A BILL FOR AN ACT

To further amend title 54 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 4-32, 4-81 and 4-114, by amending sections 112, 116, 124, 201, and 802 relating to wages and salaries, business gross revenue and import taxes, and for other purposes.

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

1 Section 1. Section 112 of title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 4-81, 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 (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. For any person, persons, entity, entities, or combinations thereof carrying on more than one such profession, trade, manufacture, other undertaking or activity, 'business' means all of such professions, trades, manufactures, other undertakings or activities carried on by such person, persons, entity, entities or combinations thereof, combined as one business for the purposes and requirements of subchapters IV and V of this chapter. Copra production by unincorporated copra producers collectively or severally shall not be included as a business under this definition.

1 (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 Trust Territory, 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 not in the form of salaries or wages as defined in subsection (11) of this section, and the gross receipts 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, fees, or other emoluments however designated and without any deductions on account of the cost of property sold, the cost of materials used, labor cost,
taxes 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;
(c) income in the form of wages and salaries which are taxed under other provisions of this chapter;
(d) sale 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 by the seller of such aircraft for its rental by seller;
(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 lessor by lessee of such aircraft for its purchase by the 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'; or
(g) gross revenue 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.

(6) 'Military or Naval Forces of the United States'
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) '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.

(9) 'Rental payments' means any payments made in
exchange for use or rental, and includes interest, carrying
charges, or other charges associated with use or rental.

(10) 'Secretary' means the Secretary of the Department
of Finance.

(11) 'Wages' or 'Salaries' means and includes
commissions, fees, compensation, emoluments, bonuses, and
every and all other kinds of compensation paid for,
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) wages and salaries 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 moving, travel and
office expense allowances to the extent that they do not
exceed any comparable Trust Territory Government rates and
to the extent that such office expense allowance is used to
staff, equip, and provide an office for the recipient
thereof;

(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 or for domestic service in a private home of an employer;

(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 within the Trust Territory;

(i) wages and salaries received by a minister of the gospel or clergyman from a religious group or organization;

(j) wages and salaries received by an employee for services performed or rendered in the capacity of a domestic or household employee for a private individual or family; or

(k) wages and salaries 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.

(12) 'Year' means calendar year."

Section 2. Section 116 of title 54 of the Code of the Federated
States of Micronesia, as amended by Public Law No. 4-32, is hereby
further 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 this 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 revenues 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 or 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) The Secretary shall make and maintain, or cause to
be made and maintained, in each office of the Revenue
Division of the Department of Finance of the Federated
States of Micronesia, a current list of persons, entities
and businesses delinquent in the payment of taxes, penalties
or interest or the filing of returns pursuant to the
requirements of this title. Such list shall state the name,
address or location, type and amount of tax, penalties or
interest due and unpaid, and type and period covered for
returns not filed for each such person, entity or business.
Notwithstanding anything to the contrary contained in this title, the Secretary shall make such list available at the offices of the said Revenue Division for inspection by persons or businesses who have extended or contemplate extending credit to persons, entities or businesses whose names may appear thereon. The Secretary shall also make such list available to the Administrator of the Accounting Division of the Department of Finance of the Federated States of Micronesia, and said Administrator shall notify the Secretary in writing at least 3 business days prior to the payment of public moneys from the Treasury of the Federated States of Micronesia to any person, entity or business whose name appears on the said list."

Section 3. Section 124 of title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 4-114, is hereby further amended to read as follows:

"Section 124. Source of wages; Apportionment.

(1) If an employee is credited or paid salaries or wages derived from, or attributable to, personal services performed or rendered both within and without the Federated States of Micronesia during any given month, then the whole of the salaries or wages shall be presumed to have been earned within the Federated States of Micronesia. All wages and salaries paid from public moneys of the Federated States of Micronesia or any of its constituent States are
conclusively and irrebuttable presumed to be derived from or
attributable to personal services performed or rendered
within the Federated States of Micronesia.

