



## United South and Eastern Tribes, Inc.

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### USET Resolution No. 2013:010

#### **INTERNAL REVENUE SERVICE INTERFERENCE WITH TRIBAL GOVERNMENT RIGHT TO PROVIDE MEMBERS WITH TAX-FREE PROGRAM BENEFITS FOR THE GENERAL WELFARE**

- 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,** the regulatory authority of Tribes over their citizens and territories flows from the Tribes' preexisting inherent sovereignty that has been recognized by the U.S. Constitution, legislation, treaties, judicial decisions and administrative practice; and
- WHEREAS,** Tribal governments provide their citizens with a broad range of economic, social, cultural, educational and health benefits through programs to foster the general welfare of the Tribal community; and
- WHEREAS,** the Internal Revenue Service (IRS) has subjected Tribal governments to an inordinate amount of audit activity, primarily in the form of information return and employment tax examinations; and
- WHEREAS,** Congress, in response to improper IRS attempts to tax Tribal health benefits, enacted Section 139D to the Tax Code by Section 9021 of the Patient Protection and Affordable Care Act (PPACA) clarifying that the value of a broad range of Indian Health Care benefits received by Tribal members are excluded from gross income and therefore not taxable; and
- WHEREAS,** the IRS has subsequently issued internal guidance interpreting non-prescription drug benefits to be outside the scope of non-taxable Indian Health Care benefits in contravention with the letter, intent and spirit of Section 139D of the Tax Code; and
- WHEREAS,** Tribal governments have engaged congressional oversight committees with respect to IRS audit practices and inconsistency regarding tax treatment of Tribal general welfare program benefits; and
- WHEREAS,** a consultation process with the Department of the Treasury and the IRS regarding Tribal government authority to provide their members with tax-free benefits pursuant to general welfare programs resulted in the publication of IRS Notice 2012-75, which sets forth a new draft revenue procedure for the tax-free treatment of benefits provided to Tribal members under Tribal general welfare programs and establishes mechanisms to shield from taxation any compensation received from the performance of Tribal cultural heritage activities and participation in cultural education programs; and
- WHEREAS,** the comment period for the draft revenue procedure under Notice 2012-75 ends on June 3, 2013; therefore, be it

**RESOLVED** the USET Board of Directors urges the Internal Revenue Service to suspend audits and examinations in order to continue consultation with Tribes to finalize the new revenue procedure for the tax-free treatment of benefits provided to Tribal members under Tribal general welfare programs and to develop and implement training programs for Internal Revenue Service employees on the new revenue procedure and to build proper understanding of Tribal sovereignty and authority under the constitution and federal law; and, be it further

**RESOLVED** the USET Board of Directors calls upon the Internal Revenue Service to retract its exceedingly narrow and illogical interpretation that non-prescription drug benefits fall outside the scope of Indian Health Benefits under Section 139D of the Tax Code; and, be it further

**RESOLVED** the USET Board of Directors expresses a firm commitment that USET Member Tribes and USET staff will continue working with Tribes, intertribal organizations, congressional committees and executive agencies to advance Tribal tax policy priorities, including clarification of the authority of Tribal governments to provide their members with tax-free economic, social, cultural, educational and health benefits through programs to foster the general welfare of the Tribal community.

### CERTIFICATION

This resolution was duly passed at the USET Impact Week Meeting, at which a quorum was present, in Arlington, VA, on Thursday, February 7, 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”*