A BILL FOR AN ACT

To amend sections 312, 313, 314, 322, 331 and 352 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 13-71, and as amended by Public Law Nos. 14-110, 16-19, 16-52 and 17-73, to include Major FSM Branches, and for other purposes.

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

Section 1. Section 312 of title 54 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 14-110 and 16-52, 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 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 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] or Paid-in [capital] 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] Paid-in [capital] 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) ‘Major FSM Branch’ means any corporation 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)) authorized by law to issue stock, organized under laws other than the laws of the Federated States of Micronesia for a purpose or purposes for which a corporation may be organized under the laws of the Federated States of Micronesia, section 102(1).
which has a Permanent Establishment in the Federated States of Micronesia and whose Paid-in Capital as of the beginning of its fiscal year is $1,000,000 or more.

(\[3\]4) ‘Permanent Establishment’ means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(\[4\]5) ‘Secretary’ means the Secretary of the Department of Finance and Administration.

(\[5\]6) ‘Taxable Year’ shall mean the fiscal year of a Major Corporation for Major FSM Branch, as the case may be, as reported [to the Secretary] under section 314 of this chapter.

(\[6\]7) ‘Paid-in Capital’ for purpose of this chapter shall mean: (I) in the case of a Major Corporation, the total amount of consideration contributed to the company for the issuance of shares[-]; and (II) in the case of a Major FSM Branch, the total amount of Domestic Capital (as defined in section 314(2)) registered with the Registrar of Corporation.”

Section 2. Section 313 of title 54 the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 14-110, 16-19 and 16-52, is hereby further amended to read as follows:

“Section 313. Applicability of this chapter. Taxes imposed under this chapter shall apply to all [\[m\]Major [e]Corporations [incorporated in] as defined in section
312. In case of conflict, this chapter shall prevail over other laws or regulations of the Federated States of Micronesia [as defined in section 312].

Section 3. Section 314 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Laws Nos. 13-71, is hereby amended 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) A [m]Major [e]Corporation that is a Domestic [e]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]a) the true and correct name of the [m]Major [e]Corporation;

([2]b) the taxpayer identification number or other identifying number, if any, of the [m]Major [e]Corporation;

([3]c) the mailing and office address of the [m]Major [e]Corporation;

([4]d) the name, address, telephone, and fax numbers of the authorized representative for the [m]Major [e]Corporation;
([e]) the nature of the [Major] Corporation’s principal business; and

([f]) 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."

(2) Every Foreign Corporation which undertakes to do or carry on business in the Federated States of Micronesia as a Major Corporation shall be permitted to do so upon:

(a) remitting the sum of $1,000,000 or more (or its equivalent in another currency) to a commercial bank licensed to business in the Federated States of Micronesia, hereinafter referred to as a “Licensed Bank”, as initial capital for the purpose of doing or carrying on business in the Federated States of Micronesia;

(b) registering such amount as its initial domestic capital (“Domestic Capital”) by filing with the Registrar of Corporations a copy of a statement prepared by such Licensed Bank duly confirming its receipt from the corporation of such Domestic Capital;

(c) filing with the Registrar of Corporations a declaration stating:

(i) the true and correct name of the
corporation;

(ii) the state or country wherein it was incorporated;

(iii) the location and address of its principal office;

(iv) the location and address of its branch office in the Federated States of Micronesia, including its mailing address;

(v) the names and addresses of its officers and directors;

(vi) the nature of the corporation’s principal business (unless otherwise stated in the Certificate of Incorporation, Charter, Articles of Association or equivalent document to be filed pursuant to paragraph (d) of this subsection);

(vii) the names and addresses of its officers and directors;

(viii) the nature of the corporation’s principal business unless otherwise stated in the certificate of Incorporation, Charter, Articles of Association or equivalent document to be filed pursuant to paragraph (d) of this subsection);

(ix) its Domestic Capital which shall be $1,000,000 or more;

(x) the name and branch address of the
Licensed Bank which received the Domestic Capital;

(xi) the name, citizenship and business address of the person residing within the Federated States of Micronesia upon whom legal notice and process from the courts of the Federated States of Micronesia, or notices from officials of the Federated States of Micronesia, may be served;

(xii) the last day of the corporation’s fiscal year; and

(d) filing with the Registrar of Corporations a copy of the corporation’s Certificate of Incorporation, Charter, Articles of Association or equivalent document.”

