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 116, 118, 123, 135, 151, and 155 of chapter 1 thereof, to insert new sections 811 and 812 into chapter 8 of title 54 of the FSM Code, in order to authorize the Secretary of Finance and Administration to inspect and examine records, books of account, bank statements and other data of taxpayers, including records of financial institutions and of third parties for the purpose of securing information necessary to enforce the provisions of chapter 1 of title 54 F.S.M.C., to allow the Secretary of Finance and Administration to grant relief from penalties and interest charged in limited extenuating circumstances, to allow taxpayers relief due to business interruptions and hardships caused by COVID-19, to introduce specific amendments to improve the administration of the Customs and Tax Division of the Department of Finance and Administration, to authorize tax write-off and reinstatement of tax liabilities in certain cases, to delegate specific functions of the Secretary of Finance and Administration under title 54 of the FSM Code, and for other purposes.

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

Section 1. Section 116 of chapter 1 of title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby amended to read as follows:

"Section 116. Preservation and disclosure of information.

(1) All reports and returns required by this chapter shall be preserved for three years and thereafter until the Secretary orders them to be destroyed.

(2) The Secretary and every employee of the Department of Finance shall maintain the secrecy of all matters relating to the chapter which come to their knowledge and shall not communicate such matters to any person except
for the purpose of carrying into effect this chapter or any other enactment imposing taxes or duties payable to the Government of the Federated States of Micronesia.

(3) No employee of the Department of Finance shall be required to produce in any court any matter or thing relating to the taxes imposed by this chapter coming under his notice in the performance of his duties as an employee of the Revenue Division except when it is necessary to do so for the purpose of carrying into effect any provision of this chapter or any other enactment imposing duties or taxes payable to the Government of the Federated States of Micronesia.

(4) Information as to the amount of income or any particular set forth or disclosed in any report or return required under this chapter may, upon request of a committee appointed by the Congress of the Federated States of Micronesia, be furnished to the committee, but the committee or any member, clerk, or other officer or employee thereof shall not disclose any particulars of the information so furnished except to law enforcement officers for the purpose of aiding the detection or prosecution of crimes committed in violation of this chapter.

(5) The Governor of each State may appoint one representative of his administration who shall have
access to all returns, reports, or other information on file with the Department of Finance as may be necessary to show that the required distribution of revenue to his State has been made. Each Governor shall make the appointment of his representative known to the Secretary of Finance. The appointee may share information acquired hereunder with the Governor of his State. The Governor and his appointee may not disclose the information to any other person except for the specific purpose of ensuring that the required distribution of revenues to their State has been made, or except as otherwise provided for by law.

(6) The Attorney General or other legal representatives of the Government of the Federated States of Micronesia may inspect the report of return of any taxpayer who brings an action to set aside or review the tax based thereon, or against whom an action of proceeding has been instituted to recover any tax or any penalty imposed by this chapter.

(7) Nothing herein shall prohibit the Secretary or his delegate from compiling and publishing statistics or information generally on the returns filed so long as there is no reference to a particular return and the statistics and the information do not in effect divulge the contents of any one return.
(8) In enforcing the provisions of this chapter, the Secretary shall have authority to demand the production by a taxpayer, and to inspect and examine, the records, books of account, bank statements, and any other pertinent data of a taxpayer in his possession for the purpose of determining the accuracy of the tax return or the correct amount of tax due to the National Government. The authority of the Secretary extends to the examination of financial records in the possession of a financial institution or a third party, including a State government or a municipal government in the FSM, with whom a taxpayer has a business relation or a transaction, and to demand from a financial institution or a third party, including a State government or a municipal government in FSM, the production of such records, with respect to a relevant taxpayer, for the purpose of enabling the Secretary to obtain relevant information in connection with enforcing the provisions of this chapter.

The term “financial institution” used in this section means any person or entity, which carries on a business which includes any of the following activities:

(a) acceptance of deposits and other repayable funds from the public;

(b) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and
financing of commercial transactions;

(c) financial leasing;

(d) money transmission services;

(e) issuing and administering means of payment
(such as credit cards, travelers checks and bankers
drafts);

(f) issuing or brokering insurance policy,
guarantees and commitments;

(g) trading for their own account or for account of
customers in money market instruments (such as checks,
bills, certificates of deposit), foreign exchange,
financial futures and options, exchange and interest rate
instruments, and transferable securities;

(i) underwriting share issues and participation in
such issues;

advice to undertakings on capital structure, industrial
strategy and related questions, and advice and services
relating to mergers and the purchase of undertakings;

(j) money-brokering;

(k) portfolio management and advice;

(l) safekeeping and administration of securities;

(m) credit reference services; or

(n) safe custody services.”

