

A BILL FOR AN ACT

To further amend Title 54 of the Code of the Federated States of Micronesia by adding a new chapter 7, for the purpose of establishing a Federated States of Micronesia Unified Revenue Authority for the National Government, and for other purposes.

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

1 Section 1. Title 54 of the Code of the Federated States
2 of Micronesia is hereby further amended by adding a new
3 chapter 7 entitled "FSM Unified Revenue Authority".

4 Section 2. Title 54 of the Code of the Federated States
5 of Micronesia is hereby amended by adding a new subchapter I
6 to chapter 7 entitled "General Provisions."

7 Section 3. Title 54 of the Code of the Federated States
8 of Micronesia is hereby further amended by adding a new
9 section 701 to subchapter I of chapter 7 to read as follows:

10 "Section 701. Short title. This chapter may be
11 cited as the Federated States of Micronesia Unified
12 Revenue Authority Act of 2010".

13 Section 4. Title 54 of the Code of the Federated States
14 of Micronesia is hereby further amended by adding a new
15 section 702 to subchapter I of chapter 7 to read as follows:

16 "Section 702. Definitions.
17 Wherever used in this chapter, unless the subject
18 matter, context, or sense otherwise requires:

19 (1) 'Authority' means the Federated States of

1 Micronesia Unified Revenue Authority established by
2 section 711 of this title.

3 (2) 'Board' means the Board of Directors of the
4 Authority appointed under section 712 of this
5 title.

6 (3) 'CEO' means the Chief Executive Officer
7 appointed under Section 731 of this title.

8 (4) 'Congress' means the Congress of the
9 Federated States of Micronesia.

10 (5) 'CTA' means the FSM Department of Finance and
11 Administration, Division of Customs and Tax
12 Administration.

13 (6) 'Finance Official' means the Secretary, a
14 Director of Finance, Director of Administration,
15 Director of Administration and Treasury or such
16 other official holding the highest administrative
17 office responsible for matters of finance or
18 taxation within the FSM National Government or the
19 Government of any State.

20 (7) 'FSM' means the Federated States of
21 Micronesia.

22 (8) 'Government' means the Government of the
23 Federated States of Micronesia or the Government of
24 a State in the Federated States of Micronesia,
25 whichever the context appropriately requires.

26 (9) 'Generally Accepted Accounting Principles' or

1 "GAAP" means those accounting principles currently
2 accepted by certified public accountants, which are
3 utilized by auditors operating within the FSM;
4 PROVIDED, HOWEVER, that in the event International
5 Financial Reporting Standards (IFRS) become
6 generally accepted by the financial/auditing
7 entities within the FSM and as prescribed by law or
8 regulations, then GAAP shall be modified by IFRS.

9 (10) 'Memorandum of Understanding' means the
10 Memorandum of Understanding entered into between
11 the FSM National Government and the governments of
12 the several States under section 759 of this title.

13 (11) 'National tax' means a tax or duty imposed
14 under a law referred to in paragraphs (a) or (b) of
15 the definition of "Revenue law" in subsection (17)
16 of this section.

17 (12) 'Net tax' means the gross collection of tax,
18 penalties, and interest under a revenue law less
19 refunds paid under such law.

20 (13) 'Net National taxes' means the net tax
21 collected in respect of National taxes.

22 (14) 'Net State taxes' means the net tax collected
23 in respect of a State's taxes.

24 (15) 'Prescribed percentage', in relation to the
25 Authority's operations budget, is that percentage
26 determined under sections 752 and 756(2) of this

1 title.

2 (16) 'Revenue authority' means the CTA as defined
3 in subsection (5) of this section, or the
4 administrative office responsible for matters of
5 finance or taxation within the Government of any
6 State.

7 (17) 'Revenue law' means:

8 (a) any chapter under this title;

9 (b) a law of the FSM imposing a tax or duty
10 if the law provides that the Authority has the
11 responsibility for administering the tax or duty;
12 and

13 (c) a law of a State imposing a tax which
14 the Authority is allowed to administer by virtue
15 of the laws of such State.

16 (18) 'Revenue officer' means the CEO and any
17 officer of the Authority appointed under section
18 732 of this title.

19 (19) 'Secretary' means the Secretary of the
20 Department of Finance and Administration.

21 (20) 'State' means a State of the Federated States
22 of Micronesia; and

23 (21) 'State tax' means a tax imposed under a law
24 referred to in paragraph (c) of the definition of
25 "Revenue law" in subsection (17) of this section."

26 Section 5. Title 54 of the Code of the Federated States

1 of Micronesia is hereby further amended by adding a new
2 subchapter II to chapter 7 entitled "Establishment,
3 Membership, and Meetings of the Authority."

4 Section 6. Title 54 of the Code of the Federated States
5 of Micronesia is hereby further amended by adding a new
6 section 711 to subchapter II of chapter 7 to read as follows:

7 "Section 711. Establishment of the Federated
8 States of Micronesia Unified Revenue Authority. The
9 Federated States of Micronesia Unified Revenue
10 Authority is hereby established under the laws of
11 the Federated States of Micronesia. It may
12 hereinafter be referred to as "the Authority".

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

16 "Section 712. Board of Directors of the Authority.

17 (1) There is a Board of Directors of the
18 Authority that is the governing body of the
19 Authority.

20 (2) The Board is responsible for monitoring the
21 overall performance of the Authority and for
22 determining policies relating to staffing of and
23 procurement by the Authority.

24 (3) The Board must not intervene in the
25 determination of an assessment, ruling application,
26 liability, objection, or appeal of a person under a

1 revenue law, or in any other operational matter of
2 the Authority."

3 Section 8. Title 54 of the Code of the Federated States
4 of Micronesia is hereby further amended by adding a new
5 section 713 to subchapter II of chapter 7 to read as follows:

6 "Section 713. Appointment and termination of
7 directors.

8 (1) The Board consists of the following
9 directors:

10 (a) the Secretary;

11 (b) a representative of the State of Chuuk
12 appointed pursuant to Chuuk State law;

13 (c) a representative of the State of Kosrae
14 appointed pursuant to Kosrae State law;

15 (d) a representative of the State of Pohnpei
16 appointed pursuant to Pohnpei State law;

17 (e) a representative of the State of Yap
18 appointed pursuant to Yap State law; and

19 (f) a representative of the private sector
20 appointed by a majority of the directors referred
21 to in paragraphs (a) through (e) of this section.

