United South and Eastern Tribes, Inc.

Nashville, TN Office:
711 Stewarts Ferry Pike, Suite 100
Nashville, TN 37214
Phone: (615) 872-7900
Fax: (615) 872-7417

Washington, DC Office:
400 North Capitol Street, Suite 585
Washington, D.C., 20001
Phone: (202) 624-3550
Fax: (202) 393-5218

Approved by USET Board of Directors
Annual Meeting, Oneida Indian Nation
December 3, 2014

USET Proposals for Tribal Tax Reform

I. Introduction

The United South and Eastern Tribes, Inc. (USET) calls upon the United States Congress to amend the Internal Revenue Code to ensure that federal tax law treats Indian Tribes in a manner consistent with their governmental status, as reflected under the U.S. Constitution and numerous federal laws, treaties and federal court decisions. Indian Tribes have a governmental structure, and have the power and responsibility to enact civil and criminal laws regulating the conduct and affairs of their members and reservations. They operate and fund courts of law, police forces and fire departments. They provide a broad range of governmental services to their citizens, including education, transportation, public utilities, health, economic assistance, and domestic and social programs. Like states and local governments, Tribes--as political bodies--are not subject to income tax under the Code.

The non-taxable status of Tribal governments should be maintained in any version of federal tax reform considered by the Congress as a matter of governmental fairness and parity. Improvements in the Tax Code are also vitally needed to **align federal tax policy with the critical federal policy objectives of Tribal self-determination, Tribal economic growth and self-sufficiency and the promotion of strong Tribal governments on equal footing with other sovereigns within the federal system**. USET's tax policy proposals advance these objectives in a manner that will promote economic growth, foster Tax Code fairness by eliminating additional burdens on Tribal governments and further important federal policy interests.

Tax policy fairness toward Tribal governments and the promotion of economic growth are of central importance in Indian Country. While tribal governments have full sovereign rights and authority to tax economic activity within their territories, many tribes generate revenues through the operation of their own enterprises and economic development activities where profits provide a source of revenue to meet and supplement vital programs and services. Yet, under Supreme Court jurisprudence, both Tribes and states may tax non-Tribal members doing business in Indian country. Such double taxation has stifled economic development on Indian reservations. Tribes often refrain from levying the Tribal tax in order to attract and retain non-Indian businesses for its employment benefits. The tax revenues generated from these on-reservation business activities, however, are transferred out of Indian Country and into state and local government coffers where they are used to serve other non-Indian populations. Congress must create reliable and effective federal tax policy to firmly support Tribal governance

while protecting the ability of Tribes to generate and retain the full use of Tribal revenue to stimulate economic development and deliver services within Indian Country.

Tribal governments also have responsibilities that are distinct from those of other sovereigns. Tribes and their elected representatives have the added responsibility of ensuring they have the revenue needed to fulfill responsibilities to maintain Tribal language, culture, and ceremonies. Preservation and restoration of Tribal culture remains a significant federal policy objective that seeks to reverse damage caused by the former federal policy of Indian Assimilation, which forbade the practice of Native ceremonies and use of Native languages.

USET's tax reform proposals, as set forth below, are guided by these important policy objectives. USET calls on the Congressional tax writing committees to incorporate these proposals into tax reform or other tax legislation in order to develop a Tax Code that:

- encourages private investment and stimulates business activities in Indian Country;
- provides Tribes with full access to government financing tools;
- ensures that revenues generated within tribal territories are retained by tribes for tribal economy building and are not subject to taxation by state and local jurisdictions
- respects elected leader decision-making with regard to determining the well-being of tribal citizens, including advancing and protecting social, cultural and ceremonial practices;
- advances the ability of Tribes to build an economic base and create employment opportunities;
- promotes certainty of jurisdiction, certainty to the capital markets, and certainty in tax policy to sustain economic growth and foster economic partnerships.

II. USET's Tax Reform Proposals

A. ADVANCE IMPORTANT FEDERAL POLICY

1. Respect and Promote Tribal Self-Determination through application of the General Welfare Exclusion for Tribal Government-Provided General Welfare Benefits

Current Law: Both the IRS and the courts have defined income broadly, limiting exclusions to those specified in the Tax Code. Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 acknowledges more than three dozen types of benefits/payments as "items specifically excluded from gross income." Until 2014, the Tax Code was silent on the issue of whether the programs and services that Tribal governments provide to Tribal citizens are subject to federal income tax. In that context, the IRS has employed an administrative practice, known as the General Welfare Exclusion ("GWE"), which excludes benefits and payments to individuals from federal income taxation when those benefits and payments are made pursuant to a governmental program serving the general welfare.

