

AN ACT

To further amend chapter 3 of title 54 of the Code of the Federated States of Micronesia, as amended, by further amending section 312, as amended by Public Law No. 14-110, section 313, as amended by Public Laws Nos. 14-110 and 16-19, section 321, as amended by Public Law No. 16-36, section 322, section 331, section 342, section 351, as amended by Public Law No. 14-110, section 352, and section 370, and by enacting new sections 371, 372, 373, 374, 375, 376, 377, 378, to make procedural changes to the corporate tax in order to make it more attractive to potential taxpayers, and for other purposes.

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

1 Section 1. Section 312 of title 54 of the FSM Code, as
2 enacted by Public Law No. 13-71 and amended by Public Law No.
3 14-110, is hereby further amended to read as follows:

4 "Section 312. Definitions.

5 (1) 'Control group' of a corporation for purposes of
6 this chapter shall mean a group of corporations
7 comprising of:

8 (a) the corporation,

9 (b) other corporations in which the corporation
10 owns directly or indirectly 80% or more of the shares,

11 (c) other corporations that own directly or
12 indirectly 80% or more of the shares of the corporation,
13 and,

14 (d) corporations other than the corporation
15 described in paragraph (a) of this section or
16 corporations described in paragraph (b) of this section,
17 or corporations where 80% or more shares are owned
18 directly or indirectly by the corporations described in

1 paragraph (c) of this section.

2 (2) 'Major Corporation' means any corporation not
3 principally engaged in business in the Federated States
4 of Micronesia as a bank (as such term is defined in
5 title 29 of the Code of the Federated States of
6 Micronesia, section 102(1)), formed on or after January
7 1, 2005, and,

8 (a) whose shareholders equity or paid-in capital
9 as of the beginning of its fiscal year is \$1,000,000 or
10 more; or

11 (b) the aggregate amount of the shareholders
12 equity or paid-in capital of the control group is
13 \$10,000,000 or more; or

14 (c) that is a captive insurance company licensed
15 pursuant to title 37 of the Code of the Federated States
16 of Micronesia regardless of the amount of
17 capitalization.

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

20 (4) 'Taxable Year' shall mean the fiscal year of the
21 major corporation as reported to the Secretary under
22 section 314 of this chapter.

23 (5) 'Paid-in Capital' for purposes of this chapter
24 shall mean the total amount of consideration contributed
25 to the company for the issuance of shares."

1 Section 2. Section 313 of title 54 of the FSM Code, as
2 enacted by Public Law No. 14-110 and amended by Public Law No.
3 16-19, is hereby further amended to read as follows:

4 "Section 313. Applicability of this chapter. Taxes
5 imposed under this chapter shall apply to all major
6 corporations incorporated in the Federated States of
7 Micronesia as defined in section 312.

8 Section 3. Section 321 of title 54 of the FSM Code, as
9 enacted by Public Law No. 13-71 and amended by Public Law No.
10 16-36, is hereby further amended to read as follows:

11 "Section 321. Tax imposed. A tax at the rate of
12 twenty-one percent (21 percent) is hereby imposed for
13 each taxable year on the taxable income of every major
14 corporation. For all major corporations' taxable year
15 ending on or before March 30, 2011, 25.5% tax rate shall
16 apply to the entire taxable year. For all major
17 corporations' taxable year ending on or after March 31,
18 2011, 21% tax rate shall apply to the entire taxable
19 year."

20 Section 4. Section 322 of title 54 of the FSM Code, as
21 enacted by Public Law No. 13-71, is hereby amended to read as
22 follows:

23 "Section 322. Taxable income defined. The taxable
24 income of a major corporation equals its income, before
25 income taxes, earned in the taxable year as determined

1 under International Financial Reporting Standard
2 (hereinafter, 'IFRS') or Generally Accepted Accounting
3 Principles (hereinafter, 'GAAP'), as IFRS or GAAP, as
4 the case may be, is regularly utilized to calculate
5 taxable income in the major corporation's principal
6 shareholder's, if a corporation, place of incorporation
7 or, if an individual, country of primary residence."

8 Section 5. Section 331 of title 54 of the FSM Code, as
9 enacted by Public Law No. 13-71, is hereby amended to read as
10 follows:

11 "Section 331. Non-refundable credit for payment of
12 foreign taxes.

