A BILL FOR AN ACT

To further amend title 54 of the Code of the Federated States of Micronesia, as amended, by further amending section 112, as amended by Public Law No. 7-41; by amending section 142; and by adding new sections 145, 146, and 147; for the purpose of revising the tax laws of the Federated States of Micronesia; 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, as amended by Public Law No. 7-41, is hereby further amended to read as follows:

"Section 112. Definitions. Wherever used in this chapter, unless the subject matter, context, or sense otherwise requires.

(1) 'Business' means any profession, trade, manufacture, or other undertaking carried on for pecuniary profit and includes all activities whether personal, professional, or incorporated, carried on within the Federated States of Micronesia for economic benefit either direct or indirect, and excludes casual sales, as determined by the Secretary; however, one who qualifies as an employee under this section shall not be considered as a business.

Copra production by unincorporated copra producers collectively or severally shall not be included as a business under this definition.

(2) 'Commercial aircraft' means any aircraft capable of and intended for use in commercial aviation.

(3) 'Employee' means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

(4) 'Employer' includes any individual, corporation, association, joint stock company, bank, insurance company,
credit union, cooperative, or other equity or group employing any person, and also includes the Federated States of Micronesia, State and local governments, and their agencies, charged with the disbursement of public moneys as salaries or wages. "Employer" also includes the United States Government and instrumentalities thereof.

(5) "Gross revenue" means the gross receipts, cash or accrued, of the taxpayer received as compensation for personal services not in the form of salaries or wages as defined in subsection (11) of this section, and the gross receipts of the taxpayer derived from trade, business, commerce, or sales and the value proceeding or accruing from the sale of tangible personal property, or services, or both, and all receipts, actual or accrued by reason of the capital of the business engaged in, including interest, rentals, royalties, fees, or other emoluments however designated and without any deductions on account of the cost of property sold, the cost of materials used, labor cost, taxes, royalties, or interest paid or any other expenses whatsoever. Gross revenue shall not include the following:

(a) refunds and rebates;
(b) moneys held in a fiduciary capacity;
(c) income in the form of wages and salaries which are taxed under other provisions of this chapter;
(d) sale payments received for the sale of a
commercial aircraft, to the extent that such sale payments in
any quarter shall equal the rental payments made to the buyer
by the seller of such aircraft for its rental by seller;

(e) rental payments received for the rental of a
commercial aircraft, to the extent that such rental payments in
any quarter shall equal the sale payments made to the lessor by
lessee of such aircraft for its purchase by the lessor;

(f) cash discounts allowed and taken on sales, the
proceeds of sale of goods, wares, or merchandise returned by
customers when the sale price is refunded either in cash or by
credit; or the sale price of any article accepted as part of
payment of any new article sold, if the full sale price of a
new article is included in 'gross revenue'; or

(g) gross revenue received by an international
organization, foreign contractor, or other foreign entity paid
from foreign aid proceeds donated to the Federated States of
Micronesia pursuant to a foreign aid agreement entered into by
the Federated States of Micronesia, the terms of which require
that such gross revenue shall not be subject to taxation by the
Government of the Federated States of Micronesia.

(6) 'Military or Naval Forces of the United States' and
'Armed Forces of the United States' means all regular and
reserve components of the uniformed services which are subject
to the jurisdiction of the Secretary of the Army, Navy, or Air
Force, and also includes the Coast Guard.
(7) "Month" means calendar month.

(8) "Purchase payments" means payments on the actual selling price, including any interest, carrying charges, or other charges associated with a sale. As used herein, the word 'sale' implies a transfer of ownership of that which is sold, in exchange for the purchase payments or promise thereof.

(9) "Rental payments" means any payments made in exchange for use or rental, and includes interest, carrying charges, or other charges associated with use or rental.

(10) "Secretary" means the Secretary of the Department of Finance.

(11) "Wages" or "Salaries" means and includes commissions, fees, compensation, emoluments, bonuses, and every and all other kinds of compensation paid for, credited, or attributable to personal services performed by an individual, which services have been performed by such person as an employee. Wages and salaries shall not include the following:

   (a) wages and salaries received from the United States by members of the Military or Naval Forces of the United States or the Armed Forces of the United States;

   (b) reasonable per diem and travel allowances to the extent that they do not exceed any comparable Federated States of Micronesia Government rates;

   (c) rental value of a home furnished to any employee or a reasonable rental allowance paid to any employee.
The gross or net remuneration of a minister of education or a minister of an educational institution:

- Time, bona fide student or an employee whose the is a full-time, part-time, or student-employee not engaged to any employee whose the is a full-time, part-time, or student-employee;

- Any payment in the form of a scholarship or a grant.

