

FIRST CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FIRST REGULAR SESSION, 1979

CONGRESSIONAL RESOLUTION NO. 1-25, CD1, CD2

A RESOLUTION

Urging the Commissioner of the U.S. Internal Revenue Service to immediately withdraw Revenue Ruling 68-608 and issue a new ruling to affirm that U.S. citizen employees of the government of the Federated States of Micronesia and its states, are not employees of agencies or instrumentalities of the United States Government.

1 **WHEREAS, a letter dated February 16, 1968 from the Director of the**
2 **Income Tax Division of the Internal Revenue Service informed the Director of**
3 **the Office of Territories a previous ruling, holding that the Congress of**
4 **Micronesia was not an agency of the United States Government and that U.S.**
5 **citizens performing services for the Congress would be entitled to the benefits**
6 **of section 911 (e), had been revoked; and**

7 **WHEREAS, Revenue Ruling 68-608, 1968-2 Com. Bull. 389, consequently**
8 **held that any U.S. citizen employee of a government of the Trust Territory**
9 **of the Pacific Islands was not entitled to exclude his income from U.S. income**
10 **tax laws because the Trust Territory was considered to be an agency or**
11 **instrumentality of the U.S. Government for the purposes of the Internal**
12 **Revenue Code; and**

13 **WHEREAS, this ruling has worked hardship on many U.S. citizen employees**
14 **of the Trust Territory Executive and Legislative branches over the years, who**
15 **filed under the assumption that their income was excludable, who have been**
16 **consistently audited by the IRS, and who have paid fines and penalties**
17 **because of their disallowed filing status; and**

18 **WHEREAS, while U.S. citizen employees are able to receive a deduction**
19 **or credit for Trust Territory income taxes against their U.S. income tax**
20 **after filing returns, the immediate deductions of both taxes for payroll**
21 **purposes works an additional hardship on this class of employee; and**

22 **WHEREAS, while Congress of the Federated States of Micronesia and many**

1 Executive Branch employees are paid from locally-generated revenues, ironi-
2 cally, U.S. employees of Global Associates which operates the Kwajalein
3 Missile Range in the Marshalls under a direct contract and funding from the
4 U.S. Army are exempt from U.S. taxation after meeting the residency require-
5 ments because the question has never been source of income, or whether the
6 Trust Territory is a foreign country, but rather the 'agency' test; and

7 WHEREAS, the U.S. Fifth District Circuit Court on November 11, 1974
8 supported this contention and ruled that plaintiffs Kenneth R. and Peggy L.
9 Groves, former Trust Territory contract employees, were not entitled to the
10 exclusion under 911 (a); and

11 WHEREAS, U.S. Ninth District Circuit Court in 1978 reversed a 1975
12 decision by the Tax Court on a separate but identical case (McComish V.
13 Commissioner, 64 T.C. 909 (1975)), ruling that the Trust Territory is not a
14 United States agency for the purposes of 911 (a); and

15 WHEREAS, despite this later, conflicting ruling by a court of equal
16 jurisdiction, the Internal Revenue Service failed to file an appeal within
17 the time permitted; and

18 WHEREAS, while the IRS took no legal action to contest the ruling, it has
19 also neither withdrawn Revenue Ruling 68-608 nor issued a new ruling to take
20 its place; and

21 WHEREAS, this inaction by the Internal Revenue Service not only causes
22 inconvenience to U.S. citizen contract employees of the Congress and Executive
23 Branch of the Federated States of Micronesia who are uncertain of their filing
24 status, but also inconveniences the Congress of the Federated States of Micro-
25 nesia in determining proper wage and salary scales for U.S. citizen employees;

1 and

2 WHEREAS, withdrawal of said ruling would be beneficial to the Federated
3 States of Micronesia Government in that it would be able to recruit, when
4 necessary, U.S. citizen employees who would not be subject to income tax from
5 their country; and

6 WHEREAS, the Congress of the Federated States of Micronesia finds the
7 notion that the former Congress of Micronesia and its successors were or are
8 agencies or instrumentalities of the United States Government for any legal
9 purpose to be without any justifiable basis; and

10 WHEREAS, the Constitution of the Federated States of Micronesia, a
11 sovereign entity, began to be effective on May 10, 1979, on which date the
12 First Congress of the Federated States of Micronesia was installed which in
13 turn elected the first President and Vice President of the Federated States of
14 Micronesia, who were inaugurated on May 15, 1979; and

15 WHEREAS, the Eight Principles of Hilo provide for a government-to-
16 government Compact of Free Association, which is not in consonance with the
17 findings of Revenue Ruling 68-608 on the 'agency' test; now, therefore,

18 BE IT RESOLVED by the First Congress of the Federated States of Micro-
19 nesia, First Regular Session, 1979 that the Commissioner of the Internal
20 Revenue Service of the U.S. Department of the Treasury is hereby urged to
21 immediately withdraw Revenue Ruling 68-608, and issue a new ruling to affirm
22 that U.S. citizen employees of the government of the Federated States of
23 Micronesia and its states, are not employees of agencies or instrumentalities
24 of the United States Government; and

25 BE IT FURTHER RESOLVED that certified copies of this Resolution be

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1 transmitted to Supreme Court Justice William Rehnquist; to Chief Judge of the
2 Ninth District Circuit Court James Browning; to Secretary of the Treasury
3 W. Michael Blumenthal; to the Commissioner of the Internal Revenue Service
4 Jerome Kurtz; to the Chairman and Ranking Minority members of the Senate
5 Committee on Appropriations and its Subcommittees on Foreign Operations,
6 Interior, Treasury-Postal Service-General Government; to the Committee on
7 Energy and Natural Resources; to the Committee on Finance and its Subcommittees
8 on Taxation and Debt Management, Oversight of the Internal Revenue Service, and
9 Revenue Sharing, Intergovernmental Revenue Impact, and Economic Problems;
10 to the Committee on Foreign Relations and its Subcommittee on East Asian and
11 Pacific Affairs; to the Committee on Governmental Affairs; to the Chairman and
12 Ranking Minority Members of the U.S. House Committee on Appropriations and its
13 Subcommittees on Interior, and Treasury, Postal Service, General Government;
14 to the Committee on Foreign Affairs and its Subcommittees on Asian and Pacific
15 Affairs, and International Operations; to the Committee on Government
16 Operations and its Subcommittee on Commerce, Consumer, and Monetary Affairs;
17 to the Committee on Interior and Insular Affairs and its Subcommittees on
18 National Parks and Insular Affairs, and Pacific Affairs; to the Committee on
19 Ways and Means; to the President of the Federated States of Micronesia; to
20 the Speaker of the Niihela of the Marshall Islands Government; to the
21 Speaker of the Palau District Legislature; to the Director, Office of
22 Territorial Affairs, Department of the Interior; and to the High Commissioner
23 of the Trust Territory.

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25 Adopted: June 15, 1979