



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted Electronically
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January 16, 2025

Fatima Abbas
Director
Office of Tribal and Native Affairs
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Director Abbas,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Department of the Treasury's (Treasury) Notice of Proposed Rulemaking (NPRM) on, "Entities Wholly Owned by Indian Tribal Governments." We commend Treasury's efforts to finally address this long-standing issue and appreciate the time and effort Treasury has made toward resolving this critically important matter with Tribal Nation guidance. The uncertainty of the tax status of Tribally chartered entities (TCEs) (formerly referenced as Tribally chartered corporations (TCCs)) has remained a persistent policy barrier for Tribal Nations seeking to rebuild our economies and generate our own governmental revenues. For over 30 years, Tribal Nations have urged Treasury and the Internal Revenue Service (IRS) to recognize that our TCEs chartered under Tribal law have the same tax status as our governments. These entities are critical to the exercise of inherent Tribal sovereignty and self-determination to create jobs as well as create an economic multiplier effect to rebuild and grow our economies. USET SPF applauds Treasury—especially its Office of Tribal and Native Affairs and the Treasury Tribal Advisory Committee—for the considerable work and effort involved in developing this NPRM and we urge its swift finalization.

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), 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), Mi'kmaq Nation (ME), 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 Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

Strong Support for the NPRM on the Tax Status of Entities Wholly Owned by Tribal Governments

USET SPF strongly supports the prompt finalization of this NPRM to confirm that wholly owned TCEs would not be recognized as separate entities for tax purposes and instead share the tax status of their respective Tribal government(s). The finalization of this NPRM is a matter of governmental parity. Tribal Nations should no longer be treated differently than state and local governments that regularly engage in business activities, which the IRS deems exempt, to fund programs and services. Indeed, the unique government-to-government and trust relationship that Tribal Nations have with the federal government—and now E.O. 14112—demands that the solution not limit, in any way, but rather expand the tax exemption for Tribal economic activity.

In addition, this NPRM is particularly timely and urgent, as many wholly owned Tribal energy development corporations would in turn become eligible for Direct Pay tax credits authorized by the Inflation Reduction Act (IRA). The finalization of this NPRM would ensure that such TCEs would not be recognized as a separate entity for federal tax purposes and would not impede these entities from appropriately applying for and obtaining the IRA's Direct Pay tax credits. This action by Treasury and IRS complies with and adheres to Executive Order 14112, "Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination" (EO 14112).

Further, we are pleased that Treasury and IRS have taken into consideration the recommendation from the Treasury Tribal Advisory Committee (TTAC) to recognize "financial support" under Sec. 2(b) of EO 14112 to include tax matters ranging from tax credits to federal tax rules that regulate Tribal revenue. This acknowledgement is a positive step in the right direction and reflects Treasury's commitment to support our efforts to exercise our sovereignty and self-determination to rebuild our Tribal economies.

In addition, we underscore our support for the following proposals included in the NPRM—

- **Acknowledgement that multiple Tribal governments can work together to establish TCEs.** This reflects and upholds the inherent sovereignty of Tribal governments, including when we choose to collaborate with one another. This will support the creation of jobs and shared sovereign economic growth for Tribal Nations through partnership.
- **Recognition that various types of TCEs will be treated as instrumentalities of Tribal governments and eligible for IRA Direct Pay tax credits.** USET SPF supports Treasury and the IRS's decision regarding the wholly owned TCEs, federally chartered Tribal corporations, single member limited liability companies organized under the laws of a Tribal government, and multi-Tribal TCEs will be recognized as being instrumentalities of Tribal governments and eligible to apply for IRA Direct Pay tax credits.
- **No imposition of an integral part test for evaluating the tax status of wholly owned TCEs.** USET SPF applauds Treasury and IRS for considering [Tribal comments](#) received and avoiding the reinstatement of IRS' "integral part test" for evaluating the tax status of TCEs. The integral part test is cumbersome and results in disparate, uneven results and does not go far enough to provide the certainty that Tribal governments require to secure revenue for the benefit of our citizens and communities.
- **No imposition of additional information reporting under the proposed rules.** USET SPF commends Treasury and the IRS's decision not to impose additional reporting requirements in the NPRM. This action adheres to and upholds Sec. 5 of EO 14112 to increase the accessibility, equity, flexibility, and utility of federal funding and support programs for Tribal Nations.

