



## United South and Eastern Tribes, Inc.

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October 21, 2014

Dr. Elaine Buckberg  
Deputy Assistant Secretary for Policy Coordination  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Re: Implementation of the Tribal General Welfare Exclusion Act

Dear Dr. Buckberg,

On behalf of the United South and Eastern Tribes, Inc. (USET), I write to request that the Treasury Department and Internal Revenue Service (IRS) actively, broadly and immediately engage Indian Country in Government to Government consultation, in accordance with Executive Order 13175 and 13647, to properly implement the Tribal General Welfare Exclusion Act (PL 113-168). USET expresses its expectation that the Treasury Department and IRS interpret and implement the language in PL 113-168 in a manner consistent with the intention of Congress and Indian Country. Specifically, USET requests that the IRS and Treasury give immediate attention to the selection and appointment process of the Tribal Advisory committee (TAC) that was created by section 3 of the act.

The TAC has been assigned pivotal responsibilities for the implementation of the Tribal General Welfare Exclusion Act and in the administration of internal revenue laws with respect to Indian Tribes. These responsibilities involve advising the Secretary "on matters relating to the taxation of Indians" and consulting with the Department in the education and training of internal revenue field agents (USET also requests a copy of the existing IRS Field Agent Indian Country Training Manual/Curriculum in order for us to review and make recommendations to strengthen as discussed on numerous occasions). USET expects the establishment of the TAC will be the first step Treasury and IRS takes in the implementation of PL 113-168, and Tribes will be consulted during each step of this process. The grounds for these expectations were expressed by Senator Wyden in the Senate colloquy:

"... the IRS issued regulations clarifying the application of the exclusion, and the regulations were a good step in the right direction, clearing up some questions and reflecting an improved dialogue between the IRS and tribes. However, a regulation is not a congressional statute; we need to lock these improvements into statutory law, as well as expand on them such as by **establishing a Tribal Advisory Committee to help the Treasury Department and the IRS understand about how best to address tax issues affecting Indian Country.**"

Senator Wyden, Congressional Record (S. 5687, Sept. 17, 2014) (emphasis added).

The application of federal tax rules to Tribal government benefit programs impacts Tribal sovereignty at a fundamental level: a Tribe's determination as to how best to provide for the wellbeing of its Tribal members and the Tribal community. For this reason, the general welfare exclusion will remain an area of Tribal focus and concern. USET is fully committed to work with you to ensure the effective implementation of PL 113-168 to the same extent that USET committed itself to the dialogue and written comments that led to the issuance of Revenue Procedure 2014-35. In our discussions with Treasury and the IRS over the past few years, USET consistently emphasized that we view administrative and legislative action on the general welfare exclusion as mutually-reinforcing elements in the effort to better align federal tax law with Indian Self-Determination. As we have explained, the proper alignment of tax law with the policy of Indian Self-determination is vital for Tribal nation-building and to foster the wellbeing of Tribal communities in all regions of the United States.

USET recognizes that over the course of the consultation regarding the general welfare exclusion, the quality of the federal-Tribal dialogue evolved and improved. USET views this experience as a positive foundation that will be strengthened and improved through creation of the TAC and continued government-to-government consultation. We feel strongly that it will be beneficial to all of Indian Country to have the TAC in place as soon as possible. The TAC will be an invaluable resource as we move to quickly engage in Government to Government consultation on the critical provisions of PL 113-168, including: the moratorium on audits of Indian Tribes and Tribal members, the Treaty Canons of Construction and deference to Tribal government determinations of the general welfare, religious and cultural issues, and the use of custom, tradition, and government practice in establishing programs.

Upon the establishment of the TAC as a complement to consultation, USET expects Tribes and IRS/Treasury to be better able to address a wide range of Indian tax law matters through problem-solving approaches that advance mutual policy interests. We at USET wish to express our readiness to begin this effort and encourage you to convene and participate in dialogue with Tribes and Tribal organizations to foster the establishment of the TAC and the implementation of the Tribal General Welfare Exclusion Act.

Sincerely,



Brian Patterson  
President



Kitcki A. Carroll  
Executive Director

cc: IRS/ITG Director Christie Jacobs  
Senate Finance Committee Chairman Wyden  
Senate Finance Committee Vice Chairman Hatch  
House Ways and Means Committee Chairman Camp  
House Ways and Means Committee Ranking Member Levin

*“Because there is strength in Unity”*