

**RESOLUTION NO. 205 -22
OF THE GOVERNING BODY OF THE
YAVAPAI-APACHE NATION**

A Resolution Adopting the Yavapai-Apache Nation Holiday Assistance Program

- WHEREAS:** The Yavapai-Apache Tribal Council (“Council”) is authorized to represent the Yavapai-Apache Nation (“Nation”) and act on all matters that concern the health and welfare of the Nation, and to make decisions not inconsistent with or contrary to the Constitution of the Yavapai-Apache Nation ("Constitution"), as provided by Article V (a) of the Constitution; and
- WHEREAS:** The Council is authorized to manage all tribal economic affairs and enterprises and to appropriate and regulate the use of tribal funds, as provided by Articles V(i) and (k), respectively, of the Constitution; and
- WHEREAS:** The Constitution of the Yavapai-Apache Nation confirms that a core responsibility of the Tribal Council is to “protect our Indian heritage including our religion, customs and language” as provided in the Constitution’s Preamble; and
- WHEREAS:** The Council by tribal custom or government practices has previously recognized the provision of holiday assistance payments to the Nation’s members as a means to promote the Nation’s general welfare, culture and traditions, as well as a means to provide needed financial assistance for basic household expenses; and
- WHEREAS:** The Council finds that the financial assistance provided to members under the Program established by this Resolution is intended to promote the general welfare of the Nation by assisting Members in the preservation of tribal culture and traditions and with household expenses, that such assistance is necessary and appropriate in achieving these goals, and is consistent with specific findings of the Council, made after considering the unique facts, needs and circumstances of the Nation and its Members, as well as the means, mechanisms and alternatives available to address those needs; and
- WHEREAS:** The Council, upon review of facts and circumstances unique to the Nation and its Members, as well as other relevant facts and circumstances, makes the following findings in support of the need to establish the Program of assistance provided for herein and adopted under this Resolution:
- The Nation has a long-standing culture and tradition of supporting the gathering of Member families at various holidays during which Members are presented with unique opportunities to share the culture and tradition of the Yavapai and Apache people.

- Holiday gatherings present a unique opportunity for Members to share, teach, participate in, and learn about culture and traditions.
- Holiday gatherings place a financial burden on Members that could, without assistance, hinder the promotion of culture and traditions.
- Certain cultural and traditional gatherings of Members may not take place without assistance for food, travel, ceremonial costs, and other associated expenses.
- Financial assistance to Members will help to encourage the passing of tribal culture and traditions.
- Holiday gatherings provide a unique opportunity for the Nation’s elders to share past and present culture and traditions.
- The Nation and its Members have adopted “holiday” dates into the Nation’s culture and traditions, as a means to promote the Nation’s own unique tribal culture, traditions, and ceremonial values.
- The Nation’s unique tribal culture, traditions, and ceremonial values are also manifest at funerals and burials, which may also require assistance for food, travel, ceremonial costs, and other associated expenses.
- Members often have difficulty in meeting household expenses, particularly during holiday seasons, placing undue burdens on the ability to promote the Nation’s culture and traditions.
- Financial assistance with rent and mortgage payments, utilities and food expenses will promote the general welfare of the Nation consistent with the goals expressed herein.
- Members face additional burdens in meeting basic household expenses during the holidays (for example, due to added expenses or expenses that are made more difficult to meet due to other holiday obligations).
- The Council finds that assistance to or for the benefit of Members is helpful in relieving the cultural and traditional obligations of Members to help their Member family and relatives participate in holiday, cultural and ceremonial gatherings.
- The foregoing is only a summary of key findings that support the Program, and it is not intended to list all factors that support the Program.
- The activities promoted by the Program will help to build a stronger tribal government and community.
- Establishment of the Program is in the best interest of the Nation and its members; and

WHEREAS: All of the above findings are based on the Council’s unique knowledge of the Nation’s culture, tradition, historic barriers, needs and long-term goals of self-determination, and are made in the sole discretion of the Council taking these factors into account; and

WHEREAS: The Council desires to formally memorialize the Nation’s prior tribal custom and government practice of recognizing holiday assistance to the Nation’s Members as a means of promoting the Nation’s general welfare, culture and

traditions, and to provide financial assistance for basic household needs, through adoption of the “Yavapai-Apache Nation Holiday Assistance Program” (hereafter, the “Program”) in the form attached to this Resolution as **Exhibit A** and incorporated herein by reference.


