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A BILL FOR AN ACT

To further amend title 54 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 4-32, 4-81 and 4-114, by amending sections 112, 116, 124, 201, and 802 relating to wages and salaries, business gross revenue and import taxes, and for other purposes.

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

1       Section 1. Section 112 of title 54 of the Code of the Federated  
2 States of Micronesia, as amended by Public Law No. 4-81, is hereby  
3 further amended to read as follows:

4           "Section 112. Definitions. Wherever used in this chapter,  
5 unless the subject matter, context, or sense otherwise  
6 requires.

7           (1) 'Business' means any profession, trade,  
8 manufacture, or other undertaking carried on for pecuniary  
9 profit and includes all activities whether personal,  
10 professional, or incorporated, carried on within the  
11 Federated States of Micronesia for economic benefit either  
12 direct or indirect, and excludes casual sales, as determined  
13 by the Secretary; however, one who qualifies as an employee  
14 under this section shall not be considered as a business.  
15 For any person, persons, entity, entities, or combinations  
16 thereof carrying on more than one such profession, trade,  
17 manufacture, other undertaking or activity, 'business' means  
18 all of such professions, trades, manufactures, other  
19 undertakings or activities carried on by such person,  
20 persons, entity, entities or combinations thereof, combined  
21 as one business for the purposes and requirements of  
22 subchapters IV and V of this chapter. Copra production by  
23 unincorporated copra producers collectively or severally  
24 shall not be included as a business under this definition.

25           (2) 'Commercial aircraft' means any aircraft capable



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1 of and intended for use in commercial aviation.

2 (3) 'Employee' means any individual who, under the  
3 usual common law rules applicable in determining the  
4 employer-employee relationship, has the status of an  
5 employee.

6 (4) 'Employer' includes any individual, corporation,  
7 association, joint stock company, bank, insurance company,  
8 credit union, cooperative, or other equity or group  
9 employing any person, and also includes the Trust Territory,  
10 Federated States of Micronesia, State and local governments,  
11 and their agencies, charged with the disbursement of public  
12 moneys as salaries or wages. 'Employer' also includes the  
13 United States Government and instrumentalities thereof.

14 (5) 'Gross revenue' means the gross receipts, cash or  
15 accrued, of the taxpayer received as compensation for  
16 personal services not in the form of salaries or wages as  
17 defined in subsection (11) of this section, and the gross  
18 receipts of the taxpayer derived from trade, business,  
19 commerce, or sales and the value proceeding or accruing from  
20 the sale of tangible personal property, or services, or  
21 both, and all receipts, actual or accrued by reason of the  
22 capital of the business engaged in, including interest,  
23 rentals, royalties, fees, or other emoluments however  
24 designated and without any deductions on account of the cost  
25 of property sold, the cost of materials used, labor cost,

1 taxes royalties, or interest paid or any other expenses  
2 whatsoever. Gross revenue shall not include the following:  
3 (a) refunds and rebates;  
4 (b) moneys held in a fiduciary capacity;  
5 (c) income in the form of wages and salaries  
6 which are taxed under other provisions of this chapter;  
7 (d) sale payments received for the sale of a  
8 commercial aircraft, to the extent that such sale payments  
9 in any quarter shall equal the rental payments made to the  
10 buyer by the seller of such aircraft for its rental by  
11 seller;  
12 (e) rental payments received for the rental of a  
13 commercial aircraft, to the extent that such rental payments  
14 in any quarter shall equal the sale payments made to the  
15 lessor by lessee of such aircraft for its purchase by the  
16 lessor;  
17 (f) cash discounts allowed and taken on sales,  
18 the proceeds of sale of goods, wares, or merchandise  
19 returned by customers when the sale price is refunded either  
20 in cash or by credit; or the sale price of any article  
21 accepted as part of payment of any new article sold, if the  
22 full sale price of a new article is included in 'gross  
23 revenue'; or  
24 (g) gross revenue received by an international  
25 organization, foreign contractor, or other foreign entity



1           paid from foreign aid proceeds donated to the Federated  
2           States of Micronesia pursuant to a foreign aid agreement  
3           entered into by the Federated States of Micronesia, the terms  
4           of which require that such gross revenue shall not be  
5           subject to taxation by the Government of the Federated  
6           States of Micronesia.

