
A BILL FOR AN ACT

To further amend title 54 of the Code of the Federated States of Micronesia (Annotated), as amended, by amending sections 212, 221, 222 and 805 thereof, to increase the import duty on alcohol, wine, sugar sweetened beverages and food products with high sodium content, and to require ten percent of net tax collected from such increase to be deposited in the Health Revolving Fund, and for other purposes.

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

1 Section 1. This act is crucial for the following reasons:

2 (1) It protects and promotes the health of the public of
3 the Federated States of Micronesia;

4 (2) It addresses the State of Health Emergencies declared
5 by each of the four states of the Federated States of Micronesia
6 acknowledging the epidemic of non-communicable diseases in the FSM
7 and calling for resolute mitigating intervention;

8 (3) It mitigates the incidence of preventable non-
9 communicable diseases through decreasing consumption of alcohol,
10 wine, sugar sweetened beverages and food products with high sodium
11 content; and

12 (4) It implements the FSM's obligations under the World
13 Health Organisation Framework Convention on Tobacco Control, WHO
14 Global Action Plan for the Prevention and Control of Non-
15 Communicable Diseases 2013 – 2020, and the strategies agreed upon
16 in the Pacific Islands Non-Communicable Disease Roadmap.

17 Section 2. Section 212 of title 54 of the Code of the

1 Federated States of Micronesia (Annotated), as amended, is hereby
2 further amended to read as follows:

3 “Section 212. Definition

4 In this chapter, except where otherwise specified, the
5 following terms shall have the meanings stated below:

6 (1) “Ad valorem” (Latin for “according to the value”)
7 means a tax imposed at a rate equal to a percentage of
8 value.

9 (2) “Aircraft” includes airplanes, seaplanes,
10 airships, balloons or any other means of aerial
11 locomotion.

12 (3) “Airport” means an official port of entry for
13 aircraft as identified in or pursuant to title 18 of
14 this code and amendments thereto.

15 (4) “Alcoholic beverage” means a drink containing
16 ethyl alcohol of agricultural origin in any percentage,
17 derived either through natural fermentation, or addition
18 during process.

19 [~~4~~] (5) “Approved form” means a form approved by the
20 Secretary of Finance.

21 [~~5~~] (6) “Arrival” means the first time goods or
22 passengers become subject to Customs control within the
23 FSM or any subsequent time before reaching their final
24 destination.

25 [~~6~~] (7) “Bottle” means any closed or sealed

1 container regardless of size or shape, including those
2 made of glass, metal, paper, plastic, or any other
3 material or combination of materials.

4 ~~(7)~~(8) "Caloric sweetener" means any caloric
5 substance suitable for human consumption that humans
6 perceive as sweet, including sucrose, fructose, glucose,
7 other sugars, and fruit juice concentrates. Caloric
8 sweetener does not include non-caloric sweeteners. For
9 purposes of this definition, caloric means a substance
10 that adds calories to the diet of a person who consumes
11 that substance.

12 ~~(8)~~(9) "Cannabis" means a cannabis plant, whether
13 living or dead, which includes, in any form, any
14 flowering or fruiting tops, leaves, seeds, stalks or any
15 other part of a cannabis plant and any mixture of parts
16 of a *cannabis* plant.

17 ~~(9)~~(10) "CIF" means "costs, insurance, and freight"
18 incurred for imported goods, and includes all costs and
19 charges associated with the goods up through the time
20 they are delivered to and unloaded at an FSM port of
21 entry or post office.

22 ~~(10)~~(11) "Cigar" means a more or less cylindrical
23 roll of tobacco cured for smoking, of any of various
24 lengths, thicknesses or degrees of straightness, usually
25 wrapped in tobacco leaf or equivalent and includes

1 cigarillos.

2 (12) "Cigarette" means a short tightly rolled cylinder
3 of tobacco, wrapped in thin paper and often having a
4 filter tip for smoking.

5 ~~(12)~~(13) "Commissioner" means the Commissioner of
6 Customs.

