A BILL FOR AN ACT

To further amend title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, by amending sections 212, 221, 222 and 805 thereof, to increase the import duty on alcohol, wine, sugar sweetened beverages and food products with high sodium content, and to require ten percent of net tax collected from such increase to be deposited in the Health Revolving Fund, and for other purposes.

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

Section 1. This act is crucial for the following reasons:

1. It protects and promotes the health of the public of the Federated States of Micronesia;
2. It addresses the State of Health Emergencies declared by each of the four states of the Federated States of Micronesia acknowledging the epidemic of non-communicable diseases in the FSM and calling for resolute mitigating intervention;
3. It mitigates the incidence of preventable non-communicable diseases through decreasing consumption of alcohol, wine, sugar sweetened beverages and food products with high sodium content; and

Section 2. Section 212 of title 54 of the Code of the
Federated States of Micronesia (Annotated), as amended, is hereby further amended to read as follows:

"Section 212. Definition
In this chapter, except where otherwise specified, the following terms shall have the meanings stated below:

(1) "Ad valorem" (Latin for "according to the value") means a tax imposed at a rate equal to a percentage of value.

(2) "Aircraft" includes airplanes, seaplanes, airships, balloons or any other means of aerial locomotion.

(3) "Airport" means an official port of entry for aircraft as identified in or pursuant to title 18 of this code and amendments thereto.

(4) "Alcoholic beverage" means a drink containing ethyl alcohol of agricultural origin in any percentage, derived either through natural fermentation, or addition during process.

(5) "Approved form" means a form approved by the Secretary of Finance.

(6) "Arrival" means the first time goods or passengers become subject to Customs control within the FSM or any subsequent time before reaching their final destination.

(7) "Bottle" means any closed or sealed
container regardless of size or shape, including those made of glass, metal, paper, plastic, or any other material or combination of materials.

[(7)](8) "Caloric sweetener" means any caloric substance suitable for human consumption that humans perceive as sweet, including sucrose, fructose, glucose, other sugars, and fruit juice concentrates. Caloric sweetener does not include non-caloric sweeteners. For purposes of this definition, caloric means a substance that adds calories to the diet of a person who consumes that substance.

[(8)](9) "Cannabis" means a cannabis plant, whether living or dead, which includes, in any form, any flowering or fruiting tops, leaves, seeds, stalks or any other part of a cannabis plant and any mixture of parts of a cannabis plant.

[(9)](10) "CIF" means "costs, insurance, and freight" incurred for imported goods, and includes all costs and charges associated with the goods up through the time they are delivered to and unloaded at an FSM port of entry or post office.

[(10)](11) "Cigar" means a more or less cylindrical roll of tobacco cured for smoking, of any of various lengths, thicknesses or degrees of straightness, usually wrapped in tobacco leaf or equivalent and includes
cigarillos.

(12) "Cigarette" means a short tightly rolled cylinder of tobacco, wrapped in thin paper and often having a filter tip for smoking.

[(12)](13) "Commissioner" means the Commissioner of Customs.

[(13)](14) "Congress" means the Congress of the FSM.

[(14)](15) "Container" means an article of transport equipment:

(a) of a permanent character and accordingly strong enough to be suitable for repeated use;

(b) specially designed to facilitate the transport of goods, by one or more modes of transport, without intermediate reloading; and

(c) designed to be secured and/or readily handled, having corner fittings for these purposes.

(d) In addition, the following shipping term used with containers has the following meaning: "CY-CY" means all the goods packed in the container are for the one consignee and the container is consigned from container yard to another container yard and will not normally be unpacked at the wharf.

[(15)](16) "Controlled substance" means those described in sections 1119, 1121, 1123, 1125, and 1127 of title 11 of this code or successor provision of law.
“Customs” means the FSM Department of Finance, Division of Customs.

“Customs officer” means a person:

(a) employed by the FSM Department of Finance, Division of Customs;

(b) authorized in writing by the Secretary under this chapter to perform all of the functions of a Customs officer; or

(c) deputized in accordance with the provisions of section 268 of this chapter.