7           (6) 'Military or Naval Forces of the United States'  
8           and 'Armed Forces of the United States' means all regular  
9           and reserve components of the uniformed services which are  
10          subject to the jurisdiction of the Secretary of the Army,  
11          Navy, or Air Force, and also includes the Coast Guard.

12          (7) 'Month' means calendar month.

13          (8) 'Purchase payments' means payments on the actual  
14          selling price, including any interest, carrying charges, or  
15          other charges associated with a sale. As used herein, the  
16          word 'sale' implies a transfer of ownership of that which is  
17          sold, in exchange for the purchase payments or promise  
18          thereof.

19          (9) 'Rental payments' means any payments made in  
20          exchange for use or rental, and includes interest, carrying  
21          charges, or other charges associated with use or rental.

22          (10) 'Secretary' means the Secretary of the Department  
23          of Finance.

24          (11) 'Wages' or 'Salaries' means and includes  
25          commissions, fees, compensation, emoluments, bonuses, and

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1 every and all other kinds of compensation paid for,  
2 credited, or attributable to personal services performed by  
3 an individual, which services have been performed by such  
4 person as an employee. Wages and salaries shall not include  
5 the following:

6 (a) wages and salaries received from the United  
7 States by members of the Military or Naval Forces of the  
8 United States or the Armed Forces of the United States;

9 (b) reasonable per diem, ~~and~~ moving, travel and  
10 office expense allowances to the extent that they do not  
11 exceed any comparable Trust Territory Government rates and  
12 to the extent that such office expense allowance is used to  
13 staff, equip, and provide an office for the recipient  
14 thereof;

15 (c) rental value of a home furnished to any  
16 employee or a reasonable rental allowance paid to any  
17 employee (to the extent such allowance is used by the  
18 employee to rent or provide a home);

19 (d) any payment on account of sickness or  
20 accident disability, or any payment of medical or  
21 hospitalization expenses, made by an employer to or on  
22 behalf of an employee; provided, however, that normal wages  
23 or salaries paid to an employee for a period of time during  
24 which he is excused from work because of sickness shall not  
25 be excluded from wages and salaries under this subsection;



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- 1 (e) any payment made to or on behalf of an  
2 employee or to his beneficiary from a trust or annuity;
- 3 (f) remuneration paid in any medium other than  
4 cash to an employee for service not in the ordinary course  
5 of the employer's trade or business or for domestic service  
6 in a private home of an employer;
- 7 (g) remuneration paid for casual or intermittent  
8 labor not performed in the ordinary course of the employer's  
9 trade or business and for not more than one week in each  
10 calendar month;
- 11 (h) any payment in the form of a scholarship,  
12 fellowship, or stipend made to any employee while he is a  
13 full-time, bona fide student at an educational institution  
14 within the Trust Territory;
- 15 (i) wages and salaries received by a minister of  
16 the gospel or clergyman from a religious group or  
17 organization;
- 18 (j) wages and salaries received by an employee  
19 for services performed or rendered in the capacity of a  
20 domestic or household employee for a private individual or  
21 family; or
- 22 (k) wages and salaries received by an employee,  
23 who is not a citizen of the Federated States of Micronesia,  
24 while employed by an international organization, foreign  
25 contractor, or other foreign entity performing services or

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1 otherwise conducting business in furtherance of a foreign  
2 aid agreement entered into by the Federated States of  
3 Micronesia, the terms of which require that such wages and  
4 salaries shall not be subject to taxation by the Government  
5 of the Federated States of Micronesia.

6 (12) 'Year' means calendar year."

7 Section 2. Section 116 of title 54 of the Code of the Federated  
8 States of Micronesia, as amended by Public Law No. 4-32, is hereby  
9 further amended to read as follows:

10 "Section 116. Preservation and disclosure of information.

