

**TITLE 54
TAXATION AND CUSTOMS**

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**SUBCHAPTER I
General Provisions**

§ 111. Short title.

This chapter shall be entitled the “Federated States of Micronesia Income Tax Law”.

Source: COM PL 5-26 § 10; TT Code 1980, 77 TTC 250; PL 1-83 § 1(3).

Cross-reference: FSM Const., art. IX, § 2(e).

Section 2. The following powers are expressly delegated to Congress:

- ...
- (e) to impose taxes on income;
- ...

The provisions of the Constitution are found in Part I of this code.

Editor’s note: The effective date of COM PL 7-32, relating to a progressive income tax, is January 1, 1983. See also COM PL 7-67 § 3; COM PL 7-94 § 1; COM PL 1-123 §§ 1, 2; and COM PL 2-27 § 1. The provisions of COM PL 7-32 have therefore not been incorporated into this codification. The 1980 edition of the TT Code erroneously included provisions of COM PL 7-32 as current law at 77 TTC 259, 77 TTC 269, 77 TTC 271, 77 TTC 272, and 77 TTC 273 thereof.

§ 112. Definitions.

Wherever used in this chapter, unless the subject matter, context, or sense otherwise requires:

- (1) “Business” means any profession, trade, manufacture, or other undertaking carried on for pecuniary profit and includes all activities whether personal, professional, or incorporated, carried on within the Federated States of Micronesia for economic benefit either direct or indirect, and excludes casual sales, as determined by the Secretary; however, one who qualifies as an employee under this section shall not be considered as a business. Copra production by unincorporated copra producers collectively or severally shall not be included as a business under this definition.

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Case annotations: In FSM Income Tax Law, 54 F.S.M.C. 111 et seq., cooperatives are not singled out in any way within the definition of business and there is no indication in the tax law that cooperatives are to be treated differently than corporations or any other forms of businesses. *Kolonia Consumers Coop. Ass'n v. Tuuth*, 5 FSM R. 68, 70 (Pon. 1991).

Limitation of the definition of “business” under the FSM income tax law to “all activities . . . carried on within the Federated States of Micronesia” strongly implies that activities carried on elsewhere by a business functioning within the FSM are not subject to FSM income tax. 54 F.S.M.C. 112(1). *Bank of the FSM v. FSM*, 5 FSM R. 346, 348 (Pon. 1992).

(2) “Commercial aircraft” means any aircraft capable of and intended for use in commercial aviation.

(3) “Employee” means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

Case annotations: All government officials are employees of the government within the meaning of the FSM Income Tax Law. *Heston v. FSM*, 2 FSM R. 61, 65 (Pon. 1985).

Although plaintiff incurred expenses in carrying out his obligations under contract, they were well below 10% of amount he received under the contract. Such expenditures are insufficient to alter plaintiff’s status from an “employee” to a “business” under FSM Income Tax Law. *Heston v. FSM*, 2 FSM R. 61, (Pon. 1985).

A taxpayer who held high public office of Chief of Finance, whose contract gave him wide degree of discretion in carrying out governmental powers, and who was not an outside consultant who could merely suggest or advise but was an integral part of governmental operation is a governmental official, therefore an employee for purposes of FSM Income Tax Law. *Heston v. FSM*, 2 FSM R. 61, 65 (Pon. 1985).

FSM Income Tax Law’s distinction between employees and businesses obviously reflects congressional expectation that businesses and employees are generally distinguishable on basis of whether generation of their income would require substantial expenditures by them. *Rauzi v. FSM*, 2 FSM R. 8, (Pon. 1985).

There is common law of taxation which addresses status of public officials as employees. *Rauzi v. FSM*, 2 FSM R. 8 (Pon. 1985).

Pohnpei State Government official is an employee for purposes of FSM Income Tax Law. *Rauzi v. FSM*, 2 FSM R. 8, 12 (Pon. 1985).

There appears to be uniform acceptance by common law jurisdictions of the principle that government officials are considered employees for income tax purposes. This amounts to common law rule of taxation and yields a result in harmony with the underlying principles of the taxation system established by the FSM Income Tax Law. *Rauzi v. FSM*, 2 FSM R. 8, 12 (Pon. 1985).

(4) “Employer” includes any individual, corporation, association, joint stock company, bank, insurance company, credit union, cooperative, or other equity or group employing any person, and also includes the Federated States of Micronesia, State and local governments, and their agencies, charged with the disbursement of public moneys as salaries or wages. “Employer” also includes the United States Government and instrumentalities thereof.

(5) “Gross revenue” means the gross receipts, cash or accrued, of the taxpayer received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce, or sales and the value proceeding or accruing from the sale of tangible personal property, or services, or both, and all receipts, actual or accrued by reason of the capital of the business engaged in, including interest, rentals, royalties, fees, or other emoluments however designated and without any

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deductions on account of the cost of property sold, the cost of materials used, taxes, royalties, or interest paid or any other expenses whatsoever. Gross revenue shall not include the following:

- (a) refunds and rebates;

Case annotations: Patronage refunds paid by a cooperative to its members are not refunds within the meaning of 54 F.S.M.C. 112(5)(a) and are not excludable from gross revenue under the FSM Tax Law. *Kolonia Consumers Coop. Ass'n v. Tuuth*, 5 FSM R. 68, 71 (Pon. 1991).

Where regulations existed referring to patronage refund as “bonus or refund” at time Congress enacted statute excluding refunds from definition of gross revenue, statute unambiguously excludes patronage refunds from gross revenue. *Kolonia Consumers Coop. Ass'n v. FSM*, 5 FSM R. 375, 379-80 (App. 1992).

Patronage refunds are not voluntarily paid refunds because regulations compel allocation of patronage refunds. Therefore they are properly excludable from gross revenue. *Kolonia Consumers Coop. Ass'n v. FSM*, 5 FSM R. 375, 380 (App. 1992).

- (b) moneys held in a fiduciary capacity;

Case annotations: Moneys held in fiduciary capacity are specifically excluded by statute from definition of gross revenue. 54 F.S.M.C. 112(5)(b). The term “fiduciary capacity” is not restricted to technical or express trusts, but extends to money that is not the taxpayer’s own, but which is handled for the benefit of another. *NIH Corp. v. FSM*, 5 FSM R. 411, 416 (Pon. 1992).

- (c) wages and salaries, received by the taxpayer, which are taxed under other provisions of this chapter;

- (d) sale payments received for the sale of a commercial aircraft, to the extent that such sale payments in any quarter shall equal the rental payments made to the buyer/lessor by the seller/lessee of such aircraft for its rental by the seller/lessee;

- (e) rental payments received for the rental of a commercial aircraft, to the extent that such rental payments in any quarter shall equal the sale payments made to the seller/lessee by the buyer/lessor of such aircraft for its purchase by the buyer/lessor;

- (f) cash discounts allowed and taken on sales, the proceeds of sale of goods, wares, or merchandise returned by customers when the sale price is refunded either in cash or by credit; or the sale price of any article accepted as part of payment of any new article sold, if the full sale price of a new article is included in “gross revenue”;

- (g) funds received by an international organization, foreign contractor, or other foreign entity paid from foreign aid proceeds donated to the Federated States of Micronesia pursuant to a foreign aid agreement entered into by the Federated States of Micronesia, the terms of which require that such gross revenue shall not be subject to taxation by the Government of the Federated States of Micronesia;

Editor’s notes: This definition was among those changed by PL 12-18 § 1.

Case annotations: Each exclusion from definition of “gross revenue” in 54 F.S.M.C. 112(5) seems to represent one or another of three possible purposes: to prevent dual taxation of revenue of single taxpayer, to make allowances for special situations, or to exclude funds received by taxpayer on behalf of another such as refunds and rebates, moneys held in a fiduciary capacity, cash discounts taken on sales, or proceeds of sales of goods returned by customers when sale price was refunded in cash or by credit. *Kolonia Consumers Coop. Ass'n v. Tuuth*, 5 FSM R. 68 (Pon. 1991).

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Rents are income taxable under FSM Income Tax Statute, and a state tax on gross rental receipts combines to create vertical multiple taxation of a form of income. *Truk Continental Hotel, Inc. v. Chuuk*, 7 FSM R. 117 (App. 1995).

(h) proceeds of export sales of tangible personal property produced or manufactured in the Federated States of Micronesia and delivered to a buyer outside the Federated States of Micronesia;

(i) proceeds of sales of products of a processing facility in the Federated States of Micronesia which are subsequently exported from, and not used in, the Federated States of Micronesia;

(j) proceeds of sales of fish by foreign or domestic fishing vessels to processing facilities within the Federated States of Micronesia; or

(k) proceeds of sales of bait fish to foreign or domestic fishing vessels.

(l) proceeds from

(i) recycling waste paper, plastic, aluminum, tin or other scrap metal, or glass so that such materials may be re-used,

(ii) removing such waste materials, motor vehicles, appliances, batteries, paint or toxic chemicals from the Federated States of Micronesia for disposal or recycling; or

(iii) collecting such waste materials, motor vehicles, appliances, batteries, paint or toxic chemicals for the purposes of removal from the Federated States of Micronesia for recycling or disposal.

(6) “Military or Naval Forces of the United States” and “Armed Forces of the United States” means all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of the Army, Navy, or Air Force, and also includes the Coast Guard.

(7) “Month” means calendar month.

(8) “Taxable gross revenue” shall mean, for any tax period, the figure calculated by deducting from the Gross Revenues for the period, the following expenses of the business for that period:

(a) wages, salaries and benefits reasonably paid by the taxpayer to or on behalf of employees of the business for personal services relating to producing the Gross Revenues, as such wages and salaries are reported pursuant to subchapter III of chapter 1 of title 54 of this code; and

(b) Social Security contributions by the business in respect of its employees pursuant to section 902 of title 53 of this code.

Cross-reference: Title 53 of this code is on Social Security.

(9) “Processing facility” means a business that prepares, alters, and/or packages raw materials into a finished product for resale.

(10) “Purchase payments” means payments on the actual selling price, including any interest, carrying charges, or other charges associated with a sale. As used herein, the word “sale” implies a transfer of ownership of that which is sold, in exchange for the purchase payments or promise thereof.

(11) “Rental payments” means any payments made in exchange for use or rental, and includes interest, carrying charges, or other charges associated with use or rental.

(12) “Secretary” means the Secretary of the Department of Finance and Administration.

(13) “Wages” or “Salaries” means and includes commissions, fees, compensation, emoluments, bonuses, and every and all other kinds of compensation paid for, or credited or attributable

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to, personal services performed by an individual, which services have been performed by such person as an employee. Wages and salaries shall not include the following:

(a) any payment received from the United States by members of the Military or Naval Forces of the United States or the Armed Forces of the United States;

(b) reasonable per diem and travel allowances to the extent that they do not exceed any comparable Federated States of Micronesia Government rates;

(c) rental value of a home furnished to any employee or a reasonable rental allowance paid to any employee (to the extent such allowance is used by the employee to rent or provide a home);

(d) any payment on account of sickness or accident disability, or any payment of medical or hospitalization expenses, made by an employer to or on behalf of an employee; provided, however, that normal wages or salaries paid to an employee for a period of time during which he is excused from work because of sickness shall not be excluded from wages and salaries under this subsection;

(e) any payment made to or on behalf of an employee or to his beneficiary from a trust or annuity;

(f) remuneration paid in any medium other than cash to an employee for service not in the ordinary course of the employer's trade or business;

(g) remuneration paid for casual or intermittent labor not performed in the ordinary course of the employer's trade or business and for not more than one week in each calendar month;

(h) any payment in the form of a scholarship, fellowship, or stipend made to any employee while he is a full-time, *bona fide* student at an educational institution;

(i) any payment received by a minister of the gospel or clergyman from a religious group or organization;

(j) any payment received by an employee for services performed as a domestic or household employee for a private individual or family;

(k) any payment received by an employee, who is not a citizen of the Federated States of Micronesia, while employed by an international organization, foreign contractor, or other foreign entity performing services or otherwise conducting business in furtherance of a foreign aid agreement entered into by the Federated States of Micronesia, the terms of which require that such wages and salaries shall not be subject to taxation by the Government of the Federated States of Micronesia; or

(l) the foreign service premium authorized by section 163 of title 52 of this code.

(14) "Year" means calendar year.

Source: TT Code 1980, 77 TTC 251; PL 1-83 § 1(4), PL 2-23 § 1; PL 4-81 § 1; PL 7-41 § 1; PL 10-93 § 1; PL 10-149 § 1; PL 12-18 § 1; PL 14-40 § 1; PL 14-90 § 1.

Editor's note: Definition of "Director" has been editorially replaced with definition of "Secretary," in accordance with title 2 (Executive), § 203, of this code. References to "Director" throughout this chapter have been changed to "Secretary." Subsections have been rearranged in alphabetical order.

PL 4-81, § 1 added subsections 5(g) and 11(k) to this section. The effective date of PL 4-81 was December 24, 1986. PL 4-81, § 2 applied these subsections retroactively.

Cross-reference: Chapter 2 of title 10 (Foreign Relations) provides exemptions from taxation for certain designated international organizations.

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Case annotations: The common law for the FSM referred to at 54 F.S.M.C. 112(3) is not based upon the law of England at the time of the American Revolution but upon the law of the United States, the Trust Territory and other nations in the common law tradition up to the initiation of constitutional government in 1979. *Rauzi v. FSM*, 2 FSM R. 8, 17 (Pon. 1985).

FSM Income Tax Law's distinction between employees and businesses obviously reflects congressional expectation that businesses and employers are generally distinguishable on the basis of whether generation of their income would require substantial expenditures by them. *Rauzi v. FSM*, 2 FSM R. 8, (Pon. 1985).

In the Federated States of Micronesia Income Tax Law, 54 F.S.M.C. 111 *et seq.*, cooperatives are not singled out in any way within the definition of business and there is no indication in the tax law that cooperatives are to be treated differently than corporations or any other forms of businesses. *KCCA v. Tuuth*, 5 FSM R. 68, 70 (Pon. 1991).

§ 113. Taxes collected declared realization of the FSM.

The taxes levied, assessed, and collected under and pursuant to this chapter shall be paid to the treasurer of the Federated States of Micronesia and become part of the General Fund of the Federated States of Micronesia as local revenue realization available for appropriation by the Congress of the Federated States of Micronesia.

Source: COM PL 4C-2 § 20; TT Code 1970, 77 TTC 269 (1975 supplement); TT Code 1980, not codified; amended by PL 7-41 § 2.

Editor's note:

1. The 1980 edition of the Trust Territory Code erroneously codified COM PL 7-32 § 7 in place of COM PL 4C-2 § 20 as 77 TTC 269, although COM PL 7-32 was not in effect in the FSM.
2. PL 1-83 provides for the amendment of 77 TTC 269, *inter alia*. However, PL 1-83 § 1(11) amends former 77 TTC 270, on privileged information, although identifying it as section 269.
3. COM PL 4C-2 § 20 was the law prior to its amendment by PL 7-41 § 2. Its modification by Secretarial Order No. 3027 § 7 is noted by the cross-reference.

Cross-reference: See also Secretarial Order No. 3027, § 7.

The statutory provisions on the President and Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 114. Regulations.

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

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

Source: COM PL 4C-2 § 12; COM PL 4C-14 § 4; TT Code 1980, 77 TTC 262; PL 1-83 § 1(9).

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Cross-reference: The statutory provisions on the President and Executive are found in title 2 of this code.

The statutory provisions on Administrative Procedure are found in title 17 of this code.

§ 115. Tax returns—Information required.

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

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

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

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

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

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

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

Source: COM PL 4C-2 § 11; COM PL 5-26 § 7; TT Code 1980, 77 TTC 261; amended by PL 5-84 § 1.

§ 116. Preservation and disclosure of information.

(1) All reports and returns required by this chapter shall be preserved for three years and thereafter until the Secretary orders them to be destroyed.

(2) The Secretary and every employee of the Department of Finance shall maintain the secrecy of all matters relating to this chapter which come to their knowledge and shall not communicate such matters to any person except for the purpose of carrying into effect this chapter or any other enactment imposing taxes or duties payable to the Government of the Federated States of Micronesia.

(3) No employee of the Department of Finance shall be required to produce in any court any matter or thing relating to the taxes imposed by this chapter coming under his notice in the performance of his duties as an employee of the Revenue Division except when it is necessary to do so for the purpose of carrying into effect any provision of this chapter or any other enactment imposing duties or taxes payable to the Government of the Federated States of Micronesia.

(4) Information as to the amount of income or any particular set forth or disclosed in any report or return required under this chapter may, upon request of a committee appointed by the Congress of the Federated States of Micronesia, be furnished to the committee, but the committee or any member, clerk, or other officer or employee thereof shall not disclose any particulars of the information so furnished except to law enforcement officers for the purpose of aiding the detection or prosecution of crimes committed in violation of this chapter.

(5) The Governor of each State may appoint one representative of his administration who shall have access to all returns, reports, or other information on file with the Department of Finance as may be necessary to show that the required distribution of revenues to his State has been made. Each

Governor shall make the appointment of his representative known to the Secretary of Finance. The appointee may share information acquired hereunder with the Governor of his State. The Governor and his appointee may not disclose the information to any other person except for the specific purpose of ensuring that the required distribution of revenues to their State has been made, or except as otherwise provided for by law.

