

# SANTA YNEZ BAND OF CHUMASH INDIANS

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November 18, 2019

Treasury Tribal Advisory Committee  
Department of the Treasury  
1500 Pennsylvania Avenue NW, Room 1426G  
Washington, DC 20220  
[Tribal.Consult@treasury.gov](mailto:Tribal.Consult@treasury.gov)

### RE: Public Comment in advance of December 3, 2019 TTAC meeting

To the Honorable Treasury Tribal Technical Advisory Committee:

As the Committee addresses the General Welfare Exclusion (GWE), the Santa Ynez Band of Chumash Indians ("Chumash") respectfully requests the following issues be included:

#### 1. Safe Harbor for Reimbursements

Chumash requests that guidance under Code Section 139E continue the position previously taken under Revenue Procedure 2014-35 with regard to reimbursements. Revenue Procedure 2014-35 specifically added reimbursements to the GWE:

Sec. 2.06 [p. 9] *Changes from Notice 2012-75*. In response to comments from Indian tribal governments and other individuals and groups, this revenue procedure makes the following changes from the revenue procedure proposed in Notice 2012-75:

(2) Section 4.04 clarifies that for purposes of this revenue procedure the term "pay" means "pay or reimburse in whole or in part." Conforming changes are made throughout this revenue procedure.

(5) Section 5.01(1) clarifies that a tribal government may provide a benefit described in this revenue procedure directly or indirectly, by payment or reimbursement, and in cash or property. [p. 10]

Ultimately, reimbursements were added to the definition of "pay" in Rev. Proc. 2014-35:

#### SECTION 4. DEFINITIONS

.04 *Pay*. The term "pay" means pay or reimburse in whole or in part. [p. 14]

## 2. Treatment of Qualified nonmembers in Rev. Proc. 2014-35

Chumash requests that guidance under Code Section 139E recognize that benefits “to or on behalf of a member of an Indian tribe (or any spouse or dependent of such a member)” is broad enough to cover qualified nonmembers as previously recognized in Revenue Procedure 2014-35 so long as such coverage is consistent with the underlying tribal program. Members, for example, may owe certain cultural obligations to assist and care for extended family (such as lineal descendants or ancestors) so that certain program benefits received by these individuals are “on behalf of” the member beneficiary. Chumash requests that the phrase “to or on behalf of” under Code Section 139E be read broadly to reflect tribal culture, traditions, and practices. The he qualified nonmember concept set forth in Revenue Procedure 2014-35 reflected this and should be continued. In this regard, Revenue Procedure 2014-35 provides that:

If section 5.01(1) or 5.01(2) of this revenue procedure applies, the Service will not assert that members of an Indian tribe or qualified nonmembers must include the value of the applicable benefits in gross income under § 61 or that the benefits are subject to the information reporting requirements of § 6041.

Section 5.01, p. 15.

The Background to changes in Rev. Proc. 2014-25 explains that “Section 5.02(2)(d)(ii) replaces “spouse or dependent” with “qualified nonmember.” Section 2.06(22), p. 13.

Section 4 provides the following definition of “Qualified nonmember” as follows:

.05 Qualified nonmember. The term “qualified nonmember” means a spouse, former spouse, legally recognized domestic partner or former domestic partner, ancestor, descendant, or dependent of a member of an Indian tribe.

Section 4.05, p. 14-15.

After Rev. Proc. 2014-35, Congress enacted Internal Revenue Code (“Code”) Section 139E.

In contrast, Code Section 139E provides that “Indian general welfare” benefits are provided to or on behalf of a member of an Indian tribe (or the spouse or dependent of such member) pursuant to an Indian tribal government program are considered to promote the general welfare of the Tribe. (emphasis added).

While Notice 2015-34 clarified that taxpayers may continue to rely on Revenue Procedure 2014-35 after the enactment of Code Section 139E, there should be regulations to codify that Qualified nonmembers are fully included within Code Section 139E.

Sincerely,



Kenneth Kahn,  
Tribal Chairman