A BILL FOR AN ACT

To further amend chapter 3 of title 54 of the Code of the Federated States of Micronesia, as amended, by further amending section 312, as amended by Public Law No. 14-110, section 313, as amended by Public Laws Nos. 14-110 and 16-19, section 321, as amended by Public Law No. 16-36, section 322, section 331, section 342, section 351, as amended by Public Law No. 14-110, section 352, and section 370, and by enacting new sections 371, 372, 373, 374, 375, 376, 377, 378, to make procedural changes to the corporate tax in order to make it more attractive to potential taxpayers, and for other purposes.

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

1. Section 312 of title 54 of the FSM Code, as enacted by Public Law No. 13-71 and amended by Public Law No. 14-110, is hereby further amended to read as follows:

"Section 312. Definitions.

(1) 'Control group' of a corporation for purposes of this chapter shall mean a group of corporations [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] comprising of:

(a) the corporation,

(b) other corporations in which the corporation owns directly or indirectly 80% or more of the shares,

(c) other corporations that own directly or indirectly 80% or more of the shares of the corporation, and,

(d) corporations other than the corporation described in paragraph (a) of this section or
corporations described in paragraph (b) of this section, or corporations where 80% or more shares are owned directly or indirectly by the corporations described in paragraph (c) of this section.

(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 1 of this chapter.] not principally engaged in business in the Federated States of Micronesia as a bank (as such term is defined in title 29 of the Code of the Federated States of Micronesia, section 102(1)), formed on or after January 1, 2005, and,

(a) whose shareholders equity or paid-in capital as of the beginning of its fiscal year is $1,000,000 or more; or

(b) the aggregate amount of the shareholders equity or paid-in capital of the control group is $10,000,000 or more; or

(c) that is a captive insurance company licensed pursuant to title 37 of the Code of the Federated States of Micronesia regardless of the amount of capitalization.

(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.

(5) ‘Paid-in Capital’ for purposes of this chapter shall mean the total amount of consideration contributed to the company for the issuance of shares."

Section 2. Section 313 of title 54 of the FSM code, as enacted by Public Law No. 14-110 and amended by Public Law No. 16-19, is hereby further amended to read as follows:

"Section 313. Applicability of this chapter. Taxes imposed under this chapter shall apply to all major 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 title 29 of the Code of the Federated States of Micronesia section 102(1); or

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

Section 3. Section 321 of title 54 of the FSM Code, as enacted by Public Law No. 13-71 and amended by Public Law No. 16-36, is hereby further amended to read as follows:

“Section 321. Tax Imposed. A tax at the rate of twenty-one percent (21 percent) is hereby imposed for each taxable year on the taxable income of every major corporation. For all major corporations' taxable year ending on or before March 30, 2011, 25.5% tax rate shall apply to the entire taxable year. For all major corporations' taxable year ending on or after March 31, 2011, 21% tax rate shall apply to the entire taxable year.”

Section 4. Section 322 of title 54 of the FSM Code, as enacted by Public Law No. 13-71, is hereby amended 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 International Financial Reporting Standard (hereinafter, ‘IFRS’) or Generally Accepted Accounting Principles (hereinafter, 'GAAP'), as IFRS or GAAP, as the case may be, is regularly utilized to calculate taxable income in the major corporation’s principal
Section 5. Section 331 of title 54 of the FSM Code, as enacted by Public Law No. 13-71, is hereby amended to read as follows:

"Section 331. Non-refundable credit for payment of foreign taxes.

(1) 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.

(2) 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.

(3) 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.

(4) 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. In no
event, however, shall any such foreign tax credit be
carried forward more than seven (7) years.”

Section 6. Section 342 of title 54 of the FSM Code, as
enacted by Public Law No. 13-71, is hereby amended 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 IFRS or GAAP, as
applicable, 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 IFRS or GAAP, as applicable, 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 7. Section 351 title 54 of the FSM Code, as enacted
by Public Law No. 13-71 and amended by Public Law No. 14-110, is hereby further amended 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 financial statements and any other required information or documents as prescribed by the Secretary in regulations, 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. [A major corporation must submit the most recent audited financial statement of any corporation that owns more than 50% of that major corporation. Audited financial statements are not required from individual owners of a major corporation or from corporations that own 50% or less of a major corporation.”

