A BILL FOR AN ACT

To further amend title 54 of the Code of the Federated States of Micronesia, as amended, by creating a new chapter 5 to establish the Net Profit Tax Act of 2013, 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 creating a new chapter 5 entitled “Taxation of Net Profits.”

Section 2. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby amended by creating a new subchapter I under chapter 5 entitled “General Provisions.”

Section 3. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 511 to subchapter I of chapter 5 to read as follows:

“Section 511. Short title. This chapter may be cited as the ‘Net Profit Tax Act of 2013’.”

Section 4. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 512 to subchapter I of chapter 5 to read as follows:

“Section 512. Definitions.

Wherever used in this chapter, except where otherwise specified, unless the subject matter, context, or
sense otherwise requires:

(1) ‘Associate’ has the meaning in section 515 of this title.

(2) ‘Business’ includes any profession, trade, manufacturing, or other undertaking carried on for pecuniary profit, but not including employment.

(3) ‘Business asset’ means an asset, whether of revenue or capital nature, used in carrying on a business, including inventory, a depreciable asset, an intangible, or goodwill.

(4) ‘CEO’ means the Chief Executive Officer appointed under section 731 of this title.

(5) ‘Consideration received’, in relation to a business asset, has the meaning attributed to it in section 553 of this title.

(6) ‘Corporation’ includes corporations and companies authorized to issue stock and any other business associations that limit the liability of individual owners.

(7) ‘Cost’, in relation to a business asset, has the meaning attributed to it in section 552 of this title.

(8) ‘Depreciable asset’ means any tangible personal property or that portion of a structural improvement to real property that:
(a) has a useful life exceeding one year; 
(b) is likely to lose value as a result of normal wear and tear, or obsolescence; and 
(c) is used solely to derive gross revenue. 

(9) ‘Disposal’, in relation to a business asset, has the meaning in section 551 of this title. 

(10) ‘Distribution’, in relation to an entity, includes a distribution of profits or entitlement to income by an entity to a member of the entity. 

(11) ‘Employee’ means any individual who, under the usual common law rules applicable in the FSM in determining an employer-employee relationship, has the status of an employee, and includes the holder of an office. 

(12) ‘Employment’ means an employer-employee relationship as determined under the usual common law rules applicable in the FSM and includes activities performed as the holder of an office. 

(13) ‘Entertainment’ means the provision of food, beverages, tobacco, amusement, recreation, or hospitality of any kind. 

(14) ‘Entity’ means a company, corporation, partnership, unincorporated association or other business entity, trust, or estate. 

(15) ‘exempt income’ has the meaning in section 533.
(16) ‘Finance lease’ means a lease that is treated under generally accepted accounting principles as a finance lease and is so accounted for by the lessor in its financial accounts.

(17) ‘FSM’ means the Federated States of Micronesia.

(18) ‘Generally Accepted Accounting Principles’ or ‘GAAP’ means those accounting principles currently accepted by certified public accountants, which are utilized by auditors practicing within the FSM; PROVIDED, HOWEVER, that in the event International Financial Reporting Standards (IFRS) become generally accepted by the financial/auditing entities within the FSM and as prescribed by law or regulations, then GAAP shall be modified by IFRS.

(19) ‘Gross revenue’ has the meaning attributed to it in section 532 of this title.

(20) ‘Industrial building’ means a building that is a depreciable asset used, available for use, or held solely in carrying on:

(a) manufacturing operations;

(b) research and development into improved or new methods of manufacture;

(c) mining operations (other than an accommodation building); or

(d) a hotel business.
(21) ‘Intangible’ means:

(a) a patent, invention, design or model, secret formula or process, trademark, copyright, or other like property or right that has a limited useful life and is used solely to derive gross revenue;

(b) a customer list, distribution channel, or unique name, symbol or picture, or other marketing intangible that has a limited useful life and is used solely to derive gross revenue;

(c) contractual rights (including arising as a result of a prepayment of expenses) with a benefit for a limited period but of more than one year that are used solely to derive gross revenue; or

(d) an expenditure that provides an advantage or benefit for a period of more than one year, other than expenditure incurred to acquire any tangible personal or real property, provided that the property, right, or expenditure is used solely to derive gross revenue.

(22) ‘Interest’ means:

(a) an amount, whether described as interest, discount, premium, or otherwise, whether periodical or a lump sum, as consideration for the use of money or being given time to pay;
(b) an amount that is functionally equivalent
to an amount referred to in paragraph (a) of this
subsection;
(c) any amount treated as interest under
section 546 of this title; or
(d) a commitment, guarantee, service, or
similar fee payable in respect of a debt or other
instrument or agreement giving rise to interest under
paragraphs (a), (b), or (c) of this subsection.

(23) ‘Inventory’ means anything produced,
manufactured, purchased, or otherwise acquired for
sale or exchange, and includes livestock, or any raw
materials, or consumables used in a production or
manufacturing process.

(24) ‘Liaison office’ means an office the sole
activity of which is representation.

(25) ‘Management fee’ means an amount as
consideration for the rendering of a managerial
service, but does not include salary or wages.

(26) ‘Member’, in relation to an entity, means a
shareholder or other owner in a corporation, partner
in a partnership, beneficiary of a trust or estate,
or any other person with an ownership interest in the
entity.

(27) ‘Natural resource amount’ means:
(a) an amount (including a premium or like amount) as consideration for the right to take minerals or a living or non-living resource from land or sea; or

(b) an amount calculated in whole or part by reference to the quantity or value of minerals or a living or non-living resource taken from land or sea.

(28) ‘net book value’, in relation to a business asset, means the cost of the asset reduced by any depreciation or amortization deductions allowed in respect of the asset or, if section 552(5) applies, the cost apportioned to the asset under that section reduced by any depreciation or amortization deductions allowed that relate to the cost apportioned to the asset under section 552(5).

(29) ‘Net profit’ has the meaning in section 531 of this title.

(30) ‘Net profit tax’ means a tax imposed under subchapter II of this chapter.

(31) ‘Non-resident person’ means a person that is not a resident person.

(32) ‘Permanent establishment’ means a fixed place of business through which the business of a person is wholly or partly carried on, and includes:

(a) a place of management, branch, office
(other than a liaison office), factory, warehouse, or workshop;

(b) a mine, oil or gas well, quarry, or other place of extraction of natural resources;

(c) a building site, or a construction, assembly or installation project, or supervisory activities connected with such site or project, but only if the site, project or activities continue for more than ninety days;

(d) the furnishing of services by the person, including consultancy services, through employees or other personnel engaged by the person for such purpose, but only if activities of that nature continue for the same or a connected project for a period or periods aggregating more than ninety days within any twelve-month period;

(e) a person (referred to as an “agent”) acting on behalf of another person (referred to as the “principal”), if the agent:

(i) has and habitually exercises an authority to conclude contracts on behalf of the principal; or

(ii) habitually maintains a stock of inventory from which the agent regularly delivers inventory on behalf of the principal, but does not
include an agent of independent status; or

(f) any substantial equipment used by a

person.

