

SUBTITLE II
FSM SOCIAL SECURITY

CHAPTER 6
General Provisions

SECTIONS

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Editor’s note: Although most of the provisions of the TT Social Security Act in subtitle I of this title have been repealed by implication by the FSM Social Security Act codified in this subtitle II, the provisions of the TT Social Security Act are retained in subtitle I, since 53 F.S.M.C. 1109 provides for saving of certain of its provisions for certain purposes.

§ 601. Short title.

This subtitle is known and may be cited as the “Federated States of Micronesia Social Security Act.”

Source: PL 2-74 § 101.

Cross-reference: The statutory provisions on the TT Social Security Act are found in subtitle I of this title.

§ 602. Declaration of policy.

The purpose of this subtitle is to effect economy and efficiency in the fields of government and business by providing a means whereby employees may be ensured a measure of security in their old age and given an opportunity for leisure without hardship and complete loss of income, and, further, to provide survivors’ insurance for wage earners

and their dependents.

Source: PL 2-74 § 102.

Case annotations: The FSM social security program's purpose is to provide a means whereby employees may be ensured a measure of financial security in their old age and be given an opportunity for leisure without hardship and complete loss of income, and, further, to provide survivors' insurance for wage earners and their dependents. 53 F.S.M.C. 602. The program is funded by joint contributions from employers and employees. *FSM Social Security Admin. v. Weilbacher*, 7 FSM R. 137, 141 (Pon. 1995).

§ 603. Definitions.

(1) "Application" means the prescribed form or forms provided to individuals by the Social Security Administrator as the exclusive means by which an individual may apply for the payment of any benefit provided for in section 801, 802, 803 or 803A of this Act.

(2) "Became disabled" means the first month in which an individual is under a disability.

(3) "Board" means the Federated States of Micronesia Social Security Board provided for by section 701 of this subtitle.

(4) "Child or spouse" means an applicant that the court of the State in which an individual was domiciled at the time of his death has or would find to be the individual's child or spouse in determining the devolution of intestate personal property. "Child" shall include only the deceased individual's biological children and such adopted children whose confirmed petition for adoption by the wage earner has been presented to the Social Security Administration and who were adopted by the wage earner on or prior to the wage-earner's 55th birthday of the adopting parent, shall be a "child" for the purposes of this title unless, the Social Security Administrator makes a determination that, due to exceptional circumstances, the person shall be so entitled. In reaching a determination that exceptional circumstances apply, the Social Security Administrator shall satisfy himself or herself that future eligibility for social security benefits was not a significant factor in the decision to adopt and may consider any available, relevant information including, but not limited to:

(a) whether the adopted child's biological mother, and/or biological father were alive at the time the adoption took place;

(b) if one or both biological parents were alive at the time of adoption, whether one or both parents were acting or were capable of acting as a primary caregiver at that time;

(c) whether the adopting parent is a relative of the adopted child;

(d) whether, at the time the adoption took place, there were relatives, not including the adopting parents, who would have been appropriate guardians for the adopted child;

(e) whether the adopting parent was a primary caregiver for the adopted child at the time of adoption and continued in that role after the adoption took place;

(f) any other factor the Social Security Administrator considers relevant.

(5) "Contributions" means the tax imposed upon income of covered employees and the tax imposed upon employers on account of wages paid to a covered employee.

(6) “Disability” means inability to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

(7) “Earning test” means that an individual who receives a retirement, disability, or survivor benefit and who works in covered or non-covered employment shall have his quarterly benefit reduced by one dollar for each two dollars earned in a quarter, except there shall be no reduction for the first \$300 earned in a quarter. The reduction shall be applied in one of the subsequent two quarters immediately after the quarter in which the earnings were made, or as soon as possible thereafter. All benefit recipients have an affirmative duty to disclose to the FSM Social Security Administration all earnings from either covered or non-covered employment for which time they are receiving or claiming benefits. Under certain circumstances as defined in section 804, the earnings test may not apply to old age benefits received by an individual between the ages of 60 and 64 who turns 60, after January 1, 2011.

(8) “Employee” means:

(a) any officer of a corporation; or

(b) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(c) any self-employed person who has at least one employee for whom he is required to report in a given quarter; or

(d) any self-employed person who had more than \$10,000 of annual gross revenue in the preceding calendar year.