13 (1) In the case of a major corporation, any income
14 taxes paid or accrued on taxable income during the
15 taxable year to a foreign country shall be allowed as a
16 credit against the amount of tax imposed by section 321.

17 (2) In the case of a dividend received by a major
18 corporation, a credit shall also be allowed against the
19 amount of tax imposed by section 321 in an appropriate
20 amount to reflect any income taxes the major corporation
21 can demonstrate have been paid with respect to such
22 dividend to any foreign country or countries.

23 (3) In no case shall a major corporation, in any
24 taxable year, be entitled to credits which, in the
25 aggregate, exceed the amount of the tax imposed, for

1 that taxable year, under the provisions of section 321
2 of this chapter.

3 (4) No foreign tax credit shall be permitted to create
4 a refund or credit for overpayment of tax; but any
5 amount of foreign tax not creditable by reason of this
6 provision may be carried forward as a creditable foreign
7 tax to each succeeding year until fully utilized subject
8 to the same restrictions in the succeeding years. In no
9 event, however, shall any such foreign tax credit be
10 carried forward more than seven (7) years."

11 Section 6. Section 342 of title 54 of the FSM Code, as
12 enacted by Public Law No. 13-71, is hereby amended to read as
13 follows:

14 "Section 342. Method of accounting. The taxable income of a
15 major corporation shall be computed under the method of
16 accounting which the major corporation regularly computes its
17 income. To the extent permitted by IFRS or GAAP, as
18 applicable, a major corporation may compute its taxable
19 income under any of the following methods of accounting:

20 (1) the cash receipts and disbursements method;

21 (2) an accrual method;

22 (3) any combination of the foregoing methods or any
23 other method selected by the major corporation. To the
24 extent permitted by IFRS or GAAP, as applicable, a major
25 corporation using any one of the above methods may, at

1 its option, convert to another one of the above methods,
2 provided that such a conversion may not be done more
3 than once during any sixty (60) month period without the
4 advance written consent of the Secretary."

5 Section 7. Section 351 title 54 of the FSM Code, as enacted
6 by Public Law No. 13-71 and amended by Public Law No. 14-110, is
7 hereby further amended to read as follows:

8 "Section 351. Filing of annual returns. Every major
9 corporation shall prepare and file with the Secretary an
10 annual income tax return on a form approved by the
11 Secretary, which annual income tax return shall be signed
12 by the major corporation's authorized representative.
13 This form shall be filed with the Secretary, together
14 with a copy of the major corporation's financial
15 statements and any other required information or
16 documents as prescribed by the Secretary in regulations,
17 in a form acceptable to the Secretary, by the last day of
18 the sixth month period following the last day of the
19 major corporation's taxable year."

20 Section 8. Section 352 of title 54 of the FSM Code is hereby
21 further amended to read as follows:

22 "Section 352. Payment of tax due. Taxes shall be paid
23 as follows:

24 All major corporations shall, for their fiscal year
25 starting on or after April 1, 2010 pay fifty percent

1 (50%) of the tax it paid for the income of previous
2 fiscal year to the FSM by the end of the eighth (8th)
3 month of the current fiscal year. If a major
4 corporation does not have a previous fiscal year to
5 determine its fifty percent tax payment because it is
6 newly formed or is redomesticating in the FSM, the major
7 corporation shall make a payment of fifty percent (50%)
8 of their estimated tax liability of the current fiscal
9 year at the end of the 8th month of the current fiscal
10 year. The remaining fifty percent (50%) it paid for the
11 previous fiscal year or of the estimated tax liability
12 of the current fiscal year, as the case may be, shall be
13 paid by the last business day of the second month period
14 following the last day of the major corporation's fiscal
15 year. Any additional tax due as shown on the annual
16 income tax return of the major corporation shall be paid
17 by the last business day of the sixth month period
18 following the last day of the major corporation's fiscal
19 year. If the additional tax due as indicated on the
20 annual income tax return filed by a newly formed
21 corporation or a redomesticated corporation is more than
22 ten percent (10%) of the estimated tax amount paid, the
23 major corporation shall also pay interest, compounded
24 monthly and not in advance, on the additional tax due at
25 the rate of two thirds of one percent per month, or

1 fraction of a month, from the date the estimated tax
2 amount was due to the date the additional tax is paid."

