

Congress of the United States

JOINT COMMITTEE ON TAXATION

Washington, DC 20515-6453

SEP 03 2014

MEMORANDUM

TO:

FROM: Thomas A. Barthold

T.A.B.

SUBJECT: Revenue Estimate

This memorandum is in response to your request of August 4, 2014, for a revenue estimate of H.R. 3043, the “Tribal General Welfare Exclusion Act of 2013 (the ‘Act’).”

Under present law, except as otherwise provided, gross income means all income from whatever source derived. The general welfare doctrine is an IRS administrative rule that operates to exclude certain payments from gross income. Excludable payments generally consist of payments: (1) made from a governmental fund, (2) for the promotion of general welfare (on the basis of the need of the recipient), and (3) which do not represent compensation for services.

Examples of excludable benefits include disaster relief, adoption assistance, housing and utility subsidies for low income persons, and government benefits paid to the blind.

Prior to IRS Notice 2012-75 and Revenue Procedure 2014-35 (which made certain changes to the revenue procedure proposed in IRS Notice 2012-75) (herein collectively referred to as “Rev. Proc. 2014-35”), discussed below, there was some uncertainty concerning the application of the general welfare doctrine to certain benefits provided by Indian tribes to their members. Benefits that have been scrutinized by the IRS include payments for housing, cultural, education, and elder programs provided by Indian tribal governments. The issue is whether the tribal governments can provide such benefits tax-free to their members because they are addressing a social welfare need, without considering the financial need of the members.

In response to requests from tribes to provide guidance on this issue, the IRS issued Rev. Proc. 2014-35, which provides safe harbors under which the IRS will presume that the individual need requirement of the general welfare exclusion is met for benefits provided under certain Indian tribal governmental programs.

The Act provides similar requirements to Rev. Proc. 2014-35 in terms of which benefits would qualify for exclusion under the general welfare doctrine, including that the benefits (1) are provided pursuant to a specific Indian tribal government program, (2) are available to any tribal member who meets certain guidelines, (3) are for the promotion of general welfare, (4) are not

Congress of the United States
JOINT COMMITTEE ON TAXATION
Washington, DC 20515-6453

TO:
SUBJECT: Revenue Estimate

Page 2

lavish or extravagant, and (5) are not compensation for services. The Act, however, does not provide specific examples of programs under which benefits would qualify for exclusion.

The Act requires the Secretary of the Treasury (“Secretary”) to establish a Tribal Advisory Committee to advise on matters relating to the taxation of Indians. In consultation with the Committee, the Act requires the Secretary to establish and require training of IRS agents on Federal Indian law and training of tribal financial officers about the Act. The Act also requires the Secretary to suspend audits and examinations of Indian tribal governments and tribe members relating to the general welfare exclusion until this education has been completed. The Act provides that the Secretary may waive interest and penalties to the extent those penalties relate to excluding a payment under the general welfare exclusion.

The Act applies to years for which the tribal member’s refund statute of limitations period has not expired and provides a one-year waiver of the refund statute of limitations period in the event that the period expires before the end of the one-year period beginning on the date of enactment of the Act.

In order to estimate the revenue effects of your proposal we have assumed that it would be enacted November 1, 2014. We estimate that your proposal would have a negligible effect on Federal fiscal revenues.