(33) ‘Person’ means an individual, entity, a
government, a political subdivision of a government,
or a public international organization.

(34) ‘Prescribed’ means set forth by the Secretary
in regulations.

(35) ‘President’ means the President of the FSM.

(36) ‘Public international organization’ has the
meaning in the International Organizations Immunities
Act of 1974, chapter 2 of title 10 of the Code of the
Federated States of Micronesia, or its successor.

(37) ‘Real property’ includes an exploration,
prospecting, development, or similar right relating
to real property.

(38) ‘Relative’ in relation to an individual, means:

(a) an ancestor, a descendant of any of the
grandparents, or an adopted child, of the individual;

(b) an ancestor, a descendant of any of the
grandparents, or an adopted child of a spouse of the
individual; or

(c) a spouse of the individual or any person
specified in paragraph (a) or (b) of this subsection.

(39) ‘Resident person’ means:
(a) in the case of an individual, an individual who:

(i) has his or her home in the FSM; or

(ii) is present in the FSM for a period of, or periods amounting in aggregate to, one hundred eighty-three days or more in any twelve month period that commences or ends during a tax year; or

(iii) is an employee of the National or of a State Government of the FSM posted abroad at any time during the year;

(b) in the case of any other person, the person is incorporated, formed, organized, or otherwise established in the FSM; or

(c) the Government of the FSM, a Government of a State Government in the FSM, or a local government in the FSM.

(40) ‘Royalty’ means an amount, however described, whether periodical or a lump sum, as consideration for:

(a) the use of, or right to use any patent, invention, design or model, secret formula or process, trademark, or other like property or right; or

(b) the use of, or right to use any copyright of a literary, artistic, or scientific work (including films or video tapes for use in connection
with television or tapes in connection with radio
broadcasting);

   (c) the receipt of, or right to receive, any
visual images or sounds, or both, transmitted by
satellite, cable, optic fiber, or similar technology
in connection with television, radio, or internet
broadcasting;

   (d) the supply of any technical, industrial,
commercial, or scientific knowledge,
experience, or skill;

   (e) the use of or right to use any industrial,
commercial, or scientific equipment; or

   (f) the supply of any assistance that is ancillary
and subsidiary to, and is furnished as a means of
enabling the application or enjoyment of, any
property or right referred to in paragraphs (a)
through (e) of this subsection.

(41) ‘Secretary’ means the Secretary of the
Department of Finance and Administration of the FSM
National Government.

(42) ‘Small business’ means a business that is
carried on by a person that is not registered for the
value added tax, but not including a business making
exempt supplies that would be above the value added
tax (VAT) registration threshold if the exempt
supplies were taxable supplies.

(43) ‘State’ means a State of the FSM.

(44) ‘Structural improvement’, in relation to real property, includes any building, road, driveway, car park, pipeline, bridge, tunnel, airport runway, canal, dock, wharf, retaining wall, fence, power lines, water or sewerage pipes, drainage, landscaping, or dam.

(45) ‘Tax year’ means:

(a) in the case of a corporation, the period of twelve months ending on the date of the annual balance of its accounts; or

(b) in any other case, the period of twelve months ending on December 31.

(46) ‘use’ or ‘used’, in relation to a business asset, includes available for use or held.

(47) ‘VAT’ means the value added tax imposed pursuant to applicable revenue laws.

(48) ‘VAT Law’ means the Value Added Tax Act of a State.”

Section 5. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 513 to subchapter I of chapter 5 to read as follows:

“Section 513. Source of income.
(1) An amount derived by a resident person in carrying on a business is derived from sources in the FSM except to the extent that it is attributable to a business carried on through a permanent establishment of the person outside the FSM.

(2) An amount derived by a non-resident person in carrying on a business is derived from sources in the FSM to the extent that it is attributable to a business carried on through a permanent establishment of the person in the FSM.

(3) Notwithstanding subsections (1) and (2) of this section, the following amounts are considered derived from sources in the FSM:

(a) a fee for services performed in the FSM;

(b) rental from the lease of real property in the FSM;

(c) interest, a royalty, or a management fee:

(i) paid by a resident person, other than as an expense of a business carried on through a permanent establishment of the person outside the FSM; or

(ii) paid by a non-resident person as an expense of a business carried on through a permanent establishment of the person in the FSM;

(d) a natural resource amount in respect of a
natural resource taken in the FSM;

(e) an insurance premium in respect of the
insurance of a risk in the FSM;

(f) a gain arising on disposal of real
property in the FSM; or

(g) a gain arising on disposal of an ownership
interest in an entity whose assets consist, directly
or indirectly, through one or more interposed
entities, solely or principally of real property in
the FSM.”

Section 6. Title 54 of the Code of the Federated States
of Micronesia, as amended, is hereby further amended by
inserting a new section 514 to subchapter I of chapter 5 to
read as follows:

“Section 514. Fair market value.

(1) The fair market value of an asset, property,
service, or benefit at a particular time is the
ordinary open market value of the asset, property,
service, or benefit at that time.

(2) If it is not possible to determine the fair
market value of an asset, property, service, or
benefit at a particular time under subsection (1) of
this section, the fair market value is the
consideration a similar asset, property, service, or
benefit would ordinarily fetch in the open market at
that time, adjusted to take account of the
differences between the similar asset, property,
service, or benefit and the actual asset, property,
service, or benefit.

(3) If the fair market value of an asset, property,
service, or benefit cannot be determined under
subsection (1) or (2) of this section, the fair
market value is the amount determined by the CEO.

(4) This section is subsection to section 561.”

Section 7. Title 54 of the Code of the Federated States
of Micronesia, as amended, is hereby further amended by
inserting a new section 515 to subchapter I of chapter 5 to
read as follows:

“Section 515. Associate.

(1) Subject to subsection (2) of this section, two
persons are associates if the relationship between
them is such that one may reasonably be expected to
act in accordance with the intentions of the other,
or both persons may reasonably be expected to act in
accordance with the intentions of a third person.

(2) Two persons are not associates solely by reason
of the fact that one person is an employee or client
of the other or both persons are employees or clients
of a third person.

(3) Without limiting the generality of subsection
(1) of this section, the following are treated as associates:

(a) an individual and a relative of the individual, except if the CEO is satisfied that neither person may reasonably be expected to act in accordance with the intentions of the other;

(b) a partner in a partnership and the partnership, if the partner, either alone or together with an associate or associates under another application of this section, controls fifty percent (50%) or more of the rights to income or capital of the partnership;

(c) a trust or estate and a person who benefits or may benefit under the trust or estate;

(d) a member in a corporation and the corporation, if the member, either alone or together with an associate or associates under another application of this section, controls either directly or through one or more interposed entities:

(i) fifty percent (50%) or more of the voting power in the corporation;

(ii) fifty percent (50%) or more of the rights to dividends; or

(iii) fifty percent (50%) or more of the rights to capital; and
(e) two corporations, if a person, either alone or together with an associate or associates under another application of this section, controls either directly or through one or more interposed entities:

(i) fifty percent (50%) or more of the voting power in both corporations;

(ii) fifty percent (50%) or more of the rights to dividends in both corporations; or

(iii) fifty percent (50%) or more of the rights to capital in both corporations.

