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AN ACT

To further amend title 54 of the Code of the Federated States of Micronesia, as amended, by further amending section 112 thereof, as amended by Public Laws Nos. 7-41 and 10-93, and by further amending section 222 thereof, as enacted by Public Law No. 9-139 and amended by Public Laws Nos. 10-10 and 10-136, for the purpose of exempting certain items and activities from taxation, and for other purposes.

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

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

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

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

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

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

(4) 'Employer' includes any individual, corporation, association, joint stock company, bank, insurance company, credit union, cooperative, or other equity or group employing any person, and also includes the Federated States of Micronesia, State and local governments, and their agencies,

charged with the disbursement of public moneys as salaries or wages. 'Employer' also includes the United States Government and instrumentalities thereof.

(5) 'Gross revenue' means the gross receipts, cash or accrued, of the taxpayer received as compensation for personal services not in the form of salaries or wages as defined in subsection (11) of this section, and the gross receipts of the taxpayer derived from trade, business, commerce, or sales and the value proceeding or accruing from the sale of tangible personal property, or services, or both, and all receipts, actual or accrued by reason of the capital of the business engaged in, including interest, rentals, royalties, fees, or other emoluments however designated and without any deductions on account of the cost of property sold, the cost of materials used, labor cost, taxes, royalties, or interest paid or any other expenses whatsoever. Gross revenue shall not include the following:

- (a) refunds and rebates;
- (b) moneys held in a fiduciary capacity;
- (c) income in the form of wages and salaries which are taxed under other provisions of this chapter;
- (d) sale payments received for the sale of a commercial aircraft, to the extent that such sale payments in

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

(e) rental payments received for the rental of a commercial aircraft, to the extent that such rental payments in any quarter shall equal the sale payments made to the lessor by the lessee of such aircraft for its purchase by the lessor;

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

(g) gross revenue received by an international organization, foreign contractor, or other foreign entity paid from foreign aid proceeds donated to the Federated States of Micronesia pursuant to a foreign aid agreement entered into by the Federated States of Micronesia, the terms of which require that such gross revenue shall not be subject to taxation by the Government of the Federated States of Micronesia;

(h) gross revenue derived solely from the export sales of tangible personal property produced or manufactured in the

Federated States of Micronesia and delivered to a buyer outside the Federated States of Micronesia; or

(i) gross revenue derived solely from industrial processing of goods in the Federated States of Micronesia which are subsequently exported from, and not used in, the Federated States of Micronesia.

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

(7) 'Month' means calendar month.

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

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

(10) 'Secretary' means the Secretary of the Department of Finance.

(11) 'Wages' or 'Salaries' means and includes commissions, fees, compensation, emoluments, bonuses, and every and all other kinds of compensation paid for, or credited or attributable to, personal services performed by an individual, which services have been performed by such person as an employee. Wages and salaries shall not include the following:

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

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

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

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

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

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

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

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

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

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

(k) wages and salaries received by an employee, who is not a citizen of the Federated States of Micronesia, while employed by an international organization, foreign contractor, or other foreign entity performing services or otherwise conducting business in furtherance of a foreign aid agreement entered into by the Federated States of Micronesia,

the terms of which require that such wages and salaries shall not be subject to taxation by the Government of the Federated States of Micronesia; or

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

(12) 'Year' means calendar year."

Section 2. Section 222 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 9-139 and amended by Public Laws Nos. 10-10 and 10-136, is hereby further amended to read as follows:

"Section 222. Exemptions.

(1) Damaged, pillaged or faulty goods. Upon receipt of a written request within 28 days of the goods' release from Customs control, the Secretary may authorize a refund of the whole or part of the duty paid, where any of the following conditions exist:

(a) Goods have been damaged, pillaged, lost or destroyed during the voyage;

(b) Goods have, while subject to the control of Customs, been damaged, pillaged, lost or destroyed; or

(c) The Commissioner is satisfied that, owing to a fault or defect in any goods, the importer has received a

reduction or a refund, in whole or part, of the price paid for the goods.

(2) Imported goods subsequently exported.

(a) Upon application to and approval by the Secretary, import duty paid on the following goods shall be refunded:

(i) goods imported for processing in the FSM, not otherwise used in the FSM, and subsequently exported from the FSM. For purposes of this subsection, raw materials or ingredients which are worked into or otherwise become part of a different or more finished product are deemed exported when that product is exported; and

(ii) goods imported for transshipment through the FSM, not used in the FSM, and stored while in the FSM in a bonded warehouse pursuant to policies or regulations promulgated by the Secretary. This transshipment exemption shall not apply to tobacco products, alcoholic beverages, or other goods which the Secretary has specified by policy or regulation are to be excluded from the benefit of this exemption due to the risk of tax avoidance or other customs violations.

(b) Goods are eligible for the duty refund when they have been loaded on an aircraft or vessel for direct removal from the FSM and that aircraft or vessel has departed from the port. After they have been so loaded, the goods shall

again be subject to import duty if they are unloaded or used in the FSM. With respect to importers primarily engaged in importing for processing and subsequent export and with respect to goods held in a bonded warehouse, the Secretary may provide by policy or regulation for waiving, rather than collecting and subsequently refunding, duties on imports to be subsequently exported.

(3) Per trip abroad. Each time an individual person enters or returns to the FSM from a foreign jurisdiction, he or she is entitled to bring into the FSM the following goods, duty-free, provided that such goods are for that person's own personal use or consumption and not for resale or exchange, and provided further that such person is permitted by applicable State law to possess, use, and consume such goods:

- (a) up to 200 cigarettes;
- (b) up to one pound of tobacco or twenty cigars;
- (c) up to 52 fluid ounces or 1500 milliliters of distilled alcoholic beverages; and
- (d) up to two hundred dollars (\$200) worth of goods other than tobacco products, beer and malt beverages, distilled alcoholic beverages, and wine.

(4) Visitors' personal effects. A visitor to the FSM may import bona fide personal effects into the FSM duty-free, provided the goods are for the visitor's own personal use and

will be taken with the visitor when he or she leaves the country.

(5) Returning goods. Goods produced or properly entered in the FSM which are subsequently removed from the FSM may be returned to the FSM duty-free. The burden shall be on the owner of the goods to establish that the goods were either produced in the FSM or previously and properly entered.

(6) Foreign aid projects. An international organization, foreign contractor, or other foreign entity may import goods into the FSM duty-free in connection with the performance of services or other conduct of business in furtherance of a foreign aid agreement entered into by the FSM, the terms of which require that such import shall not be subject to taxation by the FSM; provided that if and when such goods are subsequently sold in the FSM, import duty shall be due based on the sale amount. The duty, together with penalties and interest, shall be the joint and several personal liability of the importer and the purchaser and shall be secured by first liens on the goods and on the importer's property as hereinafter provided.

(7) Personal Gifts. Goods claimed as gifts, valued at one hundred dollars (\$100) or less, and received by persons within the FSM from sources outside the FSM shall not be subject to import duty provided the goods are for the

recipient's own personal use or consumption and not for resale or exchange. There shall be a rebuttable presumption that goods received from outside the FSM are not gifts.

(8) Fishing vessels basing in the Federated States of Micronesia under a valid permit or license issued pursuant to title 24 of the Code of the Federated States of Micronesia shall not be subject to the import duty on either the vessel or equipment installed in the vessel."

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

\_\_\_\_\_, 1999

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Jacob Nena  
President  
Federated States of Micronesia