

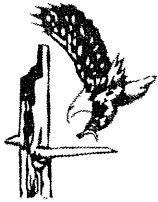


The Grand Traverse Band of Ottawa and Chippewa Indians

2605 N. West Bay Shore Drive • Peshawbestown, MI 49682-9275 • (231) 534-7750

STATEMENT OF CHAIRWOMAN SANDRA WITHERSPOON ON RAO DISTRIBUTION UNDER THE TRIBAL/IRS GENERAL WELFARE DISTRIBUTION

The Tribal Council adopted an amendment to the RAO on November 27, 2024, to utilize the terms of the IRS provision §139E, called the Tribal General Welfare Exclusion Act. The Department of the Interior, Office of Indian Gaming, approved the amendments on January 23, 2025. Tribal General Welfare (GWE) benefits are social programs provided by tribal governments to their citizens, with the goal of supporting their overall well-being. These benefits are generally not considered part of a tribal member's taxable income. GTB enacted Resolution #25-43.3762 "General Welfare Distribution," attached "Program Guidelines for the RAO amendments and IRS 139E," "Justification for the General Welfare Exclusion Distribution." Based on federal and tribal law this process exempts the RAO payment from federal income tax made in May and November of each year. (with certain limited exceptions related to Child Support, Tribal Court Judgment, and contract agreements to pay debts back to the tribe). Minor payments into the existing minor trusts will be segregated from May 2025 under the theory that their future distribution will qualify for the RAO amendments, IRS §139E in accord with the provisions of Resolution #25-43.3762. The end message to tribal members is that the RAO distributions are not subject to federal income tax because the RAO distributions are Tribal General Welfare Distributions. The Resolution #25-43.3762 and attachments will also be posted at GTB Members website.



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TRIBAL COUNCIL RESOLUTION Resolution #25-43.3762

GENERAL WELFARE DISTRIBUTION

- WHEREAS:** The Grand Traverse Band of Ottawa and Chippewa Indians (GTB) became a federally-recognized Indian Tribe having a government-to-government relationship with the United States effective May 27, 1980 (see 45 Fed. Reg. 18321-322 (March 25, 1980)) and GTB is organized under a Tribal Constitution approved by the Secretary of the Interior on March 29, 1988; and
- WHEREAS:** GTB has a full Tribal Council currently consisting of Sandra L. Witherspoon, Tribal Chairwoman; Jane Rohl, Vice Chair; Anna Miller, Secretary; Donna Swallows, Treasurer; Tina Frankenberger, Councilor; Brian Napont, Councilor; and Angelina Raphael, Councilor; and
- WHEREAS:** Article IV § 1 of the Tribal Constitution provides that the Council “[S]hall be vested with all of the sovereign governmental executive and legislative powers of the Tribe”; and
- WHEREAS:** Article IV § 1(a) of the of the Tribal Constitution provides that a power of the Tribal Council is “[t]o promote and protect the health, education, and general welfare of the Band and its members;” and
- WHEREAS:** Article IV, Section (1)(h) of the Tribal Constitution provides that a power of the Tribal Council is “[t]o manage and control the economic affairs, enterprises, property, and all other interests of the Band; and
- WHEREAS:** By Resolution #24-42.3731 of November 27, 2024, “[T]he GTB Council... enacts the November 27, 2024, Omnibus Amendment of the Revenue Allocation Ordinance for submission to the United States Department of the Interior for approval or disapproval...”; and
- WHEREAS:** Resolution #24-42.3731 was “published and posted for tribal citizen comment for 30 days” and no comments were received; and
- WHEREAS:** On November 27, 2024, the Tribal Council amendment to Title 18 Chapter 16 Revenue Allocation Ordinance included § 1606 that contained the following language:

“The Tribal Council shall annually determine, based on an evaluation of community needs, the portion of the net gaming revenues allocated to

section 1605 (“use of net revenues: tribal member distributions”) that will be set aside to make equal distributions to qualify and tribal members for the special purposes or programs, such as payments under social welfare medical assistance, education assistance our housing or other similar specifically identified needs. The tribal Council shall develop appropriate procedures to implement this section 1606. (“The Tribal Member Distribution (“General Welfare Exclusion”)”

WHEREAS: On January 23, 2025, The Department of Interior, Office of the Secretary, Bryan K. Mercier, Director of Indian Affairs Exercising the delegated authority of the Assistant Secretary –Indian Affairs approved the amendment with the following language:

“The Department of the Interior (Department) has completed its review of the Amendment. The Amendment “Per Capita Benefits” to “Tribal Member Distributions,” which may consist of either per capita payments, general welfare distributions, or both.