NOW THEREFORE BE IT RESOLVED that the Yavapai-Apache Tribal Council, in Council assembled, at which a quorum is present, hereby adopts the “Yavapai-Apache Nation Holiday Assistance Program” (the “Program”), in the form attached to this Resolution as **Exhibit A**, to be administered in compliance with the Tribal General Welfare Exclusion Act of 2014 (Internal Revenue Code Section 139E), and other applicable laws and IRS guidance.

BE IT FURTHER RESOLVED that the Yavapai-Apache Nation General Welfare Ordinance (see Tribal Council Resolution 118-07) shall be interpreted (and deemed amended as necessary) to incorporate the Nation’s sovereign right to provide financial assistance to its Members in accordance with subsequent federal legislation, known as the Tribal General Welfare Exclusion Act of 2014 (Internal Revenue Code Section 139E).

BE IT FINALLY RESOLVED that the Chairwoman and Vice-Chairman, or either of them, are hereby authorized to take such further action as deemed necessary to carry out the intent and purposes of this Resolution.


CERTIFICATION

I hereby certify that the foregoing resolution was adopted by an affirmative vote of the Tribal Council, with a quorum in attendance, presented for approval on November 3 2022, by a vote of 8 8 in favor, 0 opposed and 0 abstaining, pursuant to the authority contained under the Constitution of the Yavapai-Apache Nation as cited above.




Tanya Lewis, Chairwoman

ATTEST:



Karla Reimer, Council Secretary

Approved as to Form:


Office of the Attorney General

EXHIBIT A

Yavapai-Apache Nation Holiday Assistance Program

**YAVAPAI-APACHE NATION
HOLIDAY ASSISTANCE PROGRAM**

General Welfare Assistance
Program Description and Guideline

1. Indian Tribal Government Program

This Program Description and Guideline is intended to memorialize the Yavapai-Apache Nation Holiday Assistance Program (the “Program”) of the Yavapai-Apache Nation (the “Nation”), a federally recognized Indian tribal government. The Program is intended to provide Indian general welfare assistance benefits to the Nation’s Members in accordance with the general welfare doctrine, Internal Revenue Code Section 139E and the Yavapai-Apache Nation General Welfare Assistance Ordinance (the “GWO”).

2. Program Eligibility for General Welfare Exclusion

(a) General Rule: The Program reflects the Nation’s inherent sovereign right to promote the general welfare of the Nation, its self-determination, culture, and tradition, by providing general welfare assistance to the Nation’s Members that meets all requirements for treatment as Indian general welfare benefits within the meaning of Internal Revenue Code (the “Code”) Section 139E. <https://www.law.cornell.edu/uscode/text/26/139E>

(b) Code Section 139E Requirements: Each assistance payment made by the Nation to a Member under the Program shall be treated as a non-taxable Indian general welfare benefit under Code Section 139E provided that the following restrictions are met:

- (1) Program benefits must be administered under the guidelines specified in this Program and may not discriminate in favor of the members of the Nation’s governing body;
- (2) Program benefits shall be made available to any Member who meets such guidelines;
- (3) Program benefits must be for the promotion of the general welfare of the Nation;
- (4) Program benefits may not be lavish or extravagant; and
- (5) Program benefits may not consist of compensation for services.

(c) IRS Safe Harbor Recognition: Per Revenue Procedure 2014-35, the Internal Revenue Service (“IRS”) has previously recognized that cultural and religious programs, as well as programs to assist Members with food, housing, utilities and other necessary household expenses may qualify for tax free treatment under the general welfare exclusion. <https://www.irs.gov/pub/irs-drop/rp-14-35.pdf> This Program provides benefits included within these safe harbor categories.

Per IRS Notice 2015-34, <https://www.irs.gov/pub/irs-drop/n-15-34.pdf>, taxpayers may continue to rely on Revenue Procedure 2014-35 safe harbors following enactment of Code Section 139E.

(d) Safe Harbor Examples:

Without limitation, the Council has specifically considered the following examples that IRS has expressly recognized in its safe harbor guidance in connection with the development of this Program:

(1) Cultural and Religious Assistance.