On June 3, 2014, the IRS issued Revenue Procedure 2014-35. The Revenue Procedure affirms that the GWE "applies to payments by Indian tribal governments no less favorably than it applies to payments by federal, state, local, or foreign governments," while also acknowledging that because of the unique

legal status of tribes, the general welfare exclusion applies differently to tribal government programs than to the general welfare programs of other governments. Under this established IRS doctrine, the payments made by governments for the general welfare are not taxable if they are: (1) made pursuant to a governmental program; (2) for the promotion of the general welfare (based on individual or family need); and (3) not compensation for services. Revenue Procedure 2014-35 also establishes two sets of "safe harbor" rules under which the IRS will (1) "conclusively presume" that the need criterion under the GWE is met for payments made pursuant to certain tribal government programs; and (2) "conclusively presume" that certain payments (related to cultural program services) are not taxable as compensation for services.

On September 26, 2014, President Obama signed HR 3043, the Tribal General Welfare Exclusion Act, into law as PL 113-168. The terms of the Act reflect criteria similar to Revenue Procedure 2014-35 and statements in the Senate Colloquy made clear that when applying the Act, the IRS is to treat tribal government programs for the promotion of the general welfare in a manner that is at least as favorable as the safe harbor approach provided for in Revenue Procedure 2014–35. Additionally, the law codifies the Indian canon of treaty and statutory construction, providing "[a]mbiguities in [the new law] shall be resolved in favor of Indian tribal governments and deference shall be given to Indian tribal governments for the programs administered and authorized by the tribe to benefit the general welfare of the tribal community." PL 113-168 also requires the Secretary of the Treasury to establish a Tribal Advisory Committee (TAC) to advise the Secretary on matters relating to the taxation of Indians and to assist the Secretary in developing education and training for IRS field agents. The Act also suspends the audits and examinations of Indian tribal governments and members of Indian tribes related to the provision or receipt of general welfare benefits until IRS field agents complete the training and education developed by the Secretary as advised by the TAC.

Tribal advocacy and congressional oversight have critical roles to play in the interpretation and implementation of the Tribal General Welfare Exclusion Act that has already begun and that will continue into 2015.

2. Establish a Tribal Advisory Committee (TAC) within Treasury to advise the Secretary on matters of Indian taxation

Current law: Until the enactment of the Tribal General Welfare Exclusion Act on September 26, 2014, there had not been a formal Tribal advisory committee within Treasury or the IRS regarding matters of Indian taxation.

Reasons for creating a new Advisory Committee: In recent years, Indian Tribal governments and the Internal Revenue Service have disagreed on several issues concerning when tax liability attaches to Tribal payments, or benefits, provided to their citizens. A Tribal tax policy advisory body would assist Treasury and IRS in ensuring that treaty rights and principles of self-determination and self-governance are properly balanced with the IRS' internal policies and to provide orientation for the conduct of consultation with Indian Tribes in accordance with Executive Order 13175.

Proposal: USET has recommended the creation of a Tribal advisory committee made up of Tribal leaders with the support of a Tribal technical work group to address a broad range of Tribal taxation matters that would complement, but not substitute for Tribal consultation. The TAC created by the Tribal General Welfare Exclusion Act is charged with a broad mandate to advise Treasury and IRS on not only GWE implementation but also other tribal taxation matters. It will be vital to ensure that TAC members are tribal leaders and tribal representatives as the nomination and selection process moves forward.

B. HELP GROW THE ECONOMY

The following Tax Code modifications and extensions will enhance economic development and foster nation-rebuilding in Indian Country by establishing a more even playing field for investment in Indian Country and by ensuring that Tribes retain and may use the revenues they generate in their territories.

1. Eliminate Double (State-Tribal) Taxation

Current law: Indian Tribal governments are service providers that must generate revenue to sustain government operations and deliver needed services. Yet, under Supreme Court jurisprudence, both Tribes and states may tax non-Tribal members doing business in Indian country. The Department of the Interior has recently issued regulations governing the leasing of Indian lands (25 CFR 162.017) that have initially been interpreted by a federal court to preempt state and local government taxation of activities under a lease conducted on the leased premises. The regulation is still new and has not been fully tested and implemented. Also it is subject to federal court interpretation that may result in inconsistent application in Indian Country. Moreover, the state and local taxation provisions only apply to leased land.

