

EX 111
WJM

A BILL FOR AN ACT

To further amend title 54 of the Code of the Federated States of Micronesia, as amended, by adding a new chapter 7, the U.S. Tax Information Exchange Agreement Act, for the purpose of authorizing the Federated States of Micronesia to enter into a Tax Information Exchange Agreement with the United States of America and providing for the legal means and mechanisms for the Federated States of Micronesia to comply with such an agreement, and for other purposes.

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

1 Section 1. The Secretary of External Affairs is hereby
2 authorized to enter into an agreement with the United States of
3 America providing for the exchange of tax information.

4 Section 2. Title 54 of the Code of the Federated States of
5 Micronesia is hereby further amended by adding a new section
6 701 of chapter 7 to read as follows:

7 "Section 701. Short title. This act shall be known
8 and may be cited as the U.S. Tax Information Exchange
9 Agreement Act."

10 Section 3. Title 54 of the Code of the Federated States of
11 Micronesia is hereby further amended by adding a new section
12 702 of chapter 7 to read as follows:

13 "Section 702. Definitions. In this act, unless the
14 context otherwise requires:

15 (1) 'Agreement' means the agreement between the
16 Federated States of Micronesia and the United States
17 for the Exchange of Information with Respect to Taxes
18 (and accompanying diplomatic notes) entered into or to
19 be entered into by the Secretary of External Affairs.

20 (2) 'Business' includes profession or trade.

21 (3) 'Document' includes any book, paper,
22 statement, account, writing or record, and any device
23 by means of which information is recorded or stored.

24 (4) 'Federated States of Micronesia' means the
25 Government of the Federated States of Micronesia.

1 (5) 'Information' includes documents or any other
2 data received by, recorded by, prepared by, furnished
3 to or collected by employees of the Internal Revenue
4 Service in the case of the United States and by
5 employees of the Department of Finance in the case of
6 the Federated States of Micronesia.

7 (6) 'Judge' means judge of any court of competent
8 jurisdiction in the Federated States of Micronesia.

9 (7) 'Premises' includes any place whatsoever and
10 any means of transport.

11 (8) 'Regulation' means any regulations made under
12 section 714 of this chapter.

13 (9) 'Request' means an application made to the
14 Federated States of Micronesia for assistance pursuant
15 to the Agreement.

16 (10) 'Secretary' has the meaning given in section
17 703 of this chapter.

18 (11) 'United States' means the United States of
19 America and such other places as are included in the
20 Agreement for purposes of determining the geographical
21 area within which jurisdiction to compel production of
22 information may be exercised.

23 (12) 'U.S. Government' means the Government of the
24 United States."

25 Section 4. Title 54 of the Code of the Federated States of

1 Micronesia is hereby further amended by adding a new section
2 703 of chapter 7 to read as follows:

3 "Section 703. References - Secretary. In this act, a
4 reference to the Secretary in relation to any function
5 to be performed by the Secretary under this act is a
6 reference to the Secretary of Finance or such person,
7 being an officer or servant, or an agency, of the
8 Government of the Federated States of Micronesia, as
9 the Secretary of Finance may designate to perform the
10 function (with or without a duty to refer back to the
11 Secretary of Finance) in his stead as his delegate."

12 Section 5. Title 54 of the Code of the Federated States of
13 Micronesia is hereby further amended by adding a new section
14 704 of chapter 7 to read as follows:

15 "Section 704. References - Performance of a function.
16 A reference in this act to the performance of a
17 function includes reference to the performance of a
18 duty or the exercise of a power or right."

19 Section 6. Title 54 of the Code of the Federated States of
20 Micronesia is hereby further amended by adding a new section
21 705 of chapter 7 to read as follows:

22 "Section 705. Legal effect of this act.

23 (1) This act has effect for the purpose of
24 enforcing the giving of assistance by persons in the
25 Federated States of Micronesia in connection with the

1 performance of the obligations assumed by the Federated
2 States of Micronesia under the Agreement.

3 (2) The Secretary, in performing his functions
4 under this act, is not restricted by any law or rule of
5 law relating to confidentiality of information held by
6 any person except as expressly provided in the
7 Agreement."

8 Section 7. Title 54 of the Code of the Federated States of
9 Micronesia is hereby further amended by adding a new section
10 706 of chapter 7 to read as follows:

11 "Section 706. Procedure with respect to a request.

12 (1) A request must be in writing.

13 (2) A request must be signed by an official
14 designated by the U.S. Government.