7 ~~(13)~~(14) "Congress" means the Congress of the FSM.

8 ~~(14)~~(15) "Container" means an article of transport
9 equipment:

10 (a) of a permanent character and accordingly
11 strong enough to be suitable for repeated use;

12 (b) specially designed to facilitate the
13 transport of goods, by one or more modes of transport,
14 without intermediate reloading; and

15 (c) designed to be secured and/or readily
16 handled, having corner fittings for these purposes.

17 (d) In addition, the following shipping term
18 used with containers has the following meaning: "CY-CY"
19 means all the goods packed in the container are for the
20 one consignee and the container is consigned from
21 container yard to another container yard and will not
22 normally be unpacked at the wharf.

23 ~~(15)~~(16) "Controlled substance" means those described
24 in sections 1119, 1121, 1123, 1125, and 1127 of title 11
25 of this code or successor provision of law.

1 [~~16~~] (17) "Customs" means the FSM Department of
2 Finance, Division of Customs.

3 [~~17~~] (18) "Customs officer" means a person:

4 (a) employed by the FSM Department of Finance,
5 Division of Customs;

6 (b) authorized in writing by the Secretary under
7 this chapter to perform all of the functions of a
8 Customs officer; or

9 (c) deputized in accordance with the provisions
10 of section 268 of this chapter.

11 [~~18~~] (19) "Duty" means any tax payable on the
12 importation of goods, and "dutiable goods" means those
13 goods subject to tax on their importation.

14 [~~19~~] (20) "FOB" ("free on board") means the value of
15 goods when shipped for export, and includes all costs
16 and charges up to the time of delivery of the goods on
17 board the exporting vessel or aircraft.

18 [~~20~~] (21) "Forfeiture" means the surrender of
19 ownership of property to the FSM government following a
20 breach of certain provisions of this chapter; it is
21 independent of and in addition to any penalty imposed by
22 this chapter.

23 [~~21~~] (22) "FSM" means the Federated States of
24 Micronesia.

25 [~~22~~] (23) "Goods" means any type of merchandise,

1 product, commodity, vehicle, moveable personal property,
2 or commercial wares.

3 [(23)] (24) "Importer" means any person by or for whom
4 any goods are imported, and includes the consignee and
5 any other person who is beneficially interested in the
6 goods.

7 [(24)] (25) "Master" means:

8 (a) In relation to a vessel the person in charge
9 or command of the vessel;

10 (b) In relation to an installation the person in
11 charge of the installation.

12 [(25)] (26) "Narcotic drug" means those described in
13 subsection (15) of section 1112 of title 11 of this code
14 or successor provision of law.

15 [(26)] (27) "Non-caloric sweetener" means any non-
16 caloric substance suitable for human consumption that
17 humans perceive as sweet, including aspartame,
18 saccharin, stevia, and sucralose. Non-caloric sweetener
19 does not include caloric sweeteners. For purposes of
20 this definition, non-caloric means a substance that
21 contains fewer than five calories per serving.

22 [(27)] (28) "On or about the body" means on or within
23 the body, clothing, footwear, purse, handbag, or similar
24 article.

25 [(28)] (29) "Owner" means:

1 (a) In respect to goods, any person being or
2 holding himself or herself out to be the owner,
3 importer, exporter, consignee, agent or person possessed
4 of, or having control of, or power of disposition over
5 the goods;

6 (b) In respect of a vessel or aircraft, the
7 owner of record, or a person acting as agent on behalf
8 of the owner of record.

9 ~~[(29)]~~ (30) "Package" includes every means by which
10 goods for transportation may be cased, covered,
11 enclosed, contained, or packed.

12 ~~[(30)]~~ (31) "Person" means any individual, company,
13 corporation, partnership, unincorporated association, or
14 other business entity.

15 ~~[(31)]~~ (32) "Pilot" means the person in charge or in
16 command of an aircraft.

17 ~~[(32)]~~ (33) "Place" means any location, building or
18 site, and includes moveable locations such as a vessel
19 or aircraft.

