A BILL FOR AN ACT

To further amend section 112 of title 54 of the Code of the Federated States of Micronesia (Annotated), as amended by Public Laws No. 18-118 and 21-250, to reassert the long-standing definition of “Gross revenue” and clarify that the gross revenue tax is computed by not allowing a deduction for the state sales tax, and for other purposes.

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

Section 1. Section 112 of title 54 of the Code of the Federated States of Micronesia (Annotated), as amended by Public Laws Nos. 18-118 and 21-250, is hereby further amended to read as follows:

"Section 112. Definitions. Wherever used in this chapter, unless the subject matter, context, or sense otherwise requires:

(1) ‘Business’ means any profession, trade, manufacture, or other undertaking carried on for pecuniary profit and includes all activities whether personal, professional, or incorporated, carried on within the Federated States of Micronesia for economic benefit either direct or indirect, and excludes casual sales as determined by the Secretary; however, one who qualifies as an employee under this section shall not be considered as a business. Copra production by unincorporated copra producers collectively or severally shall not be included as a business under this definition.
(2) ‘Commercial aircraft’ means any aircraft capable of and intended for use in commercial aviation.

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

(4) ‘Employer’ includes any individual, corporation, association, joint stock company, bank, insurance company credit union, cooperative, or other equity or group employing any person, and also includes the Federated States of Micronesia, State and local governments, and their agencies, charged with the disbursement of public moneys as salaries or wages. ‘Employer’ also includes the United States Government and instrumentalities thereof.

(5) ‘Gross revenue’ means the gross receipts, cash or accrued, of the taxpayer received as compensation for personal services and the gross receipt of the taxpayer derived from trade, business, commerce, or sales and the value proceeding or accruing from the sale of tangible personal property, or services, or both, and all receipts, actual or accrued by reason of the capital of the business engaged in, including interest, rentals, royalties, fee, or other emoluments however designated and without any deductions on account of the cost of
property sold, the cost of materials used, taxes — including state sales tax — [τ] royalties, or interest paid or any other expenses whatsoever. Gross revenue shall not include the following:

(a) refunds and rebates;

(b) moneys held in a fiduciary capacity, which excludes the amount of state sales tax retained and set aside by a seller for later remittance to the state;

(c) wages and salaries, received by the taxpayer, which are taxed under other provisions of this chapter;

(d) sales payments received for the sale of a commercial aircraft, to the extent that such sale payments in any quarter shall equal the rental payments made to the buyer/lessor by the seller/lessee of such aircraft for its rental by the seller/lessee;

(e) rental payments received for the rental of a commercial aircraft, to the extent that such rental payments in any quarter shall equal the sale payments made to the seller/lessee by the buyer/lessor of such aircraft for its purchase by the buyer/lessor;

(f) cash discounts allowed and taken on sales, the proceeds of sale of goods, wares, or merchandise returned by customers when the sale price is refunded either in cash or by credit; or the sale price of any
article accepted as part of payment of any new article sold, if the full sale price of a new article is included in ‘gross revenue’;

(g) funds received by an international organization, foreign contractor, or other foreign entity paid from foreign aid proceeds donated to the Federated States of Micronesia pursuant to a foreign aid agreement entered into by the Federated States of Micronesia, the terms of which require that such gross revenue shall not be subject to taxation by the Government of the Federated States of Micronesia;

(h) proceeds of export sales of tangible personal property produced or manufactured in the Federated States of Micronesia and delivered to a buyer outside the Federated States of Micronesia;

(i) proceeds of sales of products of a processing facility in the Federated States of Micronesia, which are subsequently exported from, and not used in, the Federated States of Micronesia;

(j) proceeds of sales of fish by foreign or domestic fishing vessels to processing facilities within the Federated States of Micronesia; or

(k) proceeds of sales of bait fish to foreign or domestic fishing vessels;

(l) proceeds from (i) recycling waste paper,
plastic, aluminum, tin or other scrap metal, or glass so that such materials may be re-used, (ii) removing such waste materials, motor vehicles, appliances, batteries, paint or toxic chemicals from the Federated States of Micronesia for disposal or recycling; or (iii) collecting such waste materials, motor vehicles, appliances, batteries, paint or toxic chemicals for the purposes of removal from the Federated States of Micronesia for recycling or disposal.

