

CHAPTER 7

FSM Unified Revenue Authority

Editor's notes: Section 1 of PL 16-75 added a new chapter 7 of this title entitled FSM Unified Revenue Authority. PL 16-75 was signed into law by Vice President Alik L. Alik, in his capacity as Acting President, on April 19, 2011.

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SUBCHAPTER I

General Provisions

Editor's note: Section 2 of PL 16-75 added a new subchapter I of this chapter 7 entitled General Provisions.

§ 701. Short title.

This chapter may be cited as the Federated States of Micronesia Unified Revenue Authority Act of 2010.

Source: PL 16-75 § 3.

§ 702. Definitions.

Wherever used in this chapter, unless the subject matter, context, or sense otherwise requires:

- (1) “Authority” means the Federated States of Micronesia Unified Revenue Authority established by section 711 of this chapter.
- (2) “Board” means the Board of Directors of the Authority appointed under section 712 of this chapter.
- (3) “CEO” means the Chief Executive Officer appointed under section 731 of this chapter.
- (4) “Congress” means the Congress of the Federated States of Micronesia.
- (5) “CTA” means the FSM Department of Finance and Administration, Division of Customs and Tax Administration.
- (6) “Finance Official” means the Secretary, a Director of Finance, Director of Administration, Director of Administration and Treasury or such other official holding the highest administrative office responsible for matters of finance or taxation within the FSM National Government or the Government of any State.
- (7) “FSM” means the Federated States of Micronesia.
- (8) “Government” means the Government of the Federated States of Micronesia or the Government of a State in the Federated States of Micronesia, whichever the context appropriately requires.
- (9) “Generally Accepted Accounting Principles” or “GAAP” means those accounting principles currently accepted by certified public accountants, which are utilized by auditors operating within the FSM; PROVIDED, HOWEVER, that in the event International Financial Reporting Standards (IFRS) become generally accepted by the financial/auditing entities within the FSM and as prescribed by law or regulations, then GAAP shall be modified by IFRS.
- (10) “Memorandum of Understanding” means the Memorandum of Understanding entered into between the FSM National Government and the governments of the several States under section 759 of this chapter.
- (11) “National tax” means a tax or duty imposed under a law referred to in paragraphs (a) or (b) of the definition of “Revenue law” in subsection (17) of this section.
- (12) “Net tax” means the gross collection of tax, penalties, and interest under a revenue law less refunds paid under such law.
- (13) “Net National taxes” means the net tax collected in respect of National taxes.
- (14) “Net State taxes” means the net tax collected in respect of a State’s taxes.
- (15) “Prescribed percentage”, in relation to the Authority’s operations budget, is that percentage determined under sections 752 and 756(2) of this chapter.
- (16) “Revenue authority” means the CTA as defined in subsection (5) of this section, or the administrative office responsible for matters of finance or taxation within the Government of any State.
- (17) “Revenue law” means:
 - (a) any chapter under this title;
 - (b) a law of the FSM imposing a tax or duty if the law provides that the Authority has the

responsibility for administering the tax or duty; and

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

(18) “Revenue officer” means the CEO and any officer of the Authority appointed under section 732 of this chapter.

(19) “Secretary” means the Secretary of the Department of Finance and Administration.

(20) “State” means a State of the Federated States of Micronesia; and

(21) “State tax” means a tax imposed under a law referred to in paragraph (c) of the definition of “Revenue law” in subsection (17) of this section.

Source: PL 16-75 § 4.

SUBCHAPTER II

Establishment, Membership, and

Meetings of the Authority

Editor’s note: Section 5 of PL 16-75 added a new subchapter II of this chapter 7 entitled Establishment, Membership, and Meetings of the Authority.

§ 711. Establishment of the FSM Unified Revenue Authority.

The Federated States of Micronesia Unified Revenue Authority is hereby established under the laws of the Federated States of Micronesia. It may hereinafter be referred to as “the Authority”.

Source: PL 16-75 § 6.

§712. Board of Directors of the Authority.

