



United South and Eastern Tribes, Inc.

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USET Resolution No. 2014:040

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,** USET member Tribes provide their citizens with 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 the USET member Tribes, the Department of Interior, and by the United States (U.S.) Congress as tax exempt; and
- WHEREAS,** at least one field office of the Internal Revenue Service (IRS) has asserted to Indian Tribes that it views such trust per capita payments as taxable income to the recipient Tribal citizens; and
- WHEREAS,** Tribes and Tribal organizations requested consultation with the U.S. Department of Treasury (Treasury) and the Department of Interior (DOI) regarding per capita taxation which conflicts with longstanding policy and practice and constitutes a shift in IRS policy that requires meaningful consultation with the affected Tribes, on a government to government basis, as mandated by Executive Order No. 13175; and
- WHEREAS,** IRS issued Notice 12-60 in September 2012 to clarify that per capita payments from the settlement of Tribal trust fund mismanagement cases are tax exempt, 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 Indian Affairs Committee 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,** in September 2012, the IRS testified at the House Subcommittee hearing that the "legal reasoning" of the Treasury's September 2012 Notice of Guidance No. 2012-60 declaring distributions of Tribal trust claim settlements tax exempt would also apply to trust per capita payments based on the 1983 Per Capita Act (Public Law 98-64) which establishes statutory obligations upon the DOI; and

- WHEREAS**, the Assistant Secretary for Indian Affairs has made 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 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 United States 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 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 tax exempt 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 Internal Revenue Service, the Department of Treasury, the Department of Interior and the White House to engage in meaningful government-to-government consultation with USET and its member Tribes impacted by the Internal Revenue Service's policy regarding the taxability of trust per capita payments; and, be it finally
- RESOLVED** the USET Board of Directors calls upon the Assistant Secretary for Indian Affairs, in recognition of his delegated authority for the administration of trust resources, to urge the Internal Revenue Service and the Department of Treasury to expedite consultation and finalize guidance on the non-taxability of trust per capita payments.

CERTIFICATION

This resolution was duly passed at the USET Impact Week Meeting, at which a quorum was present, in Arlington, VA, on Thursday, February 6, 2014.



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



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

"Because there is strength in Unity"