(6) The Attorney General or other legal representatives of the Government of the Federated States of Micronesia may inspect the report of return of any taxpayer who brings an action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or any penalty imposed by this chapter.

(7) Nothing herein shall prohibit the Secretary or his delegate from compiling and publishing statistics or information generally on the returns filed so long as there is no reference to a particular return and the statistics and the information do not in effect divulge the contents of any one return.

Source: COM PL 5-26 § 9(1), (2), (4)-(7); TT Code 1980, 77 TTC 270(1), (2), (4)-(7); PL 1-83 § 1(11)(1), (2), (4)-(7); PL 4-32 § 1.

Cross-reference: The statutory provisions on the President and Executive are found in title 2 of this code.

§ 117. Restrictions on outside employment.

(1) The Secretary and every employee of the Department of Finance while in such employment shall not engage in the business or profession of tax accounting or accept employment with compensation from any person, firm, or corporation for the purpose, directly or indirectly, of preparing the tax returns required by the Government of the Federated States of Micronesia.

(2) Nor shall any person accept any employment for the purpose of advising or preparing materials or data, or the auditing of books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by the Government of the Federated States of Micronesia.

Source: COM PL 5-26 § 9(3); TT Code 1980, 77 TTC 270(3); PL 1-83 § 1(11)(3).

§ 118. Penalties for violations of sections 116 and 117.

Any violation of subsections (2), (3), (4), or (5) of section 116 or violation of section 117 of this chapter shall be a misdemeanor and shall be punishable by a fine of not more than \$500, or imprisonment for not more than six months, or both.

Source: COM PL 5-26 § 9(8); TT Code 1980, 77 TTC 270(8); PL 1-83 § 1(11)(8); PL 4-32 § 2.

**SUBCHAPTER II
Taxation of Wages and Salaries:
Taxes Applicable**

§ 121. Tax on wages and salaries.

There shall be assessed, levied, collected, and paid a tax of six percent upon the first \$11,000 and ten percent upon the amount over the first \$11,000 of all wages and salaries received by every employee, as defined, except as provided in section 122 of this chapter.

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Source: COM PL 4C-2 § 2; COM PL 4C-14 § 6 (part); COM PL 6-52 § 3; COM PL 7-67 § 1(1); PL IC-26 § 4; TT Code 1980, 77 TTC 252(1).

Case annotations: In the FSM Income Tax Law, 54 F.S.M.C. 111 et seq., cooperatives are not singled out in any way within the definition of business and there is no indication in the tax law that cooperatives are to be treated differently than corporations or any other forms of businesses. *Kolonia Consumers Coop. Ass'n v. Tuuth*, 5 FSM R. 68, 70 (Pon. 1991).

An income tax typically applies to practically all income, with rates payable based on the total income of the taxpayer, after giving allowance to certain exemptions, and normally extends to all forms of income, including wages and salaries, interest, royalties, fees and returns on capital, as well as income realized through the sale of goods. *Youngstrom v. Kosrae*, 5 FSM R. 73, 76 (Kos. 1991).

The FSM Income Tax Law confirms that it is the nature of the services performed and the person performing the services, rather than the stated identity of the contracting party, which determines the tax treatment for the compensation under the contract. It is of no import that the “contractor” was identified as a corporation rather than as an individual when the contract makes clear that the primary services to be rendered were those of an individual and the corporation was merely a name under which the individual conducted business. *Heston v. FSM*, 2 FSM R. 61, 64 (Pon. 1985).

All Government officials are employees of the Government within the meaning of the FSM Income Tax Law. *Heston v. FSM*, 2 FSM R. 61, 65 (Pon. 1985).

Although plaintiff incurred expense in carrying out his obligations under contract, they were well below ten percent of the amount he received under the contract. Such expenditures are insufficient to alter plaintiff’s status from an “employee” to a “business” under the FSM Income Tax Law. *Heston v. FSM*, 2 FSM R. 61, 66 (Pon. 1985).

A taxpayer who held the high public office of Chief of Finance, whose contract gave him a wide degree of discretion in carrying out governmental powers, and who was not an outside consultant who could merely suggest or advise but was an integral part of the governmental operation is a governmental official, therefore an employee for purposes of the FSM Income Tax Law. *Heston v. FSM*, 2 FSM R. 61, 65 (Pon. 1985).

The FSM Income Tax Law’s distinction between employees and businesses obviously reflects congressional expectation that businesses and employees are generally distinguishable on the basis of whether generation of their income would require substantial expenditures by them. *Rauzi v. FSM*, 2 FSM R. 8, 19 (Pon. 1985).

There is a common law of taxation which addresses the status of public officials as employees. *Rauzi v. FSM*, 2 FSM R. 8, 17 (Pon. 1985).

A Pohnpei State Government official is an employee for purposes of the FSM Income Tax Law. *Rauzi v. FSM*, 2 FSM R. 8, 12 (Pon. 1985).

There appears to be uniform acceptance by common law jurisdictions of the principle that government officials are considered employees for income tax purposes. This amounts to common law rule of taxation and yields a result in harmony with the underlying principles of the taxation system established by the FSM Income Tax Law. *Rauzi v. FSM*, 2 FSM R. 8, 12 (Pon. 1985).

§ 122. Deduction from tax; Claim for refund.

(1) Every employee, as defined, except those whose gross annual wages and salaries are \$5,000 or more, shall be allowed a deduction of \$1,000 per year from all wages and salaries subject to tax levied by section 121 of this chapter and received by the employee in the year in which the deduction is claimed.

(2) The deduction shall be claimed by the employee filing for a refund under the provisions of section 123 of this chapter.

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Source: COM PL 4C-2 § 2; COM PL 4C-14 § 6 (part); COM PL 5-79 § 1; COM PL 7-67 § 1(2); TT Code 1980, 77 TTC 252(2).

§ 123. Refunds of taxes on wages and salaries.

(1) If it shall be shown, upon application of an employee, that there has been withheld from his wages or salaries any tax not due thereon, or more than the amount of tax due thereon, or that he has paid from his wages and salaries any tax not due thereon or more than the amount of tax thereon, or if it is shown upon application of the business that it has paid an amount not due as tax under this chapter or greater than the tax levied under this chapter, then the Secretary shall refund the amount found to have been overpaid or otherwise not due and shall pay such refund out of current collections of the tax; provided, the Secretary shall be satisfied that:

- (a) the amount so overpaid or otherwise not due has been paid to the Government;
- (b) the amount of refund claimed has not been used as a credit against any tax or taxes due and payable to the Government from such employee; and
- (c) application for such refund was filed within one year after the end of the calendar year in which the amount to be refunded was withheld or paid.

(2) The Secretary shall make a decision on the application for refund within 90 days after it is submitted.

Source: COM PL 4C-2 § 17; TT Code 1980, 77 TTC 267.

Cross-reference: The statutory provisions on the President and Executive are found in title 2 of this code.

§ 124. Source of wages.

If an employee is credited or paid salaries or wages derived from, or attributable to, personal services performed or rendered both within and without the Federated States of Micronesia, then the whole of the salaries or wages shall be presumed to have been earned within the Federated States of Micronesia.

Source: COM PL 4C-2 § 10(a); TT Code 1970, 77 TTC 260(1) (1975 supplement); PL 1-83 § 1(8)(1), PL 7-41 § 3.

Editor's note: The 1980 edition of the Trust Territory Code erroneously substituted COM PL 7-32 § 6(1) for this provision. COM PL 4C-2 § 10(a) was the law prior to its amendment by PL 7-41 § 3.

Case annotations: The gross revenue tax levied by the National Government under 54 F.S.M.C. §§ 141-144 is distinguishable from a sales tax in several ways. *Ponape Fed'n of Coop. Ass'ns v. FSM*, 2 FSM R. 124, 127 (Pon. 1985).

SUBCHAPTER III Taxation of Wages and Salaries: Withholding and Reporting

§ 131. Resident employers—Withholding of tax.

(1) The tax imposed by section 121 of this chapter shall be collected by the employer by deducting and withholding the tax imposed on any wages and salaries as and when paid or credited to the employee.

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(2) Every employer required to deduct and withhold the tax imposed shall be liable for the payment and shall pay such tax to the National revenue officer of the State in which the employer has his principal place of business, or to the Secretary, if the employer has no place of business in the Federated States of Micronesia.

(3) Any employer who violates any of the provisions of this section shall be subject to the penalties prescribed in this chapter.

Source: COM PL 4C-2 § 3; COM PL 7-82 § 1; TT Code 1980, 77 TTC 253; PL 1-83 § 1(5).

Cross-reference: The statutory provisions on Business Regulation are found in title 32 of this code. The statutory provisions on Corporations and Business Associations are found in title 36 of this code.

§ 132. Resident employers—Employers to file tax returns—Reporting and payments.

(1) The employer shall, on or before the last day of the month following the close of each quarter, to wit, on or before April 30, July 31, October 31, and January 31, pay the tax withheld, and make a full, true, and correct return showing all wages and salaries covered by section 131 of this chapter paid by him during the preceding quarter, and showing the tax due and withheld thereon, which return shall be filed at the place prescribed in section 131 of this chapter for payment of the tax and shall include such other information as shall be required or prescribed by the Secretary.

(2) With respect to salaries and wages paid out of public moneys, the Secretary at his discretion may prescribe special forms for, and different procedures and times for, the filing of such returns by employers paying such compensation, or may, upon such conditions and subject to such rules as he may prescribe from time to time, waive the filing of any such returns.

(3) The Secretary may require more frequent returns and payments as he in his discretion feels are advisable, but in no case shall an employer be required to make returns and payments more frequently than monthly. The Secretary, for good cause, may extend the time for making returns and payments but not beyond the last day of the first month next succeeding the regular due date thereof.

Source: COM PL 4C-2 § 4(a); COM PL 5-26 § 4; TT Code 1980, 77 TTC 254(1).

Cross-reference: The statutory provisions on Business Regulation are found in title 32 of this code. The statutory provisions on Corporations and Business Associations are found in title 36 of this code.

§ 133. Resident employers—Withholding statements to employees.

(1) Every employer required to deduct and withhold any tax on the salaries and wages of any employee shall furnish to each such employee on or before January 31 of the succeeding year (or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of compensation is made) a written statement showing the wages or salaries paid by the employer to such employee during the year and the amount of the tax deducted and withheld or paid with respect to such compensation.

(2) Such employer shall include with his final return for the calendar year, or shall file on or before January 31, a duplicate copy of each such statement, at the place prescribed in section 131 of this chapter for the payment of the tax.

(3) The Secretary may grant to any employer a reasonable extension of time, not in excess of 60 days, with respect to any statement required by this section to be furnished to any employee or to be filed, and may by regulation provide for the furnishing or filing of statements at such other times and containing such other information as may be required for the administration of this chapter.

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(4) The Secretary shall prescribe the form of statement required by this section and may adopt any United States Federal income tax form appropriate for the purpose.

Source: COM PL 4C-2 § 4(b); TT Code 1980, 77 TTC 254(2).

§ 134. Resident employers—Liability to penalties.

Any employer who violates any of the provisions of sections 132 and 133 of this chapter shall be subject to penalties prescribed in this title.

Source: COM PL 4C-2 § 4(c); TT Code 1980, 77 TTC 254(3); PL 13-61 § 1.

§ 135. Employer's responsibility for withheld taxes.

(1) All taxes withheld by any employer under section 131 of this chapter shall be held in trust by such employer for the Government and for payment to the Secretary in the manner and at the time required by this chapter.

(2) If any employer shall fail, neglect, or refuse to deduct and withhold from the compensation paid to an employee, or to pay over, the amount of the tax imposed by this chapter, such employer shall, moreover, be liable to pay to the Government the amount of the tax, which amount shall (whether or not tax withholdings constituting trust funds have been commingled with said employer's assets) form a lien on the employer's entire assets, having priority over all other claims and liens, except as provided by the Secured Transactions Act.

(3) Any employer may recover from an employee any amount which he should have withheld but did not withhold from such employee's wages and salaries, if he has been required to pay and has paid the amount to the Government out of his own funds pursuant to this section.

Source: COM PL 4C-2 § 5; TT Code 1980, 77 TTC 255; PL 14-34 § 82.

Case annotations: Liens under 54 F.S.M.C. 135 have priority even over liens which arose earlier in time. *Bank of Guam v. Island Hardware, Inc. (II)*, 3 FSM R. 105, 108 (Pon. 1987).

Any lien rights of the government under § 135(2) supersede even preexisting lien rights of any other party. *Bank of Guam v. Island Hardware, Inc. (II)*, 3 FSM R. 105, 110 (Pon. 1987).

Attachment and seizure create statutory and possessory lien rights which will be unaffected by subsequent writs of execution, but will be subject to national government's wage and salary tax lien claims under 54 F.S.M.C. 135(2), to wage claims of low level employees and laborers, and to pre-existing national government lien rights under 54 F.S.M.C. 153. *In re Mid-Pacific Constr. Co.*, 3 FSM R. 292, 303 (Pon. 1988).

Under 54 F.S.M.C. 135(2), government's judgment for wages and salary taxes constitutes a lien that is entitled to highest priority. *In re Island Hardware*, 3 FSM R. 332, 337 (Pon. 1988).

The priority lien rights provided for the government in section 135(2) relate only to wage and salary tax claims and not to gross revenue taxes or other taxes. *Bank of Guam v. Island Hardware, Inc. (II)*, 3 FSM R. 105, 111 (Pon. 1987).

Under 54 F.S.M.C. 135(2), no other payment to creditors may be made from execution sale proceeds until all amounts owing for wage and salary taxes are paid in full to the government. *In re Mid-Pacific Constr. Co.*, 3 FSM R. 292, 297 (Pon. 1988).

Amounts owing for penalties and interest under the tax law, 54 F.S.M.C. §§ 155 and 902, do not qualify for lien treatment under 55 F.S.M.C. §§ 135 or 153. *In re Island Hardware, Inc.*, 3 FSM R. 428, 433 (Pon. 1988).

§ 136. No cause of action for withholding.

No employee shall have any right of action against his employer with respect to any moneys deducted from such employee's salaries and wages in compliance or intended compliance with this chapter, and paid to the person designated in section 131 of this chapter.

Source: COM PL 4C-2 § 6; TT Code 1980, 77 TTC 256.

§ 137. Nonresident employers—Employees to file returns.

(1) Any individual who is paid or credited wages or salaries from an employer who does not have a place of business in the Federated States of Micronesia and does not have an agent within the Federated States of Micronesia responsible for making the returns, withholdings, and payments of taxes on compensation required by this chapter, shall file a return with and pay the tax due under this chapter to the National revenue officer of the State in which he resides or in which he is present at the time for payment as may be required by the rules of the Secretary, or, if he is not at the time within the Federated States of Micronesia, then with and to the Secretary.

(2) Any individual who is paid or credited wages from the United States or an instrumentality thereof shall be under the same duty as an individual who is paid or credited wages or salaries from an employer who does not have a place of business in the Federated States of Micronesia, unless the tax has been withheld from such salaries and wages as provided by section 131 of this chapter.

Source: COM PL 4C-2 § 7 (part); TT Code 1980, 77 TTC 257 (part); PL 1-83 § 1(6) (part).

§ 138. Nonresident employers—Employee returns—Requirements.

(1) All such returns shall be filed, and the payments thereon shall be made, at the times and in the manner prescribed in sections 131 and 132 of this chapter, and

(2) Each return shall state the name of the individual filing the same, the name, residence, and address of his employer, the total of all compensation received for the preceding three months, and the tax due thereon, and shall include such other information and be upon such form as the Secretary shall require or prescribe.

Source: COM PL 4C-2 § 7 (part); TT Code 1980, 77 TTC 257 (part); PL 1-83 § 1(6) (part).

§ 139. Nonresident employers—Employee returns—Extension of time; Penalties.

(1) The Secretary, upon request of a taxpayer required by section 137 of this chapter to make returns, may permit semiannual returns and payments of tax with respect to salaries and wages, and in granting such permission shall fix the date or dates for such filing of returns and payment of taxes.

(2) The Secretary, for good cause, may extend the time for making returns and payments, but not beyond the twentieth day of the second month succeeding the regular due date thereof.

(3) Failure to comply with the provisions of sections 137, 138, and 139 of this chapter shall be punishable under the penalties prescribed in this title.

Source: COM PL 4C-2 § 7 (part); TT Code 1980, 77 TTC 257 (part); PL 1-83 § 1(6) (part); PL 13-61 § 2.

Cross-reference: The statutory provisions on the President and Executive are found in title 2 of this code.

SUBCHAPTER IV
Taxation of Gross Revenues

§ 141. Tax on gross revenues; Exemption.

(1) There shall be assessed, levied, collected, and paid a tax of \$80 per year upon that portion of the amount of taxable gross revenues earned by every business subject to the provisions of this chapter which does not exceed \$10,000 per year.

(2) There shall be assessed, levied, collected, and paid a tax of three percent per year upon that portion of the amount of taxable gross revenues earned by every business subject to the provisions of this chapter which is in excess of \$10,000 per year.