- **Providing reliance for tax years preceding the NPRM.** USET SPF appreciates that the proposed rules will apply to Tribal governments and wholly owned TCEs for the tax years preceding the date of the publication of the NPRM. This will ensure that the proposed rules apply for taxable years ending on or before October 9, 2024, providing much-needed certainty to Tribal Nations with pre-existing TCEs.

Further Tribal Consultation and Rulemaking Required on Partially Owned TCEs

USET SPF commends Treasury and the IRS for the progress made on this rulemaking. However, we remind Treasury and the IRS that consultation and rulemaking on the tax status of partially owned TCEs must address the tax treatment of partially owned TCEs. In addition, Treasury must acknowledge that the tax treatment of TCEs extends to all wholly owned subsidiaries since this corporate structure is common in Tribal economic development. Treasury must also explicitly confirm that TCEs can assert the same excise tax benefits as the Tribal Nations that chartered them, as this remains an area of uncertainty. In addition, we encourage Treasury to provide guidance on TCEs that are owned in part by persons other than Tribal governments, as outlined in the October 7, 2024, [Dear Tribal Leader letter](#).

We note that under “Background”, Sec. 1 of the NPRM that Treasury and IRS have stated that they will, “continue to consider the Federal tax treatment of Tribally chartered corporations that are owned in part by persons other than Tribes. The Treasury Department and the IRS would conduct Tribal consultation prior to issuing any additional guidance in that area.” Tribal consultation on TCEs must include the issues regarding partially owned TCE subsidiaries, excise tax benefits, and those TCEs owned in part by persons other than Tribal governments. We look forward to engaging with Treasury and IRS on these important matters, however, we note that consideration of these issues must be pursued in a timely manner.

Moving forward, Treasury must remain engaged with TTAC and Tribal Leaders rather than assuming that adoption of the current regulations provides an absolute resolution to the tax treatment of our TCEs. Ongoing dialogue with TTAC and Tribal Leaders will be essential to successful implementation of the NPRM once finalized, and necessary to address the outstanding issues of tax treatment of all types of TCE ownership structures. These actions will ensure that we are able to exercise our inherent sovereignty and self-determination to grow our Tribal economies through TCE development and achieve an economic multiplier effect, allowing each dollar to turn over multiple times within a given Tribal economy.

Conclusion

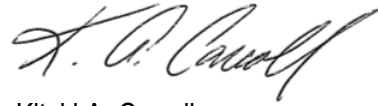
Economic sovereignty is essential to Indian Country’s ability to be self-determining and self-sufficient. Rebuilding our Tribal Nations includes rebuilding our Tribal economies as a core foundation of healthy and productive communities. The NPRM acknowledges our inherently sovereign, governmental status and that TCEs established by our Tribal Nations facilitate the pursuit of Nation rebuilding. They are essential components in our effort to rebuild our Tribal economies, create jobs for our citizens, and improve the public well-being and economic self-sufficiency of our citizens and communities. Further, TCEs can have a multiplier effect on dollars within our communities, increase the generational wealth of Tribal citizens, and support our surrounding non-Tribal communities through economic development and job creation.

USET SPF appreciates the development and publication of this NPRM, however, we remind Treasury and the IRS that more work must be done regarding the tax status of partially owned TCEs. We urge Treasury and the IRS to engage in Tribal consultation on partially owned TCEs to develop further guidance on this critical and timely issue. 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,

A handwritten signature in black ink, appearing to read 'K. Francis', with a long horizontal stroke extending to the right.

Chief Kirk Francis
President

A handwritten signature in black ink, appearing to read 'K. A. Carroll', written in a cursive style.

Kitcki A. Carroll
Executive Director