(9) “Employer” means:

(a) For purposes of this Act, employer means the person, business organization or other organization, or national or state or municipal government or agency, that pursuant to common law rules of employment is the actual person or organization responsible for the formation and continuation of the working relationship with employee.

(b) The Social Security Administration has the right to determine the actual employer of employees for purposes of implementing this Act, and need not rely on the characterization provided.

(c) Employer may be an individual, partnership, corporation or other type of business venture or non-business organization, national or municipal or state organization or agencies thereof, and which in certain circumstances may be more than one, that is responsible for the payment of all Social Security taxes. For partnerships, the liability shall be joint and several among all partners. For other types of business or non-business organizations that are not corporations, the liability shall be joint and several as if the organization was a common law partnership. For corporations, if the corporation fails to meet its tax obligations when due, the liability shall be joint and several between the president of the corporation, and all shareholders with greater than a 30% interest in the corporation.

Under this definition all such persons are jointly defined as the employer, for all purposes including the implementation of criminal penalties.

Case annotations: For Social Security purposes, wages means payment, salary, or compensation for employment, whether received in cash or a medium other than cash, such as meals. *FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I)*, 7 FSM R. 280, 284 (Yap 1995).

Social Security contributions are taxed from both employer and employee, and the employer is responsible for assessing the employee’s contribution and withholding it from wages as and when paid. *FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I)*, 7 FSM R. 280, 285

(Yap 1995).

The cash value of meals provided by the employer, even if provided for the convenience of the employer, constitute wages subject to the social security tax. *FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I)*, 7 FSM R. 280, 288 (Yap 1995).

Both employer and employee must pay a tax or contribution to the social security trust fund. It is the employer's responsibility to deduct the employee's contribution from the wages it pays. *FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II)*, 7 FSM R. 365, 367 (Yap 1996).

Social security taxes are a percentage calculated from the wages actually received by the employee not from the amount in the employment contract. *FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II)*, 7 FSM R. 365, 367 (Yap 1996).

(10) "Employment, covered" or "covered employment" means any service by an employee for an employer incorporated or doing business within the Federated States of Micronesia employing him, irrespective of where such employment is performed, except family employment.

(11) "Employment, non-covered" or "non-covered employment" means any employment engaged in by an employee where coverage is statutorily exempt in the Federated States of Micronesia, family employment, or employment by an employee outside of the Federated States of Micronesia and which is not taxable by the FSM Social Security Administration.

(12) "Family employment" means employment of a worker by a member of the household, a parent or a son or daughter except that the worker may apply to the Board for a determination that such employment is *bona fide* covered employment subject to this subtitle.

(13) "Insured status" can mean any of the following:

(a) "Currently insured individual" means any individual who has had not less than 20 quarters of coverage during the 25 quarter period ending with:

- (i) the quarter in which he died; or
- (ii) the quarter in which he became entitled to old age insurance benefits at age 60; or
- (iii) the quarter in which he became disabled, whichever first occurs.

(b) For individuals who qualified as a currently insured person prior to December 31, 2006, the number of quarters to qualify as a currently insured person was not less than eight quarters of coverage during the 13 quarter period ending with:

- (i) the quarter in which he died; or
- (ii) the quarter in which he became entitled to old age insurance benefits at age 60;
- (iii) the quarter in which he became disabled, whichever occurs first.

(c) "Fully insured individual" means any individual whose total cumulative quarters of coverage are at least as great as the number of years calculated from the later of the date the worker turned age 21, or June 30, 1968, to the date the worker attains age 60, dies or becomes disabled. For this purpose, partial years shall be counted as whole years (for example 37.25 years would be rounded up to 38 years). In no case shall an individual be a fully insured individual unless he has at least 12 quarters of coverage:

(i) For individuals who attain age 60, die or become disabled on or before December 31, 2006, no more than 38 quarters of coverage are required to be fully insured and there is no minimum amount required for employee contributions to the Social Security System.

(ii) For individuals who turn 60 or die after December 31, 2006, no more than 50 quarters of

coverage and employee contributions to the Social Security System of at least \$2,500 are required to be fully insured. Should an individual's employee contributions total less than \$2,500 as of the date of termination of employment or death, the individual or their surviving spouse may pay the difference to the FSM Social Security Administration in a single sum payment in order to become fully insured. The surviving children will be eligible for benefits so long as the individual was currently insured at the time of the individual's death.