(4) In applying subsection (3)(b), (d), or (e) of this section holdings that are attributable to a person from an associate are not reattributed to another associate.”

Section 8. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by creating a new subchapter II under chapter 5 entitled: “Imposition of Tax”.

Section 9. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 521 to subchapter II of chapter 5 to read as follows:

“Section 521. Imposition of net profit tax.

Net profit tax is imposed for each tax year at the
rate of twenty five percent (25%) on the net profit for the tax year of every business.”

Section 10. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 522 to subchapter II of chapter 5 to read as follows:

“Section 522. Imposition of presumptive tax. A presumptive tax of eighty dollars ($80) per tax year is imposed on a business if the gross revenue of the business for the tax year does not exceed ten thousand dollars ($10,000.)”

Section 11. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 523 to subchapter II of chapter 5 to read as follows:

“Section 523. General provisions applicable to net profit tax and presumptive tax. (1) Net profit tax or presumptive tax is payable by the person or persons carrying on the business. If a person carries on more than one business, the net profit tax or presumptive tax payable is computed and reported separately for each business. For this purpose, if a business has operations in more than one State, the operations in each State are treated as a separate business.”
(2) No net profit tax or presumptive tax is payable if the gross revenue of a business for a tax year does not exceed two thousand dollars ($2,000).

(3) Notwithstanding subsection (1) of this section, in determining whether the gross revenue of a business carried on by a person does not exceed ten thousand dollars ($10,000) for the purposes of section 522 of this title, or two thousand dollars ($2,000) for the purposes of subsection (2) of this section, account is taken of the gross revenue of all businesses carried on by the person and by associates of the person in the FSM.”

Section 12. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 524 to subchapter II of chapter 5 to read as follows:

“Section 524. Imposition of tax on transportation income of non-resident person.

(1) Tax is imposed at the rate of three percent (3%) on the gross revenue derived by a non-resident person without a permanent establishment in the FSM operating a ship or aircraft for the carriage of passengers, livestock, mail, merchandise, or goods embarked in the FSM.

(2) Tax payable under this section shall be payable
by the non-resident person deriving the amount subject to tax. The tax payable is discharged if the tax has been paid in accordance with section 575 or 576 of this title.

(3) Subsection (1) of this section does not apply to an amount that is exempt income.”

Section 13. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 525 to subchapter II of chapter 5 to read as follows:

“Section 525. Imposition of tax on certain payments to non-resident persons.

(1) Tax is imposed at the rate specified in subsection (2) of this section on the gross amount of interest, a royalty, natural resource amount, insurance premium, or management fee derived by a non-resident person from sources in the FSM.

(2) The rate of tax imposed under subsection (1) of this section is:

(a) five percent (5%) of the gross amount of the insurance premium; or

(b) fifteen percent (15%) of the gross amount of the interest, royalty, natural resource amount, or management fee.

(3) Subsection (1) of this section does not apply
to:

(a) an amount that is exempt income; or

(b) interest, a royalty, natural resource amount, insurance premium, or management fee that is attributable to a business carried on by the non-resident person through a permanent establishment of the person in the FSM and, in that case, the interest, royalty, natural resource amount, insurance premium, or management fee is taxable under section 521 of this title.

(4) The tax payable under subsection (1) of this section is discharged if the tax has been paid in accordance with section 581 of this title.”

Section 14. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by creating a new subchapter III under chapter 5 entitled: "Computation of Net Profit”.

Section 15. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 531 to subchapter III of chapter 5 to read as follows:

“Section 531. Net profit.

The net profit of a business for a tax year is the gross revenue of the business for the year reduced by the total amount of deductions allowed to the
business for the year.”

Section 16. Title 54 of the Code of the Federated States of Micronesia, as amended is hereby further amended by inserting a new section 532 to subchapter III of chapter 5 to read as follows:

“Section 532. Gross revenue.

(1) The gross revenue of a business for a tax year is the sum of the following amounts (other than an amount that is exempt income) derived by the business during the year from sources in the FSM:

(a) the gross receipts from the carrying on of the business, including the gross proceeds from the disposal of inventory and the gross fees for the provision of services;

(b) the gross receipts from the capital of the business, including interest, royalties, and rentals;

(c) the net gain on disposal of a business asset (other than inventory);

(d) the net gain on satisfaction or cancellation of a debt of the business; and

(e) the amount of an expense, loss, or bad debt previously allowed as a deduction that has been reimbursed or recovered by the business.

(2) For the purposes of subsection (1)(c) of this section, the net gain on disposal of a business asset
is the consideration received on disposal of the asset less the net book value of the asset at the time of disposal.

(3) For the purposes of subsection (1)(d) of this section, the net gain on disposal of a debt of a business is the amount of the debt less the amount received on satisfaction or cancellation of the debt.

(4) The gross revenue of a business does not include any amount subject to tax under sections 522, 524, or 525 of this title.”

Section 17. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 533 to subchapter III of chapter 5 to read as follows:

“Section 533. Exempt income.

(1) The following amounts are exempt income:

(a) a distribution by an entity;

(b) interest paid by a resident corporation to a non-resident person in respect of debentures if the following conditions are satisfied:

(i) the debentures were issued by the corporation outside the FSM for the purpose of raising a loan outside the FSM;

(ii) the debentures were issued with a view to public subscription or other wide
distribution;

(iii) the debentures were issued for the purpose of raising funds for use by the corporation in a business carried on in the FSM; and

(iv) the interest is paid outside the FSM;

and

(c) an amount exempt from tax under an international agreement between the Government of the FSM and a foreign government or a public international organization.

(2) A provision in another law providing that an amount is exempt income does not have legal effect unless also provided for in this chapter.

(3) For purposes of subsection (2) of this section, exemptions contained in chapter 3 of title 54 and chapter 10 of title 37 of the Code of the Federated States of Micronesia have legal effect.”

Section 18. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 534 to subchapter III of chapter 5 to read as follows:

“Section 534. Deductions.

(1) Subject to this chapter, the total amount of deductions allowed to a business for a tax year is the sum of:
(a) subject to section 535 of this title, the expenses or losses incurred during the year solely in deriving amounts included in the gross revenue of the business;

(b) the cost of inventory for the year as determined under this chapter;

(c) the total amount, as determined under section 536 of this title, by which the value of the depreciable assets of the business have declined during the year by reason of wear and tear from use in deriving amounts included in the gross revenue of the business;

(d) the total amount, as determined under section 537 of this title, by which the value of the intangibles of the business have declined in value during the year from use in deriving amounts included in the gross revenue of the business; and

(e) the net loss on disposal of a business asset (other than inventory) during the year.

(2) For the purposes of subsection (1)(e) of this section, the net loss on disposal of a business asset is the net book value of the asset at the time of disposal less the consideration received on disposal of the asset.”

