

WJM

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. 5-65, 5-81 and 5-84, by redesignating chapters 1 and 2 as chapters 6 and 7 and by redesignating section numbers therein, and by adding new chapters 1, 2, 3, and 4, and schedule I, and for other purposes.

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

- 1 Section 1. Title 54 of the Code of the Federated States of
2 Micronesia is hereby further amended by:
- 3 (1) Redesignating chapter 1 as chapter 6;
4 (2) Redesignating sections 111 through 118 as
5 sections 611 through 618, respectively;
6 (3) Redesignating sections 121 through 124 as
7 sections 621 through 624, respectively;
8 (4) Redesignating sections 131 through 139 as
9 sections 631 through 639, respectively;
10 (5) Redesignating sections 141 through 144 as
11 sections 641 through 644, respectively;
12 (6) Redesignating sections 151 through 156 as
13 sections 651 through 656, respectively;
14 (7) Redesignating chapter 2 as chapter 7;
15 (8) Redesignating sections 201 through 203 as
16 sections 701 through 703, respectively; and
17 (9) Amending all cross-references in the laws and
18 Code of the Federated States of Micronesia to reflect all
19 such redesignations.

- 20 Section 2. Title 54 of the Code of the Federated States of
21 Micronesia is hereby further amended by adding a new chapter 1 to
22 read as follows:

23 "CHAPTER I

24 PRELIMINARY

25 Section 101. Short title. Chapters 1 through 4 of this

1 title may be cited as the 'Taxation Code of 1990.'

2 Section 102. Interpretation. Wherever used in chapters 1
3 through 4 of this title, unless the subject matter,
4 context, or sense otherwise requires:

5 (1) 'Assistant Commissioner' means the Assistant
6 Commissioner for Revenue and Taxation in the FSM Government;

7 (2) 'Business' means any profession, trade,
8 manufacture, or other undertaking carried on for pecuniary
9 profit and includes all activities whether carried on by an
10 individual, corporation, partnership, cooperative, or any
11 other form of business association or organization within
12 the Federated States of Micronesia for economic benefit
13 either direct or indirect, and excludes casual sales, as
14 determined by the Secretary. Employment income derived by
15 an employee as defined under this section shall not be
16 considered as derived from a business. Copra production by
17 unincorporated copra producers collectively or severally
18 shall not be included as a business under this definition;

19 (3) 'Commissioner' means Commissioner for Revenue and
20 Taxation or any officer designated by the Commissioner from
21 the Division of Revenue of the Department of Finance of the
22 FSM Government;

23 (4) 'Employee' includes every individual performing
24 services under the direction and control of the employer
25 pursuant in the legal employment relationship of employee

1 and employer existing between such individual and his
2 employer;

3 (5) 'Employer' includes any individual and any entity
4 whatsoever employing any person, and also includes the FSM
5 Government and any State or local government or any agency
6 thereof, charged with the disbursement of public moneys as
7 wages and salaries;

8 (6) 'FSM' means the Federated States of Micronesia
9 including where appropriate, its territorial waters
10 (including the extended economic zone), continental shelf
11 and air space;

12 (7) 'FSM Government' means the National Government of
13 the Federated States of Micronesia;

14 (8) 'FSM State' means member State of the FSM;

15 (9) 'Goods' means merchandise, machinery, products in
16 bulk or packages, raw materials, commodities, or any other
17 materials generally in solid, liquid or any other form;

18 (10) 'Military or Naval Forces of the United States'
19 and 'Armed Forces of the United States' means all regular
20 and reserve components of the uniformed services that are
21 subject to the jurisdiction of the United States Secretary
22 of the Army, Navy, or Air Force, and also includes the
23 United States Coast Guard;

24 (11) 'Month' means calendar month;

25 (12) 'Person' means a natural person and any body

1 corporate, association, partnership, or any entity in
2 general;

3 (13) 'Rental payment' means any payment made in
4 exchange for use or rental, and includes interest, carrying
5 charges, and other charges associated with use or rental;

6 (14) 'Resident' means resident of the FSM pursuant to
7 either general common law principles or pursuant to the
8 conditions prescribed by regulations promulgated pursuant
9 to this title;

10 (15) '\$' means United States dollar;

11 (16) 'Sale' means the transfer of ownership of that
12 which is sold for a purchase price or promise thereof, and
13 'sale' also includes exchange;

14 (17) 'Secretary' means the Secretary of the
15 Department of Finance of the FSM Government or any other
16 official designated by the Secretary;

17 (18) 'Wages' or 'Salaries' means any commissions,
18 fees, compensation, emoluments, bonuses, or any other kind
19 of compensation paid for, credited, or attributable to
20 personal services performed in the ordinary course of the
21 employee's activities or for casual or intermittent labor
22 as the Secretary may prescribe, by an individual, which
23 services have been performed by such person as an
24 employee. Wages and salaries shall not include the
25 following:

W+M

C. B. No. 6-238

1 (a) Wages and salaries received from the United
2 States Government by members of the Military or Naval
3 Forces of the United States or the Armed Forces of the
4 United States;

5 (b) Per diem and travel allowances to the extent
6 that they do not exceed any comparable FSM Government rates;

7 (c) Any payment on account of sickness or
8 accident disability, or any payment of medical or
9 hospitalization expenses, made by an employer to or on
10 behalf of an employee; PROVIDED, however, that normal wages
11 or salaries paid to an employee for a period of time during
12 which he is excused from work because of sickness shall not
13 be excluded from wages and salaries under this subsection;

14 (d) Any payment made to or on behalf of an
15 employee, or to his beneficiary, from a trust or annuity;

16 (e) Any payment in the form of a scholarship,
17 fellowship, or stipend made to any employee while he is a
18 full-time, bona fide student at an educational institution
19 within the FSM;

20 (f) Wages and salaries received by a full-time
21 minister of the gospel or a full-time clergyman from a
22 religious group or organization;

23 (g) Wages and salaries received by an employee
24 for services performed or rendered in a capacity of a
25 domestic or household employee for a private individual or

1 family;

2 (19) 'Year' means calendar year.

