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:

Section 1. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by:

(1) Redesignating chapter 1 as chapter 6;

(2) Redesignating sections 111 through 118 as sections 611 through 618, respectively;

(3) Redesignating sections 121 through 124 as sections 521 through 524, respectively;

(4) Redesignating sections 131 through 139 as sections 631 through 639, respectively;

(5) Redesignating sections 141 through 144 as sections 641 through 644, respectively;

(6) Redesignating sections 151 through 156 as sections 651 through 656, respectively;

(7) Redesignating chapter 2 as chapter 7;

(8) Redesignating sections 201 through 203 as sections 701 through 703, respectively; and

(9) Amending all cross-references in the laws and Code of the Federated States of Micronesia to reflect all such redesignations.

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

CHAPTER 1

PRELIMINARY

Section 101. Short title. Chapters 1 through 4 of this
Title may be cited as the 'Taxation Code of 1990.'

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

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

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

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

(4) 'Employee' includes every individual performing services under the direction and control of the employer pursuant in the legal employment relationship of employee
and employer existing between such individual and his
employer;

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

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

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

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

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

(10) '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 that are
subject to the jurisdiction of the United States Secretary
of the Army, Navy, or Air Force, and also includes the
United States Coast Guard;

(11) 'Month' means calendar month;

(12) 'Person' means a natural person and any body
corporate, association, partnership, or any entity in

    general;

(13) 'Rental payment' means any payment made in

    exchange for use or rental, and includes interest, carrying

    charges, and other charges associated with use or rental;

(14) 'Resident' means resident of the FSM pursuant to

    either general common law principles or pursuant to the

    conditions prescribed by regulations promulgated pursuant

    to this title;

(15) '$' means United States dollar;

(16) 'Sale' means the transfer of ownership of that

    which is sold for a purchase price or promise thereof, and

    'sale' also includes exchange;

(17) 'Secretary' means the Secretary of the

    Department of Finance of the FSM Government or any other

    official designated by the Secretary;

(18) 'Wages' or 'Salaries' means any commissions,

    fees, compensation, emoluments, bonuses, or any other kind

    of compensation paid for, credited, or attributable to

    personal services performed in the ordinary course of the

    employee's activities or for casual or intermittent labor

    as the Secretary may prescribe, 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 Government by members of the Military or Naval Forces of the United States or the Armed Forces of the United States;

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

(c) 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;

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

(e) 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 FSM;

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

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

(19) 'Year' means calendar year.

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

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

(2) Chapters 6 through 9 of this title shall apply to
all wages and salaries, gross revenues and imports before

January 1, 1991, and such chapters are repealed as of
January 1, 1995."

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

"CHAPTER 2

INCOME TAXATION

SUBCHAPTER I

TAXATION OF PERSONAL INCOME

Section 201. Income and source.

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

(2) For purposes of this title, wages and salaries
shall include housing allowances to the employee, and the
estimated value of any free housing benefit, as the
Secretary may prescribe.

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

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

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

<table>
<thead>
<tr>
<th>Amounts (in $)</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.00 to 2,000</td>
<td>0 percent</td>
</tr>
<tr>
<td>2,001 to 13,000</td>
<td>6 percent</td>
</tr>
<tr>
<td>13,001 to 24,000</td>
<td>10 percent</td>
</tr>
<tr>
<td>24,001 to 35,000</td>
<td>14 percent</td>
</tr>
<tr>
<td>35,001 and above</td>
<td>18 percent</td>
</tr>
</tbody>
</table>

Section 204. Liability for payment of tax.

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

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

(3) The withholding tax shall be abated upon
presentation of evidence to the Secretary that the
recipient of wages and salaries has paid the tax due.

Section 205. Withholding tax and fees for consulting and
other services.

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

(2) The payer of such amount shall deduct and
withhold such tax and shall be responsible for collection
of such withholding tax and for payment of such tax to the Secretary.

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

Section 206. *Resident employer to pay tax monthly.*

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

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

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

Section 207. *Resident employer to file tax returns.*

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

(2) Such tax return shall state any information and
shall be accompanied with such documents, including receipts delivered pursuant to section 206 of this title, as the Secretary may prescribe by regulation.

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

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

Section 208. Certain employees to file returns.

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

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

(3) Each such return shall state the name of the individual filing it, the name and address of his employer, 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
prescribed in this subchapter for the payment of the tax.

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

Section 210. Responsibility for taxes withheld.

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

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

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

Section 211. No cause of action for withholding. No
employee shall have any right of action against his
employer with respect to any moneys deducted and withheld
from such employee's wages and salaries in compliance or
intended compliance with this subchapter, and paid pursuant
to the provisions of this subchapter.
Section 212. Refunds.

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

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

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

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

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

(2) A foreign government or international organization;
(3) A foreign central bank;

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

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

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

SUBCHAPTER II
BUSINESS TAXATION

Section 221. Minimum tax imposed.

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

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

(3) Any business that earns gross revenues of not
more than $6,000 per year shall be exempt from taxation
under this subchapter. A claim for refund may be filed
with the Secretary in the manner and at the time prescribed
by regulation.

