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P.O. Box 549
Siletz, OR 97380-0549

Delores Pigsley,
Tribal Chairman
Brenda Bremner,
General Manager
and Editor-in-Chief

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Courtesy photo by Ann Goddard

Ian Kelley carries the eagle staff as nightfall approaches on the first day of this year's Run to the Rogue. See more photos on pages 9-12.

Congress passes Tribal General Welfare Exclusion Act, which bans taxes on health care, education, housing and legal aid provided by Tribes

WASHINGTON – On Sept. 18, the U.S. Senate passed H.R. 3043, the Tribal General Welfare Exclusion Act, by unanimous consent. On Sept. 16, the measure passed the House of Representatives by voice vote.

The Tribal General Welfare Exclusion Act will fully recognize that Indian Tribes – as sovereign nations – are responsible for making certain their government programs and services best fit the needs of their citizens, just as other local governments across the country do.

For years, Indian Tribes have been taxed for providing health care, education, housing or legal aid to those in need. Local and state governments throughout the United States frequently offer such services to those who need assistance, but the people receiving help are not taxed by the IRS.

The path to this legislation began in 2005 when the Internal Revenue Service Office of Tribal Governments began an aggressive audit campaign against Tribes, finding that programs and services provided by Tribal governments to their citizens were a form of taxable income and imposing penalties against Tribes for failing to issue 1099 forms.

Even though no federal, state or local government programs were subject to the same taxation, the IRS grew increasingly strict, alleging that backpacks provided to schoolchildren or travel provided to Elders for health care were a form of taxable income.

As these audits spread from Tribe to Tribe, Tribal leaders became increasingly unified and vigorously opposed.

The IRS responded with guidance in Revenue Procedure 2014-35 that set up a series of "safe harbors" for Tribal programs and services. The guidance is very helpful, but Tribal leaders have remained concerned that IRS field offices have been inconsistent in recognizing Tribal government status and receive little training.

Once signed into law, the Tribal General Welfare Exclusion Act will:

- Mandate Tribal government programs, services and benefits authorized or administered by Tribes for Tribal citizens, spouses and dependents are excluded from income as a "general welfare exclusion"
- Clarify that items of cultural significance (e.g., paying someone to lead sacred Indian ceremonies) or cash honoraria provided by Tribal governments shall not represent compensation for services and shall be excluded from taxable income
- Direct the Secretary of Treasury to require education and training of IRS field agents on federal Indian law and the unique legal treaty and trust relationship between the government and Tribes
- Establish a Tribal Advisory Committee within the Treasury to advise the secretary on matters of Indian tax policy
- Temporarily suspend all audits and examinations of Tribal governments and members until the education and training measures are completed
- Authorize the secretary to waive any penalties or interest imposed on Indian Tribal governments or members
- Direct the secretary that any ambiguities in applying this act shall be resolved in favor of Tribal governments and deference shall be given to Tribal governments for the programs administered and authorized by the Tribe to benefit the general welfare

H.R. 3043 was sponsored in the House by Representatives by Devin Nunes (R-CA). The Senate companion bill, S. 1507, was sponsored by Sen. Heidi Heitkamp (D-ND) and Sen. Jerry Moran (R-KS).

According to the National Congress of American Indians, this is a statement to the work of Tribal leaders over the years that

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