Section 19. Title 54 of the Code of the Federated States
of Micronesia, as amended, is hereby further amended by inserting a new section 535 to subchapter III of chapter 5 to read as follows:

"Section 535. Non-deductible expenses.

(1) No deduction is allowed for:

   (a) a distribution by an entity or capital withdrawn from a business;

   (b) an expense or loss of a capital nature except as provided in section 534(1)(c), (d), or (e) of this title;

   (c) an amount placed in a reserve fund, a provision for expected expenses or losses, or an amount capitalized in any way;

   (d) an expense or loss to the extent recoverable under a policy of insurance or contract of indemnity;

   (e) an expense incurred in providing entertainment except:

       (i) if the entertainment was provided in the ordinary course of a business carried on to provide the entertainment and the entertainment was not provided to an employee or an associate of the person carrying on the business;

       (ii) if the entertainment is a meal or refreshment consumed by the owner or employee of a
business while the owner or employee was traveling for the purposes of the business; or

(iii) if the entertainment is a meal or refreshment provided to an employee on the business’ premises and which is available to all full-time employees on equal terms;

(f) interest payable to an associate other than that interest included in the gross revenue of a business carried on by the associate or taxable under section 525 of this title;

(g) the net profit tax, including any penalty or late payment interest payable in respect of net profit tax payable;

(h) a fine or penalty imposed for violation of any law, rule, or regulation; or

(i) a bribe, kickback, or other expense incurred to accomplish an illegal transaction or activity.

(2) A person required to withhold tax under subchapter VII of this chapter in respect of an amount paid to a non-resident person is not allowed a deduction for the amount paid until the tax has been withheld and paid to the CEO.

(3) The only deduction allowed in relation to the cost of an intangible of a business is as provided
Section 20. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 536 to subchapter III of chapter 5 to read as follows:

"Section 536. Depreciable assets.

(1) A business is allowed a deduction for a tax year for the amount by which the value of the depreciable assets of a business has declined during the year.

(2) The decline in value of a depreciable asset of a business for a tax year is computed by applying the rate specified in subsection (3) of this section against the cost of the asset.

(3) The rate of depreciation is:

(a) in the case of motor vehicles, buses and minibuses, goods vehicles, trucks, tractors, trailers, and trailer-mounted containers, computers and data handling equipment, construction equipment and earthmoving equipment, and plant and machinery used in manufacturing, mining, or farming operations, fifty percent (50%);

(b) in the case of industrial buildings, ten percent (10%);

(c) in the case of any other structural
(d) in the case of any other depreciable asset, thirty three and one-third percent (33\(\frac{1}{3}\)%).

(4) If a depreciable asset of a business is not used in carrying on the business for the whole of the year, the amount computed under subsection (2) of this section is reduced by the proportion of the year that the asset was not so used.

(5) The total decline in value allowed as a deduction under section 534(1)(c) of this title for a depreciable asset for the current tax year and all previous tax years must not exceed the cost of the asset.”

Section 21. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 537 to subchapter III of chapter 5 to read as follows:

“Section 537. Intangibles.

(1) A business is allowed a deduction for a tax year for the amount by which the value of the intangibles of a business has declined during the year.

(2) The decline in value of an intangible of a business for a tax year is computed by dividing the cost of the intangible by its useful life.
(3) An intangible is treated as having a useful life of ten years if:

(a) it has a useful life of more than ten years; or

(b) it does not have an ascertainable useful life.

(4) If an intangible of a business is not used in carrying on the business for the whole of the year, the amount computed under subsection (2) of this section is reduced by the proportion of the year that the intangible was not so used.

(5) The total decline in value allowed as a deduction under section 534(1)(d) of this title for an intangible for the current tax year and all previous tax years must not exceed the cost of the intangible."

Section 22. Title 54 of the Code of the Federated States of Micronesia, as amended is hereby further amended by inserting a new section 538 to subchapter III of chapter 5 to read as follows:

"Section 538. Net loss carry forward.

(1) If the total amount of deductions of a business allowed for a tax year (other than under this section or section 540(3) of this title) exceeds the gross revenue of the business for the year, the amount of
the excess is the net loss of the business for the
year.

(2) If a business has a net loss for a tax year, the
amount of the loss is carried forward to the
following tax year and allowed as a deduction in
computing the net profit of the business for that
following year.

(3) If a net loss is not wholly deducted under
subsection (2) of this section, the amount not
deducted is carried forward to the next following tax
year and applied as specified in subsection (2) of
this section in that year, and so on until the loss
is fully deducted, but no loss can be carried forward
for more than three tax years after the year in which
the loss was incurred.

(4) If a business has a net loss carried forward
under this section for more than one tax year, the
loss of the earliest year is deducted first.

(5) If a business has a net loss carried forward
under this section and an interest expense carried
forward under section 540 of this title for a tax
year, the net loss carried forward is deducted first.

(6) If a person carries on more than one business,
this section applies separately to each business.”

Section 23. Title 54 of the Code of the Federated States
1 of Micronesia, as amended, is hereby further amended by
2 inserting a new section 539 to subchapter III of chapter 5 to
3 read as follows:

   “Section 539. Currency translation.

   (1) An amount taken into account under this chapter
   must be expressed in United States dollars.

   (2) Subject to subsection (3) of this section, if
   an amount is in a currency other than United States
   dollars, the amount must be translated to United
   States dollars at the United States Federal Reserve
   exchange rate applying between the foreign currency
   and United States dollars on the date the amount is
   taken into account for the purposes of this chapter.

   (3) With the prior written permission of the CEO,
   amounts taken into account in computing the net
   profit or net loss of a business for a tax year may
   be translated to United States dollars at the average
   mid-exchange rate for the tax year between the
   foreign currency and United States dollars.”

Section 24. Title 54 of the Code of the Federated States
of Micronesia, as amended, is hereby further amended by
inserting a new section 540 to subchapter III of chapter 5 to
read as follows:

   “Section 540. Interest expense.

   (1) Subject to section 535(1)(f) of this title and
subsection (2) of this section, a business is allowed a deduction for any interest expense incurred by the business during a tax year to the extent to which the business has used the proceeds or benefit of the debt or other instrument or agreement giving rise to the interest solely to derive amounts included in the gross revenue of the business.

(2) The total amount of interest allowed to a business as a deduction under this section for a tax year must not exceed the amount computed according to the following formula:

$$A + (50\% \times (B - C))$$

Where:

- **A** is the total interest income derived by the business from sources in the FSM during the year;
- **B** is the total gross revenue of the business for the year, other than interest income; and
- **C** is the total amount of deductions allowed to the business for the year incurred in deriving amounts included in gross revenue, other than for interest incurred.

(3) If an amount of interest is not deducted in a tax year as a result of subsection (2) of this section, the undeducted amount of the interest is carried forward and treated as interest incurred by
the business in the next following tax year and
deducted in accordance with this section in that
year, and so on until the interest is fully deducted.
(4) Subsection (2) of this section does not apply
to a financial institution.”