15 (3) A request shall contain particulars
16 indicating:

17 (a) that by the request the U.S. Government
18 seeks information identified in the request;

19 (b) that a person in the Federated States of
20 Micronesia has or may have that information in his
21 possession, custody or control;

22 (c) that the information relates to the
23 carrying out of the laws of the United States relating
24 to the United States taxes covered by the Agreement;

25 (d) that the information relates to the

1 affairs of a taxpayer with respect to whom the request
2 has been made under the Agreement;

3 (e) that the United States has a valid tax
4 purpose in making the request;

5 (f) whether or not the taxpayer about whom
6 the request is made is a resident of the United States
7 or of the Federated States of Micronesia; and

8 (g) the period under examination by the
9 U.S., the period covered by the request, and that the
10 period of the request relates to the period under
11 examination."

12 Section 8. Title 54 of the Code of the Federated States of
13 Micronesia is hereby further amended by adding a new section
14 707 of chapter 7 to read as follows:

15 "Section 707. Power to require production of
16 information.

17 (1) Subject to the requirements of this section,
18 where the Secretary has received a request which
19 fulfills the requirements of section 706 of this
20 chapter, he shall notify pursuant to subsection (2) of
21 this section the relevant person(s) as defined in
22 section 706(3)(b) of this chapter and direct such
23 person(s) to deliver to the Secretary the information
24 specified in such notice.

25 (2) A notice under this section must:

1 (a) specify the information requested and
2 the period for which it has been requested; and
3 (b) specify the time within which the
4 information sought by the request is to be delivered to
5 the Secretary.

6 (3) The time to respond specified in such a
7 notice shall be 28 days, commencing on the day on which
8 the notice was served, or such lesser number of days as
9 the Secretary may require.

10 (4) Subject to subsections (5) and (6), a person
11 who is directed by such a notice to provide information
12 to the Secretary shall provide it to the Secretary in
13 accordance with the notice if he has the information in
14 his possession, custody or control.

15 (5) A person complies with a duty under this
16 section to provide information to the Secretary if he
17 makes the information available to him.

18 (6) After a notice has been served, the Secretary
19 may in any case enlarge the time specified in the
20 notice, either before or after that time has expired,
21 if in his opinion the circumstances warrant.

22 (7) A direction given in a notice under this
23 section to a person is an absolute defense to any claim
24 brought against him with respect to any act of his that
25 was done, or any omission of his that was made in good

1 faith, in obedience to the direction.

2 (8) Any person receiving such a notice shall have
3 the right to commence an action not later than 20 days
4 after the day such notice was given to challenge
5 production of the requested document on any appropriate
6 basis recognized by any law or rule of law. However,
7 the fact that information was received in a
8 confidential relationship (other than one described in
9 the Agreement) shall not constitute an appropriate
10 basis for failing to produce information."

11 Section 9. Title 54 of the Code of the Federated States of
12 Micronesia is hereby further amended by adding a new section
13 708 of chapter 7 to read as follows:

14 "Section 708. Power to enter premises to obtain
15 information.

16 (1) An officer of the Department of Finance may
17 make an application to a judge under and in accordance
18 with the provisions of this section for the issuance of
19 a warrant authorizing entry upon premises.

20 (2) An officer of the Department of Finance who
21 makes such an application must produce a delegation of
22 authority signed by the Secretary personally,
23 authorizing the officer to make the application in that
24 particular case.

25 (3) If on information given under oath by such an

1 officer a judge is satisfied that there is reasonable
2 ground for suspecting that an offense against this act
3 has been or is being, or is about to be committed on
4 any premises, being an offense by reason of which the
5 supply to the Secretary of information sought by a
6 request is endangered, then the judge may issue a
7 warrant in writing authorizing an officer of the
8 Department of Finance to enter the premises, by force
9 if necessary, at any time within 14 days commencing on
10 the day of the issue of the warrant, and search them.

11 (4) In issuing a warrant under this section, the
12 judge may impose such restrictions upon the execution
13 of the warrant as he may deem proper in the
14 circumstances.

15 (5) An officer entering premises by virtue of
16 this section may take such other persons and equipment
17 with him as he thinks necessary, and, on leaving
18 premises entered by virtue of a warrant under this
19 section, shall, if they are unoccupied or the occupier
20 is temporarily absent, leave them as effectively
21 secured against trespassers as he found them.

22 (6) On entering premises by virtue of this
23 section, the officer may seize and remove any things
24 whatsoever found there which he has reasonable cause to
25 believe may contain information sought by the request,

1 and shall deliver any things so seized and removed to
2 the Secretary.