(3) Businesses which earn gross revenues of not more than \$2,000 per year are exempt from taxation under this section. The deduction shall be claimed by the business by filing for a refund under the provisions of sections 122 and 123 of this chapter.

(4) For the purpose of section 805 of this title, every business that operates in more than one State of the Federated States of Micronesia shall file a separate tax return for revenue collected in each State.

Source: COM PL 4C-2 § 8; COM PL 4C-94 § 1; COM PL 5-26 § 5; COM PL 7-67 § 2; TT Code 1980, 77 TTC 258; PL IC-26 § 5; amended by PL 5-84 § 2; PL 14-90 § 2.

Cross-reference: The statutory provisions on Business Regulation are found in title 32 of this code. The statutory provisions on Corporations and Business Associations are found in title 36 of this code.

Case annotations: The tax on gross revenues falls squarely within the constitutional authorization given to Congress by art. IX, § 2(e) to tax income. *Ponape Fed'n of Coop. Ass'ns v. FSM*, 2 FSM R. 124, 126 (Pon. 1985).

The penalty provisions of 54 F.S.M.C. 902 apply to failure to make timely payment of the gross revenue tax imposed under 54 F.S.M.C. 141. *FSM v. George*, 2 FSM R. 88, 94 (Kos. 1985).

That Congress may tax “gross income” is plainly and unmistakably provided for in the words of art. IX, § 2(e) of the Constitution. *Ponape Fed'n of Coop. Ass'ns v. FSM*, 2 FSM R. 124, 127 (Pon. 1985).

The power granted to Congress by FSM Constitution art. IX, § 2(e) “to impose taxes on income” includes the power to tax gross revenue. *Afituk v. FSM*, 2 FSM R. 260, 264 (Truk 1986).

The gross revenue tax as enacted by the Congress of Micronesia continued in effect in the FSM by virtue of the transition article of the FSM Constitution but, because it was subsequently amended by the FSM Congress and was included in the codification of FSM Statutes, may now be considered a law enacted by Congress. *Afituk v. FSM*, 2 FSM R. 260, 264 (Truk 1986).

Taxation of gross revenue of business at different amounts and rates, depending upon the amount of each business’s annual gross revenue is rationally related to the legitimate legislative purposes of requiring businesses who receive less to pay lower tax and of administrative simplicity, and therefore does not violate the due process or equal protection provisions of the FSM Constitution. *Afituk v. FSM*, 2 FSM R. 260, 264 (Truk 1986).

There appears to be uniform acceptance by common law jurisdictions of the principle that government officials are considered employees for income tax purposes. This amounts to common law rule of taxation and yields a result in harmony with the underlying principles of the taxation system established by the FSM Income Tax Law. *Rauzi v. FSM*, 2 FSM R. 8, 12 (Pon. 1985).

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In the FSM Income Tax Law, 54 F.S.M.C. 111 et seq., cooperatives are not singled out in any way within the definition of business and there is no indication in the tax law that cooperatives are to be treated differently than corporations or any other forms of businesses. *Kolonia Consumers Coop. Ass'n v. Tuuth*, 5 FSM R. 68, 70 (Pon. 1991).

§ 142. Source of gross revenue; Apportionment.

(1) If any business earns or derives its gross revenue from business activities or undertakings both within and without the Federated States of Micronesia during the taxable year, then the whole of its gross revenue shall be presumed to have been derived from sources within the Federated States of Micronesia.

(2) The business may file for an apportionment of the tax on a form prescribed by the Secretary and the tax shall be levied only on that portion which is earned in or derived from sources or transactions or parts of transactions within the Federated States of Micronesia.

Source: COM PL 4C-2 § 10(b); TT Code 1970, 77 TTC 260(2) (1975 supplement); PL 1-83 § 1(8)(2).

Editor's note: The 1980 edition of the Trust Territory Code erroneously substituted COM PL 7-32 § 6 (part) for this provision.

Cross-reference: The statutory provisions on Business Regulation are found in title 32 of this code. The statutory provisions on Corporations and Business Associations are found in title 36 of this code.

Case annotations: The gross revenue tax levied by the national government under 54 F.S.M.C. §§ 141-44 is distinguishable from a sales tax in several ways. *Ponape Fed'n of Coop. Ass'ns v. FSM*, 2 FSM R. 124, 127 (Pon. 1985).

While there is a presumption that all revenue of a business is derived from sources within the FSM, the presumption may be rebutted and the tax "levied only on that portion which is earned or derived from sources or transactions within the Federated States of Micronesia." 54 F.S.M.C. 142. *Bank of the FSM v. FSM*, 5 FSM R. 346, 349 (Pon. 1992).

The statutory scheme emphasizes the location of the business activity which generates the revenue in question. Therefore revenue derived from banking investment transactions in Honolulu and Chicago are not taxable since they are not derived from sources or transactions within the FSM. *Bank of the FSM v. FSM*, 5 FSM R. 346, 349 (Pon. 1992).

§ 143. Returns and payment of tax on taxable gross revenue.

(1) Every business, on or before the last day of the month following the close of each quarter, to wit: on or before April 30, July 31, October 31, January 31, shall pay, based on its taxable gross revenue of the preceding quarter, the amount of tax imposed by this chapter to the National revenue officer in the State in which the business has its principal place of business in the Federated States of Micronesia, or to the Secretary.

(2) Each business shall, on or before the date provided for payment of tax under this section, make a full, true, and correct return showing all gross revenue received, accrued, or earned by the business, the taxable gross revenues of the business, the expenses for wages and salaries and social security contributions claimed by the business in calculating its taxable gross revenue and the amounts deducted and set aside on account of the taxable gross revenues during the preceding quarter.

(3) The return shall be filed at the place in this section prescribed for payment of the tax and shall include such other information as shall be required or prescribed by the Secretary. The Secretary,

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for good cause, may extend the time for making payments and returns, but not beyond the last day of the first month succeeding the regular due date thereof.

Source: COM PL 4C-2 § 9(a); COM PL 5-26 § 6(a); TT Code 1970, 77 TTC 259(1) (1975 supplement); TT Code 1980: not codified; PL 1-83 § 1(7)(1); PL 14-90 § 3.

Editor's note: The 1980 edition of the Trust Territory Code erroneously substituted COM PL 7-32 § 5(1) for this provision.

Cross-reference: The statutory provisions on Business Regulation are found in title 32 of this code. The statutory provisions on Corporations and Business Associations are found in title 36 of this code.

Case annotations: Statute mandates that all businesses compute gross revenue tax liability using the accrual accounting method. 54 F.S.M.C. 143(2). *NIH Corp. v. FSM*, 5 FSM R. 411, 413 (Pon. 1992).

Where the government's prior audit methods had the effect of permitting gross revenue tax computation on the cash basis and where the government's attempts to advise businesses that they are required to use the accrual method have for many years been woefully inadequate, the government will be barred by equitable estoppel from assessing penalties and interest on any underpayment of taxes that was the result of being led to believe that the cash basis was an acceptable method of tax computation. *NIH Corp. v. FSM*, 5 FSM R. 411, 415 (Pon. 1992).

§ 144. Liability for payment of tax; Penalties.

(1) Every business shall be liable for the payment of the tax required to be deducted and paid by it to the Government.

(2) Failure to comply with the provisions of this section shall be punishable under the penalties prescribed by this title.

Source: COM PL 4C-2 § 9(b), (c); TT Code 1970, 77 TTC 259(2),(3) (1975 supplement); PL 1-83 § 1(7)(2), (3); PL 13-61 § 3.

Editor's note: The 1980 edition of the Trust Territory Code erroneously substituted COM PL 7-32 § 5(2), (3) for this provision.

Cross-reference: The statutory provisions on Business Regulation are found in title 32 of this code. The statutory provisions on Corporations and Business Associations are found in title 36 of this code.

Case annotations: The statement in 54 F.S.M.C. 144(2) that penalties provided in chapter 1 will apply to the gross revenue tax law does not preclude the penalty specified in 54 F.S.M.C. 902 from applying. *FSM v. George*, 2 FSM R. 88, 91 (Kos. 1985).

SUBCHAPTER V Enforcement

§ 151. Records; Inspection and audit.

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

Source: COM PL 4C-2 § 13(b); TT Code 1980, 77 TTC 263(2).

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Cross-reference: The statutory provisions on Business Regulation are found in title 32 of this code. The statutory provisions on Corporations and Business Associations are found in title 36 of this code.

§ 152. Tax assessment on failure to file or pay.

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

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

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

Source: COM PL 4C-2 § 13(a); TT Code 1980, 77 TTC 263(1); PL 14-34 § 83.

Cross-reference: The statutory provisions on the President and Executive are found in title 2 of this code.

Case annotations: By statute, a taxpayer is liable for penalties and interest on any underpayment of his gross revenue tax liability regardless of the reason for underpayment, unless some other principle of law applies to afford the taxpayer relief. *NIH Corp. v. FSM*, 5 FSM R. 411, 413-14 (Pon. 1992).

Pursuant to 54 F.S.M.C. 152(3), the Secretary's gross revenue tax assessment is be presumed to be correct unless and until it is proved incorrect by the person, business, or employer disputing the amount of the assessment. *Ting Hong Oceanic Enterprises v. Ehsa*, 10 FSM R. 24, 31 (Pon. 2001).

When the taxpayer has failed to meet its the burden of showing that the Secretary's assessment was incorrect and has failed to put forth competent evidence in opposition to the Secretary's summary judgment motion and its lengthy opposition contained only legal argument, the taxpayer has failed to submit evidence establishing that the Secretary's assessment was incorrect and summary judgment in the Secretary's favor is appropriate. *Ting Hong Oceanic Enterprises v. Ehsa*, 10 FSM R. 24, 31 (Pon. 2001).

§ 153. Lien on property.

All taxes imposed or authorized under this chapter shall be a lien upon any property of the person or business obligated to pay said taxes and may be collected by levy upon such property in the same manner as the levy of an execution.

Source: COM PL 4C-2 § 16; TT Code 1980, 77 TTC 266.

Cross-reference: The statutory provisions on Business Regulation are found in title 32 of this code. The statutory provisions on Corporations and Business Associations are found in title 36 of this code. The statutory provision on tax liens is found in § 801 of this title.

Case annotations:

Taxation—Tax Liens

The statute 54 F.S.M.C. 153 does not require the government to give notice of its lien claims to any other creditors or even to the taxpayer. This statute, then, authorizes a lien which may be kept secret from interested parties. The

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effect of such a lien would be determined against the background of the strong general policy against secret liens. *Bank of Guam v. Island Hardware, Inc. (II)*, 3 FSM R. 105, 108 (Pon. 1987).

A section 153 lien should be treated as an equitable lien, its effect to be determined on a case-by-case basis with a view toward equitable considerations, especially when the government has taken reasonable and timely action to notify such other parties to the government's claims based upon tax delinquency. *Bank of Guam v. Island Hardware, Inc. (II)*, 3 FSM R. 105, 108 (Pon. 1987).

Priority of national government's lien for unpaid business gross revenue taxes under 54 F.S.M.C. 153 is subject to requirement that government take reasonable and timely action to notify other parties of the government's claim, but filing of litigation is sufficient notification to all parties under 54 F.S.M.C. 153. *In re Mid-Pacific Constr. Co.*, 3 FSM R. 292, 297 (Pon. 1988).

In order for government's judgment for gross revenue taxes to have a highest priority lien, notice that the tax payments are overdue, not just that tax liability has accrued must be given. *In re Island Hardware*, 3 FSM R. 332, 338 (Pon. 1988).

Amounts owing for penalties and interest under the tax law, 54 F.S.M.C. §§ 155 and 902, do not qualify for lien treatment under 55 F.S.M.C. §§ 135 or 153. *In re Island Hardware, Inc.*, 3 FSM R. 428, 433 (Pon. 1988).

Where the government is entitled to a lien on the debtor's assets as of the date it gave notice of its claim for those taxes the lien also becomes effective as of that date. *In re Pacific Islands Distributing Co.*, 3 FSM R. 575, 585 (Pon. 1988).

An intervenor must make a three part showing to qualify for intervention as a matter of right: an interest, impairment of that interest, and inadequacy of representation by existing parties. A tax lien holder and a judgment creditor with an unsatisfied writ of execution may intervene as a matter of right where an assignee is compromising a debtor's accounts receivable. *California Pac. Assocs. v. Alexander*, 7 FSM R. 198, 200 (Pon. 1995).

§ 154. Criminal penalties.

Any person or business convicted under the provisions of this chapter shall be fined not more than \$1,000, or, if a natural person, imprisoned not more than one year, or both.

Source: COM PL 4C-2 § 14; TT Code 1980, 77 TTC 264.

Case annotations: Statutory provisions designed to enhance the capacity of the government to enforce penalties for failure to pay taxes are penal, not remedial, and should be strictly construed. *In re Island Hardware, Inc.*, 3 FSM R. 428, 432 (Pon. 1988).

§ 155. Civil penalties.

The criminal penalties imposed by section 154 of this chapter for violation of provisions of this chapter shall be separate from, and in addition to, all other penalties or interest provided for in this section. The following civil penalties are hereby levied and shall be assessed and collected by this Secretary:

(1) *Failure to file return on time.* Except as may be permitted by the Secretary pursuant to sections 139 and 143 of this chapter, if any taxpayer fails to make and file a return required under this chapter on or before the date set, unless prior to that date such taxpayer applied for and received an extension for reasonable cause, one percent of the tax shall be added for each 30 days or fraction thereof elapsing between the due date of the return and the date on which it is actually filed; provided, however, that the minimum penalty under this subsection shall be five dollars and the maximum penalty under this section shall be 25 percent of the tax due.

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(2) *Failure by employer to file statement.* Any employer required to furnish a written statement prescribed in section 133 of this chapter who willfully failed to file such statements on the date prescribed thereof, except with regard to any extension of time for filing, shall be subject to a five dollar penalty for each such statement not so filed.

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

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

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

Source: COM PL 4C-2 § 15; COM PL 5-26 § 8; TT Code 1980, 77 TTC 265; PL 13-61 § 4.

Cross-reference: The statutory provisions on the President and Executive are found in title 2 of this code.

Case annotations: Under 54 F.S.M.C. 135(2), no other payment to creditors may be made from execution sale proceeds until all amounts owing for wage and salary taxes are paid in full to the government. *In re Mid-Pacific Constr. Co.*, 3 FSM R. 292, 297 (Pon. 1988).

In order for government's judgment for gross revenue taxes to have a highest priority lien, notice that the tax payments are overdue, not just that tax liability has accrued must be given. *In re Island Hardware*, 3 FSM R. 332, 338 (Pon. 1988).

Statutory provisions designed to enhance the capacity of the government to enforce penalties for failure to pay taxes are penal, not remedial, and should be strictly construed. *In re Island Hardware, Inc.*, 3 FSM R. 428, 432 (Pon. 1988).

By statute, a taxpayer is liable for penalties and interest on any underpayment of his gross revenue tax liability regardless of the reason for underpayment, unless some other principle of law applies to afford the taxpayer relief. *NIH Corp. v. FSM*, 5 FSM R. 411, 413-14 (Pon. 1992).

Where the government's prior audit methods had the effect of permitting gross revenue tax computation on the cash basis and where the government's attempts to advise businesses that they are required to use the accrual method have for many years been woefully inadequate, the government will be barred by equitable estoppel from assessing penalties and interest on any underpayment of taxes that was the result of being led to believe that the cash basis was an acceptable method of tax computation. *NIH Corp. v. FSM*, 5 FSM R. 411, 415 (Pon. 1992).

§ 156. Judicial review.

(1) If a decision of the Secretary is adverse to the taxpayer, in whole or in part, the taxpayer shall have the right within one year from the date of such decision to institute an action for review, irrespective of the amount, in a court of competent jurisdiction in the Federated States of Micronesia. Such action shall be commenced by filing a petition setting forth assignments of all errors alleged to have been committed by the Secretary in his determination of the assessment, the facts relied upon to

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sustain such assignments of errors, and a prayer for appropriate relief. The Secretary or his successor in office shall be the defendant in such proceedings.

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

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

Source: COM PL 4C-2 § 18; TT Code 1980, 77 TTC 268; PL 1-83 § 1(10).

Cross-reference: The statutory provisions on the FSM Supreme Court and Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedures are found in title 6 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

Case annotations: Because a man who denies the legality of a tax should have a clear and certain remedy, justice may require that he should be at liberty to pay promptly and bring suit on his side. *Weno v. Stinnett*, 9 FSM R. 200, 212 (App. 1999).

The filing of a suit to contest the legality of a tax, which the trial court found to be the plaintiffs' only remedy, obviates the need for demonstrating duress and notice of protest, as required by the common law, for payments made after suit is instigated. The filing of suit is protest of the most emphatic sort, and allowing a claim for recovery for payments made thereafter without regard to duress recognizes the "implied duress" under which contested taxes are paid. *Weno v. Stinnett*, 9 FSM R. 200, 212 (App. 1999).