3 Section 103. Dates of applicability of chapters of this
4 title.

5 (1) Chapters 1 through 4 of this title shall apply to
6 all wages and salaries, gross revenues, net profits, and
7 imports after December 31, 1990.

8 (2) Chapters 6 through 9 of this title shall apply to
9 all wages and salaries, gross revenues and imports before
10 January 1, 1991, and such chapters are repealed as of
11 January 1, 1995."

12 Section 3. Title 54 of the Code of the Federated States of
13 Micronesia is hereby further amended by adding a new chapter 2 to
14 read as follows:

15 "CHAPTER 2

16 INCOME TAXATION

17 SUBCHAPTER I

18 TAXATION OF PERSONAL INCOME

19 Section 201. Income and source.

20 (1) Except as otherwise provided in this subchapter,
21 every employer in the FSM making any payment of wages and
22 salaries shall deduct and withhold upon such payment a tax
23 determined in accordance with sections 203 and 205 of this
24 title.

25 (2) For purposes of this title, wages and salaries

1 shall include housing allowances to the employee, and the
 2 estimated value of any free housing benefit, as the
 3 Secretary may prescribe.

4 (3) Notwithstanding subsection (1) of this section
 5 with respect to the source of income, if an employee is
 6 credited or paid wages and salaries derived from or
 7 attributable to, personal services performed or rendered
 8 both within and without the FSM, then the aggregate amount
 9 of all wages and salaries shall be presumed to have been
 10 earned within the FSM.

11 Section 202. Deduction allowed. Every employee shall be
 12 allowed a deduction of \$2,000 per year from all wages and
 13 salaries subject to tax under section 203 received during
 14 the year.

15 Section 203. Withholding tax rates. The tax on wages and
 16 salaries shall be deducted and withheld in accordance with
 17 the following schedules:

<u>Amounts (in \$)</u>	<u>Rate</u>
1.00 to 2,000.....	0 percent
2,001 to 13,000.....	6 '
13,001 to 24,000.....	10 '
24,001 to 35,000.....	14 '
35,001 and above.....	18 '

24 Section 204. Liability for payment of tax.

25 (1) Every employer shall deduct and withhold the tax

W+M

C. B. No. 6-238

1 imposed under section 203, shall be liable for the payment
2 of the entire amount due, and shall pay such tax on the
3 period defined under section 206 to the Assistant
4 Commissioner of the State in which the employer has his
5 principal place of business, or otherwise to the Secretary.

6 (2) If the employer, in violation of this title,
7 fails to deduct and withhold the tax under this subchapter,
8 he shall be fined \$2,000, and he shall remain liable for
9 the amount of tax due pursuant to this title. The
10 employer's failure to deduct and withhold the tax with
11 respect to each employee shall constitute a separate
12 violation.

13 (3) The withholding tax shall be abated upon
14 presentation of evidence to the Secretary that the
15 recipient of wages and salaries has paid the tax due.
16 Section 205. Withholding tax and fees for consulting and
17 other services.

18 (1) Every amount paid from sources within the FSM by
19 any individual or entity in the FSM, including the FSM
20 Government and FSM State governments, to any non-resident
21 individual or entity pursuant to a contract for consultancy
22 or other technical assistance or contractual services,
23 shall be subject to a 15 percent withholding tax.

24 (2) The payer of such amount shall deduct and
25 withhold such tax and shall be responsible for collection

1 of such withholding tax and for payment of such tax to the
2 Secretary.

3 (3) For purposes of computing the withholding tax
4 under this section, no deduction or tax credit shall be
5 allowed.

6 Section 206. Resident employer to pay tax monthly.

7 (1) Every resident employer shall, on or before the
8 10th day of each month, pay the tax deducted and withheld
9 on the wage and salary payments made by such employer to
10 the Assistant Commissioner in the State in which such
11 employer has his principal place of business or otherwise
12 to the Secretary.

13 (2) Upon payment as described in this section of the
14 tax deducted and withheld, the Assistant Commissioner or
15 the Secretary, as the case may be, shall deliver a receipt
16 for such payment to such employer.

17 (3) The Secretary may require more frequent payments
18 as he deems fit, but in no case shall an employer be
19 required to make payments more frequently than biweekly.

20 Section 207. Resident employer to file tax returns.

21 (1) With respect to the tax deducted and withheld on
22 wages and salaries paid, every resident employer shall file
23 a tax return quarterly, to wit: on or before April 30, July
24 31, October 31 and January 31.

