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USET SPF Resolution No. 2016:029

REQUESTING ADMINISTRATIVE ACTION TO CLARIFY THE INDIAN TRADER REGULATIONS TO ENSURE THAT ECONOMIC ACTIVITY TAKING PLACE IN INDIAN COUNTRY GENERATES REVENUE FOR INDIAN COUNTRY

- WHEREAS,** USET Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of twenty-six (26) federally recognized Tribal Nations; and
- WHEREAS,** the actions taken by the USET SPF Board of Directors officially represent the intentions of each member Tribal Nation, as the Board of Directors comprises delegates from the member Tribal Nation's leadership; and
- WHEREAS,** the United States has entered into numerous treaties with Tribal Nations located within its borders, including USET SPF members, in which it has promised to recognize and respect their sovereignty and jurisdiction, but has consistently violated those treaties throughout its history; and
- WHEREAS,** in 1982, the U.S. Congress enacted the Indian Tribal Government Tax Status for purposes of ensuring that revenues generated by Tribal Nations would not be subject to income tax and would be treated like other sovereign governments for tax purposes; and
- WHEREAS,** Tribal Nation governments provide services such as education, transportation infrastructure, housing, and law enforcement to Tribal citizens that require an adequate stream of revenue to the Tribal government; and
- WHEREAS,** the U.S. Constitution, treaties and Supreme Court cases acknowledge Tribal Nations as sovereign governments with the power to tax activities occurring within the boundaries of their reservations; and
- WHEREAS,** Tribal Nation governments have established retail sales, business and other taxes to generate revenues that are critical to sustain the delivery of governmental services; and
- WHEREAS,** the Supreme Court has authorized states, under certain conditions, to also impose taxes on non-Indians buying goods or doing business on Indian lands, thus undermining exclusive Tribal taxing jurisdiction and allowing states and local governments to interfere with Tribal economic activity involving non-Indians; and
- WHEREAS,** the problem of duplicative, or dual, taxation of economic activity involving non-Indians impedes the ability of Tribal Nations to attract business, expand their Tribal economies and generate revenues; and
- WHEREAS,** Congress has the power to regulate commerce and other matters relating to Indian Tribes pursuant to the Indian Commerce Clause of the U.S. Constitution; and

- WHEREAS,** Congress has already enacted legislation pursuant to the Indian Commerce Clause of the U.S. Constitution for the purpose of regulating non-Indian traders operating within Indian Country under the "Indian Trader Statutes" that are codified at 25 U.S.C. § 261 *et seq.*; and
- WHEREAS,** the Indian Trader Statutes delegated to the Department of Interior the responsibility to oversee non-Indians engaged in commerce in Indian Country and to regulate those traders to ensure the protection and well-being of Indian individuals, families and Tribal Nation communities from adverse impacts of such commerce; and
- WHEREAS,** the Indian Trader Statutes were originally enacted in the 19th Century to protect Indians and Tribal Nations from predatory non-Indians, but through recent U.S. Supreme Court decisions, have found the Department of Interior's regulatory scheme with respect to commerce in Indian Country with non-Indian traders not to have the effect of pre-empting state and local government taxation of economic activity occurring on Tribal lands; and
- WHEREAS,** recently the Department of the Interior has developed new regulations for leasing of Tribal trust lands (25 CFR Part 162) and for the issuance of rights-of-way (25 CFR Part 169) in which the Department has clarified that taxation by state and local governments of leases and rights-of-way issued in accordance with said regulations is prohibited; and
- WHEREAS,** the USET Board of Directors, in Resolution 2013:037, called upon Congress to explore the economic development and revenue generating impacts of dual taxation and, in consultation with tribes, develop proposed legislation to overcome the negative impacts of dual taxation by considering the creation of Tribally-designated tax-free zones on Indian lands, the establishment of Tribally designated tax-credit zones, federal preemption of state taxation on Indian lands, and federal tax credits; and
- WHEREAS,** the USET Board of Directors, in Resolution 2012:024, urged the Bureau of Indian Affairs to conduct a study of the problem of dual taxation in Indian Country that has never been undertaken; and
- WHEREAS,** the development of new regulations to implement the Indian Trader Statutes by the Department of Interior to clarify that the regulation of non-Indians engaging in commerce in Indian Country is intended to protect and promote the wellbeing of Tribal Nation communities through the pre-emption of state and local taxation on Tribal lands will provide a vitally necessary tool for promoting Tribal economic activity, job creation and sustainable nation-building in Indian Country; 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** USET SPF continues to support efforts by the U.S. Congress to reform the U.S. tax code to ensure greater protection and respect existing sovereign rights of Tribal sovereignty and self-

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determination, especially to support efforts by Tribal Nations to establish strong Tribal economies; and be it further

RESOLVED USET SPF Tribal tax reform efforts shall continue to be guided by the following principles in order to develop a tax code that:

- Respects the government-to-government relationship between Tribal Nations and the United States;
- encourages private investment and stimulates business activities in Indian Country;
- provides Tribal Nations with full access to government financing tools;
- ensures that revenues generated within Tribal territories are retained by tribes for Tribal economy building and are not subject to taxation by state and local jurisdictions;
- respects elected leader decision-making with regard to determining the well-being of Tribal citizens, including advancing and protecting social, cultural and ceremonial practices;
- advances the ability of Tribal Nations to build an economic base and create employment opportunities;
- promotes certainty of jurisdiction, certainty to the capital markets, and certainty in tax policy to sustain economic growth and foster economic partnerships; and be it finally

RESOLVED USET SPF supports the removal of state tax and regulatory burdens on economic activity occurring on Tribal lands by (i) affirming the exclusive taxing jurisdiction of Tribal Nations within their territories, and (ii) developing new regulations to the federal Indian Trader Statutes that have the effect of pre-empting the ability of state and local governments to assess taxes on licensed traders doing business in Indian Country.

CERTIFICATION

This resolution was duly passed at the USET SPF Impact Week Meeting, at which a quorum was present, in Arlington, VA, February 11, 2016.



Brian Patterson, President
USET Sovereignty Protection Fund



Chief Lynn Malerba, Secretary
USET Sovereignty Protection Fund

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