

A BILL FOR AN ACT

To further amend title 54 of the Code of the Federated States of Micronesia, as amended, by adding a new chapter 3 thereto, for the purpose of levying an accumulated earnings tax, and for other purposes.

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

1 Section 1. Title 54 of the Code of the Federated States of
2 Micronesia, as amended, is hereby further amended by adding a new
3 chapter 3 to be entitled, "Accumulated Earnings Tax".

4 Section 2. Title 54 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by adding a new
6 section 301 to read as follows:

7 "Section 301. Purpose. Congress has found that
8 certain taxpayers' practice of charging excessive
9 prices for their goods or services in the Federated
10 States of Micronesia has resulted in accumulated
11 earnings which are often placed in interest-bearing
12 accounts outside of the Federated States of Micronesia.
13 These accumulated earnings do not generate further
14 employment for the people of the Federated States of
15 Micronesia and fail to expand the islands' economies.
16 Therefore, this practice burdens the nation's
17 commercial growth and is inimical to the nation's goal
18 for economic development and expansion. Congress

1 therefore institutes the accumulated earnings tax below
2 for the purpose of encouraging business to utilize
3 those accumulated earnings to expand the nation's
4 economy."

5 Section 3. Title 54 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by adding a new
7 section 302 to read as follows:

8 "Section 302. Definitions. When used in this chapter,
9 the following terms are defined as follows:

10 (1) 'Taxpayers' means any business entity, be it a
11 proprietorship, partnership, corporation, cooperative,
12 a limited partnership or limited liability corporation,
13 or any variation of any of such entities, whether
14 dealing in goods or services, is a taxpayer for the
15 purpose of this chapter if:

16 (a) it is chartered or incorporated in the FSM
17 or conducts business in the FSM, regardless of
18 ownership, and realizes a net profit of \$50,000 or more
19 for the current business year, or an accumulated net
20 profit of \$100,000 or more for two consecutive business
21 years; or

22 (b) it is a private trust or investment fund, a
23 private savings or a certificate of deposit account, or
24 a holding company or a subsidiary of a FSM taxpayer as
25 defined in section (1)(a), located inside the FSM or

1 located outside the FSM but at least 50% of which is
2 owned by a FSM taxpayer as defined in section (1)(a),
3 if at least 25% of the value of the trust corpus or the
4 principal of the savings or certificate of deposit
5 account or its assets is derived from activity within
6 the FSM and if its net earnings for the current
7 business year are \$50,000 or more or total \$100,000 or
8 more for two consecutive business years.

9 (2) 'Accumulated earnings' means the total sum of a
10 taxpayer's net earnings or profits, including
11 interests, dividends, returns on investments, in cash
12 or in other forms of assets realized from engaging in a
13 profit making activity in the FSM during a period of at
14 least two consecutive business years, but does not
15 include:

16 (a) value of assets acquired for and, within
17 one year of its acquisition, actually used for further
18 profit making activities; or

19 (b) net earnings realized from the cultivation,
20 processing and marketing within the FSM of local
21 agricultural crops, marine or other local natural
22 resources.

23 (3) 'Holding company' means a business entity whose
24 principal assets are derived from the activity of a
25 parent or sister company or a taxpayer under section

1 (a) and which does not generate at least 25% of its own
2 earnings.

3 (4) 'Subsidiary' means a business entity at least
4 51% of whose assets are owned by a taxpayer under
5 section (1) who also controls at least 30% of the
6 voting rights in that company.

7 (5) 'Regular employee' means a person not related to
8 the taxpayer by blood or marriage who works at least 40
9 hours a week for at least one year and receives
10 benefits and protections regularly available to
11 employees."

12 Section 4. Title 54 of the Code of the Federated States of
13 Micronesia, as amended, is hereby further amended by adding a new
14 section 303 to read as follows:

15 "Section 303. Levy. There shall be levied on a
16 taxpayer an accumulated earnings tax according to the
17 following schedule:

18 (1) 10% for any year in which a taxpayer has
19 accumulated earnings of not less than \$100,000;

20 (2) 20% for any year in which a taxpayer has
21 accumulated earnings of not less than \$200,000;

22 (3) 30% for any year in which a taxpayer has
23 accumulated earnings of not less than \$300,000;

24 (4) 40% for any year in which a taxpayer has
25 accumulated earnings of not less than \$400,000;

1 (5) 50% for any year in which a taxpayer has
2 accumulated earnings of \$500,000 or more."