Section 2. Section 118 of chapter 1 of title 54 of the Code
of the Federated States of Micronesia (Annotated), as amended, is
hereby amended to read as follows:

“Section 118. Penalties for violation of sections 116 and 117. Any violation of subsection (2), (3), (4), [or] (5), or failure to make available the records required by the Secretary pursuant to subsection (8) of section 116 or violation of section 117 of this chapter shall be a misdemeanor and shall be punishable by a fine of not more than $500, or imprisonment for not more than six months, or both.

Section 3. Section 123 of chapter 1 of title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby amended to read as follows:

“Section 123. Refunds of taxes on wages and salaries.

(1) If it shall be shown, upon application of an employee, that there has been withheld from his wages or salaries any tax not due thereon, or more than the amount of tax due thereon, or that he has paid from his wages and salaries any tax not due thereon or more than the amount of tax thereon, or if it is shown upon application of the business that it has paid an amount not due as tax under this chapter or greater than the tax levied under this chapter, then the Secretary shall refund the amount found to have been overpaid or otherwise not due and shall pay such refund out of current collections of the tax; provided, the Secretary
shall be satisfied that:

   (a) the amount so overpaid or otherwise not due
   has been paid to the Government;
   (b) the amount of refund claimed has not been
   used as a credit against any tax or taxes due and
   payable to the Government from such employee; and
   (c) application for such refund was filed within
   one year after the end of the calendar year in which
   the amount to be refunded was withheld or paid.

   (2) The Secretary shall make a decision on the
   application for refund within 90 days after it is
   submitted.

   (3) Notwithstanding anything in this section, the
   Secretary may refrain from issuing a tax refund check
   when the amount of tax refund does not exceed five
   dollars. Any tax refund that is withheld shall be
   offset against any tax owed or transferred forward to
   the next taxable year.”

Section 4. Section 135 of chapter 1 of title 54 of the Code
of the Federated States of Micronesia (Annotated), as amended, is
hereby amended to read as follows:

“Section 135. Responsibilities for withheld taxes.

   (1) All taxes withheld by any employer under section
   131 of this chapter shall be held in trust by such
   employer for the Government and for payment to the
Secretary in the manner and at the time required by this chapter.

(2) If any employer fails or neglects to deduct and withhold from the compensation paid to an employee the amount of the tax imposed by this chapter, and the Secretary is satisfied that the employer has not refused to deduct the amount of the tax imposed, the employee shall be liable to pay to the Government the amount of the tax not deducted no later than the last day of the month following the close of each quarter, to wit, on or before April 30, July 31, October 31, and January 31.

(3) Notwithstanding subsection (2) of this section, if any employer refuses to deduct and withhold from the compensation paid to an employee, or to pay over, the amount of the tax imposed by this chapter, such employer shall, moreover, be liable to pay to the Government the amount of the tax, which amount shall (whether or not tax withholdings constituting trust funds have been commingled with said employer’s assets) form a lien on the employer’s entire assets, having priority over all other claims and liens, except as provided by the Secured Transactions Act.

[3](4) Any employer may recover from an employee any amount which he should have withheld but did not
Section 5. Section 151 of chapter 1 of title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby amended to read as follows:

“Section 151. Records; inspection and audit.

(1) All persons, employees, and business required to make and file returns under this chapter shall keep and maintain for a period of six (6) years accurate records, and the records may be inspected, uplifted, copied, or audited [and audited] at any reasonable time by the Secretary for the purpose of administering the provisions of this chapter.

(2) For the purpose of this section the term “records” includes books of account, recording receipts documents or income or expenditure or purchases or sales, and also includes vouchers, invoices, receipts, and such other documents (including in electronic form) as are necessary to verify the entries in any such books of account and, in the case of an agent, records of all transactions (including in electronic form) carried out on behalf of the agent’s principal.”

Section 6. Section 155 of chapter 1 of title 54 of the Code
of the Federated States of Micronesia (Annotated), as amended, is hereby amended to read as follows:

"Section 155. Civil penalties. The criminal penalties imposed by section 154 of this chapter for violation of provisions of this chapter shall be separate from, and in addition to, all other penalties or interest provided for in this section. The following civil penalties are hereby levied and shall be assessed and collected by this Secretary:

(1) Failure to file return on time. Except as may be permitted by the Secretary pursuant to sections 139 and 143 of this chapter, if any taxpayer fails to make and file a return required under this chapter on or before the date set, unless prior to that date such taxpayer applied for and received an extension for reasonable cause, one percent of the tax shall be added for each 30 days or fraction thereof elapsing between the due date of the return and the date on which it is actually filed; provided, however, that the minimum penalty under this subsection shall be five dollars.