3 (7) Where entry to premises has been made with a
4 warrant under this section and the officer making the
5 entry has seized any things under the authority of the
6 warrant, he shall prepare a list of them and, if so
7 requested by a person showing himself either:

8 (a) to be the occupier of the premises; or

9 (b) to have had possession or custody of
10 those things immediately before the seizure;

11 the officer shall provide that person with a copy of
12 the list.

13 (8) Where things are seized under the authority
14 of a warrant and it is shown that access to those
15 things is required for the continued conduct of the
16 business or affairs of any person, the Secretary shall
17 afford to that person reasonable access to those
18 things."

19 Section 10. Title 54 of the Code of the Federated States
20 of Micronesia is hereby further amended by adding a new section
21 709 of chapter 7 to read as follows:

22 "Section 709. Supplementing provisions to section 708.
23 Where the Secretary obtains material by virtue of
24 section 708 of this chapter, he shall:

25 (a) in any event, for 20 days commencing on

1 the day on which he obtained the material, unless he
2 returns it pursuant to paragraph (c), not disclose or
3 reveal to any person the contents or import of the
4 material, and, in particular, if the material in his
5 opinion contains information sought by a request, not,
6 as respects that material, comply with the request,
7 except that the Secretary may shorten the 20-day period
8 if in his opinion the requested material is needed by
9 the U.S. Government before the expiration of 20 days
10 and the interests of justice require the speedy
11 transmission of the requested information;

12 (b) if the material in his opinion contains
13 information sought by a request, be entitled to make
14 copies of it and keep them and also make them available
15 to others in furtherance of the request;

16 (c) whether or not the material contains
17 information sought by a request, return the material as
18 soon as practicable to the person from whom he obtained
19 it."

20 Section 11. Title 54 of the Code of the Federated States
21 of Micronesia is hereby further amended by adding a new section
22 710 of chapter 7 to read as follows:

23 "Section 710. Service of documents.

24 (1) A document to be served under this act by one
25 person ('the server') on another person ('the subject')

1 is to be treated as properly served on the subject if
2 dealt with as provided for in this section.

3 (2) The document may be delivered or sent by mail
4 to the subject, or addressed to him by name and left at
5 his proper address.

6 (3) For the purposes of subsection (2), a
7 document sent by mail to, or left at, the address last
8 known to the server as a person's address shall be
9 treated as sent by mail to or left at, his proper
10 address.

11 (4) References in this section to the serving of
12 a document on a person include the giving of the
13 document to him."

14 Section 12. Title 54 of the Code of the Federated States
15 of Micronesia is hereby further amended by adding a new section
16 711 of chapter 7 to read as follows:

17 "Section 711. Offenses.

18 (1) A person who:

19 (a) contravenes subsection (4) of section
20 707; or

21 (b) willfully obstructs an officer executing
22 a warrant under section 708 of this chapter or a person
23 lawfully accompanying him pursuant to subsection (5) of
24 that section;
25 is guilty of a criminal offense.

1 (2) A person who, in or in connection with
2 delivering information pursuant to subsection (4) of
3 section 707 of this chapter, willfully tampers with it
4 or alters it so that the information is false when
5 received by the Secretary, is guilty of a criminal
6 offense.

7 (3) A person who, without a reasonable excuse,
8 destroys or damages any information which he knows that
9 the Secretary by a notice under section 707 of this
10 chapter has directed should be provided to the
11 Secretary, is guilty of a criminal offense.

12 (4) Any person who discloses or divulges any
13 information or produces any document in contravention
14 of section 715 of this chapter is guilty of a criminal
15 offense.

16 (5) A person guilty of such criminal offense is
17 liable on conviction to the penalties provided in
18 section 901 of this title for willful violation of
19 revenue laws."

20 Section 13. Title 54 of the Code of the Federated States
21 of Micronesia is hereby further amended by adding a new section
22 712 of chapter 7 to read as follows:

23 "Section 712. Depositions, etc.

24 (1) Where a request so stipulates, the Secretary
25 shall obtain information sought by the request in the

1 form of:

2 (a) depositions of witnesses;

3 (b) copies of documents (including books,
4 papers, statements, records, accounts and writings); or

5 (c) in any other form or in any other manner
6 specified in the Agreement.

7 (2) The Secretary shall promulgate regulations,
8 conferring such functions on such persons as the
9 regulations may specify, so that full effect can be
10 given to subsection (1)."

11 Section 14. Title 54 of the Code of the Federated States
12 of Micronesia is hereby further amended by adding a new section
13 713 of chapter 7 to read as follows:

14 "Section 713. Judicial review. For the avoidance of
15 any doubt, it is hereby declared that nothing in this
16 act excludes or restricts the right of any person
17 aggrieved by the performance of the Secretary or any
18 other person of any function under this act to
19 challenge the performance of that function, insofar as
20 it affects him, by seeking review of it by a judge."