(2) The employer paying the tax or the employee whose
compensation is taxed may file for an apportionment of the
tax on a form prescribed by the Secretary and the tax shall
be levied only on that portion of the salary or wages which
is attributable to personal services performed or rendered
within the Federated States of Micronesia."

Section 4. Section 201 of title 54 of the Code of the Federated
States of Micronesia is hereby amended to read as follows:

"Section 201. Import taxes - Levy and rates. The following
import taxes are hereby levied on all products specified
herein which are imported into the Federated States of
Micronesia for resale or for use in or by a business or for
the production of income, except that the taxes levied under
subsections (1), (2), (5), (6), and (7) of this section
shall apply to products which are imported into the
Federated States of Micronesia for personal use and
consumption as well as for resale or for use in or by a
business or for the production of income. All articles
imported into the Federated States of Micronesia by a
person, entity or business who is licensed or is legally
required to be licensed to carry on a business in or to
import articles into the Federated States of Micronesia are
rebuttably presumed to be imported for resale or for use in
or by a business or for the production of income. As used
in this chapter the term 'ad valorem' means C.I.F. price at
the port or site of import into the Federated States of
Micronesia:

(1) cigarettes, at the rate of seven cents per every
twenty cigarettes, except that any person may bring into any
State of the Federated States of Micronesia up to one carton
or two hundred cigarettes per trip tax-free, if such
cigarettes are for that person's use and consumption and not
for resale or for use in or by a business or for the
production of income;

(2) tobacco, other than cigarettes, at the rate of
fifty percent ad valorem, except that any person may bring
into any State of the Federated States of Micronesia up to
one pound of tobacco or twenty cigars per trip tax-free, if
such tobacco products are for that person's use and
consumption and not for resale or for use in or by a
business or for the production of income;

(3) 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 twenty-five percent ad valorem;
(4) soft drinks and nonalcoholic beverages, at the
rate of two cents on each twelve fluid ounces or fractional
part thereof;

(5) beer and malt beverages, at the rate of four cents
per can or bottle of twelve fluid ounces or fractional part
thereof;

(6) distilled alcoholic beverages, at the rate of
seven dollars per wine gallon, except that any person
permitted by applicable State law to possess, consume, and
use distilled alcoholic beverages, may bring into such State
of the Federated States tax free, an amount of liquor not to
exceed two-fifths of a wine gallon per trip, if such liquor
is for his personal use and consumption and not for resale
or for use in or by a business or for the production of
income;

(7) wine, at the rate of two dollars per wine gallon,
except that this tax shall not apply to any religious
organization which is importing or receiving into the
Federated States sacramental wine for use in the religious
rites of such organization;

(8) foodstuffs for human consumption, at the rate of
one percent ad valorem;

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

(10) all other imported products, except those
specified above, at the rate of three percent ad valorem."

Section 5. Section 802 of title 54 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 802. Civil action of enforcement; Agent for service of process,

(1) Any taxes or license fees imposed or authorized under this title or under any district law may also be collected by a civil suit brought either in the name of the taxing unit concerned or in the name of the person authorized to collect the same. In such civil suit a written statement of the designated employee in charge of the unit concerned, as to the amount of tax due, the fact that it is unpaid, and who is authorized to collect it, shall be sufficient evidence of these matters unless the contrary is expressly shown.

(2) The Secretary of the Department of Finance is appointed as agent to receive service of process in any action to enforce the provisions of this title in any case involving a person, entity or business not having an agent, office or place of business within the Federated States of Micronesia upon whom or where service of process may otherwise be performed. Not later than 2 business days after receipt of such service, the Secretary shall send by certified mail, return receipt requested, all documents and materials received pursuant to such service of process to
the last known address of the person, entity or business
named therein. Service of process made in accordance
herewith shall be legally sufficient, valid, and effective
upon the earlier to occur of (a) receipt by the addressee of
the documents sent by the Secretary by certified mail or (b)
15 days after service of process is made upon the Secretary.
Nothing contained in this section shall limit or otherwise
affect the right to serve any process in any other manner
now or hereafter provided by law."

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: 7/31/87

Introduced by: Claude H. Phillip
(by request)