22 (2) The person appointed under subsection (1) (f)
23 of this section must be from a pool of candidates
24 from the private sector nominated by the Governors,
25 who in the opinion of the Board, has adequate
26 experience in public administration, or in

1 financial, commercial, tax, or legal matters. Each
2 Governor may nominate no more than two persons from
3 his State.

4 (3) The following persons are not allowed to be
5 appointed under subsection (1)(f) of this section:

6 (a) a person who is an undischarged
7 bankrupt;

8 (b) a person who has been convicted of an
9 offense under a revenue law, or who otherwise has
10 been convicted of any other crime involving moral
11 turpitude;

12 (c) a person whose affairs under all revenue
13 laws are not up to date; or

14 (d) a person who is disqualified or
15 suspended from practice of the person's profession
16 for misconduct.

17 (4) Before appointing a person under subsection
18 (1)(f) of this section, the Board must take into
19 consideration any potential conflicts of interest
20 that the person may have.

21 (5) The person appointed as director under
22 subsection (1)(a) of this section shall hold the
23 office for as long as the person holds the office
24 of Secretary.

25 (6) A person appointed as director under
26 subsection (1)(b), (c), (d), or (e) of this section

1 shall hold office pursuant to the respective State
2 law under which each was appointed.

3 (7) The person appointed as director under
4 subsection (1)(f) of this section shall hold office
5 for a term not exceeding three years and is
6 eligible for reappointment.

7 (8) A person appointed as a director under
8 subsection(1)(b), (c), (d), or (e) of this section
9 may be removed from office in accordance with the
10 State law of appointment.

11 (9) The person appointed as director under
12 subsection (1)(f) of this section may be removed
13 from office by resolution of the Board if the
14 director:

15 (a) has been absent, without leave of the
16 Board, from three consecutive meetings of the
17 Board;

18 (b) has become an undischarged bankrupt;

19 (c) has been convicted of an offense, or has
20 become liable for a penalty, under a revenue law,
21 including section 718 of this chapter, or has been
22 convicted of any other crime involving moral
23 turpitude; or

24 (d) has become disqualified or suspended
25 from practice of the person's profession for
26 misconduct."

1 Section 9. Title 54 of the Code of the Federated States
2 of Micronesia is hereby further amended by adding a new
3 section 714 to subchapter II of chapter 7 to read as follows:

4 "Section 714. Chairperson of the Board.

5 (1) The Chairperson of the Board shall rotate
6 annually among the five FSM governments as
7 determined by the Board.

8 (2) The Chairperson may authorize, in writing,
9 any director to exercise any power or perform any
10 function conferred on the Chairperson by or under
11 this chapter."

12 Section 10. Title 54 of the Code of the Federated
13 States of Micronesia is hereby further amended by adding a
14 new section 715 to subchapter II of chapter 7 to read as
15 follows:

16 "Section 715. Meetings of the Board.

17 (1) The Board must meet as often as may be
18 necessary for the performance of its functions;
19 PROVIDED HOWEVER that it shall meet on no less than
20 four occasions each calendar year; and PROVIDED,
21 FURTHER, that at least two such meetings shall
22 require the physical presence of the directors at a
23 single location.

24 (2) At any meeting, the quorum of the Board shall
25 be four directors. Subject to subsection (1) of
26 this section, participation may be in person, by

1 teleconference, or by other appropriate electronic
2 means in real time. A quorum, once established,
3 shall not be broken by the absence or withdrawal of
4 one or more directors before a meeting is
5 adjourned.

6 (3) Notice of a meeting of the Board must be
7 given to each director and shall be delivered by
8 hand or sent by post, facsimile, electronic mail,
9 or other written message to an address supplied by
10 the director to the Board for this purpose.

11 (4) Subject to subsection (5) of this section,
12 decisions at meetings of the Board are by a simple
13 majority of the directors participating.

14 (5) The director appointed under section
15 713(1)(f) of this section shall be a non-voting
16 member of the Board but is to be taken into account
17 in determining whether a quorum exists.

18 (6) Subject to this section, the Board may
19 regulate its own procedure.

20 (7) The validity of a proceeding of the Board is
21 not affected by a vacancy in the membership, or by
22 any defect in the appointment of a director.

23 (8) The Board may invite a person to attend a
24 meeting of the Board for the purpose of advising it
25 on any matter under discussion, but the person so
26 attending shall have no right to vote at the

1 meeting."

2 Section 11. Title 54 of the Code of the Federated
3 States of Micronesia is hereby further amended by adding a
4 new section 716 to subchapter II of chapter 7 to read as
5 follows:

6 "Section 716. Transaction of business without
7 meeting.

8 (1) A resolution of the Board is valid, even
9 though it was not passed at a meeting of the Board,
10 if:

11 (a) it is signed or assented to by all five
12 directors of the Board who are appointed under
13 section 713(1)(a), (b), (c), (d), and (e) of this
14 title; and

15 (b) a notice in writing of the proposed
16 resolution was given to each director."

17 (2) RESERVED

18 Section 12. Title 54 of the Code of the Federated
19 States of Micronesia is hereby further amended by adding a
20 new section 717 to subchapter II of chapter 7 to read as
21 follows:

22 "Section 717. Remuneration of directors.
23 The directors of the Board and persons invited to
24 attend a meeting of the Board under section 715(8)
25 of this title are entitled to such remuneration as
26 may be established by regulation."

1 Section 13. Title 54 of the Code of the Federated
2 States of Micronesia is hereby further amended by adding a
3 new section 718 to subchapter II of Chapter 7 to read as
4 follows:

5 "Section 718. Disclosure of interest.

6 (1) A director of the Board who has a direct or
7 indirect personal interest in the outcome of any
8 matter before the Board must disclose the interest
9 to the Board.

10 (2) The disclosure of an interest under
11 subsection (1) of this section must be recorded in
12 the minutes of the Board.