(2) Failure by employer to file statement. Any employer required to furnish a written statement prescribed in section 133 of this chapter who willfully failed to file such statements on the date prescribed thereof, except with regard to any extension of time
for filing, shall be subject to a five dollar penalty for each such statement not so filed.

(3) Failure to file after demand. Where taxpayer fails to file return and pay tax after demand in any case where the Secretary makes a return and assesses a tax after a taxpayer’s failure or refusal to make and file a return and pay the tax required by this chapter, [10%] 25 percent of the tax assessed, in addition to the penalties of subsection (1) of this section, shall be added thereto.

(4) False and fraudulent returns. If any part of any deficiency is due to fraud with intent to evade the tax, or any portion thereof, 50 percent of the total amount of such deficiency, in addition to the penalties provided in subsections (1), (2), and (3) of this section, shall be assessed and added to the deficiency assessment.

(5) Interest. If any tax or penalty imposed by this chapter is not paid on or before the date prescribed for such payment, there shall be collected, in addition to such tax and penalties, interest on the unpaid balance of the tax principal at the rate of six percent per annum from its due date until the date it is paid.

(6) On application for relief made in writing to the Secretary by any taxpayer who (whether before or after
the commencement of this provision) has become liable
for the payment of any penalty or interest under
subsections (1) (2), (3), and (5) of this section, the
Secretary may, grant relief to the taxpayer by the
remission of the whole or part of the penalty and or
interest, if he is satisfied that the late filing and
or late payment was due to:

(a) circumstances outside of the control of the
taxpayer; or

(b) the serious illness of the person responsible
for filing the return or statement, or paying the tax;

or

(c) excusable error on the part of a taxpayer
relying upon an incorrect information.

(e) A significant disruption to the person’s
business caused by COVID-19 (also known as Coronavirus)
restrictions.”

Section 7. Chapter 8 of title 54 of the Code of the
Federated States of Micronesia (Annotated), as amended, is
hereby amended by inserting new section 811 to read as follows:

“Section 811. Tax write-off and reinstatement of tax
debt

(1) The Secretary may write off in whole or in part
any amount of unpaid tax, penalties, or interest owed
by a taxpayer where he is satisfied that all reasonable
efforts have been taken to collect the tax, penalties, or interest and the amount to be written off is in fact irrecoverable;

(2) The provisions of subsection (1) shall apply to the following categories:

(a) a taxpayer who, after reasonable enquiry has left the FSM and permanently resides overseas;

(b) a taxpayer whose current whereabouts, business or residential addresses are not known;

(c) a deceased taxpayer whose estate does not have any asset of value;

(d) a taxpayer with a serious illness or incapacitation who will not likely not have future earnings be able to earn any future income;

(e) a person who is incarcerated for a period of not less than 5 years and will not likely earn any income in the future and does not have any asset of value;

(f) a person who is facing serious financial hardship due to a significant disruption to the person’s business caused by COVID-19 (also known as new Coronavirus) restrictions;

(g) a natural person who has suffered such loss or is in such circumstances that the payment of the full amount of the tax has entailed or would entail
serious hardship;

(h) an insolvent or bankrupt corporation, or

(i) it is uneconomical to pursue the recovery of

the outstanding unpaid tax.

(3) Notwithstanding anything in this section, the

Secretary may reinstate within a period of seven (7)

years the amount written off if the Secretary, upon

reasonable enquiry, is satisfied that:

(a) the taxpayer is financially capable of paying

the amount written off in full or in part within a

period of 5 years upon reinstatement, and the amount

written off is economically viable to recover; or

(b) the taxpayer knowingly absconded to avoid the

amount written off and the taxpayer is financially

capable of paying the amount written off in full or in

part within a period of 10 years upon reinstatement.”

Section 8. Chapter 8 of title 54 of the Code of the
Federated States of Micronesia (Annotated), as amended, is hereby
amended by inserting new section 812 to read as follows:

“Section 812. Delegation of Secretary’s functions and
powers.

(1) Subject to subsection (4) of this section, the
Secretary may, by written instrument, delegate to a
Department of Finance and Administration employee any

of his functions and powers under Title 54, other than
this power of delegation.

(2) A reference in Title 54 to the Secretary includes, in respect of the exercise of a power or performance of a function delegated to an employee, a reference to the delegate.

(3) A delegation under this section is revocable at will and does not prevent the exercise of a power or performance of a function by the Secretary.

(4) The Secretary shall not delegate the functions and powers of Title 54 to any person other than an employee of the Department of Finance and Administration; provided, however, that nothing herein shall be deemed as limiting the Secretary from retaining legal counsel, or contracting with consultants and others as may be necessary to assist the Department of Finance and Administration to perform its duties pursuant to Title 54."

Section 9. 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: 4/13/20  Introduced by: /s/ Florencio S. Harper
Florencio S. Harper  (by request)