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

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

21 (3) No employee of the Department of Finance shall be  
22 required to produce in any court any matter or thing  
23 relating to the taxes imposed by this chapter coming under  
24 his notice in the performance of his duties as an employee  
25 of the Revenue Division except when it is necessary to do so



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

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

15 (5) The Governor of each State may appoint one  
16 representative of his administration who shall have access  
17 to all returns, reports, or other information on file with  
18 the Department of Finance as may be necessary to show that  
19 the required distribution of revenues to his State has been  
20 made. Each Governor shall make the appointment of his  
21 representative known to the Secretary of Finance. The  
22 appointee may share information acquired hereunder with the  
23 Governor of his State. The Governor and his appointee may  
24 not disclose the information to any other person except for  
25 the specific purpose of ensuring that the required



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1 distribution of revenues to their State has been made, or  
2 except as otherwise provided for by law.

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

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

16 (8) The Secretary shall make and maintain, or cause to  
17 be made and maintained, in each office of the Revenue  
18 Division of the Department of Finance of the Federated  
19 States of Micronesia, a current list of persons, entities  
20 and businesses delinquent in the payment of taxes, penalties  
21 or interest or the filing of returns pursuant to the  
22 requirements of this title. Such list shall state the name,  
23 address or location, type and amount of tax, penalties or  
24 interest due and unpaid, and type and period covered for  
25 returns not filed for each such person, entity or business.



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1        Notwithstanding anything to the contrary contained in this  
2        title, the Secretary shall make such list available at the  
3        offices of the said Revenue Division for inspection by  
4        persons or businesses who have extended or contemplate  
5        extending credit to persons, entities or businesses whose  
6        names may appear thereon. The Secretary shall also make  
7        such list available to the Administrator of the Accounting  
8        Division of the Department of Finance of the Federated  
9        States of Micronesia, and said Administrator shall notify  
10       the Secretary in writing at least 3 business days prior to  
11       the payment of public moneys from the Treasury of the  
12       Federated States of Micronesia to any person, entity or  
13       business whose name appears on the said list."

14       Section 3. Section 124 of title 54 of the Code of the Federated  
15 States of Micronesia, as amended by Public Law No. 4-114, is hereby  
16 further amended to read as follows:

17       "Section 124. Source of wages; Apportionment.

18                (1) If an employee is credited or paid salaries or  
19 wages derived from, or attributable to, personal services  
20 performed or rendered both within and without the Federated  
21 States of Micronesia during any given month, then the whole  
22 of the salaries or wages shall be presumed to have been  
23 earned within the Federated States of Micronesia. All wages  
24 and salaries paid from public moneys of the Federated States  
25 of Micronesia or any of its constituent States are



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1 conclusively and irrebuttably presumed to be derived from or  
2 attributable to personal services performed or rendered  
3 within the Federated States of Micronesia.

4 (2) The employer paying the tax or the employee whose  
5 compensation is taxed may file for an apportionment of the  
6 tax on a form prescribed by the Secretary and the tax shall  
7 be levied only on that portion of the salary or wages which  
8 is attributable to personal services performed or rendered  
9 within the Federated States of Micronesia."

10 Section 4. Section 201 of title 54 of the Code of the Federated  
11 States of Micronesia is hereby amended to read as follows:

12 "Section 201. Import taxes - Levy and rates. The following  
13 import taxes are hereby levied on all products specified  
14 herein which are imported into the Federated States of  
15 Micronesia for resale or for use in or by a business or for  
16 the production of income, except that the taxes levied under  
17 subsections (1), (2), (5), (6), and (7) of this section  
18 shall apply to products which are imported into the  
19 Federated States of Micronesia for personal use and  
20 consumption as well as for resale/ or for use in or by a  
21 business or for the production of income. All articles  
22 imported into the Federated States of Micronesia by a  
23 person, entity or business who is licensed or is legally  
24 required to be licensed to carry on a business in or to  
25 import articles into the Federated States of Micronesia are



1 rebuttably presumed to be imported for resale or for use in  
2 or by a business or for the production of income. As used  
3 in this chapter the term 'ad valorem' means C.I.F. price at  
4 the port or site of import into the Federated States of  
5 Micronesia:

6 (1) cigarettes, at the rate of seven cents per every  
7 twenty cigarettes, except that any person may bring into any  
8 State of the Federated States of Micronesia up to one carton  
9 or two hundred cigarettes per trip tax-free, if such  
10 cigarettes are for that person's use and consumption and not  
11 for resale or for use in or by a business or for the  
12 production of income;

13 (2) tobacco, other than cigarettes, at the rate of  
14 fifty percent ad valorem, except that any person may bring  
15 into any State of the Federated States of Micronesia up to  
16 one pound of tobacco or twenty cigars per trip tax-free, if  
17 such tobacco products are for that person's use and  
18 consumption and not for resale or for use in or by a  
19 business or for the production of income;

20 (3) perfumery, cosmetics, and toiletries, including  
21 cologne and other toilet waters, articles of perfumery,  
22 whether in sachets or otherwise, and all preparations used  
23 as applications to the hair or skin, lipsticks, pomades,  
24 powders, and other toilet preparations not having medicinal  
25 properties, at the rate of twenty-five percent ad valorem;

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1 (4) soft drinks and nonalcoholic beverages, at the  
2 rate of two cents on each twelve fluid ounces or fractional  
3 part thereof;

4 (5) beer and malt beverages, at the rate of four cents  
5 per can or bottle of twelve fluid ounces or fractional part  
6 thereof;

7 (6) distilled alcoholic beverages, at the rate of  
8 seven dollars per wine gallon, except that any person  
9 permitted by applicable State law to possess, consume, and  
10 use distilled alcoholic beverages, may bring into such State  
11 of the Federated States tax free, an amount of liquor not to  
12 exceed two-fifths of a wine gallon per trip, if such liquor  
13 is for his personal use and consumption and not for resale  
14 or for use in or by a business or for the production of  
15 income;

16 (7) wine, at the rate of two dollars per wine gallon,  
17 except that this tax shall not apply to any religious  
18 organization which is importing or receiving into the  
19 Federated States sacramental wine for use in the religious  
20 rites of such organization;

21 (8) foodstuffs for human consumption, at the rate of  
22 one percent ad valorem;

23 (9) gasoline and diesel fuel, at the rate of five  
24 cents per gallon;

25 (10) all other imported products, except those



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1 specified above, at the rate of three percent ad valorem."

2 Section 5. Section 802 of title 54 of the Code of the Federated  
3 States of Micronesia is hereby amended to read as follows:

4 "Section 802. Civil action of enforcement; Agent for  
5 service of process.

6 (1) Any taxes or license fees imposed or authorized  
7 under this title or under any district law may also be  
8 collected by a civil suit brought either in the name of the  
9 taxing unit concerned or in the name of the person  
10 authorized to collect the same. In such civil suit a  
11 written statement of the ~~Treasurer~~ employee in charge of the  
12 unit concerned, as to the amount of tax due, the fact that  
13 it is unpaid, and who is authorized to collect it, shall be  
14 sufficient evidence of these matters unless the contrary is  
15 expressly shown.

16 (2) The Secretary of the Department of Finance is  
17 appointed as agent to receive service of process in any  
18 action to enforce the provisions of this title in any case  
19 involving a person, entity or business not having an agent,  
20 office or place of business within the Federated States of  
21 Micronesia upon whom or where service of process may  
22 otherwise be performed. Not later than 2 business days  
23 after receipt of such service, the Secretary shall send by  
24 certified mail, return receipt requested, all documents and  
25 materials received pursuant to such service of process to

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1        the last known address of the person, entity or business  
2        named therein. Service of process made in accordance  
3        herewith shall be legally sufficient, valid, and effective  
4        upon the earlier to occur of (a) receipt by the addressee of  
5        the documents sent by the Secretary by certified mail or (b)  
6        15 days after service of process is made upon the Secretary.  
7        Nothing contained in this section shall limit or otherwise  
8        affect the right to serve any process in any other manner  
9        now or hereafter provided by law."

10       Section 6. This act shall become law upon approval by the  
11 President of the Federated States of Micronesia or upon its becoming  
12 law without such approval.

13  
14 Date: 7/21/87

Introduced by:

Claude H. Phillip  
(by request)

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