(iii) For individuals who become disabled after December 31, 2006, no more than 45 quarters of coverage and employee contributions to the Social Security System of at least \$1,500 are required to be fully insured. Should an individual's employee contribution total less than \$1,500 as of the date of termination from employment, the individual may pay the difference to the FSM Social Security Administration in a single sum payment in order to become fully insured.

(d) "Fully insured status" means:

(i) For individuals who turn 60 or die after January 01, 2010, shall have total cumulative quarters of coverage equaling 50 quarters of coverage or greater, and employee contributions to the Social Security System of at least \$2,500 are required to be fully insured. Employee contributions are the contributions defined in section 901 only. Should an individual's employee contributions total less than \$2,500 as of the date of qualification as a fully insured individual, the individual or their surviving spouse may pay the difference to the FSM Social Security Administration in a single sum payment in order to be fully insured. If the individual or the surviving spouse is unable to pay the difference on the minimum contribution, the individual or surviving spouse can opt for lump sum payment equal to the total employee contribution.

(ii) "Fully insured" means for individuals who become disabled on or after January 1, 2010, at least 45 quarters of coverage are needed to be defined as fully insured, and they must also meet the definition of currently insured at the time of the onset of their disability. Additionally, employee's contributions to the Social Security System of at least \$1,500 are required to be fully insured. Should an individual's employee contribution total less than \$1,500 as of the date of disability, the individual may pay the difference to the FSM Social Security Administration in a single lump sum payment in order to be fully insured.

(14) "Quarter" and "calendar quarter" mean a period of three calendar months ending on March 31st, June 30th, September 30th, or December 31st. "Quarter of coverage" means a quarter in which the individual has been paid \$300 or more in wages in covered employment subject to this subtitle.

(15) "Wages" means remuneration paid subject to the provisions of this subtitle, including the cash value of all remuneration paid in any medium other than cash and remuneration accruing to a self-employed person. Remuneration accruing to a self-employed person shall be deemed to be twice the amount paid to the highest paid employee reported by the self-employed person in a quarter, with a maximum of \$3,000 per quarter through September 30, 2003 and a maximum of \$5,000 per quarter beginning October 1, 2003. This maximum quarterly amount shall increase to \$6,000 on January 1, 2008, \$7,000 on January 1, 2013, \$8,000 on January 1, 2018, \$9,000 on January 1, 2023, and \$10,000 on January 1, 2028. Remuneration accruing to a self-employed person who has no covered employees shall, for each quarter of a year, be deemed to be five percent of the gross revenue of the business for the previous calendar year, subject to a \$3,000 maximum per quarter through September 30, 2003 and a maximum of \$5,000 per quarter beginning October 1, 2003. The maximum quarterly amount shall increase to \$6,000 on January 1, 2008, \$7,000 on January 1, 2013, \$8,000 on January 1, 2018, \$9,000 on January 1, 2023, and \$10,000 on October 1, 2028. Remuneration paid for any service, which is more or less than a whole dollar shall, as may be prescribed by regulations, be computed to the nearest dollar. Wages shall not include:

(a) that part of remuneration in excess of \$3,000 through September 30, 2003 and in excess of \$5,000 beginning October 1, 2003, in excess of \$6,000 beginning January 1, 2008, in excess of \$7,000 beginning January 1, 2013, in excess of \$8,000 beginning January 1, 2018, in excess of \$9,000 beginning on January 1,

2023, and in excess of \$10,000 beginning on January 1, 2028, paid in a quarterly reporting period by one employer;

(b) any payment on account of sickness or accident disability, or medical or hospitalization expenses made by an employer to or on behalf of an employee;

(c) any payment made to or on behalf of an employee or to the employee's beneficiary from a trust or annuity;

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

(e) remuneration paid for casual or intermittent labor not performed in the course of the employer's trade or business when such employment does not exceed employment in more than one week in each calendar month of each quarterly reporting period; and

(f) remuneration from family employment subject to the provisions of this subtitle.

Source: PL 2-74 § 103; PL 5-120 § 1; PL 7-118 § 1; PL 12-76 § 1; PL 14-37 §1; PL 14-86 § 1; PL 15-73 § 1; PL 16-10 § 1.

Editor's note: Amendments to this section made by PL 7-118 § 1 became effective July 1, 1993 pursuant to PL 7-118 § 3.

