
A BILL FOR 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 [~~and its~~
7 ~~80% or greater owned subsidiaries, its parent companies~~
8 ~~that own directly or indirectly 80% or more of the~~
9 ~~corporation, and the 80% or greater owned subsidiaries~~
10 ~~of such parent companies.~~] comprising of:

11 (a) the corporation,

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

14 (c) other corporations that own directly or
15 indirectly 80% or more of the shares of the
16 corporation, and,

17 (d) corporations other than the corporation
18 described in paragraph (a) of this section or

1 corporations described in paragraph (b) of this section,
2 or corporations where 80% or more shares are owned
3 directly or indirectly by the corporations described in
4 paragraph (c) of this section.

5 (2) 'Major Corporation' means any corporation [~~that is~~
6 ~~subject to taxation under this chapter, specifically,~~
7 ~~any corporation that is not exempt from taxation by~~
8 ~~section 313-1 of this chapter.] not principally engaged
9 in business in the Federated States of Micronesia as a
10 bank (as such term is defined in title 29 of the Code of
11 the Federated States of Micronesia, section 102(1)),
12 formed on or after January 1, 2005, and,~~

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

16 (b) the aggregate amount of the shareholders
17 equity or paid-in capital of the control group is
18 \$10,000,000 or more; or

19 (c) that is a captive insurance company licensed
20 pursuant to title 37 of the Code of the Federated States
21 of Micronesia regardless of the amount of
22 capitalization.

23 (3) 'Secretary' means the Secretary of the Department
24 of Finance and Administration.

25 (4) 'Taxable Year' shall mean the fiscal year of the

1 major corporation as reported to the Secretary under
2 section 314 of this chapter.

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

6 Section 2. Section 313 of title 54 of the FSM code, as
7 enacted by Public Law No. 14-110 and amended by Public Law No. 16-
8 19, is hereby further amended to read as follows:

9 "Section 313. Applicability of this chapter. Taxes
10 imposed under this chapter shall apply to all [~~capti~~
11 ~~insurance companies licensed pursuant to title 37 of the~~
12 ~~Code of the Federated States of Micronesia regardless of~~
13 ~~capitalization and to all other~~] major corporations
14 incorporated in the Federated States of Micronesia
15 [~~unless:~~] as defined in section 312.

16 [~~(1) the corporation's shareholder equity or paid-in~~
17 ~~capital as of the beginning of its fiscal year is less~~
18 ~~than \$1,000,000; or~~

19 [~~(2) the shareholder equity or paid-in capital of the~~
20 ~~corporation's control group is less than \$10,000,000; or~~

21 [~~(3) the corporation is principally engaged in business~~
22 ~~in the Federated States of Micronesia as a bank as such~~
23 ~~term is defined in title 29 of the Code of the Federated~~
24 ~~States of Micronesia section 102(1); or~~

25 [~~(4) the corporation was formed under the laws of the~~

1 ~~Federated States of Micronesia prior to January 1,~~
2 ~~2005.]”~~

3 Section 3. Section 321 of title 54 of the FSM Code, as
4 enacted by Public Law No. 13-71 and amended by Public Law No.
5 16-36, is hereby further amended to read as follows:

6 “Section 321. Tax Imposed. A tax at the rate of
7 twenty-one percent (21 percent) is hereby imposed for
8 each taxable year on the taxable income of every major
9 corporation. For all major corporations' taxable year
10 ending on or before March 30, 2011, 25.5% tax rate shall
11 apply to the entire taxable year. For all major
12 corporations' taxable year ending on or after March 31,
13 2011, 21% tax rate shall apply to the entire taxable
14 year.”

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

18 “Section 322. Taxable income defined. The taxable
19 income of a major corporation equals its income, before
20 income taxes, earned in the taxable year as determined
21 under International Financial Reporting Standard
22 (hereinafter, 'IFRS') or Generally Accepted Accounting
23 Principles (hereinafter, 'GAAP'), as IFRS or GAAP, as
24 the case may be, is regularly utilized to calculate
25 taxable income in the major corporation's principal

1 shareholder's, if a corporation, place of incorporation
2 or, if an individual, country of primary residence."

3 Section 5. Section 331 of title 54 of the FSM Code, as
4 enacted by Public Law No. 13-71, is hereby amended to read as
5 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 an 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 credits 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 create
24 a refund or credit for overpayment of tax; but any
25 amount of foreign tax not creditable by reason of this

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

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

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

- 15 (1) the cash receipts and disbursements method;
16 (2) an accrual method;
17 (3) any combination of the foregoing methods or any
18 other method selected by the major corporation. To the
19 extent permitted by IFRS or GAAP, as applicable, a major
20 corporation using any one of the above methods may, at
21 its option, convert to another one of the above methods,
22 provided that such a conversion may not be done more
23 than once during any sixty (60) month period without the
24 advance written consent of the Secretary."