“Duty” means any tax payable on the importation of goods, and “dutiable goods” means those goods subject to tax on their importation.

“FOB” (“free on board”) means the value of goods when shipped for export, and includes all costs and charges up to the time of delivery of the goods on board the exporting vessel or aircraft.

“Forfeiture” means the surrender of ownership of property to the FSM government following a breach of certain provisions of this chapter; it is independent of and in addition to any penalty imposed by this chapter.

“FSM” means the Federated States of Micronesia.

“Goods” means any type of merchandise,
product, commodity, vehicle, moveable personal property, or commercial wares.

[(23)] (24) "Importer" means any person by or for whom any goods are imported, and includes the consignee and any other person who is beneficially interested in the goods.

[(24)] (25) "Master" means:

(a) In relation to a vessel the person in charge or command of the vessel;

(b) In relation to an installation the person in charge of the installation.

[(25)] (26) "Narcotic drug" means those described in subsection (15) of section 1112 of title 11 of this code or successor provision of law.

[(26)] (27) "Non-caloric sweetener" means any non-caloric substance suitable for human consumption that humans perceive as sweet, including aspartame, saccharin, stevia, and sucralose. Non-caloric sweetener does not include caloric sweeteners. For purposes of this definition, non-caloric means a substance that contains fewer than five calories per serving.

[(27)] (28) "On or about the body" means on or within the body, clothing, footwear, purse, handbag, or similar article.

[(28)] (29) "Owner" means:
(a) In respect to goods, any person being or holding himself or herself out to be the owner, importer, exporter, consignee, agent or person possessed of, or having control of, or power of disposition over the goods;

(b) In respect of a vessel or aircraft, the owner of record, or a person acting as agent on behalf of the owner of record.

[29][30] “Package” includes every means by which goods for transportation may be cased, covered, enclosed, contained, or packed.

[30][31] “Person” means any individual, company, corporation, partnership, unincorporated association, or other business entity.

[31][32] “Pilot” means the person in charge or in command of an aircraft.

[32][33] “Place” means any location, building or site, and includes moveable locations such as a vessel or aircraft.

[33][34] “Port” or “Port of entry” means an official port of entry identified in or pursuant to title 18 of this code and amendments thereto.

[34][35] “Powder” means any solid mixture of ingredients used in making, mixing, or compounding sugar-sweetened beverages by mixing the powder with one
or more other ingredients, including water, ice, syrup, simple syrup, fruits, vegetables, fruit juice, vegetable juice, carbonation, or other gas.

[(35)] (36) “President” means the President of the FSM.

[(36)] (37) “Prohibited goods” means any goods the importation or exportation of which is prohibited under FSM law.

[(37)] (38) “Regulations” means any regulations promulgated pursuant to this chapter.

[(38)] (39) “Sale” means the transfer of title or possession for valuable consideration regardless of the manner by which the transfer is completed.

(40)”Salt reduction target” means the recommended maximum level of sodium in selected categories of processed foods proposed by the World Health Organization (WHO) for Pacific Island countries, and as amended from time to time.

[(39)] (41) “Secretary” means the Secretary of the FSM Department of Finance.

[(40)] (42) “Smuggling” means any importation or exportation, attempted importation or exportation, with the intent to defraud the FSM.

[(41)] (43) “Stamp” means device or instrument used by a Customs officer to make a distinctive impression or imprint, to identify and evidence the clearance of
imported or exported goods and the clearance of vessels or aircraft.

