
A BILL FOR AN ACT

To amend sections 312, 313, 314, 322, 331 and 352 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 13-71, and as amended by Public Law Nos. 14-110, 16-19, 16-52 and 17-73, to include Major FSM Branches, 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 Code of the
2 Federated States of Micronesia, as amended by Public Laws Nos.
3 14-110 and 16-52, is hereby further amended to read as
4 follows:

5 "Section 312. Definitions.

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

9 (a) the corporation,

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

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

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

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

7 (a) whose shareholders equity [~~or paid~~] or Paid-
8 ~~[capital]~~ Capital as of the beginning of its fiscal year
9 is \$1,000,000 or more; or

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

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

17 (3) 'Major FSM Branch' means any corporation not
18 principally engaged in business in the Federated States
19 of Micronesia as a bank (as such term is defined in
20 title 29 of the Code of the Federated States of
21 Micronesia, section 102(1)) authorized by law to issue
22 stock, organized under laws other than the laws of the
23 Federated States of Micronesia for a purpose or purposes
24 for which a corporation may be organized under the laws
25 of the Federated States of Micronesia, section 102(1),

1 which has a Permanent Establishment in the Federated
2 States of Micronesia and whose Paid-in Capital as of the
3 beginning of its fiscal year is \$1,000,000 or more.

4 ([3]4) 'Permanent Establishment' means a fixed place of
5 business through which the business of an enterprise is
6 wholly or partly carried on.

7 ([4]5) 'Secretary' means the Secretary of the Department
8 of Finance and Administration.

9 ([5]6) 'Taxable Year' shall mean the fiscal year of a
10 Major Corporation for Major FSM Branch, as the case may
11 be, as reported [~~to the Secretary~~] under section 314 of
12 this chapter.

13 ([6]7) 'Paid-in Capital' for purpose of this chapter
14 shall mean: (I) in the case of a Major Corporation, the
15 total amount of consideration contributed to the company
16 for the issuance of shares[-]; and (II) in the case of a
17 Major FSM Branch, the total amount of Domestic Capital
18 (as defined in section 314(2)) registered with the
19 Registrar of Corporation."

20 Section 2. Section 313 of title 54 the Code of the Federated
21 States of Micronesia, as amended by Public Laws Nos. 14-110, 16-19
22 and 16-52, is hereby further amended to read as follows:

23 "Section 313. Applicability of this chapter. Taxes
24 imposed under this chapter shall apply to all [m]Major
25 [e]Corporations [incorporated in] as defined in section

1 312. In case of conflict, this chapter shall prevail
2 over other laws or regulations of the Federated States
3 of Micronesia [as defined in section 312].

4 Section 3. Section 314 of title 54 of the Code of the
5 Federated States of Micronesia, as enacted by Public Laws Nos.
6 13-71, is hereby amended to read as follows:

7 ""Section 314. Filing of report. A major corporation
8 shall file an initial written report with the Secretary.
9 The written report shall be signed by the authorized
10 representative of the major corporation and shall state:

11 (1) A [m]Major [e]Corporation that is a Domestic
12 [e]Corporation shall file an initial written report with
13 the Secretary. The written report shall be signed by
14 the authorized representative of the Major Corporation
15 and shall state:

16 ([1]a) the true and correct name of the [m]Major
17 [e]Corporation;

18 ([2]b) the taxpayer identification number or other
19 identifying number, if any, of the [m]Major
20 [e]Corporation;

21 ([3]c) the mailing and office address of the
22 [m]Major [e]Corporation;

23 ([4]d) the name, address, telephone, and fax numbers
24 of the authorized representative for the [m]Major
25 [e]Corporation;

1 ([5]e) the nature of the [m]Major [e]Corporation's
2 principal business; and

3 ([6]f) the last day of the [m]Major [e]Corporation's
4 fiscal year. The report shall be filed by the [m]Major
5 [e]Corporation within sixty (60) days of the [m]Major
6 [e]Corporation becoming subject to this chapter."

