

A BILL FOR AN ACT

To further amend title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, by amending sections 116, 118, 123, 135, 151, and 155 of chapter 1 thereof, to insert new sections 811 and 812 into chapter 8 of title 54 of the FSM Code, in order to authorize the Secretary of Finance and Administration to inspect and examine records, books of account, bank statements and other data of taxpayers, including records of financial institutions and of third parties for the purpose of securing information necessary to enforce the provisions of chapter 1 of title 54 F.S.M.C., to allow the Secretary of Finance and Administration to grant relief from penalties and interest charged in limited extenuating circumstances, to allow taxpayers relief due to business interruptions and hardships caused by COVID-19, to introduce specific amendments to improve the administration of the Customs and Tax Division of the Department of Finance and Administration, to authorize tax write-off and reinstatement of tax liabilities in certain cases, to delegate specific functions of the Secretary of Finance and Administration under title 54 of the FSM Code, and for other purposes.

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

1 Section 1. Section 116 of chapter 1 of title 54 of the Code of
2 the Federated States of Micronesia (Annotated), as amended, is
3 hereby amended to read as follows:

4 “Section 116. Preservation and disclosure of
5 information.

6 (1) All reports and returns required by this chapter
7 shall be preserved for three years and thereafter until
8 the Secretary orders them to be destroyed.

9 (2) The Secretary and every employee of the Department
10 of Finance shall maintain the secrecy of all matters
11 relating to the chapter which come to their knowledge and
12 shall not communicate such matters to any person except

1 for the purpose of carrying into effect this chapter or
2 any other enactment imposing taxes or duties payable to
3 the Government of the Federated States of Micronesia.

4 (3) No employee of the Department of Finance shall be
5 required to produce in any court any matter or thing
6 relating to the taxes imposed by this chapter coming
7 under his notice in the performance of his duties as an
8 employee of the Revenue Division except when it is
9 necessary to do so for the purpose of carrying into
10 effect any provision of this chapter or any other
11 enactment imposing duties or taxes payable to the
12 Government of the Federated States of Micronesia.

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

24 (5) The Governor of each State may appoint one
25 representative of his administration who shall have

1 access to all returns, reports, or other information on
2 file with the Department of Finance as may be necessary
3 to show that the required distribution of revenue to his
4 State has been made. Each Governor shall make the
5 appointment of his representative known to the Secretary
6 of Finance. The appointee may share information acquired
7 hereunder with the Governor of his State. The Governor
8 and his appointee may not disclose the information to any
9 other person except for the specific purpose of ensuring
10 that the required distribution of revenues to their State
11 has been made, or except as otherwise provided for by
12 law.

13 (6) The Attorney General or other legal representatives
14 of the Government of the Federated States of Micronesia
15 may inspect the report of return of any taxpayer who
16 brings an action to set aside or review the tax based
17 thereon, or against whom an action of proceeding has been
18 instituted to recover any tax or any penalty imposed by
19 this chapter.

20 (7) Nothing herein shall prohibit the Secretary or his
21 delegate from compiling and publishing statistics or
22 information generally on the returns filed so long as
23 there is no reference to a particular return and the
24 statistics and the information do not in effect divulge
25 the contents of any one return.

1 (8) In enforcing the provisions of this chapter, the
2 Secretary shall have authority to demand the production
3 by a taxpayer, and to inspect and examine, the records,
4 books of account, bank statements, and any other
5 pertinent data of a taxpayer in his possession for the
6 purpose of determining the accuracy of the tax return or
7 the correct amount of tax due to the National Government.
8 The authority of the Secretary extends to the examination
9 of financial records in the possession of a financial
10 institution or a third party, including a State
11 government or a municipal government in the FSM, with
12 whom a taxpayer has a business relation or a transaction,
13 and to demand from a financial institution or a third
14 party, including a State government or a municipal
15 government in FSM, the production of such records, with
16 respect to a relevant taxpayer, for the purpose of
17 enabling the Secretary to obtain relevant information in
18 connection with enforcing the provisions of this chapter.
19 The term "financial institution" used in this section
20 means any person or entity, which carries on a business
21 which includes any of the following activities:

