
A BILL FOR AN ACT

To further amend title 54 of the Code of the Federated States of Micronesia, as amended, by further amending sections 321, 322, 331, 351, 352 and 370, in order to decrease the tax rate imposed on major corporations, to modify the tax payment procedures and a requirement for an audited financial statement, to place certain restrictions on tax assessment and applicability to foreign tax credits, and to insert additional sections 371, 372, 373, 374, 375, 376, 377 and 378 under title under 54, and for other purposes.

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

1 Section 1. Section 321 of title 54 of the Code of the
2 Federated States of Micronesia, as enacted by Public Law No.
3 13-71, is hereby amended to read as follows:

4 "Section 321. Tax imposed. A tax at the rate of
5 ~~[twenty five and a half percent (25.5 percent)]~~ twenty-
6 one percent (21 percent) is hereby imposed for each
7 taxable year on the taxable income of every major
8 corporation."

9 Section 2. Section 322 of title 54 of the FSM Code, as
10 enacted by Public Law No. 13-71, is hereby amended to read as
11 follows:

12 "Section 322. Taxable income defined. The taxable
13 income of a major corporation equals its income, before
14 income taxes, earned in the taxable year as determined
15 under International Financial Reporting Standard
16 (hereinafter, 'IFRS') or Generally Accepted Accounting
17 Principles (hereinafter, 'GAAP'), as GAAP is regularly

1 utilized in the major corporation's principal
2 shareholder's, if a corporation, place of incorporation
3 or, if an individual, country of primary residence."

4 Section 3. Section 331 title 54 of the FSM Code, as enacted
5 by Public Law No. 13-71, is hereby amended to read as follows:

6 "Section 331. Non-refundable credit for payment of
7 foreign taxes.

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

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

18 (3) In no case shall a major corporation, in any
19 taxable year, be entitled to credit which, in the
20 aggregate, exceed the amount of the tax imposed, for
21 that taxable year, under the provisions of section 321
22 of this chapter.

23 (4) No foreign tax credit shall be permitted to
24 create a refund or credit for overpayment of tax; but
25 any amount of foreign tax not creditable by reason of

1 this provision may be carried forward as a creditable
2 foreign tax to each succeeding year until fully utilized
3 subject to the same restrictions in the succeeding
4 years. In no event, however, shall any such foreign tax
5 credit be carried forward more than seven (7) years."

6 Section 4. Section 351 title 54 of the Code of the
7 Federated States of Micronesia, as enacted by Public Law No.
8 13-71, and as amended by Public Law No. 14-110, is hereby further
9 amended to read as follows:

10 "Section 351. Filing of annual returns. Every major
11 corporation shall prepare and file with the Secretary an
12 annual income tax return on a form approved by the
13 Secretary, which annual income tax return shall be
14 signed by the major corporation's authorized
15 representative. This form shall be filed with the
16 Secretary, together with a copy of the major
17 corporation's financial statements and any other
18 required information or documents as prescribed by the
19 Secretary in regulations, in a form acceptable to the
20 Secretary, by the last day of the sixth month period
21 following the last day of the major corporation's
22 taxable year. [~~A major corporation must submit the most~~
23 ~~recent audited financial statement of any corporation~~
24 ~~that owns more than 50 percent of that major~~
25 ~~corporation. Audited financial statements are not~~

1 ~~required from individual owners of a major corporation~~
2 ~~or from corporations that own 50 percent or less of a~~
3 ~~major corporation.]”~~

4 Section 5. Section 352 title 54 of the Code of the
5 Federated States of Micronesia, as enacted by Public Law No.
6 13-71, is hereby amended to read as follows:

7 “Section 352. Payment of tax due. Taxes shall be paid
8 as follows:

9 All major corporations whose fiscal year starts on or
10 after April 1, 2010 shall pay fifty percent (50 percent)
11 of the tax liability of their previous fiscal year to
12 the FSM by the end of the eighth (8th) month of the
13 current fiscal year. For major corporations that have
14 not made a tax payment in the previous fiscal year
15 because they are newly formed in the FSM, those major
16 corporations shall make an estimated payment of 50
17 percent of their tax liability of the current fiscal
18 year at the end of the eighth (8th) month of the current
19 fiscal year. Any estimated additional tax due or
20 remaining of the current fiscal year shall be paid by
21 the last business day of the second month period
22 following the last day of the major corporation’s fiscal
23 year. ~~[Within 30 days of the last day of the major~~
24 corporation’s taxable year, the major corporation shall
25 pay its estimated amount of the tax due for that year

