A BILL FOR AN ACT

To amend sections 212, 221, 222 and 805 of title 54 of the Code of the Federated States of Micronesia (Annotated), as amended Public Laws Nos. 18-107 and 21-152, to increase the import duty on alcohol, wine, tobacco, and sugar sweetened beverages; to require three percent of the national share of the net tax collected from such increase of import duty provided in this act to be deposited into the Health Revolving Fund established under Chapter XVI of title 55 of the FSM Code, and for other purposes.

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

Section 1. Policy statement. It is the sense of Congress that this act is crucial for the following reasons:

(1) It protects and promote the health of the public of the Federated States of Micronesia;

(2) It addresses the State of Health Emergencies declared by each of the four States of the Federated States of Micronesia acknowledging the epidemic of non-communicable diseases in FSM and calling for resolute mitigating intervention;

(3) It mitigates the incidence of preventable non-communicable diseases through decreasing consumption of alcohol, wine, and sugar sweetened beverages; and


Section 2. Section 212 of title 54 of the Code of the
Federated States of Micronesia (Annotated), as amended, is hereby amended to read as follows:

"Section 212. Definition

In this chapter, except where otherwise specified, the following terms shall have the meanings stated below:

(1) "Ad valorem" (Latin for "according to the value") means a tax imposed at a rate equal to a percentage of value.

(2) "Aircraft" includes airplanes, seaplanes, airships, balloons or any other means of aerial locomotion.

(3) "Airport" means an official port of entry for aircraft as identified in or pursuant to title 18 of this code and amendments thereto.

(4) "Alcoholic beverage" means a drink containing ethyl alcohol of agricultural origin in any percentage, derived either through natural fermentation, or addition during process.

(5) "Approved form" means a form approved by the Secretary of Finance.

(6) "Arrival" means the first time goods or passengers become subject to Customs control within the FSM or any subsequent time before reaching their final destination.
(7) "Bottle" means any closed or sealed container regardless of size or shape, including those made of glass, metal, paper, plastic, or any other material or combination of materials.

(8) "Caloric sweetener" means any caloric substance suitable for human consumption that humans perceive as sweet, including sucrose, fructose, glucose, other sugars, and fruit juice concentrates. Caloric sweetener does not include non-caloric sweeteners. For purposes of this definition, caloric means a substance that adds calories to the diet of a person who consumes that substance.

[46](9) "Cannabis" means a cannabis plant, whether living or dead, which includes, in any form, any flowering or fruiting tops, leaves, seeds, stalks or any other part of a cannabis plant and any mixture of parts of a cannabis plant.

[47](10) "CIF" means "costs, insurance, and freight" incurred for imported goods, and includes all costs and charges associated with the goods up through the time they are delivered to and unloaded at an FSM port of entry or post office.

(11) "Cigar" means a more or less cylindrical roll of tobacco cured for smoking, of any of various lengths, thicknesses or degrees of straightness, usually
wrapped in tobacco leaf or equivalent and includes cigarillos.

(12) “Cigarette” means a short tightly rolled cylinder of tobacco, wrapped in thin paper and often having a filter tip for smoking.

(13) “Commissioner” means the Secretary of the Department of Finance and Administration Commissioner of Customs.

(14) “Congress” means the Congress of the FSM.

(15) “Container” means an article of transport equipment:

(a) of a permanent character and accordingly strong enough to be suitable for repeated use;

(b) specially designed to facilitate the transport of goods, by one or more modes of transport, without intermediate reloading; and

(c) designed to be secured and/or readily handled, having corner fittings for these purposes.

(d) In addition, the following shipping term used with containers has the following meaning: “CY-CY” means all the goods packed in the container are for the one consignee and the container is consigned from container yard to another container yard and will not normally be unpacked at the wharf.

(16) “Controlled substance” means those described
in sections 1119, 1121, 1123, 1125, and 1127 of title 11 of this code or successor provision of law.

[(12)](17) "Customs" means the FSM Department of Finance, Division of Customs.