25 (2) Such tax return shall state any information and

W+M

C. B. No. 6-238

1 shall be accompanied with such documents, including
2 receipts delivered pursuant to section 206 of this title,
3 as the Secretary may prescribe by regulation.

4 (3) Such tax returns shall be filed at the place of
5 payment of withholding tax as described under section 206
6 of this title.

7 (4) The Secretary, for good cause, may extend the
8 time for filing returns but, in no case, beyond the last
9 day of the first month next succeeding the regular due date
10 for filing returns.

11 Section 208. Certain employees to file returns.

12 (1) In the case of any individual who is paid or
13 credited wages and salaries from an employer that does not
14 maintain a place of business in the FSM and that is not
15 represented by an agent within the FSM, such individual
16 shall file a tax return as provided in this subchapter
17 with, and pay the tax due under this subchapter to, the
18 Assistant Commissioner in the State in which such
19 individual resides, or otherwise with and to the Secretary.

20 (2) All such returns shall be filed quarterly, and
21 the payments thereon shall be made monthly, in the manner
22 prescribed in this subchapter in sections 206 and 207.

23 (3) Each such return shall state the name of the
24 individual filing it, the name and address of his employer,
25 the total of all wages and salaries received for the

preceding three months, and the tax due thereon, and shall
include such other information and be accompanied with such
documents as the Secretary may require by regulation.

(4) The Secretary, for good cause, may extend the
time for filing such returns and for payment, but, in no
case, beyond 6 calendar weeks past the regular due date for
filing returns.

(5) An employee shall be entitled to a tax credit not
to exceed an amount equivalent to the tax applicable in the
FSM, for taxes paid to foreign governments on payments to
such employee for services rendered outside the FSM. The
tax credit may be claimed in the manner and at the time
prescribed by regulation promulgated pursuant to this title.
Section 209. Withholding statements.

(1) Every employer required to withhold and deduct
any tax on the wages and salaries of any employee shall
furnish to each such employee on or before January 31 of
the year succeeding the year during which any such tax was
deducted and withheld a written statement showing all wages
and salaries paid by the employer to such employee during
the year and the amount of all taxes deducted and withheld
or paid with respect to such payments.

(2) Such employer shall submit with his final return
for the year, or shall file on or before January 31, a
duplicate copy of each such statement at the place

1 prescribed in this subchapter for the payment of the tax.

2 (3) A fine of \$10 shall be imposed for every
3 statement not attached to such tax return.

4 Section 210. Responsibility for taxes withheld.

5 (1) All taxes deducted and withheld by any employer
6 under sections 203 and 205 shall be held in trust for the
7 FSM Government pending payment in accordance with the
8 provisions of this subchapter.

9 (2) If any employer shall fail, in violation of this
10 title, to deduct and withhold tax from payments made to an
11 employee, or to pay the amount of the tax imposed under
12 this subchapter, such employer shall be liable to pay to
13 the FSM Government the amount of the tax due, which amount
14 shall (whether or not tax withholdings constituting trust
15 funds have been commingled with said employer's assets)
16 constitute a lien on the employer's entire assets, having
17 priority over all other claims and liens.

18 (3) Any employer may recover from an employee any
19 amount which it should have but did not withhold from such
20 employee's wages and salaries, if such employer has been
21 required to pay and has paid the amount to the FSM
22 Government out of the employer's own funds.

23 Section 211. No cause of action for withholding. No
24 employee shall have any right of action against his
25 employer with respect to any moneys deducted and withheld

1 from such employee's wages and salaries in compliance or
2 intended compliance with this subchapter, and paid pursuant
3 to the provisions of this subchapter.

4 Section 212. Refunds.

5 (1) If it shall be shown, upon application of the
6 employee or the employer to the Secretary, that there has
7 been deducted and withheld from the employee's wages and
8 salaries any tax which is not due under this title or any
9 amounts in excess of the tax due under this title, then the
10 Secretary shall adjust the amount of such tax due, if any,
11 and refund to the employee any amounts overpaid.

12 (2) Prior to any adjustment or refund, the Secretary
13 shall be satisfied that any amount claimed for refund is
14 not otherwise due to the FSM Government and that the
15 application for such refund was filed within 1 year after
16 the end of the year in which the amount to be refunded was
17 deducted and withheld.

18 (3) The Secretary shall make a decision within 3
19 months from the date on which the application for refund
20 was submitted to him.

21 Section 213. Exemption from withholding tax. The tax
22 imposed under any subchapter of this chapter shall not
23 apply to payments made to:

24 (1) The FSM Government or any FSM State government;

25 (2) A foreign government or international organization;

W+M

C. B. No. 6-238

1 (3) A foreign central bank;

2 (4) Any individual when such payment is the
3 individual's pension plan or retirement fund payment;

4 (5) Any non-FSM citizen or non-FSM entity by an
5 international organization, foreign contractor, or other
6 foreign entity for services rendered pursuant to a foreign
7 aid agreement entered into by the National Government, the
8 terms of which require that such payments shall not be
9 subject to taxation by the National Government; or

10 (6) Any person who is exempt from taxation pursuant
11 to the Vienna Convention on Diplomatic Relations.

