

AN 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 Laws Nos. 7-41, 10-93 and 10-149, to allow deduction of certain expenses from gross revenue before computation of the gross revenue tax, and for other purposes.

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

1 Section 1. Section 112 of title 54 of the Code of the Federated
2 States of Micronesia, as amended by Public Laws Nos. 7-41, 10-93 and
3 10-149, is hereby amended to read as follows:

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

7 (1) 'Business' means any profession, trade, manufacture, or
8 other undertaking carried on for pecuniary profit and
9 includes all activities whether personal, professional, or
10 incorporated, carried on within the Federated States of
11 Micronesia for economic benefit either direct or indirect,
12 and excludes casual sales, as determined by the Secretary;
13 however, one who qualifies as an employee under this section
14 shall not be considered as a business. Copra production by
15 unincorporated copra producers collectively or severally
16 shall not be included as a business under this definition.

17 (2) 'Business-related utilities expense' means an

1 expenditure of funds, paid to a public utility, for power,
2 water, or waste-water services necessary to and directly
3 related to the conduct of the business.

4 (~~2~~3)'Commercial aircraft' means any aircraft capable of
5 and intended for use in commercial aviation.

6 (~~3~~4)'Employee' means any individual who, under the usual
7 common law rules applicable in determining the employer-
8 employee relationship, has the status of an employee.

9 (~~4~~5)'Employer' includes any individual, corporation,
10 association, joint stock company, bank, insurance company,
11 credit union, cooperative, or other entity [~~equity~~] or group
12 employing any person, and also includes the Federated States
13 of Micronesia, State and local governments, and their
14 agencies, charged with the disbursement of public moneys as
15 salaries or wages. 'Employer' also includes the United
16 States Government and instrumentalities thereof.

17 (~~5~~6)'Gross revenue' means:

18 (a) the gross receipts, cash or accrued, of the
19 taxpayer received as compensation for personal services not
20 in the form of salaries or wages as defined in subsection
21 (~~11~~12) of this section~~[7]~~; and

22 (b) the gross receipts of the taxpayer derived
23 from trade, business, commerce, or sales and the value
24 proceeding or accruing from the sale of tangible personal
25 property, or services, or both, and all receipts, actual or

1 accrued by reason of the capital of the business engaged in,
2 including interest, rentals, royalties, fees, or other
3 emoluments however designated and without any deductions on
4 account of the cost of property sold, the cost of materials
5 used, [~~labor cost,~~] taxes, royalties, or interest paid or any
6 other expenses whatsoever, PROVIDED that the following
7 expenses may be deducted to the extent substantiated through
8 reliable documentation:

9 (i) wages and salaries which have been paid by
10 the taxpayer to or on behalf of citizen employees as
11 reflected in reports filed pursuant to subchapter III of
12 chapter 1 of title 54 of the Code of the Federated States of
13 Micronesia;

14 (ii) Federated States of Micronesia Social
15 Security contributions which have been paid by the taxpayer
16 for the benefit of his or her citizen employees pursuant to
17 section 902 of title 53; and

18 (iii) business-related utilities expenses.

19 (c) Gross revenue shall not include the following:

20 (~~a~~)i) refunds and rebates;

21 (~~b~~)ii) moneys held in a fiduciary capacity;

22 (~~e~~)iii) income in the form of wages and salaries
23 which are taxed under other provisions of this chapter;

24 (~~d~~)iv) sale payments received for the sale of a
25 commercial aircraft, to the extent that such sale payments in

1 any quarter shall equal the rental payments made to the buyer
2 by the seller of such aircraft for its rental by the seller;

3 ([e]y) rental payments received for the rental of a
4 commercial aircraft, to the extent that such rental
5 payments in any quarter shall equal the sale payments made to
6 the lessor by the lessee of such aircraft for its purchase by
7 the lessor;

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

15 ([g]vii) gross revenue received by an international
16 organization, foreign contractor, or other foreign entity
17 paid from foreign aid proceeds donated to the Federated
18 States of Micronesia pursuant to a foreign aid agreement
19 entered into by the Federated States of Micronesia, the terms
20 of which require that such gross revenue shall not be subject
21 to taxation by the Government of the Federated States of
22 Micronesia; Rents are income taxable under the FSM Income Tax
23 Statute, and a state tax on gross rental receipts combines to
24 create vertical multiple taxation of a form of income;

