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

"Section 116. Preservation and disclosure of information.

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

(2) The Secretary and every employee of the Department of Finance shall maintain the secrecy of all matters relating to the chapter which come to their knowledge and shall not communicate such matters to any person except
for the purpose of carrying into effect his chapter or any 
other enactment imposing taxes or duties payable to the 
Government of the Federated States of Micronesia.

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

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

(5) The Governor of each State may appoint one 
representative of his administration who shall have access
to all returns, reports, or other information on file with
the Department of Finance as may be necessary to show that
the required distribution of revenue to his State has been
made. Each Governor shall make the appointment of his
representative known to the Secretary of Finance. The
appointee may share information acquired hereunder with
the Governor of his State. The Governor and his appointee
may not disclose the information to any other person
except for the specific purpose of ensuring that the
required distribution of revenues to their State has been
made, or except as otherwise provided for by law.

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

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

(8) In enforcing the provisions of this chapter, the
Secretary shall have authority to demand the production by a taxpayer, and to inspect and examine, the records, books of account, bank statements, and any other pertinent data of a taxpayer in his possession for the purpose of determining the accuracy of the tax return or the correct amount of tax due to the National Government. The authority of the Secretary extends to the examination of financial records in the possession of a financial institution or a third party, including a State government or a municipal government in the FSM, with whom a taxpayer has a business relation or a transaction, and to demand from a financial institution or a third party, including a State government or a municipal government in the FSM, the production of such records, with respect to a relevant taxpayer, for the purpose of enabling the Secretary to obtain relevant information in connection with enforcing the provisions of this chapter. The term “financial institution” used in this section means any person or entity, which carries on a business which includes any of the following activities:

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

(b) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;
(c) financial leasing;
(d) money transmission services;
issuing and administering means of payment (such as credit
cards, travelers checks and bankers drafts);
(e) issuing or brokering insurance policy,
guarantees and commitments;
(g) trading for their own account or for account of
customers in money market instruments (such as checks,
bills, certificates of deposit), foreign exchange,
financial futures and options, exchange and interest rate
instruments, and transferable securities;
(h) underwriting share issues and participation in
such issues;
(i) advice to undertakings on capital structure,
industrial strategy and related questions, and advice and
services relating to mergers and the purchase of
undertakings;
(j) money-broking;
(k) portfolio management and advice;
(l) safekeeping and administration of securities;
(m) credit reference services; or
(n) safe custody services.”

Section 2. Section 118 of chapter 1 of title 54 of the Code
of the Federated States of Micronesia (Annotated), as amended, is
hereby amended to read as follows:
“Section 118. Penalties for violation of sections 116 and 117. Any violation of subsection (2), (3), (4), [or] (5), or failure to make available the records required by the Secretary pursuant to subsection (8) of section 116 or violation of section 117 of this chapter shall be a misdemeanor and shall be punishable by a fine of not more than $500, or imprisonment for not more than six months, or both.

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

“Section 123. Refunds of taxes on wages and salaries.

(1) If it shall be shown, upon application of an employee, that there has been withheld from his wages or salaries any tax not due thereon, or more than the amount of tax due thereon, or that he has paid from his wages and salaries any tax not due thereon or more than the amount of tax thereon, or if it is shown upon application of the business that it has paid an amount not due as tax under this chapter or greater than the tax levied under this chapter, then the Secretary shall refund the amount found to have been overpaid or otherwise not due and shall pay such refund out of current collections of the tax; provided, the Secretary shall be satisfied that:
(a) the amount so overpaid or otherwise not due has been paid to the Government;
(b) the amount of refund claimed has not been used as a credit against any tax or taxes due and payable to the Government from such employee; and
(c) application for such refund was filed within one year after the end of the calendar year in which the amount to be refunded was withheld or paid.

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

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

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

“Section 135. Employer’s Responsibilities for withheld taxes.

(1) All taxes withheld by any employer under section 131 of this chapter shall be held in trust by such employer for the Government and for payment to the
Secretary in the manner and at the time required by this chapter.

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

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

(4) Any employer may recover from an employee any amount which he should have withheld but did not
withhold from such employee's wages and salaries, if he has been required to pay and has paid the amount to the Government out of his own funds pursuant to this section.”

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

"Section 151. Records; inspection and audit.

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

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

Section 6. Section 155 of chapter 1 of title 54 of the Code
1 of the Federated States of Micronesia (Annotated) is hereby amended, to read as follows:

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

(1) Failure to file return on time. Except as may be permitted by the Secretary pursuant to sections 139 and 143 of this chapter, if any taxpayer fails to make and file a return 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, one percent of the tax shall be added for each 30 days or fraction thereof elapsing between the due date of the return and the date on which it is actually filed; provided, however, that the minimum penalty under this subsection shall be five dollars and the minimum penalty under this section shall be 25% percent of the tax due.

(2) Failure by employer to file statement. Any employer required to furnish a written statement prescribed in section 133 of this chapter who willfully
failed to file such statements on the date prescribed thereof, except with regard to any extension of time for filing, shall be subject to a five dollar penalty for each such statement not so filed.

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

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

(5) Interest. If any tax or penalty imposed by this chapter is not paid on or before the date prescribed for such payment, there shall be collected, in addition to such tax and penalties, interest on the unpaid balance of the tax principal at the rate of six percent per annum from its due date until the date it is paid.
(6) On application for relief made in writing to the Secretary by any taxpayer who (whether before or after the commencement of this provision) has become liable for the payment of any penalty or interest under subsections (1) (2), (3), and (5) of this section, the Secretary may, grant relief to the taxpayer by the remission of the whole or part of the penalty or interest, if he is satisfied that the late filing and or late payment was due to:

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

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

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

(d) A significant disruption to the person’s business caused by a Public Health Emergency restrictions.”

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

“Section 812. Delegation of Secretary’s functions and powers.

(1) Subject to subsection (4) of this section, the
Secretary may, by written instrument, delegate to a Department of Finance and Administration employee any of his functions and powers under Title 54, other than this power of delegation.

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

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

(4) The Secretary shall not delegate the functions and powers of Title 54 to any person other than an employee of the Department of Finance and Administration; provided, however, that nothing herein shall be deemed as limiting the Secretary from retaining legal counsel, or contracting with consultants and others as may be necessary to assist the Department of Finance and Administration to perform its duties pursuant to Title 54."
Section 9. 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: 1/24/22

Introduced by: /s/ Florencio S. Harper

Florencio S. Harper
(by request)