Change is needed to promote economic growth: The double taxation scenario stifles economic development on Indian reservations. In order to avoid this chilling effect of dual taxation, Tribes often refrain from levying the Tribal tax in order to attract and retain non-Indian businesses for its employment benefits. The tax revenues generated from these on-reservation business activities, however, are transferred out of Indian Country and into state and local government coffers where they are used to serve other non-Indian populations.

Proposal: Congress should restore tax fairness between states and Tribes by assuring that Tribes are able to collect tax revenues attributable to economic development activity taking place within Tribal jurisdictions. This could be achieved through a statutory preemption of state and local government taxation on Indian lands. This statutory clarification would provide certainty of jurisdiction that would facilitate greater investment by non-members in businesses within Indian Country. This would also restore tax equity by prohibiting the anomaly of extraterritorial taxation by state and local governments of activities on Indians lands where states and local governments provide no services. The change would also provide Tribes with the ability to diversify their revenue base.

Congress has enacted terms to preempt state and local taxation of on reservation activities in the context of Indian gaming. Under the Indian Gaming Regulatory Act (IGRA), states and local

governments may not impose taxes or fees on a tribe's Indian gaming activities. To accommodate state and local government interests in receiving compensation for actual services they provide, reimbursement of such costs is permitted in the compacting process. The Coalition of Large Tribes (COLT) has proposed preemption of state and local taxes on energy development activities modeled on the IGRA approach. USET supports the COLT proposal, however, USET also urges Congress to statutorily preempt state and local government taxation not only with respect to energy development activities but also to preempt state and local government taxation with respect to a broad array of economic development activities taking place in Indian Country. Tribal tax codes and tribal tax compacts with states and local governments are the legal mechanism that should establish the taxation authorities, taxable activities and revenue-sharing between tribes and state and local governments, not interest-balancing tests or dual taxation schemes that have been permitted under Supreme Court precedent.

USET also proposes that the Market Fairness Act or other federal legislation governing the ability of states to impose sales taxes on internet and other remote sales should clearly authorize that tribes may collect taxes on internet sales in their territories and that where a tribal tax applies, the state sales tax does not. Such terms are necessary to prevent dual taxation of remote sales in Indian Country.

2. Immunize Tribe-to-Tribe Commerce and Investment from Taxation

Current law: Historically, Indian nations and Tribes engaged in inter-tribal trade relations that were not subject to taxation. Now that Indian territories are surrounded by state jurisdictions, states have recently begun to levy their taxes and impose their regulations on commerce taking place exclusively between two locations in Indian Country.

Change will enhance economic growth: Indian people have numerous opportunities to work together to create jobs and investment opportunities. Some Tribes have lands and natural resources to develop, but lack capital and expertise. Other Tribes have capital and expertise but limited lands and resources.

Proposal: Congress can stimulate job creation and development in Indian Country by prohibiting state taxation and regulation of Tribe-to-Tribe commerce and investment where the economic activity takes place on Indian lands.

3. Adopt the Indian Country Economic Revitalization Act (H.R. 4699)

Current Law: Federal agencies have been directed by Congress to promote economic development in Indian Country. Unfortunately, many federal agency programs have been of limited impact due to such factors as the short-term timeframes for implementation, complex eligibility requirements, and the predominance of one-size-fits-all strategies. The Native American Business Development, Trade, Promotion and Tourism Act is among the programs that has been underutilized even though it contains provisions intended to revitalize economically and physically distressed Native American Economies and promote private investment in Indian Country economies. 25 U.S.C. §§ 4301-4307 (Title 25, Chapter 44, U.S. Code). Although its objectives are to stimulate job creation and foster economic self-

sufficiency and political self-determination, due to insufficient agency resources and coordination, little is known about this Act in Indian Country.

