

AN ACT

To further amend title 54 of the Code of the Federated States of Micronesia, as amended, by adding a new chapter 3 to establish an income tax for corporations, and for other purposes.

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

1 Section 1. Title 54 of the Code of the Federated States of
2 Micronesia, as amended, is hereby further amended by adding a new
3 chapter 3 entitled "Income Tax Regime for FSM Corporations".

4 Section 2. Title 54 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by adding a new
6 section 311 of chapter 3 to read as follows:

7 "Section 311. Short title. This chapter may be cited
8 as the 'Corporate Income Tax Act of 2004'."

9 Section 3. Title 54 of the Code of the Federated States of
10 Micronesia, as amended, is hereby further amended by adding a new
11 section 312 of chapter 3 to read as follows:

12 "Section 312. Definitions.

13 (1) 'Control group' for purposes of this chapter shall
14 mean a corporation and its 80% or greater owned
15 subsidiaries, its parent companies that own directly or
16 indirectly 80% or more of the corporation, and the 80%
17 or greater owned subsidiaries of such parent companies.

18 (2) 'Major Corporation' means any corporation that is
19 subject to taxation under this chapter, specifically,
20 any corporation that is not exempt from taxation by

1 section 313 of this chapter.

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

4 (4) 'Taxable Year' shall mean the fiscal year of the
5 major corporation as reported to the Secretary under
6 section 314 of this chapter."

7 Section 4. Title 54 of the Code of the Federated States of
8 Micronesia, as amended, is hereby further amended by adding a new
9 section 313 of chapter 3 to read as follows:

10 "Section 313. Applicability of this chapter. Taxes
11 imposed under this chapter shall apply to all
12 corporations incorporated in the Federated of States of
13 Micronesia unless:

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

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

19 (3) the corporation is principally engaged in business
20 in the Federated States of Micronesia as a bank as such
21 term is defined in 29 F.S.M.C. §102(1); or

22 (4) the corporation was formed under the laws of the
23 Federated States of Micronesia prior to January 1,
24 2005."

25 Section 5. Title 54 of the Code of the Federated States of

1 Micronesia, as amended, is hereby further amended by adding a new
2 section 314 of chapter 3 to read as follows:

3 "Section 314. Filing of report. A major corporation
4 shall file an initial written report with the Secretary.
5 The written report shall be signed by the authorized
6 representative of the major corporation and shall state:

7 (1) the true and correct name of the major
8 corporation;

9 (2) the taxpayer identification number or other
10 identifying number, if any, of the major corporation;

11 (3) the mailing and office address of the major
12 corporation;

13 (4) the name, address, telephone, and fax numbers of
14 the authorized representative for the major
15 corporation;

16 (5) the nature of the major corporation's principal
17 business; and

18 (6) the last day of the major corporation's fiscal
19 year.

20 The report shall be filed by the major corporation
21 within sixty (60) days of the major corporation becoming
22 subject to this chapter."

23 Section 6. Title 54 of the Code of the Federated States of
24 Micronesia, as amended, is hereby further amended by adding a new
25 section 315 of chapter 3 to read as follows:

1 "Section 315. Continued applicability of this chapter.
2 A major corporation subject to taxation under this
3 chapter shall continue to be subject to taxation under
4 this chapter through the last day of the taxable year in
5 which it meets the criteria set forth in section 313 on
6 any day of such taxable year."

7 Section 7. Title 54 of the Code of the Federated States of
8 Micronesia, as amended, is hereby further amended by adding a new
9 section 321 of chapter 3 to read as follows:

10 "Section 321. Tax imposed. A tax at the rate of
11 twenty-five and a half percent (25.5%) is hereby imposed
12 for each taxable year on the taxable income of every
13 major corporation."

14 Section 8. Title 54 of the Code of the Federated States of
15 Micronesia, as amended, is hereby further amended by adding a new
16 section 322 of chapter 3 to read as follows:

17 "Section 322. Taxable income defined. The taxable
18 income of a major corporation equals its income, before
19 income taxes, earned in the taxable year as determined
20 under Generally Accepted Accounting Principles
21 (hereinafter, 'GAAP'), as GAAP is regularly utilized in
22 the major corporation's principal shareholder's, if a
23 corporation, place of incorporation or, if an
24 individual, country of primary residence."

25 Section 9. Title 54 of the Code of the Federated States of

1 Micronesia, as amended, is hereby further amended by adding a new
2 section 323 of chapter 3 to read as follows:

3 "Section 323. Exemption from Taxation of Gross Revenues.
4 Any major corporation that is not engaging in business
5 in the Federated States of Micronesia or a business
6 operating in the Federated States of Micronesia pursuant
7 to section 360 of this chapter and remits tax pursuant
8 to section 321 of this chapter is exempt from the
9 requirements of title 54, chapter 1, subchapter IV:
10 Taxation of Gross Revenues, for each taxable year that
11 the major corporation has remitted tax pursuant to
12 section 321 of this chapter."