12 SUBCHAPTER II

13 BUSINESS TAXATION

14 Section 221. Minimum tax imposed.

15 (1) Subject to the provisions of this subchapter,
16 there shall be assessed, levied, collected, and paid a tax
17 in the amount of \$100 per year upon any amount of gross
18 revenues, not exceeding \$10,000 per year, based on the
19 business' gross revenues earned the previous year and
20 earned by every such business.

21 (2) The minimum tax imposed under this section shall
22 be paid on or before March 31 of the year in which such
23 gross revenues are earned.

24 (3) Any business that earns gross revenues of not
25 more than \$6,000 per year shall be exempt from taxation

1 under this subchapter. A claim for refund may be filed
 2 with the Secretary in the manner and at the time prescribed
 3 by regulation.

4 Section 222. Taxation of gross revenues.

5 (1) Subject to the provisions of this subchapter,
 6 there shall be assessed, levied, collected, and paid a tax
 7 of two and one-half percent upon that portion of the amount
 8 of gross revenues earned by every business which is in
 9 excess of \$10,000 per year.

10 (2) Except as otherwise provided in this subchapter,
 11 gross revenues mean all income from whatever source derived
 12 (within or outside the FSM), including the following items:

13 (a) All gross receipts, cash or accrued, of the
 14 taxpayer received as compensation for personal services;

15 (b) All gross receipts, cash or accrued, of the
 16 taxpayer derived from trade, business, commerce, sales, or
 17 dealings in real or personal property; and

18 (c) All receipts, actual or accrued, by reason
 19 of the capital of the business engaged in, including
 20 interest, rentals, royalties, fees, or other emoluments,
 21 however designated, without deduction for the cost of
 22 property sold, materials used, labor cost, taxes,
 23 royalties, fees paid, benefits paid, or any other expenses
 24 whatsoever.

25 (3) Gross revenues shall not include the following items:

W&M

C. B. No. 6-238

-
-
- 1 (a) Discounts and rebates;
2 (b) Insurance proceeds;
3 (c) Moneys held in a fiduciary capacity;
4 (d) Income in the form of wages and salaries
5 that are taxed under other provisions of this title; and
6 (e) Cash discounts allowed and taken on sales,
7 the proceeds of sale of good, wares, or merchandise
8 returned by customers when the sale price is refunded
9 either in cash or by credit; or the sale price of any
10 article accepted as part of payment of any new article
11 sold, if the full sale price of a new article is included
12 in 'gross revenues.'
13 (4) Foreign source income shall be treated as follows:
14 (a) If any taxpayer derives its gross revenues
15 from business activities or undertakings both within and
16 without the FSM during any given year, then the whole of
17 such taxpayer's gross revenues shall be presumed to have
18 been derived from sources within the FSM and tax shall be
19 computed on the aggregate amount in accordance with the
20 provisions of this subchapter.
21 (b) To the extent foreign income tax has been
22 paid by the taxpayer on that portion of gross revenues
23 derived from sources outside the FSM, then such foreign
24 income tax paid shall be credited against any tax due in
25 the FSM. The credit shall not exceed the FSM tax on such

1 income. The Secretary shall determine by regulations the
 2 conditions under which such tax credit may be claimed.

3 (5) On or before the last day of the month following
 4 the close of each quarter, to wit: on or before April 30,
 5 July 31, October 31, and January 31, every taxpayer shall
 6 pay, based on its gross revenues of the preceding quarter,
 7 the amount of tax imposed under this subchapter to the
 8 Assistant Commissioner in the State in which the taxpayer
 9 has its principal place of business in the FSM, or
 10 otherwise to the Secretary.

11 (6) Each taxpayer shall, on or before the date
 12 provided for payment of tax under this section, file a
 13 return showing all such gross revenues received, accrued,
 14 or earned, and the amounts deducted, withheld, and set
 15 aside on account thereof during the preceding quarter. The
 16 return shall be filed at the place prescribed in this
 17 section for payment of the tax and shall include such other
 18 information as may be required by the Secretary.

19 (7) The Secretary, for good cause, may extend the
 20 time for filing returns but, in no case, beyond the last
 21 day of the first month succeeding the regular due date for
 22 filing returns.

23 Section 223. Net profits tax.

24 (1) Notwithstanding section 222, with respect to any
 25 taxpayer whose gross revenues are in excess of \$75,000 in

WJM

C. B. No. 6-238

1 any year, there shall be, for each such year, assessed,
2 levied, collected, and paid a tax of whichever is greater
3 of the following two amounts:
4 (a) Two and one-half percent of such taxpayer's
5 gross revenues; or
6 (b) Twenty percent of such taxpayer's net profits.
7 (2) Net profits shall be defined as gross revenues,
8 as defined under section 222 of this title less the
9 following deductions:
10 (a) Wages and salaries paid out by the taxpayer
11 to its employees, on which withholding tax under subchapter
12 I of chapter II of this title applies, and the employer's
13 share of social security payments;
14 (b) Cost of goods directly used and expenses
15 exclusively incurred for the production of income;
16 (c) Rental and utilities expenses including fuel;
17 (d) Interest paid to duly registered banks and
18 other financial institutions in the FSM;
19 (e) Bad debts;
20 (f) Twenty-year linear depreciation for
21 buildings; and
22 (g) Five-year linear depreciation for other
23 capital goods and materials.
24 (3) A credit for foreign tax paid on any portion of
25 gross revenues, as determined by the Secretary, shall be

W+M

C. B. No. 16-238

1 allowed.

