



USET

SOVEREIGNTY PROTECTION FUND

Washington, DC Office
1730 Rhode Island Ave., NW, Suite 909
Washington, DC 20036

Nashville, TN Office
711 Stewarts Ferry Pike
Nashville, TN 37214
P: 615-872-7900 | F: 615-872-7417

Transmitted Electronically

May 19, 2026

The Honorable Kenneth J. Kies
Assistant Secretary for Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Ave., NW, Room 3120
Washington, DC 20220

RE: Treasury Notice 2026-23

Dear Assistant Secretary Kies,

On behalf of United South and Eastern Tribes Sovereignty Protection Fund, we write to provide comment to the U.S. Department of Treasury (Treasury) and the Internal Revenue Service (IRS) regarding the 2026-2027 Priority Guidance Plan. The Treasury Department's Office of Tax Policy and the IRS use the annual Priority Guidance Plan process to identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance. USET SPF celebrates the action that Treasury has taken during this Administration to finalize the General Welfare Exclusion Act rule, as well as guidance confirming the tax status of Tribally chartered entities – both of which appeared in Treasury's 2025-2026 Priority Guidance Plan and both of which were long-standing priorities for Indian Country. Now, we call upon Treasury to continue building upon this momentum to remove other persistent barriers to Tribal economic and infrastructure development in fulfillment of trust and treaty obligations, as well as the Administration's goal of unleashing a golden age of prosperity for all.

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 assisting its membership in dealing effectively with public policy issues.

Recommendations for Inclusion in 2026-2027 Priority Guidance

According to Treasury Notice 2026-23, among the considerations as Treasury considers projects for inclusion in its 2026-2027 Priority Guidance Plan will be regulations described in Executive Order 14219, and therefore, targeted for rescission or changes. The Executive Order and the Treasury Notice include, among others, the following types of regulations as eligible for action: regulations that are based on

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 Indian Tribe (VA), and Wampanoag Tribe of Gay Head (Aquinnah) (MA).

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anything other than the best reading of the underlying statutory authority or prohibition; and regulations that harm the national interest by significantly and unjustifiably impeding technological innovation, infrastructure development, disaster response, inflation reduction, research and development, economic development, energy production, land use, and foreign policy objectives. In addition, Treasury cites other scenarios that will be taken into account as it determines projects for Treasury action. These include: Whether the recommendation involves existing regulations or other guidance that is outdated, unnecessary, ineffective, insufficient, or unnecessarily burdensome and that should be modified, streamlined, expanded, replaced, or withdrawn; Whether the recommended guidance resolves significant issues relevant to a broad class of taxpayers; Whether the recommended guidance promotes sound tax administration; Whether the IRS can administer the recommended guidance on a uniform basis; and Whether the recommended guidance can be drafted in a manner that will enable taxpayers to easily understand and apply the guidance.

Taken in combination with Treasury's trust and treaty obligations to Tribal Nations, the following proposals meet many of Treasury's criteria for inclusion in its 2026-2027 Priority Guidance. Tribal Nations continue to face excessive regulation and bureaucracy as we seek to rebuild our Tribal economies, develop infrastructure, and exercise self-determination. We urge that Treasury continue to work in consultation with Tribal Nations and collaboration with the Treasury Tribal Advisory Committee (TTAC) to remove barriers that impede these objectives.

1. Guidance on the use of Tribal Tax-Exempt Bond Financing

For over four decades, Tribal Nations have faced considerable barriers to the use of Tribal tax-exempt bond financing, which has chilled economic and infrastructure development across Indian Country. Despite having issued positive proposed regulations on the issue in 1984, that have yet to be withdrawn, Treasury is inexplicably relying on a 2006 non-precedential notice to issue negative guidance on Tribal bond financings. The negative rulings and other restrictions have led to a vast underutilization of Tribal tax-exempt bonding authority. Indeed, a 2013 Treasury study found that just 17% of federally recognized Tribal Nations utilized this authority between 1987 and 2010. In 2020, Tribal governments issued \$39 million in tax-exempt debt. State and local governments issued \$51 billion that same year. This shows the deep disparity between Tribal governments and other units of government who do not face the same restrictions.

