Executive summary | March 14, 2023

Wipfli Tribal Government CFO Peer Exchange

Host: Lisa Desotelle, Wipfli

Subject matter expert: Telly Meier, Hobbs Straus Dean & Walker

Facilitator: Austin Evans, Profitable Ideas Exchange (PIE)

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Introduction

Fourteen chief financial officers (CFOs) and leaders of finance from tribal governments met virtually to share leading practices and discuss topics of mutual interest based on an agenda created through a series of pre-interviews.

Lisa Desotelle, partner at Wipfli, hosted the exchange, and Austin Evans of PIE facilitated. Telly Meier, counsel at Hobbs Straus Dean & Walker, LLP, joined to provide subject matter expertise. The focus of the discussion covered the following topics over the course of the hour: an introduction to the General Welfare Exclusion Act (GWE), responses to the GWE and approaches to mitigating risk associated with GWE.

General Welfare Exclusion Act

Lisa Desotelle opened the conversation about the GWE with the assistance of Telly Meier.

- Meier has over 16 years of experience in tribal tax, including five years spent representing tribes against the IRS and 11 years working at the IRS.
- Meier provided a detailed overview of the Treasury's expected direction regarding tribal welfare compliance and explained the role of the GWE.

Prior to 2011, the IRS audited general welfare programs that provided benefits to tribal citizens.

- In the past, tribes usually self-funded or insured benefits on an as-needed basis to ensure tribal members had access to healthcare or adequate childcare, among other examples.

The IRS considered these benefits taxable, leading to a series of audits between 2000 and 2011.

- The general welfare exception was an administrative exception created by the IRS in the context of federal and state government benefit programs. These programs were focused on individual need, and most often individual financial need.
- In 2012, the IRS released its first guidance stating that tribes could consider community benefits over individualized needs. The GWE was created to codify this guidance, with Meier playing a key role in its establishment.

General Welfare Exclusion Act

One of the features of the GWE is its creation of the Treasury Tribal Advisory Committee (TTAC).

- The TTAC was formed to advise on any tax issues that the Treasury may encounter. Due to resignations during the COVID-19 pandemic, the committee lost quorum. Despite this setback, the IRS has been working quietly on clarifying compliance pieces.
- TTAC came back online in October 2022, to hold its first forum in over two years. Recently, the committee also held a public meeting on tribal tax priorities and the GWE.
- Tribes will have to wait until after the Treasury's scheduled meeting to get all the answers, but Meier is optimistic that the summary could be released as early as this year.

Responses and guidance

Group members were curious to hear about the different stances taken by tribal organizations as they wait for the Treasury's guidance to become clearer.

- CFOs are hesitant to take action while the Treasury works to define its compliance status. Many are adopting a middle-of-the-road approach to minimize any potential reductions to member benefits if the IRS imposes stricter benefit policies.
- Meier understood the reluctance but shared the opinion that the IRS would likely not go after individual members and require them to refile their tax returns. Meier urged the group to take an actionable stance while it is still early in the process.

Many CFOs from tribal governments are apprehensive about taking strong positions due to a lack of clarity around what constitutes lavish or extravagant expenses from the Treasury.

- This raises questions around why each individual tribe cannot define these terms, given socioeconomic and different cultural and religious practices between tribes.
- One CFO wondered why the IRS had a say in defining general welfare at all, noting that their tribe provides numerous benefits that align with their culture (e.g., paying for higher education, services and benefits provided to elders that reflect the tribe's high regard for its elders) but that might be considered extravagant by the IRS.

Responses and guidance

- The member noted the tricky balance of trying to take care of the tribe's members while also worrying about incurring possible fines from the IRS.
- During the March summit, there was hope that the TTAC would address some of the ambiguity around certain definitions. However, even the intricate order and payment breakdown for the pow-wow dancers alone proved challenging for CFOs when designating clear benefit packages, as these are culturally charged.
- Furthermore, clarifying the difference between "ceremony" and "services" was something the CFOs believed should be left up to tribal leaders.

Regarding the IRS's expectations for avoiding lavish or extravagant expenses, Meier noted two things that could potentially trip tribes up.

- First, there are questions surrounding how tribes interpret whether benefits are lavish or extravagant. However, the IRS has set a very high bar for this issue, and tribes have wide latitude in determining what is appropriate.
- Second, Meier noted that tribal councils must maintain consistency with their bookkeeping and develop a policy that aligns with their revenue allocation plan (RAP).

Responses and guidance

One executive shared that their tribe has begun using a third-party administrator to distribute funds through their flexible spending account and manage all adjudicated claims.

- While it required some effort to get everyone on board, it ultimately prevents the organization from having to take on the role of the "bad guy" from time to time.

- Modifying the RAP may require some investigation, but, as Meier suggests, it is better to make the necessary changes now than to risk the IRS discovering noncompliance later.


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