13 (3) After making a disclosure under subsection
14 (1) of this section, the director:

15 (a) in the case of a meeting, must withdraw
16 from the meeting before the commencement of
17 deliberations of the Board in respect of the matter
18 referred to in subsection (1) of this section,
19 although the director may be counted for the
20 purposes of forming a quorum of the Board at the
21 meeting; and

22 (b) in any case, must not vote on the
23 matter.

24 (4) A director who contravenes this section is
25 guilty of an offense, and upon conviction is
26 subject to a fine not exceeding \$1000, imprisonment

1 for not more than one year, or both."

2 Section 14. Title 54 of the Code of the Federated
3 States of Micronesia is hereby further amended by adding a
4 new section 719 to subchapter II of chapter 7 to read as
5 follows:

6 "Section 719. Minutes of meetings and business
7 transacted.

8 (1) The Board must keep minutes of all its
9 meetings and business transacted under sections 715
10 and 716 of this title in a proper form.

11 (2) The minutes of a meeting, if duly signed by
12 the Chairperson or person presiding, are
13 admissible, in any legal proceedings, as evidence
14 of the facts stated therein and a meeting of the
15 Board in respect of which minutes have been so
16 signed is treated as having been duly convened and
17 held, and the directors present at the meeting have
18 been duly appointed to act.

19 (3) Any minutes of a resolution dealt with under
20 section 716 of this title, if duly signed by the
21 Chairperson, are admissible, in any legal
22 proceedings, as evidence of the facts stated
23 therein and that the resolution was properly dealt
24 with in accordance with section 716 of this title."

25 Section 15. Title 54 of the Code of the Federated
26 States of Micronesia is hereby further amended by adding a

1 new section 720 to subchapter II of chapter 7 to read as
2 follows:

3 "Section 720. Common seal.

4 (1) The Authority must have a common seal of such
5 design as it may decide.

6 (2) The common seal must be kept by the
7 Chairperson and its affixing must be authenticated
8 by two directors of the Board generally or
9 specifically authorized by the Authority for the
10 purpose, or by one such director and the
11 Chairperson.

12 (3) All deeds, documents, and other instruments
13 purporting to be sealed with the common seal and
14 authenticated in accordance with subsection (2) of
15 this section are, unless the contrary is proved,
16 presumed to have been validly executed.

17 (4) The common seal of the Authority must be
18 officially and judicially noticed for all
19 purposes."

20 Section 16. Title 54 of the Code of the Federated
21 States of Micronesia is hereby further amended by adding a
22 new section 721 to subchapter II of chapter 7 to read as
23 follows:

24 "Section 721. Task assignment by Board.

25 (1) The Board may, from time to time, by notice
26 in writing under the hand of the Chairperson,

1 assign to any person or committee a specific task
2 to assist the Board in furtherance of its duties;
3 PROVIDED, HOWEVER, that the Board may not delegate
4 its policy-making power.

5 (2) An assignment under this section may be made
6 to a specified person or committee, or holder for
7 the time being of a specified office or to the
8 holders of offices of a specified class.

9 (3) An assignment may be made subject to such
10 restrictions and conditions as the Board thinks
11 fit, and may be made either generally or in
12 relation to any particular case or class of case.

13 (4) A person or committee purporting to be acting
14 under assignment of the Board must, when required
15 to do so, produce satisfactory evidence of such
16 assignment.

17 (5) A committee established under this section
18 may regulate its own procedure but is subject to
19 direction given by the Board.

20 (6) Sections 715, 716, 718, and 719 of this title
21 apply equally to members and meetings of a
22 committee established under this section.

23 (7) The members of a committee and persons
24 invited to attend meetings of the committee to
25 advise the committee are entitled to such
26 allowances and expenses as the Board may fix by

1 regulation.

2 Section 17. Title 54 of the Code of the Federated
3 States of Micronesia is hereby further amended by adding a
4 new subchapter III of chapter 7 entitled "Service of
5 Authority."

6 Section 18. Title 54 of the Code of the Federated
7 States of Micronesia is hereby further amended by adding a
8 new section 731 to subchapter III of chapter 7 to read as
9 follows:

10 "Section 731. Appointment of Chief Executive
11 Officer.

12 (1) The Board shall appoint a Chief Executive
13 Officer (CEO) on such terms and conditions as the
14 Board may determine.

15 (2) The CEO:

16 (a) shall serve for a term of four years,
17 subject to reappointment by the Board;

18 (b) is responsible for the administration
19 and enforcement of, and collection of revenue,
20 under the revenue laws;

21 (c) is responsible for the day-to-day
22 operations of the Authority;

23 (d) is responsible for the proper
24 administration and management of the functions and
25 affairs of the Authority in accordance with the
26 policy laid down by the Board; and

1 (e) shall perform such other functions and
2 duties as the Board may determine.

3 (3) Except as provided in subsection (2) of this
4 section, the CEO is not subject to the direction or
5 control of any person.

6 (4) If the CEO is temporarily absent from the
7 FSM, or temporarily unable to perform the duties of
8 his office, the Board may appoint a person to act
9 in the place of the CEO during that period.

10 (5) The Board may terminate the appointment of
11 the CEO for incapacity, misbehavior, or misfeasance
12 or malfeasance. A CEO whose appointment has been
13 terminated under this subsection may appeal to a
14 Court of competent jurisdiction."

15 Section 19. Title 54 of the Code of the Federated
16 States of Micronesia is hereby further amended by adding a
17 new section 732 to subchapter III of chapter 7 to read as
18 follows:

19 "Section 732. Appointment of officers and other
20 staff.

21 The CEO may appoint, on such terms and conditions
22 as the Board may determine, such officers,
23 employees, agents, or consultants as may be
24 necessary or expedient for carrying out the
25 functions and duties of the Authority."

26 Section 20. Title 54 of the Code of the Federated

1 States of Micronesia is hereby further amended by adding a
2 new section 731 to subchapter III of chapter 7 to read as
3 follows:

4 "Section 733. Delegation of CEO's functions and
5 powers.

6 (1) Subject to subsection (4) of this section,
7 the CEO may, by written instrument, delegate to a
8 revenue officer any of his or her functions and
9 powers under any revenue law, other than this power
10 of delegation.