Case annotation: The determination of an employee-employer relationship for tort liability purposes will not be based upon an employer's decision on whether to report the persons as "employees" for the purposes of reporting Social Security contributions and FSM Income Tax deductions. *Sigrah v. Timothy*, 9 FSM R. 48, 52 (Kos. S. Ct. Tr. 1999).

For the purposes of determining the employee status of an individual person for FSM Social Security contributions or for the FSM Income Tax law, the statutes look to the usual common law rules applicable in determining the employer-employee relationship. An employer includes any association or group employing any person. Employment means any service by an employee for the employer employing him, irrespective of where such employment is performed. *Sigrah v. Timothy*, 9 FSM R. 48, 52 (Kos. S. Ct. Tr. 1999).

§ 604. Susceptibility of benefits, contributions, and funds to legal process or assignment.

The benefits, the employee and employer contributions, and the securities in the several funds from all taxes presently or hereinafter levied shall not be subject to execution, attachment, or garnishment and shall be nonassignable except as specifically provided in this subtitle.

Source: PL 2-74 § 104.

Case annotation: There is no violation of the 53 F.S.M.C. 604 susceptibility of benefits rule, when there has been no execution, attachment, garnishment, or assignment of the judgment-debtor's Social Security retirement benefits and when the trial court's order in aid of judgment specifically found that the judgment-debtor would have sufficient funds for his and his dependents' basic support. *Rodriguez v. Bank of the FSM*, 11 FSM R. 367, 380 (App. 2003).

Social Security benefits are not subject to execution, attachment, or garnishment and are not assignable except as provided in the FSM Social Security Act. *Rodriguez v. Bank of the FSM*, 11 FSM R. 367, 377 (App. 2003).

When the judgment-debtor's Social Security retirement benefits are received by him and have not been subjected to any sort of direct levy, allotment or garnishment or any execution, attachment, or assignment of these benefits and when these benefits may be commingled with any other income the debtor may have available to him, and from these funds he meets his living expenses and his other obligations, the trial court's order in aid of judgment does not require that the payment come from any particular source of income. *Rodriguez v. Bank of the FSM*, 11 FSM R. 367, 379 (App. 2003).

When 53 F.S.M.C. 604 does not contain the broader language of, "or other legal processes," it cannot be interpreted in a manner identical to the U.S. statute that does. The FSM provision is more restrictive than the U.S. provision, as it protects Social Security benefits only from execution, attachment, garnishment, and assignment and not from other legal processes. *Rodriguez v. Bank of the FSM*, 11 FSM R. 367, 379 (App. 2003).

§ 605. Violations—Penalties and interest—Attorney's fees and costs.

(1) Any person who knowingly makes any false statement or who falsifies any report to or record of the Federated States of Micronesia Social Security System in an attempt to defraud the system is guilty of a misdemeanor and upon conviction thereof shall be imprisoned for a period of not more than one year, or fined not more than \$2,000 or both. Any employer who intentionally fails to pay the employer's FSM Social Security taxes in any given quarter, or any employer who intentionally withholds FSM Social Security taxes from an employee's wages and does not pay FSM Social Security taxes on behalf of that employee, or any employer who employs an employee and knowingly fails to withhold FSM Social Security taxes on that employee is guilty of a misdemeanor and upon conviction thereof shall be imprisoned not more than one year, or fined not more than \$2,000 or both. In addition to this criminal penalty, if an employer is determined by his failure to have paid either the employer's or employee's contributions to the FSM Social Security Administration, and the employee is denied benefits by the FSM Social Security Administration because of a lack of quarters of coverage, and the contributions withheld would have caused the employee to be fully or currently insured and eligible for benefits, the employer shall be responsible directly for the payment of all benefits that would accrue to the employee or his beneficiaries under this Act. If the employer, after the initial denial, subsequently makes back payments, the FSM Social Security Administration can seek repayment from the employer of all benefits paid to the employee as a penalty for the failure to pay.

(2) Any employer who willfully fails to report wages paid or pay contributions required thereon is guilty of a misdemeanor and, in addition to any other penalty prescribed by law, such an employer shall also pay penalties not in excess of 100 percent of the tax due plus interest to the Board as it by regulation shall require.

(3) Any person who receives benefits to which he or she is not entitled shall be liable to repay the Social Security Administration those benefits, and in addition to the remedies under section 808 of this subtitle, may be subject to civil action for recovery of those benefits.