Payments made by the Tribe for special purposes or programs will be considered general welfare exclusion distributions and administered by the Tribe in accordance with the Internal Revenue Service guidance in interpreting section 130 9E of the Internal Revenue Code. The amendment clarifies that the Tribe will set aside amounts for general welfare exclusion distributions under section 1606 of the Tribe’s revenue allocation ordinance. The Amendment defines per capita benefits as distribution of money or other things of value to all members of the Tribe, or to identified groups of Tribal members, which are paid from the net revenues of tribal gaming activity. Under the amendment, payment set aside by the Tribe for special purposes or programs, such as payments made for social welfare, medical assistance, education, housing, or other similar specifically identified needs are General Welfare Exclusion payments, not per capita benefits.

I conclude that the Amendment complies with the Indian Gaming Regulatory Act, 25 U.S.C. section 2701 et seq. (IGRA) and the Department’s Implementing Regulations. [FN See 25 C.F.R. § 290]. Accordingly, pursuant to Section 11 of the IGRA and the delegated authority of the Assistant Secretary – Indian Affairs, the Amendment is approved.”

WHEREAS: Attached hereto is an Area Income and Cost-of-Living Chart, based on a review of the census statistical data for Northwest Michigan for the year 2022, that the cost-of-living in Northwest Michigan is the above the median income of tribal members within the 6-county service area; and

WHEREAS: Attached hereto is an Executive Directive of the Tribal Council entitled “Program Guidelines for implementation of §§ 1605 and 1606 of the RAO as a General Welfare Distribution to all GTB Members under the RAO and IRS 139E.”; and

WHEREAS: The provisions of § 1609 (Child Support Obligations), § 1610 (Tribal Court Orders) § 1611 (Adult Trusts) § 1605(e) (1) (minor per capita trust,) were amended for existing minor trust; and

WHEREAS: § 1605(e)2 was amended directing that all future payments to minor trusts that “The trust shall segregate and separately track per capita payments and General Welfare Exclusion distributions contributed to the trust.”; and

WHEREAS: The Tribal Council must provide Executive Program Guidelines, attached hereto, for the General Welfare Benefit Exclusion Program administered by the Tribe for the purpose of providing general welfare assistance to all tribal members consistent with IRS §139E and IRS Rev. Proc. 2014-35 and 2015-34, “Application of the General Welfare Exclusion to Indian Tribal Government Programs that Provide Benefits to Tribal Members.”; and

WHEREAS: The “Executive Program Guidelines” can be modified by program staff as developing circumstances of program administration require to meet the central purpose of this Resolution and as consistent with and guidance provided the IRS to be following IRS 139(E).

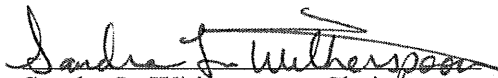
NOW THEREFORE BE IT RESOLVED that following the approval of the GTB RAO on January 23, 2025, and the IRS Rev. Proc. 2014-35, and the Notice 2015-34 “Application of the General Welfare Exclusion to Indian Tribal Government Programs that Provide Benefits to Tribal Members,” on the General Welfare Exclusion Act IRS § 139E, and the findings of the Council on “Area Income and Cost-of-Living Chart,” based on a review of the census statistical data for Northwest Michigan based on the Census Data of 2022, and an evaluation of community needs, that all RAO distributions will now be presumptively treated as General Welfare Distributions of GTB Tribal Government to all GTB Members and therefore not subject to federal income tax on distribution to all GTB members.

BE IT FURTHER RESOLED that the Tribal Council, by this Resolution #25-43.3762 creates and establishes a General Welfare Benefit Exclusion Distribution Program to be administered by select Tribal Departments, principally the GTB OMB, under the executive directive “Program Guidelines for Implementation of §§ 1605 and 1606 of the RAO as a General Welfare Distribution to All GTB Members under the RAO and IRS 139E”.

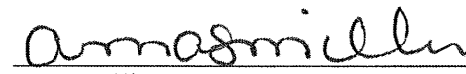
BE IT FURTHER RESOLVED that RAO §1610, (Tribal Court Orders), are treated as GWDE distributions not subject to 1099 reporting, and that RAO § 1609 (Child Support) are treated as taxable transactions to the extent of the child support due by tribal members and the balance to be treated as GWDE distributions.

BE IT FURTHER RESOLVED that the trust administrator of 1605(e) 2, (Minor’s Trust) is directed to segregate present minor per capita funds from future General Welfare Exclusion contribution to minor per capita funds commencing May 2025.

