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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. 5-65, 5-81 and 5-84, by amending section 112 to clarify when individuals and business entities based outside the Federated States of Micronesia may be subject to the gross revenue tax of the Federated States of Micronesia, and for other purposes.

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

1 Section 1. Purpose. The purpose of this bill is to clarify when
2 individuals and business entities based outside the Federated States
3 of Micronesia may be subject to the gross revenue tax of the Federated
4 States of Micronesia.

5 Section 2. Amendment. Section 112 of title 54 of the Code of
6 the Federated States of Micronesia is hereby amended to read as
7 follows:

8 "Section 112. Definitions. Wherever used in this chapter,
9 unless the subject matter, context, or sense otherwise
10 requires.

11 (1) 'Business' means any profession, trade, manufac-
12 ture, or other undertaking carried on for pecuniary profit
13 and includes all activities whether personal, professional,
14 or incorporated, carried on within the Federated States of
15 Micronesia for economic benefit either direct or indirect,
16 and excludes casual sales, as determined by the Secretary;
17 however, one who qualifies as an employee under this
18 section shall not be considered as a business. Copra
19 production by unincorporated copra producers collectively
20 or severally shall not be included as a business under this
21 definition.

22 (2) For the purpose of section 112(1), 'carried on
23 within the Federated States of Micronesia' shall not
24 include individuals or business entities who ship
25 merchandise into the Federated States of Micronesia from

locations based outside the Federated States of Micronesia
and who do not have a full-time office or store physically
located in the Federated States of Micronesia. The mere
physical presence of an employee, an agent, or other
representative of such individuals or business entities
within the Federated States of Micronesia will not result
in such individuals or business entities being deemed to be
doing business in the Federated States of Micronesia.

(23) 'Commercial aircraft' means any aircraft capable
of and intended for use in commercial aviation.

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

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

(56) 'Gross revenue' means the gross receipts, cash
or accrued, of the taxpayer received as compensation for

1 personal services not in the form of salaries or wages as
 2 defined in subsection (~~1112~~) of this section, and the gross
 3 receipts of the taxpayer derived from trade, business,
 4 commerce, or sales and the value proceeding or accruing
 5 from the sale of tangible personal property, or services,
 6 or both, and all receipts, actual or accrued by reason of
 7 the capital of the business engaged in, including interest,
 8 rentals, royalties, fees, or other emoluments however
 9 designated and without any deductions on account of the
 10 cost of property sold, the cost of materials used, labor
 11 cost, taxes royalties, or interest paid or any other
 12 expenses whatsoever. Gross revenues shall not include the
 13 following:

- 14 (a) refunds and rebates;
- 15 (b) moneys held in a fiduciary capacity;
- 16 (c) income in the form of wages and salaries
 17 which are taxed under other provisions of this chapter;
- 18 (d) sale payments received for the sale of a
 19 commercial aircraft, to the extent that such sale payments
 20 in any quarter shall equal the rental payments made to the
 21 buyer by the seller of such aircraft for its rental by
 22 seller;
- 23 (e) rental payments received for the rental of a
 24 commercial aircraft, to the extent that such rental
 25 payments in any quarter shall equal the sale payments made

1 to the lessor by lessee of such aircraft for its purchase
2 by the lessor;

3 (f) cash discounts allowed and taken on sales,
4 the proceeds of sale of goods, wares, or merchandise
5 returned by customers when the sale price is refunded
6 either in cash or by credit; or the sale price of any
7 article accepted as part of payment of any new article sold,
8 if the full sale price of a new article is included in
9 'gross revenue'; or

10 (g) gross revenue received by an international
11 organization, foreign contractor, or other foreign entity
12 paid from foreign aid proceeds donated to the Federated
13 States of Micronesia pursuant to a foreign aid agreement
14 entered into by the Federated States of Micronesia, the
15 terms of which require that such gross revenue shall not be
16 subject to taxation by the Government of the Federated
17 States of Micronesia.

18 (~~67~~) 'Military or Naval Forces of the United States'
19 and 'Armed Forces of the United States' means all regular
20 and reserve components of the uniformed services which are
21 subject to the jurisdiction of the Secretary of the Army,
22 Navy, or Air Force, and also includes the Coast Guard.