Duress and protest need not be shown to state a claim for recovery of tax payments extracted under an unconstitutional enactment when the plaintiffs seek refund of payments made after instigation of suit in a court having jurisdiction over the parties, and when such a lawsuit is the plaintiff's only remedy. *Weno v. Stinnett*, 9 FSM R. 200, 212 (App. 1999).

The taxing authority, if it opts not to provide predeprivation process, must by way of postdeprivation process provide a clear and certain remedy for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one. A clear and certain remedy is one designed to render the opportunity to challenge a tax meaningful by preventing any permanent unlawful deprivation of property. *Weno v. Stinnett*, 9 FSM R. 200, 213 (App. 1999).

When deciding the question of retroactivity of a decision declaring a tax unconstitutional, a court considers three factors: 1) whether a decision enunciates a new and unanticipated principle; 2) whether retroactive application to this case would promote implementation of the rule at issue, taking into consideration the rule's history; and 3) the equities of the case as they are associated with retroactive application. *Weno v. Stinnett*, 9 FSM R. 200, 214 (App. 1999).

When Continental has alleged a sufficient stake in the action's outcome and is threatened not only with substantial costs if it complies but also with civil and criminal penalties if it does not and these threatened injuries are all traceable to the Chuuk service tax and would be addressed by a favorable decision, it may therefore challenge the legal requirement that it collect the tax (and remit it to the State) even if technically, only the statutorily defined taxpayer has the legal ability to challenge the tax's validity. *Continental Micronesia, Inc. v. Chuuk*, 17 FSM R. 152, 159 (Chk. 2010).

§ 157. Summons.

(1) For the purposes described under sections 151 and 804 of this title, the Secretary shall be authorized to summon the person or persons liable for tax under this title to appear before the Secretary

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or his designee and at such appearance to produce such documents and to give such testimony as specified in the summons.

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

Source: PL 7-40 § 1.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedures are found in title 6 of this code.

Editor's note: PL 7-40 was signed into law by the President on December 23, 1991.

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CHAPTER 2
Duties and Customs

Editor's note: Former chapter 2 of this title on Import and Export Taxes (§§ 201-205) was repealed in its entirety by PL 9-139 § 2.

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SECTIONS

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SUBCHAPTER I General Provisions

§ 211. Short title.

This chapter may be cited as the “Customs Act of 1996”.

Source: PL 9-139 § 5.

§ 212. Definitions.

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

- (1) “*Ad valorem*” (Latin for “according to the value”) means a tax imposed at a rate equal to a percentage of value.
- (2) “Aircraft” includes airplanes, seaplanes, airships, balloons or any other means of aerial locomotion.
- (3) “Airport” means an official port of entry for aircraft as identified in or pursuant to title 18 of this code and amendments thereto.
- (4) “Approved form” means a form approved by the Secretary of Finance.
- (5) “Arrival” means the first time goods or passengers become subject to Customs control within the FSM or any subsequent time before reaching their final destination.

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(6) “*Cannabis*” means a *cannabis* plant, whether living or dead, which includes, in any form, any flowering or fruiting tops, leaves, seeds, stalks or any other part of a *cannabis* plant and any mixture of parts of a *cannabis* plant.

(7) “CIF” means “costs, insurance, and freight” incurred for imported goods, and includes all costs and charges associated with the goods up through the time they are delivered to and unloaded at an FSM port of entry or post office.

(8) “Commissioner” means the Commissioner of Customs.

(9) “Congress” means the Congress of the FSM.

(10) “Container” means an article of transport equipment:

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

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

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

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

Editor’s note: Former subsection 212(10)(d)(i) has been incorporated into the main body of subsection 212(10)(d) for format consistency.

(11) “Controlled substance” means those described in sections 1119, 1121, 1123, 1125, and 1127 of title 11 of this code or successor provision of law.

(12) “Customs” means the FSM Department of Finance, Division of Customs.

(13) “Customs officer” means a person:

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

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

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

(14) “Duty” means any tax payable on the importation of goods, and “dutiable goods” means those goods subject to tax on their importation.

(15) “FOB” (“free on board”) means the value of goods when shipped for export, and includes all costs and charges up to the time of delivery of the goods on board the exporting vessel or aircraft.

(16) “Forfeiture” means the surrender of ownership of property to the FSM government following a breach of certain provisions of this chapter; it is independent of and in addition to any penalty imposed by this chapter.

(17) “FSM” means the Federated States of Micronesia.

(18) “Goods” means any type of merchandise, product, commodity, vehicle, moveable personal property, or commercial wares.

(19) “Importer” means any person by or for whom any goods are imported, and includes the consignee and any other person who is beneficially interested in the goods.

(20) “Master” means:

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

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

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(21) “Narcotic drug” means those described in subsection (15) of section 1112 of title 11 of this code or successor provision of law.

(22) “On or about the body” means on or within the body, clothing, footwear, purse, handbag, or similar article.

(23) “Owner” means:

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

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

(24) “Package” includes every means by which goods for transportation may be cased, covered, enclosed, contained, or packed.

(25) “Person” means any individual, company, corporation, partnership, unincorporated association, or other business entity.

(26) “Pilot” means the person in charge or in command of an aircraft.

(27) “Place” means any location, building or site, and includes moveable locations such as a vessel or aircraft.

(28) “Port” or “Port of entry” means an official port of entry identified in or pursuant to title 18 of this code and amendments thereto.

(29) “President” means the President of the FSM.

(30) “Prohibited goods” means any goods the importation or exportation of which is prohibited under FSM law.

(31) “Regulations” means any regulations promulgated pursuant to this chapter.

(32) “Secretary” means the Secretary of the FSM Department of Finance.

(33) “Smuggling” means any importation or exportation, attempted importation or exportation, with the intent to defraud the FSM.

(34) “Stamp” means device or instrument used by a Customs officer to make a distinctive impression or imprint, to identify and evidence the clearance of imported or exported goods and the clearance of vessels or aircraft.

(35) “Unlawfully imported, exported, or carried goods” means any smuggled goods and any goods imported, exported, or carried in breach of the provisions of this chapter, or any other law of the FSM, or whose sale, possession or use is prohibited or contrary to restrictions imposed by the State into which the importation took place. The above defined phrase carries a like meaning wherever similarly stated in this chapter.

(36) “Vehicle” means every description of motorized carriage or other contrivance used or capable of being used as a means of transport on land.

Source: PL 9-139 § 6, modified.

Cross-reference: Title 11 of this code is on Crimes. Title 18 of this code is on Territory, Economic Zones and Ports of Entry.

§ 213. Limitations on liability.

A Customs officer acting in good faith and according to the provisions of this chapter shall be immune from civil suit. The FSM Government is not liable for any loss or damage to any goods subject to the control of Customs except by the gross negligence or willful wrong of a Custom officer.

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Source: PL 9-139 § 7.

Cross-reference: The statutory provisions on the President and Executive are found in title 2 of this code.

Editor's note: The word "Liability" in the title of this section has been changed to "liability" for grammatical consistency.

SUBCHAPTER II Import Duties

§ 221. Levy and rates.

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

- (1) cigarettes, at the rate of \$0.025 per cigarette, provided that this rate shall increase by \$0.005 per cigarette on January 1 of each of the years 2007, 2009, 2011, 2013 and 2015;
- (2) tobacco, other than cigarettes, at the rate of 50 percent *ad valorem*;
- (3) perfumery, cosmetics, and toiletries, including cologne and other toilet waters, articles of perfumery, whether in sachets or otherwise, and all preparations used as applications to the hair or skin, lipsticks, pomades, powders, and other toilet preparations not having medicinal properties, at the rate of 25 percent *ad valorem*;
- (4) soft drinks, drink mixes, drink preparations, coffee, tea, and nonalcoholic beverages, at the rate of 25 percent *ad valorem*, provided, however, that any beverage having a fruit juice content of 25 percent or more by volume shall be at the rate of three percent *ad valorem*;
- (5) beer and malt beverages, at the rate of \$0.25 per 12 fluid ounces;
- (6) distilled alcoholic beverages, at the rate of 12 dollars per gallon;
- (7) wine at the rate of 30 percent *ad valorem*;
- (8) foodstuffs for human consumption, at the rate of three percent *ad valorem*; provided, however, that fresh and frozen fish and seafood, shall be at the rate of 25 percent *ad valorem*;
- (9) gasoline and diesel fuel, at the rate of five cents per gallon;
- (10) laundry bar soap, at the rate of 25 percent *ad valorem*; and
- (11) all other imported products, except those specified above, at the rate of four percent *ad valorem*.

Source: PL 9-139 § 9, modified; PL 13-60 § 1.

§ 222. Exemptions.

- (1) *Damaged, pillaged or faulty goods.* Upon receipt of a written request within 28 days of the goods' release from Customs control, the Secretary may authorize a refund of the whole or part of the duty paid, where any of the following conditions exist:
 - (a) goods have been damaged, pillaged, lost or destroyed during the voyage;
 - (b) goods have, while subject to the control of Customs, been damaged, pillaged, lost or destroyed; or
 - (c) the Commissioner is satisfied that, owing to a fault or defect in any goods, the importer has received a reduction or a refund, in whole or part, of the price paid for the goods.
- (2) *Goods imported for subsequent export.*

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

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

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

(d) The burden of proving that goods imported are for subsequent export shall be upon the importer/exporter as specified in regulations.

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

- (a) up to 200 cigarettes;
- (b) up to one pound of tobacco or 20 cigars;
- (c) up to 52 fluid ounces or 1500 milliliters of distilled alcoholic beverages; and
- (d) up to two hundred dollars (\$200) worth of goods other than tobacco products, beer and malt beverages, distilled alcoholic beverages, and wine.

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

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

(6) *Goods used in foreign aid projects.* An international organization, foreign contractor, or other foreign entity may import goods into the FSM duty free in connection with the performance of services or other conduct of business in furtherance of a foreign aid agreement entered into by the FSM, the terms of which require that such import shall not be subject to taxation by the FSM; provided that if and when such goods are subsequently sold in the FSM, import duty shall be due based on the sale amount. The duty, together with penalties and interest, shall be the joint and several personal liability of

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the importer and the purchaser and shall be secured by first liens on the goods and on the importer's property as hereinafter provided.

(7) *Certain fishing vessels and equipment.* Fishing vessels basing in the Federated States of Micronesia under a valid permit or license issued pursuant to title 24 of this code shall not be subject to the import duty on either the vessel or equipment installed in the vessel. This exemption shall apply to replacement parts and equipment imported by these fishing vessels as well.

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

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

Source: PL 9-139 § 10; PL 10-10 § 1; PL 10-136 § 1; PL 10-149 § 1; PL 11-43 § 1; PL 11-70 § 1; PL 11-82 § 1, modified; PL 15-58 § 1.

Cross-reference: Title 24 of this code is on Marine Resources.

§ 223. Basis of import duty.

(1) For purposes of determining the basis of import duties levied by this subchapter, the term “ad valorem” shall mean the CIF price of the subject item.

(2) If the Customs officer can reasonably determine the CIF price of imported goods, the import duty shall be payable on the CIF price.

(3) If the Customs officer cannot reasonably determine the CIF price of imported goods, the value for payment of duty shall be determined by the first of the following methods which is reasonably available to the Customs officer:

(a) FOB price plus actual insurance, freight, and other charges from the FOB location to the CIF location;

(b) The value of identical goods at the CIF location; or

(c) The value of identical goods at an earlier point plus actual insurance, freight, and other charges from that point to the CIF location.

(4) If the Customs officer cannot determine the CIF price or its equivalent through one of the foregoing methods, the value for payment of duty shall be determined by the appraisement, the cost of which shall be borne by the owner.

(5) No deduction of any kind shall be allowed from the CIF amount because of any special or sample discount, or on account of any other consideration by which a special reduction in price has been or might be obtained.

(6) Where there is a relationship between the buyer and seller of imported goods the consignee may be required to provide reasonable proof that the relationship did not influence the price paid or payable for the goods.

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(a) To demonstrate the acceptability of the price paid or payable for the goods, the consignee shall supply to Customs details of:

(i) The way in which the buyer and seller organize their commercial relationship;

(ii) The way in which the price in question was arrived at; and

(iii) The price of identical merchandise, or similar merchandise, in sales to unrelated buyers in the FSM.

(b) Where Customs officials determine that the relationship has influenced the price paid or payable the CIF shall be determined by appraisalment, the cost of which shall be borne by the owner.

(7) If the value of imported goods is stated in a currency other than that of the FSM, then the basis of the import tax of such goods shall be calculated according to the ruling rate of exchange at the date of export of the goods.

Source: PL 9-139 § 11.

§ 224. Lien on imported goods.

All duties imposed on goods under this chapter, together with any penalties and interest thereon, shall constitute a lien on those goods having priority over all other claims and liens, except as provided in the Secured Transactions Act, and may be collected by levy upon those goods in the same manner as the levy of an execution.

Source: PL 9-139 § 12; PL 14-34 § 84.

§ 225. Personal liability of importer.

If any imported goods are removed, whether legally or illegally, from the dock, airport, or post office before payment of the full and correct duties thereon, the importer of the goods shall be personally liable for the payment of any duties not so paid, together with any penalties and interest thereon. If there is more than one importer, all such importers shall be jointly and severally liable.

Source: PL 9-139 § 13.

§ 226. Lien on importer's property.

The personal liability of an importer provided for in this chapter shall be secured by a lien on any personal property of that importer, having priority over all other claims and liens, except as provided in the Secured Transactions Act, and with the exception of liens imposed pursuant to subsection (2) of section 135 of this title, and may be collected by levy upon such property in the same manner as the levy of an execution.

Source: PL 9-139 § 14; PL 14-34 § 85.

§ 227. Civil penalties and interest.

The following penalties and interest shall be separate from and in addition to the criminal penalties imposed elsewhere in this chapter. It is the duty of an importer to know and declare, fully and accurately, the types, quantities, and values of all dutiable goods which he or she imports, and civil penalties and interest may not be avoided through lack of knowledge, however innocent such lack of knowledge may be.

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(1) *Understatement.* If the amount of duty due on goods is understated when reasonably calculated on the basis of the documentary and other information provided to Customs officers, there shall be added to the amount of the understatement a penalty equal to the following percentage of the amount of the understatement:

(a) 100% if the understatement is discovered by Customs officials before release of the goods;

(b) 100% if the understatement is discovered and reported to Customs by an importer or owner and the full and correct duty, including penalties and interest, is paid within ten days after release of the goods; or

(c) 200% otherwise.

(2) *Late payment.* Unless goods are entered and the duty thereon is paid within the time limit for entry established in section 238 of this chapter, there shall be added to the amount of duty due five percent of the duty if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not to exceed 100% in the aggregate.

(3) *Interest.* Any duty which is not paid before the earlier of the time limit for entry or release of the goods shall thereafter bear interest at the rate of 18% per annum until paid.

Source: PL 9-139 § 15, modified.

SUBCHAPTER III Customs Procedures and Offenses

§ 231. Administration of Customs.

(1) The Secretary of Finance shall appoint Customs officers.

(2) *Customs locks and seals.*

(a) *Official locks and seals.* All courts and all persons shall take notice of any official lock or seal used by an officer during the course of his/her duties and shall presume, until shown otherwise, that the lock or seal was fastened by the proper authority.

(b) *National offense.* Any person who willfully disregards, alters, breaks, or interferes with a lawfully affixed Customs lock or seal is guilty of a National offense.

(c) *Penalty.* A person convicted under this subsection shall be subject to a fine not exceeding \$1,000, or imprisonment of not more than one year, or both.

(3) *Customs stamps.*

(a) *Stamped impression.* All courts and all persons shall take notice of a stamped impression made by an officer during the course of his/her duties and shall presume, until shown otherwise, that the impression was made by the proper authority.

(b) *National offense.* Any person who willfully disregards, alters or attempts to alter, or unlawfully duplicates a Customs stamp is guilty of a National offense.

(c) *Penalty.* A person convicted under this subsection shall be subject to a fine not exceeding \$1,000, or imprisonment of not more than one year, or both.

(4) *Working days and hours.* The working days and hours of the Division of Customs are Monday through Friday, 8:00 a.m. through 5:00 p.m., except for National holidays or as prescribed by Public Service System Regulations.

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(a) Except when the working of overtime is authorized in advance by the Commissioner, cargo should be cleared and passengers landed from vessel or aircraft only on working days and during working hours.

(b) Any person may request that the Commissioner arrange for an officer to be made available to perform a function at a place outside of the hours prescribed under paragraph (a) of this section. Such person shall pay to the FSM Government such fee as is set by the Secretary, reflecting the cost of making officers available.

(5) *Insurance.* The Commissioner is authorized to provide insurance coverage for Customs officers who undertake hazardous duties.

(6) *Annual report.* Within 60 days of the end of each fiscal year the Division of Customs will provide for Congress an annual report on its activities setting out the following details:

- (a) overview;
- (b) revenue:
 - (i) revenue collected;
 - (ii) cost of collection;
 - (iii) costs recovered;
 - (iv) entries passed;
- (c) enforcement:
 - (i) invoices appraised;
 - (ii) vessels and aircraft searched;
 - (iii) goods seized;
 - (iv) prosecutions and convictions;
- (d) Staff;
- (e) Plan for the next year.