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

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

(3) The Board must not intervene in the determination of an assessment, ruling application, liability, objection, or appeal of a person under a revenue law, or in any other operational matter of the Authority.

Source: PL 16-75 § 7.

§ 713. Appointment and termination of directors.

(1) The Board consists of the following directors:

- (a) the Secretary;
- (b) a representative of the State of Chuuk appointed pursuant to Chuuk State law;
- (c) a representative of the State of Kosrae appointed pursuant to Kosrae State law;
- (d) a representative of the State of Pohnpei appointed pursuant to Pohnpei State law;
- (e) a representative of the State of Yap appointed pursuant to Yap State law; and

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

(2) The person appointed under subsection (1)(f) of this section must be from a pool of candidates from the private sector nominated by the Governors, who in the opinion of the Board, has adequate experience in public administration, or in financial, commercial, tax, or legal matters. Each Governor may nominate no more than two persons from his State.

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

- (a) a person who is an undischarged bankrupt;
- (b) a person who has been convicted of an offense under a revenue law, or who otherwise has been convicted of any other crime involving moral turpitude;
- (c) a person whose affairs under all revenue laws are not up to date; or
- (d) a person who is disqualified or suspended from practice of the person's profession for misconduct.

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

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

(6) A person appointed as director under subsection (1)(b), (c), (d), or (e) of this section shall hold office pursuant to the respective State law under which each was appointed.

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

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

(9) The person appointed as director under subsection (1)(f) of this section may be removed from office by

resolution of the Board if the director:

- (a) has been absent, without leave of the Board, from three consecutive meetings of the Board;
- (b) has become an undischarged bankrupt;
- (c) has been convicted of an offense, or has become liable for a penalty, under a revenue law, including section 718 of this chapter, or has been convicted of any other crime involving moral turpitude; or
- (d) has become disqualified or suspended from practice of the person's profession for misconduct.

Source: PL 16-75 § 8.

§ 714. Chairperson of the Board.

- (1) The Chairperson of the Board shall rotate annually among the five FSM governments as determined by the Board.
- (2) The Chairperson may authorize, in writing, any director to exercise any power or perform any function conferred on the Chairperson by or under this chapter.

Source: PL 16-75 § 9.

§ 715. Meetings of the Board.

- (1) The Board must meet as often as may be necessary for the performance of its functions; PROVIDED HOWEVER that it shall meet on no less than four occasions each calendar year; and PROVIDED, FURTHER, that at least two such meetings shall require the physical presence of the directors at a single location.
- (2) At any meeting, the quorum of the Board shall be four directors. Subject to subsection (1) of this section, participation may be in person, by teleconference, or by other appropriate electronic means in real time. A quorum, once established, shall not be broken by the absence or withdrawal of one or more directors before a meeting is adjourned.
- (3) Notice of a meeting of the Board must be given to each director and shall be delivered by hand or sent by post, facsimile, electronic mail, or other written message to an address supplied by the director to the Board for this purpose.
- (4) Subject to subsection (5) of this section, decisions at meetings of the Board are by a simple majority of the directors participating.
- (5) The director appointed under section 713(1)(f) of this section shall be a non-voting member of the Board but is to be taken into account in determining whether a quorum exists.
- (6) Subject to this section, the Board may regulate its own procedure.
- (7) The validity of a proceeding of the Board is not affected by a vacancy in the membership, or by any defect in the appointment of a director.

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

Source: PL 16-75 § 10.

§ 716. Transaction of business without meeting.

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

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

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

(2) [RESERVED]

Source: PL 16-75 § 11.

§ 717. Remuneration of directors.

The directors of the Board and persons invited to attend a meeting of the Board under section 715(8) of this chapter are entitled to such remuneration as may be established by regulation.

Source: PL 16-75 § 12.

§ 718. Disclosure of interest.

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

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

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

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

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

(4) A director who contravenes this section is guilty of an offense, and upon conviction is subject to a fine not exceeding \$1000, imprisonment for not more than one year, or both.

Source: PL 16-75 § 13.