Section 8. Section 352 of title 54 of the FSM Code is hereby further amended to read as follows:

“Section 352. Payment of tax due. Taxes shall be paid as follows:

All major corporations shall, for their fiscal year
starting on or after April 1, 2010 pay fifty percent (50%) of the tax it paid for the income of previous fiscal year to the FSM by the end of the eighth (8th) month of the current fiscal year. If a major corporation does not have a previous fiscal year to determine its fifty percent tax payment because it is newly formed or is redomesticating in the FSM, the major corporation shall make a payment of fifty percent (50%) of their estimated tax liability of the current fiscal year at the end of the 8th month of the current fiscal year. The remaining fifty percent (50%) it paid for the previous fiscal year or of the estimated tax liability of the current fiscal year, as the case may be, shall be paid by the last business day of the second month period following the last day of the major corporation’s fiscal year. [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] fiscal year. If the additional tax due as indicated on the annual income tax return filed by a newly formed corporation or a
redomesticated corporation is more than ten percent (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 9. Section 370 of title 54 of the FSM Code, as amended, is hereby further amended 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.] Regulations.

(1) The Secretary shall, subject to approval of the President of the Federated States of Micronesia, prescribe and have printed reasonable regulations for the enforcement of this chapter and such regulations shall have the force and effect of law if they are not in conflict with the express provisions of this chapter or other laws of the Federated States of Micronesia.

(2) Such regulations shall also provide for the making of returns concerning any taxes imposed by this chapter, and the payment thereof, in any situations not specifically covered by this chapter.”

Section 10. Chapter 3, title 54, of the FSM code, as amended, is hereby further amended by inserting a new section 371
to read as follows:

"Section 371. Tax returns — Information required.

(1) The Secretary shall prescribe the forms of all returns required to be furnished under the provisions of this chapter or provide for other methods of filing returns and may provide in such forms for the giving of such information as he may deem necessary or advisable.

(2) All information required by the form of any return must be included in the return by the person, employer, company, or business responsible for making the return.

(3) No return shall be complete unless and until it is signed by or for the employer, business or other person liable to make the return, or by someone authorized to do so in behalf of such employer, business, or other person. Every return shall be signed by a natural person.

(4) The Secretary may require that, if any person or persons actually prepare or sign a return for another employer, business, or other person, a form stating such facts and authorizing such person to sign such return be signed by the person so preparing or signing the return, and the employer, business, or other person in whose name the return is filed.

(5) The Secretary may by regulations define the classes of persons to whom this provision shall apply.
(6) Any other provision of law to the contrary notwithstanding, no oath shall be required upon any tax return.

(7) Revenue shall be identified by the State or States in which it is earned.”

Section 11. Chapter 3, title 54, of the FSM code, as amended, is hereby further amended by inserting a new section 372 to read as follows:

“Section 372. Records, Inspection and Audit.
All persons, employees, and businesses required to make and file returns under this chapter shall keep and maintain accurate records, and the records may be inspected and audited at any reasonable time by the Secretary for the purpose of administering the provisions of this chapter.”

Section 12. Chapter 3, title 54, of the FSM code, as amended, is hereby further amended by inserting a new section 373 to read as follows:

“Section 373. Tax assessment on failure to file or pay.
(1) Upon the failure of any person, business, or employer to make and file a return required by this chapter within the time and in the manner and form prescribed, or upon failure to pay any amount due, the Secretary may notify such person, business, or employer of such failure and demand that a return be made and
filed and the tax paid as required by this chapter.

(2) If such person, business, or employer upon notice and demand by the Secretary fails or refuses within 30 days after receipt of said notice and demand to make and file a return and pay the tax required by this chapter, the secretary may make a return for such person, business, or employer from any information and records obtainable, may file a notice of lien pursuant to the Secured Transactions Act, and may levy and assess the appropriate amount of tax.

(3) Such assessment shall be presumed to be correct unless and until it is proved incorrect by the person, business, or employer disputing the amount of the assessment.

(4) In no event, however, shall any tax assessment, demand for filing a return, or demand for payment be made after seven years (7) of such time for filing a return or for payment of taxes in the manner and form prescribed.”

Section 13. Chapter 3, title 54, of the FSM code, as amended, is hereby further amended by inserting a new section 374 to read as follows:

“Section 374. Lien on property.