[(13)](18) "Customs officer" means a person:

(a) employed by the FSM Department of Finance, Division of Customs;

(b) authorized in writing by the Secretary under this chapter to perform all of the functions of a Customs officer; or

(c) deputized in accordance with the provisions of section 268 of this chapter.

[(14)](19) "Duty" means any tax payable on the importation of goods, and "dutiable goods" means those goods subject to tax on their importation.

[(15)](20) "FOB" ("free on board") means the value of goods when shipped for export, and includes all costs and charges up to the time of delivery of the goods on board the exporting vessel or aircraft.

[(16)](21) "Foodstuffs" means any substance that is ordinarily used as food, or to make food, for human consumption, excluding beverages or substances used to make beverages;

(22) "Forfeiture" means the surrender of ownership of property to the FSM government following a
breach of certain provisions of this chapter; it is
independent of and in addition to any penalty imposed by
this chapter.

[17][23] "FSM" means the Federated States of
Micronesia.

[18][24] "Goods" means any type of merchandise,
product, commodity, vehicle, moveable personal property,
or commercial wares.

[19][25] "Importer" means any person by or for whom
any goods are imported, and includes the consignee and
any other person who is beneficially interested in the
goods.

[20][26] "Master" means:
(a) In relation to a vessel the person in charge
or command of the vessel;
(b) In relation to an installation the person in
charge of the installation.

[21][27] "Narcotic drug" means those described in
subsection (15) of section 1112 of title 11 of this code
or successor provision of law.

(28) "Non-caloric sweetener" means any non-
caloric substance suitable for human consumption that
humans perceive as sweet, including aspartame,
saccharin, stevia, and sucralose. Non-caloric sweetener
does not include caloric sweeteners. For purposes of
this definition, non-caloric means a substance that contains fewer than five calories per serving.

[(22)](29) "On or about the body" means on or within the body, clothing, footwear, purse, handbag, or similar article.

[(23)](30) "Owner" means:

(a) In respect to goods, any person being or holding himself or herself out to be the owner, importer, exporter, consignee, agent or person possessed of, or having control of, or power of disposition over the goods;

(b) In respect of a vessel or aircraft, the owner of record, or a person acting as agent on behalf of the owner of record.

[(24)](31) "Package" includes every means by which goods for transportation may be cased, covered, enclosed, contained, or packed.

[(25)](32) "Person" means any individual, company, corporation, partnership, unincorporated association, or other business entity.

[(26)](33) "Pilot" means the person in charge or in command of an aircraft.

[(27)](34) "Place" means any location, building or site, and includes moveable locations such as a vessel or aircraft.
“Port” or “Port of entry” means an official port of entry identified in or pursuant to title 18 of this code and amendments thereto.

“Powder” means any solid mixture of ingredients used in making, mixing, or compounding sugar-sweetened beverages by mixing the powder with one or more other ingredients, including water, ice, syrup, simple syrup, fruits, vegetables, fruit juice, vegetable juice, carbonation, or other gas.

“President” means the President of the FSM.

“Prohibited goods” means any goods the importation or exportation of which is prohibited under FSM law.

“Regulations” means any regulations promulgated pursuant to this chapter.

“Sale” means the transfer of title or possession for valuable consideration regardless of the manner by which the transfer is completed.

“Secretary” means the Secretary of the FSM Department of Finance and Administration.

“Smuggling” means any importation or exportation, attempted importation or exportation, with the intent to defraud the FSM.

“Stamp” means device or instrument used by a Customs officer to make a distinctive impression or
imprint, to identify and evidence the clearance of imported or exported goods and the clearance of vessels or aircraft.

(44) “Sugar-sweetened beverage” means any non-alcoholic beverage, carbonated or non-carbonated, that is intended for human consumption and contains any added caloric sweetener. As used in this definition, non-alcoholic beverage means any beverage that contains less than one-half of one per cent alcohol per volume. Sugar-sweetened beverage does not include:

(a) Beverages consisting of one hundred per cent natural fruit juice or natural vegetable juice with no added caloric sweetener. For purposes of this paragraph, natural fruit juice or natural vegetable juice means the original liquid resulting from the pressing of fruits or vegetables, respectively, or the liquid resulting from the dilution of dehydrated natural fruit juice or natural vegetable juice, respectively;

(b) Milk without any added caloric sweetener. For purposes of this paragraph milk means natural liquid milk regardless of animal source or butterfat content; natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content; dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat content;
soy milk; or rice milk.

