



Revenue Allocation Plans -RAPs Best Practices

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Best Practices

Overview

- What are the best practices ?
- What do they do ?
- Why do we like them?

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What is a Revenue Allocation Plan or RAP ?

Tribal Allocation Plan or Allocation Plan:

*Means the document submitted
by an Indian Tribe that provides for
distributing net gaming revenue.*

25 C.F.R. § 290.2

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Law Governing

- **Indian Gaming Regulatory Act (IGRA)**

25 U.S.C. § 2710 (b)(3)

25 U.S.C. §2710 (b)(2)(B)(i)-(v)

- **25 C.F.R. Part 290**

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What is the process for approval?

- 1- **Tribe** - enact ordinance according to Tribal law
- 2- **Superintendent** - submits verification properly adopted
- 3- **Office of Indian Gaming** - conducts an analysis & review, forwards a recommendation
- 4 - **Assistant Secretary-Indian Affairs** - makes final decision

Best Practices

WHY

- Comply with IGRA and 290 regulations
- Demonstrate sound financial management practices
- Maintain Tribes as primary beneficiaries
- Serve both short and long term interests of Tribe
- Address immediate needs of tribal members
- Wide variety of strategies within the same regulatory framework
- Tailored to address specific needs/concerns of each Tribe

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TRENDS

1. Financial management
2. Best interests/issues of Tribe
3. Community vs. individual wants & needs

Best Practices Financial Management

Recent IRS ruling on “taxable income”



decrease in allocation per capita distribution



increase in allocation general welfare

(Tribal General Welfare Exclusion Act of 2014)

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Financial Management

Tribe's 1st RAP created - IRS rules/benefits identified

The Tribe affirms that it may adopt and implement General Welfare Programs contemplated by the Tribal General Welfare Exclusion Act of 2014

Direction regarding programs- In order to ensure that the intended beneficiaries of the Tribe's general welfare programs remain the primary beneficiaries ..,

.., in its interest to take reasonable steps to prevent benefits from being treated as income for federal tax purposes..,

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Financial Management

Accordingly the Tribe shall take steps to comply with guidance from Congress and the Internal Revenue service by requiring the following with respect to General Welfare Programs:

- (a) Shall be specified and include written guidelines which specify how individuals qualify*
- (b) Shall be available to any Tribal Member, qualified non-Member, or identified group of members who satisfy program guidelines*
- (c) Cannot discriminate in favor of Members of Executive Committee*
- (d) May not be compensation for services*
- (e) Should not be lavish or extravagant*
- (f) Other requirements of federal law to ensure benefits of such programs are not treated as “income” and subject to federal taxation*

Best Practices

Comprehensive List of Permitted Programs

Tribal Housing Programs

Includes:

1. Mortgage payments
2. Enhance habitability
3. Basic housing repairs or rehabilitation
4. Pay utility bills and charges, (water, electricity, gas)
5. Basic communication services (phone, internet, cable)
6. Other tribal programs related to the foregoing that may be developed

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Comprehensive List of Permitted Programs

Tribal Education Programs

Includes:

1. Transportation (including post-secondary)
2. Tutors and supplies (clothing, backpacks, laptop, computers, musical instruments, and sports equipment)
3. Tuition payments (for preschool, school, college, university, online school, educational seminars, vocational & technical, adult & continuing or alternative education), (includes allowances for room and board, on or off campus for student, spouse, domestic partner, & dependents)

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Comprehensive List of Permitted Programs

Tribal Education Programs

Includes:

1. Childcare assistance, to help parents to be gainfully employed or pursue education
2. Job counseling and programs (expenses for interviews, tutoring, appropriate clothing)
3. Other tribal programs related to the foregoing that may be developed

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Comprehensive List of Permitted Programs

Tribal Elder & Disabled Programs

1. Meals through home delivery, community center or similar facility
2. Home care assistance with meals, chores, daycare outside of home
3. Local transportation assistance
4. Improvements to adapt housing needs
5. Other programs related to the foregoing that may be developed

Best Practices

Comprehensive List of Permitted Programs

Additional Tribal Programs

1. Costs of rental cars, substantiated mileage, fares for bus, taxi & public transportation btw Indian reservation, service area, or service unit area & facilities that provide essential services to public
2. Cost of transportation, meals, and lodging of a tribal member or qualified non-tribal member while receiving medical care away from home
3. Assistance in exigent circumstances(including victims of abuse), including food, clothing, shelter, transportation, auto repair, & similar expense

Best Practices

Comprehensive List of Permitted Programs

Additional Tribal Programs

1. Costs for temporary relocation & shelter for involuntarily displacement from homes (including but not limited to fire or natural disaster)
2. Assistance for transportation emergencies, (transportation, shelter, meals)
3. Costs of non-prescription drugs (including but not limited to traditional medicines)
4. Other programs related to the foregoing that may be developed

Best Practices

Comprehensive List of Permitted Programs

Cultural and Religious Programs

1. Expenses to attend or participate in Tribe's cultural, social, religious or community activities, (pow-wows, ceremonies & traditional dances)
2. Expenses to visit sites of cultural or historical significance, including but not limited to other Indian reservations
3. Costs to receive instructions about Tribe's history, language, culture, & traditions
4. Funeral & burial expenses
5. Transportation costs and admission fees to attend educational, social, or cultural programs supported by another Tribe
6. Other programs related to the foregoing that may be developed

