A BILL FOR AN ACT

To amend chapter 7 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 16-75, by adding a new section 703 concerning the definition of a revenue law, by amending sections 702, 735, 751, 756, and 758, and for other purposes.

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

Section 1. Section 702 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 16-75, is hereby amended to read as follows:

"Section 702. Definitions. Wherever used in this Chapter, unless the subject matter, context, or sense otherwise requires:

(1) ‘Authority’ means the Federated States of Micronesia Unified Revenue Authority established by section 711 of this title.

(2) ‘Board’ means the Board of Directors of the Authority appointed under section 712 of this title.

(3) ‘CEO’ means the Chief Executive Officer appointed under Section 731.

(4) ‘Congress’ means the Congress of the Federated States of Micronesia.

(5) ‘CTA’ means the FSM Department of Finance and Administration, Division of Customs and Tax Administration.
(6) ‘Finance Official’ means the Secretary, a Director of Finance, Director of Administration, Director of Administration and Treasury or such other official holding the highest administrative office responsible for matters of finance or taxation within the FSM National Government or the Government of any State.

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

(8) ‘Government’ means the Government of the Federated States of Micronesia or the Government of a State in the Federated States of Micronesia, whichever the context appropriately requires.

(9) ‘Generally Accepted Accounting Principles’ or “GAAP” means those accounting principles currently accepted by certified public accountants, which are utilized by auditors operating 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.

(10) ‘Memorandum of Understanding’ means the Memorandum of Understanding entered into between
the FSM National Government and the several States under section 759 of this title.

(11) ‘National tax’ means a tax or duty imposed under a law referred to in paragraphs (a) or (b) of the definition of “Revenue law” in subsection (15) of this section.

(12) ‘Net tax’ means the gross collection of tax, penalties, and interest under a revenue law less refunds paid under such law.

(13) ‘Net National taxes’ means the net tax collected in respect of National taxes.

(14) ‘Net State taxes’ means the net tax collected in respect of a State’s taxes.

(15) ‘Prescribed percentage’, in relation to the Authority’s operations budget, is that percentage determined under sections 752 and 756(2) of this title.

(16) ‘Revenue authority’ means the CTA as defined in subsection (5) of this section, or the administrative office responsible for matters of finance or taxation within the Government of any State.

(17) ‘Revenue law’ means:

(a) any chapter under this title except chapter 3 of title 54 of the Code of the Federated
States of Micronesia;

(b) a law of the FSM imposing a tax or duty if the law provides that the Authority has the responsibility for administering the tax or duty; and

c) a law of a State imposing a tax which the Authority is allowed to administer by virtue of the laws of such State.

(18) ‘Revenue officer’ means the CEO and any officer of the Authority appointed under section 732 of this title.

(19) ‘Secretary’ means the Secretary of the Department of Finance and Administration.

(20) ‘State’ means a State of the Federated States of Micronesia; and

(21) ‘State tax’ means a tax imposed under a law referred to in paragraph (c) of the definition of “Revenue law” in subsection (17) of this section.”

Section 2. Chapter 7 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 16-75, is hereby amended by inserting a new section 703 to read as follows:

“Section 703. Modification of Definitions of Revenue Law, National Tax, State Tax.

(1) The definition of “revenue law” includes a
law of the FSM referred to in section 807 of chapter 8 of this title or of a law of a State authorizing the Authority to collect a levy, charge, fee, or similar amount for the purposes of the following sections:

(a) the definition of “net tax” in section 702(12); and

(b) section 712(3), 713(3) and (9), 733, 735, 741(1), 754, 761, 762, and 764.

(2) The definition of “National Tax” includes a levy, charge, fee, or similar amount imposed under a law of the FSM referred to in section 807 of chapter 8 of this title for the purposes of the following sections:

(a) the definition of “net National taxes” in section 702(13); and

(b) sections 735(1)(b), 741(11), 751(8), and 753(1).

(3) The definition of “State Tax” includes a levy, charge, fee, or similar amount imposed under a law of a State authorizing the Authority to collect such levy, charge, fee, or similar amount for the purposes of the following sections:

(a) the definition of “net State taxes” in section 702(14); and
(b) sections 735(1)(c), 741(12), 751(8), and 753(2)."

Section 3. Chapter 7 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 16-75, is hereby amended to read as follows:

“Section 735. Confidentiality and disclosure of information.