APPROVED:


Sandra L. Witherspoon, Chairwoman

ADOPTED:



Anna Miller, Secretary

CERTIFICATION

As Secretary of the Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians, I hereby certify that the above resolution was approved and adopted at a Special Session of the Tribal Council held in Peshawbestown, Michigan, on April 16, 2025, by a vote of:

5 FOR, 0 AGAINST, 0 ABSTAINING, and 1 ABSENT.

ATTEST:


Anna Miller, Secretary

**Program Guidelines for Implementation of the §§ 1605 and 1606 of the RAO
as a General Welfare Distribution to All GTB Members under the RAO and
IRS 139E**

- I.** The purpose of these guidelines is to outline the procedure for implementing IRS § 139E in conjunction with GTB's approved RAO. IRS § 139E provides guidance on General Welfare Benefits programs and the treatment of such Benefits as nontaxable income under specific conditions. These procedures are applicable to programs established by the Tribe for the distribution of the approved RAO. GTB has an RAO that recognizes the coordination of previous per capita distributions under its approved RAO to be distributed as general welfare benefits under IRS § 139E.
- II.** Eligibility criteria for General Welfare Benefits distribution under IRS § 139E.

To ensure compliance with IRS regulations, the Council adopts the following criteria when program staff is adopting, establishing and implementing General welfare programs that qualify for nontaxable treatment.

- a. Benefits to all tribal members: any program under § 139E is available to all tribal members.
- b. The program should reflect the customs, traditions, and needs of the tribal community.
- c. The program must apply uniformly to all eligible tribal members without discrimination.

III. Program design and implementation

The following steps outlined the process for designing and implementing the General Welfare program under IRS § 139E

- a. Every year that ends in an even number, the Council will cause to be made a review of the statistical income level of primary service areas in Northwest Michigan that constitute the residential area for tribal members. This will be done to establish the low-income status of Tribal members and the need of the IRS § 139E to allay the low-income status of tribal members.
- b. Every year that ends in an even number, the Council will require its planning staff to engage tribal members in whether the program culturally reflects the values of the community.
- c. Every year the Council will prepare detailed guidelines outlining the eligibility criteria, benefits use criteria, and distribution methods.
- d. Every year that ends in an even number, the Council will review program design against other approved programs operating similar programs.
- e. The principal factor in the justification of the program is the low-income of tribal members, when done on a census statistical base, that reflect direct transfer of benefits is the best method to alleviate the poverty-based needs of the tribal members.
- f. Consistent with the RAO, § 1609 all tribal members who owe money for Child Support, the OMB shall treat that distribution as a taxable event and issue a 1099 for the child support and the balance, if any, is treated as GWDE not subject to 1099 reporting.

- g. Consistent with RAO § 1610, the OMB shall treat all transactions under this provision as GWDE, not subject to the issuance of a 1099. The OMB shall honor and enforce all Tribal Court Order or signed contractual agreement as GWDE not subject to the issuance of a 1099.

IV. IRS Compliance Review

- a. Every year that ends with an even number, the Council will consult with legal counsel and tax advisors to review the parameters of the program against IRS proposed rules and current and developing guidance.
- b. Every year that ends in an even number, the Council will document its compliance efforts to maintain adequate records reflecting the nontaxable status of the program's benefits.

V. Distribution process

- a. Notification of all tribal members about program details by the inclusion of relevant Council Governing Resolutions, Motions and Ordinances passed to implement §§ 1605 and 1606 of the RAO in conjunction with IRS § 139E on the initial implementation of the program year 2025 and thereafter tribal members will be notified on every 3 years about the program.

VI. No Tribal Member is required to participate in the program. Based on the statistical picture of the tribal members, who have substantially lower income than the medium, the Council is making a specific finding that all tribal members are eligible for the program, and thus, no application is necessary to participate. All tribal members previously eligible for benefits under the previous RAO are automatically eligible under the approved amended January 23, 2025, RAO.

VII. Monitoring and reporting:

- a. The Council will cause to be conducted regular evaluations of the program's impact on the community. These evaluations will be done every 3 years.
- b. The Council will collect feedback from tribal members to enhance program effectiveness at monthly meetings of the Council where any member can speak on any topic.
- c. Segregated records and computer files related to this program for potential audits or reviews by the IRS or other related government officials.

VIII. Since all tribal members are eligible, the Tribe will only maintain records of individual tribal members who elect to continue receiving the distribution on a tax basis.

**Justification for the Grand Traverse Band of Ottawa and Chippewa Indians'
Annual General Welfare Exclusion Distributions
2025**

Pursuant to RAO §§ 1605 and 1606, the Grand Traverse Band of Ottawa and Chippewa Indians (the “**Tribe**”) plans to make equal distributions for the purpose of providing general welfare support benefits to members of the Tribe. The Tribe has determined that the amount distributed in a given year will be determined by the Tribal Council based on a community needs assessment, and taking into consideration the funds available for distribution. It is the Tribe’s position that, so long as the amount of the Tribe’s distributions to a member in a given year are below the baseline amount established through the needs assessment, the entire distribution amount should be treated as a tax-exempt distribution under the Tribal General Welfare Exclusion Act of 2014 (the “**Act**”).