3 Section 5. Title 54 of the Code of the Federated States of
4 Micronesia, as amended, is hereby further amended by adding a new
5 section 304 to read as follows:

6 "Section 304. Deductions and credits. A taxpayer
7 under this chapter is entitled to the following tax
8 deductions and/or tax credits:

9 (1) a taxpayer who reinvested at least \$50,000 but
10 less than \$100,000 of its accumulated earnings for the
11 most recently completed business year and employed at
12 least 5 regular employees during such year is entitled
13 to a tax deduction of 25% of the amount reinvested and
14 a tax credit of \$10,000;

15 (2) a taxpayer who reinvested at least \$100,000 but
16 less than \$200,000 of its accumulated earnings for the
17 most recently completed business year and employed at
18 least 5 regular employees during such year is entitled
19 to a tax deduction of 30% of the amount reinvested and
20 a tax credit of \$15,000;

21 (3) a taxpayer who reinvested at least \$200,000 but
22 less than \$300,000 of its accumulated earnings for the
23 most recently completed business year and employed at
24 least 5 regular employees during such year is entitled
25 to a tax deduction of 35% of the amount reinvested and

1 a tax credit of \$20,000;

2 (4) a taxpayer who reinvested at least \$300,000 but
3 less than \$400,000 of its accumulated earnings for the
4 most recently completed business year and employed at
5 least 10 regular employees during such year is entitled
6 to a tax deduction of 40% of the amount reinvested and
7 a tax credit of \$25,000;

8 (5) a taxpayer who reinvested at least \$400,000 but
9 less than \$500,000 of its accumulated earnings for the
10 most recently completed business year and employed at
11 least 10 regular employees during such year is entitled
12 to a tax deduction of 45% of the amount reinvested and
13 a tax credit of \$30,000;

14 (6) a taxpayer who reinvested at least \$500,000 of
15 its accumulated earnings for the most recently
16 completed business year and employed at least 15
17 regular employees during such year is entitled to a tax
18 deduction of 50% of the amount reinvested and a \$40,000
19 tax credit."

20 Section 6. Title 54 of the Code of the Federated States of
21 Micronesia, as amended, is hereby further amended by adding a new
22 section 305 to read as follows:

23 "Section 305. Assessment of Deductions. The
24 deductions granted by section 304 of this section shall
25 be assessed or credited against the taxpayer's

1 accumulated earnings tax."

2 Section 7. Title 54 of the Code of the Federated States of
3 Micronesia, as amended, is hereby further amended by adding a new
4 section 306 to read as follows:

5 "Section 306. Administration.

6 (1) Within three months of the effective date of
7 this act, the Secretary of Finance and Administration
8 of the Federated States of Micronesia (the "Secretary")
9 shall notify all potentially eligible taxpayers to
10 submit their most recent audited financial statements
11 not later than six months from the date of the
12 Secretary's notice.

13 (2) The Secretary shall assess a taxpayer's
14 accumulated earnings tax based on the taxpayer's
15 audited financial statement and all other information
16 the Secretary deems pertinent. The assessment shall be
17 completed within three months after receipt of a
18 taxpayer's audited statement.

19 (3) Based on such assessment, the Secretary shall
20 notify the taxpayer of the amount of the accumulated
21 earnings tax assessed and due, and shall demand payment
22 thereof not later than two months from the date of the
23 Secretary's notice. The Secretary's notice (the
24 "Notice of Demand for Payment") shall expressly inform
25 the taxpayer of the following:

1 (a) that the Secretary's Notice of Demand for
2 Payment constitutes a first priority tax lien on the
3 taxpayer's assets; and

4 (b) that failure of the taxpayer to pay the tax
5 or present his or her objections to the tax assessed
6 within those two months shall result in enforcement of
7 the lien against the taxpayer's assets.

8 (4) Within one month after expiration of the two
9 month period set forth in subsection (3) above, the
10 Secretary shall file the Notice of Demand for Payment
11 with the Trial Division of the Supreme Court of the
12 Federated States of Micronesia. Filing with the
13 Supreme Court authorizes the Secretary to seize or
14 garnish the taxpayer's assets not earlier than thirty
15 days from the date of filing. The Secretary may
16 dispose of such assets in satisfaction of the
17 delinquent taxes, including all enforcement costs.

18 (5) The enforcement procedure under this chapter may
19 be suspended if a valid payment settlement is entered
20 into by the Secretary and the taxpayer, provided such
21 settlement provides satisfaction of all delinquent
22 taxes for the taxpayer within one year from the date of
23 the Secretary's Notice of Demand for Payment."

24 Section 8. This act shall become law upon approval by the
25 President of the Federated States of Micronesia or upon its

1 becoming law without such approval.

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3 Date: 6/3/04

Introduced by: /s/ Sabino S. Asor
Sabino S. Asor

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