A BILL FOR AN ACT

To further amend title 54 of the Code of the Federated States of Micronesia, as amended, by amending section 112, as amended by Public Law Nos. 10-93, 10-149, 12-18, 14-40, and 14-90, and section 141, as amended by Public Law No. 14-90 for the purpose of providing a tax break to new businesses, and for other purposes.

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

Section 1. Section 112 of title 54 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 10-93, 10-149, 12-18, 14-40, and 14-90, is hereby amended to read as follows:

"Section 112. Definitions. Wherever used in this chapter, unless the subject matter, context, or sense otherwise requires:

(1) 'Business' means any profession, trade, manufacture, or other undertaking carried on for pecuniary profit and includes all activities whether personal, professional, or incorporated, carried on within the Federated States of Micronesia for economic benefit either direct or indirect, and excludes casual sales, as determined by the Secretary; however, one who qualifies as an employee under this section shall not be considered as a business. Copra production by unincorporated copra producers collectively or severally shall not be included as a business under this definition."
(2) 'Commercial aircraft' means any aircraft capable of and intended for use in commercial aviation.

(3) 'Employee' means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

(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 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, 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) wages and salaries, received by the
taxpayer, 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/lessor by the
seller/lessee of such aircraft for its rental by the
seller/lessee;
(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 seller/lessee by the buyer/lessor of such
aircraft for its purchase by the buyer/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

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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';

(g) funds 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;

(h) proceeds of 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;

(i) proceeds of sales of products of a processing facility in the Federated States of Micronesia which are subsequently exported from, and not used in, the Federated States of Micronesia;

(j) proceeds of sales of fish by foreign or domestic fishing vessels to processing facilities within the Federated States of Micronesia; or

(k) proceeds of sales of bait fish to foreign or domestic fishing vessels.

(l) proceeds from (i) recycling waste paper,
plastic, aluminum, tin or other scrap metal, or glass so that such materials may be re-used, (ii) removing such waste materials, motor vehicles, appliances, batteries, paint or toxic chemicals from the Federated States of Micronesia for disposal or recycling; or (iii) collecting such waste materials, motor vehicles, appliances, batteries, paint or toxic chemicals for the purposes of removal from the Federated States of Micronesia for recycling or disposal.

(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) 'Taxable Gross Revenues' shall mean, for any tax period, the figure calculated by deducting from the Gross Revenues for the period, the following expenses of the business for that period:

(a) wages, salaries and benefits reasonably paid by the taxpayer to or on behalf of employees of the business for personal services relating to producing the Gross Revenues, as such wages and
salaries are reported pursuant to subchapter III of chapter 1 of title 54 of the Code of the Federated States of Micronesia; and

(b) Social Security contributions by the business in respect of its employees pursuant to section 902 of title 53 of the Code of the Federated States of Micronesia.

(9) 'Processing facility' means a business that prepares, alters, and/or packages raw materials into a finished product for resale.

(10) '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.

(11) '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.

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

(13) 'Start-up period’ means the period of five (5) years following the commencement of business.
operation of a new business. A mere change of
ownership, change of name, change of scope of
business operation, or the like, does not entitle a
business to a start-up period.

(Wages' or 'Salaries' means and includes
commissions, fees, compensation, emoluments, bonuses,
and every and all other kinds of compensation paid
for, or 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) any payment 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;

(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) any payment received by a minister of the gospel or clergyman from a religious group or organization;

(j) any payment received by an employee for services performed as a domestic or household employee for a private individual or family;
(k) any payment 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; or

(l) the foreign service premium authorized by section 163 of title 52 of the Code of the Federated States of Micronesia.

(15) 'Year' means calendar year."

Section 2. Section 141 of title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 14-90, is hereby, further amended to read as follows:

"Section 141. Tax on gross revenues; Exemption.

(1) There shall be assessed, levied, collected, and paid a tax of $80 per year upon that portion of the amount of taxable gross revenues earned by every business subject to the provisions of this chapter which does not exceed $10,000 per year.

(2) There shall be assessed, levied, collected, and paid a tax of three percent per year upon that
portion of the amount of taxable gross revenues earned by every business subject to the provisions of this chapter which is in excess of $10,000 per year.

(3) Businesses which earn gross revenues of not more than $2,000 per year are exempt from taxation under this section. The deduction shall be claimed by the business by filing for a refund under the provisions of sections 122 and 123 of this chapter.

(4) For the purpose of section 805 of this title, every business that operates in more than one State of the Federated States of Micronesia shall file a separate tax return for revenue collected in each State.

(5) Any business operating within its start-up period, as defined in section 112, is exempt from taxation under this section in any quarter for which the business’s taxable gross revenue for that quarter do not exceed $12,500. A business operating within its start-up period is entitled to a deduction at the time of filing its gross revenues tax return as required by section 143. Such deduction shall be in the amount of the business’s taxable gross revenue as reported on the business’s gross revenues tax return. Nothing in this subsection shall exempt a business from any penalties or interest provided for in this
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: 1/28/11

Introduced by: /s/ Dion G. Neth

Dion G. Neth