As explained below, the Tribal Council’s analysis demonstrates that the average annual unmet general welfare needs of Grand Traverse community members are *at least \$15,000*. Because the Tribe’s proposed annual distribution amount is significantly below this amount, the entire distribution should be treated as a tax-exempt distribution under the Act.

Summary of Findings

Overall, the Tribe has approximately 4,156 members, 3,221 of whom live in Michigan, and another 928 live across the United States in forty-six other states plus the District of Columbia. In addition, seven Tribal members live outside the United States. Out of those members who live in Michigan, 1,937 live in the following counties: Antrim, Benzie, Charlevoix, Grand Traverse, Leelanau, and Manistee (the “**Service Counties**”). Recognizing that the Act does not require general welfare benefits to be based on individual need, it is the Tribal Council’s position that the members located in the Service Counties present a reasonable picture of the Tribal community’s needs in general.

The Tribal Council recognizes that the Tribe’s members have significant general welfare needs, including but not limited to housing, utilities, education, dependent care, and transportation. Due to the availability of quality data and the amount of the Tribe’s distributions, the Tribal Council believes it would be efficient to focus its analysis on the cost of housing and utilities for members located in the Services Counties.

The Internal Revenue Service publishes IRS Collection Financial Standards for housing and utilities in every county in the United States. These standards are intended for use in calculating repayment of delinquent taxes. Although the standards are for purposes of federal tax administration only, they can be helpful in establishing the cost of living in a particular county. The expenses included in the IRS standards for housing and utilities include mortgage or rent, property taxes, interest, insurance, maintenance, repairs, gas, electric, water, heating oil, garbage collection, residential telephone service, cell phone service, cable television, and internet service.¹ For the Michigan counties of Antrim, Benzie, Charlevoix, Grand Traverse, Leelanau, and Manistee, the IRS standard monthly cost of housing and utilities is as follows²:

¹ Michigan - Local standards: Housing and utilities, IRS, <https://www.irs.gov/businesses/small-businesses-self-employed/michigan-local-standards-housing-and-utilities>.

² On average when comparing the counties, the monthly cost is \$1,889 per month, or about \$22,668 per year.

| County | Family of 1 | Family of 2 | Family of 3 | Family of 4 | Family of 5 |
|-----------------------|-------------|-------------|-------------|-------------|-------------|
| Antrim County | \$1,433 | \$1,684 | \$1,774 | \$1,978 | \$2,010 |
| Benzie County | \$1,507 | \$1,770 | \$1,865 | \$2,079 | \$2,113 |
| Charlevoix County | \$1,485 | \$1,744 | \$1,838 | \$2,049 | \$2,082 |
| Grand Traverse County | \$1,610 | \$1,891 | \$1,993 | \$2,222 | \$2,258 |
| Leelanau County | \$1,751 | \$2,056 | \$2,167 | \$2,416 | \$2,455 |
| Manistee County | \$1,361 | \$1,599 | \$1,685 | \$1,879 | \$1,909 |

The Tribal Council also recognizes that the Tribe has other general welfare programs that provide monthly or annual housing and utilities benefits to members who qualify. These benefits must be taken into account to ensure the Tribe's distributions do not duplicate existing programs and only address the unmet needs of the Tribe's members.

Based on its review of other programs, the Tribal Council finds that a qualifying member could receive resources in monthly and annual housing and utilities benefits. However, the Tribe also recognizes that less than half of the Tribe's members would qualify for the full amount of these benefits.

Analysis and Conclusion

Based on the table above, the Tribe's members in the Service Counties have at least \$19,188 of annual housing and utilities expenses.³ Further, the annual average for housing and utilities expenses in the Service Counties amounts to approximately \$22,668, while the maximum amount is \$29,460.⁴ These numbers are conservative because the general welfare needs of the Tribe's members are not limited to housing and utilities.

Further, even if the Tribe subtracts out the potential maximum annual amount of housing and utilities benefits received by members who qualify for these benefits, there remains an unmet need of \$15,688 for housing and utilities expenses. This amount is significantly below the Tribe's annual distribution. Consequently, the Tribal Council concludes that it is reasonable to treat the entire amount distributed by the Tribe as a tax-exempt distribution under the Act.

³ This is the annual amount for a family of 1 in Manistee County.

⁴ This is the annual amount for a family of 5 in Leelanau County.