Section 222. Taxation of gross revenues.

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

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

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

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

(c) 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, without deduction for the cost of
property sold, materials used, labor cost, taxes,
royalties, fees paid, benefits paid, or any other expenses
whatsoever.

(3) Gross revenues shall not include the following items:
(a) Discounts and rebates;

(b) Insurance proceeds;

(c) Moneys held in a fiduciary capacity;

(d) Income in the form of wages and salaries that are taxed under other provisions of this title; and

(e) 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 revenues.'

(4) Foreign source income shall be treated as follows:

(a) If any taxpayer derives its gross revenues from business activities or undertakings both within and without the FSM during any given year, then the whole of such taxpayer's gross revenues shall be presumed to have been derived from sources within the FSM and tax shall be computed on the aggregate amount in accordance with the provisions of this subchapter.

(b) To the extent foreign income tax has been paid by the taxpayer on that portion of gross revenues derived from sources outside the FSM, then such foreign income tax paid shall be credited against any tax due in the FSM. The credit shall not exceed the FSM tax on such
income. The Secretary shall determine by regulations the
conditions under which such tax credit may be claimed.

(5) 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, and January 31, every taxpayer shall
pay, based on its gross revenues of the preceding quarter,
the amount of tax imposed under this subchapter to the
Assistant Commissioner in the State in which the taxpayer
has its principal place of business in the FSM, or
otherwise to the Secretary.

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

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

Section 223. Net profits tax.

(1) Notwithstanding section 222, with respect to any
taxpayer whose gross revenues are in excess of $75,000 in
any year, there shall be, for each such year, assessed, levied, collected, and paid a tax of whichever is greater of the following two amounts:

(a) Two and one-half percent of such taxpayer's gross revenues; or

(b) Twenty percent of such taxpayer's net profits.

(2) Net profits shall be defined as gross revenues, as defined under section 222 of this title less the following deductions:

(a) Wages and salaries paid out by the taxpayer to its employees, on which withholding tax under subchapter I of chapter II of this title applies, and the employer's share of social security payments;

(b) Cost of goods directly used and expenses exclusively incurred for the production of income;

(c) Rental and utilities expenses including fuel;

(d) Interest paid to duly registered banks and other financial institutions in the FSM;

(e) Bad debts;

(f) Twenty-year linear depreciation for buildings; and

(g) Five-year linear depreciation for other capital goods and materials.

(3) A credit for foreign tax paid on any portion of gross revenues, as determined by the Secretary, shall be
allowed.

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

Section 224. Returns and payments of net profits tax.

(1) 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, and January 31, every taxpayer subject to the provisions of section 223 of this title shall pay, based on its gross revenue of the preceding quarter, the amount of tax that would be imposed by section 222 to the Assistant Commissioner in the State in which the taxpayer has its principal place of business in the FSM, or otherwise to the Secretary.

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

(3) Every taxpayer subject to the provisions of this subchapter shall, on or before the date provided for payment of tax under section 223 of this title, file a return showing all such gross revenues received, accrued,
or earned, and the amounts deducted or set aside on account
therefore during the preceding quarter, and, if applicable,
all net profits.

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

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

§225. Liability for payment of net profits tax.
Every taxpayer subject to the provisions of this subchapter
shall be liable for the payment of the tax pursuant to this
subchapter.

§226. Exemption of religious organizations.
Provisions of this subchapter shall not apply to the
religious and educational activities of the clergy and
other religious organizations but shall apply to the
commercial activities of the clergy and other religious
organizations."

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

"CHAPTER 3

20 of 36
TAXATION OF IMPORTS

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

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

Section 303. Exemption for goods exported.

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

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

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

'CHAPTER IV

ADMINISTRATIVE PROVISIONS

SUBCHAPTER I

IN GENERAL

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

Section 402. Regulations.

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

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

(3) Schedules to this title shall have the same force
and effect as the title itself. The Secretary is authorized
to amend such Schedules by regulations as he deems fit,
subject to the approval of the President of the FSM.
Section 403. Tax returns - Information required.
(1) The Secretary shall prescribe the forms of all
returns required to be filed pursuant to this title.
(2) All information required in any return must be
included in the return by the person responsible for the
filing.
(3) No return shall be complete unless and until it
is signed by or for the person responsible to file the
return, or by the person authorized to do so on behalf of
the person responsible for filing the return. Every return
shall be signed.
(4) The Secretary may require from any person or
persons who prepare or sign a return for another person a
form stating such facts and authorizing such person to sign
such return, signed by the person so preparing or signing
the return, and by the employer, business, or other person
in whose name the return is filed.
Section 404. Preservation and disclosure of information.
(1) All reports and returns required under this title
shall be preserved for a minimum of 3 years.
(2) The Secretary and every officer and employee of
the Department of Finance of the FSM Government shall
maintain the secrecy of all non-public matters relating to
this title that come to their knowledge and shall not
communicate such matters to any person except for the
purpose of carrying into effect this title or any other law
imposing taxes payable to the FSM Government.