Section 25. Title 54 of the Code of the Federated States
of Micronesia, as amended, is hereby further amended by
creating a new subchapter IV under chapter 5 to be entitled
“Tax Accounting”.

Section 26. Title 54 of the Code of the Federated States
of Micronesia, as amended, is hereby further amended by
inserting a new section 541 to subchapter IV of chapter 5 to
read as follows:

“Section 541. Simplified tax accounting for small
businesses.

(1) The net profit of a small business is computed
in accordance with generally accepted accounting
principles subject to the following modifications:

(a) the revenues and expenses of the business
are accounted for on a cash basis under which an
amount of revenue is derived when it is received and
an expense is incurred when it is paid;

(b) no deduction is allowed for an amount
specified in section 535 of this title;

(c) subject to paragraph (e) of this section,
the amount allowed for the depreciation of
depreciable assets or the amortization of intangibles
is computed in accordance with sections 536 and 537
of this title;
(d) the amount allowed as a deduction under
section 534(1)(b) of this title for a tax year is the
total amount paid by the business for the cost of
inventory acquired during the year and section 544 of
this title does not apply; and
(e) an intangible that is a prepayment of a
business expense is deductible in the tax year in
which it is paid.”
(2) Reserved.

Section 27. Title 54 of the Code of the Federated States
of Micronesia, as amended, is hereby further amended by
inserting a new section 542 to subchapter IV of chapter 5 to
read as follows:

“Section 542. Tax accounting for businesses other
than small businesses.
(1) The net profit of a business (other than a
small business) is computed in accordance with
generally accepted accounting principles subject to
the following modifications:
(a) the revenues and expenses of the business
are accounted for on an accrual basis under which an
amount of revenue is derived when it is due and an
expense is incurred when it is payable;

(b) no deduction is allowed for any amount
specified in section 535 of this title;

(c) the amount allowed for the depreciation of
depreciable assets or the amortization of intangibles
is computed in accordance with sections 536 and 537
of this title;

(d) the deduction allowed for inventory is
computed in accordance with section 544 of this
title;

(e) the gross revenues and expenses arising
under a long-term contract are determined under
section 545 of this title;

(f) a finance lease is treated as the
equivalent of a sale and purchase of the leased asset
in accordance with section 546 of this title; and

(g) a deduction for a bad debt is allowed in
accordance with section 547 of this title.

(2) For the purposes of subsection (1)(a) of this
section:

(a) an amount is due when the business is
entitled to receive it even if the time for discharge
of the entitlement is postponed or the amount is
payable by installments; and
(b) an amount is payable when all the events that determine liability have occurred and the amount of the liability can be determined with reasonable accuracy, but not before economic performance occurs.

(3) For the purposes of subsection (2) of this section, economic performance occurs:

(a) in the case of the acquisition of services or assets, at the time the services are provided or assets delivered;

(b) in the case of the use of assets, at the time assets are used; and

(c) in any other case, at the time payment is made in full satisfaction of the liability.”

Section 28. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 543 to subchapter IV of chapter 5 to read as follows:

“Section 543. Change in tax accounting method.

(1) If a business that is a small business ceases to be a small business or a business that is not a small business becomes a small business, the business shall apply, in writing, to the CEO for a change in the method of accounting used by the business in computing the net profit of the person’s business and the CEO shall in writing, approve or disapprove the
application.

(2) If the method of accounting used by a business in computing the net profit of a business changes, adjustments must be made in the tax year of change to items of revenue, deduction, or credit, or to any other items affected by the change so that no item is omitted and no item is taken into account more than once.”

Section 29. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 544 to subchapter IV of chapter 5 to read as follows:

“Section 544. Inventory.

(1) The amount allowed as a deduction under section 534(1)(b) of this title for a tax year to a business accounting for net profits tax on an accrual basis for the cost of inventory is the cost of inventory disposed of during the year as computed under this section.

(2) The cost of inventory disposed of by a business during a tax year is computed in accordance with the following formula:

\[(A + B) - C\]

Where:

\[A\] is the opening value of the inventory for the
B is the cost of inventory acquired during the tax year; and

C is the closing value of inventory for the tax year.

(3) The opening value of inventory for a tax year:

(a) is the cost of inventory on hand at the end of the previous tax year; or

(b) if the business commenced during the year, the cost of inventory (if any) acquired by the owner of the business prior to commencement of the business.

(4) The closing value of inventory for a tax year is the lower of cost or fair market value of inventory on hand at the end of the tax year.

(5) The cost of inventory on hand at the end of a tax year is computed under the absorption-cost method. The absorption-cost method is the generally accepted accounting principle under which the cost of an item of inventory is the sum of direct material costs, direct labor costs, and factory overhead costs. Direct material costs are the cost of materials that become an integral part of the inventory manufactured or produced, or which are consumed in the manufacturing or production process.
Direct labor costs are the labor costs directly related to the manufacture or production of inventory. Factory overhead costs are the total costs of manufacturing or producing inventory, other than direct labor and direct material costs.

(6) If particular items of inventory are not readily identifiable, the cost of inventory on hand at the end of a tax year must be accounted for on the first-in-first-out method. The first-in-first-out method is the generally accepted accounting principle under which the valuation of inventory is based on the assumption that inventory is sold in the order of its acquisition.”

Section 30. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 545 to subchapter IV of chapter 5 to read as follows:

“Section 545. Long-term contracts.

(1) A business accounting for net profit tax on an accrual basis must compute the net profit arising under a long-term contract during a tax year under the percentage of completion method. The percentage of completion method is the generally accepted accounting principle under which revenues and expenditures arising under a long-term contract are
recognized by reference to the stage of completion of
the contract.

(2) In this section, ‘long-term contract’ means a
contract for manufacture, installation, or
construction, or, in relation to each, the
performance of related services, that is not
completed within the tax year in which work under the
contract commenced, other than a contract estimated
to be completed within six months of the date on
which work under the contract commenced.”

Section 31. Title 54 of the Code of the Federated States
of Micronesia, as amended, is hereby further amended by
inserting a new section 546 to subchapter IV of chapter 5 to
read as follows:

“Section 546. Finance leases.

(1) If a business has entered into a finance lease,
the net profit of the business is computed on the
basis that:

(a) the lessee is the owner of the asset;
(b) the lessee acquired the asset at the
commencement of the lease, except in cases when the
lessee already was the owner of the asset; and
(c) the lessor has made a blended loan to the
lessee at the commencement of the lease and each
lease payment is in part repayment of principal and
in part payment of interest under that loan.

(2) The cost of an asset treated as owned by the lessee under subsection (1)(a) of this section is:

(a) if the lessor and lessee are not associates and an amount is stated as the cost or value of the asset in the lease agreement, that amount; or

(b) in any other case, the fair market value of the asset at the commencement of the lease.

(3) The amount of the loan referred to in subsection (1)(c) of this section is the amount determined under subsection (2) of this section as the cost of the asset.

