To further amend title 53 of the Code of the Federated States of Micronesia, as amended, by amending section 603 to exempt earnings from non-covered employment from the definition of earning test.

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

Section 1.  Section 603 of title 53 of the Code of the Federated States of Micronesia, as amended by Public Law Nos. 5-120, 7-118, 12-76, 14-37, 14-86, 15-73 and 16-10, is hereby further amended to read as follows:

"Section 603. Definitions. In this chapter, unless the context otherwise requires, the following definitions shall be applicable:

(1) 'Application' means the prescribed form or forms provided to individuals by the Social Security Administrator as the exclusive means by which an individual may apply for the payment of any benefit provided for in section 801, 802, 803 or 803A of this act.

(2) 'Became disabled' means the first month in which an individual is under a disability.

(3) 'Board' means the Federated States of Micronesia Social Security Board provided for by section 701 of this subtitle.

(4) 'Child or spouse' means an applicant that
the court of the State in which an individual was
domiciled at the time of his death has or would
find to be the individual's child or spouse in
determining the devolution of intestate personal
property. 'Child' shall include only the deceased
individual's biological children and such adopted
children whose confirmed petition for adoption by
the wage earner has been presented to the Social
Security Administration and who were adopted by the
wage earner on or prior to the wage earner's 55th
birthday of the adopting parent, shall be a 'child'
for the purposes of this title unless, the Social
Security Administrator makes a determination that,
due to exceptional circumstances, the person shall
be so entitled. In reaching a determination that
exceptional circumstances apply, the Social
Security Administrator shall satisfy himself or
herself that future eligibility for social security
benefits was not a significant factor in the
decision to adopt and may consider any available,
relevant information including, but not limited to:

(a) whether the adopted child's
biological mother, and/or biological father were
alive at the time the adoption took place;

(b) if one or both biological parents
were alive at the time of adoption, whether one or both parents were acting or were capable of acting as a primary caregiver at that time;

(c) whether the adopting parent is a relative of the adopted child;

(d) whether, at the time the adoption took place, there were relatives, not including the adopting parents, who would have been appropriate guardians for the adopted child;

(e) whether the adopting parent was a primary caregiver for the adopted child at the time of adoption and continued in that role after the adoption took place;

(f) any other factor the Social Security Administrator considers relevant.

(5) 'Contributions' means the tax imposed upon income of covered employees and the tax imposed upon employers on account of wages paid to a covered employee.

(6) 'Disability' means inability to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.
(7) 'Earning test' means that an individual who receives a retirement, disability, or survivor benefit and who works in covered [or non-covered] employment shall have his quarterly benefit reduced by one dollar for each two dollars earned in a quarter, except there shall be no reduction for the first $300 earned in a quarter. The reduction shall be applied in one of the subsequent two quarters immediately after the quarter in which the earnings were made, or as soon as possible thereafter. All benefit recipients have an affirmative duty to disclose to the FSM Social Security Administration all earnings from [either] covered [or non-covered] employment for which time they are receiving or claiming benefits. Under certain circumstances as defined in section 804, the earnings test may not apply to old age benefits received by an individual between the ages of 60 and 64 who turns 60, after January 1, 2011.

(8) 'Employee' means:

(a) any officer of a corporation; or

(b) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or
(c) any self-employed person who has at least one employee for whom he is required to report in a given quarter; or
(d) any self-employed person who had more than $10,000 of annual gross revenue in the preceding calendar year.

(9) ‘Employer means:
(a) For purposes of this act, employer means the person, business organization or other organization, or national or state or municipal government or agency, that pursuant to common law rules of employment is the actual person or organization responsible for the formation and continuation of the working relationship with employee.
(b) The Social Security Administration has the right to determine the actual employer of employees for purposes of implementing this act, and need not rely on the characterization provided.
(c) Employer may be an individual, partnership, corporation or other type of business venture or non-business organization, national or municipal or state organization or agencies thereof, and which in certain circumstances may be more than one, that is responsible for the payment
of all Social Security taxes. For partnerships, the liability shall be joint and several among all partners. For other types of business or non-business organizations that are not corporations, the liability shall be joint and several as if the organization was a common law partnership. For corporations, if the corporation fails to meet its tax obligations when due, the liability shall be joint and several between the president of the corporation, and all shareholders with greater than a 30% interest in the corporation. Under this definition all such persons are jointly defined as the employer, for all purposes including the implementation of criminal penalties.

(10) 'Employment, covered' or 'covered employment' means any service by an employee for an employer incorporated or doing business within the Federated States of Micronesia employing him, irrespective of where such employment is performed, except family employment.

[(11) 'Employment, non-covered' or 'non-covered employment' means any employment engaged in by an employee where coverage is statutorily exempt in the Federated States of Micronesia, family employment, or employment by an employee outside of]
'Family employment' means employment of a worker by a member of the household, a parent or a son or daughter except that the worker may apply to the Board for a determination that such employment is bona fide covered employment subject to this subtitle.

'Insured status' can mean any of the following:

(a) 'Currently insured individual' means any individual who has had not less than 20 quarters of coverage during the 25 quarter period ending with:

   (i) the quarter in which he died; or
   (ii) the quarter in which he became entitled to old age insurance benefits at age sixty (60);
   (iii) the quarter in which he became disabled, whichever occurs first.