22 (a) acceptance of deposits and other repayable
23 funds from the public;

24 (b) lending, including consumer credit, mortgage
25 credit, factoring (with or without recourse) and

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- 1 financing of commercial transactions;
2 (c) financial leasing;
3 (d) money transmission services;
4 (e) issuing and administering means of payment
5 (such as credit cards, travelers checks and bankers
6 drafts);
7 (f) issuing or brokering insurance policy,
8 guarantees and commitments;
9 (g) trading for their own account or for account of
10 customers in money market instruments (such as checks,
11 bills, certificates of deposit), foreign exchange,
12 financial futures and options, exchange and interest rate
13 instruments, and transferable securities;
14 (i) underwriting share issues and participation in
15 such issues;
16 advice to undertakings on capital structure, industrial
17 strategy and related questions, and advice and services
18 relating to mergers and the purchase of undertakings;
19 (j) money-brokering;
20 (k) portfolio management and advice;
21 (l) safekeeping and administration of securities;
22 (m) credit reference services; or
23 (n) safe custody services."

24 Section 2. Section 118 of chapter 1 of title 54 of the Code
25 of the Federated States of Micronesia (Annotated), as amended, is

1 hereby amended to read as follows:

2 “Section 118. Penalties for violation of sections 116
3 and 117. Any violation of subsection (2), (3), (4),
4 ~~[$\text{\textcircled{e}}$]~~ (5), or failure to make available the records
5 required by the Secretary pursuant to subsection (8) of
6 section 116 or violation of section 117 of this chapter
7 shall be a misdemeanor and shall be punishable by a
8 fine of not more than \$500, or imprisonment for not
9 more than six months, or both.

10 Section 3. Section 123 of chapter 1 of title 54 of the Code
11 of the Federated States of Micronesia (Annotated), as amended, is
12 hereby amended to read as follows:

13 “Section 123. Refunds of taxes on wages and salaries.
14 (1) If it shall be shown, upon application of an
15 employee, that there has been withheld from his wages
16 or salaries any tax not due thereon, or more than the
17 amount of tax due thereon, or that he has paid from his
18 wages and salaries any tax not due thereon or more than
19 the amount of tax thereon, or if it is shown upon
20 application of the business that it has paid an amount
21 not due as tax under this chapter or greater than the
22 tax levied under this chapter, then the Secretary shall
23 refund the amount found to have been overpaid or
24 otherwise not due and shall pay such refund out of
25 current collections of the tax; provided, the Secretary

1 shall be satisfied that:

2 (a) the amount so overpaid or otherwise not due
3 has been paid to the Government;

4 (b) the amount of refund claimed has not been
5 used as a credit against any tax or taxes due and
6 payable to the Government from such employee; and

7 (c) application for such refund was filed within
8 one year after the end of the calendar year in which
9 the amount to be refunded was withheld or paid.

10 (2) The Secretary shall make a decision on the
11 application for refund within 90 days after it is
12 submitted.

13 (3) Notwithstanding anything in this section, the
14 Secretary may refrain from issuing a tax refund check
15 when the amount of tax refund does not exceed five
16 dollars. Any tax refund that is withheld shall be
17 offset against any tax owed or transferred forward to
18 the next taxable year."

19 Section 4. Section 135 of chapter 1 of title 54 of the Code
20 of the Federated States of Micronesia (Annotated), as amended, is
21 hereby amended to read as follows:

22 "Section 135. Responsibilities for withheld taxes.

23 (1) All taxes withheld by any employer under section
24 131 of this chapter shall be held in trust by such
25 employer for the Government and for payment to the

1 Secretary in the manner and at the time required by
2 this chapter.

3 (2) If any employer fails or neglects to deduct and
4 withhold from the compensation paid to an employee the
5 amount of the tax imposed by this chapter, and the
6 Secretary is satisfied that the employer has not
7 refused to deduct the amount of the tax imposed, the
8 employee shall be liable to pay to the Government the
9 amount of the tax not deducted no later than the last
10 day of the month following the close of each quarter,
11 to wit, on or before April 30, July 31, October 31, and
12 January 31.