11 (2) A reference in a revenue law to the CEO
12 includes, in respect of the exercise of a power or
13 performance of a function delegated to a revenue
14 officer, a reference to the delegate.

15 (3) A delegation under this section is revocable
16 at will and does not prevent the exercise of a
17 power or performance of a function by the CEO.

18 (4) The CEO shall not delegate the functions and
19 powers of tax assessment and collection to any
20 person other than an employee of the Authority;
21 PROVIDED, HOWEVER, that nothing herein shall be
22 deemed as limiting the CEO from retaining legal
23 counsel, or contracting with consultants and others
24 as may be necessary to assist the Authority to
25 perform its duties."

26 Section 21. Title 54 of the Code of the Federated

1 States of Micronesia is hereby further amended by adding a
2 new section 734 to subchapter III of chapter 7 to read as
3 follows:

4 "Section 734. Oath of office.

5 The Board may prescribe an oath of office to be
6 administered to revenue officers."

7 Section 22. Title 54 of the Code of the Federated
8 States of Micronesia is hereby further amended by adding a
9 new section 735 to subchapter III of chapter 7 to read as
10 follows:

11 "Section 735. Confidentiality and disclosure of
12 information.

13 (1) Revenue officers, directors, employees of the
14 Authority, former directors of the Board, former
15 members of a committee of the Board, persons
16 invited to a Board or committee meeting, former
17 employees or contractors of the Authority, and any
18 person formerly or presently engaged by the
19 Authority in any capacity shall not disclose any
20 business or personal document or information
21 received during the performance of duties or in the
22 course of any meeting of the Authority if such
23 document or information is deemed confidential or
24 secret by law or by generally accepted business
25 practices, except that they may disclose a
26 confidential or secret business or personal

1 document or information to the following:

2 (a) another revenue officer, but only to the
3 extent required by law or as may be necessary for
4 the purposes of any revenue law;

5 (b) the Secretary, but only in relation to
6 National taxes;

7 (c) a Finance Official of a State, but only
8 in relation to that State's taxes;

9 (d) the Secretary of the FSM Department of
10 Justice or his designee, but only to the extent
11 required for any legal action or claim by or
12 against the National Government;

13 (e) the Attorney General of a State
14 Government or his designee, but only to the extent
15 required for any legal action or claim by or
16 against that State;

17 (f) a court of competent jurisdiction upon
18 order of such court, or to the extent necessary
19 with respect to the enforcement of any revenue law;

20 (g) the National Public Auditor or a person
21 authorized by the National Public Auditor in
22 writing, but only to the extent that the disclosure
23 is necessary for the performance of the audit of
24 the Authority's accounts;

25 (h) a State Public Auditor or a person
26 authorized by a State Public Auditor in writing,

1 but only to the extent that the disclosure is
2 necessary for audit of accounts held by the
3 Authority on behalf of that State;

4 (i) the competent authority of a government
5 of a foreign country with which the FSM National
6 Government has entered into an agreement providing
7 for the exchange of information, but only to the
8 extent permitted under that agreement and
9 applicable law; and

10 (j) a person with the written consent of the
11 person to whom the documents or information relate.

12 (2) If a revenue officer is permitted to disclose
13 documents or information under subsection (1) of
14 this section, the officer must maintain secrecy and
15 confidentiality except to the minimum extent
16 necessary to achieve the object for which the
17 disclosure is permitted.

18 (3) Any person who knowingly or intentionally
19 violates any provision of subsections (1) or (2) of
20 this section, or a duty or obligation imposed
21 therein, shall be guilty of a felony and, upon
22 conviction thereof, shall be fined not less than
23 \$500 and not more than \$5,000, or be imprisoned for
24 not more than two years, or both."

25 Section 23. Title 54 of the Code of the Federated
26 States of Micronesia is hereby amended by adding a new

1 subchapter IV to chapter 7 entitled "Functions, Duties and
2 Powers of the Authority."

3 Section 24. Title 54 of the Code of the Federated
4 States of Micronesia is hereby further amended by adding a
5 new section 741 to subchapter IV of chapter 7 to read as
6 follows:

7 "Section 741. Functions of the Authority.
8 The primary function of the Authority is to
9 maximize, over time, the collection of tax revenue
10 lawfully owing to the FSM National Government and
11 the States given the resources available to it.
12 Without limiting the generality of the foregoing,
13 the Authority has the following specific functions:

14 (1) to act as agent in the collection of revenue
15 on behalf of the FSM National Government and the
16 Governments of the several States in accordance
17 with their revenue laws;

18 (2) to otherwise administer on behalf of the FSM
19 National Government and the Governments of the
20 several States the provisions of the revenue laws
21 as shall from time to time require its action;

22 (3) to render ancillary services to the FSM
23 National Government and the Governments of the
24 several States in the administration and
25 enforcement of their revenue laws;

26 (4) to take border security and customs measures

1 as required under chapter 2 of title 54 of the Code
2 of the Federated States of Micronesia or as
3 assigned to the Authority in accordance with law;
4 (5) to ensure that all revenue collected is dealt
5 with in accordance with Section 758 of this title;
6 (6) to promote voluntary compliance with the
7 revenue laws;
8 (7) to take such measures as may be required to
9 improve the standards of service provided to
10 taxpayers with a view to improving efficiency and
11 effectiveness in administration, and maximizing
12 revenue collection;
13 (8) to take such measures as may be required or
14 considered necessary to prevent tax evasion and
15 fraud of any type;
16 (9) to advise the FSM National Government and the
17 Governments of the several States on matters
18 relating to the administration and collection of
19 revenue, and border security, under the revenue
20 laws;
21 (10) as directed by the Secretary, to represent
22 the FSM National Government internationally in
23 respect of matters related to taxation and customs;
24 (11) to perform such other functions, in relation
25 to the collection of National taxes as the
26 Secretary may assign to the Authority; and

1 (12) to perform such other functions in relation
2 to the collection of State taxes as the Finance
3 Official of the relevant State may assign to the
4 Authority."

5 Section 25. Title 54 of the Code of the Federated States
6 of Micronesia is hereby further amended by adding a new
7 section 742 to subchapter IV of chapter 7 to read as follows:

8 "Section 742. Powers of the Authority.