(7) *Customs officers' authority to arrest.*

(a) When authorized by the Secretary, a Customs officer shall have the authority given to a policeman under section 211 of title 12 of this code, or successor provision of law, to make an arrest without warrant for an offense defined under this chapter.

(b) The Secretary shall, on consultation with the Attorney General, establish procedures for arrest and disposition of criminal suspects by Customs officers.

Source: PL 9-139 § 17.

Cross-reference: Title 12 of this code is on Criminal Procedure. The statutory provisions on the President and Executive are found in title 2 of this code.

§ 232. Duties of controlling authorities.

(1) The controlling authority of every port, airport or transit building shall provide and maintain at the port, airport or transit building, to the satisfaction of the Secretary the following:

(a) staff accommodation and facilities for the use of Customs officers, at such place or places as the Secretary may direct; and

(b) suitable transit buildings as the Secretary may declare as necessary in respect to the port or airport, together with suitable weighing appliances for use by Customs officers.

(2) The controlling authority of every port, airport or transit building shall store goods subject to the control of Customs in such manner and place as the Commissioner or other proper officer of Customs may direct.

Source: PL 9-139 § 18.

Cross-reference: The statutory provisions on the President and Executive are found in title 2 of this code.

§ 233. Cooperation with other National and State authorities.

The Secretary is authorized to enter into Memorandums of Understanding with other National and State authorities to allow the Division of Customs to provide assistance in the enforcement of any National or State law.

(1) *Taxation.* The Division of Customs is authorized to exchange information with other National or State authorities to ensure the proper and correct collection of taxes.

(2) *Statistics.*

(a) The Division of Customs is responsible for the collection of statistical data on the importation and exportation of goods and providing this information to the Division of Statistics.

(b) The Secretary is authorized to introduce classification schedules and associated computer software to assist with this function.

(3) *Quarantine.* The Secretary may accept an appointment made by the Secretary of the FSM Department of Resources and Development, regarding the empowering of Customs officers to perform agriculture quarantine inspections, pursuant to section 407 of title 22 of this code or any successor provision.

(4) *Food safety.* The Secretary may accept an appointment by the Secretary of the FSM Department of Health Services regarding the empowering of Customs officers to perform food safety inspections pursuant to 41 F.S.M.C. 1013 (National Food Safety Act) or any successor provision.

(5) *Immigration.* The Secretary may accept an appointment made by the FSM Office of the Attorney General regarding the empowering of Customs officers perform immigration inspections pursuant to section 108 of title 50 of this code or any successor provision.

(6) *Community, social, environmental and antiquities protection.* The Division of Customs will monitor imports and exports on behalf of other National and State agencies to ensure compliance with legislation and international agreements, ratified by the FSM, dealing with community, social, environmental and antiquities protection.

Source: PL 9-139 §19, modified.

Cross-reference: Title 22 of this code is on Agriculture and Livestock. Title 41 of this code is on Public Health, Safety, and Welfare. Chapter 10 of title 41 is on the National Food Safety Act. Title 50 of this code is on Immigration.

§ 234. Customs control of goods.

(1) *Goods subject to Customs control:*

(a) Imported goods, from the time of their importation until applicable duties are paid and the goods are released or until their exportation to any country outside of the FSM.

(b) All goods for export, from the time such goods are brought to any port, airport or other place for export until their exportation to any country outside of the FSM.

(c) Goods imported or exported through the Post Office are subject to the control of the Customs in the same manner as goods otherwise imported or exported.

(2) *Non-routine examinations.* Where, for the purposes of section 235 of this chapter, examination at the dock or airport is impracticable, shipments may, subject to approval by a customs officer of a written undertaking in the approved form, be removed to the owner's premises for examination.

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(3) *CY-CY Containers.*

(a) CY-CY container shipments or similar shipments may be delivered to a final destination other than the dock, upon the approval of a Customs officer.

(b) The consignee shall notify the Division of Customs of the delivery of the shipment and shall not open the container without the approval of a Customs officer.

(c) Customs officers shall be given access to any CY-CY container or similar shipment at the owner's premises for the purposes of any section of this chapter.

(4) *Removal of goods.* Goods removed from the dock or airport pursuant to subsections (2) and (3) of this section remain subject to Customs control until the examination has been undertaken and a Customs officer has authorized their release.

(5) *National offense.* Any person who, otherwise than by authority and in accordance with this chapter, moves, alters or interferes with goods subject to the control of Customs, is guilty of a National offense.

(6) *Penalty.* A person convicted under this section shall be subject to a fine not exceeding \$5,000, or imprisonment of not more than five years, or both.

Source: PL 9-139 § 20.

Cross-reference: The statutory provisions on the President and Executive are found in title 2 of this code.

§ 235. Right of examination.

A Customs officer shall have the right to examine all goods subject to Customs control.

(1) *Examination of goods.* In carrying out the examination of goods:

(a) Any Customs officer may open packages and examine, weigh, mark and seal any goods.

(b) Where, shipment has been removed to the owner's premises for examination, Customs officers shall be granted access to the shipment for the purposes of this section. The expenses of the examination, including the cost of removal to the place of the examination, shall be borne by the owner.

(2) *Search of residences, building and premises.* Any officer, with legally sufficient grounds to believe goods that may be forfeited pursuant to section 253 of this chapter are present and, pursuant to a search warrant required by law, may enter any residence, building or premise to search for and seize such goods.

(3) *Search of persons.*

(a) Where a Customs officer on reasonable grounds believes a person who has just landed from or is about to board a vessel or aircraft has dutiable or prohibited goods on or about his or her person, the officer may, subject to the following conditions, search and detain that person and may use reasonable force to carry out the search.

(b) No search shall be undertaken unless another officer or person is present as a witness.

(c) Searches shall be undertaken by an officer or person of the same gender unless there are reasonable grounds for believing the person being searched may resist the search or, despite diligent efforts to procure an officer or person of the same gender, no such person is available to undertake the search.

(d) Body cavity searches shall be carried out by a qualified medical officer.

Source: PL 9-139 § 21.

Cross-reference: The statutory provisions on the President and Executive are found in title 2 of this code.

§ 236. Use of aids by Customs officers.

In exercising any power of examination or search under this chapter, any officer of Customs or any member of the Police assisting him may have with him and reasonably use for the purposes of examination or searching, any trained animal, or any mechanical, electrical, or electronic device generally accepted for use in such activities.

Source: PL 9-139 § 22.

§ 237. Owners having possession of dutiable goods.

An owner shall be personally liable for any duty payable when, while in possession or custody of goods subject to the control of Customs, that person fails to;

- (1) keep them safely, or
- (2) satisfactorily account for them to an officer of Customs.

Source: PL 9-139 § 23.

§ 238. Importation of goods.

(1) *Arrival procedures.* On arrival of a vessel or an aircraft at any port in the FSM the master or pilot of such vessel or aircraft shall deliver to the Customs officer:

- (a) Copies of the manifest; and
- (b) All bills of lading and air waybills for cargo to be discharged at that particular port.

(2) *Time limit for entry.* Each consignee of imported goods shall make entry of those goods at the local Customs office within 15 days after departure of the importing vessel or aircraft, exclusive of Sundays and FSM national holidays. To enter goods means to notify Customs officials of the arrival of those goods and to comply with all Customs requirements in connection therewith.

(3) *Verification of entry:*

(a) Entry shall be verified by the presentation to Customs by the consignee, or authorized agent of the consignee, of a completed and signed entry form together with a non-negotiable bill of lading or an air waybill and vendor's invoices for the imported goods.

(b) The consignee shall answer any questions relating to the goods and, upon request of a Customs officer, furnish any other documentation deemed necessary for:

- (i) a proper assessment of the duties on the merchandise;
- (ii) the proper collection of accurate statistics with respect to the merchandise being imported; and
- (iii) a determination of whether any other applicable legal requirements have been met.

(c) The approved entry form shall set forth such facts in regard to the importation as the Secretary may require for the inspection, appraisalment, payment of import taxes and for the collection of statistics.

(4) *Releasing of goods.* Customs personnel shall, on satisfactory examination of the above documents, and payment of the correct duty, stamp and release the imported goods.

(5) *Personal Baggage.* Goods that are the personal baggage of passengers in a vessel or aircraft and are not taxable goods may be released without entry.

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(6) *Importation defined:*

(a) Goods shall, except where otherwise expressly provided, be deemed to be imported into the FSM as soon as and in any manner, whether lawfully or unlawfully, they are brought or come within the territorial limits of the FSM from any country outside those limits. For purposes of this chapter, the territorial limits of the FSM include the territorial sea, as defined in chapter 1 of title 18 of this code.

(b) Goods whose destination is outside the territorial limits of the FSM, including ship's stores and aircraft stores, shall not be deemed to be imported unless, while they are within those limits, they are removed from the vessel or aircraft in which they arrived there.

(c) Imported goods intended for use, sale, or other disposition within the territorial sea or internal waters of the FSM must first be brought to a port of call and cleared through Customs.

(d) Vessels or aircraft entering into the territorial limits of the FSM solely in transit or for loading, unloading, transshipping, provisioning, refueling, other resupply, equipping, maintenance, repair, overhaul, and other like purposes shall not be deemed to be goods imported into the FSM unless such vessels or aircraft thereafter become based in the FSM.

(7) *Import tax rate.* Dutiable goods shall be liable to the duty rates at the time when the aircraft or vessel first arrives at a designated port of entry within the FSM.

(8) *Clearing goods prior to arrival.* Each consignee of imported goods, may, provided he or she has the required documentation, clear those goods prior to arrival of the vessel or aircraft. This does not waive or limit the authority of Customs to examine those goods on arrival.

(9) *Exempt goods.* All tax exempt goods shall be identified and cleared on the official clearance form.

(10) *Abandoned goods:*

(a) Goods remaining unentered three months after the departure of the importing vessel or aircraft shall be treated as goods abandoned to the National Government and may be sold by public auction.

(b) Proceeds of such sale shall be deposited in the General Fund and used first to pay expenses of sale, duties, storage charges, and any lien for freight charges, in said order. Surplus proceeds may be paid to the owner upon proof of his or her interest therein.

Source: PL 9-139 § 24, modified.

Cross-reference: Chapter 1 of title 18 (Territory, Economic Zones and Ports of Entry) is on Territorial Boundaries and Economic Zones.

§ 239. Prohibited and restricted imports.

It shall not be lawful to import into the FSM any goods whose use, sale, possession or import is prohibited or contrary to restrictions imposed by the FSM or the State into which the goods are imported, unless the importer has a valid permit or license to import such goods.

Source: PL 9-139 § 25.

§ 240. Prohibited and restricted exports.

It shall not be lawful to export from the FSM any goods whose use, sale, possession or export is prohibited or contrary to restrictions imposed by the FSM or the State from which they are being exported, unless the exporter has a valid permit or license to export such goods.

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Source: PL 9-139 § 26.

§ 241. Production of documents.

(1) Where a Customs officer is not satisfied with the facts as presented in documents relating to a particular shipment or arrival or departure of a vessel or an aircraft, the officer may require the owner to produce further documents and answer any questions relating to them.

(2) *Summons.*

(a) For the purpose of enforcing this chapter and determining the amount of duty due, the Secretary shall be authorized to summon the importer or owner of imported goods to appear before the Secretary or his designee and at such appearance to produce such documents as specified in the summons and to answer any questions relating to said documents.

(b) The provisions of paragraph (a) of this subsection shall also apply to any officer, employee or agent of the person(s) described in paragraph (a) of this subsection, or any third party having possession, custody, or care of the documents relating to the goods in question.

Source: PL 9-139 § 27.

§ 242. Boarding and searching vessels and aircraft on arrival.

(1) *Boarding, searching, and answering questions.* A Customs officer may:

(a) board any vessel or aircraft on its arrival in the FSM. The hoisting or displaying of a foreign flag will be taken as consent to board;

(b) search any vessel or aircraft on arrival in the FSM;

(c) require all persons found on the vessel or aircraft to answer questions, and produce documents in relation to:

(i) the vessel or aircraft, its voyage or flight, and its cargo, stores, crew and passengers; or

(ii) the presence of those persons on the vessel or aircraft.

(2) *Arming of officers.*

(a) Where the Commissioner has reasonable cause to believe any person on board any vessel or aircraft bears firearms, the Commissioner is authorized to direct that the officers boarding the vessel or aircraft be armed.

(b) All occasions when Customs officers are armed while boarding shall be reported to the FSM Office of the Attorney General.

Source: PL 9-139 § 28, modified.

Cross-reference: Chapter 1 of title 18 (Territory, Economic Zones and Ports of Entry) is on Territorial Boundaries and Economic Zones.

Editor's note: In subsection (1) of this section, the first word in all of the paragraphs of this subsection are changed to lower case to comport with standard code formatting.

§ 243. Patrolling of coasts and inspections of airports and ports.

Any Customs officer and any person acting in his aid may, at any time and using such means of transport as the officer, or person, considers appropriate:

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(1) patrol upon and pass freely along and over any part of the seashore or on the shores, banks or beaches of any port, bay or harbor, or over any part of the land immediately adjoining the seashore, shores, or banks, and on any structures extending from the seashore, shores, or banks; and

(2) enter and inspect any airport or port, their facilities and goods therein; and may remain in any such area to carry out investigations and to exercise surveillance for the detection of offenses against this chapter and for these purposes may make use of any examination or surveillance aids.

Source: PL 9-139 § 29.

Editor's note: The first letter of subsection 243(2) has been changed to lower case for format consistency.

§ 244. Mooring vessels of Customs.

The officer in charge of any vessel employed in the service of Customs may haul the vessel upon any part of the seashore or of the shores or banks of any port, bay, or harbor, or upon any part of the land immediately adjoining the seashore, shores or banks, and moor the vessel there.

Source: PL 9-139 § 30.

§ 245. Stopping of vehicles.

(1) A Customs officer or officer of the FSM National Police may, on reasonable suspicion, stop and search any vehicle for the purpose of ascertaining whether any dutiable or prohibited goods are contained therein.

(2) The driver shall stop and permit such search when signaled to do so.

(3) Any driver who willfully fails to stop and permit such search, when signaled to do so, is guilty of a National offense.

(4) *Penalty.* A person convicted under this section shall be subject to a fine not exceeding \$5,000, or imprisonment of not more than five years, or both.

Source: PL 9-139 § 31.

§ 246. Bringing to or landing other than at official port of entry.

(1) The master of a vessel or pilot of an aircraft who willfully fails to comply with section 201 of title 18 of this code is guilty of a National offense.

(2) *Penalty.* A person convicted under this section shall be subject to a fine not exceeding \$5,000, or imprisonment of not more than five years, or both.

Source: PL 9-139 § 32.

Cross-reference: Section 201 of title 18 (Territory, Economic Zones and Ports of Entry) is on Ports of Entry.

§ 247. Bringing to or landing on signal.

(1) If the master of a vessel within the territorial limits of the FSM willfully fails to bring the vessel to for boarding on being approached by, or hailed or signaled from:

(a) a vessel or aircraft in the service of Customs, that has hoisted the Customs flag; or

(b) a vessel or aircraft in the service of the FSM Government, that has hoisted the proper ensign and pendant or displays the proper signal; the master is guilty of a National offense.

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(2) If the pilot of an aircraft within the territorial limits of the FSM willfully fails to bring the aircraft to the nearest airport for boarding on being approached by, or hailed or signaled from:

(a) a vessel or aircraft in the service of Customs, that has hoisted the Customs flag; or

(b) a vessel or aircraft in the service of the FSM Government that has hoisted the proper ensign and pendant or displays the proper signal; the pilot is guilty of a National offense.

(3) *Penalty.* A person convicted under this section shall be subject to fine not exceeding \$5,000, or imprisonment of not more than five years, or both.

Source: PL 9-139 § 33.

Editor's note: The first word "A" in all of the paragraphs of this section are changed to lower case to comport with standard code formatting.

§ 248. Facilitation of boarding.

(1) Where for the purposes of sections 242 and 247 of this chapter, a master of a vessel or a pilot of an aircraft willfully fails to facilitate by all reasonable means boarding by a person authorized under this chapter, such master or pilot is guilty of a National offense.

(2) *Penalty.* A person convicted under this section shall be subject to a fine not exceeding \$5,000, or imprisonment of not more than five years, or both.

Source: PL 9-139 § 34.

§ 249. Report of cargo.

(1) The master, owner or pilot of a vessel or aircraft arriving from a place outside the FSM is guilty of a National offense if that person willfully fails:

(a) to report, within one day after the arrival at a port or airport, the vessel or aircraft and her cargo by delivering to Customs an inward manifest, in duplicate, of goods for the port or airport;

(b) to answer questions relating to the vessel or aircraft and her cargo, crew, passengers, stores and voyage; or

(c) to produce documents relating to the vessel or aircraft and her cargo.

(2) *Penalty.* A person convicted under this section shall be subject to a fine not exceeding \$5,000, or imprisonment of not more than five years, or both.

Source: PL 9-139 § 35.

Editor's note: The first word "To" in all of the paragraphs of this section are changed to lower case to comport with standard code formatting.

