A BILL FOR AN ACT

To further amend title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, by creating a new chapter 6 to provide for availability, access, and exchange of information for taxation purposes, and for other purposes.

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

Section 1. The Congress finds that illegal tax evasion is a serious and global problem, and the effective international measures to exchange information for tax purposes is necessary to prevent tax fraud, money laundering, and financing of terrorism. It is hereby declared to be the policy of the Federated States of Micronesia to implement international standards for transparency and exchange of tax information, and it is the intent of Congress that this chapter be implemented in accordance with the policy.

Section 2. Title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended by creating a new chapter 6 entitled: “Access and Exchange of Information.”

Section 3. Title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended by inserting a new section 601 of chapter 6, to read as follows:

“Section 601. Short title. This chapter may be cited as the ‘Exchange of Tax Information Act of 2016’.”

Section 4. Title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended by creating a new chapter 6 entitled: “Access and Exchange of Information.”

Section 5. Title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended by inserting a new section 601 of chapter 6, to read as follows:

“Section 601. Short title. This chapter may be cited as the ‘Exchange of Tax Information Act of 2016’.”
Micronesia (Annotated), as amended, is hereby further amended by inserting a new section 602 of chapter 6, to read as follows:

"Section 602. Definitions.
Wherever used in this chapter, except where otherwise specified, unless the subject matter, context, or sense otherwise requires:

(1) "Business" includes any profession, trade, manufacture, or other undertaking carried on for pecuniary profit in the Federated States of Micronesia, but not including employment.

(2) "Customs and Tax Administration" means the division in the Department of Finance that is charged with administration of national tax laws. It is headed by an assistant secretary.

(3) ‘Entity’ means a company, corporation, partnership, unincorporated association or other business entity, trust, or estate that:

(a) is registered in the Federated States of Micronesia;

(b) has a permanent establishment in the Federated States of Micronesia;

(c) owns assets in the Federated States of Micronesia; or

(d) in the case of a trust, has a trustee resident in the Federated States of Micronesia."
(4) ‘Secretary’ means the Secretary of the Department of Finance and Administration.”

Section 5. Title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended by inserting a new section 603 of chapter 6, to read as follows:

“Section 603. Availability of Information.

(1) Every business or entity, on or before January 31 each year, shall provide complete ownership and identity information to the Customs and Tax Administration. The information required will be set out in a form approved by the Secretary pursuant to this section.

(2) Any corporation that has provided ownership information to the FSM National Registrar of Corporations within the previous year may file for an exemption from the requirements of subsection (1) of this section. The exemption request shall be on a form approved by the Secretary and shall contain such information as the Secretary may require.

(3) A business or entity may request an extension of time to file the information required by this section of up to 90 days.”

Section 6. Title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended by inserting a new section 604 of chapter 6, to read as follows:

“Section 604. Accounting Records.
(1) Every business or entity shall maintain accounting records for a period of six years that:
   (a) Correctly explain all transactions;
   (b) Enable the financial position of the business or entity to be determined with reasonable accuracy; and
   (c) Allow financial statements to be prepared.

(2) Every business or entity shall maintain underlying documents of all transactions such as invoices and contracts for a period of six years.

(3) The Secretary may by regulation provide for simplified accounting record retention requirements for small businesses and entities. Any regulations issued pursuant to this subsection shall comply with international standards for tax transparency.”

Section 7. Title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended by inserting a new section 605 of chapter 6, to read as follows:

“Section 605. Exchange of Information.

(1) Subject to ratification by Congress, the Executive branch may negotiate and execute treaty with another country on the exchange of tax information. Upon entry into force of such treaty, the Secretary may enter into agreement or agreements with foreign counterpart to implement the terms of treaty.
(2) Any exchange of information concluded with other nation under subsection (1) or subsection (2) of this Section shall provide for reasonable safeguards against unauthorized or improper disclosure of confidential information.

(3) Any exchange of information pursuant to an agreement entered into under subsection (1) or subsection (2) of this section shall be exempt from any confidentiality or secrecy provisions provided for by law, but only to the extent permitted under that agreement and applicable law.”

Section 8. Title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended by inserting a new section 606 of chapter 6, to read as follows:

“Section 606. Power to Obtain Tax Information.

(1) The Secretary shall have authority to use any statutory powers to the extent granted in this title to obtain access to tax information for the purpose of complying with a request for exchange of tax information, including:

(a) powers to summon persons to provide testimony or provide documents under section 157(1) of this title;

(b) powers to summon third parties to provide testimony or provide documents under section 157(2) of
(c) powers of access to records under section 151 of this title; and

(d) powers of and seizure as may be provided for under applicable FSM law.

(2) Any substantive restrictions or procedural requirements associated with the exercise of statutory access powers for a domestic tax purpose shall apply in a like manner when exercising such powers for the purpose of complying with a request for exchange of tax information.

(3) The powers provided by this section shall be exercised subject to such privileges as may be recognized by the FSM Supreme Court, but shall not be subject to contractual duties of confidentiality, and shall not be subject to professional ethical requirements not recognized by the law of privilege.”

Section 9. Title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended by inserting a new section 607 of chapter 6, to read as follows:

“Section 607. Civil Penalty.

(1) If any business or entity fails to provide ownership and identity information as required under this chapter on or before the date set, unless prior to that date such taxpayer applied for and received an
extension for reasonable cause, the business or entity
shall pay a penalty of $100 per month until such
information is provided."

(2) If any business or entity fails to provide
accounting records or banking or other information as
required under chapter, then the business or entity
shall pay a penalty of $500 per month until such
information is provided.

(3) If any person subject to a third party request
for information or testimony as required by this
chapter, then such person shall pay a penalty of $500
per month until such information is provided. As used
in this subsection, a person includes a government,
corporation, or other legal entity."

Section 10. Title 54 of the Code of the Federated States of
Micronesia (Annotated), as amended, is hereby further amended by
inserting a new section 608 of chapter 6, to read as follows:

“Section 608. Criminal Penalty.
Any person, business or entity who willfully violates
any of the provisions of this chapter, or any license,
rule, or regulation issued thereunder, shall upon
conviction be imprisoned for a period of not more than
one year, or fined not more than $50,000, or both.”

Section 11. Title 54 of the Code of the Federated States of
inserting a new section 609 of chapter 6, to read as follows:

"Section 609. With the approval of the President, the Secretary may adopt new regulation or amend, or rescind existing regulations prescribing rules for the efficient and convenient implementation and enforcement, and such regulations shall have the force and effect of law if they are not in conflict with the express provisions of this chapter or other laws of the FSM.

Section 12. 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: 12/14/16

Introduced by: /s/ Florencio S. Harper

Florencio S. Harper
(by request)