§ 719. Minutes of meetings and business transacted.

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

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

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

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Source: PL 16-75 § 14.

§ 720. Common seal.

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

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

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

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

Source: PL 16-75 § 15.

§ 721. Task assignment by Board.

(1) The Board may, from time to time, by notice in writing under the hand of the Chairperson, assign to any person or committee a specific task to assist the Board in furtherance of its duties; PROVIDED, HOWEVER, that the Board may not delegate its policy-making power.

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

(3) An assignment may be made subject to such restrictions and conditions as the Board thinks fit, and may

be made either generally or in relation to any particular case or class of case.

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

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

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

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

Source: PL 16-75 § 16.

SUBCHAPTER III

Service of Authority

Editor's note: Section 17 of PL 16-75 added a new subchapter III of this chapter 7 entitled Service of Authority.

§ 731. Appointment of Chief Executive Officer.

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

(2) The CEO:

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

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

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

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

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

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

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

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

Source: PL 16-75 § 18.

§ 732. Appointment of officers and other staff.

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

Source: PL 16-75 § 19.

§ 733. Delegation of CEO's functions and powers.

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

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

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

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

Source: PL 16-75 § 20.

§ 734. Oath of office.

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

Source: PL 16-75 § 21.

§ 735. Confidentiality and disclosure of information.

(1) Revenue officers, directors, employees of the Authority, former directors of the Board, former members

of a committee of the Board, persons invited to a Board or committee meeting, former employees or contractors of the Authority, and any person formerly or presently engaged by the Authority in any capacity shall not disclose any business or personal document or information received during the performance of duties or in the course of any meeting of the Authority if such document or information is deemed confidential or secret by law or by generally accepted business practices, except that they may disclose a confidential or secret business or personal document or information to the following:

- (a) another revenue officer, but only to the extent required by law or as may be necessary for the purposes of any revenue law;
- (b) the Secretary, but only in relation to National taxes;
- (c) a Finance Official of a State, but only in relation to that State's taxes;
- (d) the Secretary of the FSM Department of Justice or his designee, but only to the extent required for any legal action or claim by or against the National Government;
- (e) the Attorney General of a State Government or his designee, but only to the extent required for any legal action or claim by or against that State;
- (f) a court of competent jurisdiction upon order of such court, or to the extent necessary with respect to the enforcement of any revenue law;
- (g) the National Public Auditor or a person authorized by the National Public Auditor in writing, but only to the extent that the disclosure is necessary for the performance of the audit of the Authority's accounts;
- (h) a State Public Auditor or a person authorized by a State Public Auditor in writing, but only to the extent that the disclosure is necessary for audit of accounts held by the Authority on behalf of that State;
- (i) the competent authority of a government of a foreign country with which the FSM National Government has entered into an agreement providing for the exchange of information, but only to the extent permitted under that agreement and applicable law; and
- (j) a person with the written consent of the person to whom the documents or information relate.

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

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

Source: PL 16-75 § 22.

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

SUBCHAPTER IV

Functions, Duties and Powers of the Authority

Editor's note: Section 23 of PL 16-75 added a new subchapter IV of this chapter 7 entitled Functions, Duties and Powers of the Authority.

§ 741. Functions of the Authority.

The primary function of the Authority is to maximize, over time, the collection of tax revenue lawfully owing to the FSM National Government and the States given the resources available to it. Without limiting the generality of the foregoing, the Authority has the following specific functions:

- (1) to act as agent in the collection of revenue on behalf of the FSM National Government and the Governments of the several States in accordance with their revenue laws;
- (2) to otherwise administer on behalf of the FSM National Government and the Governments of the several States the provisions of the revenue laws as shall from time to time require its action;
- (3) to render ancillary services to the FSM National Government and the Governments of the several States in the administration and enforcement of their revenue laws;
- (4) to take border security and customs measures as required under chapter 2 of title 54 of this code or as assigned to the Authority in accordance with law;
- (5) to ensure that all revenue collected is dealt with in accordance with section 758 of this chapter;
- (6) to promote voluntary compliance with the revenue laws;
- (7) to take such measures as may be required to improve the standards of service provided to taxpayers with a view to improving efficiency and effectiveness in administration, and maximizing revenue collection;
- (8) to take such measures as may be required or considered necessary to prevent tax evasion and fraud of any type;
- (9) to advise the FSM National Government and the Governments of the several States on matters relating to the administration and collection of revenue, and border security, under the revenue laws;
- (10) as directed by the Secretary, to represent the FSM National Government internationally in respect of matters related to taxation and customs;
- (11) to perform such other functions, in relation to the collection of National taxes as the Secretary may assign to the Authority; and
- (12) to perform such other functions in relation to the collection of State taxes as the Finance Official of the relevant State may assign to the Authority.

Source: PL 16-75 § 24.

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

§ 742. Powers of the Authority.

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

- (a) to adopt, alter, and use a seal;
- (b) to adopt and amend bylaws governing the conduct of its business and the exercise of its powers, subject to the provisions of the revenue laws;
- (c) to sue and be sued in its name;
- (d) to acquire, in any lawful manner, any personal property, either tangible or intangible, to hold, maintain, use and operate such property, and to sell, lease or otherwise dispose of such property;
- (e) to retain and terminate the services of employees, agents, attorneys, auditors, and independent contractors upon such terms and conditions as it may deem appropriate;
- (f) to make assessments, conduct investigations, initiate judicial proceedings, publish rules and rulings, and to take such other action as may be necessary in connection with its role as a unified tax administration for the FSM National Government and the Governments of the several States; and
- (g) to do all such other things on its own account or as agent for the FSM National Government and the Governments of the several States as may be deemed incidental to or conducive to the attainment of the functions and responsibilities of the Authority.

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

Source: PL 16-75 § 25.

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

SUBCHAPTER V

Financial Provisions and Reporting

Editor's note: Section 26 of PL 16-75 added a new subchapter V of this chapter 7 entitled Financial Provisions and Reporting.

§ 751. Funds of the Authority.

(1) *Establishment.* There shall be established a Federated States of Micronesia Special Fund, hereinafter

referred to as the “Fund”, separate and apart from all public monies or funds of the Federated States of Micronesia, which shall be administered by the Authority exclusively for the purposes of this chapter.

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

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

(4) *Authority funds.* The funds of the Authority consist of:

(a) money appropriated from time to time by Congress and paid to the Authority;

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

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

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

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

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

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

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

(7) The Authority shall conserve its funds by performing its functions and exercising its powers under this chapter so as to ensure that the total revenues of the Authority are sufficient to meet all sums properly chargeable to its revenue account including depreciation and interest on capital.

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

Source: PL 16-75 § 27.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Government Finance and Contracts are found in title 55 of this code. Chapter 2 of title 55 is on Financial Management.

§ 752. Funding of Authority operations.

(1) Unless otherwise provided by an Act of Congress, the Authority shall deduct from the National Government's share of the National taxes collected during the current year an amount not exceeding the prescribed percentage as funds for its operations in collecting National taxes in the ensuing year. Such deductions shall be deemed appropriated as if set forth in the comprehensive budget Act for the relevant fiscal year.

(2) The Authority's operations in collecting each state's taxes will be funded pursuant to a Memorandum of Understanding described in section 759 of this chapter and any law enacted by a state to give effect to such Memorandum of Understanding.

Source: PL 16-75 § 28.

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

§ 753. Taxes collected by the Authority held in trust for National or State Governments.

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

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

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

Source: PL 16-75 § 29.

§ 754. Expenditure to be charged on funds of the Authority.

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

(a) paying any expenditure lawfully incurred by the Authority in the performance of its functions or the exercise of its powers under the revenue laws;

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

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

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

Source: PL 16-75 § 30.

§ 755. Bank accounts.

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

(2) The Authority shall maintain a separate bank account for each Government. The Authority shall deposit the funds held in trust pursuant to section 753 of this chapter into the respective account of each Government. Such funds collected by the Authority shall be deposited into the appropriate account no later than the next business day following receipt of such funds. The Authority shall not commingle funds.