13 (3) Notwithstanding subsection (2) of this section,
14 if any employer refuses to deduct and withhold from the
15 compensation paid to an employee, or to pay over, the
16 amount of the tax imposed by this chapter, such
17 employer shall, moreover, be liable to pay to the
18 Government the amount of the tax, which amount shall
19 (whether or not tax withholdings constituting trust
20 funds have been commingled with said employer's assets)
21 form a lien on the employer's entire assets, having
22 priority over all other claims and liens, except as
23 provided by the Secured Transactions Act.

24 [3](4) Any employer may recover from an employee any
25 amount which he should have withheld but did not

1 withhold from such employee's wages and salaries, if he
2 has been required to pay and has paid the amount to the
3 Government out of his own funds pursuant to this
4 section."

5 Section 5. Section 151 of chapter 1 of title 54 of the Code
6 of the Federated States of Micronesia (Annotated), as amended, is
7 hereby amended to read as follows:

8 "Section 151. Records; inspection and audit.

9 (1) All persons, employees, and business required to
10 make and file returns under this chapter shall keep and
11 maintain for a period of six (6) years accurate
12 records, and the records may be inspected, uplifted,
13 copied, or audited [~~and audited~~] at any reasonable time
14 by the Secretary for the purpose of administering the
15 provisions of this chapter.

16 (2) For the purpose of this section the term
17 "records" includes books of account, recording receipts
18 documents or income or expenditure or purchases or
19 sales, and also includes vouchers, invoices, receipts,
20 and such other documents (including in electronic form)
21 as are necessary to verify the entries in any such
22 books of account and, in the case of an agent, records
23 of all transactions (including in electronic form)
24 carried out on behalf of the agent's principal."

25 Section 6. Section 155 of chapter 1 of title 54 of the Code

1 of the Federated States of Micronesia (Annotated), as amended, is
2 hereby amended to read as follows:

3 "Section 155. Civil penalties. The criminal penalties
4 imposed by section 154 of this chapter for violation of
5 provisions of this chapter shall be separate from, and
6 in addition to, all other penalties or interest
7 provided for in this section. The following civil
8 penalties are hereby levied and shall be assessed and
9 collected by this Secretary:

10 (1) Failure to file return on time. Except as may be
11 permitted by the Secretary pursuant to sections 139 and
12 143 of this chapter, if any taxpayer fails to make and
13 file a return required under this chapter on or before
14 the date set, unless prior to that date such taxpayer
15 applied for and received an extension for reasonable
16 cause, one percent of the tax shall be added for each
17 30 days or fraction thereof elapsing between the due
18 date of the return and the date on which it is actually
19 filed; provided, however, that the minimum penalty
20 under this subsection shall be five dollars.

21 (2) Failure by employer to file statement. Any
22 employer required to furnish a written statement
23 prescribed in section 133 of this chapter who willfully
24 failed to file such statements on the date prescribed
25 thereof, except with regard to any extension of time

1 for filing, shall be subject to a five dollar penalty
2 for each such statement not so filed.

3 (3) Failure to file after demand. Where taxpayer
4 fails to file return and pay tax after demand in any
5 case where the Secretary makes a return and assesses a
6 tax after a taxpayer's failure or refusal to make and
7 file a return and pay the tax required by this chapter,
8 [~~10%~~] 25 percent of the tax assessed, in addition to
9 the penalties of subsection (1) of this section, shall
10 be added thereto.

11 (4) False and fraudulent returns. If any part of any
12 deficiency is due to fraud with intent to evade the
13 tax, or any portion thereof, 50 percent of the total
14 amount of such deficiency, in addition to the penalties
15 provided in subsections (1), (2), and (3) of this
16 section, shall be assessed and added to the deficiency
17 assessment.

18 (5) Interest. If any tax or penalty imposed by this
19 chapter is not paid on or before the date prescribed
20 for such payment, there shall be collected, in addition
21 to such tax and penalties, interest on the unpaid
22 balance of the tax principal at the rate of six percent
23 per annum from its due date until the date it is paid.

