



USET

SOVEREIGNTY PROTECTION FUND

1730 Rhode Island Avenue, NW
Suite 210
Washington, DC 20036
P: (615) 872-7900
F: (615) 872-7417
www.usetinc.org

Transmitted electronically to
tribal.consult@treasury.gov

March 31, 2023

Chief Lynn Malerba
Treasurer of the United States
Point of Contact for Tribal Consultation
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Chief Malerba,

We write on behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) to provide comment to the U.S. Department of Treasury (Treasury) in response to its February 28, 2023 consultation on the findings and recommendations released in the Treasury Tribal Advisory Committee's (TTAC) Dual Taxation Report adopted by the TTAC December 9, 2021. Through inequities in the tax code as well as state dual taxation, revenue generated within Indian Country continues to be taken outside its borders or otherwise falls victim to a lack of parity. In addition, Tribal Nations continue to lack many of the same benefits and flexibility offered to other units of government under the tax code. With this in mind, USET SPF welcomes the Dual Taxation Report and applauds the TTAC Dual Taxation Subcommittee for its work in highlighting this critical issue. We strongly agree with the Report's findings and recommendations and offer the following comments to further strengthen and refine its message. The U.S. government has a responsibility to ensure that federal tax law treats Tribal Nations in a manner consistent with our governmental status, as reflected under the U.S. Constitution and numerous federal laws, treaties and federal court decisions. We urge Treasury to honor the guidance of Tribal Nations, the TTAC, and others in Indian Country as it seeks to address the problem of dual taxation.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe—Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

General Comments

From our perspective, the Report does a thorough job of describing and framing the problem of dual taxation in Indian Country, and, in large part, mirrors the experiences of our member Tribal Nations. Dual taxation hinders Tribal Nations from achieving our own revenue generating potential. Although Tribal Nations have authority to tax noncitizens doing business in Indian Country, when other jurisdictions can tax those same noncitizens for the same transactions, Tribal Nations must lower their taxes to keep overall pricing at rates the market can bear or forgo levying a tax at all. The application of an outside government's tax often makes the Tribal tax economically infeasible. Dual taxation undercuts the ability of Tribal Nations to offer tax incentives to encourage non-Indian business entities onto the reservation to create jobs and stimulate the Tribal economy. As long as outside governments tax non-Indian businesses on the reservation, even if a Tribal government offers complete Tribal tax immunity to attract a new non-Indian business to the reservation, that business is subject to the same state tax rate that is applicable off-reservation. Tribal Nations rarely see the benefit of our tax dollars extracted by other units of government. The revenue leaving our homelands benefits state and local citizens, and does not come back to Tribal Nations and our citizens in the form of governmental services or community infrastructure. All of this is critical to understanding the scope and impact of this issue, and, we note, is outlined in the Report.

In order to achieve economic success, revenues and profits generated on Tribal lands must stay within Indian Country in order to benefit from the economic multiplier effect, allowing for each dollar to turn over multiple times within a given Tribal economy. It is critical that inequities and the lack of parity in policy and federal funding be addressed for Tribal Nations in order to fully exercise our inherent self-governance to conduct economic development activities for the benefit of our Tribal citizens. Recognizing the federal government's trust obligation to promote and protect Tribal Nation economic development, as well as to support our general welfare, Treasury must take action to remove barriers to robust economies in Indian Country. We join the TTAC Dual Taxation Subcommittee and the broader TTAC in urging Treasury and the whole of the federal government to ensure that Tribal Nations are the only taxing authority within the boundaries of our homelands.

Additional Recommendations for Action

As noted above, USET SPF strongly agrees with the Recommendations for Action proposed by the TTAC Dual Taxation Subcommittee. We offer the following additional thoughts to further strengthen the Report and Treasury's relationship with Tribal Nations:

- **Treasury Should Commit to Supporting and Leading Legislative and Regulatory Efforts to Confirm the Exclusive Taxing Authority of Tribal Nations**

As consultation on the Report concludes, Tribal Nations will be looking to Treasury to commit to concrete next steps. This should necessarily include official communication from the Department acknowledging the negative impacts of dual taxation on Tribal Nation economies and confirmation that the federal government will work with Indian Country to ensure this is addressed.

- **This Consultation Should Inform Treasury's Approach to Implementing All Tax Policy**

While the Report focuses mainly on dual taxation, it expresses important principles with regard to the tax status of Tribal Nations and our enterprises that should be applied across the Department in its tax dealings with Indian Country. We further expect that these principles will be reinforced and deepened by Tribal Nations via this consultation. Treasury should ensure the record of this consultation informs future consultations going forward, as well as any forthcoming tax guidance.

- **Permanency for Treasury's Office of Tribal and Native Affairs**

USET SPF applauds Treasury's establishment of its Office of Tribal and Native Affairs. Tribal Nations have long advocated for the creation of an Office of Tribal Affairs within the Treasury to improve the Department's delivery of federal trust and treaty obligations to Tribal Nations. Now, we call upon Treasury to ensure the Office is positioned to outlast this Administration and fulfill its potential. This includes ensuring the Office has dedicated funding—regardless of whether this is achieved through Tribal Nation advocacy with Congress, maintaining a direct line between the Office and the Secretary, and facilitating the Office's involvement in matters across the Department. Taking steps to make this Office permanent, including providing dedicated resources, will help to ensure that the full array of Treasury's programs support Tribally driven economic development and investment in Indian Country and Departmental policy is implemented in a way that upholds sovereignty and self-determination.

Conclusion

USET SPF appreciates the opportunity to revive a conversation with Treasury around dual taxation via the Subcommittee's Report. Organizationally, we have united around the principle that economic activity taking place in Indian Country must generate revenue for the benefit of Tribal communities. Economic sovereignty is essential to Indian Country's ability to be self-determining and self-sufficient. Rebuilding of our Tribal Nations includes rebuilding of our Tribal economies as a core foundation of healthy and productive communities. As state and local governments reach into Tribal coffers and siphon away revenue, Tribal Nations lose the opportunity for economic growth and sovereignty. If Tribal Nations are ever to achieve parity with other communities in the United States, we must have the right to make the sovereign choice whether to assess taxes on our lands free from the overreach and interference of other governments levying their own taxes. We call upon Treasury to ensure that this consultation is merely the beginning of Treasury's efforts to address this injustice. To do so would be nothing short of game-changing, and would truly reflect a commitment to Tribal self-determination on the part of the federal government. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director