(45) “Syrup” means a liquid mixture of ingredients used in making, mixing, or compounding sugar-sweetened beverages using one or more other ingredients including water, ice, a powder, simple syrup, fruits, vegetables, fruit juice, vegetable juice, carbonation, or other gas.

(46) “Tobacco” means a product made or derived entirely or partly of leaf tobacco or any other parts of a tobacco plant, which is intended for human consumption, to be smoked, sucked, chewed or snuffed or otherwise inhaled or ingested.

[(35)](47) “Unlawfully imported, exported, or carried goods” means any smuggled goods and any goods imported, exported, or carried in breach of the provisions of this chapter, or any other law of the FSM, or whose sale, possession or use is prohibited or contrary to restrictions imposed by the State into which the importation took place. The above-defined phrase carries a like meaning wherever similarly stated in this chapter.

[(36)](48) “Vehicle” means every description of motorized carriage or other contrivance used or capable of being used as a means of transport on land.”

Section 3. Section 221 of title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby
amended to read as follows:

"Section 221. Levy and rates.

The following import duties are hereby levied on all products specified herein which are imported into the FSM:

(1) cigarettes, at the rate of $0.025 per cigarette, provided that this rate shall increase by $0.005 per cigarette on January 1 of each of the years 2007, 2009, 2011, 2013, and 2015; PROVIDED THAT, the rate shall be $0.075 per cigarette on or from October 1, 2021; and

PROVIDED FURTHER, that this rate shall further increase by $0.025 per cigarette on January 1 of each of the years 2023, 2024, 2025 and 2026 and thereafter shall be adjusted by the rate of inflation on January 1 of each year;

(2) cigars, at the rate of $0.075 per cigar on and from October 1, 2021, provided that this rate shall increase by $0.025 per cigar on January 1 of each of the years 2023, 2024, 2025 and 2026 and thereafter shall be adjusted by the rate of inflation on January 1 of each year;

(2)(3) tobacco, other than cigarettes and cigars, at the rate of 50 percent ad valorem of each of the years 2007, 2009, 2011, 2013, and 2015; PROVIDED THAT, the rate shall be $0.031 per gram on October 1, 2021; PROVIDED
FURTHER, that this rate shall further increase by $0.05 per gram on January 1 of each of the years 2023, 2024, 2025 and 2026 and thereafter shall be adjusted by the rate of inflation on January 1 of each year;

(3) perfumery, cosmetics, and toiletries, including cologne and other toilet waters, articles of perfumery, whether in sachets or otherwise, and all preparations used as applications to the hair or skin, lipsticks, pomades, powders, and other toilet preparations not having medicinal properties, at the rate of 25 percent ad valorem, PROVIDED THAT this rate shall be 4 percent on and from October 1, 2021;

(4) soft drinks, drink mixes, drink preparations, coffee, tea, and nonalcoholic beverages, at the rate of 25 percent ad valorem, provided, however, that any beverage having a fruit juice content of 25 percent or more by volume shall be at the rate of three percent ad valorem;

(5) Sugar-sweetened beverages other than bottled water, at the rate of $5 per kilogram of sugar content on and from October 1, 2021. For syrups and powders, the tax must be applied to the sugar content of the syrup or powder, including the largest amount of sugar to be added to that syrup or powder according to the
manufacturers instruction;

(6) Alcoholic beverages at a rate of 0.5 cent per
fluid ounce per percentage point of alcohol content on
all alcoholic beverages from October 1, 2021 [beer and
malt beverages, at the rate of $0.25 per 12 fluid
ounces];

[(6) distilled alcoholic beverages, at the rate of 12
dollars per gallon;]

[(7) wine at the rate of 30 percent ad valorem;]

[(8)](7) foodstuffs for human consumption at the rate
of three percent ad valorem; [provided, however, that
fresh and frozen fish and seafood, shall be at the rate
of 25 percent ad valorem;]

[(9)](8) gasoline and diesel fuel, at the rate of five
cents per gallon;

[(10)](9) laundry bar soap, at the rate of 254
percent ad valorem on and from October 1, 2021; and

[(11)](10) all other imported products, except those
specified above, at the rate of four percent ad valorem.

