

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:

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

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

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

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

12 (4) It implements FSM's obligations under the World Health
13 Organisation Framework Convention on Tobacco Control, WHO Global
14 Action Plan for the Prevention and Control of Non-Communicable
15 Diseases 2013 – 2020, and the strategies agreed upon in the
16 Pacific Islands Non-Communicable Disease Roadmap.

17 Section 2. Section 212 of title 54 of the Code of the

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

3 "Section 212. Definition

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

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

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

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

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

19 [~~4~~](5) "Approved form" means a form approved by the
20 Secretary of Finance.

21 [~~5~~](6) "Arrival" means the first time goods or
22 passengers become subject to Customs control within the
23 FSM or any subsequent time before reaching their final
24 destination.

1 (7) "Bottle" means any closed or sealed
2 container regardless of size or shape, including those
3 made of glass, metal, paper, plastic, or any other
4 material or combination of materials.

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

13 ~~(6)~~(9) "Cannabis" means a cannabis plant, whether
14 living or dead, which includes, in any form, any
15 flowering or fruiting tops, leaves, seeds, stalks or any
16 other part of a cannabis plant and any mixture of parts
17 of a *cannabis* plant.

18 ~~(7)~~(10) "CIF" means "costs, insurance, and freight"
19 incurred for imported goods, and includes all costs and
20 charges associated with the goods up through the time
21 they are delivered to and unloaded at an FSM port of
22 entry or post office.

23 (11) "Cigar" means a more or less cylindrical
24 roll of tobacco cured for smoking, of any of various
25 lengths, thicknesses or degrees of straightness, usually

1 wrapped in tobacco leaf or equivalent and includes
2 cigarillos.

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

6 ~~[(8)]~~(13) "Commissioner" means the Secretary of the
7 Department of Finance and Administration ~~Commissioner of~~
8 ~~Customs.~~

9 ~~[(9)]~~(14) "Congress" means the Congress of the FSM.

10 ~~[(10)]~~(15) "Container" means an article of transport
11 equipment:

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

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

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

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

25 ~~[(11)]~~(16) "Controlled substance" means those described

1 in sections 1119, 1121, 1123, 1125, and 1127 of title 11
2 of this code or successor provision of law.

3 [~~(12)~~](17) "Customs" means the FSM Department of
4 Finance, Division of Customs.

5 [~~(13)~~](18) "Customs officer" means a person:

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

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

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

13 [~~(14)~~](19) "Duty" means any tax payable on the
14 importation of goods, and "dutiabale goods" means those
15 goods subject to tax on their importation.

16 [~~(15)~~](20) "FOB" ("free on board") means the value of
17 goods when shipped for export, and includes all costs
18 and charges up to the time of delivery of the goods on
19 board the exporting vessel or aircraft.

20 [~~(16)~~](21) "Foodstuffs" means any substance that is
21 ordinarily used as food, or to make food, for human
22 consumption, excluding beverages or substances used to
23 make beverages;

24 (22) "Forfeiture" means the surrender of
25 ownership of property to the FSM government following a

1 breach of certain provisions of this chapter; it is
2 independent of and in addition to any penalty imposed by
3 this chapter.

4 [~~(17)~~](23) "FSM" means the Federated States of
5 Micronesia.

6 [~~(18)~~](24) "Goods" means any type of merchandise,
7 product, commodity, vehicle, moveable personal property,
8 or commercial wares.

9 [~~(19)~~](25) "Importer" means any person by or for whom
10 any goods are imported, and includes the consignee and
11 any other person who is beneficially interested in the
12 goods.

13 [~~(20)~~](26) "Master" means:

14 (a) In relation to a vessel the person in charge
15 or command of the vessel;

16 (b) In relation to an installation the person in
17 charge of the installation.

18 [~~(21)~~](27) "Narcotic drug" means those described in
19 subsection (15) of section 1112 of title 11 of this code
20 or successor provision of law.

21 (28) "Non-caloric sweetener" means any non-
22 caloric substance suitable for human consumption that
23 humans perceive as sweet, including aspartame,
24 saccharin, stevia, and sucralose. Non-caloric sweetener
25 does not include caloric sweeteners. For purposes of

1 this definition, non-caloric means a substance that
2 contains fewer than five calories per serving.

3 ~~(22)~~(29) "On or about the body" means on or within
4 the body, clothing, footwear, purse, handbag, or similar
5 article.

6 ~~(23)~~(30) "Owner" means:

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

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

15 ~~(24)~~(31) "Package" includes every means by which
16 goods for transportation may be cased, covered,
17 enclosed, contained, or packed.

18 ~~(25)~~(32) "Person" means any individual, company,
19 corporation, partnership, unincorporated association, or
20 other business entity.

21 ~~(26)~~(33) "Pilot" means the person in charge or in
22 command of an aircraft.

