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 amending sections 112, 113, 143, 803, 805 and 806 to permit the States to collect, retain and enforce the gross revenue 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 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 an 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 instrumental-
ities 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
taken 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, except in reference to the gross revenue tax. With respect to the gross revenue tax, 'Secretary' means the head of the State government office charged with enforcing and collecting the gross revenue tax in that State.

(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;

(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 113 of title 54 of the Code of the Federated
States of Micronesia is hereby amended to read as follows:

"Section 113. Taxes collected declared [(consistent with)]
[allocated] local revenue. The taxes, except the gross
revenue tax, levied, assessed, and collected under and
pursuant to this chapter shall be paid to the
treasurer of the [those] Federated States
of Micronesia and become part of the General Fund of the
[(consistent with)] [allocated] as local revenue. [(consistent with)]
[allocated]
All gross revenue taxes levied, assessed and collected under
and pursuant to this chapter shall be paid to the
treasurer of the State in which the tax is levied and
assessed."

Section 3. Section 143 of title 54 of the Code of the Federated
States of Micronesia is hereby amended to read as follows:

"Section 143. Returns and payment of tax on gross revenue.

(1) Every business, on or before the last day of the
month following the close of each quarter, to wit: on or
before April 30, July 31, October 31, January 31, shall
pay, based on its gross revenue of the preceding quarter,
the amount of tax imposed by this chapter to the State revenue officer in the State in which the business has its principal place of business in the Federated States of Micronesia, or to the Secretary of the State agency authorized to levy, assess and collect the gross revenue tax.

(2) Each business shall, on or before the date provided for payment of tax under this section, make a full, true, and correct return showing all such gross revenue received, accrued, or earned, and the amounts deducted and set aside on account thereof during the preceding quarter.

(3) The return shall be filed at the place in this section prescribed for payment of the tax and shall include such other information as shall be required or prescribed by the Secretary. The Secretary, for good cause, may extend the time for making payments and returns, but not beyond the last day of the first month succeeding the regular due date thereof."

Section 4. Section 803 of title 54 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 803. Rules and regulations — Promulgation by Secretary of Finance.

(1) The Secretary of Finance, with the approval of the President of the Federated States of Micronesia, shall
1 prescribe such rules and regulations as are necessary to
2 collect all taxes, fees, and charges levied or imposed
3 under this title and all such taxes, fees, and charges
4 shall be deposited in the General Fund of the Federated
5 States of Micronesia for appropriation by the Congress
6 of the Federated States of Micronesia, except for the gross
7 revenue tax which shall be deposited into the general
8 fund of the State enforcing the tax.
9 (2) Such rules and regulations shall wherever
10 practicable require payment in full of all taxes, fees,
11 and charges immediately upon assessment, and in the case
12 of import taxes, no later than fifteen days after the
13 departure of the vessel or plane on which the products
14 subject to import taxes arrived and before any
15 merchandise is released by the carrier or his agent
16 to the importer and, in the case of export taxes, before
17 any merchandise is loaded on any vessel or aircraft."
18 Section 5. Section 805 of title 54 of the Code of the Federated
19 States of Micronesia is hereby amended to read as follows:
20 "Section 805. Distribution of revenues.
21 (1) The Secretary of the Federated States of Micronesia Department of Finance
22 shall pay one hundred percent of the
23 taxes collected pursuant to section 141 of this title,
24 eighty percent of the net taxes collected pursuant to
section 201(9) of this title, and fifty percent of all
other net taxes collected pursuant to sections 121/451/4
and 201 of this title, into the treasury of the State
government to which the taxes are attributable for
appropriation by the State legislature.

(2) 'Net taxes' as used in subsection (1) of this
section means gross collections of taxes, penalties,
interest, or other related charges less refunds and less
the cost of administration.

(3) 'Cost of administration' as used in subsection
(2) of this section means the cost determined to be
allocatable to each State by the Congress of the Federated
States of Micronesia when making appropriations for the
operating expenses of the Revenue Division.

(4) The revenue office in each State may administer
the taxes of the State in which located, but those duties
shall not interfere with the administration of taxes
imposed by the laws of the Federated States of Micronesia.
All costs in excess of those funded by appropriations of
the Congress of the Federated States of Micronesia required
for the administration of State taxes shall be borne
entirely by the State."

Section 6. Section 806 of title 54 of the Code of the
Federated States of Micronesia is hereby amended to read as follows:

"Section 806. Grace period."
(1) All taxes assessed, levied, or imposed by law
prior to and which are unpaid as of October 3, 1967, are
hereby declared to be due and payable within sixty days
following that date.

(2) Any person who, or firm, corporation, partnership, or association which owes such taxes and fails to
pay them in full, including interest at the rate of six
percent per annum, shall be subject to the penalties
prescribed in chapter 9 of this title and the Secretary
deemed to be the person or bodies shall collect or cause
to be collected such taxes, interest, and penalty in
accordance with chapter 9 of this title or in any other
manner authorized by law."

Section 7. 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: 6/8/89

Introduced by: Peter M. Christian