9 (1) In performing the functions authorized
10 pursuant to section 741 of this chapter, the
11 Authority has the following powers:

12 (a) to adopt, alter, and use a seal;

13 (b) to adopt and amend bylaws governing the
14 conduct of its business and the exercise of its
15 powers, subject to the provisions of the revenue
16 laws;

17 (c) to sue and be sued in its name;

18 (d) to acquire, in any lawful manner, any
19 personal property, either tangible or intangible,
20 to hold, maintain, use and operate such property,
21 and to sell, lease or otherwise dispose of such
22 property;

23 (e) to retain and terminate the services of
24 employees, agents, attorneys, auditors, and
25 independent contractors upon such terms and
26 conditions as it may deem appropriate;

1 (f) to make assessments, conduct
2 investigations, initiate judicial proceedings,
3 publish rules and rulings, and to take such other
4 action as may be necessary in connection with its
5 role as a unified tax administration for the FSM
6 National Government and the Governments of the
7 several States; and

8 (g) to do all such other things on its own
9 account or as agent for the FSM National Government
10 and the Governments of the several States as may be
11 deemed incidental to or conducive to the attainment
12 of the functions and responsibilities of the
13 Authority.

14 (2) The Authority is not permitted to own any
15 real property, but may lease real property to the
16 extent necessary for its operation."

17 Section 26. Title 54 of the Code of the Federated
18 States of Micronesia is hereby amended by adding a new
19 subchapter V to chapter 7 entitled "Financial Provisions and
20 Reporting."

21 Section 27. Title 54 of the Code of the Federated
22 States of Micronesia is hereby further amended by adding a
23 new section 751 to subchapter V of chapter 7 to read as
24 follows:

25 "Section 751. Funds of the Authority.

26 (1) Establishment. There shall be established a

1 Federated States of Micronesia Special Fund,
2 hereinafter referred to as the "Fund", separate and
3 apart from all public monies or funds of the
4 Federated States of Micronesia, which shall be
5 administered by the Authority exclusively for the
6 purposes of this chapter.

7 (2) Deposits. Except as may otherwise be
8 required by grantors in cases of grants, all funds
9 specified under subsection (4) of this section, and
10 all funds derived from deductions made pursuant to
11 section 752 of this section, shall be deposited in
12 the Fund. Any unexpended moneys in this Fund shall
13 neither revert nor lapse to the General Fund, or
14 any other Fund.

15 (3) Administration. The Fund shall be
16 administered by the CEO in accordance with the
17 regulations and procedures which the Board shall
18 promulgate as appropriate for the effectuation and
19 implementation of the provisions of this
20 subchapter. Procurement of goods and services to be
21 funded wholly or partially from the Fund shall be
22 subject to the Financial Management Act of 1979 and
23 its subsidiary regulations.

24 (4) Authority funds. The funds of the Authority
25 consist of:

26 (a) money appropriated from time to time by

1 Congress and paid to the Authority;

2 (b) money derived from the disposal, lease,
3 or hire of, or any other dealing with, any property
4 vested in or acquired by the Authority;

5 (c) money borrowed by the Authority in
6 accordance with subsection (5) of this section;

7 (d) income from investments referred to in
8 subsection (6) of this section;

9 (e) except as provided herein, any other
10 moneys that may become payable to the Authority in
11 respect of any matter incidental to its functions
12 and powers, including but not limited to grants or
13 other donated funding; and

14 (f) money deducted for the operations of
15 the Authority pursuant to section 752 of this
16 chapter.

17 (5) The Authority may borrow upon such terms and
18 conditions as the Board may approve, any sums
19 required by the Authority to meet any of its
20 obligations or to perform any of its functions.

21 (6) The Authority shall, to the extent
22 practicable, maintain its funds in the form of
23 liquid, interest bearing bank deposits.

24 (7) The Authority shall conserve its funds by
25 performing its functions and exercising its powers
26 under this chapter so as to ensure that the total

1 revenues of the Authority are sufficient to meet
2 all sums properly chargeable to its revenue account
3 including depreciation and interest on capital.

4 (8) The funds of the Authority do not include
5 National and State taxes, or any interest or
6 penalty in relation to such taxes, collected by the
7 Authority on behalf of the FSM National Government
8 or the Governments of the several States."

9 Section 28. Title 54 of the Code of the Federated
10 States of Micronesia is hereby further amended by adding a
11 new section 752 to subchapter V of chapter 7 to read as
12 follows:

13 "Section 752. Funding of Authority operations.
14 Unless otherwise provided by an act of Congress,
15 the Authority shall deduct from the National
16 Government's share of the National taxes collected
17 during the current year an amount not exceeding the
18 prescribed percentage as funds for its operations
19 in the ensuing year. Such deductions shall be
20 deemed appropriated as if set forth in the
21 comprehensive budget act for the relevant fiscal
22 year."

23 Section 29. Title 54 of the Code of the Federated
24 States of Micronesia is hereby further amended by adding a
25 new section 753 to subchapter V of chapter 7 to read as
26 follows:

1 "Section 753. Taxes collected by the Authority
2 held in trust for National or State Governments.

3 (1) The National taxes collected by the
4 Authority are held by the Authority in trust for
5 the FSM National Government and the Governments of
6 the several States in the proportion specified in
7 section 758 of this title.

8 (2) The State taxes collected by the Authority
9 on behalf of a State are held by the Authority in
10 trust for the State in the proportion specified in
11 section 758 of this title.

12 (3) The amounts referred to in subsections (1)
13 and (2) of this section do not form part of the
14 assets of the Authority available to meet the
15 claims of creditors of the Authority."

16 Section 30. Title 54 of the Code of the Federated
17 States of Micronesia is hereby further amended by adding a
18 new section 754 to subchapter V of chapter 7 to read as
19 follows:

20 "Section 754. Expenditure to be charged on funds
21 of the Authority.

22 (1) The funds of the Authority shall be expended
23 for the purposes of:

24 (a) paying any expenditure lawfully
25 incurred by the Authority in the performance of its
26 functions or the exercise of its powers under the

1 revenue laws;

2 (b) discharging any obligations and
3 liabilities of the Authority and making any
4 payments that the Authority is required or
5 authorized to make; and

6 (c) paying any expenses for carrying into
7 effect the provisions of the revenue laws.