Programs to--

- (i) Pay expenses (including but not limited to admission fees, transportation, food, and lodging) to attend or participate in an Indian tribe's cultural, social, religious, or community activities, such as pow-wows, ceremonies, and traditional dances;
- (ii) Pay expenses (including but not limited to admission fees, transportation, food, and lodging) to visit sites that are culturally or historically significant for the tribe, including but not limited to other Indian reservations;
- (iii) Pay the costs of receiving instruction about an Indian tribe's culture, history, and traditions (including but not limited to traditional language, music, and dances);
- (iv) Pay funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events; and
- (v) Pay transportation costs and admission fees to attend educational, social, or cultural programs offered or supported by the tribe or another tribe.

(2) Housing Assistance.

Programs relating to principal residences and ancillary structures that are not used in any trade or business, or for investment purposes that--

- (i) Pay mortgage payments, down payments, or rent payments (including but not limited to security deposits) for principal residences;
- (ii) Enhance habitability of housing, such as by remedying water, sewage, sanitation service, safety (including but not limited to mold remediation), or heating or cooling issues;

- (iii) Provide basic housing repairs or rehabilitation (including but not limited to roof repair and replacement); and
- (iv) Pay utility bills and charges (including but not limited to water, electricity, gas, and basic communications services such as phone, internet, and cable).

3. Program Purpose and Findings

(a) Promotion of the General Welfare: The Program is intended to promote the general welfare of the Nation by assisting Members in the preservation of tribal culture and traditions and with household expenses, which the Nation recognizes are made more challenging with holiday and cultural gatherings. The Nation has found the Program to be necessary or appropriate in achieving these goals, based on specific findings of the Council after considering the unique facts, needs and circumstances of the Nation and its Members, as well as the means, mechanisms, and alternatives available to address those needs.

(b) Specific Findings of Need:

The Tribal Council, upon review of facts and circumstances unique to the Nation and its Members, as well as other relevant facts and circumstances, makes the following findings in support of the need to establish the Program of assistance provided for herein:

- The Constitution of the Yavapai-Apache Nation confirms that a core responsibility of the Tribal Council is to “protect our Indian heritage including our religion, customs and language” Constitution of the Yavapai-Apache Nation - Preamble.
- The Nation has a long-standing culture and tradition of supporting the gathering of Member families at various holidays during which Members are presented with unique opportunities to share traditions and culture.
- Holiday gatherings present a unique opportunity for Members to share, teach, participate in, and learn about culture and traditions.
- Holiday gatherings present a financial burden on Members that could, without assistance, hinder the promotion of culture and traditions.
- Certain cultural and traditional gatherings may not take place without assistance for food, travel, ceremonial costs, and other associated expenses.
- Program assistance will help to encourage the passing of tribal traditions and culture.
- Holiday gatherings provide a unique opportunity for elders to share traditions and culture, past and present.
- The Nation and its Members have adopted “holiday” dates into the Nation’s own culture and traditions, as a means to promote the Nation’s own unique tribal culture, traditions, and ceremonial values.
- Members often have difficulty in meeting household expenses, particularly during holiday seasons, which may place undue burdens on the foregoing tribal goals.
- Financial assistance with rent and mortgage payments, utilities and food expenses will promote the general welfare of the Nation consistent with the foregoing goals.

- Members face additional burdens for basic household expenses during the holidays (for example, due to added expenses or expenses that are made more difficult due to the need to meet other holiday obligations).
- Assistance to or for the benefit of Members is helpful in relieving the cultural and traditional obligations of Members to help Member family and relatives participate in holiday, cultural and ceremonial gatherings.
- The activities promoted by the Program help to build a stronger tribal government and community.
- Establishment of the Program is in the best interest of the Nation and its members.

The foregoing list of findings is only a summary of key findings that support the Program. The list is not an exhaustive list all factors that support the Program. All findings are based on the Council's unique knowledge of the Nation's culture, tradition, historic barriers, needs and long-term goals of self-determination, and are made in the sole discretion of the Council taking these factors into account.

The Council shall periodically review the facts, circumstances and needs of the Nation and its membership, and make modifications to the Program as needed to ensure that the Program continues to serve the general welfare of the Nation.

4. Program Eligibility

Except as provided in Section 5(c), the following Members are eligible to receive Program benefits:

All adult members of the Nation, eighteen years old and older (as shown on the official enrollment records of the Nation), as of a uniform date established by the Council annually for which assistance is approved and appropriated.