25 Section 7. Section 351 title 54 of the FSM Code, as enacted

1 by Public Law No. 13-71 and amended by Public Law No. 14-110, is
2 hereby further amended to read as follows:

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

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

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

25 All major corporations shall, for their fiscal year

1 starting on or after April 1, 2010 pay fifty percent
2 (50%) of the tax it paid for the income of previous
3 fiscal year to the FSM by the end of the eighth (8th)
4 month of the current fiscal year. If a major corporation
5 does not have a previous fiscal year to determine its
6 fifty percent tax payment because it is newly formed or
7 is redomesticating in the FSM, the major corporation
8 shall make a payment of fifty percent (50%) of their
9 estimated tax liability of the current fiscal year at
10 the end of the 8th month of the current fiscal year. The
11 remaining fifty percent (50%) it paid for the previous
12 fiscal year or of the estimated tax liability of the
13 current fiscal year, as the case may be, shall be paid
14 by the last business day of the second month period
15 following the last day of the major corporation's fiscal
16 year. [Within 30 days of the last day of the major
17 corporation's taxable year, the major corporation shall
18 pay its estimated amount of the tax due for that year
19 (hereinafter, the 'estimated amount').] Any additional
20 tax due as shown on the annual income tax return of the
21 major corporation shall be paid by the last business day
22 of the sixth month period following the last day of the
23 major corporation's [~~taxable~~]fiscal year. If the
24 additional tax due as indicated on the annual income tax
25 return filed by a newly formed corporation or a

1 redomesticated corporation is more than ten percent
2 (10%) of the estimated tax amount paid, the major
3 corporation shall also pay interest, compounded monthly
4 and not in advance, on the additional tax due at the
5 rate of two thirds of one percent per month, or fraction
6 of a month, from the date the estimated tax amount was
7 due to the date the additional tax is paid."

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

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

13 (1) The Secretary shall, subject to approval of the
14 President of the Federated States of Micronesia,
15 prescribe and have printed reasonable regulations for
16 the enforcement of this chapter and such regulations
17 shall have the force and effect of law if they are not
18 in conflict with the express provisions of this chapter
19 or other laws of the Federated States of Micronesia.

20 (2) Such regulations shall also provide for the making
21 of returns concerning any taxes imposed by this chapter,
22 and the payment thereof, in any situations not
23 specifically covered by this chapter."

24 Section 10. Chapter 3, title 54, of the FSM code, as
25 amended, is hereby further amended by inserting a new section 371

1 to read as follows:

2 "Section 371. Tax returns – Information required.

3 (1) The Secretary shall prescribe the forms of all
4 returns required to be furnished under the provisions of
5 this chapter or provide for other methods of filing
6 returns and may provide in such forms for the giving of
7 such information as he may deem necessary or advisable.

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

11 (3) No return shall be complete unless and until it is
12 signed by or for the employer, business or other person
13 liable to make the return, or by someone authorized to
14 do so in behalf of such employer, business, or other
15 person. Every return shall be signed by a natural
16 person.

17 (4) The Secretary may require that, if any person or
18 persons actually prepare or sign a return for another
19 employer, business, or other person, a form stating such
20 facts and authorizing such person to sign such return be
21 signed by the person so preparing or signing the return,
22 and the employer, business, or other person in whose
23 name the return is filed.

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

1 (6) Any other provision of law to the contrary
2 notwithstanding, no oath shall be required upon any tax
3 return.

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

6 Section 11. Chapter 3, title 54, of the FSM code, as
7 amended, is hereby further amended by inserting a new section 372
8 to read as follows:

9 "Section 372. Records, Inspection and Audit.
10 All persons, employees, and businesses required to make
11 and file returns under this chapter shall keep and
12 maintain accurate records, and the records may be
13 inspected and audited at any reasonable time by the
14 Secretary for the purpose of administering the
15 provisions of this chapter."

16 Section 12. Chapter 3, title 54, of the FSM code, as
17 amended, is hereby further amended by inserting a new section 373
18 to read as follows:

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

20 (1) Upon the failure of any person, business, or
21 employer to make and file a return required by this
22 chapter within the time and in the manner and form
23 prescribed, or upon failure to pay any amount due, the
24 Secretary may notify such person, business, or employer
25 of such failure and demand that a return be made and

1 filed and the tax paid as required by this chapter.

