A BILL FOR AN ACT

To amend title 54 of the Code of the Federated States of Micronesia by amending sections 112 and 201 relating to business gross revenue and import taxes, and for other purposes.

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

1. Section 112 of title 54 of the Code of the Federated States of Micronesia is hereby 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 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; or

(h) payments received from the National or a
State or local government in the Federated States of Micronesia pursuant to a contract for the construction of a project for public use or benefit.

(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 travel allowances to
the extent that they do not exceed any comparable Trust
Territory 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 or for domestic service
in a private home of an employer;

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(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 clergymen 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 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, 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:

(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;

(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;

(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;

(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 and products imported for resale by or to
the National or a State or local government in the Federated
States of Micronesia, at the rate of three percent
ad valorem."
Section 3. 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: May 10/78

Introduced by: Claude H. Phillip
(by request)