8 (2) The FSM National Government and the
9 Governments of the several States are not liable
10 for any debts incurred by the Authority unless all
11 the Governments have agreed otherwise in relation
12 to a particular debt or debts."

13 Section 31. Title 54 of the Code of the Federated
14 States of Micronesia is hereby further amended by adding a
15 new section 755 to subchapter V of chapter 7 to read as
16 follows:

17 "Section 755. Bank accounts.

18 (1) The Authority shall maintain one or more
19 bank accounts into which funds of the Authority shall
20 be deposited and from which operational expenses are
21 paid. Funds of the Authority shall be deposited into
22 the appropriate account no later than the next
23 business day following receipt of such funds.

24 (2) The Authority shall maintain a separate bank
25 account for each Government. The Authority shall
26 deposit the funds held in trust pursuant to section

1 753 of this title into the respective account of each
2 Government. Such funds collected by the Authority
3 shall be deposited into the appropriate account no
4 later than the next business day following receipt of
5 such funds. The Authority shall not commingle funds.

6 (3) No withdrawal or payment of money from an
7 account opened under subsection (1) of this section
8 can be made without the signature of the CEO or
9 his/her designee. No withdrawal or payment of
10 money from an account opened under subsection (2)
11 of this section can be made without the signature
12 of the CEO or his/her designee and the signature of
13 the Chief Financial Officer of the Authority or
14 his/her designee.

15 (4) No amount can be withdrawn from an account
16 opened under subsection (2) of this section except
17 in making a refund of tax deposited into the
18 account or in the transfer of the balance of the
19 account of the FSM National Government or a State
20 Government in accordance with section 758 of this
21 title.

22 (5) The Authority shall maintain in each account
23 a sufficient balance to meet minimum bank balance
24 requirements as set by the bank."

25 Section 32. Title 54 of the Code of the Federated
26 States of Micronesia is hereby further amended by adding a

1 new section 756 to subchapter V of chapter 7 to read as
2 follows:

3 "Section 756. Annual budget and costs of
4 administration.

5 (1) At such time and in such manner as the Board
6 may prescribe, but not later than six months prior
7 to the close of the current fiscal year, the CEO
8 shall submit to the Board a detailed estimate of
9 the budget for the next ensuing fiscal year for the
10 proper conduct of the Authority. This submission
11 shall include:

12 (a) for the last completed fiscal year;

13 (i) audited accounts indicating the
14 amount of revenue collected by the Authority on
15 behalf of the FSM National Government and the
16 Governments of the several States;

17 (ii) the amount of other income of the
18 Authority;

19 (iii) the amount of all expenditures
20 incurred by the Authority; and

21 (iv) the closing balance of all bank
22 accounts maintained by the Authority;

23 (b) for the fiscal year in progress, a
24 statement showing the estimated amount of revenue
25 to be collected on behalf of the FSM National
26 Government and the Governments of the several

1 States, the estimated amount of other income of the
2 Authority, and the estimated amount of all
3 expenditures to be incurred by the Authority,
4 together with such summaries, schedules, and
5 supporting data as the Board or the President may
6 require by notice in writing to the CEO; and

7 (c) for the next ensuing fiscal year, a
8 budget showing the estimated amount of revenue to
9 be collected on behalf of the FSM National
10 Government and the Governments of the several
11 States, the estimated amount of other income of the
12 Authority, and the estimated amount of all
13 expenditures to be incurred by the Authority,
14 including salaries and wages, purchases of office
15 supplies, operational expenses, and the cost of
16 maintaining branch offices.

17 (2) The annual budget of the Authority shall be
18 no more than ten percent (10%) of the National
19 Government's share of National taxes, expressed as
20 the prescribed percentage authorized by Congress;
21 PROVIDED, HOWEVER, that the Board may designate in
22 writing a lower budget cap, within the prescribed
23 percentage."

24 Section 33. Title 54 of the Code of the Federated
25 States of Micronesia is hereby further amended by adding
26 a new section 757 to subchapter V of chapter 7 to read as

1 follows:

2 "Section 757. Accounts, annual report, and audit.

3 (1) The Authority must keep accounts of its
4 transactions and financial affairs, and must ensure
5 that:

6 (a) all moneys received by the Authority are
7 properly recorded and accounted for;

8 (b) all payments by the Authority are
9 properly authorized and recorded;

10 (c) adequate control is maintained over the
11 Authority's property and the incurring of
12 liabilities; and

13 (d) the accounts are kept in accordance with
14 Generally Accepted Accounting Principles.

15 (2) Within three months after the end of each
16 fiscal year, the CEO must prepare a report of the
17 Authority's activities during the fiscal year
18 (referred to as the "Annual Report"), and submit a
19 copy of the report to the Board, the President, the
20 Governor of each State, and the Finance Officials.

21 (3) The annual report must contain, among other
22 things:

23 (a) a statement of financial performance,
24 including a statement of the financial position of
25 the Authority;

26 (b) a statement of cash flows;

1 (c) a statement of distribution of revenues
2 to the States pursuant to section 758 of this
3 title;

4 (d) a copy of the most recent budget
5 submitted pursuant to section 756 of this title;

6 (e) a report of the Authority's operations
7 for the year; and

8 (f) such other information as is required to
9 give a true and fair view of the Authority's
10 financial affairs.

11 (4) The annual accounts of the Authority must be
12 audited by the Public Auditor or, if the Public
13 Auditor indicates in writing that an audit cannot
14 be completed within six months of the end of the
15 financial year, by an independent accounting firm
16 satisfactory to the Board. For this purpose, the
17 CEO must, within three months after the end of each
18 financial year, submit to the Auditor:

19 (a) the accounts of the Authority for the
20 year; and

21 (b) the annual report for the year prepared
22 in accordance with subsection (2) of this section.

23 (5) The Board shall cause a copy of the annual
24 report and a copy of the auditor's opinion of the
25 Authority's accounts for a financial year to be
26 laid before Congress and the State legislatures

1 within thirty (30) days following receipt of the
2 Auditor's opinion.

3 (6) The CEO shall, from time to time as the
4 Board may require, and no less than once each
5 fiscal quarter, submit to the Board an interim
6 report accounting for estimated and actual revenue
7 collections, as well as estimated and actual
8 expenditures of the Authority."