(4) Any covered employer who fails to submit the quarterly report and pay the social security tax within ten days after the end of the quarter shall be considered delinquent. The Board or its authorized representatives shall be vested with the authority to levy a penalty of not more than \$1,000 per quarter on delinquent employers.

(5) If any tax or penalty imposed by this subtitle is not paid on or before the date prescribed for such payment, the Board or its authorized representatives shall be vested with the authority to collect, in addition to such tax and penalty, interest on the unpaid balance of the tax principal at the rate of 12 percent per annum from its due date until the date it is paid.

(6) In the event that any claim for monies due to the Social Security Administration under this subtitle is referred to an attorney or trial counselor for collection, whether or not suit is brought for the collection thereof, the individual or entity shall additionally be liable for reasonable attorney or trial counselor fees and costs of collection, including court costs incurred by the Social Security Administration. The Social Security Administration in its discretion may waive part or all of any attorney fee and costs awardable under this section.

(7) In the event of a violation of subsections (1), (2), (4), (5) or (6) of this section, the payments or penalties defined apply to the employer, as defined in section 603(9) of this chapter, and the payments or penalties, including

criminal penalties, defined in these subsections can be enforced on the persons defined in section 603(9) of this chapter.

In addition, for municipal organizations, states of the Federated States of Micronesia or national government or any agencies of any of the above, the Director of Finance, or its equivalent position of such organization is responsible for payments as described herein, and the payments or penalties, including criminal penalties, defined in these subsections can be enforced against such chief financial officer.

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Source: PL 2-74 § 105; PL 5-120 § 2, modified; PL 14-37 § 2; PL 15-73 § 2.

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Case annotations: A taxpayer who owes social security taxes to the government as employer contributions under the FSM Social Security Act is liable for reasonable attorney's fees if the tax delinquency is referred to an attorney for collection; however, the court may exercise discretion in determining the reasonableness of the fees assessed in light of the particular circumstances of the case. *FSM Soc. Sec. Admin. v. Mallarme*, 6 FSM R. 230, 232 (Pon. 1993).

Among the factors which the court may consider in determining the amount of attorney's fees recoverable in an action brought under 53 F.S.M.C. 605 is the nature of the violation, the degree of cooperation by the taxpayer, and the extent to which the Social Security Administration prevails on its claims. *FSM Soc. Sec. Admin. v. Mallarme*, 6 FSM R. 230, 232-33 (Pon. 1993).

The Social Security Administration is entitled to summary judgment for unpaid taxes when it supported its motion with an affidavit detailing the taxpayer's audit and other evidence indicating the taxpayer's liability, and the taxpayer has provided no evidence to indicate otherwise. *FSM Social Sec. Admin. v. Weilbacher*, 7 FSM R. 442, 445-46 (Pon. 1996).

A taxpayer is liable to the Social Security Administration for reasonable attorney's fees and costs when unpaid taxes are referred to an attorney for collection to the extent which the Social Security Administration prevails on its claims. *FSM Social Sec. Admin. v. Weilbacher*, 7 FSM R. 442, 447 (Pon. 1996).

A trial court may, pursuant to 53 F.S.M.C. 605(4), award attorney's fees and collection costs, including fees for a successful appeal, to the Social Security Administration. *FSM Social Sec. Admin. v. Kingtex (FSM) Inc.*, 8 FSM R. 129, 134 (App. 1997).

A successful plaintiff under the civil rights statute, 11 F.S.M.C. 701(3), is entitled to an award for costs and reasonable attorney's fees. *Davis v. Kutta*, 8 FSM R. 218, 220 (Chk. 1997).

When Congress has specifically given Social Security, not the courts, the discretion to levy a penalty and limited that discretion to \$1,000 a quarter and Social Security has exercised its discretion by levying a penalty less than that allowed by the statute, the court is generally bound to enforce it. The courts cannot usurp the power Congress granted to another governmental body. *FSM Social Sec. Admin. v. Kingtex (FSM) Inc.*, 8 FSM R. 129, 133 (App. 1997).

§ 606. Accounts, budget, and costs of administration.