(11) The levies under subsections (5) and (6) shall be
reviewed every two years by the Department of Finance &
Administration and the Department of Health and Social
Affairs to recommend adjustment to FSM Congress.”

Section 4. Section 222 of title 54 of the Code of the
Federated States of Micronesia (Annotated), as amended, is hereby
amended to read as follows:

(1) *Damaged, pillaged or faulty goods.* Upon receipt of a written request within 28 days of the goods' release from Customs control, the Secretary may authorize a refund of the whole or part of the duty paid, where any of the following conditions exist:

(a) goods have been damaged, pillaged, lost or destroyed during the voyage;

(b) goods have, while subject to the control of Customs, been damaged, pillaged, lost or destroyed; or

(c) the Commissioner is satisfied that, owing to a fault or defect in any goods, the importer has received a reduction or a refund, in whole or part, of the price paid for the goods.

(2) *Goods imported for subsequent export.*

(a) Upon application to and approval by the Secretary, import duty paid on the following goods shall be refunded: goods imported for processing in the FSM, not otherwise used in the FSM, and subsequently exported from the FSM. For purposes of this subsection, raw materials or ingredients which are worked into or otherwise become part of a different or more finished product are deemed exported when that product is exported.

(b) Goods imported for processing are eligible
for the duty refund when the finished products which the imported goods were processed into have been loaded on an aircraft or vessel for direct removal from the FSM and that aircraft or vessel has departed from the port. After they have been so loaded, the goods shall again be subject to import duty if they are unloaded or used in the FSM. With respect to importers primarily engaged in importing for processing and subsequent export, the Secretary shall provide for waiving, by regulation rather than collecting and subsequently refunding, duties.

(c) Upon application to and approval by the Secretary, import duty shall be waived on the following goods: goods imported for transshipment through the FSM, not to be used in the FSM, which are securely stored while in the FSM and which are exported from the FSM within a reasonable time of import to the FSM, as defined by regulation. Should these goods not be exported within a reasonable time, the importer will be subject to a penalty equal to one-quarter of the import duty that would have been due if the goods were to be used in the FSM. Should these goods be removed from the secure storage facility or used in the FSM, they will be subject to the full import duty.

(d) The burden of proving that goods imported
are for subsequent export shall be upon the importer/exporter as specified in regulations.

(3) Goods carried in per trip abroad. Each time an individual person enters or returns to the FSM from a foreign jurisdiction, he or she is entitled to bring into the FSM the following goods duty free, provided that such goods are for that person’s own personal use or consumption and not for resale or exchange, and provided further that such person is permitted by applicable State law to possess, use, and consume such goods:

(a) up to [200] 100 cigarettes;

(b) up to [one half] a pound of tobacco or [20] 10 cigars;

(c) up to 52 fluid ounces or 1500 milliliters of distilled alcoholic beverages; and

(d) up to two hundred dollars ($200) worth of goods other than tobacco products[, beer and malt beverages, distilled] or alcoholic beverages[, and wine].

(4) Visitors’ personal effects. A visitor to the FSM may import bona fide personal effects into the FSM duty free, provided the goods are for the visitor’s own personal use and will be taken with the visitor when he or she leaves the country.
(5) **Returning goods.** Goods produced or properly entered in the FSM which are subsequently removed from the FSM may be returned to the FSM duty free. The burden shall be on the owner of the goods to establish that the goods were either produced in the FSM or previously and properly entered.