Change will bring new levels of inter-agency coordination and analysis to assess and implement more pragmatic, effective and dynamic programs for economic development in Indian Country. Rep. Delbene introduced the "Indian Country Economic Revitalization Act of 2014" (H.R. 4699) to amend the Native American Business Development, Trade Promotion, and Tourism Act of 2000. The legislation would require the Secretary of Commerce to prepare a report and recommendations to Congress to promote the sustained economic development of Indian tribes and Indian lands. The terms of the bill require the report to analyze the impact of court decisions allowing taxation of economic activity on Indian reservations; the effect of existing and proposed tax credits and incentives for economic development on Indian lands; as well as Indian Country's access to infrastructure, energy resources, educational opportunities and investment capital. The tools provided by this legislation will allow for long-term, practical approaches to stimulate economic investment incentives on Tribal lands and ensure that federal programs supporting economic development are coordinated with tribal governments and enterprises in order to maximize impact.

4. Establish Tribal Empowerment Zones in Indian Country

Current Law: For many years, annual legislation ("tax extenders") has included provisions intended to promote investment on Indian lands (such as the Accelerated Depreciation and the Indian Employment Tax Credits). These "extenders" were intended as a mechanism to enhance economic development and nation-rebuilding in Indian Country by offsetting the adverse impacts of state and local taxation on Indian lands. For example, the problem of dual taxation in Indian Country that allows both tribes and states to impose taxes on non-Indian activities in Indian Country, and pursuant to which the state tax has generally precluded the tribal tax. The "extenders" were intended to make investment in Indian Country more even handed through various tax credits to non-Indians that locate businesses on-reservation, but these have been underutilized due to complex qualification rules, their short-term duration and their modest economic benefit. Additionally, in the past Congress has legislated tax credits for business investment and hiring in low-income, distressed communities known as "Empowerment Zones" tax credits. Today, the White House has launched its "Promise Zones" initiative for revitalizing communities (by increasing economic activity, creating jobs, improving education, enhancing access to housing and reducing crime). Pursuant to this Promise Zones initiative, the President has proposed cutting taxes on hiring and investment based the previously existing program of "Empowerment Zones" tax credits.

Change will enhance economic growth: Existing Code provisions to incentivize investment in Indian Country have had limited effectiveness. These provisions have been temporary or short-term measures that were never made permanent and the procedures to utilize them have been complex enough as to require significant upfront investment by Tribes, such as retaining outside attorneys, accountants and consultants). A more straightforward, long-term and practical approach is needed to stimulate new economic investment incentives on Tribal lands. Additionally, the White House Promise Zone initiative involves only a few selected communities and its incentives are not targeted to the specific obstacles faced in tribal communities. While Promise Zones provide a degree of

federal tax immunity, tribes are burdened by state taxation that siphons revenues from tribal economic development activity on reservation lands.

Proposal: Congress should restore the treaty-recognized status of Tribal lands as being immune from all federal and state taxation. To initiate this approach, Congress should establish a Tribal Empowerment Zone Demonstration Project including the following elements:

- 50 Tribal Empowerment Zones established throughout Indian Country
    - Select 25 of the most economically challenged Tribes
    - Select 25 of the most successful entrepreneurial Tribes
- Prohibit federal or state taxes of any kind within the zone
- Establish a ten-year demonstration project period

5. Create Tax Credits for Federal Income Tax Paid

Current law: Indian Tribal governments are service providers that must generate revenue to sustain government operations and deliver needed services. Unlike other governments, Indian Tribes have no tax base to rely upon for that revenue. As a result, Tribes rely heavily upon federal grants and economic development programs to finance governmental activities. With the federal budget out of balance, Tribes risk further cutbacks of federal funds. Meanwhile, individual members of Indian Tribes are subject to the federal income tax.

Change will enhance economic growth: In the face of federal budget cuts, Tribes need a reliable revenue stream to provide adequate health care, law enforcement, infrastructure improvement, and other governmental services. In addition to the creation of Tribal government jobs, the enhancement of Tribal governance capacity and effective service delivery are prerequisites to attracting business and investment to Indian Country. Although Tribes provide many fundamental services, such as health care, to their members as well as to non-Indians residing within or near reservation boundaries, Tribal capacity to serve all residents of our territories depends upon Tribal ability to generate the revenues needed to complement limited federal program funding.

Proposal: Congress should develop Tax Code provisions allowing for the federal income taxes generated by Tribal citizens to be credited back to the Tribal government. This could be achieved by crediting taxes paid to the Tribal government or by authorizing deductions for donations made to a Tribal government. This proposal would preserve wealth generated on Tribal lands and provide for reinvestment of those dollars to support Tribal government operations and create an infrastructure and services platform for economic development.