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

(4) Information as to the amount of income or any
particular set forth or disclosed in any report or return
required under this title may, upon request from a
committee of the FSM Congress, be furnished to such
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 offenses committed in violation
of this title.

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

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

(7) The Secretary may compile and publish statistics
and other information generally on the returns filed as
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 individual taxpayer's return.
Section 405. Access of Public Auditor to information.

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

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

Section 406. Restrictions on outside employment.

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

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

SUBCHAPTER II

ENFORCEMENT

Section 421. Records.

(1) All persons, employees and businesses required to file returns under this act shall keep and maintain accurate records.
(2) Failure to maintain adequate records shall be subject to penalties under sections 426, 431 and 432.

Section 422. Examination, inspection and audit. For the purposes of ascertaining the correctness of any return or determining the liability of any person for any tax (including penalties, interest and other additional amounts, if any), the Secretary may examine any records including books, papers, or any other relevant data. Such records may be inspected and audited at any reasonable time within 3 years following the close of the calendar year for which a return has been filed or a tax has become due.

Section 423. Power to consolidate separate filings. For purposes of this subchapter, the Commissioner shall have the power to question the separate filing of returns and to consolidate the filing of two or more separate returns filed by a person or persons for business or businesses that are in fact substantially owned or controlled, as the Secretary shall determine, by the same person, and the Secretary shall compute the tax, penalties, and interest due as if such separate returns were part of the same return.

Section 424. Summons.

(1) For the purposes described under section 422, the Secretary is authorized to summon the person or persons liable for tax under this title to appear before a
designated officer or employee of the Division of Revenue
of the Department of Finance of the FSM Government pursuant
to the summons to produce such documents and give such
testimony as specified in the summons.

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

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

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

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

(3) If such person, business, or employer, upon
notice and demand by the Secretary, fails, within 30 days
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) Except as otherwise provided in this section, the amount of any tax imposed under this title shall be assessed and the demand for payment issued within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed).

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

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

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

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

SUBCHAPTER III
OTHER PENALTIES

Section 431. Intentional violation of tax laws. Any person who intentionally violates any of the provisions of
this title, or any rule or regulation promulgated
thereunder, shall, upon conviction, be fined not more than
$10,000, and required to pay a penalty in the amount of up
to 50 percent of the tax due, or imprisoned for a period of
not more than 1 year, or both.
Section 432. Violation of tax laws. Any person who
violates any of the provisions of this title, or any rule
or regulation promulgated thereunder, shall be fined not
more than $5,000 and required to pay a penalty in the
amount of 10 percent of the tax due.
Section 433. Monthly penalty upon unpaid taxes. In the
case of failure to pay any tax, penalty, or interest
imposed under this title when due, there shall be added to
the amount due one percent of the amount of such tax,
penalty or interest if the failure is not for more than 1
month, with an additional one percent for each additional
month or fraction thereof during which such failure
continues, not exceeding 25 percent in the aggregate.
Section 434. Interest. If any tax or penalty imposed
under this title is not paid on or before the date
prescribed for such payment, there shall be collected, in
addition to such tax and penalties, interest on the unpaid
balance of the principal tax at the rate of eight percent
per annum from its due date until the date it is paid.

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

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

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

SUBCHAPTER V
DISTRIBUTION AND ALLOCATION

Section 451. Distribution of revenues.

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

(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
allocable to each State by the FSM Congress when making
appropriations for the operating expenses of the Revenue
Division.

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

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

"SCHEDULE I
GOODS SUBJECT TO IMPORT TAX

<table>
<thead>
<tr>
<th>GOODS</th>
<th>RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cigarettes (1)</td>
<td>100% ad valorem</td>
</tr>
<tr>
<td>Tobacco (other than cigarettes but including cigars)</td>
<td>100% ad valorem</td>
</tr>
</tbody>
</table>
Perfumery, cosmetics and
toiletries (3)....................... 50% ad valorem

Soft drinks and non-
alcoholic beverages................. 4 cents on each 12 fluid ounces or

fractional part thereof

Beer and malt

beverages.......................... 50% ad valorem

Distilled alcoholic beverages (4)... 150% ad valorem

Wine (5)............................. 150% ad valorem

Foodstuff for human consumption (6).... 1% ad valorem

Gasoline and diesel fuel.............. 7 cents per gallon

All other goods...................... 6% ad valorem

(1) Except for up to 200 cigarettes per person, per
trip, which may be brought into the FSM, provided the
cigarettes are for the person's own use and consumption and
not for resale.

(2) Except for up to one pound of tobacco or 20 cigars
per person, per trip, which may be brought into the FSM,
provided the tobacco is for the person's own use and
consumption and not for resale.

(3) Including cologne and other toilet water, articles
of perfumery, whether in sachets or otherwise, and all
preparations used as applications to the hair or skin,
lipsticks, creams, powders, and other toilet preparations not 
having medicinal properties.

(4) Except that any person permitted by applicable
State law to possess, consume, and use distilled alcoholic 
beverages may bring into such State 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.

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

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

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: 5-25-90

Introduced by: Donnis S. Halbert (by request)