(6) ‘Military or Naval Forces of the United and ‘Armed Forces of the United States’ means all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of the Army, Navy, or Air Force, and also includes the Coast Guard.

(7) ‘Month’ means calendar month.

(8) ‘Taxable Gross Revenues’ shall mean, for any tax period, the figure calculated by deducting from the Gross Revenues for the period, the following expenses of the business for the period:

(a) wages, salaries and benefits reasonably paid by the taxpayer to or on behalf of employees of the business for personal services relating to producing the Gross Revenues, as such wages and salaries are reported pursuant to subchapter III of chapter 1 of title 54 of...
the Code of the Federated States of Micronesia; and

(b) Social Security contributions by the business in respect of its employees pursuant to section 902 of title 53 of the Code of the Federated States of Micronesia;

(c) Electric utility and water utilities costs paid by the business which are directly related to business operations;

(d) Communication expenses paid by the business which are directly related to business operations;

(e) Contributions made by the business on behalf of their employees towards the employees’ MiCare health insurance plan.

(9) ‘Processing facility’ means a business that prepares, alters, and/or packages raw materials into a finished product for resale.

(10) ‘Purchase payments’ means payments on the actual selling price, including any interest, carrying charges, or other charges associated with a sale. As used herein, the word ‘sale’ implies a transfer of ownership of that which is sold, in exchange for the purchase payments or promise thereof.

(11) ‘Rental payments’ means any payments made in exchange for use or rental, and includes interest,
carrying charges, or other changes associated with use
or rental.

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

(13) ‘Wages’ or ‘Salaries’ means and includes
commissions, fees, compensation, emoluments, bonuses,
and every and all other kinds of compensation paid for,
or credited or attributable to, personal services
performed by an individual, which services have been
performed by such person as an employee. Wages and
salaries shall not include the following:

   (a) any payment received from the United States

   by members of the Military or Naval Forces of the United
   States or the Armed Forces of the United States;

   (b) reasonable per diem and travel allowances to

   the extent that they do not exceed any comparable

   Federated States of Micronesia Government rates;

   (c) rental value of a home furnished to any

   employee or a reasonable rental allowance paid to any

   employee (to the extent such allowance is used by the

   employee to rent or provide a home);

   (d) any payment on account of sickness or

   accident disability, or any payment of medical or

   hospitalization expenses, made by an employer to or on

   behalf of an employee; provided, however, that normal
wages or salaries paid to an employee for a period of
time during which he is excused from work because of
sickness shall not be excluded from wages and salaries
under this subsection;

(e) any payment made to or on behalf of an
employee or to his beneficiary from a trust or annuity;

(f) remuneration paid in any medium other than
cash to an employee for service not in the ordinary
course of the employer’s trade or business;

(g) remuneration paid for casual or intermittent
labor not performed in the ordinary course of the
employer’s trade or business and for not more than one
week in each calendar month;

(h) any payment in the form of a scholarship,
fellowship, or stipend made to any employee while he is
a full-time, bona fide student at an educational
institution;

(i) any payment received by a minister of the
gospel or clergyman from a religious group or
organization;

(j) any payment received by an employee for
services performed as a domestic or household employee
for a private individual or family;

(k) any payment received by an employee, who is
not a citizen of the Federated States of Micronesia,
while employed by an international organization, foreign contractor, or other foreign entity performing services or otherwise conducting business in furtherance of a foreign aid agreement entered into by the Federated States of Micronesia, the terms of which require that such wages and salaries shall not be subject to taxation by the Government of the Federated States of Micronesia; or

(1) the foreign service premium authorized by section 163 of title 52 of the Code of the Federated States of Micronesia."

Section 2. 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: 5/27/22

Introduced by: /s/ Isaac V. Figir

Isaac V. Figir