6. Improve the Effectiveness of the "Tax Extenders" Intended to Benefit Indian Country

a. The Simplified Indian Employment Tax Credit.

Current law: The Indian Employment Tax Credit (Section 45A) provides a 20 percent credit against income tax liability to employers for up to $20,000 of qualified wages and qualified employee health insurance costs paid or incurred by the employer for services performed by qualified employees. A "qualified employee" is an employee who is an enrolled member (or the spouse of an enrolled

member) of an Indian Tribe, who performs substantially all of the services within an Indian reservation, and whose principal place of abode while performing such services is on or near the reservation in which the services are performed. The credit is due to expire for taxable years beginning after December 31, 2013.

Change will help grow the economy: The current provision has not been utilized to its full potential due to the uncertainty associated with the short-term and limited nature of the provision. By making the credit permanent, businesses and industry can build the credit into its planning processes and see longer-term advantage to employing Tribal members in Indian Country.

Proposal: Permanently extend the Indian employment credit and modify the base year from 1993 to the average of qualified wages and health insurance costs for the two tax years prior to the current year. This proposal is consistent with the legislative changes proposed in the Obama Administration's Fiscal Year 2014 budget. See *General Explanation of the Administration's Fiscal Year 2014 Revenue Proposals*, p. 14 (available at http://www.treasury.gov/resource-center/tax-policy/Documents/General- Explanations-FY2014.pdf). In addition, consider making the credit available to nonprofit and governmental employers by allowing the credit to offset employers' on-reservation payroll tax liabilities.

b. Permanently Extend the New Markets Tax Credit with a Tribal Set Aside.

Current law: The New Markets Tax Credit (NMTC) is a 39-percent credit for equity investments in a qualified community development entity (CDE) held for a period of seven years. A qualified CDE is any domestic corporation or partnership: (1) whose primary mission is serving or providing investment capital for low-income communities or low-income persons; (2) that maintains accountability to residents of low-income communities by their representation on governing or advisory boards to the CDE; and (3) that is certified by the Treasury as being a qualified CDE. Treasury is authorized to designate targeted populations, including members of an Indian Tribe, as low-income communities even if they do not meet the statistical tests that generally apply if they lack adequate access to loans or equity investments. The NMTC was extended by the American Taxpayer Relief Act of 2012 through 2013.

Reason change will promote economic growth: The current provision has not been utilized to its full potential due to the uncertainty associated with the short-term and limited nature of the provision.

Proposal: Permanently extend the NMTC, would increase the annual credit allocation amount to $5 billion a year; in addition, provide that 3 percent or $150 million of each year's allocation be set aside for Indian Tribes, Tribal entities and organizations established to primarily benefit Indian reservation communities.

c. Extend Energy Production Grants, plus Clean Renewable Energy Bonds.

Current law: The Tax Code provides production tax credits (PTCs) for renewable energy facilities constructed before the end of 2013. Section 45 of the IRC provides PTCs for wind, biomass, geothermal, landfill gas, trash, qualified hydropower, and marine and hydrokinetic projects that

generate electricity. Current law also provides an investment tax credit for energy property, which includes (1) property that is part of a facility that, but for the election to claim an investment tax credit, would qualify for a production tax credit; and (2) certain other listed property (including solar energy property). In addition, current law also provides grants for certain energy property on which construction began in 2009, 2010, or 2011.

Reasons for Change: Currently the tax credits are unusable because Tribal governments do not pay taxes. As a result, renewable energy projects do not occur on Indian lands.

Proposal: Permanently extend the PTC for renewable energy property and make it refundable in a way that Tribal governments can utilize the credit even though they have no income tax liability to offset. In addition, explore extending the expired provisions for Clean Renewable Energy Bonds, with a Tribal government set-aside.

d. Extend the Indian Country Coal Production Tax Credit

Current law: Under the 2005 Energy Policy Act, coal produced on land owned by an Indian Tribe qualifies for a production tax credit equivalent to $2 per ton through 2012. The American Taxpayer Relief Act extended the tax credit through 2013.

Change will promote economic growth: Production of coal on Indian lands is a long-term endeavor. Absent a longer-term period for the realization of the tax credit, private industry will be reluctant to partner with Tribes for the development of coal.

Proposal: Extend the coal production tax credit at least through 2020.