§ 250. Report of wrecked vessel or aircraft.

(1) When any vessel from outside the FSM is lost or wrecked upon the coast, the master or owner shall without unreasonable delay make report of the vessel and her cargo to the Customs office nearest to the place where the vessel was lost or wrecked.

(2) When any aircraft arriving from outside the FSM is lost or wrecked at any place within the FSM, the pilot or owner shall, without unreasonable delay, make report of the aircraft and cargo to the Customs office nearest to the place where the aircraft was lost and wrecked.

(3) Any master or owner of a vessel lost or wrecked, or pilot or owner of an aircraft lost or wrecked, who fails to report such loss or wreck to Customs is guilty of a National offense.

(4) *Penalty.* A person convicted under this section shall be subject to a fine not exceeding \$1,000, or imprisonment of not more than one year, or both.

Source: PL 9-139 § 36.

§ 251. Vessel and aircraft adapted for smuggling.

(1) The master or owner of a vessel or the pilot or owner of an aircraft shall be guilty of a National offense if the vessel or aircraft comes or is found within the territorial limits of the FSM having;

(a) false bulkheads, bows, sides, or bottoms, or any other secret or disguised place adapted for the purpose of concealing goods; or

(b) any hole, pipe, or device adapted for the purpose of unlawfully importing or exporting goods.

(2) *Penalty.* A person convicted under this section shall subject to a fine not exceeding \$5,000, or imprisonment of not more than five years, or both.

Source: PL 9-139 § 37.

Editor's note: In subsection (1) of this section, the first word in the two paragraphs of this subsection are changed to lower case to comport with standard code formatting.

§ 252. Forfeited vessels and aircraft.

The following vessels and aircraft may be forfeited to the FSM Government:

(1) Any vessel or aircraft used to unlawfully import, export, or carry any goods, where an owner or master knew or, but for the intentional disregard of objective facts, should have known, that such vessel was so used;

(2) Any vessel the master of which has refused to permit such vessel to be boarded following a lawfully made request to do so;

(3) Any aircraft failing to land at an airport, or the master of which has refused to permit such aircraft to be boarded, after being properly requested to do so; and

(4) Any vessel or aircraft from which goods are thrown overboard, staved or destroyed to prevent seizure by Customs.

Source: PL 9-139 § 38.

§ 253. Forfeited goods.

The following goods may be forfeited to the FSM Government:

(1) All goods which are unlawfully imported, exported, or carried;

(2) All goods found on any vessel or aircraft after arrival in any port or airport which are not specified or referred to in the inward manifest and are not baggage belonging to crew or passengers and have not been satisfactorily accounted for;

(3) All goods subject to the control of Customs that are moved, altered or interfered with in violation of the provisions of this chapter;

(4) All goods which are, as specified by statute or as directed by a Customs officer, to be moved or dealt with in any way and which are not moved or dealt with in any way and which are not moved or dealt with accordingly;

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- (5) Any vehicle or animal used in smuggling or in the unlawful importation, exportation, or conveyance of any goods;
- (6) All goods, except a passenger's baggage, found on any vessel or aircraft after clearance and not specified or referred to in the outward manifested and not accounted for to the satisfaction of the Commissioner;
- (7) All dutiable goods concealed in any manner;
- (8) Any package in which there are concealed goods:
 - (a) not included in the clearance documents; or
 - (b) so packed as to deceive the officer.
- (9) All dutiable goods found in the possessions or in the baggage of any person who has got out of, landed from or gone on board any vessel or aircraft and who has denied that he or she has any dutiable goods in his or her possession, or who when questioned by a Customs officer has not fully disclosed that such goods are in his or her possession or baggage;
- (10) Any stolen or counterfeit goods.

Source: PL 9-139 § 39.

Cross-reference: The statutory provisions on the President and Executive are found in title 2 of this code.

Editor's note: In subsection (8) of this section, the first word in the two paragraphs of this subsection are changed to lower case to comport with standard code formatting.

§ 254. Seizure of goods.

- (1) A Customs officer or officer of the FSM National Police may seize any forfeited goods or any goods that the officer believes on reasonable grounds are forfeited goods.
- (2) The power to seize goods under subsection (1) of this section may, without limiting the power of that subsection, be exercised at sea or in any other waters.
- (3) All seized goods shall be taken to the nearest National Government warehouse or to such other place of security as the Commissioner directs.
- (4) All seized goods must be endorsed on an appropriate receipt.
- (5) If the Commissioner determines that any goods are of a perishable nature or are live animals, such goods may be sold by the Commissioner without delay.

Source: PL 9-139 § 40.

§ 255. Notice of seizure.

- (1) Where any vessel, aircraft or goods have been seized as forfeited, the seizing officer shall give written notice of the seizure and of the cause of it to the master, pilot or owner of the vessel, aircraft or goods delivering the notice:
 - (a) personally; or
 - (b) by letter addressed to him or her and transmitted by post to or delivered at his or her last known place of abode or business.
- (2) If the master, pilot or owner is present at the time of the seizure verbal notice is sufficient.

Source: PL 9-139 § 41.

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Editor's note: In subsection (1) of this section, the first word in the two paragraphs of this subsection are changed to lower case to comport with standard code formatting.

§ 256. Return of seized goods on security.

The Secretary may authorize any vessel, aircraft or goods seized, other than controlled substances or narcotic drugs, to be delivered to the owner or agent upon production of adequate security.

Source: PL 9-139 § 42.

§ 257. Appeal procedures on the forfeiture of goods.

(1) Any person claiming an interest in goods, or acting on behalf of a person claiming an interest in goods, may appeal their forfeiture.

(2) Form and time of appeal:

(a) The Secretary or his designee may prescribe the form of the notice of appeal and statement of claim.

(b) Notice of appeal, supported by a statement of claim, shall be filed with the Secretary or his designee within 30 days of the date of issuance of the notice of seizure.

(c) With the permission of the Secretary or his designee, the appellant may file supplementary documents after the 30 day period lapses.

(d) Every statement of claim shall set out the interest of the appellant in the goods and shall be accompanied by proof of the existence and nature of the interest. In addition to this the statement will set forth clear and specific reasons why forfeiture should not proceed.

(3) On any such appeal, the Secretary or his designee may waive the forfeiture either in whole or in part, and may impose conditions on the waiver of forfeiture.

(4) Any such waiver may require that there shall be paid to the National Government in respect of the goods, a sum equal to the whole or any part of any one or more of the following:

(a) any costs or expenses incurred by the Customs;

(b) any duty (including penalties and interest) not already paid;

(c) any duty (including penalties and interest) already refunded.

(5) Goods seized shall be deemed to be forfeited to the National Government, if no notice of appeal and statement of claim is filed with the Secretary or his designee within 30 days of the date of issuance of the seizure notice.

(6) Any decision of the Secretary or his designee in respect of forfeiture may be appealed to the Trial Division of the Supreme Court within 60 days after the decision is rendered.

Source: PL 9-139 § 43.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedures are found in title 6 of this code.

Editor's note: In subsection (4), the first word “Any” in all of the paragraphs of this subsection are changed to lower case to comport with standard code formatting.

§ 258. Disposal of forfeited goods, aircraft, and vessels.

All forfeited goods, aircraft, and vessels shall become the property of the National Government and shall be sold, destroyed, or otherwise disposed of as the Secretary or Commissioner may direct.

Source: PL 9-139 § 44.

§ 259. Conspiracy for unlawful purposes.

(1) If two or more persons willfully conspire for the purpose of:

- (a) importing prohibited or restricted imports;
- (b) exporting prohibited or restricted exports;
- (c) smuggling; or
- (d) preventing the seizure of any prohibited or restricted imports, prohibited or restricted exports, or smuggled goods, then each of them is guilty of a National offense.

(2) So far as it relates to prohibited and/or restricted imports and exports, this section also applies to all controlled substances and narcotic drugs.

(3) *Penalty.* A person convicted under this section shall be subject to a fine not exceeding \$10,000, or imprisonment of not more than five years, or both.

Source: PL 9-139 § 45.

Cross-reference: Chapter 11 of title 11 (Crimes) of this code is on Controlled Substances.

Editor's note: In subsection (1) of this section, the first word in all of the paragraphs of this subsection are changed to lower case to comport with standard code formatting.

§ 260. Smuggling and unlawful importing and exporting.

(1) A person commits a National offense if that person willfully smuggles or otherwise unlawfully imports, exports or carries goods as defined in section 212 of this chapter.

(2) A person commits a National offense if that person is the owner or master of a vessel or the owner or pilot of an aircraft who uses or willfully permits the vessel or aircraft to be used:

- (a) in smuggling; or
- (b) for the other unlawful importation, exportation, or carriage of any goods as defined by section 212 of this chapter.

(3) *Penalty.* A person convicted under this section will be subject to a fine not exceeding \$10,000, or imprisonment of not more than five years, or both.

Source: PL 9-139 § 46.

Editor's note: In subsection (2) of this section, the first word in the two paragraphs of this subsection are changed to lower case to comport with standard code formatting.

§ 261. Attempts, solicitations, conspiracies.

Any person who willfully attempts, solicits, or conspires to commit any National offense defined in this chapter shall be subject to the penalties provided in chapter 2 of title 11 of this code except where otherwise provided in this chapter.

Source: PL 9-139 § 47.

Cross-reference: Chapter 2 of title 11 (Crimes) of this code is on Inchoate Crimes.

§ 262. Bribery.

For the purpose of section 531 of title 11 of this code, regarding bribery, or its successor provision, each Customs officer has a “known legal duty” to enforce the law, including investigating

each container, vessel or aircraft to the best of that officer's ability and levying the correct duties, as provided by law.

Source: PL 9-139 § 48.

Cross-reference: Section 531 of title 11 (Crimes) of this code is on Bribery in official and political matters.

§ 263. Offenses in relation to drugs.

- (1) A person is guilty of a National offense who:
- (a) without any reasonable excuse has in his or her possession, on board any vessel or aircraft, any controlled substances, *cannabis*, or narcotic drugs;
 - (b) imports or attempts to import any controlled substances, *cannabis*, or narcotic drugs;
 - (c) exports or attempts to export any controlled substances, *cannabis*, or narcotic drugs;
 - (d) without reasonable excuse has in his or her possession, or attempts to obtain possession of, any controlled substances, *cannabis*, or narcotic drugs which have been imported into the FSM in contravention of this chapter;
 - (e) conspires with another person or other persons to import, bring, or cause to be brought into the FSM any controlled substances, *cannabis*, or narcotic drugs;
 - (f) knowingly aids, abets, counsels or procures, or is in any way concerned in, the importation or exportation into the FSM of any controlled substances, *cannabis*, or narcotic drugs;
 - (g) fails to disclose to a Customs officer on demand any knowledge in that person's possession or power concerning the importation or exportation, or intended importation or exportation, into the FSM of any controlled substances, *cannabis*, or narcotic drugs;

(2) *Penalty.* A person convicted under this section shall be subject to a fine not exceeding \$5,000, or imprisonment of not more than five years, or both.

Source: PL 9-139 § 49.

Cross-reference: Chapter 11 of title 11 (Crimes) of this code is on Controlled Substances.

Editor's note: In subsection (1) of this section, the first word in all of the paragraphs of this subsection are changed to lower case to comport with standard code formatting.

§ 264. Miscellaneous offenses.

- (1) A person commits a National offense if that person:
- (a) evades any duty that is payable;
 - (b) willfully prepares, passes, alters or presents a document purporting to be a genuine invoice that is not in fact a genuine invoice;
 - (c) willfully makes, in a declaration or document produced to a Customs officer, a statement that is untrue in any particular;
 - (d) willfully produces or delivers to a Customs officer a declaration or document containing a statement that is untrue in any particular;
 - (e) willfully misleads any Customs officer in any particular likely to affect the discharge of the officer's duty; or

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(f) refuses or fails to answer questions to the best of that person's knowledge and belief, or to produce all documents relating to the concerned subject.

(2) *Penalty.* A person convicted under this section shall be subject to a fine not exceeding \$1,000, or imprisonment of not more than one year, or both.

Source: PL 9-139 § 50.

Editor's note: In subsection (1) of this section, the first word in all of the paragraphs of this subsection are changed to lower case to comport with standard code formatting.

§ 265. Liability of principal for acts of agents.

(1) Every act done by an agent in the course of his agency in relation to the provisions of this chapter, shall be deemed to have been made or done by his or her principal also, and the principal shall be liable accordingly for all civil penalties imposed by this chapter.

(2) For the purpose of this section the knowledge and intent of the agent within the course and scope of his agency shall be attributed to the principal in addition to his own.

Source: PL 9-139 § 51.

§ 266. Written authority of agents.

Any Customs officer may require any person acting as or claiming to act as the agent of any person in any matter relating to this chapter to produce written authority from his principal, and if such authority is not produced the officer may refuse to recognize the agency.

Source: PL 9-139 § 52.

§ 267. Regulations.

The Secretary of Finance may adopt, amend, or rescind regulations for the administration of this chapter pursuant to chapter 1 of title 17 of this code.

Source: PL 9-139 § 53.

Cross-reference: Chapter 1 of title 17 (Administrative Procedure) of this code is on FSM Administrative Procedures.

§ 268. Assistance from the public.

(1) Where necessary, a Customs officer may call upon and deputized any member of the public to assist in the execution of that officer's duty under this chapter.

(2) Any such member of the public, so deputized, shall have the same powers and immunity as the officer such person is assisting.

Source: PL 9-139 § 54.

§ 269. Implementation.

(1) To give effect to the provisions of this chapter the Secretary is authorized to:

- (a) draw up and implement procedures and guidelines;
- (b) distribute such procedures and guidelines to interested parties;
- (c) appoint appraisers in each of the States to examine invoices presented to Customs.

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(2) The Division of Customs is authorized to become a member of and to send representatives to meetings of;

- (a) organizations that foster cooperation between Pacific Island Nations Customs Divisions;
- (b) organizations that will increase the expertise and efficiency of the Customs Division.

Source: PL 9-139 § 55.

Cross-reference: The statutory provisions on the President and Executive are found in title 2 of this code.

Editor's note: In this section, the first word in all of the paragraphs of the two subsections are changed to lower case to comport with standard code formatting.

§ 270. Protests against the decision of a Customs officer.

Decisions of the appropriate Customs officer are final and conclusive upon all parties unless a protest is filed. The following conditions apply:

- (1) A protest must be in writing and set forth clearly and specifically:
 - (a) each decision by a Custom officer to which the protest is made;
 - (b) each category of merchandise affected by each such decision to which the protest is made;
 - (c) the nature of each objection and the reasons therefor; and
 - (d) the correct amount of duty payable, if the protest were upheld.
- (2) The protest shall be lodged with the Customs office where the decision under protest was made.
- (3) The protest must be filed within 30 calendar days after the date of the decision that is protested.
- (4) Failure to pay the levied duty in full will be a basis for denial of the protest. If the protest is upheld, any excessive levy of import duty will be returned to the importer.
- (5) The Secretary or his designee shall review the evidence and render a decision on the protest.
- (6) A decision in respect of a protest may be appealed to the Trial Division of the Supreme Court within 60 days after the decision is rendered.

Source: PL 9-139 § 56.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedures are found in title 6 of this code.

Editor's note: In subsection (1) of this section, the first word in all of the paragraphs of this subsection are changed to lower case to comport with standard code formatting.

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**CHAPTER 3
Income Tax Regime
for FSM Corporations**

Editor's note: Section 2 of PL 13-71 added a new chapter 3 entitled Income Tax Regime for FSM Corporations.

This chapter has been subdivided into subchapters to improve its organization. Also, the numbering of the sections in PL 13-71 indicated an intent to subdivide this chapter into subchapters.

**SUBCHAPTER I
General Provisions**

SECTIONS

- § 311. Short title.
- § 312. Definitions.
- § 313. Applicability of this chapter.
- § 314. Filing of report.
- § 315. Continued applicability of this chapter.

**SUBCHAPTER II
Taxation**

SECTIONS

- § 321. Tax imposed.
- § 322. Taxable income defined.
- § 323. Exemption from Taxation of Gross Revenues.

**SUBCHAPTER III
Credits**

SECTIONS

- § 331. Non-refundable credit for payment of foreign taxes.
- § 332. Refundable Credit for overpayment of tax.

**SUBCHAPTER IV
Accounting**

SECTIONS

- § 341. Change of Fiscal Year.
- § 342. Method of accounting.

**SUBCHAPTER V
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- § 351. Filing of annual returns.
- § 352. Payment of tax due.
- § 353. Engaging in business or operating a business in the FSM.

SUBCHAPTER VI
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- § 370. **Regulations.**
- § 371. **Tax returns—information required.**
- § 372. **Records, inspection and audit.**
- § 373. **Tax assessment on failure to file or pay.**
- § 374. **Lien on property.**
- § 375. **Criminal penalties.**
- § 376. **Civil penalties.**
- § 377. **Judicial review.**
- § 378. **Summons.**

SUBCHAPTER I
General Provisions

§ 311. Short title.

This chapter may be cited as the “Corporate Income Tax Act of 2004”.

Source: PL 13-71 § 2.

