
A BILL FOR AN ACT

To amend sections 116, 118, 123, 135, 151 and 155 of chapter 1 of title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, and to insert new sections 811 and 812 into chapter 8 of title 54 of the FSM Code, in order to authorize the Secretary of Finance and Administration to inspect and examine records, books of account, bank statements and other data of taxpayers, including records of financial institutions and of third parties for the purpose of securing information necessary to enforce the provisions of chapter 1 of title 54, to allow the Secretary of Finance and Administration to grant relief from penalties and interest charged in limited extenuating circumstances, and business interruptions and hardships caused by Public Health Emergencies, to introduce specific amendments to improve the administration of the Customs and Tax Division of the Department of Finance and Administration, to authorize penalty or interest write-off in certain cases, to delegate specific functions of the Secretary of Finance and Administration under title 54 of the FSM Code; and for other purposes.

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

1 Section 1. Section 116 of chapter 1 of title 54 of the Code of
2 the Federated States of Micronesia (Annotated), and amended, is
3 hereby amended to read as follows:

4 "Section 116. Preservation and disclosure of information.

5 (1) All reports and returns required by this chapter
6 shall be preserved for three years and thereafter until
7 the Secretary orders them to be destroyed.

8 (2) The Secretary and every employee of the Department
9 of Finance shall maintain the secrecy of all matters
10 relating to the chapter which come to their knowledge and
11 shall not communicate such matters to any person except

1 for the purpose of carrying into effect his chapter or any
2 other enactment imposing taxes or duties payable to the
3 Government of the Federated States of Micronesia.

4 (3) No employee of the Department of Finance shall be
5 required to produce in any court any matter or thing
6 relating to the taxes imposed by this chapter coming under
7 his notice in the performance of his duties as an employee
8 of the Revenue Division except when it is necessary to do
9 so for the purpose of carrying into effect any provisions
10 of this chapter or any enactment imposing duties or taxes
11 payable to the Government of the Federated States of
12 Micronesia.

13 (4) Information as to the amount of income or any
14 particular set forth or disclosed in any report or return
15 required under this chapter may, upon request of a
16 committee appointed by the Congress of the Federated
17 States of Micronesia, be furnished to the committee, but
18 the committee or any member, clerk, or other officer or
19 employee thereof shall not disclose any particulars of the
20 information so furnished except to law enforcement
21 officers for the purpose of aiding the detection or
22 prosecution of crimes committed in violation of this
23 chapter.

24 (5) The Governor of each State may appoint one
25 representative of his administration who shall have access

1 to all returns, reports, or other information on file with
2 the Department of Finance as may be necessary to show that
3 the required distribution of revenue to his State has been
4 made. Each Governor shall make the appointment of his
5 representative known to the Secretary of Finance. The
6 appointee may share information acquired hereunder with
7 the Governor of his State. The Governor and his appointee
8 may not disclose the information to any other person
9 except for the specific purpose of ensuring that the
10 required distribution of revenues to their State has been
11 made, or except as otherwise provided for by law.

12 (6) The Attorney General or other legal representatives
13 of the Government of the Federated States of Micronesia
14 may inspect the report of return of any taxpayer who
15 brings an action to set aside or review the tax based
16 thereon, or against whom an action of proceeding has been
17 instituted to recover any tax or any penalty imposed by
18 this chapter.

19 (7) Nothing herein shall prohibit the Secretary or his
20 delegate from compiling and publishing statistics or
21 information generally on the returns filed so long as
22 there is no reference to a particular return and the
23 statistics and the information do not in effect divulge
24 the contents of any one return.

25 (8) In enforcing the provisions of this chapter, the

1 Secretary shall have authority to demand the production by
2 a taxpayer, and to inspect and examine, the records, books
3 of account, bank statements, and any other pertinent data
4 of a taxpayer in his possession for the purpose of
5 determining the accuracy of the tax return or the correct
6 amount of tax due to the National Government. The
7 authority of the Secretary extends to the examination of
8 financial records in the possession of a financial
9 institution or a third party, including a State government
10 or a municipal government in the FSM, with whom a taxpayer
11 has a business relation or a transaction, and to demand
12 from a financial institution or a third party, including a
13 State government or a municipal government in the FSM, the
14 production of such records, with respect to a relevant
15 taxpayer, for the purpose of enabling the Secretary to
16 obtain relevant information in connection with enforcing
17 the provisions of this chapter. The term "financial
18 institution" used in this section means any person or
19 entity, which carries on a business which includes any of
20 the following activities:

21 (a) acceptance of deposits and other repayable
22 funds from the public;

23 (b) lending, including consumer credit, mortgage
24 credit, factoring (with or without recourse) and financing
25 of commercial transactions;

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- 1 (c) financial leasing;
2 (d) money transmission services;
3 issuing and administering means of payment (such as credit
4 cards, travelers checks and bankers drafts);
5 (e) issuing or brokering insurance policy,
6 guarantees and commitments;
7 (g) trading for their own account or for account of
8 customers in money market instruments (such as checks,
9 bills, certificates of deposit), foreign exchange,
10 financial futures and options, exchange and interest rate
11 instruments, and transferable securities;
12 (h) underwriting share issues and participation in
13 such issues;
14 (i) advice to undertakings on capital structure,
15 industrial strategy and related questions, and advice and
16 services relating to mergers and the purchase of
17 undertakings;
18 (j) money-brokering;
19 (k) portfolio management and advice;
20 (l) safekeeping and administration of securities;
21 (m) credit reference services; or
22 (n) safe custody services."