20 ~~[(33)]~~ (34) "Port" or "Port of entry" means an official
21 port of entry identified in or pursuant to title 18 of
22 this code and amendments thereto.

23 ~~[(34)]~~ (35) "Powder" means any solid mixture of
24 ingredients used in making, mixing, or compounding
25 sugar-sweetened beverages by mixing the powder with one

1 or more other ingredients, including water, ice, syrup,
2 simple syrup, fruits, vegetables, fruit juice, vegetable
3 juice, carbonation, or other gas.

4 [(~~35~~)] (36) "President" means the President of the FSM.

5 [(~~36~~)] (37) "Prohibited goods" means any goods the
6 importation or exportation of which is prohibited under
7 FSM law.

8 [(~~37~~)] (38) "Regulations" means any regulations
9 promulgated pursuant to this chapter.

10 [(~~38~~)] (39) "Sale" means the transfer of title or
11 possession for valuable consideration regardless of the
12 manner by which the transfer is completed.

13 (40) "Salt reduction target" means the recommended
14 maximum level of sodium in selected categories of
15 processed foods proposed by the World Health
16 Organization (WHO) for Pacific Island countries, and as
17 amended from time to time.

18 [(~~39~~)] (41) "Secretary" means the Secretary of the FSM
19 Department of Finance.

20 [(~~40~~)] (42) "Smuggling" means any importation or
21 exportation, attempted importation or exportation, with
22 the intent to defraud the FSM.

23 [(~~41~~)] (43) "Stamp" means device or instrument used by a
24 Customs officer to make a distinctive impression or
25 imprint, to identify and evidence the clearance of

1 imported or exported goods and the clearance of vessels
2 or aircraft.

3 (44) "Sugar-sweetened beverage" means any nonalcoholic
4 beverage, carbonated or noncarbonated, that is intended
5 for human consumption and contains any added caloric
6 sweetener. As used in this definition, nonalcoholic
7 beverage means any beverage that contains less than one-
8 half of one per cent alcohol per volume. Sugar-sweetened
9 beverage does not include:

10 (a) Beverages consisting of one hundred per cent
11 natural fruit juice or natural vegetable juice with no
12 added caloric sweetener. For purposes of this paragraph,
13 natural fruit juice or natural vegetable juice means the
14 original liquid resulting from the pressing of fruits or
15 vegetables, respectively, or the liquid resulting from
16 the dilution of dehydrated natural fruit juice or
17 natural vegetable juice, respectively;

18 (b) Milk without any added caloric sweetener.
19 For purposes of this paragraph milk means natural liquid
20 milk regardless of animal source or butterfat content;
21 natural milk concentrate, whether or not reconstituted,
22 regardless of animal source or butterfat content;
23 dehydrated natural milk, whether or not reconstituted
24 and regardless of animal source or butterfat content;
25 soy milk; or rice milk.

1 (45) "Syrup" means a liquid mixture of ingredients
2 used in making, mixing, or compounding sugar-sweetened
3 beverages using one or more other ingredients including
4 water, ice, a powder, simple syrup, fruits, vegetables,
5 fruit juice, vegetable juice, carbonation, or other gas.

6 (46) "Tobacco" means a product made or derived
7 entirely or partly of leaf tobacco or any other parts of
8 a tobacco plant , which is intended for human
9 consumption, to be smoked, sucked, chewed or snuffed or
10 otherwise inhaled or ingested.

11 ~~[(43)]~~ (47) "Unlawfully imported, exported, or carried
12 goods" means any smuggled goods and any goods imported,
13 exported, or carried in breach of the provisions of this
14 chapter, or any other law of the FSM, or whose sale,
15 possession or use is prohibited or contrary to
16 restrictions imposed by the State into which the
17 importation took place. The above-defined phrase
18 carries a like meaning wherever similarly stated in this
19 chapter.

20 ~~[(44)]~~ (48) "Vehicle" means every description of
21 motorized carriage or other contrivance used or capable
22 of being used as a means of transport on land.