(4) The interest part of each payment made under the loan is computed by reference to the interest rate implicit in the lease agreement.

(5) In this section, a blended loan is a loan under which payments by the borrower represent in part a payment of interest and in part a repayment of principal when the interest part is calculated on the principal outstanding at the time of each payment.”

Section 32. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 547 to subchapter IV of chapter 5 to read as follows:
“Section 547. Bad debts.

(1) A deduction is allowed for a tax year for a bad debt of a business if the following conditions are satisfied:

(a) the amount of the debt:

   (i) was previously included in the gross revenue of the business; or

   (ii) is money lent by the business in the normal course of carrying on a business of money lending;

(b) the debt or part of the debt is written off in the accounts of the business in the tax year; and

(c) there are reasonable grounds for believing that the debt is irrecoverable.

(2) The amount of the deduction allowed under this section for a tax year must not exceed the amount of the debt written off in the accounts of the business for that year.”

Section 33. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by creating a new subchapter V under chapter 5 entitled: “Business Assets”.

Section 34. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by
inserting a new section 551 to subchapter V of chapter 5 to read as follows:

“Section 551. Disposal and acquisition of business assets.

(1) Except as otherwise provided in this chapter, this section establishes when a business asset is disposed of or acquired for the purposes of this chapter.

(2) A business is treated as having made a disposal of an asset at the time the business parts with the ownership of the asset, including when the asset is:

   (a) sold, exchanged, transferred, or distributed; or

   (b) cancelled, redeemed, relinquished, destroyed, lost, expired, or surrendered.

(3) A disposal includes the disposal of a part of an asset.

(4) The transmission of an asset by succession or under a will is treated as a disposal of the asset by the deceased at the time the asset is transmitted.

(5) The application of a business asset to personal or domestic use is treated as a disposal of the asset by the owner at the time the asset is so applied.

(6) A business acquires an asset at the time the owner of the business begins to own the asset,
including at the time the owner is granted any right.

(7) The application of a personal asset by the owner of a business to business use is treated as an acquisition of the asset by the business at the time the asset is so used.

(8) In this section, ‘personal asset’ means an asset held wholly for personal or domestic use.”

Section 35. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 552 to subchapter V of chapter 5 to read as follows:

“Section 552. Cost.

(1) Except as otherwise provided in this chapter, this section establishes the cost of a business asset for the purposes of this chapter.

(2) Subject to this chapter, the cost of a business asset is the sum of the following amounts:

(a) the total consideration given by a business for the asset, including the fair market value of any consideration in kind determined at the time the asset is acquired and, if the asset is constructed or developed, the cost of construction or development;

(b) any incidental expenditure incurred by the business in acquiring or disposing of the asset; or
(c) any expenditure incurred by the business to install, alter, renew, reconstruct, or improve the asset.

(3) Subject to this chapter, the cost of a business asset that is an intangible is:

(a) in relation to an intangible referred to in paragraph (a), (b) or (c) of the definition of ‘intangible’ in section 512 of this title, the total expenditure incurred in acquiring, creating, improving, or renewing the intangible; or

(b) in relation to an intangible referred to in paragraph (d) of the definition of ‘intangible’ in section 512 of this title, the amount of the expenditure.

(4) The cost of a business asset does not include an expense allowed as a deduction under section 534(1)(a).

(5) If a business disposes of a part of a business asset, the cost of the asset is apportioned between the part of the asset retained and the part disposed of in accordance with their respective fair market values determined at the time the business acquired the asset.

(6) The cost of a business asset does not include the amount of any grant, subsidy, rebate, commission,
or other assistance received or receivable by a business in respect of the acquisition or holding of the asset, except to the extent to which the amount is included in the gross revenue of the business. The reference to ‘other assistance’ in this subsection does not include a loan repayable with or without interest.

(7) The cost of a business asset treated as acquired under section 551(7) of this title is the fair market value of the asset determined at the date it is applied to business use.

(8) If the acquisition of a business asset is the derivation of an amount included in the gross revenue of a business, the cost of the asset is the amount so included plus any amount paid by the business for the asset.

(9) If the acquisition of a business asset is the derivation of exempt income, the cost of the asset is the exempt amount plus any amount paid by the business for the asset.

(10) The cost of an asset of a business must not be reduced by an impairment write down in relation to the asset made in the financial accounts of the business.

(11) In this section, “impairment write down”, in
relation to an asset of a business, means the write
down of the value of the asset in the financial
accounts of the business because the fair market
value of the asset is less than the cost of the
asset.”

Section 36. Title 54 of the Code of the Federated States
of Micronesia, as amended, is hereby further amended by
inserting a new section 553 to subchapter V of chapter 5 to
read as follows:

“Section 553. Consideration received.

(1) Except as otherwise provided in this chapter,
this section establishes the amount of consideration
received on disposal of a business asset for the
purposes of this chapter.

(2) The consideration received by a business on
disposal of a business asset is the total amount
received by the business for the asset, including the
fair market value of any consideration received in
kind determined at the time of disposal.

(3) If a business asset has been lost or destroyed,
the consideration received by a business for the
asset includes any compensation, indemnity, or
damages received by the business as a result of the
loss or destruction, including amounts received as a
consequence of:
(a) an insurance policy, indemnity, or other agreement;

(b) a settlement; or

(c) a judicial decision.

(4) The consideration received for a business asset treated as disposed of under section 551(5) of this title is the fair market value of the asset determined at the time it is applied to personal or domestic use.

(5) If two or more business assets are disposed of by a business in a single transaction and the consideration received for each asset is not specified, the total consideration received by the business is apportioned among the assets disposed of in proportion to their respective fair market values determined at the time of the transaction.”

Section 37. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 554 to subchapter V of chapter 5 to read as follows:

“Section 554. Non-arm’s length transaction.

(1) For the purposes of this chapter, if a business asset is disposed of in a non-arm’s length transaction:

(a) the business disposing of the asset is
treated as having received consideration equal to the fair market value of the asset determined at the time the asset is disposed of; and

(b) the business acquiring the asset is treated as having a cost equal to the amount determined under paragraph (a) of this section.

(2) Reserved."

Section 38. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 555 to subchapter V of chapter 5 to read as follows:

"Section 555. Gain or loss not recognized.

(1) For the purposes of this chapter and subject to subsection (2) of this section, no gain or loss is taken to arise on the disposal of a business asset:

(a) between spouses as part of a divorce settlement or under an agreement to live apart, but only if the asset is used by the recipient spouse in carrying on a business;

(b) by reason of the transmission of the asset on the death of a person to an executor or beneficiary, but only if the asset is used by the executor or beneficiary in carrying on a business; or

(c) by reason of the compulsory acquisition of the asset under any law if the consideration received
for the disposal is reinvested by the recipient in an asset of a like kind (referred to as a ‘replacement asset’) within one year of the disposal.

(2) Subsection (1) of this section does not apply if the person acquiring the asset (including a replacement asset) is a non-resident person at the time of the acquisition.