2 (4) Taxpayers shall apply the accrual method of
3 accounting in determining the net profits tax.

4 Section 224. Returns and payments of net profits tax.

5 (1) On or before the last day of the month following
6 the close of each quarter, to wit: on or before April 30,
7 July 31, October 31, and January 31, every taxpayer subject
8 to the provisions of section 223 of this title shall pay,
9 based on its gross revenue of the preceding quarter, the
10 amount of tax that would be imposed by section 222 to the
11 Assistant Commissioner in the State in which the taxpayer
12 has its principal place of business in the FSM, or otherwise
13 to the Secretary.

14 (2) On or before the 15th day of April following the
15 close of each calendar year, every taxpayer subject to the
16 provisions of section 223 of this title shall pay, based on
17 its gross revenues for the preceding calendar year, any
18 additional amount of tax imposed by section 223 of this
19 title to the Assistant Commissioner in the State in which
20 the taxpayer has its principal place of business in the
21 FSM, or otherwise to the Secretary.

22 (3) Every taxpayer subject to the provisions of this
23 subchapter shall, on or before the date provided for
24 payment of tax under section 223 of this title, file a
25 return showing all such gross revenues received, accrued,

W & M

C. B. No. 16-238

1 or earned, and the amounts deducted or set aside on account
2 therefore during the preceding quarter, and, if applicable,
3 all net profits.

4 (4) The return shall be filed at the place prescribed
5 in this section for payment of the tax and shall include
6 such other information as may be required by the Secretary.

7 (5) The Secretary, for good cause, may extend the
8 time for filing returns, but, in no case, beyond the last
9 day of the first month succeeding the regular due date for
10 quarterly reports and, in no case, beyond 4 months for the
11 report due on or before the 15th day of April.

12 Section 225. Liability for payment of net profits tax.
13 Every taxpayer subject to the provisions of this subchapter
14 shall be liable for the payment of the tax pursuant to this
15 subchapter.

16 Section 226. Exemption of religious organizations.
17 Provisions of this subchapter shall not apply to the
18 religious and educational activities of the clergy and
19 other religious organizations but shall apply to the
20 commercial activities of the clergy and other religious
21 organizations."

22 Section 4. Title 54 of the Code of the Federated States of
23 Micronesia is hereby further amended by adding a new chapter 3 to
24 read as follows:

25 "CHAPTER 3

TAXATION OF IMPORTS

1
2 Section 301. Import tax. There shall be imposed a tax on
3 all goods and products specified in Schedule I of this
4 title that are imported by whatever means into the FSM for
5 personal or business use and consumption or for resale, as
6 the case may be.

7 Section 302. Exemption for goods damaged or not received.
8 Any goods or products subject to a tax under section 301
9 that are not received by the importer or that are damaged
10 may be exempted from import tax upon certification of
11 nonreceipt or damage by the carrier or agent and an
12 appropriate finding by the Secretary.

13 Section 303. Exemption for goods exported.

14 (1) Any person who imports goods into the FSM, and
15 then exports them in their original state or after
16 processing, shall be entitled to a refund of any import tax
17 actually paid by it on such goods, upon application to the
18 Secretary.

19 (2) The Secretary may authorize the importer of goods
20 destined to be exported to import such goods free of import
21 tax if the importer provides a security, in the form of a
22 bank guarantee or otherwise, to the satisfaction of the
23 Secretary, for the amount of import tax otherwise due.
24 Should the importer fail to export such goods within a
25 reasonable time, the Secretary shall cause the rights under

1 the security to be exercised."

2 Section 5. Title 54 of the Code of the Federated States of
3 Micronesia is hereby further amended by adding a new chapter 4 to
4 read as follows:

5 "CHAPTER IV

6 ADMINISTRATIVE PROVISIONS

7 SUBCHAPTER I

8 IN GENERAL

9 Section 401. Taxes remitted to FSM Treasurer. The taxes
10 levied, assessed, and collected pursuant to this title
11 shall be remitted to the Treasurer of the FSM and shall
12 become part of the General Fund of the FSM as revenue
13 available for appropriation by the FSM Congress.

14 Section 402. Regulations.

15 (1) The Secretary shall, subject to approval of the
16 President of the FSM, prescribe such rules and regulations
17 in conformity with this title as are necessary or
18 appropriate for the enforcement of this title, and such
19 rules and regulations shall have the force and effect of
20 law.

21 (2) Such rules and regulations shall also provide for
22 the filing of returns concerning any taxes imposed under
23 this title, and the payment thereof, in any situations not
24 specifically covered by this title.

25 (3) Schedules to this title shall have the same force

W4M

C. B. No. 6-238

1 and effect as the title itself. The Secretary is authorized
2 to amend such Schedules by regulations as he deems fit,
3 subject to the approval of the President of the FSM.

4 Section 403. Tax returns - Information required.

5 (1) The Secretary shall prescribe the forms of all
6 returns required to be filed pursuant to this title.

7 (2) All information required in any return must be
8 included in the return by the person responsible for the
9 filing.

10 (3) No return shall be complete unless and until it
11 is signed by or for the person responsible to file the
12 return, or by the person authorized to do so on behalf of
13 the person responsible for filing the return. Every return
14 shall be signed.