23 Section 3. Section 221 of title 54 of the Code of the
24 Federated States of Micronesia (Annotated), as amended, is hereby
25 further amended to read as follows:

1 "Section 221. Levy and rates.

2 The following import duties are hereby levied on all
3 products specified herein which are imported into the
4 FSM:

5 (1) cigarettes, at the rate of \$~~[0.025]~~ 0.075 per
6 cigarette on and from January 1, 2018, provided that
7 this rate shall increase by \$~~[0.005]~~ 0.025 per cigarette
8 on January 1 of each of the years ~~[2007, 2009, 2011,~~
9 ~~2013, and 2015]~~ 2019, 2020, 2021 and 2022 and
10 thereafter shall be adjusted by the rate of inflation on
11 1 January of each year;

12 (2) cigars, at the rate of \$0.075 per cigar on and
13 from January 1, 2018, provided that this rate shall
14 increase by \$0.025 per cigar on January 1 of each of the
15 years 2019, 2020, 2021 and 2022;

16 (3) tobacco, other than cigarettes and cigars, at the
17 rate of ~~[50 percent ad valorem]~~ \$0.031 per gram on
18 January 1, 2018, provided that this rate shall increase
19 by \$0.05 per gram on January 1 of each of the years
20 2019, 2020, 2021 and 2022 and thereafter shall be
21 adjusted by the rate of inflation on 1 January of each
22 year;

23 (4) perfumery, cosmetics, and toiletries, including
24 cologne and other toilet waters, articles of perfumery,
25 whether in sachets or otherwise, and all preparations

1 used as applications to the hair or skin, lipsticks,
2 pomades, powders, and other toilet preparations not
3 having medicinal properties, at the rate of 25
4 percent *ad valorem*;

5 (5) Sugar-sweetened beverages other than bottled
6 water, at the rate of 5 cents per fluid ounce on and
7 from 1 March 2018. For syrups and powders, the tax must
8 be applied to the largest volume of sugar-sweetened
9 beverages produced from that syrup or powder according
10 to the manufacturer's instruction [~~soft drinks, drink~~
11 ~~mixes, drink preparations, coffee, tea, and nonalcoholic~~
12 ~~beverages, at the rate of 25 percent *ad valorem*,~~
13 ~~provided, however, that any beverage having a fruit~~
14 ~~juice content of 25 percent or more by volume shall be~~
15 ~~at the rate of three percent *ad valorem*];~~

16 (6) Alcoholic beverages at a rate of 5 cents per
17 fluid ounce on all alcoholic beverages with an alcohol
18 volume of up to 10 percent and 10 cents per fluid ounce
19 on all alcoholic beverages with an alcohol volume of 10
20 to 20 percent and 20 cent per fluid ounce on all
21 alcoholic beverages with an alcohol volume over 20
22 percent on and from 1 January 2018 [~~beer and malt~~
23 ~~beverages, at the rate of \$0.25 per 12 fluid ounces;~~
24 ~~(6) distilled alcoholic beverages, at the rate of 12~~
25 ~~dollars per gallon;~~

1 ~~(7) wine at the rate of 30 percent ad valorem;~~]

2 (7) foodstuffs for human consumption, other than food
3 products referred to in subsections (5), (6) and (8), at
4 the rate of three percent *ad valorem*; provided, however,
5 that fresh and frozen fish and seafood, shall be at the
6 rate of 25 percent *ad valorem*;

7 (8) Processed food products in the categories for
8 which a Pacific salt reduction target has been set by
9 the World Health Organization (WHO) listed in Annex 1,
10 with a sodium content in excess of the target level (mg
11 sodium/100g) set by the WHO and listed in Annex 1, at a
12 rate of 50% ad valorem on and from 1 March 2018;

13 (9) gasoline and diesel fuel, at the rate of five
14 cents per gallon;

15 (10) laundry bar soap, at the rate of 25 percent *ad*
16 *valorem*; and

17 (11) all other imported products, except those
18 specified above, at the rate of four percent *ad valorem*.