13 Section 10. Title 54 of the Code of the Federated States of
14 Micronesia, as amended, is hereby further amended by adding a new
15 section 331 of chapter 3 to read as follows:

16 "Section 331. Non-refundable credit for payment of
17 foreign taxes. In the case of a major corporation, any
18 income taxes paid or accrued on taxable income during
19 the taxable year to a foreign country shall be allowed
20 as a credit against the amount of tax imposed by section
21 321. In the case of a dividend received by a major
22 corporation, a credit shall also be allowed against the
23 amount of tax imposed by section 321 in an appropriate
24 amount to reflect any income taxes the major corporation
25 can demonstrate have been paid with respect to such

1 dividend to any foreign country or countries. In no
2 case shall a major corporation, in any taxable year, be
3 entitled to credits which, in the aggregate, exceed the
4 amount of the tax imposed, for that taxable year, under
5 the provisions of section 321 of this chapter. No
6 foreign tax credit shall be permitted to create a refund
7 or credit for overpayment of tax; but any amount of
8 foreign tax not creditable by reason of this provision
9 may be carried forward as a creditable foreign tax to
10 each succeeding year until fully utilized subject to the
11 same restrictions in the succeeding years."

12 Section 11. Title 54 of the Code of the Federated States of
13 Micronesia, as amended, is hereby further amended by adding a new
14 section 332 of chapter 3 to read as follows:

15 "Section 332. Refundable Credit for overpayment of tax.
16 In the case of any overpayment by a major corporation of
17 tax imposed by section 321, the amount of such
18 overpayment shall be refunded to the major corporation
19 or shall be applied to any tax liability owed by the
20 major corporation to the Federated States of
21 Micronesia."

22 Section 12. Title 54 of the Code of the Federated States of
23 Micronesia, as amended, is hereby further amended by adding a new
24 section 341 of chapter 3 to read as follows:

25 "Section 341. Change of Fiscal Year. A major

1 corporation may, at its option, change its fiscal year,
2 provided that such a change may not be done more than
3 once during any sixty (60) month period without the
4 advance written consent of the Secretary."

5 Section 13. Title 54 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by adding a new
7 section 342 of chapter 3 to read as follows:

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

- 14 (1) the cash receipts and disbursements method;
15 (2) an accrual method;
16 (3) any combination of the foregoing methods or any
17 other method selected by the major corporation.

18 To the extent permitted by GAAP, a major corporation
19 using any one of the above methods may, at its option,
20 convert to another one of the above methods, provided
21 that such a conversion may not be done more than once
22 during any sixty (60) month period without the advance
23 written consent of the Secretary."

24 Section 14. Title 54 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by adding a new

1 section 351 of chapter 3 to read as follows:

2 "Section 351. Filing of annual returns. Every major
3 corporation shall prepare and file with the Secretary an
4 annual income tax return on a form approved by the
5 Secretary, which annual income tax return shall be
6 signed by the major corporation's authorized
7 representative. This form shall be filed with the
8 Secretary, together with a copy of the major
9 corporation's audited financial statements in a form
10 acceptable to the Secretary, by the last day of the
11 sixth month period following the last day of the major
12 corporation's taxable year."

13 Section 15. Title 54 of the Code of the Federated States of
14 Micronesia, as amended, is hereby further amended by adding a new
15 section 352 of chapter 3 to read as follows:

16 "Section 352. Payment of tax due. Within 30 days of
17 the last day of the major corporation's taxable year,
18 the major corporation shall pay its estimated amount of
19 the tax due for that year (hereinafter, the 'estimated
20 amount'). Any additional tax due as shown on the annual
21 income tax return of the major corporation shall be paid
22 by the last business day of the sixth month period
23 following the last day of the major corporation's
24 taxable year. If the additional tax due as indicated on
25 the annual income tax return is more than 10% of the

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

7 Section 16. Title 54 of the Code of the Federated States of
8 Micronesia, as amended, is hereby further amended by adding a new
9 section 360 of chapter 3 to read as follows:

10 "Section 360. Engaging in business or operating a
11 business in the Federated States of Micronesia. A
12 corporation incorporated in the Federated States of
13 Micronesia that only holds, buys, sells, transfers or
14 otherwise transacts with assets or property located
15 outside of the FSM, including but not limited to,
16 businesses, shares, stocks, bonds, annuities, treasury
17 bills, partnership units or trust units, is not engaging
18 in business in the Federated States of Micronesia or a
19 business operating in the Federated States of Micronesia
20 for the purposes of section 323 of this chapter or title
21 32, chapter 2: the Foreign-Investment Act of the Code of
22 the Federated States of Micronesia."

23 Section 17. Title 54 of the Code of the Federated States of
24 Micronesia, as amended, is hereby further amended by adding a new
25 section 370 of chapter 3 to read as follows:

1 "Section 370. Sections 114 to 115 and 151 to 157 of
2 chapter 1 of this title also apply to the provisions of
3 this chapter."

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

7

8

9 **DESIGNATED PL 13-71 DUE TO OVERRIDE**

10 _____, 2004

11

12

13

14

15

Joseph J. Urusemal
President
Federated States of Micronesia

16

17

18

19

20

21

22

23

24