(b) For individuals who qualified as a currently insured person prior to December 31, 2006, the number of quarters to qualify as a currently insured person was not less than eight quarters of coverage during the thirteen quarter
period ending with:

(i) the quarter in which he died;

or

(ii) the quarter in which he became entitled to old age insurance benefits at age sixty (60);

(iii) the quarter in which he became disabled, whichever occurs first.

(c) 'Fully insured individual' means any individual whose total cumulative quarters of coverage are at least as great as the number of years calculated from the later of the date the worker turned age twenty-one (21), or June 30, 1968, to the date the worker attains age sixty (60), dies or becomes disabled. For this purpose, partial years shall be counted as whole years (for example 37.25 years would be rounded up to 38 years). In no case shall an individual be a fully insured individual unless he has at least 12 quarters of coverage:

(i) For individuals who attain age sixty (60), die or become disabled on or before December 31, 2006, no more than thirty-eight (38) quarters of coverage are required to be fully insured and there is no minimum amount required for
employee contributions to the Social Security System.

(ii) For individuals who turn sixty (60) or die after December 31, 2006, no more than fifty (50) quarters of coverage and employee contributions to the Social Security System of at least $2,500 are required to be fully insured. Should an individual’s employee contributions total less than $2,500 as of the date of termination of employment or death, the individual or their surviving spouse may pay the difference to the FSM Social Security Administration in a single sum payment in order to become fully insured. The surviving children will be eligible for benefits so long as the individual was currently insured at the time of the individual’s death.

(iii) For individuals who become disabled after December 31, 2006, no more than 45 quarters of coverage and employee contributions to the Social Security System of at least $1,500 are required to be fully insured. Should an individual’s employee contributions total less than $1,500 as of the date of termination from employment, the individual may pay the difference to the FSM Social Security Administration in a
single sum payment in order to become fully insured:

(d) ‘Fully insured status’ means:

(i) For individuals who turn sixty (60) or die after January 01, 2010, shall have total cumulative quarters of coverage equaling fifty (50) quarters of coverage or greater, and employee contributions to the Social Security System of at least $2,500 are required to be fully insured. Employee contributions are the contributions defined in section 901 only. Should an individual’s employee contributions total less than $2,500 as of the date of qualification as a fully insured individual, the individual or their surviving spouse may pay the difference to the FSM Social Security Administration in a single sum payment in order to be fully insured. If the individual or the surviving spouse is unable to pay the difference on the minimum contribution, the individual or surviving spouse can opt for lump sum payment equal to the total employee contribution.

(ii) ‘Fully insured’ means for individuals who become disabled on or after January 1, 2010, at least forty-five (45) quarters of coverage are needed to be defined as fully insured,
and they must also meet the definition of currently insured at the time of the onset of their disability. Additionally, employee’s contributions to the Social Security System of at least $1,500 are required to be fully insured. Should an individual’s employee contribution total less than $1,500 as of the date of disability, the individual may pay the difference to the FSM Social Security Administration in a single lump sum payment in order to be fully insured.

(13) ‘Quarter’ and ‘calendar quarter’ mean a period of three calendar months ending on March 31st, June 30th, September 30th, or December 31st. ‘Quarter of coverage’ means a quarter in which the individual has been paid $300 or more in wages in covered employment subject to this subtitle.

(14) ‘Wages’ means remuneration paid subject to the provisions of this subtitle, including the cash value of all remuneration paid in any medium other than cash and remuneration accruing to a self-employed person. Remuneration accruing to a self-employed person shall be deemed to be twice the amount paid to the highest paid employee reported by the self-employed person in a
quarter, with a maximum of $3,000 per quarter through September 30, 2003 and a maximum of $5,000 per quarter beginning October 1, 2003. This maximum quarterly amount shall increase to $6,000 on January 1, 2008, $7,000 on January 1, 2013, $8,000 on January 1, 2018, $9,000 on January 1, 2023, and $10,000 on January 1, 2028. Remuneration accruing to a self-employed person who has no covered employees shall, for each quarter of a year, be deemed to be five (5) percent of the gross revenue of the business or gross revenue of all businesses for the previous calendar year, subject to a $3,000 maximum per quarter through September 30, 2003 and a maximum of $5,000 per quarter beginning October 1, 2003. This maximum quarterly amount shall increase to $6,000 on January 1, 2008, $7,000 on January 1, 2013, $8,000 on January 1, 2018, $9,000 on January 1, 2023, and $10,000 on October 1, 2028. Remuneration paid for any service, which is more or less than a whole dollar shall, as may be prescribed by regulations, be computed to the nearest dollar. Wages shall not include:

(a) that part of remuneration in excess of $3,000 through September 30, 2003 and in excess
of $5,000 beginning October 1, 2003, in excess of $6,000 beginning January 1, 2008, in excess of $7,000 beginning January 1, 2013, in excess of $8,000 beginning January 1, 2018, in excess of $9,000 beginning on January 1, 2023, and in excess of $10,000 beginning on January 1, 2028, paid in a quarterly reporting period by one employer;

(b) any payment on account of sickness or accident disability, or medical or hospitalization expenses made by an employer to or on behalf of an employee;

(c) any payment made to or on behalf of an employee or to the employee's beneficiary from a trust or annuity;

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

(e) remuneration paid for casual or intermittent labor not performed in the course of the employer's trade or business when such employment does not exceed employment in more than one week in each calendar month of each quarterly reporting period; and

(f) remuneration from family employment
subject to the provisions of this subtitle.”

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: 11/30/09

Introduced by: /s/ Setiro Paul

Setiro Paul

/s/ Tony H. Otto

Tony H. Otto