19 (12) The levies under subsections (5), (6) and (8)
20 shall be reviewed every two years by the Department of
21 Finance & Administration and the Department of Health
22 and Social Affairs to recommend adjustment to FSM
23 Congress.

24 Section 4. Section 222 of title 54 of the Code of the
25 Federated States of Micronesia (Annotated), as amended, is hereby

1 further amended to read as follows:

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

7 (a) goods have been damaged, pillaged, lost or
8 destroyed during the voyage;

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

11 (c) the Commissioner is satisfied that, owing to
12 a fault or defect in any goods, the importer has
13 received a reduction or a refund, in whole or part, of
14 the price paid for the goods.

15 (2) *Goods imported for subsequent export.*

16 (a) Upon application to and approval by the
17 Secretary, import duty paid on the following goods shall
18 be refunded: goods imported for processing in the FSM,
19 not otherwise used in the FSM, and subsequently exported
20 from the FSM. For purposes of this subsection, raw
21 materials or ingredients which are worked into or
22 otherwise become part of a different or more finished
23 product are deemed exported when that product is
24 exported.

25 (b) Goods imported for processing are eligible

1 for the duty refund when the finished products which the
2 imported goods were processed into have been loaded on
3 an aircraft or vessel for direct removal from the FSM
4 and that aircraft or vessel has departed from the
5 port. After they have been so loaded, the goods shall
6 again be subject to import duty if they are unloaded or
7 used in the FSM. With respect to importers primarily
8 engaged in importing for processing and subsequent
9 export, the Secretary shall provide for waiving, by
10 regulation rather than collecting and subsequently
11 refunding, duties.

12 (c) Upon application to and approval by the
13 Secretary, import duty shall be waived on the following
14 goods: goods imported for transshipment through the
15 FSM, not to be used in the FSM, which are securely
16 stored while in the FSM and which are exported from the
17 FSM within a reasonable time of import to the FSM, as
18 defined by regulation. Should these goods not be
19 exported within a reasonable time, the importer will be
20 subject to a penalty equal to one-quarter of the import
21 duty that would have been due if the goods were to be
22 used in the FSM. Should these goods be removed from the
23 secure storage facility or used in the FSM, they will be
24 subject to the full import duty.

25 (d) The burden of proving that goods imported

1 are for subsequent export shall be upon the
2 importer/exporter as specified in regulations.

3 (3) *Goods carried in per trip abroad.* Each time an
4 individual person enters or returns to the FSM from a
5 foreign jurisdiction, he or she is entitled to bring
6 into the FSM the following goods duty free, provided
7 that such goods are for that person's own personal use
8 or consumption and not for resale or exchange, and
9 provided further that such person is permitted by
10 applicable State law to possess, use, and consume such
11 goods:

12 (a) up to [~~200~~] 100 cigarettes;

13 (b) up to [~~one~~] half a pound of tobacco or [~~20~~]
14 10 cigars;

15 (c) up to 52 fluid ounces or 1500 milliliters of
16 distilled alcoholic beverages; and

17 (d) up to two hundred dollars (\$200) worth of
18 goods other than tobacco products[~~, beer and malt~~
19 ~~beverages, distilled~~] or alcoholic beverages[~~, and~~
20 ~~wine~~].

21 (4) *Visitors' personal effects.* A visitor to the FSM
22 may import *bona fide* personal effects into the FSM duty
23 free, provided the goods are for the visitor's own
24 personal use and will be taken with the visitor when he
25 or she leaves the country.

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

7 (6) *Goods used in foreign aid projects.* An
8 international organization, foreign contractor, or other
9 foreign entity may import goods into the FSM duty free
10 in connection with the performance of services or other
11 conduct of business in furtherance of a foreign aid
12 agreement entered into by the FSM, the terms of which
13 require that such import shall not be subject to
14 taxation by the FSM; provided that if and when such
15 goods are subsequently sold in the FSM, import duty
16 shall be due based on the sale amount. The duty,
17 together with penalties and interest, shall be the joint
18 and several personal liability of the importer and the
19 purchaser and shall be secured by first liens on the
20 goods and on the importer's property as hereinafter
21 provided.

