



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted via email

September 20, 2018

The Honorable Orrin Hatch
Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building Washington,
DC 20510

The Honorable Ron Wyden
Ranking Member
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Kevin Brady
Chairman
House Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Richard Neal
Ranking Member
House Committee on Ways and Means
1139E Longworth House Office Building
Washington, DC 20515

Dear Chairmen Hatch & Brady, and Ranking Members Wyden & Neal,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to urge your leadership to address the inequities in the tax code that continue to hinder Tribal governments, and discourage investment and economic development in Tribal communities. Specifically, we note the recent advancement of the package of three bills referred to as "Tax Reform 2.0" (H.R. 6756, H.R. 6757, and H.R. 6760) within the House Ways and Means Committee which, like the Tax Cuts and Jobs Act (TCJA), has also failed to address Tribal Nation tax priorities. TCJA represented the first major overhaul of America's tax code in over three decades. Despite years of significant outreach to Congress from Tribal Nations and Tribal organizations, including USET SPF, the TCJA excluded Tribal interests and priorities.

USET SPF is an intertribal organization comprised of twenty-seven federally recognized Tribal Nations, ranging from Maine to Florida to Texas¹. USET SPF is dedicated to enhancing the development of federally recognized Tribal Nations, to improving the capabilities of Tribal governments, and assisting USET SPF Member Tribal Nations in dealing effectively with public policy issues and in serving the broad needs of Indian people.

Numerous laws, treaties, Supreme Court decisions, and the U.S. Constitution reflect and uphold the status of Tribal Nations as sovereign governments, yet several provisions of the U.S. tax code conflict with this status and treat Tribal Nations less favorably than other sovereigns within the federal system. These tax

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), 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), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), 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), 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), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

code provisions create jurisdictional uncertainty, hamper the provision of vital government services to Tribal citizens, undermine Tribal self-determination, and discourage investment in Indian Country. For years prior to the passage of the TCJA, Tribal Nations advocated for changes to the tax code to correct these disparities. However, Congress failed to include any Tribal priorities in the TCJA. This was unacceptable and represented a dereliction of this body's trust obligations to Tribal Nations.

More recently, USET SPF was recently encouraged by the passage of the Tribal Social Security Fairness Act (H.R. 6124) as a promising sign of the House Ways and Means Committee's leadership and Congress' positive action in addressing the lack of parity for Tribal Nations within the Social Security system. This legislation provides the Social Security Administration (SSA) with authority to enter into agreements with Tribal Nations to ensure the members of the elected governing body are able to pay into the Social Security system and later receive Social Security benefits. Prior to this legislative correction, states and municipalities were able to enter into agreements with SSA on behalf of elected government officials, but this was not permitted for Tribal Nations. USET SPF encourages the Committees and Congress to extend the commitment shown in advancing the Tribal Social Security Fairness Act to promoting parity in the federal tax code as well.

Lack of Tribal Provisions in Tax Reform 2.0

On September 13th, the House Ways and Means Committee met to discuss the success of the TCJA and how Congress can, according to Chairman Brady, continue to "keep building off the momentum from last year's tax reform to ensure our economy keeps booming." In addition, the Committee moved to advance a package of three bills that seek to, among other things, make certain tax cuts authorized under the TCJA permanent. The Committee does not appear to have taken into account the many Tribal communities where the economy has not been booming. None of the provisions in the package would remove the unique barriers to economic development the tax code imposes on Tribal Nations and their business partners.

USET SPF and other Tribal Nations had previously identified tax code changes that would have positive impacts on the job-growth and economic development of Tribal communities. These priorities have consistently been provided to the Committees to be included in Congress' efforts to streamline and modernize the tax code.

In our previous advocacy with the Committees, USET SPF highlighted our support for specific legislation for inclusion in any tax reform legislation to ensure Tribal governments achieve parity under the tax code and incentivize sorely needed investment and economic development in Indian Country. Among these bills are: The Tribal Economic Assistance Act of 2017 (S. 2012), the Tribal Tax and Investment Reform Act of 2017 (S. 1935), and the Affordable Housing Credit Improvement Act of 2017 (S. 548). These provisions are not controversial, nor would they significantly increase federal spending. They would, however, have had an enormous impact in our communities. Tax fairness and parity for Tribal Nations is fundamental to achieving strong and vibrant Tribal Nation economies. With this in mind, the Committees and Congress must work to include the provisions within these bills in any further efforts to reform the U.S. tax code.

Conclusion

Tribal Nations across the country, including USET SPF Tribal Nations, are simply seeking parity as governments and economic opportunity for their citizens under the U.S. tax code. It is in pursuit of these fundamental goals that we strongly urge Congress to avoid missing yet another opportunity to ensure Tribal Nations achieve governmental status under the tax code. To ensure Tribal Nations are not excluded from critical tax reform legislation moving forward, USET SPF encourages both Committees to dialogue with Tribal Nations. Further, USET SPF strongly recommends the Committees consider the recommendations

Because there is Strength in Unity

we provide for inclusion in any tax code amendments so that Tribal Nations can gain full parity as governments and incentivize much needed investment and economic development within Indian Country. 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 202-624-3550.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director

CC: Senate Committee on Indian Affairs
House Committee on Natural Resources Subcommittee on Indian, Insular, and Alaska Native Affairs