



## United South and Eastern Tribes, Inc.

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### **USET Resolution No. 2014:006**

#### **URGING CLARIFICATION THAT TRUST PER CAPITA PAYMENTS ARE NOT TAXABLE INCOME**

- WHEREAS,** United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprised of twenty-six (26) federally recognized Tribes; and
- WHEREAS,** the actions taken by the USET Board of Directors officially represent the intentions of each member Tribe, as the Board of Directors comprises delegates from the member Tribes' leadership; and
- WHEREAS,** some member Tribes of USET have provided and continue to provide their enrolled members with modest per capita distributions of revenue ("trust per capita payments") generated from the development or utilization of Tribal trust resources; and
- WHEREAS,** such trust per capita payments have always been regarded by USET member Tribes, the Department of Interior (DOI), and by the United States (U.S.) Congress as excluded from taxation by federal or state governments; and
- WHEREAS,** at least one field office of the Internal Revenue Service (IRS) has asserted to Tribes that it views such trust per capita payments as taxable income to the recipient Tribal members; and
- WHEREAS,** Tribes and Tribal organizations requested consultation with the U.S. Treasury and the DOI regarding this taxation effort in conflict with longstanding policy and practice and which constitutes a shift in IRS policy requiring meaningful consultation with the affected Tribes, on a government-to-government basis, as mandated by Executive Order No. 13175; and
- WHEREAS,** the IRS issued Notice 12-60 in September, 2012, to clarify per capita payments from the settlement of Tribal trust fund mismanagement cases are not considered income and are not taxable, but did not address the taxability of per capita payments to Tribal members arising from the development or use of trust resources; and
- WHEREAS,** congressional hearings on the IRS's efforts to tax Tribal trust per capita payments were held in the Senate Committee on Indian Affairs in June, 2012, and in the House Resources Committee's Subcommittee on Indian and Native Alaskan Affairs in September, 2012, with Committee members on a bi-partisan basis strongly urging the IRS to immediately issue published guidance to clarify that Tribal trust per capita payments are not taxable; and
- WHEREAS,** the IRS testified during the September, 2012, House Subcommittee hearing that the "legal reasoning" of the Treasury Department's September 2012 Notice of Guidance No. 2012-60 declaring that the per capita distributions of recent Tribal trust claim settlements are non-taxable would also apply to trust per capita payments under the 1983 Per Capita Act (Public Law 98-64); and

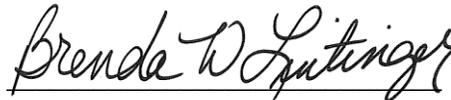
- WHEREAS,** the Per Capita Act establishes statutory obligations upon the DOI, and the Assistant Secretary for Indian Affairs has also indicated his commitment to inter-agency dialogue with Treasury on specific tax matters as they arise; and
- WHEREAS,** IRS and Treasury officials have stated in meetings with USET member Tribes and USET representatives that the publication of written guidance on the trust per capita tax rules would be a priority for 2013, yet no such guidance has been shared in either a draft or final form; and
- WHEREAS,** in December 2010, the U.S. recognized the rights of its First Peoples through its support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), whose provisions and principles support and promote the purposes of this resolution; therefore, be it
- RESOLVED** the USET Board of Directors calls upon the United States Internal Revenue Service and the Department of Treasury to immediately provide USET and affected Tribes with a discussion draft of the proposed official guidance that would establish a permanent policy clarifying that Tribal trust per capita payments are non-taxable and are subject to the income exclusions set out in the 1983 Per Capita Act; and, be it further
- RESOLVED** the USET Board of Directors urges the United States Internal Revenue Service, the Department of Treasury, to fulfill its commitment to provide clarifying guidance that trust per capita payments are not taxable; and, be it further
- RESOLVED** that USET calls upon the Assistant Secretary for Indian Affairs, in recognition of his delegated authority for the administration of trust resources, to urge the United States Internal Revenue Service, and the Department of Treasury to expedite final guidance on the non-taxability of trust per capita payments.

**CERTIFICATION**

This resolution was duly passed at the USET Annual Meeting, at which a quorum was present, in Cherokee, NC, on Thursday, October 31, 2013.



Brian Patterson, President  
United South and Eastern Tribes, Inc.



Brenda Lintinger, Secretary  
United South and Eastern Tribes, Inc.

*“Because there is strength in Unity”*