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

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

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

Source: PL 16-75 § 31.

§ 756. Annual budget and costs of administration.

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

- (a) for the last completed fiscal year;
 - (i) audited accounts indicating the amount of revenue collected by the Authority on behalf of the FSM National Government and the Governments of the several States;
 - (ii) the amount of other income of the Authority;
 - (iii) the amount of all expenditures incurred by the Authority; and
 - (iv) the closing balance of all bank accounts maintained by the Authority;
- (b) for the fiscal year in progress, a statement showing the estimated amount of revenue to be collected on behalf of the FSM National Government and the Governments of the several States, the estimated amount of other income of the Authority, and the estimated amount of all expenditures to be incurred by the Authority, together with such summaries, schedules, and supporting data as the Board or the President may require by notice in writing to the CEO; and
- (c) for the next ensuing fiscal year, a budget showing the estimated amount of revenue to be collected

on behalf of the FSM National Government and the Governments of the several States, the estimated amount of other income of the Authority, and the estimated amount of all expenditures to be incurred by the Authority, including salaries and wages, purchases of office supplies, operational expenses, and the cost of maintaining branch offices.

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

Source: PL 16-75 § 32.

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

§ 757. Accounts, annual report, and audit.

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

- (a) all moneys received by the Authority are properly recorded and accounted for;
- (b) all payments by the Authority are properly authorized and recorded;
- (c) adequate control is maintained over the Authority's property and the incurring of liabilities; and
- (d) the accounts are kept in accordance with Generally Accepted Accounting Principles.

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

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

- (a) a statement of financial performance, including a statement of the financial position of the Authority;
- (b) a statement of cash flows;
- (c) a statement of distribution of revenues to the States pursuant to section 758 of this chapter;
- (d) a copy of the most recent budget submitted pursuant to section 756 of this chapter;
- (e) a report of the Authority's operations for the year; and
- (f) such other information as is required to give a true and fair view of the Authority's financial affairs.

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

- (a) the accounts of the Authority for the year; and
- (b) the annual report for the year prepared in accordance with subsection (2) of this section.

(5) The Board shall cause a copy of the annual report and a copy of the auditor's opinion of the Authority's accounts for a financial year to be laid before Congress and the State legislatures within 30 days following receipt of the Auditor's opinion.

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

Source: PL 16-75 § 33.

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

§ 758. Distribution of revenues.

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

- (a) one hundred percent (100%) of the net tax collected pursuant to the Value Added Tax Act of the State;
- (b) one hundred percent (100%) of the net tax collected pursuant to any other taxes imposed by the State;
- (c) eighty percent (80%) of the net tax collected pursuant to section 221 of this title in relation to the import of gasoline and diesel fuels into the State;
- (d) fifty percent (50%) of the net tax collected pursuant to section 121 of this title in relation to wages and salaries received by employees in the State;
- (e) fifty percent (50%) of the net tax collected pursuant to section 221 (other than section 221 of this title in relation to the import of gasoline and diesel fuels into the State) of this title in relation to the import of goods into the State; and
- (f) fifty percent (50%) of the net tax collected pursuant to:
 - (i) sections 521 and 522 of this title in relation to business carried on through a permanent establishment in the State as determined under section 512 of this title;
 - (ii) section 524 of this title in relation to the carriage of passengers, livestock, mail, merchandise, or goods embarked in the State or to the insurance of risks in the State; and
 - (iii) section 525 of this title in relation to interest, royalties, a natural resource amount, or a management fee derived by a non-resident person from sources in the State determined under section

513 of this title on the basis that the reference in that section to FSM is a reference to the State.

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

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

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

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

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

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

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

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

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

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

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

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

Source: PL 16-75 § 34.

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

§ 759. Memorandum of Understanding.

(1) The FSM National Government and the Governments of the several States shall enter into a Memorandum of Understanding to give effect to each Government's commitments in relation to the establishment of the Authority, including the states' commitments to fund the Authority's operations in collecting state taxes.

