AN ACT

To further amend title 54 of the Code of the Federated States of Micronesia, as amended, by adding a new chapter 3 to establish an income tax for corporations, and for other purposes.

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

Section 1. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new chapter 3 entitled "Income Tax Regime for FSM Corporations".

Section 2. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 311 of chapter 3 to read as follows:

"Section 311. Short title. This chapter may be cited as the 'Corporate Income Tax Act of 2004'."

Section 3. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 312 of chapter 3 to read as follows:

"Section 312. Definitions.

(1) 'Control group' for purposes of this chapter shall mean a corporation and its 80% or greater owned subsidiaries, its parent companies that own directly or indirectly 80% or more of the corporation, and the 80% or greater owned subsidiaries of such parent companies.

(2) 'Major Corporation' means any corporation that is subject to taxation under this chapter, specifically, any corporation that is not exempt from taxation by
section 313 of this chapter.

(3) 'Secretary' means the Secretary of the Department of Finance and Administration.

(4) 'Taxable Year' shall mean the fiscal year of the major corporation as reported to the Secretary under section 314 of this chapter."

Section 4. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 313 of chapter 3 to read as follows:

"Section 313. Applicability of this chapter. Taxes imposed under this chapter shall apply to all corporations incorporated in the Federated States of Micronesia unless:

(1) the corporation’s shareholder equity or paid-in capital as of the beginning of its fiscal year is less than $1,000,000; or

(2) the shareholder equity or paid-in capital of the corporation's control group is less than $10,000,000; or

(3) the corporation is principally engaged in business in the Federated States of Micronesia as a bank as such term is defined in 29 F.S.M.C. §102(1); or

(4) the corporation was formed under the laws of the Federated States of Micronesia prior to January 1, 2005."

Section 5. Title 54 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by adding a new section 314 of chapter 3 to read as follows:

"Section 314. Filing of report. A major corporation shall file an initial written report with the Secretary. The written report shall be signed by the authorized representative of the major corporation and shall state:

(1) the true and correct name of the major corporation;

(2) the taxpayer identification number or other identifying number, if any, of the major corporation;

(3) the mailing and office address of the major corporation;

(4) the name, address, telephone, and fax numbers of the authorized representative for the major corporation;

(5) the nature of the major corporation's principal business; and

(6) the last day of the major corporation's fiscal year.

The report shall be filed by the major corporation within sixty (60) days of the major corporation becoming subject to this chapter."

Section 6. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 315 of chapter 3 to read as follows:
"Section 315. Continued applicability of this chapter.
A major corporation subject to taxation under this chapter shall continue to be subject to taxation under this chapter through the last day of the taxable year in which it meets the criteria set forth in section 313 on any day of such taxable year."

Section 7. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 321 of chapter 3 to read as follows:

"Section 321. Tax imposed. A tax at the rate of twenty-five and a half percent (25.5%) is hereby imposed for each taxable year on the taxable income of every major corporation."

Section 8. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 322 of chapter 3 to read as follows:

"Section 322. Taxable income defined. The taxable income of a major corporation equals its income, before income taxes, earned in the taxable year as determined under Generally Accepted Accounting Principles (hereinafter, 'GAAP'), as GAAP is regularly utilized in the major corporation’s principal shareholder’s, if a corporation, place of incorporation or, if an individual, country of primary residence."

Section 9. Title 54 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by adding a new section 323 of chapter 3 to read as follows:

"Section 323. Exemption from Taxation of Gross Revenues. Any major corporation that is not engaging in business in the Federated States of Micronesia or a business operating in the Federated States of Micronesia pursuant to section 360 of this chapter and remits tax pursuant to section 321 of this chapter is exempt from the requirements of title 54, chapter 1, subchapter IV: Taxation of Gross Revenues, for each taxable year that the major corporation has remitted tax pursuant to section 321 of this chapter."