21 Section 15. Title 54 of the Code of the Federated States
22 of Micronesia is hereby further amended by adding a new section
23 714 of chapter 7 to read as follows:

24 "Section 714. Regulations.

25 (1) The Secretary may promulgate regulations:

1 (a) prescribing anything required or
2 permitted by this act to be prescribed, or that is in
3 the opinion of the Secretary necessary or convenient to
4 prescribe for carrying out this act or giving effect to
5 it; and

6 (b) prescribing the conditions, methods and
7 techniques for providing the information and assistance
8 necessary to carry out the fiscal laws of the
9 respective covered jurisdictions; and

10 (c) describing offenses and prescribing
11 penalties (including imprisonment) for such offenses
12 but not exceeding the penalties fixed by section 711 of
13 this chapter."

14 Section 16. Title 54 of the Code of the Federated States
15 of Micronesia is hereby further amended by adding a new section
16 715 of chapter 7 to read as follows:

17 "Section 715. Confidentiality.

18 (1) Every person employed in carrying out the
19 provisions of or having any official duty under the
20 Agreement shall regard and deal with all documents and
21 information relating to any person, with respect to the
22 administration of the Agreement, which may come into
23 his possession or to his knowledge in the course of his
24 duties, as confidential.

25 (2) Nothing in this section shall apply to the

1 disclosure of information:

2 (a) to any person as necessary to carry out
3 the domestic laws of the Federated States of Micronesia
4 regarding taxes covered by the Agreement, including
5 determination, assessment, collection, and
6 administration of the recovery and collection of claims
7 derived from, the enforcement or prosecution in respect
8 of, or the determination of appeals in respect of, such
9 taxes. Such person may disclose the information in a
10 public court proceeding to the extent necessary for
11 purposes of the Agreement; or

12 (b) to any other person to whom such
13 disclosure is necessary for the purposes of the
14 Agreement.

15 (3) Nothing in this section shall be construed to
16 prevent the disclosure of information of a statistical
17 nature but any such information shall be supplied in
18 such manner as not to disclose the identity of any
19 person in relation to his income.

20 (4) Every person appointed under, or employed in
21 carrying out the provisions of the Agreement and every
22 person to whom information is disclosed under paragraph
23 (a) or (b) of subsection (2) may, at the discretion of
24 the Secretary, be required to make an oath or
25 affirmation of confidentiality in the manner and form

1 approved by the Secretary.

2 (5) Any oath or affirmation under subsection (4)
3 may be taken before the Secretary (who is hereby
4 authorized to administer such oath or affirmation) or
5 before a judge, and no fee shall be payable therefore.

6 (6) The obligation as to confidentiality imposed
7 by this act shall continue to apply in respect of any
8 person notwithstanding that he ceases to be appointed
9 under or employed in carrying out the provisions of the
10 Agreement.

11 (7) No person referred to in subsection (2) shall
12 be required to produce in any court any return of
13 income, assessment or notice of assessment or to
14 divulge or communicate any information which comes to
15 his knowledge in the performance of his official duties
16 or employment in respect to the Agreement, except to
17 the extent to which it is necessary for the purposes of
18 the Agreement."

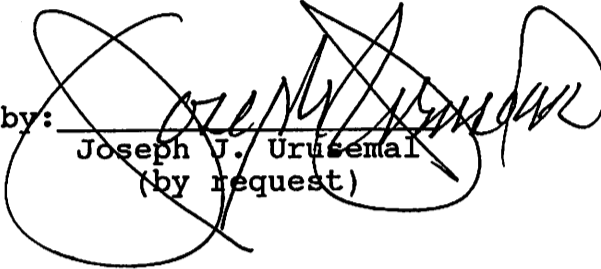
19 Section 17. Title 54 of the Code of the Federated States
20 of Micronesia is hereby further amended by adding a new section
21 716 of chapter 7 to read as follows:

22 "Section 716. Conflict with other laws. In the event
23 that any provision of this act conflicts with any
24 provision elsewhere in the Code of the Federated States
25 of Micronesia (including but not limited to section 116

1 of this title) the provision of this act shall control
2 when necessary to effectuate the Agreement and the
3 other provision shall control at all other times."

4 Section 18. This act shall become law upon approval by the
5 President of the Federated States of Micronesia or upon its
6 becoming law without such approval.

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8 Date: 5/12/93

Introduced by: 
Joseph J. Urusemal
(by request)

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