(1) Revenue officers, directors, employees of the Authority, former directors of the Board, former members of a committee of the Board, persons invited to a Board or committee meeting, former employees or contractors of the Authority, and any person formerly or presently engaged by the Authority in any capacity shall not disclose any business or personal document or information received during the performance of duties or in the course of any meeting of the Authority if such document or information is deemed confidential or secret by law or by generally accepted business practices, except that they may disclose a confidential or secret business or personal document or information to:

(a) another revenue officer, but only to the extent required by law or as may be necessary for the purposes of any revenue law;
(b) the Secretary, but only in relation to National
taxes;

(c) a Finance Official of a State, but only
in relation to the State’s taxes;

(d) the Secretary of the FSM Department of
Justice or his designee, but only to the extent
required for any legal action or claim by or
against the National Government;

(e) the Attorney General of a State
Government or his designee, but only to the extent
required for any legal action or claim by or
against the State;

(f) a Court of competent jurisdiction upon
order of such Court, or to the extent necessary
with respect to the enforcement of any revenue law;

(g) the National Public Auditor or a person
authorized by the National Public Auditor in
writing, but only to the extent that the disclosure
is necessary for the performance of the audit of
the Authority’s accounts;

(h) the State Public Auditor or a person
authorized by the State Public Auditor in writing,
but only to the extent that the disclosure is
necessary for audit of accounts held by the
Authority on behalf of the State;
(i) the competent authority of a government of a foreign country with which the FSM National Government has entered into an agreement providing for the exchange of information, but only to the extent permitted under that agreement and applicable law;

(j) any competent authority of the FSM National Government or a State or Local Government with which the Authority has entered into an agreement providing for the exchange of information, but only to the extent permitted under that agreement and applicable law;

(k) a person with the written consent of the person to whom the documents or information relate.

(2) If a revenue officer is permitted to disclose documents or information under subsection (1) of this section, the officer must maintain secrecy and confidentiality except to the minimum extent necessary to achieve the object for which the disclosure is permitted.

(3) Every person who knowingly or intentionally violates any provision of subsections (1) or (2) hereof, or a duty or obligation imposed therein, shall be guilty of a felony and, upon conviction thereof, shall be fined not less than $500.00 and
Section 4. Chapter 7 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 16-75, is hereby amended to read as follows:

“Section 751. Funds of the Authority.

(1) Establishment. There shall be established a Federated States of Micronesia Special Fund, hereinafter referred to as the “Fund”, separate and apart from all public monies or funds of the Federated States of Micronesia, which shall be administered by the Authority exclusively for the purposes of this chapter.

(2) Deposits. Except as may otherwise be required by grantors in cases of grants, all funds specified under subsection (4) hereof, and all funds derived from deductions made pursuant to section 752 hereof, shall be deposited in the Fund. Any unexpended moneys in this Fund shall neither revert nor lapse to the General Fund, or any other Fund.

(3) Administration. The Fund shall be administered by the CEO in accordance with the regulations and procedures which the Board shall promulgate as appropriate for the effectuation and
implementation of the provisions of this subchapter. Procurement of goods and services [to be] funded wholly or partially from the Fund shall be subject to the Procurement Code of the Authority. If no Procurement Code is in force, procurement shall be subject to the Financial Management Act of 1979, as amended, and its subsidiary regulations.

(4) Authority funds. The funds of the Authority consist of:

(a) money appropriated from time to time by Congress and paid to the Authority;

(b) money derived from the disposal, lease, or hire of, or any other dealing with, any property vested in or acquired by the Authority;

(c) money borrowed by the Authority in accordance with subsection (5) of this section;

(d) income from investments referred to in subsection (6) of this section;

(e) except as provided herein, any other moneys that may become payable to the Authority in respect of any matter incidental to its functions and powers, including but not limited to grants or other donated funding; and

(f) money deducted for the operations of the
Authority pursuant to section 752 hereof.

(5) The Authority may borrow upon such terms and conditions as the Board may approve, any sums required by the Authority to meet any of its obligations or to perform any of its functions.

(6) The Authority shall, to the extent practicable, maintain its funds in the form of liquid, interest bearing bank deposits.

(7) The Authority shall conserve its funds by performing its functions and exercising its powers under this chapter so as to ensure that the total revenues of the Authority are sufficient to meet all sums properly chargeable to its revenue account including depreciation and interest on capital.

(8) The funds of the Authority do not include National and State taxes, or any interest or penalty in relation to such taxes, collected by the Authority on behalf of the FSM National Government or the Governments of the several States.”

Section 5. Section 756 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 16-75, is hereby amended to read as follows:

“Section 756. Annual budget and costs of administration.