15 (4) The Secretary may require from any person or
16 persons who prepare or sign a return for another person a
17 form stating such facts and authorizing such person to sign
18 such return, signed by the person so preparing or signing
19 the return, and by the employer, business, or other person
20 in whose name the return is filed.

21 Section 404. Preservation and disclosure of information.

22 (1) All reports and returns required under this title
23 shall be preserved for a minimum of 3 years.

24 (2) The Secretary and every officer and employee of
25 the Department of Finance of the FSM Government shall

1 maintain the secrecy of all non-public matters relating to
2 this title that come to their knowledge and shall not
3 communicate such matters to any person except for the
4 purpose of carrying into effect this title or any other law
5 imposing taxes payable to the FSM Government.

6 (3) No officer of the Department of Finance of the
7 FSM Government shall be required to produce in any court
8 any non-public matter or thing relating to the taxes
9 imposed under this title coming to his knowledge in the
10 performance of his duties as an officer or employee of the
11 Department of Finance except when it is necessary to do so
12 for the purpose of carrying into effect any provision of
13 this title or any other law imposing taxes payable to the
14 FSM Government.

15 (4) Information as to the amount of income or any
16 particular set forth or disclosed in any report or return
17 required under this title may, upon request from a
18 committee of the FSM Congress, be furnished to such
19 committee, but the committee or any member, clerk, or other
20 officer or employee thereof shall not disclose any
21 particulars of the information so furnished except to law
22 enforcement officers for the purpose of aiding the
23 detection or prosecution of offenses committed in violation
24 of this title.

25 (5) For the purpose of ensuring compliance with FSM

1 State tax laws and regulations, the Governor of each State
2 may appoint one representative of his tax administration
3 who shall have access to all returns, reports, and other
4 information on file with the Department of Finance of the
5 FSM Government as may be necessary. Each Governor shall
6 make the appointment of his representative known to the
7 Secretary. The Governor and his appointee shall not
8 disclose the information to any other person except for the
9 specific purpose as stated in this subsection, or except as
10 otherwise provided for by law adopted by the FSM Government.

11 (6) The Attorney General of the FSM Government may
12 inspect the tax returns of any taxpayer who brings an
13 action to set aside or review the tax-based thereon, or
14 against whom an action or proceeding is contemplated to, or
15 has been instituted to, recover any tax or any penalty or
16 interest imposed by this title.

17 (7) The Secretary may compile and publish statistics
18 and other information generally on the returns filed as
19 long as there is no reference to a particular return and
20 the statistics and the information do not, in effect,
21 divulge the contents of any individual taxpayer's return.

22 Section 405. Access of Public Auditor to information.

23 (1) For the purpose of carrying out his duties, the
24 Public Auditor shall have access to files and documents of
25 the Department of Finance of the FSM Government pertaining

W+M

C. B. No. 6-238

1 to the management of the Department.

2 (2) A taxpayer's return is the taxpayer's record, not
3 a governmental record. The powers of the Public Auditor
4 under subsection (1) of this section shall not extend to
5 the review and examination of specific taxpayers' files and
6 returns.

7 Section 406. Restrictions on outside employment.

8 (1) Neither the Secretary nor any officer or employee
9 of the Department of Finance of the FSM Government shall
10 engage in the business or profession of tax accounting or
11 accept employment from any person or entity for the
12 purpose, directly or indirectly, of preparing the tax
13 returns required by the FSM Government or any FSM State
14 government.

15 (2) No person, as described under subsection (1) of
16 this section, shall advise on or prepare materials or data,
17 or audit books or records to be used in an effort to defeat
18 or cancel any tax or part thereof that has been assessed by
19 the FSM Government.

20 SUBCHAPTER II

21 ENFORCEMENT

22 Section 421. Records.

23 (1) All persons, employees and businesses required to
24 file returns under this act shall keep and maintain
25 accurate records.

1 (2) Failure to maintain adequate records shall be
2 subject to penalties under sections 426, 431 and 432.
3 Section 422. Examination, inspection and audit. For the
4 purposes of ascertaining the correctness of any return or
5 determining the liability of any person for any tax
6 (including penalties, interest and other additional
7 amounts, if any), the Secretary may examine any records
8 including books, papers, or any other relevant data. Such
9 records may be inspected and audited at any reasonable time
10 within 3 years following the close of the calendar year for
11 which a return has been filed or a tax has become due.
12 Section 423. Power to consolidate separate filings. For
13 purposes of this subchapter, the Commissioner shall have
14 the power to question the separate filing of returns and to
15 consolidate the filing of two or more separate returns
16 filed by a person or persons for business or businesses
17 that are in fact substantially owned or controlled, as the
18 Secretary shall determine, by the same person, and the
19 Secretary shall compute the tax, penalties, and interest
20 due as if such separate returns were part of the same
21 return.
22 Section 424. Summons.
23 (1) For the purposes described under section 422, the
24 Secretary is authorized to summon the person or persons
25 liable for tax under this title to appear before a

1 designated officer or employee of the Division of Revenue
 2 of the Department of Finance of the FSM Government pursuant
 3 to the summons to produce such documents and give such
 4 testimony as specified in the summons.

5 (2) The provisions of subsection (1) of this section
 6 shall apply to any officer or employee or agent of such
 7 person or persons described under subsection (1) of this
 8 section, or any third party having possession, custody, or
 9 care of books of accounts relating to the business of the
 10 person or persons liable for tax under this title.