1 ~~(hereinafter, the 'estimated amount').~~] Any additional
2 tax due as shown on the annual income tax return of the
3 major corporation shall be paid by the last business day
4 of the sixth month period following the last day of the
5 major corporation's fiscal year. If the additional tax
6 due as indicated on the annual income tax return is more
7 than 10 percent of the estimated tax amount paid, the
8 major corporation shall also pay interest, compounded
9 monthly and not in advance, on the additional tax due at
10 the rate of two thirds of one percent per month, or
11 fraction of a month, from the date the estimated tax
12 amount was due to the date the additional tax is paid."

13 Section 6. Section 370 title 54 of the Code of the
14 Federated States of Micronesia, as enacted by Public Law No.
15 13-71, is hereby amended to read as follows:

16 "Section 370. [~~Sections 114 to 115 and 151 to 157 of~~
17 ~~chapter 1 of this title also apply to the provisions of~~
18 ~~this chapter.~~] Regulations.

19 (1) The Secretary shall, subject to approval of the
20 President of the Federated States of Micronesia,
21 prescribe and have printed reasonable regulations for
22 the enforcement of this chapter and such regulations
23 shall have the force and effect of law if they are not
24 in conflict with the express provisions of this chapter
25 or other laws of the Federated States of Micronesia.

1 (2) Such regulations shall also provide for the
2 making of returns concerning any taxes imposed by this
3 chapter, and the payment thereof, in any situations not
4 specifically covered by this chapter.

5 Section 7. Section 371 title 54 of the Code of the
6 Federated States of Micronesia, as enacted by Public Law No.
7 13-71, is hereby amended to read as follows:

8 "Section 371. Tax returns - Information required.

9 (1) The Secretary shall prescribe the forms of all
10 returns required to be furnished under the provisions of
11 this chapter or provide for other methods of filing
12 returns and may provide in such forms for the giving of
13 such information as he may deem necessary or advisable.

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

18 (3) No return shall be complete unless and until it
19 is signed by or for the employer, business or other
20 person liable to make the return, or by someone
21 authorized to do so in behalf of such employer,
22 business, or other person. Every return shall be signed
23 by a natural person.

24 (4) The Secretary may require that, if any person or
25 persons actually prepare or sign a return for another

1 employer, business, or other person, a form stating such
2 facts and authorizing such person to sign such return be
3 signed by the person so preparing or signing the return,
4 and the employer, business, or other person in whose
5 name the return is filed.

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

8 (6) Any other provision of law to the contrary
9 notwithstanding, no oath shall be required upon any tax
10 return.

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

13 Section 8. Chapter 3 of title 54 of the Code of the
14 Federated States of Micronesia, as enacted by Public Law No.
15 13-71, is hereby amended by adding a new section 372 to read as
16 follows:

17 "Section 372. Records; Inspection and Audit.

18 All persons, employees, and businesses required to make
19 and file returns under this chapter shall keep and
20 maintain accurate records, and the records may be
21 inspected and audited at any reasonable time by the
22 Secretary for the purpose of administering the
23 provisions of this chapter."

24 Section 9. Chapter 3 of title 54 of the Code of the
25 Federated States of Micronesia, as enacted by Public Law No.

1 13-71, is hereby amended by adding a new section 373 to read as
2 follows:

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

4 (1) Upon the failure of any person, business, or
5 employer to make and file a return required by this
6 chapter within the time and in the manner and form
7 prescribed, or upon failure to pay any amount due, the
8 Secretary may notify such person, business, or employer
9 of such failure and demand that a return be made and
10 filed and the tax paid as required by this chapter.

11 (2) If such person, business, or employer upon notice
12 and demand by the Secretary fails or refuses within 30
13 days after receipt of said notice and demand to make and
14 file a return and pay the tax required by this chapter,
15 the secretary may make a return for such person,
16 business, or employer from any information and records
17 obtainable, and may levy and assess the appropriate
18 amount of tax.

19 (3) Such assessment shall be presumed to be correct
20 unless and until it is proved incorrect by the person,
21 business, or employer disputing the amount of the
22 assessment.