23 ~~(27)~~(34) "Place" means any location, building or
24 site, and includes moveable locations such as a vessel
25 or aircraft.

1 ~~[(28)]~~(35) "Port" or "Port of entry" means an official
2 port of entry identified in or pursuant to title 18 of
3 this code and amendments thereto.

4 (36) "Powder" means any solid mixture of
5 ingredients used in making, mixing, or compounding
6 sugar-sweetened beverages by mixing the powder with one
7 or more other ingredients, including water, ice, syrup,
8 simple syrup, fruits, vegetables, fruit juice, vegetable
9 juice, carbonation, or other gas.

10 ~~[(29)]~~(37) "President" means the President of the FSM.

11 ~~[(30)]~~(38) "Prohibited goods" means any goods the
12 importation or exportation of which is prohibited under
13 FSM law.

14 ~~[(31)]~~(39) "Regulations" means any regulations
15 promulgated pursuant to this chapter.

16 (40) "Sale" means the transfer of title or
17 possession for valuable consideration regardless of the
18 manner by which the transfer is completed.

19 ~~[(32)]~~(41) "Secretary" means the Secretary of the ~~FSM~~
20 Department of Finance and Administration.

21 ~~[(33)]~~(42) "Smuggling" means any importation or
22 exportation, attempted importation or exportation, with
23 the intent to defraud the FSM.

24 ~~[(34)]~~(43) "Stamp" means device or instrument used by a
25 Customs officer to make a distinctive impression or

1 imprint, to identify and evidence the clearance of
2 imported or exported goods and the clearance of vessels
3 or aircraft.

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

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

19 (b) Milk without any added caloric sweetener.
20 For purposes of this paragraph milk means natural liquid
21 milk regardless of animal source or butterfat content;
22 natural milk concentrate, whether or not reconstituted,
23 regardless of animal source or butterfat content;
24 dehydrated natural milk, whether or not reconstituted
25 and regardless of animal source or butterfat content;

1 soy milk; or rice milk.

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

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

12 ~~(35)~~(47) "Unlawfully imported, exported, or carried
13 goods" means any smuggled goods and any goods imported,
14 exported, or carried in breach of the provisions of this
15 chapter, or any other law of the FSM, or whose sale,
16 possession or use is prohibited or contrary to
17 restrictions imposed by the State into which the
18 importation took place. The above-defined phrase
19 carries a like meaning wherever similarly stated in this
20 chapter.

21 ~~(36)~~(48) "Vehicle" means every description of
22 motorized carriage or other contrivance used or capable
23 of being used as a means of transport on land."

24 Section 3. Section 221 of title 54 of the Code of the
25 Federated States of Micronesia (Annotated), as amended, is hereby

1 amended to read as follows:

2 "Section 221. Levy and rates.

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

6 (1) cigarettes, at the rate of \$0.025 per cigarette,
7 provided that this rate shall increase by \$0.005 per
8 cigarette on January 1 of each of the years 2007, 2009,
9 2011, 2013, and 2015; PROVIDED THAT, the rate shall be
10 \$0.075 per cigarette on or from October 1, 2021; and
11 PROVIDED FURTHER, that this rate shall further increase
12 by \$0.025 per cigarette on January 1 of each of the
13 years 2023, 2024, 2025 and 2026 and thereafter shall be
14 adjusted by the rate of inflation on January 1 of each
15 year;

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

22 ~~(2)~~(3) tobacco, other than cigarettes and cigars, at the
23 rate of 50 percent *ad valorem* of each of the years 2007,
24 2009, 2011, 2013, and 2015; PROVIDED THAT, the rate
25 shall be \$0.031 per gram on October 1, 2021; PROVIDED

1 FURTHER, that this rate shall further increase by \$0.05
2 per gram on January 1 of each of the years 2023, 2024,
3 2025 and 2026 and thereafter shall be adjusted by the
4 rate of inflation on January 1 of each year;

5 ~~(3)(4)~~ perfumery, cosmetics, and toiletries, including
6 cologne and other toilet waters, articles of perfumery,
7 whether in sachets or otherwise, and all preparations
8 used as applications to the hair or skin, lipsticks,
9 pomades, powders, and other toilet preparations not
10 having medicinal properties, at the rate of 25
11 percent *ad valorem*, PROVIDED THAT this rate shall be 4
12 percent on and from October 1, 2021;

13 ~~[(4) soft drinks, drink mixes, drink preparations,~~
14 ~~coffee, tea, and nonalcoholic beverages, at the rate of~~
15 ~~25 percent *ad valorem*, provided, however, that any~~
16 ~~beverage having a fruit juice content of 25 percent or~~
17 ~~more by volume shall be at the rate of three percent *ad*~~
18 ~~*valorem*];~~