24 (6) On application for relief made in writing to the
25 Secretary by any taxpayer who (whether before or after

1 the commencement of this provision) has become liable
2 for the payment of any penalty or interest under
3 subsections (1) (2), (3), and (5) of this section, the
4 Secretary may, grant relief to the taxpayer by the
5 remission of the whole or part of the penalty and or
6 interest, if he is satisfied that the late filing and
7 or late payment was due to:

8 (a) circumstances outside of the control of the
9 taxpayer; or

10 (b) the serious illness of the person responsible
11 for filing the return or statement, or paying the tax;
12 or

13 (c) excusable error on the part of a taxpayer
14 relying upon an incorrect information.

15 (e) A significant disruption to the person's
16 business caused by COVID-19 (also known as Coronavirus)
17 restrictions."

18 Section 7. Chapter 8 of title 54 of the Code of the
19 Federated States of Micronesia (Annotated), as amended, is
20 hereby amended by inserting new section 811 to read as follows:

21 "Section 811. Tax write-off and reinstatement of tax
22 debt

23 (1) The Secretary may write off in whole or in part
24 any amount of unpaid tax, penalties, or interest owed
25 by a taxpayer where he is satisfied that all reasonable

1 efforts have been taken to collect the tax, penalties,
2 or interest and the amount to be written off is in fact
3 irrecoverable;

4 (2) The provisions of subsection (1) shall apply to
5 the following categories:

6 (a) a taxpayer who, after reasonable enquiry has
7 left the FSM and permanently resides overseas;

8 (b) a taxpayer whose current whereabouts,
9 business or residential addresses are not known;

10 (c) a deceased taxpayer whose estate does not
11 have any asset of value;

12 (d) a taxpayer with a serious illness or
13 incapacitation who will not likely not have future
14 earnings be able to earn any future income;

15 (e) a person who is incarcerated for a period of
16 not less than 5 years and will not likely earn any
17 income in the future and does not have any asset of
18 value;

19 (f) a person who is facing serious financial
20 hardship due to a significant disruption to the
21 person's business caused by COVID-19 (also known as new
22 Coronavirus) restrictions;

23 (g) a natural person who has suffered such loss
24 or is in such circumstances that the payment of the
25 full amount of the tax has entailed or would entail

1 serious hardship;

2 (h) an insolvent or bankrupt corporation, or

3 (i) it is uneconomical to pursue the recovery of
4 the outstanding unpaid tax.

5 (3) Notwithstanding anything in this section, the
6 Secretary may reinstate within a period of seven (7)
7 years the amount written off if the Secretary, upon
8 reasonable enquiry, is satisfied that:

9 (a) the taxpayer is financially capable of paying
10 the amount written off in full or in part within a
11 period of 5 years upon reinstatement, and the amount
12 written off is economically viable to recover; or

13 (b) the taxpayer knowingly absconded to avoid the
14 amount written off and the taxpayer is financially
15 capable of paying the amount written off in full or in
16 part within a period of 10 years upon reinstatement."

17 Section 8. Chapter 8 of title 54 of the Code of the
18 Federated States of Micronesia (Annotated), as amended, is hereby
19 amended by inserting new section 812 to read as follows:

20 "Section 812. Delegation of Secretary's functions and
21 powers.

22 (1) Subject to subsection (4) of this section, the
23 Secretary may, by written instrument, delegate to a
24 Department of Finance and Administration employee any
25 of his functions and powers under Title 54, other than

1 this power of delegation.

2 (2) A reference in Title 54 to the Secretary
3 includes, in respect of the exercise of a power or
4 performance of a function delegated to an employee, a
5 reference to the delegate.

6 (3) A delegation under this section is revocable at
7 will and does not prevent the exercise of a power or
8 performance of a function by the Secretary.

9 (4) The Secretary shall not delegate the functions
10 and powers of Title 54 to any person other than an
11 employee of the Department of Finance and
12 Administration; provided, however, that nothing herein
13 shall be deemed as limiting the Secretary from
14 retaining legal counsel, or contracting with
15 consultants and others as may be necessary to assist
16 the Department of Finance and Administration to perform
17 its duties pursuant to Title 54."

18 Section 9. This act shall become law upon approval by the
19 President of the Federated States of Micronesia or upon its
20 becoming law without such approval.

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22 Date: 4/13/20

Introduced by: /s/ Florencio S. Harper
Florencio S. Harper
(by request)

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