



USET

SOVEREIGNTY PROTECTION FUND

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USET SPF Resolution No. 2020 SPF:002

URGING THE INTERNAL REVENUE SERVICE TO CONFIRM THE TAX-EXEMPT STATUS OF TRIBALLY-CHARTERED CORPORATIONS

- WHEREAS,** United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of thirty (30) federally recognized Tribal Nations; and
- WHEREAS,** the actions taken by the USET SPF Board of Directors officially represent the intentions of each member Tribal Nation, as the Board of Directors comprises delegates from the member Tribal Nations' leadership; and
- WHEREAS,** Tribal Nations were independent sovereign nations prior to the formation of the United States. From the first days of the Republic, the United States entered into treaties and agreements with Tribal Nations, acknowledging their status as sovereigns; and
- WHEREAS,** the United States Constitution affirms the status of Tribal Nations as sovereigns through the Treaty, Supremacy, and Commerce Clauses with the power to tax activities occurring within the boundaries of their reservations; and
- WHEREAS,** as sovereign governments, Tribal Nations are not taxable entities, and the Internal Revenue Service (IRS) recognized and confirmed in Revenue Ruling 67-284 (1967), which has ensured that the revenues Tribal Nations generate are not subject to federal tax; and
- WHEREAS,** in 1994, IRS clarified in Revenue Ruling 94-16 that as an arm of a Tribal government, a Tribal corporation organized under Section 17 of the Indian Reorganization Act (IRA) has the same tax status as the Tribal Nation, and is not subject to federal tax on its income regardless of where that income is generated; and
- WHEREAS,** in 1996, the IRS published regulations on the tax classification of business entities but did not address the tax treatment of corporations owned by Tribal Nations and chartered under Tribal law. Instead, the IRS stated in the preamble to those regulations (61 Fed. Reg. 66585), that the IRS was "studying" this issue. However, two decades later, the IRS has still not issued any guidance on this issue; and
- WHEREAS,** organization(s) formed pursuant to Tribal law that are owned by Tribal Nations are similarly instrumentalities of Tribal governments and should have the same tax status of the Tribal Nation, and should not be subject to federal tax on their income regardless of where that income is generated; and
- WHEREAS,** despite requests from Tribal Nations, the IRS has failed to issue guidance clarifying the tax status of organization(s) formed pursuant to Tribal law that are owned by Tribal Nations, but instead has employed a multi-factor *ad hoc* test to assess whether such corporations constitute an "integral part" of a Tribal Nation to qualify for the same tax status as the Tribal Nation, which has created uncertainty and hindered Tribal economic development efforts; and

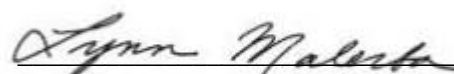
- WHEREAS,** the Department of Treasury and IRS have an obligation to meaningfully consult with Tribal Nations prior to taking action pursuant to numerous treaties, case law, and Executive Order 13175, which requires federal agencies formulating policies that have Tribal implications to "defer to Indian 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,** 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** USET SPF calls upon the Department of Treasury and Internal Revenue Service to engage in meaningful, transparent consultation with Tribal Nations regarding the tax status of organization(s) formed pursuant to Tribal law that are owned by Tribal Nations; and be it further
- RESOLVED** the USET SPF Board of Directors calls upon the Department of Treasury and Internal Revenue Service to maintain their current policy regarding the federal tax treatment of organization(s) formed pursuant to Tribal law that are owned by Tribal Nations until such time as such policy is replaced with legislation or lawfully promulgated regulations; and, be it further
- RESOLVED** the USET SPF Board of Directors calls upon the Department of Treasury and Internal Revenue Service not to propose any regulatory or legislative changes to their current policy of treating organization(s) formed pursuant to Tribal law as nontaxable entities without first obtaining the input and consent of Tribal Nations and to refrain from advancing any initiative or proposal that could adversely affect the ability of Tribal Nations to promote economic self-sufficiency through the creation of Tribally-chartered corporations or other juridical entities; and be it further
- RESOLVED** USET SPF urges the Department of Treasury and Internal Revenue Service to issue guidance acknowledging and upholding the inherent sovereignty of Tribal Nations that fully confirms that organization(s) formed pursuant to Tribal law that are owned by Tribal Nations have the same tax status as the Tribal Nation and are not subject to federal tax on its income regardless of where that income is generated; and be it finally
- RESOLVED** this resolution shall be the policy of USET SPF until it is withdrawn or modified by a subsequent resolution.

CERTIFICATION

This resolution was duly passed at the USET SPF Annual Meeting held on the Sovereign Territory of the Mississippi Band of Choctaw Indians at which a quorum was present on November 7, 2019.



Chief Kirk E. Francis, Sr., President
United South and Eastern Tribes
Sovereignty Protection Fund



Chief Lynn Malerba, Secretary
United South and Eastern Tribes
Sovereignty Protection Fund

Because there is Strength in Unity