



## United South and Eastern Tribes, Inc.

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### USET Resolution No. 2014:036

#### ENCOURAGING POLICY ADVOCACY AND THE SHARING OF BEST PRACTICES IN THE ADMINISTRATION AND OVERSIGHT OF NEW INTERNAL REVENUE SERVICE GENERAL WELFARE EXCLUSION PROCEDURES

- 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,** through the Commerce, Treaty, and Supremacy Clauses, the Constitution acknowledges Indian nations and Tribes as sovereigns, with inherent authority over our territory and citizens; and
- WHEREAS,** the United States 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,** through treaties, statutes, agreements, and executive orders, the United States established Indian reservations and lands as "permanent" homelands for our Indian Nations and Tribes; and
- WHEREAS,** it is the policy of the United States to support and promote Indian Self-Determination; and
- WHEREAS,** through treaties, statutes, executive orders, and other legal agreements and laws, the United States undertook many obligations to our people in exchange for hundreds of millions of acres of our homeland, yet the federal government has not met its solemn obligations to our people; and
- WHEREAS,** the Internal Revenue Code Section 61 states that, except as otherwise provided, gross income includes all income from whatever source derived, and, pursuant to the General Welfare Exclusion (GWE) doctrine, the Internal Revenue Service (IRS) and federal courts have consistently held that payments made under social benefit programs for the promotion of the general welfare are not includable in gross income and, therefore, not taxable; and
- WHEREAS,** many Tribal governments provide for the general welfare of their people and communities through Tribal governmental programs, services, and benefits; and
- WHEREAS,** as confirmed by a report released by the Department of Treasury (Treasury) Inspector General for Tax Administration on January 28, 2013, the IRS has been targeting Tribal governments with audits and "governmental reviews" of Tribal government programs and services; and

- WHEREAS,** IRS audits and reviews are being conducted in an inconsistent, burdensome and harassing manner that infringes upon Indian sovereignty, denigrates Tribal self-government, and does not appropriately apply the GWE to Tribal programs; and
- WHEREAS,** Tribes and intertribal organizations responded forcefully to challenge the recent IRS audits and examinations that misinterpreted and misapplied the standards governing the application of the GWE to program benefits provided by Tribal governments; and
- WHEREAS,** USET, its member Tribes, and other Tribal organizations have separately and jointly called upon the United States Congress, the Administration, and the IRS to enact legislation and implement policies to exclude Tribal governmental programs, services, and benefits from taxable income, to give deference to Tribal laws, codes, policies, customs, and traditions to determine their own community needs and to otherwise protect and promote Tribal self-determination; and
- WHEREAS,** the IRS and Treasury Department responded to Tribal objections by undertaking a consultation process with Tribal governments that generated extensive comments from Indian Country and resulted in the development of a draft Revenue Procedure set forth in Notice 2012-75 that recognizes the right of Tribal governments to provide certain programs and services to their citizens under GWE excludable from gross income; and
- WHEREAS,** USET, its member Tribes, and other Tribal organizations have stated their positions separately and collectively that, if implemented as written, Notice 2012-75 fails to appropriately recognize Tribal self-governance and Tribal economic self-sufficiency, does not adequately recognize the scope of the GWE and would require Indian nations to alter 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 and adopt written eligibility guidelines and restrictions which are contrary to the traditional and cultural practices and ways of life of our Indian nations; and
- WHEREAS,** despite the fact that Notice 2012-75 is a draft pending final review, the IRS has continued to target Tribal government programs, services, and benefits on a broad scale across the country; and
- WHEREAS,** USET, its member Tribes, and other Tribal organizations submitted proposed changes to the IRS calling for numerous amendments to the draft Revenue Procedure but to date have received no assurances that any of these Tribal proposals will be incorporated into the final GWE Revenue Procedure; and
- WHEREAS,** USET, its member Tribes, and other Tribal organizations have called upon the U.S. Congress to resolve the uncertainties, inconsistencies and infringements presented by the IRS draft Revenue Procedure by amending the Internal Revenue Code to expressly clarify that the benefits or services provided by Tribal governments for the general welfare of their communities are excluded from gross income for federal tax purposes; and
- WHEREAS,** the IRS and Treasury are expected to release final Revenue Procedure guidance on the application of the GWE to Tribal government program benefits soon; and

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- WHEREAS,** Indian Tribes have proven their capacity to exercise their sovereignty despite adverse rules issuing from federal courts, agencies and the Congress and to transform those adverse rulings through collective action at the national policy level and/or through implementation practices at the Tribal level; 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** the USET Board of Directors will collaborate with other Tribes and intertribal organizations in order to develop strategies and best practices to support USET Member Tribes as they continue carrying out programs and services for the general welfare of their membership and to ensure Tribal decision-making authority and cultural practices are respected consistent with federal policies supporting Indian Self-Determination as the Internal Revenue Service implements its new General Welfare Exclusion Revenue Procedure; and, be it further
- RESOLVED** the USET Board of Directors will work with other Tribes, intertribal organizations and Members of Congress to provide sustained oversight of the Internal Revenue Service's implementation of any new General Welfare Exclusion rules and procedures and to support enactment of General Welfare Exclusion legislation to provide clarity and certainty in the application of the General Welfare Exclusion to Tribal governments through enactment of H.R.3043 and S.1507 or similar legislation in the next session of Congress; and, be it further
- RESOLVED** the USET Board of Directors urges the formation of an advisory committee to guide the Internal Revenue Service and Department of Treasury in the implementation of tax policies affecting Indian Country and will continue to engage Internal Revenue Service and Department of Treasury on Tribal policy concerns through formal and informal dialogue; and, be it further
- RESOLVED** the USET Board of Directors urges that the Internal Revenue Service promote government-to-government relations, provide training and technical assistance on tax policy, economic development and use of tax incentives for job creation; and, be it finally
- RESOLVED** the USET Board of Directors calls upon the Administration, the United States Congress, and the Internal Revenue Service to place a moratorium on reviews by the Internal Revenue Service of Tribal governmental programs, services, and benefits for Tribal citizens until such time as (1) amendments to the Internal Revenue Code excluding Indian Tribal governmental programs, services, and benefits from the taxable income of recipients have been enacted and implemented; and (2) there is proper training and education of Internal Revenue Service personnel, including Internal Revenue Service field agents, to carry out their functions consistent with principles of Federal Indian law and the Federal government's unique treaty and trust relationships with Indian nations, and to provide training and technical assistance to Tribal finance officers for the purpose of implementing amendments to the Internal Revenue Code.

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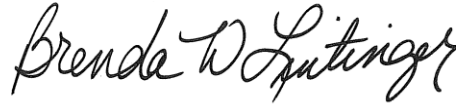
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**CERTIFICATION**

This resolution was duly passed at the USET Impact Week Meeting, at which a quorum was present, in Arlington, VA, on Thursday, February 6, 2014.



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



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

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