(3) If subsection (1)(a) or (b) of this section applies, the person acquiring the asset is treated as acquiring an asset of the same character as the person disposing of the asset for an amount equal to the cost of the asset for the person disposing of the asset at the time of the disposal.

(4) A person’s cost of a replacement asset referred to in subsection (1)(c) of this section is the cost of the asset at the time it is compulsorily acquired plus the amount by which any consideration given by the person for the replacement asset exceeds the consideration received by the person for the asset compulsorily acquired.”

Section 39. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by creating a new subchapter VI under chapter 5 entitled: “Anti-avoidance”.

Section 40. Title 54 of the Code of the Federated States
Section 561. Transfer pricing.

(1) The CEO may distribute, apportion, or allocate revenue and expenses between businesses as is necessary to reflect the outcome that would have arisen in a transaction between independent persons dealing with each other at arm’s length in respect of:

(a) a transaction between businesses carried on by persons who are associates; or

(b) a transaction between businesses carried on by the same person.

(2) In applying subsection (1) of this section, the CEO may be guided by international standards, case law, and guidelines on transfer pricing issued by international organizations concerned with taxation.”

Section 562. General anti-avoidance provision.

(1) In this section, ‘tax avoidance scheme’ means any transaction or arrangement where one of the main
purposes of a person in entering into the transaction
or arrangement is the avoidance or reduction of the
tax liability of a business under this chapter.

(2) For the purposes of determining the tax
liability of a business under this chapter, the CEO
may:

(a) determine the character of a transaction
or an element of a transaction that was entered into
as part of a tax avoidance scheme;

(b) disregard a transaction that does not have
substantial economic effect;

(c) determine the character of a transaction
if the form of the transaction does not reflect the
substance; or

(d) treat separate businesses carried on by
the same person as a single business if business
activity has been fragmented under a tax avoidance
scheme.”

Section 42. Title 54 of the Code of the Federated States
of Micronesia, as amended, is hereby further amended by
creating a new subchapter VII under chapter 5 entitled:
“Procedures”.

Section 43. Title 54 of the Code of the Federated States
of Micronesia, as amended, is hereby further amended by
inserting a new section 571 to subchapter VII of chapter 5 to
Section 571. Filing of tax return.

(1) A person liable for tax under section 521 of this title in respect of a business must file a net profit tax return for the business for each tax year within three months after the end of the tax year.

(2) A person liable for tax under section 522 of this title in respect of a business must file a presumptive tax return for the business for each tax year within three months after the end of the tax year.

(3) A tax return must be in the approved form and filed in the prescribed manner."

Section 572. Self-assessment of net profit tax or presumptive tax due.

(1) A person that files a net profit tax return in respect of a business for a tax year is treated as having made a self-assessment of:

(a) if the business has a net profit for the year, the amount of the net profit of the business and the net profit tax payable thereon as specified
in the return; or

(b) if the business has made a net loss for
the year, the amount of the net loss of the business
as specified in the return.

(2) A person that files a presumptive tax return in
respect of a business for a tax year is treated as
having made a self-assessment of the presumptive tax
payable for the year as specified in the return.”

Section 45. Title 54 of the Code of the Federated States
of Micronesia, as amended, is hereby further amended by
inserting a new section 573 to subchapter VII of chapter 5 to
read as follows:

“Section 573. Payment of tax.
The net profit tax or presumptive tax payable by a
person for a tax year in respect of a business
carried on by the person is payable by the date that
the tax return of the business for the year is due.”

Section 46. Title 54 of the Code of the Federated States
of Micronesia, as amended, is hereby further amended by
inserting a new section 574 to subchapter VII of chapter 5 to
read as follows:

“Section 574. Installments of tax.
(1) A person must pay installments of net profit
tax for a tax year in respect of a business carried
on by the person on the last working day of the
third, sixth, ninth, and twelfth months of the tax year.

(2) The amount of each installment is one-quarter of the amount of net profits tax estimated by the person to be payable in respect of the business for the tax year. An estimate of net profit tax payable by the person for a tax year in respect of a business must be filed with the CEO by the due date for payment of the first installment for the year.

(3) An estimate filed by a person under subsection (2) of this section remains in force for the whole of the tax year unless a revised estimate is filed with the CEO. A revised estimate applies to the calculation of installments of net profit tax for a tax year due both before and after the date the revised estimate was filed. The amount of any underpayment of installments made prior to filing the revised estimate must be paid by the person together with the first installment due after the revised estimate is filed. The amount of any overpaid installments is applied against future net profit tax installments due.

(4) If a person fails to file an estimate of net profit tax in respect of a business as required under subsection (2) of this section, the estimated net
profit tax payable in respect of the business for the
tax year is such amount as estimated by the CEO. The
CEO’s estimate remains in force for the whole of the
tax year unless revised by the business in accordance
with subsection (3) of this section.

(5) Each installment of net profit tax paid by a
person in respect of a business during a tax year is
credited against the assessed net profit tax of the
business for the year. If the amount of the credit
allowed exceeds the net profit tax due for the year,
the amount of the excess is credited against the
assessed net profit tax liability of the person in
relation to any other business carried on by the
person. Any remaining excess is refunded to the
person, or at the person’s election, may be credited
against the next year’s tax assessment.

(6) If the estimate (including any revised
estimate) of net profit tax payable by a person in
respect of a business for a tax year is less than
ninety percent (90%) of the assessed net profit tax
liability of the person in respect of the business
for the year (the difference is referred to as the
‘installment shortfall’), the business is liable for
a penalty equal to:

(a) if the under-estimate is due to fraud or
willful neglect, fifty percent (50%) of the
installment shortfall; or
(b) in any other case, ten percent (10%) of the
installment shortfall.
(7) No penalty is imposed under subsection (6)(b)
of this section if the CEO is satisfied that the
reason for the installment shortfall was due to
circumstances beyond the control of the business
(such as a significant price fluctuation) and all
reasonable care was taken in making the estimate.”
Section 47. Title 54 of the Code of the Federated States
of Micronesia, as amended, is hereby further amended by
inserting a new section 575 to subchapter VII of chapter 5 to
read as follows:
“Section 575. Collection of tax from non-resident
ship owners or charterers.
(1) Subject to subsection (3) of this section,
before the departure of a ship owned or chartered by
a non-resident person from a port in the FSM:
(a) the master or FSM agent of the ship must
file with the CEO a return showing the gross revenue
derived from the carriage of passengers, livestock,
mail, merchandise, or goods embarked in the FSM in
respect of the ship; and
(b) the CEO must determine the amount of tax
due under section 524 of this title in respect of the
ship and pursuant to regulatory guidelines, notify
the master or FSM agent, in writing, of the amount
due.

(2) The return required under subsection (1)(a) of
this section must be in the approved form and filed
in the prescribed manner.

(3) The master or FSM agent of a ship is liable for
the tax notified under subsection (1)(b) of this
section.

