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RESOLUTION NO. 2024-96

REVISIONS TO THE LAC COURTE OREILLES TRIBAL CODE OF LAW GENERAL WELFARE EXCLUSION GWE.1

WHEREAS, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians is a federally recognized Indian tribe ("Tribe") organized pursuant to the provisions of the Indian Reorganization Act of 1934, 25 U.S.C. §5101, *et seq.*; and,

WHEREAS, the Tribal Governing Board serves as the governing body of Lac Courte Oreilles Band of Lake Superior Chippewa Indians pursuant to Article III, § 1 of the Amended Constitution and Bylaws of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians; and

WHEREAS, the Tribal Governing Board is empowered to "administer any funds within the control of the Band" pursuant to Article V §(j); and

WHEREAS, the Tribal Governing Board is further empowered to "regulate, be enactment of ordinances, the conduct of business within the territory of the band" pursuant to Article V §§(n); and

WHEREAS, the Tribal Governing Board has a long history of providing critical benefits to Tribal Members, and this financial benefit is fundamental to the sovereignty and cultural integrity of the Tribe; and

WHEREAS, the Tribe enacted the General Welfare Exclusion Code to support tribal members through this doctrine and to the fullest extent permitted by law to allow for favorable tax treatment upon receipt of these critically needed funds; and

WHEREAS, it is in the best interest of the Tribe to make revisions to the GWE.1.

NOW THEREFORE BE IT RESOLVED, that the Tribal Governing Board hereby adopts the General Welfare Exclusion Code's revisions to support allowable tax exemptions that meet the specific criteria for exemption under IRS Code Section 139E for eligible Tribal Members as follows:

1. Capitalize the term “ordinance” throughout GWE.1.
2. Insert the following language in the **GWE.1.1.020 Authority**:

“...The assistance payments and services authorized by this Ordinance are intended to qualify for favorable tax treatment under the general welfare doctrine, generally, and Code Section 139E, specifically, to the fullest extent permitted by law and shall be construed accordingly.”

3. Substitute “has” for “have” in GWE.1.1.030(b).
4. Remove the phrase “and not the IRS” in GWE.1.1.030(b).
5. Substitute “is” for “are” in the second sentence of GWE.1.1.030(b).
6. Substitute “its” for “their” in the second sentence of GWE.1.1.030(b).
7. Add Section GWE.1.1.080 as follows:

1.1.080 Ratification of Prior Acts

This Ordinance is intended to memorialize and confirm existing procedures used in the administration of general welfare assistance programs and services. Assistance provided prior to the enactment of this Ordinance is hereby ratified and confirmed as general welfare assistance and intended to satisfy the requirement needed for the General Welfare Exclusion to apply.

8. Add Section GWE.1.1.090 as follows:

GWE.1.1.090 Federal Trust Fund Obligations; Executive Orders

The Tribe reserves the right to provide Assistance including circumstances where federal funding is insufficient to operate federal programs designed to benefit Tribal Members and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations. The Tribe’s adoption of Approved Programs is not intended to relieve or diminish the federal government of its funding and trust responsibilities. Nothing herein shall waive the Tribe’s right to seek funding shortfalls or to enforce the trust rights of the Tribe and its Members. The Tribe shall be entitled to government-to-government consultation and coordination rights regarding this Ordinance.

9. Add Section GWE.1.1.100 as follows:

Section GWE.1.1.100 Governing Law

RESOLUTION NO. 2024-96

All rights and liabilities associated with the enactment of this Ordinance, or the Assistance made hereunder shall be construed and enforced according to the laws of the Tribe.

10. Substitute “eligibility requirements” for “ties” in Section GWE.1.2.010(d).
11. Add the definition for “**Dependent**” in GWE.1.2.010 as follows:

(g) “**Dependent**” has the same meaning as the term is used in Code Section 139E.

12. Capitalize “assistance” in GWE.1.2.010(h), formerly (g).
13. Remove “it is provided under a Safe Harbor Program, or it meets the General Test.” from GWE.1.1.010(h), formerly (g).
14. Capitalize “assistance” in GWE.1.2.010(i), formerly (h).
15. Do not capitalize “Compensation” in GWE.1.2.010(i)(4), formerly ((h)(4)).
16. Add the definition for “**Member**” or “**Tribal Member**” in GWE.1.2.010 as follows:

(k) “**Member**” or “**Tribal Member**” means an enrolled member of the Tribe and such other individuals who may be treated as members for Assistance as determined by the Tribal Governing Board in accordance with the laws, customs, and traditions of the Tribe.

17. Insert the following sentence into GWE.1.2.010(n), formerly GWE.1.2.010(l) in “**Program**” or “**Approved Program**:”

“...to provide Assistance hereunder. Programs may have community service eligibility requirements to become eligible for the Assistance. The community service eligibility requirements are not employment, and the Assistance is not compensation. A program shall not...”

17. Remove the following sentence from GWE.1.2.010(q), formerly (n), “**Qualified Nonmember**:”

“...Dependent of a member of the Tribe. ~~Individual Tribal Programs may, but are not required to, cover Qualified nonmembers.~~”

18. Substitute “Code Section 168(j)6” for “Internal Revenue Code Section 162(j)” in GWE.1.2.010(q), formerly (o), “**Reservation**.”

19. Add the following clause in GWE.1.2.010(r), formerly (p), “**Safe Harbor Program**” as follows:

“...and IRS Revenue Procedure 2014-35 (and Notice 2015-34, which allowed for continued reliance after Tribal General Welfare Exclusion Act enactment), as the same...”