(1) At such time and in such manner as the Board
may prescribe, but not later than six months prior
to the close of the current fiscal year, the CEO
shall submit to the Board a detailed estimate of
the budget for the next ensuing fiscal year for the
proper conduct of the Authority. This submission
shall include:

(a) for the last completed fiscal year,
audited accounts indicating the amount of revenue
collected by the Authority on behalf of the FSM
National Government and the Governments of the
several States, the amount of other income of the
Authority, and the amount of all expenditures
incurred by the Authority, together with the
closing balance of all bank accounts maintained by
the Authority;

(b) for the fiscal year in progress, a
statement showing the estimated amount of revenue
to be collected on behalf of the FSM National
Government and the Governments of the several
States, the estimated amount of other income of the
Authority, and the estimated amount of all
expenditures to be incurred by the Authority,

together with such summaries, schedules, and
supporting data as the board or the President may
require by notice in writing to the CEO; and
(c) for the next ensuing fiscal year, a budget showing the estimated amount of revenue to be collected on behalf of the FSM National Government and the Governments of the several States, the estimated amount of other income of the Authority, and the estimated amount of all expenditures to be incurred by the Authority, including salaries and wages, purchases of office supplies, operational expenses, and the cost of maintaining branch offices.

(2) The prescribed percentage [annual budget of the Authority] shall be no more than ten percent (10%) of the National Government’s share of National taxes[, expressed as the prescribed percentage authorized by Congress]; provided that the Board may designate in writing a lower deduction from National Taxes [budget cap, within the prescribed percentage].”

Section 6. Section 758 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 16-75, is hereby amended to read as follows:

“Section 758. Distribution of Revenues.

(1) The Authority shall pay the following amounts to the treasury of each State Government:

(a) one hundred percent (100%) of the net
(b) one hundred percent (100%) of the net tax collected pursuant to any other taxes imposed by the State;

(c) fifty percent (50%) of the net tax collected pursuant to the FSM Excise Tax Act in relation to the import of alcohol and tobacco;

(d) eighty percent (80%) of the net tax collected pursuant to section 221 of this Title in relation to the import of gasoline and diesel fuels into the State;

(e) fifty percent (50%) of the net tax collected pursuant to Section 121 of this Title in relation to wages and salaries received by employees in the State;

(f) fifty percent (50%) of the net tax collected pursuant to Section 221 (other than Section 221 other than section 221 of this title in relation to the import of gasoline and diesel fuels into the State) of this Title in relation to the import of goods into the State; and

(g) fifty percent (50%) of the net tax collected pursuant to:

(i) Sections 521 and 522 of this Title
in relation to business carried on [through a permanent establishment] in the State [as determined under section 512 of this title] taking account of Section 523(1) of this title;

(ii) Section 524 of this Title in relation to the carriage of passengers, livestock, mail, merchandise, or goods embarked in the State or to the insurance of risks in the State; and

(iii) Section 525 of this Title in relation to interest, royalties, a natural resource amount, or a management fee derived by a non-resident person from sources in the State determined under Section 513 of this title on the basis that the reference in that section to FSM is a reference to the State.

(2) The Authority shall pay the following amounts to the treasury of the National Government:

(a) twenty percent (20%) of the net tax collected pursuant to section 221 of this Title in relation to the import of gasoline and diesel fuels into the State;

(b) fifty percent (50%) of the net tax collected pursuant to Section 121 of this Title in relation to wages and salaries received by employees in the State;
(c) fifty percent (50%) of the net tax collected pursuant to Section 221 (other than Section 221 of this title in relation to the import of gasoline and diesel fuels into the State) of this title in relation to the import of goods into the State; and

(d) fifty percent (50%) of the net tax collected pursuant to:

   (i) Sections 521 and 522 of this Title in relation to business carried on [through a permanent establishment] in the State [as determined under section 512 of this title] taking account of Section 523(1) of this title;

   (ii) Section 524 of this Title in relation to the carriage of passengers, livestock, mail, merchandise, or goods embarked in the State or to the insurance of risks in the State; and

   (iii) Section 525 of this Title in relation to interest, royalties, a natural resource amount, or a management fee derived by a non-resident person from sources in the State determined under Section 513 on the basis that the reference in that Section to FSM is a reference to the State.

(3) The Authority shall pay the following amounts
to the treasuries of the State Governments according to a formula to be agreed upon by the five FSM Governments:

(a) fifty percent (50%) of the net tax collected pursuant to the FSM Excise Tax Act in relation to the import of alcohol and tobacco.

(4) The Authority shall distribute any levy, charge, fee, or similar amount collected by the Authority on behalf of either the FSM or a State according to the terms of the Memorandum of Understanding authorizing such collection.

(5) All distributions referenced in this section shall include any interest accrued while the funds have been held by the Authority in trust.

(6) The timing of the distribution of revenue shall be as follows:

(a) By no later than the last day of each month the Authority shall distribute to each Government the net taxes collected and deposited by the Authority during the previous month.

(b) Refunds to taxpayers shall be paid from the subsequent month’s distribution of revenue to the Governments.”

Section 7. This act shall become law upon approval by
the President of the Federated States of Micronesia or upon becoming law without such approval.

Date: 8/20/13

Introduced by: /s/ Florencio S. Harper
Florencio S. Harper
(by request)