23 (4) In no event, however, shall any tax assessment,
24 demand for filing a return, or demand for payment be
25 made after seven years (7) of such time for filing a

1 return or for payment of taxes in the manner and form
2 prescribed."

3 Section 10. Chapter 3 of title 54 of the Code of the
4 Federated States of Micronesia, as enacted by Public Law No.
5 13-71, is hereby amended by adding a new section 374 to read as
6 follows:

7 "Section 374. Lien on property.
8 All taxes imposed or authorized under this chapter shall
9 be a lien upon any property of the person or business
10 obligated to pay said taxes and may be collected by levy
11 upon such property in the same manner as the levy of an
12 execution.

13 Section 11. Chapter 3 of title 54 of the Code of the
14 Federated States of Micronesia, as enacted by Public Law No.
15 13-71, is hereby amended by adding a new section 375 to read as
16 follows:

17 "Section 375. Criminal penalties.
18 Any person or business convicted under the provisions of
19 this chapter shall be fined not more than \$1,000, or, if
20 a natural person, imprisoned not more than one year, or
21 both."

22 Section 12. Chapter 3 of title 54 of the Code of the
23 Federated States of Micronesia, as enacted by Public Law No.
24 13-71, is hereby amended by adding a new section 376 to read as
25 follows:

1 "Section 376. Civil penalties.

2 The criminal penalties imposed by section 375 of this
3 chapter for violation of provisions of this chapter
4 shall be separate from, and in addition to, all other
5 penalties or interest provided for in this section. The
6 following civil penalties are hereby levied and shall be
7 assessed and collected by the Secretary:

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

19 (2) Failure to file after demand. Where a taxpayer
20 fails to file a return and pay tax after demand in any
21 case where the Secretary makes a return and assesses a
22 tax after a taxpayer's failure or refusal to make and
23 file a return and pay the tax required by this chapter,
24 10 percent of the tax assessed, in addition to the
25 penalties of subsection (1) of this section, shall be

1 added thereto.

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

9 (4) Interest. If any tax or penalty imposed by this
10 chapter is not paid on or before the date prescribed for
11 such payment, there shall be collected, in addition to
12 such tax and any penalties assessed, interest on the
13 unpaid balance of the tax principal at the rate of six
14 percent per annum from its due date until the date it is
15 paid.

16 Section 13. Chapter 3 of title 54 of the Code of the
17 Federated States of Micronesia, as enacted by Public Law No.
18 13-71, is hereby amended by adding a new section 377 to read as
19 follows:

20 "Section 377. Judicial review.

21 (1) If a decision of the Secretary is adverse to
22 the taxpayer, in whole or in part, the taxpayer
23 shall have the right within one year from the date
24 of such decision to institute an action for review,
25 irrespective of the amount, in a Court of competent

1 jurisdiction in the Federated States of Micronesia.
2 Such action shall be commenced by filing a petition
3 setting forth assignments of all errors alleged to
4 have been committed by the Secretary in his
5 determination of the assessment, the facts relied
6 upon to sustain such assignments of errors, and a
7 prayer for appropriate relief. The Secretary or
8 his successor in office shall be the defendant in
9 such proceedings.

10 (2) When the decision of the Court or an appeal
11 therefrom becomes final, the Secretary shall, upon
12 presentation of a certified copy of the degree,
13 make such adjustments as are necessary to correct,
14 amend, or abate the assessment, and to determine
15 whether any additional amount should be assessed.

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

19 Section 14. Chapter 3 of title 54 of the Code of the
20 Federated States of Micronesia, as enacted by Public Law No.
21 13-71, is hereby amended by adding a new section 378 to read
22 as follows:

23 "Section 378. Summons.

24 (1) For the purposes described under sections 372 and
25 804 of this title, the Secretary shall be authorized to

1 summon the person or persons liable for tax under this
2 title to appear before the Secretary or his designee and
3 at such appearance to produce such documents and to give
4 such testimony as specified in the summons.

5 (2) The provisions of subsection (1) of this section
6 shall also apply to any officer or employee or agent of
7 such person or persons described in subsection (1) of
8 this section, or any third party having possession,
9 custody, or care of books of accounts relating to the
10 business of the person or persons liable for tax under
11 this title."

12 Section 15. This act shall become law upon approval by the
13 President of the Federated States of Micronesia or upon its
14 becoming law without such approval.

15
16 Date: 5/20/10

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