



# USET

SOVEREIGNTY PROTECTION FUND

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## USET SPF Resolution No. 2023 SPF:012

### **SUPPORTING EFFORTS BY STATES TO ENSURE PARITY AMONG TRIBAL NATIONS SUBJECT TO RESTRICTIVE SETTLEMENT ACTS**

- WHEREAS,** United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of thirty-three (33) 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 have sovereign authority to tax commercial activities within our territories, whether such tax is imposed on Tribal citizens, other Indians, or non-Indians, and the U.S. Supreme Court has affirmed that a Tribal Nation's tax power is "an essential attribute of Indian sovereignty." *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 137 (1982); and
- WHEREAS,** despite the clear, sovereign right of Tribal Nations to tax within our territories, federal and state court decisions have employed a vague and malleable balancing of interests test that has permitted states to tax certain on-reservation activities of non-Indians engaging in commerce within Indian Country; and
- WHEREAS,** state government taxation within Indian Country hinders the ability of Tribal Nations to generate our own revenue to fund critical governmental services to Tribal communities, and undercuts the ability of Tribal Nations to offer tax incentives to encourage non-Indian businesses onto our homelands to create jobs and stimulate Tribal economies; and
- WHEREAS,** the USET Board of Directors, in Resolution 2012:024, urged the Bureau of Indian Affairs to conduct a study of the problem of dual taxation in Indian Country; and
- WHEREAS,** the USET SPF Board of Directors, in Resolution 2014:037, requested Congressional action to ensure that tax policy supports the principle that economic activity taking place in Indian Country should generate revenue for Indian Country and specifically noted the problem of duplicative, or dual, taxation of economic activity involving non-Indians and how it impedes the ability of Tribal Nations to attract business, expand Tribal economies, and generate revenues; and
- WHEREAS,** in various position papers, as well as Resolution 2023 SPF:010, USET SPF has called for solutions to the problem of dual taxation so that Tribal Nations can ensure that the economic benefits of commerce within Indian Country are not siphoned away by state and local government taxes that pay for services that do not benefit Tribal Nations, our citizens, and our communities; and

- WHEREAS,** through the Tribal General Welfare Exclusion Act (P.L. 113-168), the U.S. Congress established the Treasury Tribal Advisory Committee (“TTAC”) to advise the Treasury Secretary on, among other things, significant matters related to taxation of Indians; and
- WHEREAS,** TTAC created a subcommittee on dual taxation which published in December 2020 a report documenting the crisis of dual taxation and stating the following desired policy objective: “Tribal Nations, as sovereign governments, shall be the only taxing authority for all business and economic activity occurring on and with their reservations”; and
- WHEREAS,** USET SPF opposes the continuation of tax disparity among Tribal Nations imposed by Restrictive Settlement Acts and reaffirms that agreements with state and local governments ratified under such Restrictive Settlement Acts are an unjust and unconscionable encroachment on Tribal sovereignty; and
- WHEREAS,** efforts are being undertaken with legislators in states to address the scourge of dual taxation through the enactment of state legislation that exempts from state taxation all real and personal property located within Indian Country; and
- WHEREAS,** USET SPF member Tribal Nations support states addressing tax disparity caused by state and local agreements ratified under Restrictive Settlement Acts to ensure fairness and parity among Tribal Nations; and
- WHEREAS,** USET SPF member Tribal Nations and other Tribal Nations across the United States have successfully sought and had enacted state legislation prohibiting state taxation within Indian Country; and
- WHEREAS,** USET SPF supports all efforts at federal, state and Tribal levels to address and stop the intrusion of state taxation within Indian Country; and
- WHEREAS,** the USET SPF Board of Directors recognizes that until the problem of dual taxation is eliminated through federal and/or state policy, Tribal Nations will continue to see the fruits of our economic development activities benefit neighboring communities rather than our own; 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 supports Tribal efforts to address and eliminate dual taxation in the state legislative arena; be it further
- RESOLVED** USET SPF supports Tribal efforts to address and eliminate tax disparity imposed by Restrictive Settlement Acts in the state legislative arena; be it further
- RESOLVED** USET SPF supports efforts by states to pass such legislation that eliminates tax disparity caused by state and local agreements ratified under Restrictive Settlement Acts.

*Because there is Strength in Unity*

**CERTIFICATION**

This resolution was duly passed by the USET SPF Executive Committee, at which a quorum was present on February 20, 2023.



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



Vice Chairman Robert McGhee, Vice-President  
United South and Eastern Tribes  
Sovereignty Protection Fund