11 Section 425. Tax assessment of failure to file or pay.

12 (1) Upon the failure of any person to file a return
 13 required under this title within the time and in the manner
 14 prescribed, or upon failure to pay any amount due, the
 15 Secretary may notify in writing such person, business, or
 16 employer of such failure and demand that a return be filed
 17 and the tax, and any penalties or interest due, be paid as
 18 required under this title.

19 (2) Failure by any person to file such return at the
 20 time required under this title shall make such person
 21 subject to a penalty in the amount of one percent of the
 22 tax due per month but not to exceed 25 percent.

23 (3) If such person, business, or employer, upon
 24 notice and demand by the Secretary, fails, within 30 days
 25 after receipt of said notice and demand to file a

return and pay the tax required under this title, the
Secretary may levy and assess a tax based on the
Secretary's information and on the records available to him
at the time of the assessment including the records of
similar businesses.

(4) Such assessment shall be presumed to be correct
and final unless and until it is proved incorrect by the
person disputing the amount of the assessment within 30
working days of the notification of the amount assessed by
the Secretary.

Section 426. Transactions to be recorded.

(1) Every person engaging in any transaction subject
to tax under this title shall keep, for at least 3 years
after the date of such transaction, a full and accurate
record of each such transaction engaged in by it, and such
record shall be kept available for examination by the
Secretary at any reasonable time after notice in writing
has been duly given.

(2) Any person failing, in violation of this title,
to keep or make available for examination such records
shall be guilty of a misdemeanor and, upon conviction,
shall be liable for a fine not to exceed \$20,000 and shall
be subject to the immediate revocation of any existing
licenses to do business in the FSM.

Section 427. Limitations on assessment and collection.

1 (1) Except as otherwise provided in this section, the
2 amount of any tax imposed under this title shall be
3 assessed and the demand for payment issued within 3 years
4 after the return was filed (whether or not such return was
5 filed on or after the date prescribed).

6 (2) In the case of a false or fraudulent return with
7 the intent to evade tax, the tax may be assessed at any
8 time.

9 (3) In the case of failure to file a return, the tax
10 may be assessed, or a proceeding in Court for the
11 collection of such tax may be begun without assessment, at
12 any time.

13 Section 428. Tax liens. Any taxes, penalties, and
14 interest imposed under this act shall be a lien upon the
15 property of the taxpayer and may be collected by levy upon
16 it in the same manner as the execution of a levy pursuant
17 to title 8 of the Code of the Federated States of
18 Micronesia.

19 Section 429. Civil action of enforcement. Any taxes
20 imposed under this title may be collected by a civil suit
21 instituted by the Secretary.

22 SUBCHAPTER III

23 OTHER PENALTIES

24 Section 431. Intentional violation of tax laws. Any
25 person who intentionally violates any of the provisions of

W & M

C. B. No. 6-238

1 this title, or any rule or regulation promulgated
2 thereunder, shall, upon conviction, be fined not more than
3 \$10,000, and required to pay a penalty in the amount of up
4 to 50 percent of the tax due, or imprisoned for a period of
5 not more than 1 year, or both.

6 Section 432. Violation of tax laws. Any person who
7 violates any of the provisions of this title, or any rule
8 or regulation promulgated thereunder, shall be fined not
9 more than \$5,000 and required to pay a penalty in the
10 amount of 10 percent of the tax due.

11 Section 433. Monthly penalty upon unpaid taxes. In the
12 case of failure to pay any tax, penalty, or interest
13 imposed under this title when due, there shall be added to
14 the amount due one percent of the amount of such tax,
15 penalty or interest if the failure is not for more than 1
16 month, with an additional one percent for each additional
17 month or fraction thereof during which such failure
18 continues, not exceeding 25 percent in the aggregate.

19 Section 434. Interest. If any tax or penalty imposed
20 under this title is not paid on or before the date
21 prescribed for such payment, there shall be collected, in
22 addition to such tax and penalties, interest on the unpaid
23 balance of the principal tax at the rate of eight percent
24 per annum from its due date until the date it is paid.

25 SUBCHAPTER IV

JUDICIAL REVIEW

Section 441. Action for review.

(1) A demand for payment for tax, penalties and interest due issued to the taxpayer by the Commissioner may be appealed in writing to the Secretary by such taxpayer within the time specified in the demand for payment, and in any case no later than 1 month from the date of such demand for payment.

(2) In the case of failure to appeal to the Secretary within the specified period, such demand for payment shall become final.

(3) The Secretary shall consider the written appeal of such taxpayer and the Secretary shall issue a decision on such appeal within 3 months from the date on which such appeal was made or on which an oral hearing thereon occurred.

(4) Failure to issue a decision as specified under subsection (3) of this section shall relieve such taxpayer from such tax liability stated in such demand for payment as described in subsection (1) of this section.

(5) Where a decision of the Secretary is adverse to such taxpayer, in whole or in part, such taxpayer shall have the right within 1 month from the date of such decision to institute an action for review, regardless of the amount, in the Supreme Court of the FSM. Such action

WfM

C. B. No. 6-238

1 shall be commenced by filing a petition setting forth
2 assignments of all errors alleged to have been committed by
3 the Secretary in his determination of the assessment, the
4 facts relied upon to sustain such assignments of errors,
5 and a prayer for appropriate relief. The Secretary shall
6 be the defendant in such proceedings.