(4) If the CEO is satisfied that the master or FSM
agent of a ship or the owner or charterer of the ship
is unable to file the return required under
subsection (1)(a) of this section before the
departure of the ship from the FSM, the CEO may allow
the return to be filed within 30 days after departure
of the ship provided the non-resident owner or
charterer has made satisfactory arrangements for the
payment of the tax due under section 524 of this
title in respect of the ship.

(5) The CEO must not grant a port clearance for a
ship owned or chartered by a non-resident person
until satisfied that any tax due under section 524 of
this title in respect of the ship has been paid or
that arrangements for its payment have been made to
the satisfaction of the CEO.

(6) This section does not relieve the owner or charterer of the ship from liability to pay any amount due under section 524 of this title that is not paid by the master or FSM agent of the ship.”

Section 48. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 576 to subchapter VII of chapter 5 to read as follows:

“Section 576. Collection of tax from non-resident aircraft owners or charterers.

(1) The owner or charterer of an aircraft liable for tax under section 524 of this title must file a return with the CEO for each quarter within fifteen days after the end of the quarter.

(2) The return required under subsection (1) of this section must be in the approved form and filed in the prescribed manner.

(3) A person that files a tax return under subsection (1) of this section is treated as having made a self-assessment of the gross revenue derived for the carriage of passengers, livestock, mail, merchandise, or goods embarked in the FSM during the quarter and the tax payable thereon under section 524 of this title as specified in the return.
(4) The tax payable by the non-resident person under section 524 of this title is collected quarterly and is due on the due date for filing the return for each quarter.

(5) If the tax payable for a quarter is not paid within three months of the due date, the CEO may issue to the relevant airport authority a certificate specifying the name of the non-resident person and the amount of tax due, and the relevant airport authority must refuse clearance from any airport in the FSM to any aircraft owned or chartered by the person until the tax due has been paid."

Section 49. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 577 to subchapter VII of chapter 5 to read as follows:

"Section 577. Records.

(1) A person carrying on a business must:

   (a) keep such accounts, documents, and records as enable the computation of the net profit of the business for a tax year; and

   (b) retain the records required under paragraph (a) of this subsection for six (6) years after the end of the tax year to which they relate.

(2) The records that must be maintained by a person
liable to pay presumptive tax or tax under section 524 of this title may be prescribed.

(3) The CEO may disallow a claim for a deduction for an expense if a business is unable, without reasonable excuse, to produce a receipt or other record of the expense, or to produce evidence relating to the circumstances giving rise to the claim for the deduction.”

Section 50. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by creating a new subchapter VIII under chapter 5 entitled: “Withholding Tax”.

Section 51. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 581 to subchapter VIII of chapter 5 to read as follows:

“Section 581. Withholding of tax from payments to non-resident persons.

(1) A person paying interest, a royalty, natural resource amount, insurance premium, or management fee that is liable to tax under section 525 of this title must withhold tax at the rate of:

(a) in the case of an insurance premium, five percent (5%) of the gross amount of the premium; or

(b) in any other case, fifteen percent (15%)
of the gross amount of the payment.

(2) A person must withhold tax from the gross amount paid at the rate of ten percent (10%) if:

(a) a person is liable to pay a fee to a non-resident person for the rendering of independent services;

(b) the fee is derived by the non-resident person from sources in the FSM; and

(c) the fee is not attributable to a business carried on by the non-resident person through a permanent establishment of the person in the FSM.

(3) Tax required to be withheld by a person under this section must be paid to the CEO within 15 days after the end of the month in which the person was required to withhold the tax.

(4) A person is personally liable to pay the amount of the tax to the CEO if that person:

(a) fails to withhold tax as required under this section; or

(b) having withheld tax fails to pay the tax to the CEO as required under this section.

(5) A person personally liable for an amount of tax under subsection (4) of this section as a result of failing to withhold the tax is entitled to recover
the tax from the recipient of the payment.

(6) A person who has withheld tax from a payment under this section and paid the tax to the CEO is indemnified against any claim by the recipient for payment of the withheld amount."

Section 52. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 582 to subchapter VIII of chapter 5 to read as follows:

"Section 582. Withholding tax documentation.

(1) A person withholding tax under section 581 of this title must give to the recipient of the payment a tax withholding certificate as prescribed.

(2) A non-resident person required to file a net profit tax return for a tax year must attach to the return any tax withholding certificate received for the applicable tax period.

(3) A person withholding tax under section 581 of this title shall, within two months after the end of the calendar year, file with the CEO an annual withholding tax statement as prescribed."

Section 53. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 583 to subchapter VIII of chapter 5 to read as follows:
"Section 583. Priority of tax withheld.

(1) Tax withheld from a payment by a person under section 581 of this title:

(a) is held by the person in trust for the National Government; and

(b) is not subject to attachment in respect of any debt or liability of the person.

(2) In the event of the liquidation or bankruptcy of a person who has withheld tax under section 581 of this title, any amount withheld does not form part of the estate of the person in liquidation or bankruptcy and the CEO has first claim for that amount before any distribution of property is made.

(3) An amount that a person is required to withhold from a payment under section 581 of this title is:

(a) a first charge on the payment; and

(b) deducted prior to any other amount that the person may be required to deduct from the payment by virtue of an order of any Court or under any other law."

Section 584. Credit for tax withheld.

Section 54. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 584 to subchapter VIII of chapter 5 to read as follows:

“Section 584. Credit for tax withheld."
(1) If tax has been withheld under section 581(2) of this title:

(a) the gross revenue of the non-resident person deriving the fee is the amount of the fee before the withholding of the tax; and

(b) the non-resident person deriving the fee is allowed a credit for that tax against the net profit tax payable by the person for the tax year in which the tax was withheld.

(2) If the amount of the credit allowed under subsection (1)(b) of this section for a tax year exceeds the net profit tax due for the year, the amount of the excess must be refunded to the non-resident person.”

Section 55. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by creating a new subchapter IX under chapter 5 entitled: “Final Provisions”.

Section 56. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 591 to subchapter IX of chapter 5 to read as follows:

"Section 591. Regulations.

(1) The Secretary shall, subject to approval of the President, 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 FSM.

(2) The regulations shall also provide for matters prescribed under the chapter to be made by regulation.

(3) Such regulations shall be promulgated in accordance with law.”

Section 57. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 592 to subchapter IX of chapter 5 to read as follows:

“Section 592. Transition. Any tax liability that arose before this chapter came into force may be recovered under chapter 8 of this title, but without prejudice to any action already taken for the recovery of the tax.”

Section 58. Title 54 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting a new section 593 to subchapter IX of chapter 5 to read as follows:

“Section 593. Commencement of administration. Administration of this act shall commence on the commencement of administration date as determined by
Section 59. Subchapter IV of chapter 1 of title 54 of the Code of the Federated States of Micronesia, comprising sections 141, 142, 143, and 144 of Title 54, is hereby repealed in its entirety.

Section 60. Effective date. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval, this act shall take effect upon the commencement of administration date set by Executive Order of the President.

Date: 8/20/13

Introduced by: /s/ Florencio S. Harper

Florencio S. Harper
(by request)