Section 7871 was enacted as part of the Indian Tribal Government Tax Status Act of 1982. The intent was to provide clarity and parity for Tribal Nations. We would be treated like states for certain purposes, including issuing tax-exempt debt. However, due to negative guidance issued by the IRS, the results have produced anything but parity. The law allows Tribal governments to issue tax exempt debt for essential governmental functions. In 1984, Treasury released favorable temporary and proposed regulations, which included language saying they would remain in place until final regulations were issued. In 1987, the law was amended to add a definition for the term essential governmental function. Tribal Nations are limited to using tax exempt debt to finance activities that states customarily use tax exempt debt to finance.

The positive 1984 proposed regulations have not been amended or withdrawn. Instead, in 2006, Treasury released an advance notice of proposed rulemaking. The notice is non-precedential and cannot be relied on. Interestingly, the notice did not even mention the previously released regulations. Nonetheless, comments were submitted raising concerns about how the notice would depress economic development efforts, which the US Supreme Court has concluded is an essential governmental function. At least one commentor pointed out that the three criteria set forth in the notice were unsupported by law and requested consideration be given to the 2006 Government Accountability Office (GAO-06-1082) report that highlighted projects for which state and local governments regularly use tax-exempt financing.

The commenters' concerns were valid, and ignored. Instead, the IRS has pressed forward with its 2006 non-precedential notice to issue negative guidance on Tribal bond financings. The IRS guidance has suppressed economic growth, leading to additional unemployment, resulting in less investment in rural communities, and contributing to the housing crisis. We ask that, as you indicated during the recent TTAC public meeting, Treasury work with TTAC and Indian Country to provide as much parity as possible to Tribal Nations under your regulations and reduce our administrative burden.

2. Address Tax Status of Partially Owned Tribally Chartered Entities

Following the issuance of positive guidance on Tribally chartered entities that are wholly owned, we continue to seek guidance on partially owned entities. The guidance that would be most helpful and representative of Tribal business structures should provide clarity on the tax status of joint ventures and partnerships. This is a simple, common-sense action would ensure that Tribal Nations have additional certainty as we engage in economic development with non-Tribal partners chartered under our own laws.

3. Determining Tribal Political Subdivisions for Excise Tax Purposes

Another guidance issue that needs to be updated is the IRS' treatment of excise tax exemptions under Section 7871. That law provides for equal treatment of Tribal Nations as states for certain tax purposes, one of which involves an excise tax exemption. The law provides that the IRS is to consult with the Department of the Interior (DOI) on designation of Tribal political subdivisions. In 1984, IRS published a list of Tribal political subdivisions and this has never been updated or modernized. A revenue procedure in 1984 provided that Tribal subdivisions not on the 1984 list have to seek a private letter ruling from the IRS to be designated a political subdivision.

This is an extraordinarily burdensome process for Tribal Nations, the IRS, and Interior and is not required by law. Additionally, private letter rulings involve significant costs to Tribal Nations, further restricting access to this exemption that Congress intended for us to have access to since the 1980s. This results in suppression of our economies through tax uncertainty. DOI publishes a list of federally recognized Tribal Nations annually and this list likely holds the key to simplification and the lifting of burdens for both Tribal and federal government.

We request that IRS work with the TTAC and consult with Tribal Nations on modernizing this guidance consistent with the President's deregulatory agenda and Congress' intention to provide Tribal governments with excise tax relief.

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. With Treasury's continued commitment to these principles, we have great opportunities ahead to enhance the exercise of Tribal self-governance, improve lives across Indian Country, increase prosperity and ease unnecessary burdens for Tribal governments. We appreciate the consideration of these comments and urge that Treasury incorporate Indian Country's priorities into its 2026-2027 priority guidance.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director