



United South and Eastern Tribes, Inc.

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USET Resolution No. 2013:030

SUPPORT FOR LEGISLATION TO AMEND THE INTERNAL REVENUE CODE TO RESPECT SOVEREIGNTY OF TRIBAL GOVERNMENTS TO PROTECT AND PROMOTE GENERAL WELFARE OF THEIR CITIZENS

- WHEREAS,** United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprised of twenty-six (26) federally recognized Tribes; and
- WHEREAS,** the actions taken by the USET Board of Directors officially represent the intentions of each member Tribe, as the Board of Directors comprises delegates from the member Tribes' leadership; and
- WHEREAS,** the U.S. Government has a unique government-to-government relationship with Indian Tribes and has a legal and moral responsibility to respect and honor Tribal sovereignty as Tribal governments fulfill their roles in protecting and promoting the general welfare of their Tribal citizens to address economic, social, cultural, and community needs; and
- WHEREAS,** Indian Tribes are sovereigns that pre-date the United States with prior and treaty protected rights to self-government and to our Indian lands; and
- WHEREAS,** the Constitution of the United States, through the Treaty, Commerce, Supremacy, and Apportionment Clauses and the 14th Amendment recognize the sovereign status of Indian Tribes as separate nations established prior to the United States; and
- WHEREAS,** the United States undertook many treaty obligations in exchange for the cession and taking of hundreds of millions of acres of Tribal homelands, yet the Federal Government has fallen far short in meeting and funding these solemn obligations; and
- WHEREAS,** some Tribal governments, tired of waiting on the U.S. to meet its treaty and statutory obligations, have taken it upon themselves to provide for the general needs of their communities through Tribal services and programs; and
- WHEREAS,** the Internal Revenue Service (IRS), instead of fostering these acts of Indian self-determination, are targeting Tribal governments for audits and examinations, seeking to tax the benefits provided to Tribal citizens by Tribal governments; and
- WHEREAS,** the Treasury Inspector General for Tax Administration released a report on January 28, 2013, Reference Number 2013-10-018, confirming Tribal claims that the IRS has increasingly targeted Indian Tribes in recent years through the efforts of the Abuse Detection and Prevention Team (ADAPT) program to combat fraud and abuse in Indian Country, and concluding that the ADAPT program has yielded de minimis results; and

- WHEREAS, the IRS is violating Tribal treaty rights, federal policies supporting Indian Self-Determination, and provisions in the U.S. Constitution that acknowledge Tribes as separate sovereigns, not subject to taxation; and
- WHEREAS, the Internal Revenue Code Section 61 states that, except as otherwise provided, gross income includes all income from whatever source derived, and the IRS and federal courts have consistently held that payments made under similar social benefit programs for the promotion of general welfare are not includable in gross income; and
- WHEREAS, the General Welfare Exclusion (GWE) Doctrine provides a common law (or statutory interpretation by implication) exclusion for government social welfare programs; however, implementation of the GWE is based upon subjective decision-making and is difficult to apply; and
- WHEREAS, the IRS developed Notice 2012-75, which recognizes the right of Tribal governments to provide certain programs and services to their citizens on a tax-free basis consistent with the GWE; and
- WHEREAS, the IRS retains a significant amount of subjective authority under Notice 2012-75 to set Tribal tax policy on an *ad hoc* basis without adequate acknowledgment of the Federal Government's legal, treaty, trust, and statutory obligations to Indian Tribes; and
- WHEREAS, Notice 2012-75 is not permanent law, includes significant ambiguities that will subject Tribes to inconsistent and increased enforcement actions by the IRS, and does not address Tribal treaty rights or unfunded federal programs and services established by federal laws to meet federal obligations; and
- WHEREAS, Notice 2012-75 would force Indian Tribes to forever alter their deep rooted traditional ways of life and cultural practices of providing for the social, economic, religious, and other needs of their citizens as done since time immemorial in order to comply with Notice requirements, such as written guidelines, that are antithetical with the traditional and cultural practices of Indian Tribes; and
- WHEREAS, despite the fact that Notice 2012-75 is a draft pending additional Tribal government comment, the IRS has continued to target Tribal government-provided general welfare benefits on a broad scale across the country; and
- WHEREAS, Tribes across the country have urged the IRS to take immediate steps to stop targeted audits and enforcement actions and instead focus on compliance efforts to train IRS staff and field agents about the Federal Government's unique obligations to Tribes as well as the federal policy of Tribal self-determination and provide training to Tribal financial officials for the purpose of implementing Notice 2012-75 but the IRS has rejected these requests; and
- WHEREAS, Congress provided a recent example of amending the Internal Revenue Code in 2010 to address a related general welfare policy issue to clarify that Tribal government-provided health insurance and related benefits are excluded from federal income taxation; therefore, be it

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- RESOLVED** the USET Board of Directors calls upon the U.S. Congress to amend the Internal Revenue Code to clarify that Tribal government-provided programs or services authorized or administered by them or authorized or administered under federal law for benefits for American Indians because of their governmental status as American Indians are excluded from gross income for federal tax purposes; and, be it further
- RESOLVED** the USET Board of Directors calls upon the U.S. Congress to clarify that certain benefits that are items of cultural significance or cash honoraria provided to Tribal citizens shall not represent compensation for services and shall be eligible for exclusion from income; and, be it further
- RESOLVED** the USET Board of Directors calls upon the U.S. Congress to establish by law regional Tribal Advisory Committees (TAC's) within the Department of the Treasury to advise the Secretary on matters of Indian taxation; and, be it further
- RESOLVED** the USET Board of Directors calls upon the U.S. Congress to enact a moratorium to halt compliance and enforcement actions by the Internal Revenue Service pertaining to Tribal government-provided benefits at least until Notice 2012-75 is final and there is proper training of Internal Revenue Service personnel given the Internal Revenue Service has refused requests of Tribes to do so; require a more rigorous and accountable training and education program by which Internal Revenue Service field agents carry out their functions consistent with principles of federal Indian law and the Federal Government's unique legal treaty and trust relationship with Indian Tribes; and orient the training of Internal Revenue Service field agents so they have the knowledge, skills and abilities to provide training and technical assistance to Tribal financial officers for the purpose of implementing this amendment.

CERTIFICATION

This resolution was duly passed at the USET Semi-Annual Meeting, at which a quorum was present, in Niagara Falls, New York, on Thursday, May 16, 2013.



Brian Patterson, President
United South and Eastern Tribes, Inc.



Brenda Lintinger, Secretary
United South and Eastern Tribes, Inc.

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