9 Section 34. Title 54 of the Code of the Federated
10 States of Micronesia is hereby further amended by adding a
11 new section 758 to subchapter V of chapter 7 to read as
12 follows:

13 "Section 758. Distribution of revenues.

14 (1) The Authority shall pay the following
15 amounts to the treasury of each State Government:

16 (a) one hundred percent (100%) of the net
17 tax collected pursuant to the Value Added Tax Act
18 of the State;

19 (b) one hundred percent (100%) of the net
20 tax collected pursuant to any other taxes imposed
21 by the State;

22 (c) eighty percent (80%) of the net tax
23 collected pursuant to section 221 of this title in
24 relation to the import of gasoline and diesel fuels
25 into the State;

26 (d) fifty percent (50%) of the net tax

1 collected pursuant to section 121 of this title in
2 relation to wages and salaries received by
3 employees in the State;

4 (e) fifty percent (50%) of the net tax
5 collected pursuant to section 221 (other than
6 section 221 of this title in relation to the import
7 of gasoline and diesel fuels into the State) of
8 this title in relation to the import of goods into
9 the State; and

10 (f) fifty percent (50%) of the net tax
11 collected pursuant to:

12 (i) sections 521 and 522 of this title
13 in relation to business carried on through a
14 permanent establishment in the State as determined
15 under section 512 of this title;

16 (ii) section 524 of this title in
17 relation to the carriage of passengers, livestock,
18 mail, merchandise, or goods embarked in the State
19 or to the insurance of risks in the State; and

20 (iii) section 525 of this title in
21 relation to interest, royalties, a natural resource
22 amount, or a management fee derived by a non-
23 resident person from sources in the State
24 determined under section 513 of this title on the
25 basis that the reference in that section to FSM is
26 a reference to the State.

1 (2) The Authority shall pay the following
2 amounts to the treasury of the National Government:

3 (a) twenty percent (20%) of the net tax
4 collected pursuant to section 221 of this title in
5 relation to the import of gasoline and diesel fuels
6 into the State;

7 (b) fifty percent (50%) of the net tax
8 collected pursuant to section 121 of this title in
9 relation to wages and salaries received by
10 employees in the State;

11 (c) fifty percent (50%) of the net tax
12 collected pursuant to section 221 (other than
13 section 221 of this title in relation to the import
14 of gasoline and diesel fuels into the State) of
15 this title in relation to the import of goods into
16 the State; and

17 (d) fifty percent (50%) of the net tax
18 collected pursuant to:

19 (i) sections 521 and 522 of this title
20 in relation to business carried on through a
21 permanent establishment in the State as determined
22 under section 512 of this title;

23 (ii) Section 524 of this title in
24 relation to the carriage of passengers, livestock,
25 mail, merchandise, or goods embarked in the State
26 or to the insurance of risks in the State; and

1 (iii) section 525 of this title in
2 relation to interest, royalties, a natural resource
3 amount, or a management fee derived by a non-
4 resident person from sources in the State
5 determined under section 513 of this title on the
6 basis that the reference in that section to FSM is
7 a reference to the State.

8 (3) All distributions referenced in this section
9 shall include any interest accrued while the funds
10 have been held by the Authority in trust.

11 (4) The timing of the distribution of revenue
12 shall be as follows:

13 (a) By no later than the last day of each
14 month the Authority shall distribute to each
15 Government the net taxes collected and deposited by
16 the Authority during the previous month.

17 (b) Refunds to taxpayers shall be paid from
18 the subsequent month's distribution of revenue to
19 the Governments."

20 Section 35. Title 54 of the Code of the Federated
21 States of Micronesia is hereby further amended by adding a
22 new section 759 to subchapter V of chapter 7 to read as
23 follows:

24 "Section 759. Memorandum of Understanding.

25 (1) The FSM National Government and the
26 Governments of the several States shall enter into

1 a Memorandum of Understanding to give effect to
2 each Government's commitments in relation to the
3 establishment of the Authority.

4 (2) The amendment of this chapter or the
5 regulations promulgated without the unanimous
6 consent by all parties to the Memorandum of
7 Understanding will constitute a ground for
8 withdrawal by any party from the Memorandum of
9 Understanding."

10 Section 36. Title 54 of the Code of the Federated
11 States of Micronesia is hereby amended by adding a new
12 subchapter VI to chapter 7 entitled "Miscellaneous."

13 Section 37. Title 54 of the Code of the Federated
14 States of Micronesia is hereby further amended by adding a
15 new section 761 to subchapter VI of chapter 7 to read as
16 follows:

17 "Section 761. Limitation of liability.

18 (1) Except as provided in subsection (3) of
19 this section, no civil proceedings shall lie
20 against the Authority or an officer, employee, or
21 director of the Authority for anything done or
22 said, or a failure to do or say anything in the
23 course of the operation of the Authority, unless it
24 is shown that the Authority, director, officer, or
25 employee acted in bad faith or with intentional
26 disregard for the rights or safety of others, or

1 unless it is shown that such action or failure to
2 act constitutes a violation of a revenue law.

3 (2) Unless waived, no action for damages shall
4 lie against the FSM National Government or a
5 Government of the several States for any act or
6 omission on the part of the Authority, or any of
7 its directors, revenue officers or of its CEO.

8 (3) Nothing in this section shall be construed as
9 a limitation on the power of the Authority to sue
10 and be sued in its own name."

11 Section 38. Title 54 of the Code of the Federated
12 States of Micronesia is hereby further amended by adding a
13 new section 762 to subchapter VI of chapter 7 to read as
14 follows:

15 "Section 762. Authority as agent of the
16 Government.

17 (1) In exercising its powers and duties under
18 the revenue laws, no action, claim, suit or
19 statement made by the Authority in its own name
20 shall affect its status as agent of the FSM
21 National Government and the Governments of the
22 several States for the purpose of tax collection
23 and revenue administration, and all actions,
24 statements or communications undertaken by the
25 Authority as agent are effective as if made by the
26 Authority in its own name, and vice-versa.