3 Section 9. Section 370 of title 54 of the FSM Code, as
4 amended, is hereby further amended to read as follows:

5 "Section 370. Regulations.

6 (1) The Secretary shall, subject to approval of the
7 President of the Federated States of Micronesia,
8 prescribe and have printed reasonable regulations for
9 the enforcement of this chapter and such regulations
10 shall have the force and effect of law if they are not
11 in conflict with the express provisions of this chapter
12 or other laws of the Federated States of Micronesia.

13 (2) Such regulations shall also provide for the making
14 of returns concerning any taxes imposed by this chapter,
15 and the payment thereof, in any situations not
16 specifically covered by this chapter."

17 Section 10. Chapter 3, title 54, of the FSM Code, as
18 amended, is hereby further amended by inserting a new section 371
19 to read as follows:

20 "Section 371. Tax returns – information required.

21 (1) The Secretary shall prescribe the forms of all
22 returns required to be furnished under the provisions of
23 this chapter or provide for other methods of filing
24 returns and may provide in such forms for the giving of
25 such information as he may deem necessary or advisable.

1 (2) All information required by the form of any return
2 must be included in the return by the person, employer,
3 company, or business responsible for making the return.

4 (3) No return shall be complete unless and until it is
5 signed by or for the employer, business or other person
6 liable to make the return, or by someone authorized to
7 do so in behalf of such employer, business, or other
8 person. Every return shall be signed by a natural
9 person.

10 (4) The Secretary may require that, if any person or
11 persons actually prepare or sign a return for another
12 employer, business, or other person, a form stating such
13 facts and authorizing such person to sign such return be
14 signed by the person so preparing or signing the return,
15 and the employer, business, or other person in whose
16 name the return is filed.

17 (5) The Secretary may by regulations define the
18 classes of persons to whom this provision shall apply.

19 (6) Any other provision of law to the contrary
20 notwithstanding, no oath shall be required upon any tax
21 return.

22 (7) Revenue shall be identified by the State or States
23 in which it is earned."

24 Section 11. Chapter 3, title 54, of the FSM Code, as
25 amended, is hereby further amended by inserting a new section 372

1 to read as follows:

2 "Section 372. Records, inspection and audit.

3 All persons, employees, and businesses required to make
4 and file returns under this chapter shall keep and
5 maintain accurate records, and the records may be
6 inspected and audited at any reasonable time by the
7 Secretary for the purpose of administering the
8 provisions of this chapter."

9 Section 12. Chapter 3, title 54, of the FSM Code, as
10 amended, is hereby further amended by inserting a new section 373
11 to read as follows:

12 "Section 373. Tax assessment on failure to file or pay.

13 (1) Upon the failure of any person, business, or
14 employer to make and file a return required by this
15 chapter within the time and in the manner and form
16 prescribed, or upon failure to pay any amount due, the
17 Secretary may notify such person, business, or employer
18 of such failure and demand that a return be made and
19 filed and the tax paid as required by this chapter.

20 (2) If such person, business, or employer upon notice
21 and demand by the Secretary fails or refuses within 30
22 days after receipt of said notice and demand to make and
23 file a return and pay the tax required by this chapter,
24 the Secretary may make a return for such person,
25 business, or employer from any information and records

1 obtainable, may file a notice of lien pursuant to the
2 Secured Transactions Act, and may levy and assess the
3 appropriate amount of tax.

4 (3) Such assessment shall be presumed to be correct
5 unless and until it is proved incorrect by the person,
6 business, or employer disputing the amount of the
7 assessment.

8 (4) In no event, however, shall any tax assessment,
9 demand for filing a return, or demand for payment be
10 made after seven years (7) of such time for filing a
11 return or for payment of taxes in the manner and form
12 prescribed."

13 Section 13. Chapter 3, title 54, of the FSM Code, as
14 amended, is hereby further amended by inserting a new section 374
15 to read as follows:

16 "Section 374. Lien on property.

17 All taxes imposed or authorized under this chapter shall
18 be a lien upon any property of the person or business
19 obligated to pay said taxes and may be collected by levy
20 upon such property in the same manner as the levy of an
21 execution."

22 Section 14. Chapter 3, title 54, of the FSM Code, as
23 amended, is hereby further amended by inserting a new section 375
24 to read as follows:

25 "Section 375. Criminal penalties.