Cross-reference: The statutory provisions on Corporations and Business Associations are found in title 36 of this code. The statutory provisions on Commercial Law are found in title 33 of this code.

Editor’s note: Section 2 of PL 13-71 added a new chapter 3 entitled Income Tax Regime for FSM Corporations.

This chapter has been subdivided into subchapters to improve its organization. Also, the numbering of the sections in PL 13-71 indicated an intent to subdivide this chapter into subchapters.

§ 312. Definitions.

(1) “Control group” of a corporation for purposes of this chapter shall mean a group of corporations comprising of:

- (a) the corporation,
- (b) other corporations in which the corporation owns directly or indirectly 80% or more of the shares,
- (c) other corporations that own directly or indirectly 80% or more of the shares of the corporation, and,
- (d) corporations other than the corporation described in paragraph (a) of this section or corporations described in paragraph (b) of this section, or corporations where 80% or more shares are owned directly or indirectly by the corporations described in paragraph (c) of this section.

(2) “Major Corporation” means any corporation not principally engaged in business in the Federated States of Micronesia as a bank (as such term is defined in title 29 of this code, section 102(1)), formed on or after January 1, 2005, and,

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

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

(c) that is a captive insurance company licensed pursuant to title 37 of this code regardless of the amount of capitalization.

(3) “Secretary” means the Secretary of the Department of Finance and Administration.

(4) “Taxable Year” shall mean the fiscal year of the major corporation as reported to the Secretary under section 314 of this chapter.

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

Source: PL 13-71 § 3; PL 14-110 § 1; PL 16-52 § 1.

Cross-references: Title 29 of this code is on Commercial Banking. Title 37 of this code is on Insurance.

§ 313. Applicability of this chapter.

Taxes imposed under this chapter shall apply to all major corporations incorporated in the Federated States of Micronesia as defined in section 312.

Source: PL 13-71 § 4; PL 14-110 § 2; PL 16-19 § 1; PL 16-52 § 2.

Cross-reference: Title 29 of this code is on Commercial Banking.

§ 314. Filing of report.

A major corporation shall file an initial written report with the Secretary. The written report shall be signed by the authorized representative of the major corporation and shall state:

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

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

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

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

(5) the nature of the major corporation’s principal business; and

(6) the last day of the major corporation’s fiscal year.

The report shall be filed by the major corporation within 60 days of the major corporation becoming subject to this chapter.

Source: PL 13-71 § 5.

§ 315. Continued applicability of this chapter.

A major corporation subject to taxation under this chapter shall continue to be subject to taxation under this chapter through the last day of the taxable year in which it meets the criteria set forth in section 313 of this chapter on any day of such taxable year.

Source: PL 13-71 § 6.

SUBCHAPTER II

Taxation

§ 321. Tax imposed.

A tax at the rate of 21 percent (21%) is hereby imposed for each taxable year on the taxable income of every major corporation. For all major corporations' taxable year ending on or before March 30, 2011, 25.5% tax rate shall apply to the entire taxable year. For all major corporations' taxable year ending on or after March 31, 2011, 21 percent tax rate shall apply to the entire taxable year.

Source: PL 13-71 § 7; PL 16-36 § 1; PL 16-52 § 3.

§ 322. Taxable income defined.

The taxable income of a major corporation equals its income, before income taxes, earned in the taxable year as determined under International Financial Reporting Standard (hereinafter, "IFRS") or Generally Accepted Accounting Principles (hereinafter, "GAAP"), as IFRS or GAAP, as the case may be, is regularly utilized to calculate taxable income in the major corporation's principal shareholder's, if a corporation, place of incorporation or, if an individual, country of primary residence.

Source: PL 13-71 § 8; PL 16-52 § 4.

§ 323. Exemption from Taxation of Gross Revenues.

Any major corporation that is not engaging in business in the Federated States of Micronesia or a business operating in the Federated States of Micronesia pursuant to section 360 of this chapter and remits tax pursuant to section 321 of this chapter is exempt from the requirements of title 54, chapter 1, subchapter IV: Taxation of Gross Revenues of this title, for each taxable year that the major corporation has remitted tax pursuant to section 321 of this chapter.

Source: PL 13-71 § 9.

Cross-reference: The statutory provisions on Corporations and Business Associations are found in title 36 of this code. The statutory provisions on Commercial Law are found in title 33 of this code.

SUBCHAPTER III

Credits

§ 331. Non-refundable credit for payment of foreign taxes.

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

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

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

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

Source: PL 13-71 § 10; PL 16-52 § 5.

Cross-reference: The statutory provisions on Corporations and Business Associations are found in title 36 of this code. The statutory provisions on Commercial Law are found in title 33 of this code.

§ 332. Refundable Credit for overpayment of tax.

In the case of any overpayment by a major corporation of tax imposed by section 321 of this chapter, the amount of such overpayment shall be refunded to the major corporation or shall be applied to any tax liability owed by the major corporation to the Federated States of Micronesia.

Source: PL 13-71 § 11.

SUBCHAPTER IV Accounting

§ 341. Change of Fiscal Year.

A major corporation may, at its option, change its fiscal year, provided that such a change may not be done more than once during any 60 month period without the advance written consent of the Secretary.

Source: PL 13-71 § 12.

§ 342. Method of accounting.

The taxable income of a major corporation shall be computed under the method of accounting which the major corporation regularly computes its income. To the extent permitted by IFRS or GAAP, as applicable, a major corporation may compute its taxable income under any of the following methods of accounting:

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

Source: PL 13-71 § 13; PL 16-52 § 6.

SUBCHAPTER V Administration

§ 351. Filing of annual returns.

Every major corporation shall prepare and file with the Secretary an annual income tax return on a form approved by the Secretary, which annual income tax return shall be signed by the major corporation's authorized representative. This form shall be filed with the Secretary, together with a copy of the major corporation's financial statements and any other required information or documents as prescribed by the Secretary in regulations, in a form acceptable to the Secretary, by the last day of the sixth month period following the last day of the major corporation's taxable year.

Source: PL 13-71 § 14; PL 14-110 § 3; PL 16-52 § 7.

Cross-reference: The statutory provisions on Corporations and Business Associations are found in title 36 of this code. The statutory provisions on Commercial Law are found in title 33 of this code.

§ 352. Payment of tax due.

Taxes shall be paid as follows:

(1) A major corporation shall, pay 50 percent (50%) of the tax it paid for the income of previous fiscal year, if any, hereinafter referred to as "Tax Deposit", to the FSM by the end of the eighth (8th) month of the current fiscal year.

(2) A major corporation which pays an amount less than the Tax Deposit shall pay interest on the delinquent tax balance of one-half of one percent (0.5%) for each full month until the full amount is paid.

(3) A major corporation that does not have a previous fiscal year to determine its Tax Deposit either because it is newly formed or is redomesticating into the FSM, be exempt from the payment of Tax Deposit and any filing requirements pertaining to the Tax Deposit.

(4) A major corporation shall complete and submit to the Department of Finance and Administration an annual statement declaring the taxable income with permitted deductions and exemptions, hereinafter referred to as "Tax Return", by the last business day of the sixth month period following the last day of the major corporation's fiscal year. The annual statement shall be accompanied by one of the following:

(a) Any additional tax payment, after the subtraction of the Tax Deposit, due as shown on the Tax Return of the major corporation shall be paid by the last business day of the sixth month period following the last day of the major corporation's fiscal year.

(b) If the major corporation pays, including the Tax Deposit by the end of the eighth (8th) month during the fiscal year, as per paragraph (a) of this subsection, an amount less than the tax due as shown on the annual tax return by the last business day of the six month period following the last day of the corporation's fiscal year, it shall pay interest on the delinquent tax balance of one half of one percent (0.5%) for each full month until the full amount is paid.

(5) Should the Tax Deposit paid by the major corporation exceed the total annual income tax amount shown on the Tax Return resulting in overpayment of tax, then the major corporation shall be entitled to their rights conferred under section 332, chapter 3 of this title. The major corporation shall apply to the Department of Finance and Administration for either of the following tax treatment options provided under section 332 of this chapter by indicating their choice in the Tax Return form:

(a) To have the overpaid tax amount refunded in full, in which case, the Department of Finance and Administration shall credit the major corporation's bank account within a two (2) month period from the last business day of the sixth month period following the last day of the major corporation's fiscal year;

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(b) To have the overpaid tax amount credited to any tax payments by the major corporation to the Federated States of Micronesia.

Source: PL 13-71 § 15; PL 16-52 § 8; PL 17-73 § 1.

§ 353. Engaging in business or operating a business in the FSM.

A corporation incorporated in the Federated States of Micronesia that only holds, buys, sells, transfers or otherwise transacts with assets or property located outside of the FSM, including but not limited to, businesses, shares, stocks, bonds, annuities, treasury bills, partnership units or trust units, is not engaging in business in the Federated States of Micronesia or a business operating in the Federated States of Micronesia for the purposes of section 323 of this chapter or title 32, chapter 2: the Foreign-Investment Act of this code.

Source: PL 13-71 § 16.

Cross-reference: Title 32 of this code is on Business Regulation. The statutory provisions on Corporations and Business Associations are found in title 36 of this code. The statutory provisions on Commercial Law are found in title 33 of this code.

Editor's note: This section was originally numbered 360, but has been renumbered here as 353 to be consistent with standard code formatting.

The words “Federated States of Micronesia” in the section heading is shortened to “FSM”.

The words “the Code of the Federated States of Micronesia” is replaced with “this code” to comport with standard code formatting.

SUBCHAPTER VI Enforcement

§ 370. Regulations.

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

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

Source: PL 13-71 § 17; PL 16-52 § 9.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

Editor's note: PL 13-71 §17 enacted section 370 without a title, with the following content: “Sections 114 to 115 and 151 to 157 of chapter 1 of this title also apply to the provisions of this chapter.”

§ 371. Tax returns—information required.

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

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

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

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

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

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

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

Source: PL 16-52 § 10.

§ 372. Records, inspection and audit.

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

Source: PL 16-52 § 11.

§ 373. Tax assessment on failure to file or pay.

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

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

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

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

Source: PL 16-52 § 12.

§ 374. Lien on property.

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All taxes imposed or authorized under this chapter shall be a lien upon any property of the person or business obligated to pay said taxes and may be collected by levy upon such property in the same manner as the levy of an execution.

Source: PL 16-52 § 13.

§ 375. Criminal penalties.

Any person or business convicted under the provisions of this chapter shall be fined not more than \$1,000, or, if a natural person, imprisoned not more than one year, or both.

Source: PL 16-52 § 14.

§ 376. Civil penalties.

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

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

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

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

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

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

Source: PL 16-52 § 15.

§ 377. Judicial review.

(1) If a decision of the Secretary is adverse to the taxpayer, in whole or in part, the taxpayer shall have the right within one year from the date of such decision to institute an action for review, irrespective of the amount, in a court of competent jurisdiction in the Federated States of Micronesia. Such action shall be commenced by filing a petition setting forth assignments of all errors alleged to

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have been committed by the Secretary in his determination of the assessment, the facts relied upon to sustain such assignments of errors, and a prayer for appropriate relief. The Secretary or his successor in office shall be the defendant in such proceedings.

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

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

Source: PL 16-52 § 16.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 378. Summons.

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

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

Source: PL 16-52 § 17.

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**CHAPTERS 4 TO 6
[RESERVED]**

**CHAPTER 7
FSM Unified Revenue Authority**

Editor's notes: Section 1 of PL 16-75 added a new chapter 7 of this title entitled FSM Unified Revenue Authority. PL 16-75 was signed into law by Vice President Alik L. Alik, in his capacity as Acting President, on April 19, 2011.

**SUBCHAPTER I
General Provisions**

SECTIONS

- § 701. Short title.
- § 702. Definitions.

**SUBCHAPTER II
Establishment, Membership, and
Meetings of the Authority**

SECTIONS

- § 711. Establishment of the FSM Unified Revenue Authority.
- § 712. Board of Directors of the Authority.
- § 713. Appointment and termination of directors.
- § 714. Chairperson of the Board.
- § 715. Meetings of the Board.
- § 716. Transaction of business without meeting.
- § 717. Remuneration of directors.
- § 718. Disclosure of interest.
- § 719. Minutes of meetings and business transacted.
- § 720. Common seal.
- § 721. Task assignment by Board.

**SUBCHAPTER III
Service of Authority**

SECTIONS

- § 731. Appointment of Chief Executive Officer.
- § 732. Appointment of officers and their staff.
- § 733. Delegation of CEO's functions and powers.
- § 734. Oath of office.
- § 735. Confidentiality and disclosure of information.

**SUBCHAPTER IV
Functions, Duties and Powers of the Authority**

SECTIONS

- § 741. **Functions of the Authority.**
- § 742. **Powers of the Authority.**

**SUBCHAPTER V
Financial Provisions and Reporting**

SECTIONS

- § 751. **Funds of the Authority.**
- § 752. **Funding of Authority operations.**
- § 753. **Taxes collected by the Authority held in trust for National or State Governments.**
- § 754. **Expenditure to be charged on funds of the Authority.**
- § 755. **Bank accounts.**
- § 756. **Annual budget and costs of administration.**
- § 757. **Accounts, annual report, and audit.**
- § 758. **Distribution of revenues.**
- § 759. **Memorandum of Understanding.**

**SUBCHAPTER VI
Miscellaneous**

SECTIONS

- § 761. **Limitation of liability.**
- § 762. **Authority as agent of the Government.**
- § 763. **Claims for and payments of tax refunds.**
- § 764. **Proceedings conducted by revenue officers.**
- § 765. **Vesting of assets and liabilities, contracts and proceedings; transitional provisions.**
- § 766. **References in other laws.**
- § 767. **Controlling laws.**
- § 768. **Regulations.**
- § 769. **Commencement of Administration.**

**SUBCHAPTER I
General Provisions**

Editor's note: Section 2 of PL 16-75 added a new subchapter I of this chapter 7 entitled General Provisions.

§ 701. Short title.

This chapter may be cited as the Federated States of Micronesia Unified Revenue Authority Act of 2010.

Source: PL 16-75 § 3.

§ 702. Definitions.

Wherever used in this chapter, unless the subject matter, context, or sense otherwise requires:

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- (1) “Authority” means the Federated States of Micronesia Unified Revenue Authority established by section 711 of this chapter.
- (2) “Board” means the Board of Directors of the Authority appointed under section 712 of this chapter.
- (3) “CEO” means the Chief Executive Officer appointed under section 731 of this chapter.
- (4) “Congress” means the Congress of the Federated States of Micronesia.
- (5) “CTA” means the FSM Department of Finance and Administration, Division of Customs and Tax Administration.
- (6) “Finance Official” means the Secretary, a Director of Finance, Director of Administration, Director of Administration and Treasury or such other official holding the highest administrative office responsible for matters of finance or taxation within the FSM National Government or the Government of any State.
- (7) “FSM” means the Federated States of Micronesia.
- (8) “Government” means the Government of the Federated States of Micronesia or the Government of a State in the Federated States of Micronesia, whichever the context appropriately requires.
- (9) “Generally Accepted Accounting Principles” or “GAAP” means those accounting principles currently accepted by certified public accountants, which are utilized by auditors operating within the FSM; PROVIDED, HOWEVER, that in the event International Financial Reporting Standards (IFRS) become generally accepted by the financial/auditing entities within the FSM and as prescribed by law or regulations, then GAAP shall be modified by IFRS.
- (10) “Memorandum of Understanding” means the Memorandum of Understanding entered into between the FSM National Government and the governments of the several States under section 759 of this chapter.
- (11) “National tax” means a tax or duty imposed under a law referred to in paragraphs (a) or (b) of the definition of “Revenue law” in subsection (17) of this section.
- (12) “Net tax” means the gross collection of tax, penalties, and interest under a revenue law less refunds paid under such law.
- (13) “Net National taxes” means the net tax collected in respect of National taxes.
- (14) “Net State taxes” means the net tax collected in respect of a State’s taxes.
- (15) “Prescribed percentage”, in relation to the Authority’s operations budget, is that percentage determined under sections 752 and 756(2) of this chapter.
- (16) “Revenue authority” means the CTA as defined in subsection (5) of this section, or the administrative office responsible for matters of finance or taxation within the Government of any State.
- (17) “Revenue law” means:
 - (a) any chapter under this title;
 - (b) a law of the FSM imposing a tax or duty if the law provides that the Authority has the responsibility for administering the tax or duty; and
 - (c) a law of a State imposing a tax which the Authority is allowed to administer by virtue of the laws of such State.
- (18) “Revenue officer” means the CEO and any officer of the Authority appointed under section 732 of this chapter.
- (19) “Secretary” means the Secretary of the Department of Finance and Administration.
- (20) “State” means a State of the Federated States of Micronesia; and
- (21) “State tax” means a tax imposed under a law referred to in paragraph (c) of the definition of “Revenue law” in subsection (17) of this section.

Source: PL 16-75 § 4.

SUBCHAPTER II
Establishment, Membership, and
Meetings of the Authority

Editor's note: Section 5 of PL 16-75 added a new subchapter II of this chapter 7 entitled Establishment, Membership, and Meetings of the Authority.