23 Section 2. Section 118 of chapter 1 of title 54 of the Code
24 of the Federated States of Micronesia (Annotated), as amended, is
25 hereby amended to read as follows:

1 "Section 118. Penalties for violation of sections 116
2 and 117. Any violation of subsection (2), (3), (4),
3 [~~or~~] (5), or failure to make available the records
4 required by the Secretary pursuant to subsection (8) of
5 section 116 or violation of section 117 of this chapter
6 shall be a misdemeanor and shall be punishable by a fine
7 of not more than \$500, or imprisonment for not more than
8 six months, or both.

9 Section 3. Section 123 of chapter 1 of title 54 of the Code
10 of the Federated States of Micronesia (Annotated), as amended, is
11 hereby amended to read as follows:

12 "Section 123. Refunds of taxes on wages and salaries.

13 (1) If it shall be shown, upon application of an
14 employee, that there has been withheld from his wages or
15 salaries any tax not due thereon, or more than the
16 amount of tax due thereon, or that he has paid from his
17 wages and salaries any tax not due thereon or more than
18 the amount of tax thereon, or if it is shown upon
19 application of the business that it has paid an amount
20 not due as tax under this chapter or greater than the
21 tax levied under this chapter, then the Secretary shall
22 refund the amount found to have been overpaid or
23 otherwise not due and shall pay such refund out of
24 current collections of the tax; provided, the Secretary
25 shall be satisfied that:

1 (a) the amount so overpaid or otherwise not due
2 has been paid to the Government;

3 (b) the amount of refund claimed has not been
4 used as a credit against any tax or taxes due and
5 payable to the Government from such employee; and

6 (c) application for such refund was filed within
7 one year after the end of the calendar year in which the
8 amount to be refunded was withheld or paid.

9 (2) The Secretary shall make a decision on the
10 application for refund within 90 days after it is
11 submitted.

12 (3) Notwithstanding anything in this section, the
13 Secretary may refrain from issuing a tax refund check
14 when the amount of tax refund does not exceed five
15 dollars. Any tax refund that is withheld shall be
16 offset against any tax owed or transferred forward to
17 the next taxable year."

18 Section 4. Section 135 of chapter 1 of title 54 of the Code
19 of the Federated States of Micronesia (Annotated), as amended, is
20 hereby amended to read as follows:

21 "Section 135. Employer's Responsibilities for withheld
22 taxes.

23 (1) All taxes withheld by any employer under section
24 131 of this chapter shall be held in trust by such
25 employer for the Government and for payment to the

1 Secretary in the manner and at the time required by this
2 chapter.

3 (2) If any employer shall fail, neglect, or refuse to
4 deduct and withhold from the compensation paid to an
5 employee, or to pay over, the amount of the tax imposed
6 by this chapter, such employer shall, moreover, be
7 liable to pay to the Government the amount of the tax,
8 which amount shall (whether or not tax withholdings
9 constituting trust funds have been commingled with said
10 employer's assets) form a lien on the employer's entire
11 assets, having priority over all other claims and liens,
12 except as provided by the Secured Transactions Act.

13 (3) Notwithstanding that the Secretary will primarily
14 seek to recover from the employer an amount of tax
15 under subsection (2), the Secretary shall have the right
16 to recover any non-withheld amount from the employee in
17 extenuating circumstances, and nothing in this section
18 shall be construed as preventing the Secretary from
19 taking such steps as he deems fit to recover that amount
20 from the employee and from the employer concurrently, or
21 from recovering the amount wholly from the employee or
22 from employer, or partly from the employee and partly
23 from the employer.

24 ~~(3)~~(4) Any employer may recover from an employee any
25 amount which he should have withheld but did not

1 withhold from such employee's wages and salaries, if he
2 has been required to pay and has paid the amount to the
3 Government out of his own funds pursuant to this
4 section."

5 Section 5. Section 151 of chapter 1 of title 54 of the Code
6 of the Federated States of Micronesia (Annotated) is hereby
7 amended to read as follows:

8 "Section 151. Records; inspection and audit.

9 (1) All persons, employees, and business required to
10 make and file returns under this chapter shall keep and
11 maintain for a period of six (6) years accurate records,
12 and the records may be inspected, uplifted, copied, or
13 audited [~~and audited~~] at any reasonable time by the
14 Secretary for the purpose of administering the
15 provisions of this chapter.