(44) “Sugar-sweetened beverage” means any nonalcoholic beverage, carbonated or noncarbonated, that is intended for human consumption and contains any added caloric sweetener. As used in this definition, nonalcoholic beverage means any beverage that contains less than one-half of one per cent alcohol per volume. Sugar-sweetened beverage does not include:

(a) Beverages consisting of one hundred per cent natural fruit juice or natural vegetable juice with no added caloric sweetener. For purposes of this paragraph, natural fruit juice or natural vegetable juice means the original liquid resulting from the pressing of fruits or vegetables, respectively, or the liquid resulting from the dilution of dehydrated natural fruit juice or natural vegetable juice, respectively;

(b) Milk without any added caloric sweetener. For purposes of this paragraph milk means natural liquid milk regardless of animal source or butterfat content; natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content; dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat content; soy milk; or rice milk.
(45) "Syrup" means a liquid mixture of ingredients used in making, mixing, or compounding sugar-sweetened beverages using one or more other ingredients including water, ice, a powder, simple syrup, fruits, vegetables, fruit juice, vegetable juice, carbonation, or other gas.

(46) "Tobacco" means a product made or derived entirely or partly of leaf tobacco or any other parts of a tobacco plant, which is intended for human consumption, to be smoked, sucked, chewed or snuffed or otherwise inhaled or ingested.

[(43)](47) “Unlawfully imported, exported, or carried goods” means any smuggled goods and any goods imported, exported, or carried in breach of the provisions of this chapter, or any other law of the FSM, or whose sale, possession or use is prohibited or contrary to restrictions imposed by the State into which the importation took place. The above-defined phrase carries a like meaning wherever similarly stated in this chapter.

[(44)](48) "Vehicle" means every description of motorized carriage or other contrivance used or capable of being used as a means of transport on land.

Section 3. Section 221 of title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended to read as follows:
"Section 221. Levy and rates.

The following import duties are hereby levied on all products specified herein which are imported into the FSM:

(1) cigarettes, at the rate of $[0.025] 0.075 per cigarette on and from January 1, 2018, provided that this rate shall increase by $[0.005] 0.025 per cigarette on January 1 of each of the years [2007, 2009, 2011, 2013, and 2015] 2019, 2020, 2021 and 2022 and thereafter shall be adjusted by the rate of inflation on 1 January of each year;

(2) cigars, at the rate of $0.075 per cigar on and from January 1, 2018, provided that this rate shall increase by $0.025 per cigar on January 1 of each of the years 2019, 2020, 2021 and 2022;

(3) tobacco, other than cigarettes and cigars, at the rate of [50 percent ad valorem] $0.031 per gram on January 1, 2018, provided that this rate shall increase by $0.05 per gram on January 1 of each of the years 2019, 2020, 2021 and 2022 and thereafter shall be adjusted by the rate of inflation on 1 January of each year;

(4) perfumery, cosmetics, and toiletries, including cologne and other toilet waters, articles of perfumery, whether in sachets or otherwise, and all preparations
used as applications to the hair or skin, lipsticks, pomades, powders, and other toilet preparations not having medicinal properties, at the rate of 25 percent ad valorem;

(5) Sugar-sweetened beverages other than bottled water, at the rate of 5 cents per fluid ounce on and from 1 March 2018. For syrups and powders, the tax must be applied to the largest volume of sugar-sweetened beverages produced from that syrup or powder according to the manufacturer’s instruction [soft drinks, drink mixes, drink preparations, coffee, tea, and nonalcoholic beverages, at the rate of 25 percent ad valorem, provided, however, that any beverage having a fruit juice content of 25 percent or more by volume shall be at the rate of three percent ad valorem];

(6) Alcoholic beverages at a rate of 5 cents per fluid ounce on all alcoholic beverages with an alcohol volume of up to 10 percent and 10 cents per fluid ounce on all alcoholic beverages with an alcohol volume of 10 to 20 percent and 20 cent per fluid ounce on all alcoholic beverages with an alcohol volume over 20 percent on and from 1 January 2018 [beer and malt beverages, at the rate of $0.25 per 12 fluid ounces; [(6) distilled alcoholic beverages, at the rate of 12 dollars per gallon];
(7) wine at the rate of 30 percent \textit{ad valorem};

(7) foodstuffs for human consumption, other than food products referred to in subsections (5), (6) and (8), at the rate of three percent \textit{ad valorem}; provided, however, that fresh and frozen fish and seafood, shall be at the rate of 25 percent \textit{ad valorem};