7 (6) When the decision of the Court becomes final, the
8 Secretary shall, upon presentation of a certified copy of
9 the decree, make such adjustments as are necessary to
10 correct, amend, or abate the assessment, and to determine
11 whether any additional amount should be assessed.

12 (7) Where the assessment is paid, in whole or in
13 part, after the filing of the petition, the Court shall not
14 thereby be deprived of jurisdiction.

15 SUBCHAPTER V

16 DISTRIBUTION AND ALLOCATION

17 Section 451. Distribution of revenues.

18 (1) The Treasurer of the FSM shall pay 80 percent of
19 the net import tax collected on gasoline and diesel fuel
20 pursuant to this title, and 50 percent of all other net
21 taxes collected pursuant to this title into the Treasury of
22 the FSM State governments to which the taxes are
23 attributable for appropriation by the respective State
24 legislatures.

25 (2) 'Net taxes' as used in subsection (1) of this

W+M

C. B. No. 6-238

1 section means gross collections of taxes, penalties,
2 interest, or other related charges less refunds and less
3 the cost of administration.

4 (3) 'Cost of administration' as used in subsection
5 (2) of this section means the cost determined to be
6 allocable to each State by the FSM Congress when making
7 appropriations for the operating expenses of the Revenue
8 Division.

9 (4) The revenue office in each FSM State government
10 may administer the taxes of such State, but those
11 responsibilities shall not interfere with the
12 administration of taxes imposed by the laws of the FSM
13 Government. All costs in excess of those funded by
14 appropriations of the FSM Congress required for the
15 administration of FSM State taxes shall be borne entirely
16 by the State."

17 Section 6. Title 54 of the Code of the Federated States of
18 Micronesia is hereby further amended by adding a Schedule I to read
19 as follows:

20	<u>"SCHEDULE I</u>	
21	<u>GOODS SUBJECT TO IMPORT TAX</u>	
22	<u>GOODS</u>	<u>RATE</u>
23	<u>Cigarettes (1).....</u>	<u>100% ad valorem</u>
24	<u>Tobacco (other than cigarettes</u>	
25	<u>but including cigars) (2).....</u>	<u>100% ad valorem</u>

W+M

C. B. No. 6-238

1	<u>Perfumery, cosmetics and</u>	
2	<u>toiletries (3).....</u>	<u>50% ad valorem</u>
3	<u>Soft drinks and non-</u>	
4	<u>alcoholic beverages.....</u>	<u>4 cents on each 12</u>
5		<u>fluid ounces or</u>
6		<u>fractional part</u>
7		<u>thereof</u>
8	<u>Beer and malt</u>	
9	<u>beverages.....</u>	<u>50% ad valorem</u>
10	<u>Distilled alcoholic beverages (4)....</u>	<u>150% ad valorem</u>
11	<u>Wine (5).....</u>	<u>150% ad valorem</u>
12	<u>Foodstuff for human consumption (6)..</u>	<u>1% ad valorem</u>
13	<u>Gasoline and diesel fuel.....</u>	<u>7 cents per gallon</u>
14	<u>All other goods.....</u>	<u>6% ad valorem</u>
15	<u>(1) Except for up to 200 cigarettes per person, per</u>	
16	<u>trip, which may be brought into the FSM, provided the</u>	
17	<u>cigarettes are for the person's own use and consumption and</u>	
18	<u>not for resale.</u>	
19	<u>(2) Except for up to one pound of tobacco or 20 cigars</u>	
20	<u>per person, per trip, which may be brought into the FSM,</u>	
21	<u>provided the tobacco is for the person's own use and</u>	
22	<u>consumption and not for resale.</u>	
23	<u>(3) Including cologne and other toilet water, articles</u>	
24	<u>of perfumery, whether in sachets or otherwise, and all</u>	
25	<u>preparations used as applications to the hair or skin,</u>	

1 lipsticks, creams, powders, and other toilet preparations not
2 having medicinal properties.

3 (4) Except that any person permitted by applicable
4 State law to possess, consume, and use distilled alcoholic
5 beverages may bring into such State tax free an amount of
6 liquor not to exceed two-fifths of a wine gallon per trip, if
7 such liquor is for his personal use and consumption and not
8 for resale.

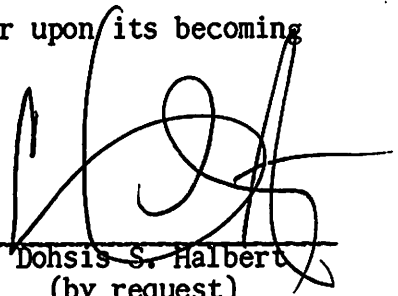
9 (5) Except for sacramental wine imported or received
10 into the FSM by any religious organization, as defined by the
11 Secretary, for use in the religious rites of such
12 organization.

13 (6) Except that any person may bring into or receive in
14 any FSM State \$200 worth of foodstuff free of import tax, if
15 such foodstuff is for the person's own use and consumption
16 and not for resale."

17 Section 7. This act shall become law upon approval by the
18 President of the Federated States of Micronesia or upon its becoming
19 law without such approval.

20
21 Date: 5-25-90

Introduced by:


Dohsis S. Halbert
(by request)