All taxes imposed or authorized under this chapter shall be a lien upon any property of the person or business
obligated to pay said taxes and may be collected by levy
upon such property in the same manner as the levy of an
execution.”

Section 14. Chapter 3, title 54, of the FSM code, as
amended, is hereby further amended by inserting a new section 375
to read as follows:

“Section 375. Criminal penalties.
Any person or business convicted under the provisions of
this chapter shall be fined not more than $1,000, or, if
a natural person, imprisoned not more than one year, or
both.”

Section 15. Chapter 3, title 54, of the FSM code, as
amended, is hereby further amended by inserting a new section 376
to read as follows:

“Section 376. Civil penalties.
The criminal penalties imposed by section 375 of this
chapter for violation of provisions of this chapter
shall be separate from, and in addition to, all other
penalties or interest provided for in this section. The
following civil penalties are hereby levied and shall be
assessed and collected by this Secretary:

(1) Failure to file return on time. If any taxpayer
fails to make and file a return required under this
chapter on or before the date set, unless prior to that
date such taxpayer applied for and received an extension
for reasonable cause, one percent of the tax shall be added for each 30 days or fraction thereof elapsing between the due date of the return and the date on which it is actually filed; provided, however, that the minimum penalty under this subsection shall be five dollars and the maximum penalty under this section shall be 25 percent of the tax due.

(2) Failure by employer to file statement. Any employer required to furnish a written statement who willfully failed to file such statements on the date prescribed thereof, except with regard to any extension of time for filing, shall be subject to a five dollar penalty for each such statement not so filed.

(3) Failure to file after demand. Where taxpayer fails to file return and pay tax after demand in any case where the Secretary makes a return and assesses a tax after a taxpayer’s failure or refusal to make and file a return and pay the tax required by this chapter, 10 percent of the tax assessed, in addition to the penalties of subsection (1) of this section, shall be added thereto.

(4) False and fraudulent returns. If any part of any deficiency is due to fraud with intent to evade the tax, or any portion thereof, 50 percent of the total amount of such deficiency, in addition to the penalties
provided in subsections (1), (2), and (3) of this section, shall be assessed and added to the deficiency assessment.

(5) Interest. If any tax imposed by this chapter is not paid on or before the date prescribed for such payment, there shall be collected, in addition to such tax and any penalties assessed, interest on the unpaid balance of the tax principal at the rate of six percent per annum from its due date until the date it is paid.”

Section 16. Chapter 3, title 54, of the FSM code, as amended, is hereby further amended by inserting a new section 377 to read as follows:


(1) If a decision of the Secretary is adverse to the taxpayer, in whole or in part, the taxpayer shall have the right within one year from the date of such decision to institute an action for review, irrespective of the amount, in a Court of competent jurisdiction in the Federated States of Micronesia. Such action shall be commenced by filing a petition setting forth assignments of all errors alleged to have been committed by the Secretary in his determination of the assessment, the facts relied upon to sustain such assignments of errors, and a prayer for appropriate relief. The Secretary or his successor in office shall be the defendant in such
1 proceedings.
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3 (2) When the decision of the Court or an appeal therefrom becomes final, the Secretary shall, upon presentation of a certified copy of the decree, make such adjustments as are necessary to correct, amend, or abate the assessment, and to determine whether any additional amount should be assessed.
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5 (3) Where the assessment is paid, in whole or in part, after the filing of the petition, the Court shall not thereby be deprived of jurisdiction.“
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7 Section 17. Chapter 3, title 54, of the FSM code, as amended, is hereby further amended by inserting a new section 378 to read as follows:
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9 “Section 378. Summons.
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11 (1) For the purposes described under sections 372 and 804 of this title, the Secretary shall be authorized to summon the person or persons liable for tax under this title to appear before the Secretary or his designee and at such appearance to produce such documents and to give such testimony as specified in the summons.
12
13 (2) The provisions of subsection (1) of this section shall also apply to any officer or employee or agent of such person or persons described in subsection (1) of this section, or any third party having possession, custody, or care of books of accounts relating to the
business of the person or persons liable for tax under this title."

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.

Date: 9/24/10

Introduced by: /s/ Joe N. Suka
Joe N. Suka
(by request)