22 (7) *Certain fishing vessels and equipment.* Fishing
23 vessels basing in the Federated States of Micronesia
24 under a valid permit or license issued pursuant to title
25 24 of this code shall not be subject to the import duty

1 on either the vessel or equipment installed in the
2 vessel. This exemption shall apply to replacement parts
3 and equipment imported by these fishing vessels as well.

4 (8) *Parcels which would generate a de minimis*
5 *duty.* Parcels mailed or otherwise sent into the FSM,
6 which would otherwise generate a *de minimis* duty, shall
7 be exempt from import duty, provided that such goods are
8 for the recipient's own personal use or consumption and
9 not for resale or exchange. Parcels with values up to
10 the amount specified in subsection (3)(d) of this
11 section, shall be exempt.

12 (9) *Health, education and welfare related goods*
13 *donated for humanitarian use.* Upon application to and
14 approval by the Secretary, the import duty on goods
15 related to health, education or welfare donated without
16 cost for humanitarian purposes, and not for resale,
17 shall be waived or refunded; provided, however, that if
18 and when any of such goods are subsequently sold in the
19 FSM, import duty shall be due based on the sale
20 amount. The duty, together with penalties and interest,
21 shall be the joint and several personal liability of the
22 importer and the purchaser and shall be secured by first
23 liens on the goods and on the importer's property as
24 hereinafter provided.

25 Section 5. Section 805 of title 54 of the Code of the

1 Federated States of Micronesia (Annotated), as amended, is hereby
2 further amended to read as follows:

3 "Section 805. Distribution of revenues.

4 (1) (a) The treasurer of the Federated States of
5 Micronesia shall pay ten percent of the net taxes
6 collected pursuant to subsections 221(1), (2), (3), (5),
7 (6) and (8) of this title, beginning 1 January 2018,
8 into the Health Revolving Fund established under Title
9 55, Sub-chapter XVI.

10 (b) The treasurer of the Federated States of
11 Micronesia shall pay eighty percent of the net taxes
12 collected pursuant to section 221(9) of this title, and
13 fifty percent at the National Government's share of all
14 other net taxes collected pursuant to sections 121, 141,
15 and 221 of this title into the treasury of the State
16 government to which the taxes are attributable for
17 appropriation by the State legislature.

18 (c) An additional twenty percent of the total of
19 all other net taxes collected pursuant to sections 121,
20 141, and 221 of this title after the Treasurer of the
21 Federated States of Micronesia has administered
22 distribution under subsections (a) and (b) shall be
23 deposited by the treasurer of the Federated States of
24 Micronesia into the State sub-account "A" of the FSM
25 Trust Fund on behalf of the National Government for the

1 State government to which the taxes are attributable.
2 The additional twenty percent (20%) deposited by the
3 National Government into individual States sub-account A
4 may not be withdrawn by the States.

5 (d) Twenty-five percent of the amount remaining,
6 after the transfer of funds pursuant to subsections
7 ~~11(a)~~, ~~and 11(b)~~, and 11(c) of this section, of the
8 net taxes collected pursuant to subsection 221(1) of
9 this title shall be placed in an account to be used
10 solely for post-graduate school scholarships or full-
11 time post-secondary courses of study leading to
12 commercial Federal Aviation Administration (FAA)
13 licenses, ratings and certifications. The allottee of
14 the scholarship funds shall be the President of the
15 Federated States of Micronesia or his designee;

16 (e) Except as specifically provided in parts
17 (a), (b), ~~and (c)~~, and (d) of this subsection, all net
18 taxes collected shall be part of the General Fund of the
19 Federated States of Micronesia, subject to appropriation
20 by Congress pursuant to title 55 of the Code of the
21 Federated States of Micronesia.

22 (2) 'Net taxes' as used in subsection (1) of this
23 section means gross collections of taxes, penalties,
24 interest, or other related charges less refunds."

25 Section 6. This act shall become law upon approval by the