16 (2) For the purpose of this section the term
17 "records" includes books of account, recording receipts
18 documents or income or expenditure or purchases or
19 sales, and also includes vouchers, invoices, receipts,
20 and such other documents (including in electronic form)
21 as are necessary to verify the entries in any such books
22 of account and, in the case of an agent, records of all
23 transactions (including in electronic form) carried out
24 on behalf of the agent's principal."

25 Section 6. Section 155 of chapter 1 of title 54 of the Code

1 of the Federated States of Micronesia (Annotated) is hereby
2 amended, to read as follows:

3 "Section 155. Civil penalties. The criminal penalties
4 imposed by section 154 of this chapter for violation of
5 provisions of this chapter shall be separate from, and
6 in addition to, all other penalties or interest provided
7 for in this section. The following civil penalties are
8 hereby levied and shall be assessed and collected by
9 this Secretary:

10 (1) Failure to file return on time. Except as may be
11 permitted by the Secretary pursuant to sections 139 and
12 143 of this chapter, if any taxpayer fails to make and
13 file a return required under this chapter on or before
14 the date set, unless prior to that date such taxpayer
15 applied for and received an extension for reasonable
16 cause, one percent of the tax shall be added for each 30
17 days or fraction thereof elapsing between the due date
18 of the return and the date on which it is actually
19 filed; provided, however, that the minimum penalty under
20 this subsection shall be five dollars and the minimum
21 penalty under this section shall be 25% percent of the
22 tax due.

23 (2) Failure by employer to file statement. Any
24 employer required to furnish a written statement
25 prescribed in section 133 of this chapter who willfully

1 failed to file such statements on the date prescribed
2 thereof, except with regard to any extension of time for
3 filing, shall be subject to a five dollar penalty for
4 each such statement not so filed.

5 (3) Failure to file after demand. Where taxpayer
6 fails to file return and pay tax after demand in any
7 case where the Secretary makes a return and assesses a
8 tax after a taxpayer's failure or refusal to make and
9 file a return and pay the tax required by this chapter,
10 ten percent of the tax assessed, in addition to the
11 penalties of subsection (1) of this section, shall be
12 added thereto.

13 (4) False and fraudulent returns. If any part of any
14 deficiency is due to fraud with intent to evade the tax,
15 or any portion thereof, 50 percent of the total amount
16 of such deficiency, in addition to the penalties
17 provided in subsections (1), (2), and (3) of this
18 section, shall be assessed and added to the deficiency
19 assessment.

20 (5) Interest. If any tax or penalty imposed by this
21 chapter is not paid on or before the date prescribed for
22 such payment, there shall be collected, in addition to
23 such tax and penalties, interest on the unpaid balance
24 of the tax principal at the rate of six percent per
25 annum from its due date until the date it is paid.

1 (6) On application for relief made in writing to the
2 Secretary by any taxpayer who (whether before or after
3 the commencement of this provision) has become liable
4 for the payment of any penalty or interest under
5 subsections (1) (2), (3), and (5) of this section, the
6 Secretary may, grant relief to the taxpayer by the
7 remission of the whole or part of the penalty or
8 interest, if he is satisfied that the late filing and or
9 late payment was due to:

10 (a) circumstances outside of the control of the
11 taxpayer; or

12 (b) the serious illness of the person
13 responsible for filing the return or statement, or
14 paying the tax; or

15 (c) excusable error on the part of a taxpayer
16 relying upon incorrect information.

17 (d) A significant disruption to the person's
18 business caused by a Public Health Emergency
19 restrictions."

20 Section 7. Chapter 8 of title 54 of the Code of the
21 Federated States of Micronesia (Annotated), as amended, is hereby
22 amended by inserting a new section 811 to read as follows:

23 "Section 812. Delegation of Secretary's functions and
24 powers.

25 (1) Subject to subsection (4) of this section, the

1 Secretary may, by written instrument, delegate to a
2 Department of Finance and Administration employee any of
3 his functions and powers under Title 54, other than this
4 power of delegation.

5 (2) A reference in Title 54 to the Secretary
6 includes, in respect of the exercise of a power or
7 performance of a function delegated to an employee, a
8 reference to the delegate.

9 (3) A delegation under this section is revocable at
10 will and does not prevent the exercise of a power or
11 performance of a function by the Secretary.

12 (4) The Secretary shall not delegate the functions
13 and powers of Title 54 to any person other than an
14 employee of the Department of Finance and
15 Administration; provided, however, that nothing herein
16 shall be deemed as limiting the Secretary from retaining
17 legal counsel, or contracting with consultants and
18 others as may be necessary to assist the Department of
19 Finance and Administration to perform its duties
20 pursuant to Title 54."

1 Section 9. This act shall become law upon approval by the
2 President of the Federated States of Micronesia or upon its
3 becoming law without such approval.

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5 Date: 1/24/22

Introduced by: /s/ Florencio S. Harper
Florencio S. Harper
(by request)

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