Section 4. Section 322 of title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 16-52, is hereby further amended to read as follows:

“Section 322. Taxable income defined. The taxable income of a Major Corporation equals: (I) in the case of a Domestic Corporation, 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 Corporation...
corporation’s principal shareholder’s, if a corporation, place of incorporation or, if an individual, country of primary residence.; and (II) in the case of a Foreign Corporation, its income, before income taxes, earned in the taxable year as determined under IFRS or GAAP, as IFRS or CAAP, as the case may be, is regularly utilized to calculate taxable income in the corporation’s place of incorporation, and attributable to a Permanent Establishment in the FSM through which the corporation carried on its business.”

Section 5. Section 331 of title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 16-52, is hereby further amended to read as follows:

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

(1) In the case of a domestic (but not a foreign) 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 [m]Major [e]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 352 of title 54 of the Code of the
Federated States of Micronesia, as amended by Public Law No.
16-52 and 17-73, is hereby further amended to read as follows:

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

(1) A [m]Major [e]Corporation shall, pay fifty percent
(50%) of the tax it paid for the income of the previous
fiscal year, if any, hereinafter referred to as “Tax
Deposit”, to the FSM by the end of the eighth (8th) month
of the current fiscal year. This is unless the Major
Corporation requests a reduction or waiver as the Tax Deposit is rendered unnecessary because the expected tax payable in the current fiscal year is less than the amount of the Tax Deposit. Reduction or waiver of the Tax Deposit is subject to approval by the Secretary; however, such approval must not be unreasonably withheld.

(2) A Corporation which pays an amount less than the Tax Deposit shall pay interest on the delinquent tax balance of one-half of one percent (0.5%) for each full month until the full amount is paid unless approval is granted under subsection (1) of this section).

(3) A Corporation that does not have a previous fiscal year to determine its Tax Deposit [either] because it is newly formed [or] is redomesticating into the FSM[?] or newly created a Permanent Establishment in the FSM, shall be exempt from the payment of Tax Deposit and any filing requirements pertaining to the Tax Deposit.

(4) A Corporation shall complete and submit to the Department of Finance and Administration an annual statement declaring the taxable income with permitted deductions and exemptions, hereinafter referred to as “Tax Return”, by the last business day of
the sixth month period following the last day of the Major Corporation’s fiscal year. The annual statement shall be accompanied by one of the following:

(a) Any additional tax payment, after the subtraction of the Tax Deposit, due as shown on the 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 fiscal year.

(b) If the Major Corporation pays, including the Tax Deposit by the end of the eighth (8th) month during the fiscal year, as per sub-section [A] above, an amount less than the tax due as shown on the annual tax return by the last business day of the six month period following the last day of the Major Corporation’s fiscal year, it shall pay interest on the delinquent tax balance of one half of one percent (0.5%) for each full month until the full amount is paid.

(5) Should the Tax Deposit paid by the Major Corporation exceed the total annual income tax amount shown on the Tax Return resulting in overpayment of tax, then the Major Corporation shall be entitled to their rights conferred under section 332, chapter 3 of title 54 of the Code of the Federated States of
Micronesia. The [_major corporation shall apply to the Department of Finance and Administration for either of the following tax treatment options provided under Section 332 by indicating their choice in the Tax Return form:

(a) To have the overpaid tax amount refunded in full, in which case, the Department of Finance and Administration shall credit the [major corporation’s bank account within a two (2) month period from the last business day of the sixth month period following the last day of the [major corporation’s fiscal year;

(b) To have the overpaid tax amount credited to any tax payments by the [major corporation to the Federated States of Micronesia.”

Section 7. Section 360 title 54 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 16-52 and 17-73, is hereby further amended to read as follows:

“Section 360. Engaging in business or operating a business in the Federated States of Micronesia. A major corporation incorporated in the Federated States of Micronesia or a major FSM Branch that only holds, buys, sell, 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] overseas Assets (as defined below) 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. For the purposes of this section 360, “Overseas Assets” means assets or property located outside of the Federated States of Micronesia, including but not limited to, businesses, shares, stocks, bonds, annuities, treasury bills, partnership units or trust units, real estate, precious metals, antiques and art.|

Section 8. 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: _______ Introduced by: ____________________________

Florencio S. Harper (by request)