23 (~~78~~) 'Month' means calendar month.

24 (~~89~~) 'Purchase payments' means payments on the actual
25 selling price, including any interest, carrying charges, or

1 other charges associated with a sale. As used herein, the
2 word 'sale' implies a transfer of ownership of that which
3 is sold, in exchange for the purchase payments or promise
4 thereof.

5 (~~9~~10) 'Rental payments' means any payments made in
6 exchange for use or rental, and includes interest, carrying
7 charges, or other charges associated with use or rental.

8 (~~10~~11) 'Secretary' means the Secretary of the
9 Department of Finance.

10 (~~11~~12) 'Wages' or 'Salaries' means and includes commis-
11 sions, fees, compensation, emoluments, bonuses, and every
12 and all other kinds of compensation paid for, credited, or
13 attributable to personal services performed by an
14 individual, which services have been performed by such
15 person as an employee. Wages and salaries shall not
16 include the following:

17 (a) wages and salaries received from the United
18 States by members of the Military or Naval Forces of the
19 United States or the Armed Forces of the United States;

20 (b) reasonable per diem and travel allowances to
21 the extent that they do not exceed any comparable Trust
22 Territory Government rates;

23 (c) rental value of a home furnished to any
24 employee or a reasonable rental allowance paid to any
25 employee (to the extent such allowance is used by the

1 employee to rent or provide a home);

2 (d) any payment on account of sickness or
3 accident disability, or any payment of medical or
4 hospitalization expenses, made by an employer to or on
5 behalf of an employee; provided, however, that normal wages
6 or salaries paid to an employee for a period of time during
7 which he is excused from work because of sickness shall not
8 be excluded from wages and salaries under this subsection;

9 (e) any payment made to or on behalf of an
10 employee or to his beneficiary from a trust or annuity;

11 (f) remuneration paid in any medium other than
12 cash to an employee for service not in the ordinary course
13 of the employer's trade or business or for domestic service
14 in a private home of an employer;

15 (g) remuneration paid for casual or intermittent
16 labor not performed in the ordinary course of the
17 employer's trade or business and for not more than one week
18 in each calendar month;

19 (h) any payment in the form of a scholarship,
20 fellowship, or stipend made to any employee while he is a
21 full-time, bona fide student at an educational institution
22 within the Trust Territory;

23 (i) wages and salaries received by a minister of
24 the gospel or clergyman from a religious group or
25 organization;

W&M

C. B. No. 6-271

1 (j) wages and salaries received by an employee
2 for services performed or rendered in the capacity of a
3 domestic or household employee for a private individual or
4 family; or

5 (k) wages and salaries received by an employee,
6 who is not a citizen of the Federated States of Micronesia,
7 while
8 employed by an international organization, foreign
9 contractor, or other foreign entity performing services or
10 otherwise conducting business in furtherance of a foreign
11 aid agreement entered into by the Federated States of
12 Micronesia, the terms of which require that such wages and
13 salaries shall not be subject to taxation by the Government
14 of the Federated States of Micronesia.

15 (~~12~~13) 'Year' means calendar year."

16 Section 3. Retroactive effect. This act shall be applied retro-
17 actively so as to prevent any tax collection or tax enforcement
18 against any individuals or business entities who in the past have not
19 carried on business within the Federated States of Micronesia, as
20 defined by this act.

21 Section 4. Repealer. To the extent that any tax and custom
22 regulations or revenue rulings are either inconsistent with or in any
23 way in conflict with this act, they are hereby repealed.

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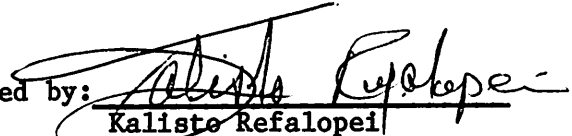
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C. B. No. 6-271

1 Section 5. Effective date. This act shall become law upon
2 approval by the President of the Federated States of Micronesia or
3 upon its becoming law without such approval.

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Date: 06-12-90

Introduced by: 
Kalisto Refalopei