25 ([h]viii) gross revenue derived solely from the export

1 sales of tangible personal property produced or manufactured
2 in the Federated States of Micronesia and delivered to a
3 buyer outside the Federated States of Micronesia; or

4 ([~~4~~]ix) gross revenue derived solely from industrial
5 processing of goods in the Federated States of Micronesia
6 which are subsequently exported from, and not used in, the
7 Federated States of Micronesia.

8 ([~~6~~]7) 'Military or Naval Forces of the United States' and
9 'Armed Forces of the United States' means all regular and
10 reserve components of the uniformed services which are
11 subject to the jurisdiction of the Secretary of the Army,
12 Navy, or Air Force, and also includes the Coast Guard.

13 ([7]8) 'Month' means calendar month.

14 ([8]9) 'Purchase payments' means payments on the actual
15 selling price, including any interest, carrying charges, or
16 other charges associated with a sale. As used herein, the
17 word 'sale' implies a transfer of ownership of that which is
18 sold, in exchange for the purchase payments or promise
19 thereof.

20 ([9]10) 'Rental payments' means any payments made in exchange
21 for use or rental, and includes interest, carrying charges,
22 or other charges associated with use or rental.

23 ([10]11) 'Secretary' means the Secretary of the Department
24 of Finance and Administration.

25 ([11]12) 'Wages' or 'Salaries' means and includes commissions,

1 fees, compensation, emoluments, bonuses, and every and all
2 other kinds of compensation paid for, or credited or
3 attributable to, personal services performed by an
4 individual, which services have been performed by such person
5 as an employee. Wages and salaries shall not include the
6 following:

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

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

13 (c) rental value of a home furnished to any employee
14 or a reasonable rental allowance paid to any employee (to the
15 extent such allowance is used by the employee to rent or
16 provide a home);

17 (d) any payment on account of sickness or accident
18 disability, or any payment of medical or hospitalization
19 expenses, made by an employer to or on behalf of an employee;
20 provided, however, that normal wages or salaries paid to an
21 employee for a period of time during which he is excused from
22 work because of sickness shall not be excluded from wages and
23 salaries under this subsection;

24 (e) any payment made to or on behalf of an employee or
25 to his beneficiary from a trust or annuity;

1 (f) remuneration paid in any medium other than cash to
2 an employee for service not in the ordinary course of the
3 employer's trade or business or for domestic service in a
4 private home of an employer;

5 (g) remuneration paid for casual or intermittent labor
6 not performed in the ordinary course of the employer's trade
7 or business and for not more than one week in each calendar
8 month;

9 (h) any payment in the form of a scholarship,
10 fellowship, or stipend made to any employee while he is a
11 full-time, bona fide student at an educational institution;

12 (i) wages and salaries received by a minister of the
13 gospel or clergyman from a religious group or organization;

14 (j) wages and salaries received by an employee for
15 services performed or rendered in the capacity of a domestic
16 or household employee for a private individual or family;

17 (k) wages and salaries received by an employee, who is
18 not a citizen of the Federated States of Micronesia, while
19 employed by an international organization, foreign
20 contractor, or other foreign entity performing services or
21 otherwise conducting business in furtherance of a foreign aid
22 agreement entered into by the Federated States of Micronesia,
23 the terms of which require that such wages and salaries shall
24 not be subject to taxation by the Government of the Federated
25 States of Micronesia; or

1 (1) the foreign service premium authorized by section
2 163 of title 52 of the Code of the Federated States of
3 Micronesia.

4 (~~12~~13) 'Year' means calendar year."

5 Section 2. Effective date. This act shall take effect 180 days
6 following its becoming law.

7 Section 3. This act shall become law upon approval by the
8 President of the Federated States of Micronesia or upon its becoming
9 law without such approval.

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13 Date: _____ Introduced by: _____

Peter M. Christian