The annual date for eligibility and the approval and appropriation of an assistance payment for a particular year shall be established by a Tribal Council Resolution.

All recipients must also be eligible for General Welfare benefits per Code Section 139E and/or Revenue Procedure 2014-35.

5. Program Administration

(a) Amount: The amount of any Program assistance payment shall be established by Tribal Council Resolution for each year for which an assistance payment is appropriated. Assistance is dependent upon budget availability as determined in the Council's complete discretion and is not a vested right. The Council shall limit the amount of any declared assistance payment to ensure that it is reasonably proportional to addressing the general welfare needs at issue, and to ensure compliance with Code Section 139E (including subsection (b)(2)(C) - not lavish or extravagant). Providing equal assistance to members is not intended to characterize the assistance as a "per capita" benefit. Program assistance is intended for specific general welfare purposes, and dollar amounts are set at an amount that is less than the anticipated need of each Member-recipient.

(b) Offsets: The amount of Program assistance payments shall be subject to deductions payable to the Nation's Tribal Court for all court-ordered payments such as restitution, court fees, child support, or any other court-ordered payments, but shall not be subject to deductions for debts owed to the Nation except as may be agreed to in written agreements between the Nation and an individual Member.

(c) Coordination with Other Government Assistance: This Program is intended to supplement rather than supplant other assistance for Members who continue to have unmet needs. Accordingly, the Council may reduce or eliminate assistance that may otherwise disqualify a Member from other government assistance. The Council may also establish a separate income-qualified category of participants in lieu of reductions or elimination of tribal assistance. The establishment of an income-qualified category of participants shall be at the discretion of the Council upon determinings that income and need testing is necessary or appropriate to coordinate Program assistance with other government assistance. Income-qualified participants will be limited to those who demonstrate individual finance need, at or below objective income guidelines (to be based on published median income and poverty guidelines unless separate criteria are established by the Council from time to time). Income-qualified participants shall be certified as such if necessary to coordinate with other government assistance.

(d) Procedure: Assistance shall be paid to each eligible Member by check or electronic means as coordinated through the Nation's Finance Department.

(e) Disclaimer: The Nation may adopt procedures to allow Members to disclaim assistance if the disclaimer is made in compliance with all applicable rules of the Internal Revenue Code.

(f) Appeal: The Tribal Council's decision shall be final on any Member dispute regarding the Program or Program administration. Nothing in this Program Description and Guideline shall constitute a waiver of the Nation's sovereign immunity from unconsented lawsuit nor to give rise to any cause of action hereunder.

6. Limited Use of Assistance

The use of assistance payments by Members is limited to qualifying Program purposes, including:

- Expenses to attend, conduct, or participate in holiday gatherings or other cultural or ceremonial activities, such as food, travel, and ceremonial costs.
- Basic household expenses, such as rent and mortgage payments, utilities, and food expenses.
- Other expenses that meet burdens resulting from holiday obligations, or other cultural or ceremonial activities.
- Other expenses that will encourage participation in holiday gatherings or other cultural or ceremonial activities. Other expenses to address findings in support of the Program, including those appearing in Section 3(b) and the IRS safe harbor expenses appearing in Section 2(d).

7. Substantiation

Assistance may be conditioned on the recipient certifying or otherwise showing to the satisfaction of the Nation that assistance will be used for qualifying Program purposes. Members may also acknowledge Program compliance by accepting payment when provided clear notice of Program rules and limitations.

Members have a duty to return any assistance that is not expensed for qualifying Program purposes.

Recipients of benefits hereunder are ultimately responsible for maintaining books, records or receipts as may be required for substantiation to the IRS for individual income tax purposes.

8. No Tax Advice

The Nation cannot provide individual tax advice to Members. The Nation cannot guarantee any particular tax treatment. There are currently no regulations issued under Code Section 139E. The Nation encourages all Members to consult with their personal tax advisor before taking any reporting position based on Code Section 139E. Members remain solely responsible for the timely and accurate filing of their individual tax returns.

9. GWO Restrictions

This Program is subject to all additional restrictions and limitations set forth in the Nation's General Welfare Ordinance (the "GWO"), restrictions on budget availability, and governing law.

All terms and definitions used herein shall be construed consistently with the Constitution and laws of the Yavapai-Apache Nation, and Internal Revenue Code Section 139E.
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