(2) The amendment of this chapter or the regulations promulgated without the unanimous consent by all parties to the Memorandum of Understanding will constitute a ground for withdrawal by any party from the

Memorandum of Understanding.

Source: PL 16-75 § 35.

SUBCHAPTER VI

Miscellaneous

Editor's note: Section 36 of PL 16-75 added a new subchapter VI of this chapter 7 entitled Miscellaneous.

§ 761. Limitation of liability.

(1) Except as provided in subsection (3) of this section, no civil proceedings shall lie against the Authority or an officer, employee, or director of the Authority for anything done or said, or a failure to do or say anything in the course of the operation of the Authority, unless it is shown that the Authority, director, officer, or employee acted in bad faith or with intentional disregard for the rights or safety of others, or unless it is shown that such action or failure to act constitutes a violation of a revenue law.

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

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

Source: PL 16-75 § 37.

§ 762. Authority as agent of the Government.

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

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

Source: PL 16-75 § 38.

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

§ 763. Claims for and payments of tax refunds.

All claims for refunds or offsets made by any person with respect to any sum collected by the Authority on behalf of the FSM National Government or the Governments of the several States shall constitute, first, a claim against those funds held within the trust accounts maintained by the Authority pursuant to section 753(2) of this chapter that are allocated or allocable to the government or governments for whose benefit the original tax was collected, and second, against the Government itself or the Governments themselves, as the case may be.

Source: PL 16-75 § 39.

§ 764. Proceedings conducted by revenue officers.

Subject to section 767 of this chapter, a properly qualified revenue officer authorized in writing by the CEO may appear in civil proceedings in a court of competent jurisdiction on behalf of such Government for the recovery of any unpaid tax under the respective revenue law.

Source: PL 16-75 § 40.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 765. Vesting of assets and liabilities, contracts and proceedings; transitional provisions.

(1) All property, except real property or such property as the CEO may determine, that immediately before the commencement of this chapter was vested in the FSM National Government for the use of the CTA for the purpose of giving effect to the taxes and duties imposed under title 54 of this code is, on the date of commencement of this chapter, and without further assurance, vested in the Authority subject to all interests, liabilities, charges, obligations and trusts affecting the property.

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

(3) All legal proceedings and claims in respect of taxes and duties imposed under title 54 of this code pending at the commencement of this chapter are to be continued or enforced by or against the Authority in the same manner as they would have been continued or enforced if this chapter had not been enacted.

(4) The Authority will offer contracts of employment to all existing revenue authority employees in good standing provided that the Authority is not required to hire the employees at the same salaries or to fill the same

positions. In the event employees of a pre-existing revenue authority are employed by the Authority, all accrued benefits, sick leave, annual leave and other contractual obligations owed by the pre-existing revenue authority to its employees remain the obligation of that authority and are not assumed by the Authority, except to the extent directed by the Board.

(5) The employees of the Authority are not subject to the requirements or rights contained in title 52 of this code, the National Public Service System Act, or any of its subsidiary regulations.

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

Source: PL 16-75 § 41.

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

Editor's note: The words "the Code of the Federated States of Micronesia" in subsections (1), (3), and (5) of this section are changed to "this code" to comport with standard code format.

§ 766. References in other laws.

A reference in any other legislation, regulation, order, or other enactment or in any agreement, deed, instrument, application, notice, or other document whatsoever to:

- (1) the person charged with the responsibility of enforcement of a revenue law to which this chapter applies must be read as a reference to the CEO; or
- (2) a preexisting revenue authority must be read as a reference to the Authority.

Source: PL 16-75 § 42.

§ 767. Controlling laws.

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

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

Source: PL 16-75 § 43.

§ 768. Regulations.

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

Source: PL 16-75 § 44.

§ 769. Commencement of Administration.

- (1) The provisions of this chapter become effective on October 1, 2011.
- (2) The Authority shall commence administration of the revenue laws 12 months after this chapter becomes law.

Source: PL 16-75 § 45.