Best Practices

Financial Management

- Implementation of Optional Tax Deferred Per Capita payment plans
- Revenues not expended within fiscal year allocated back to economic development programs or reinvested
- Charitable donations category available for community and individual community members needs
- Creation of a Distribution and Investment Board that reviews proposals for supplemental funding to distribute excess net revenues
- Pooled trust accounts for minor's and incompetent members trust funds

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Financial Management

- Establishing a sliding scale for 100% allocation versus a set amount:

Amendment changed the Tribal Government Operations from 38% to a range of 30% to 40%, the General Welfare of the Tribe from 50% to a range of 40% to 50%, Economic Development from 11% to a range of 5% to 25%, donations to charitable organizations from 0% to a range of 0% to 5%, and donations to local governments from 1% to a range of 0% to 5%

- Graduating rates of per capita payments for tribal members enrolled after a certain date:

new member must wait 1 year after enrollment ,
year 2 receives 25%,
year 3 receives 50%,
year 4 receives 75%,
year 5, same amount as other members the same age

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Best Interest of Tribe- Education

Education as part of Eligibility Requirements

- Must have completed a HS diploma or equivalent before minor trust funds are distributed:

*tribal member must wait until reaches age of 21,
or age of 25, etc..,*

- Additional payments above a base line for higher educational levels for youth:

In order to provide incentives for younger Tribal members to pursue educational and personal growth opportunities, eligible members btw 18 & 24 years of age are required to complete certain achievements to receive additional payments above base payment (base amount + 1/2 of additional amount for associates' degree, or 2 years of honorable, active duty in service, or completion of vocational school) etc..,

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Best Interest of Tribe- Education

- Penalties/Forfeitures to per cap payments

..., payments shall be distributed as provided above except as may be modified, pledged, terminated or otherwise pursuant to..,

A tribal member has no property rights to modified, reduced, forfeited, withheld, off-set, assigned, pledged, and/or terminated per capita payments

- Tribe's Law & Order Code linked to RAP, penalties applied to parent's per cap payment for child's truancy, and for any period of a child's long term suspension or expulsion from school

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Best Interest of Tribe- Education

No trust fund for minors

Policy Statement

The Tribe retains the inherent sovereign right to protect the interests of its Minors, and strongly promotes education, and seeks to encourage its Tribal Members to graduate high school and to pursue degrees in colleges, universities, or vocational school. The Tribe shall therefore tailor its distribution of monies to Minors so as to encourage Minors to complete their education and prepare for their futures.

- Eligibility requirement- 18 years of age or older with verified HS diploma or equivalent

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Best Interest of Tribe- Education

- *The Tribe retains the inherent sovereign right to protect the interests of its Minors, is committed to advancing the education of the Minors, and seeks to encourage Minors to pursue advanced degrees and education. The Tribe is concerned that providing Per Capita Distribution to Minors or that by allowing the Distributions to accumulate interest in an interest bearing account, the Minors may not be motivated to perform to their highest levels in school, and may become dependent on Per Capita Distributions alone. Accordingly, the Tribe has determined that Tribal Members shall not be entitled to any form of Per Capita Distribution until the age of 18 and meet other education requirements described herein. The General Council finds that the different treatment of Minors with regard to Per Capita Distributions bears a rational relationship to the legitimate governmental objective of encouraging Minors to complete their schooling, and that this Plan is designed to promote the permissible objective of providing for the general health, education, and welfare of the Tribe and its Tribal Members. Notwithstanding these limitations with respect to Per Capita Distributions, the Tribe anticipates that tribal governmental programs and related benefits will be available to Minors.*

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Best Interest of Tribe- Behavior

- Penalties/Forfeitures to per cap payments
- To advance the personal health, safety, and welfare of qualified tribal members and the Nation, and to promote desired conduct, per caps will be forfeited upon the following negative behaviors...
 - any forfeited proceeds shall be placed in a separate account to fund government programs dealing with alcohol and drug related offenses...
 - forfeiture of payments shall apply to criminal convictions from all jurisdictions
 - The person must completely serve the sentence prior to reinstatement of the per capita payment
 - All tribal members, in effect, will be starting with a “clean slate” for purposes of the 3 Strikes provision

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Best Interest of Tribe- Behavior

- Based on 3 Strikes: Strike 1= 25%, Strike 2= 50%, Strike 3 = 100%
 - Offenses are identified
 - Strike 1 offenses
 - Automatic Strike 2 offenses
 - Automatic Strike 3 offenses
- The following offenses may be categorized as a Strike 1 or 2 depending on underlying facts at discretion of the Prosecutor:
 - Care of Dependent Persons
 - Permitting a child's life, health or morals to be imperiled
 - Contributing to the delinquency and dependency of a minor

Best Practices

WHY

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Best Practices Conclusion

- Demonstrate prudent & responsible stewardship of Tribe's resources require
- Tribes' allocations are based best interest of Tribe and its' members
- Consideration of short & long term financial implications,

Biggest trends in financial management

IRS ruling- Tribal General Welfare Exclusion Act of 2014

Per capita distributions **subject** to federal income tax

General welfare distributions **not subject**