(8) Processed food products in the categories for which a Pacific salt reduction target has been set by the World Health Organization (WHO) listed in Annex 1, with a sodium content in excess of the target level (mg sodium/100g) set by the WHO and listed in Annex 1, at a rate of 50\% \textit{ad valorem} on and from 1 March 2018;

(9) gasoline and diesel fuel, at the rate of five cents per gallon;

(10) laundry bar soap, at the rate of 25 percent \textit{ad valorem}; and

(11) all other imported products, except those specified above, at the rate of four percent \textit{ad valorem}.

(12) The levies under subsections (5), (6) and (8) shall be reviewed every two years by the Department of Finance & Administration and the Department of Health and Social Affairs to recommend adjustment to FSM Congress.

Section 4. Section 222 of title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby
further amended to read as follows:

(1) **Damaged, pillaged or faulty goods.** Upon receipt of a written request within 28 days of the goods' release from Customs control, the Secretary may authorize a refund of the whole or part of the duty paid, where any of the following conditions exist:

(a) goods have been damaged, pillaged, lost or destroyed during the voyage;

(b) goods have, while subject to the control of Customs, been damaged, pillaged, lost or destroyed; or

(c) the Commissioner is satisfied that, owing to a fault or defect in any goods, the importer has received a reduction or a refund, in whole or part, of the price paid for the goods.

(2) **Goods imported for subsequent export.**

(a) Upon application to and approval by the Secretary, import duty paid on the following goods shall be refunded: goods imported for processing in the FSM, not otherwise used in the FSM, and subsequently exported from the FSM. For purposes of this subsection, raw materials or ingredients which are worked into or otherwise become part of a different or more finished product are deemed exported when that product is exported.

(b) Goods imported for processing are eligible
for the duty refund when the finished products which the imported goods were processed into have been loaded on an aircraft or vessel for direct removal from the FSM and that aircraft or vessel has departed from the port. After they have been so loaded, the goods shall again be subject to import duty if they are unloaded or used in the FSM. With respect to importers primarily engaged in importing for processing and subsequent export, the Secretary shall provide for waiving, by regulation rather than collecting and subsequently refunding, duties.

(c) Upon application to and approval by the Secretary, import duty shall be waived on the following goods: goods imported for transshipment through the FSM, not to be used in the FSM, which are securely stored while in the FSM and which are exported from the FSM within a reasonable time of import to the FSM, as defined by regulation. Should these goods not be exported within a reasonable time, the importer will be subject to a penalty equal to one-quarter of the import duty that would have been due if the goods were to be used in the FSM. Should these goods be removed from the secure storage facility or used in the FSM, they will be subject to the full import duty.

(d) The burden of proving that goods imported
are for subsequent export shall be upon the importer/exporter as specified in regulations.

(3) *Goods carried in per trip abroad.* Each time an individual person enters or returns to the FSM from a foreign jurisdiction, he or she is entitled to bring into the FSM the following goods duty free, provided that such goods are for that person’s own personal use or consumption and not for resale or exchange, and provided further that such person is permitted by applicable State law to possess, use, and consume such goods:

(a) up to [200] 100 cigarettes;

(b) up to [one] half a pound of tobacco or [20] 10 cigars;

(c) up to 52 fluid ounces or 1500 milliliters of distilled alcoholic beverages; and

(d) up to two hundred dollars ($200) worth of goods other than tobacco products,[beer and malt beverages, distilled] or alcoholic beverages[ and wine].

(4) *Visitors’ personal effects.* A visitor to the FSM may import *bona fide* personal effects into the FSM duty free, provided the goods are for the visitor’s own personal use and will be taken with the visitor when he or she leaves the country.
(5) Returning goods. Goods produced or properly entered in the FSM which are subsequently removed from the FSM may be returned to the FSM duty free. The burden shall be on the owner of the goods to establish that the goods were either produced in the FSM or previously and properly entered.