C. PROMOTE TAX FAIRNESS

1. Eliminate Special Restrictions on Tribal Government Debt

Current law: Indian Tribal governments are generally permitted to issue tax-exempt bonds only to finance facilities that serve an "essential governmental function." Such a requirement is not imposed on municipal debt. In addition, Tribes (unlike states) are generally prohibited from issuing private activity bonds.

Change will promote tax fairness: Under the current provisions, Tribal governments are limited to using tax-exempt financing only for certain government functions, such as roads, schools and sewage systems, while state and local government may use bonds to finance a much wider variety of government-sponsored job-creating projects (*e.g.*, convention centers, tourist accommodations and public recreational facilities including golf courses, energy production and distribution facilities, parking structures and transportation projects). Both Congress and the Administration have recognized that current law is unfair, unworkable and in need of correction.

Proposal. Repeal the essential government function test and the general prohibition on Tribal private activity bonds. (*See* Section 3 of H.R. 3030, "Tribal Tax and Investment Reform Act"). With regard

to the private activity bonds, develop a customized formula to determine the volume cap on private activity bonds issued by Indian Tribal governments. A national Tribal bond volume cap could be based on the greater of either: the minimum state volume cap, or the total population of all Tribes. The national bond cap could then be allocated among all Tribal issuers planning to issue private activity bonds in a given year under procedures developed and administered by Treasury. Other than the special calculation of volume cap, private activity bonds issued by Tribal governments would be subject to the same restrictions that apply to private activity bonds issued by other governments (*e.g.*, the prohibition on using such bonds to finance skyboxes, airplanes, gambling facilities, health club facilities and liquor stores). Similarly, governmental bonds issued by Tribes would be subject to the same restrictions and rules applicable to other governmental bond.

2. Provide Parity in Treatment of Tribal Government Pensions

Current law: Tribal government benefits plans are not treated the same as state and local pension plans. Tribal plans are not treated as "governmental plans" unless all of the employees in the plan are substantially engaged in "essential governmental" functions, and not commercial activities.

Change promotes tax fairness: The current law's limitation to "essential governmental" functions is an unfair and unworkable standard. Tribal governments are unable to utilize the cost efficiencies intended in the law and, indeed, based on IRS interpretations, have largely avoided utilizing governmental plans because of the increased administrative burdens and costs.

Proposal: Equalize the treatment of Tribal pension plans to that of state and local plans. Equal treatment could be achieved by amending the Internal Revenue Code in the following ways: (1) delete the special limitations applicable to Tribal plans that are not imposed on state and local governmental plans (e.g., that all employees be engaged in "essential governmental functions"); (2) add the same distributions rights for Tribal public safety employees that are available to state and local public safety employees; (3) confirm that pension plans may honor Tribal court domestic relations orders that meet the same standards as state court orders; (4) grandfather Tribal "457" plans that otherwise comply with the Code and were established before [2006], and (5) adopt the same employment tax rules for Tribal deferred compensation plans that apply to state and local plans. These Code amendments would provide government fairness between Indian Tribal plans and other government plans. Section 4 of HR 3030 would achieve these objectives.

3. Ensure Social Security Eligibility for Tribal Council Members

Current law: The IRS does not consider payment to Tribal council members as wages. As a result Tribes are exempt from making FICA payments for Tribal council members. Yet, unlike other government benefit programs exempt from mandatory participation in FICA, Tribal council members are not permitted to opt-in by making payments for FICA provisions.

Change is needed to promote fairness: In the past Tribal council service constituted part-time duties that may have generate modest stipends. Today, Tribal council members serve on a full-time basis, which precludes them from undertaking other employment. Yet, they have been denied the right to participate in the social security program in a manner consistent with that of other government legislators.

Proposal: A Code provision should establish that Tribes may opt to pay into the social security system in order for Tribal council members to secure this level of protection for themselves and their families.

4. Provide for Equitable Application of the Adoption Tax Credit

Current law: Taxpayers that adopt children with special needs are eligible for an increased tax credit for qualified adoption expenses. However, if a Tribal court -- instead of a state court -- makes the "special needs determination," the prospective adoptive parents cannot access the tax credit.

Proposal: Place Tribal court determinations as to the "special needs" of children on equal footing with similar determinations made in state court for purposes of the Code Section 23 adoption tax credit. This proposal is consistent with the legislative changes proposed in the Obama Administration's Fiscal Year 2014 budget. See *General Explanation of the Administration's Fiscal Year 2014 Revenue Proposals*, p. 214 (available at http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2014.pdf). Recognizing Tribal court determinations also would align IRS tax policy with the policies codified in the Indian Child Welfare Act. *See* HR 2332.