1 (2) To the extent necessary for enforcement, any
2 tax claims administered by the Authority as agent
3 of the FSM National Government or the Governments
4 of the several States are deemed assigned to the
5 Authority for the purpose of collection and
6 administration."

7 Section 39. Title 54 of the Code of the Federated
8 States of Micronesia is hereby further amended by adding a
9 new section 763 to subchapter VI of chapter 7 to read as
10 follows:

11 "Section 763. Claims for and payments of tax
12 refunds.
13 All claims for refunds or offsets made by any
14 person with respect to any sum collected by the
15 Authority on behalf of the FSM National Government
16 or the Governments of the several States shall
17 constitute, first, a claim against those funds held
18 within the trust accounts maintained by the
19 Authority pursuant to section 753(2) of this title
20 that are allocated or allocable to the government
21 or governments for whose benefit the original tax
22 was collected, and second, against the Government
23 itself or the Governments themselves, as the case
24 may be."

25 Section 40. Title 54 of the Code of the Federated
26 States of Micronesia is hereby further amended by adding a

1 new section 764 to subchapter VI of chapter 7 to read as
2 follows:

3 "Section 764. Proceedings conducted by revenue
4 officers.
5 Subject to section 767 of this title, a properly
6 qualified revenue officer authorized in writing by
7 the CEO may appear in civil proceedings in a court
8 of competent jurisdiction on behalf of such
9 Government for the recovery of any unpaid tax under
10 the respective revenue law."

11 Section 41. Title 54 of the Code of the Federated
12 States of Micronesia is hereby further amended by adding a
13 new section 765 to subchapter VI of chapter 7 to read as
14 follows:

15 "Section 765. Vesting of assets and liabilities,
16 contracts and proceedings; transitional provisions.

17 (1) All property, except real property or such
18 property as the CEO may determine, that immediately
19 before the commencement of this chapter was vested
20 in the FSM National Government for the use of the
21 CTA for the purpose of giving effect to the taxes
22 and duties imposed under title 54 of the Code of
23 the Federated States of Micronesia is, on the date
24 of commencement of this chapter, and without
25 further assurance, vested in the Authority subject
26 to all interests, liabilities, charges, obligations

1 and trusts affecting the property.

2 (2) Except as otherwise provided in subsection
3 (1) of this section in relation to property, all
4 contracts, debts, engagements and liabilities of
5 the FSM National Government attributable to the CTA
6 remain vested in the FSM National Government and
7 may be enforced by or against the FSM National
8 Government.

9 (3) All legal proceedings and claims in respect
10 of taxes and duties imposed under title 54 of the
11 Code of the Federated States of Micronesia pending
12 at the commencement of this chapter are to be
13 continued or enforced by or against the Authority
14 in the same manner as they would have been
15 continued or enforced if this chapter had not been
16 enacted.

17 (4) The Authority will offer contracts of
18 employment to all existing revenue authority
19 employees in good standing provided that the
20 Authority is not required to hire the employees at
21 the same salaries or to fill the same positions. In
22 the event employees of a pre-existing revenue
23 authority are employed by the Authority, all
24 accrued benefits, sick leave, annual leave and
25 other contractual obligations owed by the pre-
26 existing revenue authority to its employees remain

1 the obligation of that authority and are not
2 assumed by the Authority, except to the extent
3 directed by the Board.

4 (5) The employees of the Authority are not
5 subject to the requirements or rights contained in
6 title 52 of the Code of the Federated States of
7 Micronesia, the National Public Service System Act,
8 or any of its subsidiary regulations.

9 (6) Subject to satisfactory arrangements with
10 the FSM National Government and the governments of
11 the several States, the Authority is to acquire,
12 lease or otherwise take over in any lawful manner
13 the books, property, and operations of any
14 preexisting revenue authority; PROVIDED, HOWEVER,
15 that ownership of books and records herein
16 conveyed, and the right of access thereto, shall
17 remain with each respective government."

18 Section 42. Title 54 of the Code of the Federated
19 States of Micronesia is hereby further amended by adding a
20 new section 766 to subchapter VI of chapter 7 to read as
21 follows:

22 "Section 766. References in other laws.
23 A reference in any other legislation, regulation,
24 order, or other enactment or in any agreement,
25 deed, instrument, application, notice, or other
26 document whatsoever to:

1 (1) the person charged with the responsibility
2 of enforcement of a revenue law to which this
3 chapter applies must be read as a reference to the
4 CEO; or

5 (2) a preexisting revenue authority must be read
6 as a reference to the Authority."

7 Section 43. Title 54 of the Code of the Federated
8 States of Micronesia is hereby further amended by adding a
9 new section 767 to subchapter VI of chapter 7 to read as
10 follows:

11 "Section 767. Controlling laws.

12 (1) Notwithstanding anything in this chapter to
13 the contrary, no policy or procedure adopted,
14 decision made, business transacted, or action taken
15 by or under the authority of the Board, CEO, or the
16 Authority shall be valid, insofar as applying to
17 the administration or enforcement of a revenue law
18 of a government, unless such policy, procedure,
19 decision, business transaction, or action is not
20 inconsistent with a revenue law of such government.

21 (2) The applicability of and consistency with a
22 law of a Government shall be determined by the
23 chief legal officer of such Government."

24 Section 44. Title 54 of the Code of the Federated
25 States of Micronesia is hereby further amended by adding a
26 new section 768 to subchapter VI of chapter 7 to read as

1 follows:

2 "Section 768. Regulations.

3 The Board shall adopt such regulations as may be
4 necessary for the enforcement of this chapter, and
5 such regulations shall have the force and effect of
6 law if they are not in conflict with the express
7 provisions of this chapter or other applicable
8 laws."

9 Section 45. Title 54 of the Code of the Federated
10 States of Micronesia is hereby further amended by adding a
11 new section 769 to subchapter VI of chapter 7 to read as
12 follows:

13 "Section 769. Commencement of Administration.
14 The Authority shall commence administration of the
15 revenue laws twelve months after this chapter
16 becomes law."

17 Section 46. This act shall become law upon approval by
18 the President of the Federated States of Micronesia or upon
19 its becoming law without such approval.

20

21 Date: 11/16/10

Introduced by: /s/ Joe N. Suka
Joe N. Suka
(By request)

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