(6) Goods used in foreign aid projects. An international organization, foreign contractor, or other foreign entity may import goods into the FSM duty free in connection with the performance of services or other conduct of business in furtherance of a foreign aid agreement entered into by the FSM, the terms of which require that such import shall not be subject to taxation by the FSM; provided that if and when such goods are subsequently sold in the FSM, import duty shall be due based on the sale amount. The duty, together with penalties and interest, shall be the joint and several personal liability of the importer and the purchaser and shall be secured by first liens on the goods and on the importer’s property as hereinafter provided.

(7) Certain fishing vessels and equipment. Fishing vessels basing in the Federated States of Micronesia under a valid permit or license issued pursuant to title 24 of this code shall not be subject to the import duty
on either the vessel or equipment installed in the vessel. This exemption shall apply to replacement parts and equipment imported by these fishing vessels as well.

(8) Parcels which would generate a de minimis duty. Parcels mailed or otherwise sent into the FSM, which would otherwise generate a de minimis duty, shall be exempt from import duty, provided that such goods are for the recipient’s own personal use or consumption and not for resale or exchange. Parcels with values up to the amount specified in subsection (3)(d) of this section, shall be exempt.

(9) Health, education and welfare related goods donated for humanitarian use. Upon application to and approval by the Secretary, the import duty on goods related to health, education or welfare donated without cost for humanitarian purposes, and not for resale, shall be waived or refunded; provided, however, that if and when any of such goods are subsequently sold in the FSM, import duty shall be due based on the sale amount. The duty, together with penalties and interest, shall be the joint and several personal liability of the importer and the purchaser and shall be secured by first liens on the goods and on the importer's property as hereinafter provided.

Section 5. Section 805 of title 54 of the Code of the
Federated States of Micronesia (Annotated), as amended, is hereby further amended to read as follows:

"Section 805. Distribution of revenues.

(1) (a) The treasurer of the Federated States of Micronesia shall pay ten percent of the net taxes collected pursuant to subsections 221(1), (2), (3), (5), (6) and (8) of this title, beginning 1 January 2018, into the Health Revolving Fund established under Title 55, Sub-chapter XVI.

(b) The treasurer of the Federated States of Micronesia shall pay eighty percent of the net taxes collected pursuant to section 221(9) of this title, and fifty percent at the National Government’s share of all other net taxes collected pursuant to sections 121, 141, and 221 of this title into the treasury of the State government to which the taxes are attributable for appropriation by the State legislature.

(c) An additional twenty percent of the total of all other net taxes collected pursuant to sections 121, 141, and 221 of this title after the Treasurer of the Federated States of Micronesia has administered distribution under subsections (a) and (b) shall be deposited by the treasurer of the Federated States of Micronesia into the State sub-account “A” of the FSM Trust Fund on behalf of the National Government for the
State government to which the taxes are attributable.
The additional twenty percent (20%) deposited by the National Government into individual States sub-account A may not be withdrawn by the States.

(d) Twenty-five percent of the amount remaining, after the transfer of funds pursuant to subsections [1+](a), [and 1+](b), and [1+](c) of this section, of the net taxes collected pursuant to subsection 221(1) of this title shall be placed in an account to be used solely for post-graduate school scholarships or full-time post-secondary courses of study leading to commercial Federal Aviation Administration (FAA) licenses, ratings and certifications. The allottee of the scholarship funds shall be the President of the Federated States of Micronesia or his designee;

(e) Except as specifically provided in parts (a), (b), [and] (c), and (d) of this subsection, all net taxes collected shall be part of the General Fund of the Federated States of Micronesia, subject to appropriation by Congress pursuant to title 55 of the Code of the Federated States of Micronesia.

(2) 'Net taxes' as used in subsection (1) of this section means gross collections of taxes, penalties, interest, or other related charges less refunds."

Section 6. This act shall become law upon approval by the
President of the Federated States of Micronesia or upon its becoming law without such approval

Date: 10/30/17
Introduced by: /s/ Florencio S. Harper

Florencio S. Harper  (by request)