1 Any person or business convicted under the provisions of
2 this chapter shall be fined not more than \$1,000, or, if
3 a natural person, imprisoned not more than one year, or
4 both."

5 Section 15. Chapter 3, title 54, of the FSM Code, as
6 amended, is hereby further amended by inserting a new section 376
7 to read as follows:

8 "Section 376. Civil penalties.

9 The criminal penalties imposed by section 375 of this
10 chapter for violation of provisions of this chapter
11 shall be separate from, and in addition to, all other
12 penalties or interest provided for in this section. The
13 following civil penalties are hereby levied and shall be
14 assessed and collected by this Secretary:

15 (1) Failure to file return on time. If any taxpayer
16 fails to make and file a return required under this
17 chapter on or before the date set, unless prior to that
18 date such taxpayer applied for and received an extension
19 for reasonable cause, one percent of the tax shall be
20 added for each 30 days or fraction thereof elapsing
21 between the due date of the return and the date on which
22 it is actually filed; provided, however, that the
23 minimum penalty under this subsection shall be five
24 dollars and the maximum penalty under this section shall
25 be 25 percent of the tax due.

1 (2) Failure by employer to file statement. Any
2 employer required to furnish a written statement who
3 willfully failed to file such statements on the date
4 prescribed thereof, except with regard to any extension
5 of time for filing, shall be subject to a five dollar
6 penalty for each such statement not so filed.

7 (3) Failure to file after demand. Where taxpayer
8 fails to file return and pay tax after demand in any
9 case where the Secretary makes a return and assesses a
10 tax after a taxpayer's failure or refusal to make and
11 file a return and pay the tax required by this chapter,
12 10 percent of the tax assessed, in addition to the
13 penalties of subsection (1) of this section, shall be
14 added thereto.

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

22 (5) Interest. If any tax imposed by this chapter is
23 not paid on or before the date prescribed for such
24 payment, there shall be collected, in addition to such
25 tax and any penalties assessed, interest on the unpaid

1 balance of the tax principal at the rate of six percent
2 per annum from its due date until the date it is paid."

3 Section 16. Chapter 3, title 54, of the FSM Code, as
4 amended, is hereby further amended by inserting a new section 377
5 to read as follows:

6 "Section 377. Judicial review.

7 (1) If a decision of the Secretary is adverse to the
8 taxpayer, in whole or in part, the taxpayer shall have
9 the right within one year from the date of such decision
10 to institute an action for review, irrespective of the
11 amount, in a Court of competent jurisdiction in the
12 Federated States of Micronesia. Such action shall be
13 commenced by filing a petition setting forth assignments
14 of all errors alleged to have been committed by the
15 Secretary in his determination of the assessment, the
16 facts relied upon to sustain such assignments of errors,
17 and a prayer for appropriate relief. The Secretary or
18 his successor in office shall be the defendant in such
19 proceedings.

20 (2) When the decision of the Court or an appeal
21 therefrom becomes final, the Secretary shall, upon
22 presentation of a certified copy of the decree, make
23 such adjustments as are necessary to correct, amend, or
24 abate the assessment, and to determine whether any
25 additional amount should be assessed.

1 (3) Where the assessment is paid, in whole or in part,
2 after the filing of the petition, the Court shall not
3 thereby be deprived of jurisdiction."

4 Section 17. Chapter 3, title 54, of the FSM Code, as
5 amended, is hereby further amended by inserting a new section 378
6 to read as follows:

7 "Section 378. Summons.

8 (1) For the purposes described under sections 372 and
9 804 of this title, the Secretary shall be authorized to
10 summon the person or persons liable for tax under this
11 title to appear before the Secretary or his designee and
12 at such appearance to produce such documents and to give
13 such testimony as specified in the summons.

14 (2) The provisions of subsection (1) of this section
15 shall also apply to any officer or employee or agent of
16 such person or persons described in subsection (1) of
17 this section, or any third party having possession,
18 custody, or care of books of accounts relating to the
19 business of the person or persons liable for tax under
20 this title."

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24 Section 18. This act shall become law upon approval by the
25 President of the Federated States of Micronesia or upon its

1 becoming law without such approval.

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Nov. 12, 2010

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/s/ Manny Mori

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Manny Mori

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President

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Federated States of Micronesia

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