



## United South and Eastern Tribes, Inc.

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### **USET Resolution No. 2015:034**

#### **FAILURE OF INTERNAL REVENUE SERVICE NOTICE 2015-34 TO COMPLY WITH TRIBAL GENERAL WELFARE EXCLUSION ACT OR EXECUTIVE ORDERS ON CONSULTATION**

- 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,** in September 2014, Congress enacted and the President signed P.L. 113-168, the Tribal General Welfare Exclusion Act (GWE Act), which Congress developed in consultation with Tribal Nations across the country; and
- WHEREAS,** the GWE Act recognizes that payments or benefits provided by tribal governments to their citizens to promote the general welfare of their community are excluded from gross income for individual federal income tax purposes; and
- WHEREAS,** the GWE Act recognizes that Tribal Nations, not the Internal Revenue Service (IRS) or other offices or bureaus at the Department of the Treasury, are in the best position to determine the needs of their citizens and communities; and
- WHEREAS,** the GWE Act requires the Treasury Department to establish a Tribal Advisory Committee (TAC) to advise the Secretary of the Treasury about implementation of the GWE Act as well as general matters relating to the taxation of Indians; and
- WHEREAS,** the GWE Act provides that tribal government benefits cannot be "lavish or extravagant", and requires the Secretary, in consultation with the TAC, "to establish guidelines for what constitutes lavish and extravagant benefits with respect to Indian tribal government programs"; and
- WHEREAS,** the GWE Act recognizes that tribal government programs may be established by tribal government practice or tribal custom; and
- WHEREAS,** the GWE Act clarifies that the receipt of cultural items, the reimbursement of costs, and cash honorarium for participation in tribal cultural or ceremonial activities is not to be treated as compensation for services, and thus not subject to federal income taxation; and
- WHEREAS,** the Secretary of the Treasury has not yet formed the TAC, to develop guidelines for the term "lavish and extravagant" as required by the GWE Act or conducted meaningful consultation with Tribal Nations to otherwise establish these guidelines consistent with the spirit of the Act, nor has the Secretary consulted with Tribal Nations to determine implementation of the GWE Act for tribal

government programs created through practice or custom, or for the receipt of cultural items, reimbursement, or honorarium for participation in tribal cultural or ceremonial activities; and

**WHEREAS,** Section 3(c) of Executive Order 13175 requires federal agencies formulating policies that have tribal implications to "defer to Indian tribes to establish standards"; and to "consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes;" and

**WHEREAS,** on April 16, 2015, the IRS issued Notice 2015-34 requesting public comments on issues "that may be addressed in future public guidance", including the guidelines for "lavish and extravagant" benefits from tribal government programs, even though Congress in the GWE Act expressly delegated the development of these guidelines to the Secretary in consultation with the TAC; and

**WHEREAS,** Notice 2015-34 also requests public comments on the development of guidelines for tribal government programs created through tribal government practice or custom; and the receipt of cultural items, reimbursement for costs, or honorarium for participation in tribal cultural or ceremonial activities, each of which has tribal implications and, under Executive Order 13175, requires the Secretary to "defer to Indian tribes to establish standards"; and to "consult with tribal officials as to the need for Federal standards"; and

**WHEREAS,** the Treasury Department has engaged in a repeated pattern of failing to conduct appropriate consultation prior to taking actions that directly impact tribal governments and that these ill-considered federal actions have triggered widespread tribal opposition, including actions related to tribal general welfare benefits; and

**WHEREAS,** USET has called upon the Treasury Department to chart a new course where collaborative government-to-government dialogue is established and relied upon to formulate policies and practices within the Department that are aligned with the federal policy of Indian Self-Determination; 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 Treasury Department, including the Internal Revenue Service, to engage in meaningful consultations with the Tribal Advisory Committee pursuant to the General Welfare Exclusion Act and with Tribal Nations pursuant to Executive Orders 13175 and 13647 before implementing any provision of the General Welfare Exclusion Act, including the items listed in Internal Revenue Service Notice 2015-34; and be it further

**RESOLVED** the USET Board of Directors calls upon the United States Congress to direct the Treasury Department and the Administration to ensure that the General Welfare Exclusion Act is fully implemented as intended.

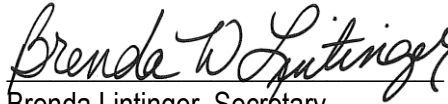
*"Because there is strength in Unity"*

**CERTIFICATION**

This resolution was duly passed at the USET Semi-Annual Meeting, at which a quorum was present, in Mashantucket, CT, May 20, 2015.



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



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

*“Because there is strength in Unity”*