(1) At such time as the Social Security Board may prescribe, the Social Security Administrator shall submit to the Board on forms and in the manner prescribed by the Board a detailed estimate of the budget for the next ensuing fiscal year for the proper conduct of the Social Security System. The Social Security Administrator shall submit to the Board:

(a) the audited accounts of the income and expenditure and the balance in the Social Security Retirement Fund for the last completed fiscal year;

(b) a statement showing the estimated income and expenditure for the fiscal year in progress, together

with such summaries, schedules, and supporting data as may be deemed necessary;

(c) a statement showing the estimated balance of the Social Security Retirement Fund at the close of the fiscal year in progress; and

(d) a budget showing the estimated income and expenditure for the next ensuing fiscal year.

(2) For the next ensuing fiscal year, the estimated costs of administration including salaries and wages, purchase of office supplies, operational expenses, and the maintenance of branch offices shall not exceed an expenditure maximum equal to 11 percent of the estimated income for that year from contributions and interest and dividend income on investments less investment expenses, provided that such expenditure shall be based upon contributions and interest and dividend income on investments less investment expenses, determined on a maximum wage contribution of \$3,000 per quarter. Any increase in the wage contribution shall not affect the calculation of the maximum allowable expenditure. The audited accounts and the budget for the ensuing fiscal year shall be approved by the Board and submitted to the President and the Congress of the Federated States of Micronesia. Should the estimated costs of administration exceed the expenditure maximum, legislative approval of the budgeted administration expenses is required.

Source: PL 2-74 § 106; PL 5-120 § 3; PL 12-76 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 607. Lien for taxes.

(1) All taxes, including penalties and interest accrued thereon, imposed or authorized under this subtitle shall be a lien upon any property of the employer, having priority over all other claims and liens including liens for other taxes, except as provided in the Secured Transactions Act, and may be collected by levy upon such property in the same manner as the levy of an execution.

(2) All taxes, including penalties and interest accrued thereon, imposed or authorized under this subtitle owed by a state or municipal government or national government or any agency thereof, shall be subject to a writ of garnishment of all moneys owed by the FSM National Government to any state or municipal government or any agency thereof, and such writ of garnishment shall have priority over any claim for such moneys in any manner by the particular state or municipal government or agency thereof and such writs of garnishment are specifically exempt from any prohibitions under section 707 of title 6 of this code.

Source: PL 5-120 § 4; PL 14-34 § 81; PL 15-73 § 3.

Editor's note: In subsection (2) of this section, the phrase “of the Code of the Federated States of Micronesia” is replaced by “of this code” for format consistency.

Cross-reference: The Secured Transactions Act is codified at chapter 10 of title 33 (Commercial Law) of this code. Title 6 of this code is on Judicial Procedure.

Case annotations: All Social Security taxes, including penalties and interest, constitute a lien upon any property of the employer, having priority over all other claims and liens including liens for other taxes. This creates a lien for social security taxes that has priority over even other tax liens, such as the wage and salary tax liens given first priority in *Island Hardware* and *Pacific Islands Distributing*. *In re Engichy*, 12 FSM R. 58, 64 (Chk. 2003).

The social security tax lien arises by operation of law whenever social security taxes become due and are not paid. *In re Engichy*, 12 FSM R. 58, 64 (Chk. 2003).

Under 53 F.S.M.C. 607, Social Security taxes specifically take priority over other tax liens. *In re Engichy*, 12 FSM R. 58, 65 (Chk. 2003).

A social security tax lien has priority over a mortgage because section 607 grants social security tax liens priority over all other liens regardless of whether the other liens arose earlier. *In re Engichy*, 12 FSM R. 58, 65 (Chk. 2003).

Under the general rule a mortgage first in time has superior right in the absence of the applicability of a statutory provision to the contrary. Section 607 is a statutory provision to the contrary because it grants social security tax liens priority over all other liens regardless of whether the other liens arose earlier. *In re Engichy*, 12 FSM R. 58, 65 (Chk. 2003).

Social Security's statutory priority tax lien is consistent with the general rule that acknowledges that the first-in-time priorities are also subject to legislative action that restructures the normal priorities. *In re Engichy*, 12 FSM R. 58, 65 (Chk. 2003).

Social Security's tax lien priority is statutory, not equitable. Statutory law, as enacted by Congress, not equitable principles fashioned by the court, applies. The statute, 53 F.S.M.C. 607, expressly gives Social Security a tax lien superior to all other liens. *In re Engichy*, 12 FSM R. 58, 65 (Chk. 2003).

As Congress clearly intended, social security tax liens must be given priority over all other claims and liens and paid first. *In re Engichy*, 12 FSM R. 58, 66 (Chk. 2003).