Section 10. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 331 of chapter 3 to read as follows:

"Section 331. Non-refundable credit for payment of foreign taxes. In the case of a major corporation, any income taxes paid or accrued on taxable income during the taxable year to a foreign country shall be allowed as a credit against the amount of tax imposed by section 321. In the case of a dividend received by a major corporation, a credit shall also be allowed against the amount of tax imposed by section 321 in an appropriate amount to reflect any income taxes the major corporation can demonstrate have been paid with respect to such
dividend to any foreign country or countries. In no case shall a major corporation, in any taxable year, be entitled to credits which, in the aggregate, exceed the amount of the tax imposed, for that taxable year, under the provisions of section 321 of this chapter. No foreign tax credit shall be permitted to create a refund or credit for overpayment of tax; but any amount of foreign tax not creditable by reason of this provision may be carried forward as a creditable foreign tax to each succeeding year until fully utilized subject to the same restrictions in the succeeding years."

Section 11. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 332 of chapter 3 to read as follows:

"Section 332. Refundable Credit for overpayment of tax. In the case of any overpayment by a major corporation of tax imposed by section 321, the amount of such overpayment shall be refunded to the major corporation or shall be applied to any tax liability owed by the major corporation to the Federated States of Micronesia."

Section 12. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 341 of chapter 3 to read as follows:

"Section 341. Change of Fiscal Year. A major
corporation may, at its option, change its fiscal year, provided that such a change may not be done more than once during any sixty (60) month period without the advance written consent of the Secretary."

Section 13. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 342 of chapter 3 to read as follows:

"Section 342. Method of accounting. The taxable income of a major corporation shall be computed under the method of accounting which the major corporation regularly computes its income. To the extent permitted by GAAP, a major corporation may compute its taxable income under any of the following methods of accounting:

(1) the cash receipts and disbursements method;

(2) an accrual method;

(3) any combination of the foregoing methods or any other method selected by the major corporation.

To the extent permitted by GAAP, a major corporation using any one of the above methods may, at its option, convert to another one of the above methods, provided that such a conversion may not be done more than once during any sixty (60) month period without the advance written consent of the Secretary."

Section 14. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new
section 351 of chapter 3 to read as follows:

"Section 351. Filing of annual returns. Every major corporation shall prepare and file with the Secretary an annual income tax return on a form approved by the Secretary, which annual income tax return shall be signed by the major corporation’s authorized representative. This form shall be filed with the Secretary, together with a copy of the major corporation’s audited financial statements in a form acceptable to the Secretary, by the last day of the sixth month period following the last day of the major corporation’s taxable year."

Section 15. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 352 of chapter 3 to read as follows:

"Section 352. Payment of tax due. Within 30 days of the last day of the major corporation’s taxable year, the major corporation shall pay its estimated amount of the tax due for that year (hereinafter, the 'estimated amount'). Any additional tax due as shown on the annual income tax return of the major corporation shall be paid by the last business day of the sixth month period following the last day of the major corporation’s taxable year. If the additional tax due as indicated on the annual income tax return is more than 10% of the
estimated tax amount paid, the major corporation shall also pay interest, compounded monthly and not in advance, on the additional tax due at the rate of two-thirds of one percent per month, or fraction of a month, from the date the estimated tax amount was due to the date the additional tax is paid."

Section 16. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 360 of chapter 3 to read as follows:

"Section 360. Engaging in business or operating a business in the Federated States of Micronesia. A corporation incorporated in the Federated States of Micronesia that only holds, buys, sells, transfers or otherwise transacts with assets or property located outside of the FSM, including but not limited to, businesses, shares, stocks, bonds, annuities, treasury bills, partnership units or trust units, is not engaging in business in the Federated States of Micronesia or a business operating in the Federated States of Micronesia for the purposes of section 323 of this chapter or title 32, chapter 2: the Foreign-Investment Act of the Code of the Federated States of Micronesia."

Section 17. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 370 of chapter 3 to read as follows:
"Section 370. Sections 114 to 115 and 151 to 157 of chapter 1 of this title also apply to the provisions of this chapter."

Section 18. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

DESIGNATED PL 13-71 DUE TO OVERRIDE

______________________________, 2004

Joseph J. Urusemal
President
Federated States of Micronesia