A BILL FOR AN ACT

To further amend title 54 of the Code of the Federated States of Micronesia, as amended, by adding a new chapter 3 thereto, for the purpose of levying an accumulated earnings tax, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

Section 1. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new chapter 3 to be entitled, "Accumulated Earnings Tax".

Section 2. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 301 to read as follows:

"Section 301. Purpose. Congress has found that certain taxpayers' practice of charging excessive prices for their goods or services in the Federated States of Micronesia has resulted in accumulated earnings which are often placed in interest-bearing accounts outside of the Federated States of Micronesia. These accumulated earnings do not generate further employment for the people of the Federated States of Micronesia and fail to expand the islands' economies. Therefore, this practice burdens the nation's commercial growth and is inimical to the nation's goal for economic development and expansion. Congress
therefore institutes the accumulated earnings tax below for the purpose of encouraging business to utilize those accumulated earnings to expand the nation's economy."

Section 3. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 302 to read as follows:

"Section 302. Definitions. When used in this chapter, the following terms are defined as follows:

(1) 'Taxpayers' means any business entity, be it a proprietorship, partnership, corporation, cooperative, a limited partnership or limited liability corporation, or any variation of any of such entities, whether dealing in goods or services, is a taxpayer for the purpose of this chapter if:

(a) it is chartered or incorporated in the FSM or conducts business in the FSM, regardless of ownership, and realizes a net profit of $50,000 or more for the current business year, or an accumulated net profit of $100,000 or more for two consecutive business years; or

(b) it is a private trust or investment fund, a private savings or a certificate of deposit account, or a holding company or a subsidiary of a FSM taxpayer as defined in section (1)(a), located inside the FSM or
located outside the FSM but at least 50% of which is
owned by a FSM taxpayer as defined in section (1)(a),
if at least 25% of the value of the trust corpus or the
principal of the savings or certificate of deposit
account or its assets is derived from activity within
the FSM and if its net earnings for the current
business year are $50,000 or more or total $100,000 or
more for two consecutive business years.

(2) 'Accumulated earnings' means the total sum of a
taxpayer's net earnings or profits, including
interests, dividends, returns on investments, in cash
or in other forms of assets realized from engaging in a
profit making activity in the FSM during a period of at
least two consecutive business years, but does not
include:

(a) value of assets acquired for and, within
one year of its acquisition, actually used for further
profit making activities; or

(b) net earnings realized from the cultivation,
processing and marketing within the FSM of local
agricultural crops, marine or other local natural
resources.

(3) 'Holding company' means a business entity whose
principal assets are derived from the activity of a
parent or sister company or a taxpayer under section
(a) and which does not generate at least 25% of its own earnings.

(4) 'Subsidiary' means a business entity at least 51% of whose assets are owned by a taxpayer under section (1) who also controls at least 30% of the voting rights in that company.

(5) 'Regular employee' means a person not related to the taxpayer by blood or marriage who works at least 40 hours a week for at least one year and receives benefits and protections regularly available to employees."

Section 4. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 303 to read as follows:

"Section 303. Levy. There shall be levied on a taxpayer an accumulated earnings tax according to the following schedule:

(1) 10% for any year in which a taxpayer has accumulated earnings of not less than $100,000;
(2) 20% for any year in which a taxpayer has accumulated earnings of not less than $200,000;
(3) 30% for any year in which a taxpayer has accumulated earnings of not less than $300,000;
(4) 40% for any year in which a taxpayer has accumulated earnings of not less than $400,000;"
Section 5. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 304 to read as follows:

"Section 304. Deductions and credits. A taxpayer under this chapter is entitled to the following tax deductions and/or tax credits:

(1) a taxpayer who reinvested at least $50,000 but less than $100,000 of its accumulated earnings for the most recently completed business year and employed at least 5 regular employees during such year is entitled to a tax deduction of 25% of the amount reinvested and a tax credit of $10,000;

(2) a taxpayer who reinvested at least $100,000 but less than $200,000 of its accumulated earnings for the most recently completed business year and employed at least 5 regular employees during such year is entitled to a tax deduction of 30% of the amount reinvested and a tax credit of $15,000;

(3) a taxpayer who reinvested at least $200,000 but less than $300,000 of its accumulated earnings for the most recently completed business year and employed at least 5 regular employees during such year is entitled to a tax deduction of 35% of the amount reinvested and
a tax credit of $20,000;

(4) a taxpayer who reinvested at least $300,000 but
less than $400,000 of its accumulated earnings for the
most recently completed business year and employed at
least 10 regular employees during such year is entitled
to a tax deduction of 40% of the amount reinvested and
a tax credit of $25,000;

(5) a taxpayer who reinvested at least $400,000 but
less than $500,000 of its accumulated earnings for the
most recently completed business year and employed at
least 10 regular employees during such year is entitled
to a tax deduction of 45% of the amount reinvested and
a tax credit of $30,000;

(6) a taxpayer who reinvested at least $500,000 of
its accumulated earnings for the most recently
completed business year and employed at least 15
regular employees during such year is entitled to a tax
deduction of 50% of the amount reinvested and a $40,000
tax credit."

Section 6. Title 54 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by adding a new
section 305 to read as follows:

"Section 305. Assessment of Deductions. The
deductions granted by section 304 of this section shall
be assessed or credited against the taxpayer's
accumulated earnings tax."

Section 7. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 306 to read as follows:

"Section 306. Administration.

(1) Within three months of the effective date of this act, the Secretary of Finance and Administration of the Federated States of Micronesia (the "Secretary") shall notify all potentially eligible taxpayers to submit their most recent audited financial statements not later than six months from the date of the Secretary's notice.

(2) The Secretary shall assess a taxpayer's accumulated earnings tax based on the taxpayer's audited financial statement and all other information the Secretary deems pertinent. The assessment shall be completed within three months after receipt of a taxpayer's audited statement.

(3) Based on such assessment, the Secretary shall notify the taxpayer of the amount of the accumulated earnings tax assessed and due, and shall demand payment thereof not later than two months from the date of the Secretary's notice. The Secretary's notice (the "Notice of Demand for Payment") shall expressly inform the taxpayer of the following:
(a) that the Secretary's Notice of Demand for Payment constitutes a first priority tax lien on the taxpayer's assets; and

(b) that failure of the taxpayer to pay the tax or present his or her objections to the tax assessed within those two months shall result in enforcement of the lien against the taxpayer's assets.

(4) Within one month after expiration of the two month period set forth in subsection (3) above, the Secretary shall file the Notice of Demand for Payment with the Trial Division of the Supreme Court of the Federated States of Micronesia. Filing with the Supreme Court authorizes the Secretary to seize or garnish the taxpayer's assets not earlier than thirty days from the date of filing. The Secretary may dispose of such assets in satisfaction of the delinquent taxes, including all enforcement costs.

(5) The enforcement procedure under this chapter may be suspended if a valid payment settlement is entered into by the Secretary and the taxpayer, provided such settlement provides satisfaction of all delinquent taxes for the taxpayer within one year from the date of the Secretary's Notice of Demand for Payment."

Section 8. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its
becoming law without such approval.

Date: 6/3/04  
Introduced by: /s/ Sabino S. Asor
Sabino S. Asor