2 (2) If such person, business, or employer upon notice
3 and demand by the Secretary fails or refuses within 30
4 days after receipt of said notice and demand to make and
5 file a return and pay the tax required by this chapter,
6 the secretary may make a return for such person,
7 business, or employer from any information and records
8 obtainable, may file a notice of lien pursuant to the
9 Secured Transactions Act, and may levy and assess the
10 appropriate amount of tax.

11 (3) Such assessment shall be presumed to be correct
12 unless and until it is proved incorrect by the person,
13 business, or employer disputing the amount of the
14 assessment.

15 (4) In no event, however, shall any tax assessment,
16 demand for filing a return, or demand for payment be
17 made after seven years (7) of such time for filing a
18 return or for payment of taxes in the manner and form
19 prescribed."

20 Section 13. Chapter 3, title 54, of the FSM code, as
21 amended, is hereby further amended by inserting a new section 374
22 to read as follows:

23 "Section 374. Lien on property.

24 All taxes imposed or authorized under this chapter shall
25 be a lien upon any property of the person or business

1 obligated to pay said taxes and may be collected by levy
2 upon such property in the same manner as the levy of an
3 execution."

4 Section 14. Chapter 3, title 54, of the FSM code, as
5 amended, is hereby further amended by inserting a new section 375
6 to read as follows:

7 "Section 375. Criminal penalties.
8 Any person or business convicted under the provisions of
9 this chapter shall be fined not more than \$1,000, or, if
10 a natural person, imprisoned not more than one year, or
11 both."

12 Section 15. Chapter 3, title 54, of the FSM code, as
13 amended, is hereby further amended by inserting a new section 376
14 to read as follows:

15 "Section 376. Civil penalties.
16 The criminal penalties imposed by section 375 of this
17 chapter for violation of provisions of this chapter
18 shall be separate from, and in addition to, all other
19 penalties or interest provided for in this section. The
20 following civil penalties are hereby levied and shall be
21 assessed and collected by this Secretary:

22 (1) Failure to file return on time. If any taxpayer
23 fails to make and file a return required under this
24 chapter on or before the date set, unless prior to that
25 date such taxpayer applied for and received an extension

1 for reasonable cause, one percent of the tax shall be
2 added for each 30 days or fraction thereof elapsing
3 between the due date of the return and the date on which
4 it is actually filed; provided, however, that the
5 minimum penalty under this subsection shall be five
6 dollars and the maximum penalty under this section shall
7 be 25 percent of the tax due.

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

14 (3) Failure to file after demand. Where taxpayer
15 fails to file return and pay tax after demand in any
16 case where the Secretary makes a return and assesses a
17 tax after a taxpayer's failure or refusal to make and
18 file a return and pay the tax required by this chapter,
19 10 percent of the tax assessed, in addition to the
20 penalties of subsection (1) of this section, shall be
21 added thereto.

22 (4) False and fraudulent returns. If any part of any
23 deficiency is due to fraud with intent to evade the tax,
24 or any portion thereof, 50 percent of the total amount
25 of such deficiency, in addition to the penalties

1 provided in subsections (1), (2), and (3) of this
2 section, shall be assessed and added to the deficiency
3 assessment.

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

10 Section 16. Chapter 3, title 54, of the FSM code, as
11 amended, is hereby further amended by inserting a new section 377
12 to read as follows:

13 "Section 377. Judicial review.

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

1 proceedings.

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

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

11 Section 17. Chapter 3, title 54, of the FSM code, as
12 amended, is hereby further amended by inserting a new section 378
13 to read as follows:

14 "Section 378. Summons.

15 (1) For the purposes described under sections 372 and
16 804 of this title, the Secretary shall be authorized to
17 summon the person or persons liable for tax under this
18 title to appear before the Secretary or his designee and
19 at such appearance to produce such documents and to give
20 such testimony as specified in the summons.

21 (2) The provisions of subsection (1) of this section
22 shall also apply to any officer or employee or agent of
23 such person or persons described in subsection (1) of
24 this section, or any third party having possession,
25 custody, or care of books of accounts relating to the

1 business of the person or persons liable for tax under
2 this title."

3 Section 18. This Act shall become law upon approval by the
4 President of the Federated States of Micronesia or upon its
5 becoming law without such approval.

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7 Date: 9/24/10

Introduced by: /s/ Joe N. Suka

Joe N. Suka
(by request)

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