7 (2) Every Foreign Corporation which undertakes to do
8 or carry on business in the Federated States of
9 Micronesia as a Major Corporation shall be permitted to
10 do so upon:

11 (a) remitting the sum of \$1,000,000 or more (or
12 its equivalent in another currency) to a commercial bank
13 licensed to business in the Federated States of
14 Micronesia, hereinafter referred to as a "Licensed
15 Bank", as initial capital for the purpose of doing or
16 carrying on business in the Federated States of
17 Micronesia;

18 (b) registering such amount as its initial
19 domestic capital ("Domestic Capital") by filing with the
20 Registrar of Corporations a copy of a statement prepared
21 by such Licensed Bank duly confirming its receipt from
22 the corporation of such Domestic Capital;

23 (c) filing with the Registrar of Corporations a
24 declaration stating:

25 (i) the true and correct name of the

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- 1 corporation;
- 2 (ii) the state or country wherein it was
- 3 incorporated;
- 4 (iii) the location and address of its
- 5 principal office;
- 6 (iv) the location and address of its branch
- 7 office in the Federated States of Micronesia, including
- 8 its mailing address;
- 9 (v) the names and addresses of its officers
- 10 and directors;
- 11 (vi) the nature of the corporation's
- 12 principal business (unless otherwise stated in the
- 13 Certificate of Incorporation, Charter, Articles of
- 14 Association or equivalent document to be filed pursuant
- 15 to paragraph (d) of this subsection);
- 16 (vii) the names and addresses of its officers
- 17 and directors;
- 18 (viii) the nature of the corporation's
- 19 principal business unless otherwise stated in the
- 20 certificate of Incorporation, Charter, Articles of
- 21 Association or equivalent document to be filed pursuant
- 22 to paragraph (d) of this subsection);
- 23 (ix) its Domestic Capital which shall be
- 24 \$1,000,000 or more;
- 25 (x) the name and branch address of the

1 Licensed Bank which received the Domestic Capital;
2 (xi) the name, citizenship and business
3 address of the person residing within the Federated
4 States of Micronesia upon whom legal notice and process
5 from the courts of the Federated States of Micronesia,
6 or notices from officials of the Federated States of
7 Micronesia, may be served;

8 (xii) the last day of the corporation's fiscal
9 year; and

10 (d) filing with the Registrar of Corporations a
11 copy of the corporation's Certificate of Incorporation,
12 Charter, Articles of Association or equivalent
13 document."

14 Section 4. Section 322 of title 54 of the Code of the
15 Federated States of Micronesia, as amended by Public Law No.
16 16-52, is hereby further amended to read as follows:

17 "Section 322. Taxable income defined. The taxable
18 income of a ~~[m]Major~~ ~~[e]Corporation~~ equals: (I) in the
19 case of a Domestic Corporation, 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]~~ Corporation

1 corporation's principal shareholder's, if a corporation,
2 place of incorporation or, if an individual, country of
3 primary residence; and (II) in the case of a Foreign
4 Corporation, its income, before income taxes, earned in
5 the taxable year as determined under IFRS or GAAP, as
6 IFRS or CAAP, as the case may be, is regularly utilized
7 to calculate taxable income in the corporation's place
8 of incorporation, and attributable to a Permanent
9 Establishment in the FSM through which the corporation
10 carried on its business."

11 Section 5. Section 331 of title 54 of the Code of the
12 Federated States of Micronesia, as amended by Public Law No.
13 16-52, is hereby further amended to read as follows:

14 "Section 331. Non-refundable credit for payment of
15 foreign taxes.

16 (1) In the case of a domestic (but not a foreign)
17 [m]Major [e]Corporation, any income taxes paid or
18 accrued on taxable income during the taxable year to a
19 foreign country shall be allowed as a credit against the
20 amount of tax imposed by section 321.

21 (2) In the case of a dividend received by a [m]Major
22 [e]Corporation, a credit shall also be allowed against
23 the amount of tax imposed by section 321 in an
24 appropriate amount to reflect any income taxes the
25 [m]Major [e]Corporation can demonstrate have been paid

1 with respect to such dividend to any foreign country or
2 countries.

3 (3) In no case shall a ~~[m]Major~~ [e]Corporation, in any
4 taxable year, be entitled to credits which, in the
5 aggregate, exceed the amount of the tax imposed, for
6 that taxable year, under the provisions of section 321
7 of this chapter.

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

16 Section 6. Section 352 of title 54 of the Code of the
17 Federated States of Micronesia, as amended by Public Law No.
18 16-52 and 17-73, is hereby further amended to read as follows:

19 "Section 352. Payment of tax due. Taxes shall be paid
20 as follows:

21 (1) A ~~[m]Major~~ [e]Corporation shall, pay fifty percent
22 (50%) of the tax it paid for the income of the previous
23 fiscal year, if any, hereinafter referred to as "Tax
24 Deposit", to the FSM by the end of the eighth (8th) month
25 of the current fiscal year. This is unless the Major

1 Corporation requests a reduction or waiver as the Tax
2 Deposit is rendered unnecessary because the expected tax
3 payable in the current fiscal year is less than the
4 amount of the Tax Deposit. Reduction or waiver of the
5 Tax Deposit is subject to approval by the Secretary;
6 however, such approval must not be unreasonably
7 withheld.

