A BILL FOR AN ACT

To further amend title 54 of the Code of the Federated States of Micronesia, as amended, by further amending section 112, as amended by Public Law No. 7-41, for the purpose of exempting export sales of domestic products from the gross revenue tax, and for other purposes.

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

1 Section 112 of title 54 of the Code of the
2 Federated States of Micronesia, as amended by Public Law No.
3 7-41, is hereby further amended to read as follows:
4 "Section 112. Definitions. Wherever used in this
5 chapter, unless the subject matter, context, or sense
6 otherwise requires.
7 (1) 'Business' means any profession, trade,
8 manufacture, or other undertaking carried on for
9 pecuniary profit and includes all activities whether
10 personal, professional, or incorporated, carried on
11 within the Federated States of Micronesia for economic
12 benefit either direct or indirect, and excludes casual
13 sales, as determined by the Secretary; however, one who
14 qualifies as an employee under this section shall not be
15 considered as a business. Copra production by
16 unincorporated copra producers collectively or severally
17 shall not be included as a business under this
18 definition.
19 (2) 'Commercial aircraft' means any aircraft
20 capable of and intended for use in commercial aviation.
21 (3) 'Employee' means any individual who, under the
22 usual common law rules applicable in determining the
23 employer-employee relationship, has the status of an
24 employee.
25 (4) '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 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.

(5) 'Gross revenue' means the gross receipts, cash or accrued, of the taxpayer received as compensation for personal services not in the form of salaries or wages as defined in subsection (11) of this section, and the gross receipts of the taxpayer derived from trade, business, commerce, or sales and the value proceeding or accruing from the sale of tangible personal property, or services, or both, and all receipts, actual or accrued by reason of the capital of the business engaged in, including interest, rentals, royalties, fees, or other emoluments however designated and without any deductions on account of the cost of property sold, the cost of materials used, labor cost, taxes, royalties, or interest paid or any other expenses whatsoever. Gross revenue shall not include the following:

(a) refunds and rebates;
(b) moneys held in a fiduciary capacity;
(c) income in the form of wages and salaries which are taxed under other provisions of this chapter;

(d) sale payments received for the sale of a commercial aircraft, to the extent that such sale payments in any quarter shall equal the rental payments made to the buyer by the seller of such aircraft for its rental by seller;

(e) rental payments received for the rental of a commercial aircraft, to the extent that such rental payments in any quarter shall equal the sale payments made to the lessor by lessee of such aircraft for its purchase by the lessor;

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

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

(h) gross revenue derived solely from the
export sales of tangible personal property produced or
manufactured in the Federated States of Micronesia and
delivered to a buyer outside the Federated States of
Micronesia.

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

(7) 'Month' means calendar month.

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

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

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

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

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

(b) reasonable per diem and travel allowances to the extent that they do not exceed any comparable Federated States of Micronesia Government rates;

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

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

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

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

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

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

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

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

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

(12) 'Year' means calendar year."

Section 2. The "Presidential Declaration of Policy" dated
April 27, 1995, exempting from the gross revenue tax all goods
sold outside the FSM by businesses within the FSM, is hereby
revoked and superseded.

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

Date: 4/19/97

Introduced by: Joseph J. Urusmal
(by request)