19 (5) Sugar-sweetened beverages other than bottled
20 water, at the rate of \$5 per kilogram of sugar content
21 on and from October 1, 2021. For syrups and powders, the
22 tax must be applied to the sugar content of the syrup or
23 powder, including the largest amount [volume] of
24 sugar to be added[~~-sweetened beverages produced~~
25 ~~from~~] to that syrup or powder according to the

1 manufacturer's instruction;

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

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

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

10 ~~[(8)](7) foodstuffs for human consumption at the rate~~
11 ~~of three percent ad valorem; [provided, however, that~~
12 ~~fresh and frozen fish and seafood, shall be at the rate~~
13 ~~of 25 percent ad valorem;]~~

14 ~~[(9)](8) gasoline and diesel fuel, at the rate of five~~
15 ~~cents per gallon;~~

16 ~~[(10)](9) laundry bar soap, at the rate of 254~~
17 ~~percent ad valorem on and from October 1, 2021; and~~

18 ~~[(11)](10) all other imported products, except those~~
19 ~~specified above, at the rate of four percent ad valorem.~~

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

24 Section 4. Section 222 of title 54 of the Code of the
25 Federated States of Micronesia (Annotated), as amended, is hereby

1 amended to read as follows:

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

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

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

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

15 (2) *Goods imported for subsequent export.*

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

25 (b) Goods imported for processing are eligible

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

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

25 (d) The burden of proving that goods imported

1 are for subsequent export shall be upon the
2 importer/exporter as specified in regulations.

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

12 (a) up to [~~200~~] 100 cigarettes;

13 (b) up to [~~one~~] half a pound of tobacco or [~~20~~]
14 10 cigars;

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

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

21 (4) *Visitors' personal effects.* A visitor to the FSM
22 may import *bona fide* personal effects into the FSM duty
23 free, provided the goods are for the visitor's own
24 personal use and will be taken with the visitor when he
25 or she leaves the country.

1 (5) *Returning goods.* Goods produced or properly
2 entered in the FSM which are subsequently removed from
3 the FSM may be returned to the FSM duty free. The
4 burden shall be on the owner of the goods to establish
5 that the goods were either produced in the FSM or
6 previously and properly entered.

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

22 (7) *Certain fishing vessels and equipment.* Fishing
23 vessels basing in the Federated States of Micronesia
24 under a valid permit or license issued pursuant to title
25 24 of this code shall not be subject to the import duty

1 on either the vessel or equipment installed in the
2 vessel. This exemption shall apply to replacement parts
3 and equipment imported by these fishing vessels as well.

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

12 (9) *Health, education and welfare related goods*
13 *donated for humanitarian use.* Upon application to and
14 approval by the Secretary, the import duty on goods
15 related to health, education or welfare donated without
16 cost for humanitarian purposes, and not for resale,
17 shall be waived or refunded; provided, however, that if
18 and when any of such goods are subsequently sold in the
19 FSM, import duty shall be due based on the sale
20 amount. The duty, together with penalties and interest,
21 shall be the joint and several personal liability of the
22 importer and the purchaser and shall be secured by first
23 liens on the goods and on the importer's property as
24 hereinafter provided.

25 Section 5. Section 805 of title 54 of the Code of

1 the Federated States of Micronesia (Annotated), as amended by
2 Public Laws Nos. 18-107 and 21-152, is hereby further amended to
3 read as follows:

4 "Section 805. Distribution of revenues.

5 (1) Distribution to the States.

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

14 (b) Subject to Part (e) below, an additional
15 twenty percent of the total of all other net taxes
16 collected pursuant to sections 121, 141, and 221 of this
17 title after the Treasurer of the Federated States of
18 Micronesia has administered distribution under part (a)
19 shall be deposited by the treasurer of the Federated
20 States of Micronesia into the State sub-account "A" of
21 the FSM Trust Fund on behalf of the National Government
22 for the State government to which the taxes are
23 attributable. The additional twenty percent (20%)
24 deposited by the National Government into individual
25 States sub-account A may not be withdrawn by the States.

1 (c) Twenty-five percent of the amount remaining,
2 after the transfer of funds pursuant to parts (a) and
3 (b) of this subsection, of the net taxes collected
4 pursuant to subsection 221(1) of this title shall be
5 placed in an account to be used solely for post-graduate
6 school scholarships or full-time post-secondary courses
7 of study leading to commercial Federal Aviation
8 Administration (FAA) licenses, ratings and
9 certifications. The allottee of the scholarship funds
10 shall be the President of the Federated States of
11 Micronesia or his designee;

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

18 (e) The treasurer of the Federated States of
19 Micronesia shall pay three percent of the net taxes paid
20 into the General Fund of the Federated States of
21 Micronesia, pursuant to part (d) of this subsection,
22 that is collected pursuant to subsections 221(1), (2),
23 (3), (5) and (6) of this title, beginning October 1,
24 2021, into the Health Revolving Fund established under
25 Title 55, Sub-chapter XVI. The President shall issue