8 (2) A ~~[m]~~Major ~~[e]~~Corporation which pays an amount
9 less than the Tax Deposit shall pay interest on the
10 delinquent tax balance of one-half of one percent (0.5%)
11 for each full month until the full amount is paid unless
12 approval is granted under subsection (1) of this
13 section).

14 (3) A ~~[m]~~Major ~~[e]~~Corporation that does not have a
15 previous fiscal year to determine its Tax Deposit
16 ~~[either]~~ because it is newly formed ~~[or]~~ is
17 redomesticating into the FSM~~[7]~~ or newly created a
18 Permanent Establishment in the FSM, shall be exempt from
19 the payment of Tax Deposit and any filing requirements
20 pertaining to the Tax Deposit.

21 (4) A ~~[m]~~Major ~~[e]~~Corporation shall complete and
22 submit to the Department of Finance and Administration
23 an annual statement declaring the taxable income with
24 permitted deductions and exemptions, hereinafter
25 referred to as "Tax Return", by the last business day of

1 the sixth month period following the last day of the
2 [M]Major [E]Corporation's fiscal year. The annual
3 statement shall be accompanied by one of the following:

4 (a) Any additional tax payment, after the
5 subtraction of the Tax Deposit, due as shown on the Tax
6 Return of the [M]Major [E]Corporation shall be paid by
7 the last business day of the sixth month period
8 following the last day of the [M]Major [E]Corporation's
9 fiscal year.

10 (b) If the [M]Major [E]Corporation pays,
11 including the Tax Deposit by the end of the eighth (8th)
12 month during the fiscal year, as per sub-section [A]1
13 above, an amount less than the tax due as shown on the
14 annual tax return by the last business day of the six
15 month period following the last day of the
16 ~~[E]Corporation's~~ Major Corporation's fiscal year, it
17 shall pay interest on the delinquent tax balance of one
18 half of one percent (0.5%) for each full month until the
19 full amount is paid.

20 (5) Should the Tax Deposit paid by the [M]Major
21 [E]Corporation exceed the total annual income tax amount
22 shown on the Tax Return resulting in overpayment of tax,
23 then the [M]Major [E]Corporation shall be entitled to
24 their rights conferred under section 332, chapter 3 of
25 title 54 of the Code of the Federated States of

1 Micronesia. The [m]Major [e]Corporation shall apply to
2 the Department of Finance and Administration for either
3 of the following tax treatment options provided under
4 Section 332 by indicating their choice in the Tax Return
5 form:

6 (a) To have the overpaid tax amount refunded in
7 full, in which case, the Department of Finance and
8 Administration shall credit the [m]Major
9 [e]Corporation's bank account within a two (2) month
10 period from the last business day of the sixth month
11 period following the last day of the [m]Major
12 [e]Corporation's fiscal year;

13 (b) To have the overpaid tax amount credited to
14 any tax payments by the [m]Major [e]Corporation to the
15 Federated States of Micronesia."

16 Section 7. Section 360 title 54 of the Code of the Federated
17 States of Micronesia, as amended by Public Laws Nos. 16-52 and 17-
18 73, is hereby further amended to read as follows:

19 "Section 360. Engaging in business or operating a
20 business in the Federated States of Micronesia. A Major
21 [e]Corporation incorporated in the Federated States of
22 Micronesia or a Major FSM Branch that only holds, buys,
23 sell, transfers or otherwise transacts with ~~[assets or~~
24 ~~property located outside of the FSM, including but not~~
25 ~~limited to, businesses, shares, stocks, bonds,~~

1 ~~annuities, treasury bills, partnership unites or trust~~
2 ~~units]~~ overseas Assets (as defined below) is not
3 engaging in business in the Federated States of
4 Micronesia or a business operating in the Federated
5 States of Micronesia for the purposes of section 323 of
6 this chapter or title 32, chapter 2: the Foreign-
7 Investment Act of the Code of the Federated States of
8 Micronesia. For the purposes of this section 360,
9 “Overseas Assets” means assets or property located
10 outside of the Federated States of Micronesia, including
11 but not limited to, businesses, shares, stocks, bonds,
12 annuities, treasury bills, partnership units or trust
13 units, real estate, precious metals, antiques and art.|

14 Section 8. This act shall become law upon approval by the
15 President of the Federated States of Micronesia or upon its
16 becoming law without such approval.

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18 Date: _____ Introduced by: _____

Florencio S. Harper
(by request)

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