20. Revise **GWE.1.3.010 Non-Binding Designation** as follows:

“Assistance provided hereunder are paid from assets of the Tribal Governing Board; all Assistance is based on budget availability, and the Tribal Governing Board does not guarantee any Assistance hereunder. Assistance paid hereunder on the basis of need shall not be treated as a resource of the Member for any purpose. The Tribal Governing Board reserves the right to cancel, adjust, modify, or revoke any Assistance that is treated as a resource of the Tribal Member.”

21. Revise GWE.1.3.020 Indian General Welfare Benefits (Code Section 139E) as follows:

“Programs providing Assistance meeting the criteria for exemption under Code Section 139E shall not require a demonstration of individual need.”

22. Substitute “The Assistance” for “Each payment must be made or service” in GWE.1.3.030.

23. Capitalize “compensation” in GWE.1.3.040 Ceremonial Activities.

24. Substitute “Assistance” for “benefit” in GWE.1.3.070 General Criteria for Safe Harbor Treatment subsections (a),(b),(c),(d),(e), and (f).

25. Capitalize “tribal member” in GWE.1.3.070(c).

26. Substitute “Assistance” for “benefit” in GWE.1.3.080 Qualifying Safe Harbor Benefits.

27. Remove the phrase “in the parenthetical language” from GWE.1.3.080 Qualifying Safe Harbor Benefits.

28. Substitute “of GWE.1.5” for “of Article VI” in GWE.1.3.080 Qualifying Safe Harbor Benefits.

29. Insert the word “involuntarily” in GWE.1.3.080(e)(4) as follows:

“...for individuals involuntarily displaced from their homes...”

30. Create Section GWE.1.3.090 Non-Safe Harbor Programs:

GWE.1.3.090 Non-Safe Harbor Programs

Nothing in this ordinance or the IRS guidance shall limit the Tribe’s right to develop non-safe harbor Programs.

31. Revise and rename GWE.1.4.010 as follows:

GWE.1.4.010 Tax Treatment of Non-Safe Harbor Programs

Any non-safe harbor program developed by the Tribe will be treated as non-taxable if they meet the requirements of Code Section 139E set forth in GWE.1.3.030.

32. Substitute “may” for “will” in GWE.1.4.030 Community Needs as follows:

“...A Program may be deemed to be based on community...”

33. Substitute “Assistance” for “general assistance payment” in GWE.1.4.060.

34. Retitle GWE.1.4.060 from **Assistance Consistent with Program Purposes to Assistance Program Compliance.** Will be an add

35. Remove the phrase “or by motion” in **GWE.1.4.070 Limitations on Welfare Assistance Payments.**

36. Add Section **GWE.1.4.090 Benefits Shall Not be Treated as an Entitlement** as follows:

GWE.1.4.090 Benefits Shall Not be Treated as an Entitlement
The Programs authorized pursuant to this Ordinance are not entitlement programs. The Tribe has made or may make provisions to fund the Programs by establishing the funds for the Programs within the Tribal budget, but the Program may be changed or eliminated as determined to be necessary or appropriate. No Tribal Member or his or her estate has any vested interest in potential or unused benefits available under the Programs. Receipt of benefits or Program resources does not create a vested right in the Members, the Member's household, their estate or their lawful heirs. Further, a Tribal Member's rights and eligibility to receive Assistance under this Ordinance are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or attachment of the Tribal Member or his or her beneficiaries.

37. Remove the phrase “or the IRS Safe Harbor” in **GWE.1.4.110 Programs Not Limited to Means Testing.**

38. Add Section **GWE.1.4.130 Government-to-Government Relationship: Executive Order 13175** as follows:

GWE.1.4.130 Government-to-Government Relationship: Executive Order 13175

Coordination with the IRS and the United States Department of the Treasury on general welfare matters shall be grounded on a government-to-government relationship that recognizes the unique relationship between the federal government and the tribal government. The federal government, as a result of its treaty obligations and trust responsibility, as committed to providing education, housing, clean water, and many other basic needs for the Tribe. Through a conscientious shift in policy in recent decades, the federal government has encouraged the Tribe itself to provide

for such needs in partnership with the federal government and, increasingly in recent years, instead of the federal government. Essential to the government-to-government relationship is mutual respect and deference to the Tribal governance decisions. Future consultations on general welfare matters should reflect these concerns and the fact that the Tribal government, through its own policy setting process, is best situated to determine the needs of the Tribe and its Members and the appropriate policy solutions. All references to Executive Order 13175 shall include any future amendments thereto.

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39. Add Section GWE.1.4.130 Privacy; Information Sharing as follows:

GWE.1.4.130 Privacy; Information Sharing

The Tribe will maintain records regarding sensitive Tribal and Tribal Member matters, including Tribal customs, religion, and traditions, confidential from third party disclosures to the fullest extent permitted by law. If information is requested by IRS or other governmental agencies or third parties during a compliance review or examination, disclosures shall be limited to the extent necessary and required by law pending an effort to address such requests through consultation and other rights under Executive Order 13175 on a government-to-government basis. Confidential Tribal information shall not be shared in a manner that would open up additional disclosure, for example, under the information sharing agreements the recipient may be subject to or under the Freedom of Information Act.

CERTIFICATION

I, the undersigned, as Secretary/Treasurer of the Lac Courte Oreilles Tribal Governing Board, hereby certify that the Tribal Governing Board is composed of seven (7) members, of whom 5 being present, constituted a quorum at a meeting thereof, duly called, convened, and held on this 16th day of September, 2024, that the foregoing Resolution was duly adopted at said meeting by an affirmative vote of 4 members, 0 against, 0 abstaining, and that said Resolution is a lawful act of the Tribe.



William Trepanier, Secretary/Treasurer
Lac Courte Oreilles Tribal Governing Board