Calendar month:

Trade or business and for no more than one week in each:

- Trade or business for the employer's ordinary course of business.

Remuneration paid for the employer's ordinary course of business:

- Remuneration paid for an employee of the other than the employer's ordinary course of business or for an employee of the other than the employer's ordinary course of business.

Any payment made to or on behalf of an employee of the other than the employer's ordinary course of business or for an employee of the other than the employer's ordinary course of business:

- Any payment made to or on behalf of an employee of the other than the employer's ordinary course of business or for an employee of the other than the employer's ordinary course of business.

Work because of sickness shall not be excluded from wages and

- Work for a period of time during which the is excluded from work:

- Provided, however, that normal wages or salaries paid to an

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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.

(13) The revenue jurisdiction of the Federated States of Micronesia includes the Exclusive Economic Zone of the Federated States of Micronesia and thus the exploitation of the pelagic resources in the EEZ is carried out within the Federated States of Micronesia."

Section 2. Section 142 of title 54 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 142. Source of gross revenue: Apportionment.

(1) If any business earns or derives its gross revenue from business activities or undertakings both within and without the Federated States of Micronesia, including the Exclusive Economic Zone of the Federated States of Micronesia, during the taxable year, then the whole of its
gross revenue shall be presumed to have been derived from sources within the Federated States of Micronesia.

(2) Revenue earned in or derived from sources or transactions or parts of transactions within the Federated States of Micronesia, including the EEZ of the Federated States of Micronesia, shall be subject to the gross revenue tax as revenue within the Federated States of Micronesia.

(3) No distinction shall be made between foreign fishing in the Exclusive Economic Zone of the Federated States of Micronesia and foreign fishing in the territorial waters of the Federated States of Micronesia for tax purposes.

(4) The business may file for an apportionment of the tax on a form prescribed by the Secretary and the tax shall be levied only on that portion which is earned in or derived from sources or transactions or parts of transactions within the Federated States of Micronesia.

(5) Revenue from the sale of goods outside the Federated States of Micronesia that is derived from sources or transactions or parts of transactions within the Federated States of Micronesia, including the EEZ of the Federated States of Micronesia, by businesses within the Federated States of Micronesia shall be subject to the gross revenue tax.

(6) There may be a limited exception to subsection
(5) above. The Congress of the Federated States of Micronesia may approve a Tax Agreement submitted by the Tax Commissioner granting a limited exemption to the gross revenue tax pursuant to sections 145, 146 and 147."

Section 3. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 145 to read as follows:

"Section 145. Tax exemption agreements.

The Tax Commissioner is authorized to negotiate proposed tax agreements. Such agreements, with the approval of the Congress of the Federated States of Micronesia, may exempt the party seeking the exemption for the gross revenue tax."

Section 4. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 146 to read as follows:

"Section 146. Approval of tax exemption agreements.

(1) To take effect, a tax exemption agreement shall require the approval of the Congress of the Federated States of Micronesia by resolution.

(2) The Committee on Ways and Means of the Congress of the Federated States of Micronesia may approve such an agreement if the Congress is not in session.

(3) The Tax Commissioner, in consultation with the Secretary of Finance, shall submit to the Congress of the
Federated States of Micronesia for approval, each proposed tax agreement requesting the tax exemption, which tax agreement shall include:

(a) an economic analysis of the costs and benefits of the tax exemption;

(b) projected revenue returns on the business;

(c) other justifications for the tax exemption;

and

(d) such additional information as the Tax Commissioner may require, by regulation, as is necessary to implement and enforce the provisions of this title."

Section 5, Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 147 to read as follows:

"Section 147. Tax exemption agreement procedural rules. The Secretary of Finance shall, by regulation, establish procedures for submission and review of applications for tax exemptions of the gross receipt tax, as is necessary to implement and enforce the provisions of this title."

Section 6. 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: 5-29-95  Introduced by: Isaac V. Figir