(6) **Goods used in foreign aid projects.** An international organization, foreign contractor, or other foreign entity may import goods into the FSM duty free in connection with the performance of services or other conduct of business in furtherance of a foreign aid agreement entered into by the FSM, the terms of which require that such import shall not be subject to taxation by the FSM; provided that if and when such goods are subsequently sold in the FSM, import duty shall be due based on the sale amount. The duty, together with penalties and interest, shall be the joint and several personal liability of the importer and the purchaser and shall be secured by first liens on the goods and on the importer’s property as hereinafter provided.

(7) **Certain fishing vessels and equipment.** Fishing vessels basing in the Federated States of Micronesia under a valid permit or license issued pursuant to title 24 of this code shall not be subject to the import duty
on either the vessel or equipment installed in the
vessel. This exemption shall apply to replacement parts
and equipment imported by these fishing vessels as well.

(8) Parcels which would generate a de minimis
duty. Parcels mailed or otherwise sent into the FSM,
which would otherwise generate a de minimis duty, shall
be exempt from import duty, provided that such goods are
for the recipient's own personal use or consumption and
not for resale or exchange. Parcels with values up to
the amount specified in subsection (3)(d) of this
section, shall be exempt.

(9) Health, education and welfare related goods
donated for humanitarian use. Upon application to and
approval by the Secretary, the import duty on goods
related to health, education or welfare donated without
cost for humanitarian purposes, and not for resale,
shall be waived or refunded; provided, however, that if
and when any of such goods are subsequently sold in the
FSM, import duty shall be due based on the sale
amount. The duty, together with penalties and interest,
shall be the joint and several personal liability of the
importer and the purchaser and shall be secured by first
liens on the goods and on the importer's property as
hereinafter provided.
the Federated States of Micronesia (Annotated), as amended by
Public Laws Nos. 18-107 and 21-152, is hereby further amended to
read as follows:

"Section 805. Distribution of revenues.

(1) Distribution to the States.

(a) The treasurer of the Federated States of Micronesia shall pay eighty percent of the net taxes collected pursuant to section 221(9)(8) of this title, and fifty percent of all other net taxes collected pursuant to sections 121, 141, and 221 of this title into the treasury of the State government to which the taxes are attributable for appropriation by the State legislature.

(b) Subject to Part (e) below, an additional twenty percent of the total of all other net taxes collected pursuant to sections 121, 141, and 221 of this title after the Treasurer of the Federated States of Micronesia has administered distribution under part (a) shall be deposited by the treasurer of the Federated States of Micronesia into the State sub-account “A” of the FSM Trust Fund on behalf of the National Government for the State government to which the taxes are attributable. The additional twenty percent (20%) deposited by the National Government into individual States sub-account A may not be withdrawn by the States.
(c) Twenty-five percent of the amount remaining, after the transfer of funds pursuant to parts (a) and (b) of this subsection, of the net taxes collected pursuant to subsection 221(1) of this title shall be placed in an account to be used solely for post-graduate school scholarships or full-time post-secondary courses of study leading to commercial Federal Aviation Administration (FAA) licenses, ratings and certifications. The allottee of the scholarship funds shall be the President of the Federated States of Micronesia or his designee;

(d) Except as specifically provided in parts (a), (b) and (c) of this subsection, all net taxes collected shall be part of the General Fund of the Federated States of Micronesia, subject to appropriation by Congress pursuant to title 55 of the Code of the Federated States of Micronesia.

(e) The treasurer of the Federated States of Micronesia shall pay three percent of the net taxes paid into the General Fund of the Federated States of Micronesia, pursuant to part (d) of this subsection, that is collected pursuant to subsections 221(1), (2), (3), (5) and (6) of this title, beginning October 1, 2021, into the Health Revolving Fund established under Title 55, Sub-chapter XVI. The President shall issue
regulations for the distribution of funds from the Health Revolving Fund.

[(e)](f) On an extraordinary basis the extra 20% of net taxes collected during fiscal years 2021 and 2022 as defined in part (b) of this subsection above shall be remitted to the States and not to the FSM Trust Fund.

(2) 'Net taxes' as used in subsection (1) of this section means gross collections of taxes, penalties, interest, or other related charges less refunds."

Section 6. 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: 7/20/21 Introduced by: /s/ Florencio S. Harper

Florencio S. Harper (by request)