5. Equip Tribal Child Support Enforcement Agencies with the Same Policy Tools and Incentives that Are Available to State-run Entities

Current law: The Social Security Act allows Indian Tribal governments to establish Child Support Enforcement Agencies. Currently, there are more than 50 of these agencies throughout Indian Country. However, Tribal Child Support Enforcement Agencies do not have all the powers of similar State-run organizations.

Change would promote fairness and program effectiveness: Tribal Child Support Enforcement Agencies do not have (1) access to parent locator databases, or (2) the authority under the Code to withhold past-due child support payments from the federal income tax returns of parents with past-due obligations. These two enforcement mechanisms are critical to improving the services provided by Tribal child support enforcement agencies.

Proposal: Amend the Social Security Act and the Internal Revenue Code to permit child support enforcement agencies to offset tax refunds for past-due payments and to access the same parent locator database available to State child support agencies. Legislative terms have been drafted in Section 6 of HR 3030.

6. Promote Parity in the Health Care Professionals Loan Repayment Exclusion

Current law: Loan amounts forgiven or repaid on an individual's behalf generally are considered taxable income. However, certain forgiven or cancelled student loan debt is excluded from income, including debt repaid under the National Health Service Corp ("NHSC") Loan Repayment Program. The Indian Health Service ("IHS") Health Professions Loan Forgiveness Program is very similar to the NHSC Loan Repayment Program. Under both programs, dentists, physicians, and nurses provide health care services to underserved populations in exchange for loan repayment assistance. However,

the IHS Health Professions Loan Forgiveness Program does not enjoy the same preferential tax treatment as the NHSC program.

Proposal: Amend the Internal Revenue Code to provide health care professionals who receive student loan repayments from IHS the same tax-free status enjoyed by those who receive NHSC loan repayments. The legislative terms for this proposal are provided in HR 3391, "The Indian Health Service Health Professions Tax Fairness Act". This proposal is also consistent with the legislative changes proposed in the Obama Administration's Fiscal Year 2014 budget. See *General Explanation of the Administration's Fiscal Year 2014 Revenue Proposals*, p. 132 (available at http://www.treasury.gov/resource-center/tax- policy/Documents/General-Explanations-FY2014.pdf).

7. Eliminate Excessive Bureaucracy in Medicaid Electronic Health Record (EHR) Incentive Payments that are Assigned to the Tribal Health Care Facilities

Current law: The Indian Health Service (IHS) has provided written guidance to the Internal Revenue Service clarifying that payments made to IHS health care professionals under the Medicaid Electronic Health Record (EHR) Incentive Payment Program should not be considered taxable income to them because they are required by their employment to assign such payments to the IHS. Yet, when health care professionals serving in Tribal health care facilities pursuant to Indian Self-Determination Act agreements with agreements with the IHS receive EHR incentive payments and assign those payments to the Tribal health facility, the Tribal health care professional is issued a 1099 form and then must issue a 1099 to the Tribal health facility to report the assignment of the payment to the health facility.

Proposal: Congress should require IRS to confirm that where a health care professional is required by law to assign the payment to IHS, or required by contract to assign the payment to a Tribal health facility, they are in fact acting as an agent and conduit of another and are unable to keep the payment, thereby making the payment non-taxable to them. IRS should also confirm that in the event of such assignments, there is no need for the health care professionals to issue a 1099 to the health care facility.

8. Exempt Tribal Government Distributions from the Kiddie Tax

Current law: Unearned income in excess of $1,900 of children under age 19, or of young adults age 19-24 who are full-time students, is taxed at the parent's marginal rate, if that rate is higher than what the child would otherwise pay. The purpose of this "kiddie tax" is to address instances of intergenerational income shifting, where a family would historically save large amounts of money by transferring highly appreciated investments to their children who enjoy a lower tax bracket.

Reason for Change: Unfortunately, however, the kiddie tax, as codified in Code Section 1(g), burdens many Tribal minors and young adults with a higher tax rate on Tribal distributions, including minors' trust distributions. The kiddie tax also may create a disincentive for some young Tribal members with respect to the pursuit of higher education.

Proposal: Amend Code Section 1(g) to exempt Tribal government distributions (whether derived from gaming or other Tribal revenue sources) from the kiddie tax.