§ 711. Establishment of the FSM Unified Revenue Authority.

The Federated States of Micronesia Unified Revenue Authority is hereby established under the laws of the Federated States of Micronesia. It may hereinafter be referred to as “the Authority”.

Source: PL 16-75 § 6.

§712. Board of Directors of the Authority.

(1) There is a Board of Directors of the Authority that is the governing body of the Authority.

(2) The Board is responsible for monitoring the overall performance of the Authority and for determining policies relating to staffing of and procurement by the Authority.

(3) The Board must not intervene in the determination of an assessment, ruling application, liability, objection, or appeal of a person under a revenue law, or in any other operational matter of the Authority.

Source: PL 16-75 § 7.

§ 713. Appointment and termination of directors.

(1) The Board consists of the following directors:

- (a) the Secretary;
- (b) a representative of the State of Chuuk appointed pursuant to Chuuk State law;
- (c) a representative of the State of Kosrae appointed pursuant to Kosrae State law;
- (d) a representative of the State of Pohnpei appointed pursuant to Pohnpei State law;
- (e) a representative of the State of Yap appointed pursuant to Yap State law; and
- (f) a representative of the private sector appointed by a majority of the directors

referred to in paragraphs (a) through (e) of this section.

(2) The person appointed under subsection (1)(f) of this section must be from a pool of candidates from the private sector nominated by the Governors, who in the opinion of the Board, has adequate experience in public administration, or in financial, commercial, tax, or legal matters. Each Governor may nominate no more than two persons from his State.

(3) The following persons are not allowed to be appointed under subsection (1)(f) of this section:

- (a) a person who is an undischarged bankrupt;
- (b) a person who has been convicted of an offense under a revenue law, or who otherwise has been convicted of any other crime involving moral turpitude;
- (c) a person whose affairs under all revenue laws are not up to date; or

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(d) a person who is disqualified or suspended from practice of the person's profession for misconduct.

(4) Before appointing a person under subsection (1)(f) of this section, the Board must take into consideration any potential conflicts of interest that the person may have.

(5) The person appointed as director under subsection (1)(a) of this section shall hold the office for as long as the person holds the office of Secretary.

(6) A person appointed as director under subsection (1)(b), (c), (d), or (e) of this section shall hold office pursuant to the respective State law under which each was appointed.

(7) The person appointed as director under subsection (1)(f) of this section shall hold office for a term not exceeding three years and is eligible for reappointment.

(8) A person appointed as a director under subsection (1)(b), (c), (d), or (e) of this section may be removed from office in accordance with the State law of appointment.

(9) The person appointed as director under subsection (1)(f) of this section may be removed from office by resolution of the Board if the director:

(a) has been absent, without leave of the Board, from three consecutive meetings of the Board;

(b) has become an undischarged bankrupt;

(c) has been convicted of an offense, or has become liable for a penalty, under a revenue law, including section 718 of this chapter, or has been convicted of any other crime involving moral turpitude; or

(d) has become disqualified or suspended from practice of the person's profession for misconduct.

Source: PL 16-75 § 8.

§ 714. Chairperson of the Board.

(1) The Chairperson of the Board shall rotate annually among the five FSM governments as determined by the Board.

(2) The Chairperson may authorize, in writing, any director to exercise any power or perform any function conferred on the Chairperson by or under this chapter.

Source: PL 16-75 § 9.

§ 715. Meetings of the Board.

(1) The Board must meet as often as may be necessary for the performance of its functions; PROVIDED HOWEVER that it shall meet on no less than four occasions each calendar year; and PROVIDED, FURTHER, that at least two such meetings shall require the physical presence of the directors at a single location.

(2) At any meeting, the quorum of the Board shall be four directors. Subject to subsection (1) of this section, participation may be in person, by teleconference, or by other appropriate electronic means in real time. A quorum, once established, shall not be broken by the absence or withdrawal of one or more directors before a meeting is adjourned.

(3) Notice of a meeting of the Board must be given to each director and shall be delivered by hand or sent by post, facsimile, electronic mail, or other written message to an address supplied by the director to the Board for this purpose.

(4) Subject to subsection (5) of this section, decisions at meetings of the Board are by a simple majority of the directors participating.

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(5) The director appointed under section 713(1)(f) of this section shall be a non-voting member of the Board but is to be taken into account in determining whether a quorum exists.

(6) Subject to this section, the Board may regulate its own procedure.

(7) The validity of a proceeding of the Board is not affected by a vacancy in the membership, or by any defect in the appointment of a director.

(8) The Board may invite a person to attend a meeting of the Board for the purpose of advising it on any matter under discussion, but the person so attending shall have no right to vote at the meeting.

Source: PL 16-75 § 10.

§ 716. Transaction of business without meeting.

(1) A resolution of the Board is valid, even though it was not passed at a meeting of the Board, if:

(a) it is signed or assented to by all five directors of the Board who are appointed under section 713(1)(a),(b),(c),(d), and (e) of this chapter; and

(b) a notice in writing of the proposed resolution was given to each director.

(2) [RESERVED]

Source: PL 16-75 § 11.

§ 717. Remuneration of directors.

The directors of the Board and persons invited to attend a meeting of the Board under section 715(8) of this chapter are entitled to such remuneration as may be established by regulation.

Source: PL 16-75 § 12.

§ 718. Disclosure of interest.

(1) A director of the Board who has a direct or indirect personal interest in the outcome of any matter before the Board must disclose the interest to the Board.

(2) The disclosure of an interest under subsection (1) of this section must be recorded in the minutes of the Board.

(3) After making a disclosure under subsection (1) of this section, the director:

(a) in the case of a meeting, must withdraw from the meeting before the commencement of deliberations of the Board in respect of the matter referred to in subsection (1) of this section, although the director may be counted for the purposes of forming a quorum of the Board at the meeting; and

(b) in any case, must not vote on the matter.

(4) A director who contravenes this section is guilty of an offense, and upon conviction is subject to a fine not exceeding \$1000, imprisonment for not more than one year, or both.

Source: PL 16-75 § 13.

§ 719. Minutes of meetings and business transacted.

(1) The Board must keep minutes of all its meetings and business transacted under sections 715 and 716 of this chapter in a proper form.

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(2) The minutes of a meeting, if duly signed by the Chairperson or person presiding, are admissible, in any legal proceedings, as evidence of the facts stated therein and a meeting of the Board in respect of which minutes have been so signed is treated as having been duly convened and held, and the directors present at the meeting have been duly appointed to act.

(3) Any minutes of a resolution dealt with under section 716 of this chapter, if duly signed by the Chairperson, are admissible, in any legal proceedings, as evidence of the facts stated therein and that the resolution was properly dealt with in accordance with section 716 of this chapter.

Source: PL 16-75 § 14.

§ 720. Common seal.

(1) The Authority must have a common seal of such design as it may decide.

(2) The common seal must be kept by the Chairperson and its affixing must be authenticated by two directors of the Board generally or specifically authorized by the Authority for the purpose, or by one such director and the Chairperson.

(3) All deeds, documents, and other instruments purporting to be sealed with the common seal and authenticated in accordance with subsection (2) of this section are, unless the contrary is proved, presumed to have been validly executed.

(4) The common seal of the Authority must be officially and judicially noticed for all purposes.

Source: PL 16-75 § 15.

§ 721. Task assignment by Board.

(1) The Board may, from time to time, by notice in writing under the hand of the Chairperson, assign to any person or committee a specific task to assist the Board in furtherance of its duties; PROVIDED, HOWEVER, that the Board may not delegate its policy-making power.

(2) An assignment under this section may be made to a specified person or committee, or holder for the time being of a specified office or to the holders of offices of a specified class.

(3) An assignment may be made subject to such restrictions and conditions as the Board thinks fit, and may be made either generally or in relation to any particular case or class of case.

(4) A person or committee purporting to be acting under assignment of the Board must, when required to do so, produce satisfactory evidence of such assignment.

(5) A committee established under this section may regulate its own procedure but is subject to direction given by the Board.

(6) Sections 715, 716, 718, and 719 of this chapter apply equally to members and meetings of a committee established under this section.

(7) The members of a committee and persons invited to attend meetings of the committee to advise the committee are entitled to such allowances and expenses as the Board may fix by regulation.

Source: PL 16-75 § 16.

SUBCHAPTER III Service of Authority

Editor's note: Section 17 of PL 16-75 added a new subchapter III of this chapter 7 entitled Service of Authority.

§ 731. Appointment of Chief Executive Officer.

- (1) The Board shall appoint a Chief Executive Officer (CEO) on such terms and conditions as the Board may determine.
- (2) The CEO:
 - (a) shall serve for a term of four years, subject to reappointment by the Board;
 - (b) is responsible for the administration and enforcement of, and collection of revenue, under the revenue laws;
 - (c) is responsible for the day-to-day operations of the Authority;
 - (d) is responsible for the proper administration and management of the functions and affairs of the Authority in accordance with the policy laid down by the Board; and
 - (e) shall perform such other functions and duties as the Board may determine.
- (3) Except as provided in subsection (2) of this section, the CEO is not subject to the direction or control of any person.
- (4) If the CEO is temporarily absent from the FSM, or temporarily unable to perform the duties of his office, the Board may appoint a person to act in the place of the CEO during that period.
- (5) The Board may terminate the appointment of the CEO for incapacity, misbehavior, or misfeasance or malfeasance. A CEO whose appointment has been terminated under this subsection may appeal to a court of competent jurisdiction.

Source: PL 16-75 § 18.

§ 732. Appointment of officers and other staff.

The CEO may appoint, on such terms and conditions as the Board may determine, such officers, employees, agents, or consultants as may be necessary or expedient for carrying out the functions and duties of the Authority.

Source: PL 16-75 § 19.

§ 733. Delegation of CEO's functions and powers.

- (1) Subject to subsection (4) of this section, the CEO may, by written instrument, delegate to a revenue officer any of his or her functions and powers under any revenue law, other than this power of delegation.
- (2) A reference in a revenue law to the CEO includes, in respect of the exercise of a power or performance of a function delegated to a revenue officer, a reference to the delegate.
- (3) A delegation under this section is revocable at will and does not prevent the exercise of a power or performance of a function by the CEO.
- (4) The CEO shall not delegate the functions and powers of tax assessment and collection to any person other than an employee of the Authority; PROVIDED, HOWEVER, that nothing herein shall be deemed as limiting the CEO from retaining legal counsel, or contracting with consultants and others as may be necessary to assist the Authority to perform its duties.

Source: PL 16-75 § 20.

§ 734. Oath of office.

The Board may prescribe an oath of office to be administered to revenue officers.

Source: PL 16-75 § 21.

§ 735. Confidentiality and disclosure of information.

(1) Revenue officers, directors, employees of the Authority, former directors of the Board, former members of a committee of the Board, persons invited to a Board or committee meeting, former employees or contractors of the Authority, and any person formerly or presently engaged by the Authority in any capacity shall not disclose any business or personal document or information received during the performance of duties or in the course of any meeting of the Authority if such document or information is deemed confidential or secret by law or by generally accepted business practices, except that they may disclose a confidential or secret business or personal document or information to the following:

- (a) another revenue officer, but only to the extent required by law or as may be necessary for the purposes of any revenue law;
- (b) the Secretary, but only in relation to National taxes;
- (c) a Finance Official of a State, but only in relation to that State's taxes;
- (d) the Secretary of the FSM Department of Justice or his designee, but only to the extent required for any legal action or claim by or against the National Government;
- (e) the Attorney General of a State Government or his designee, but only to the extent required for any legal action or claim by or against that State;
- (f) a court of competent jurisdiction upon order of such court, or to the extent necessary with respect to the enforcement of any revenue law;
- (g) the National Public Auditor or a person authorized by the National Public Auditor in writing, but only to the extent that the disclosure is necessary for the performance of the audit of the Authority's accounts;
- (h) a State Public Auditor or a person authorized by a State Public Auditor in writing, but only to the extent that the disclosure is necessary for audit of accounts held by the Authority on behalf of that State;
- (i) the competent authority of a government of a foreign country with which the FSM National Government has entered into an agreement providing for the exchange of information, but only to the extent permitted under that agreement and applicable law; and
- (j) a person with the written consent of the person to whom the documents or information relate.

(2) If a revenue officer is permitted to disclose documents or information under subsection (1) of this section, the officer must maintain secrecy and confidentiality except to the minimum extent necessary to achieve the object for which the disclosure is permitted.

(3) Any person who knowingly or intentionally violates any provision of subsections (1) or (2) of this section, or a duty or obligation imposed therein, shall be guilty of a felony and, upon conviction thereof, shall be fined not less than \$500 and not more than \$5,000, or be imprisoned for not more than two years, or both.

Source: PL 16-75 § 22.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

SUBCHAPTER IV
Functions, Duties and Powers of the Authority

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Editor's note: Section 23 of PL 16-75 added a new subchapter IV of this chapter 7 entitled Functions, Duties and Powers of the Authority.

§ 741. Functions of the Authority.

The primary function of the Authority is to maximize, over time, the collection of tax revenue lawfully owing to the FSM National Government and the States given the resources available to it. Without limiting the generality of the foregoing, the Authority has the following specific functions:

- (1) to act as agent in the collection of revenue on behalf of the FSM National Government and the Governments of the several States in accordance with their revenue laws;
- (2) to otherwise administer on behalf of the FSM National Government and the Governments of the several States the provisions of the revenue laws as shall from time to time require its action;
- (3) to render ancillary services to the FSM National Government and the Governments of the several States in the administration and enforcement of their revenue laws;
- (4) to take border security and customs measures as required under chapter 2 of title 54 of this code or as assigned to the Authority in accordance with law;
- (5) to ensure that all revenue collected is dealt with in accordance with section 758 of this chapter;
- (6) to promote voluntary compliance with the revenue laws;
- (7) to take such measures as may be required to improve the standards of service provided to taxpayers with a view to improving efficiency and effectiveness in administration, and maximizing revenue collection;
- (8) to take such measures as may be required or considered necessary to prevent tax evasion and fraud of any type;
- (9) to advise the FSM National Government and the Governments of the several States on matters relating to the administration and collection of revenue, and border security, under the revenue laws;
- (10) as directed by the Secretary, to represent the FSM National Government internationally in respect of matters related to taxation and customs;
- (11) to perform such other functions, in relation to the collection of National taxes as the Secretary may assign to the Authority; and
- (12) to perform such other functions in relation to the collection of State taxes as the Finance Official of the relevant State may assign to the Authority.

Source: PL 16-75 § 24.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 742. Powers of the Authority.

- (1) In performing the functions authorized pursuant to section 741 of this chapter, the Authority has the following powers:
 - (a) to adopt, alter, and use a seal;
 - (b) to adopt and amend bylaws governing the conduct of its business and the exercise of its powers, subject to the provisions of the revenue laws;
 - (c) to sue and be sued in its name;

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(d) to acquire, in any lawful manner, any personal property, either tangible or intangible, to hold, maintain, use and operate such property, and to sell, lease or otherwise dispose of such property;

(e) to retain and terminate the services of employees, agents, attorneys, auditors, and independent contractors upon such terms and conditions as it may deem appropriate;

(f) to make assessments, conduct investigations, initiate judicial proceedings, publish rules and rulings, and to take such other action as may be necessary in connection with its role as a unified tax administration for the FSM National Government and the Governments of the several States; and

(g) to do all such other things on its own account or as agent for the FSM National Government and the Governments of the several States as may be deemed incidental to or conducive to the attainment of the functions and responsibilities of the Authority.

(2) The Authority is not permitted to own any real property, but may lease real property to the extent necessary for its operation.

Source: PL 16-75 § 25.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

SUBCHAPTER V Financial Provisions and Reporting

Editor's note: Section 26 of PL 16-75 added a new subchapter V of this chapter 7 entitled Financial Provisions and Reporting.

§ 751. Funds of the Authority.

(1) *Establishment.* There shall be established a Federated States of Micronesia Special Fund, hereinafter referred to as the “Fund”, separate and apart from all public monies or funds of the Federated States of Micronesia, which shall be administered by the Authority exclusively for the purposes of this chapter.

(2) *Deposits.* Except as may otherwise be required by grantors in cases of grants, all funds specified under subsection (4) of this section, and all funds derived from deductions made pursuant to section 752 of this chapter, shall be deposited in the Fund. Any unexpended moneys in this Fund shall neither revert nor lapse to the General Fund, or any other Fund.

(3) *Administration.* The Fund shall be administered by the CEO in accordance with the regulations and procedures which the Board shall promulgate as appropriate for the effectuation and implementation of the provisions of this subchapter. Procurement of goods and services to be funded wholly or partially from the Fund shall be subject to the Financial Management Act of 1979 and its subsidiary regulations.

(4) *Authority funds.* The funds of the Authority consist of:

- (a) money appropriated from time to time by Congress and paid to the Authority;
- (b) money derived from the disposal, lease, or hire of, or any other dealing with, any property vested in or acquired by the Authority;
- (c) money borrowed by the Authority in accordance with subsection (5) of this section;
- (d) income from investments referred to in subsection (6) of this section;

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(e) except as provided herein, any other moneys that may become payable to the Authority in respect of any matter incidental to its functions and powers, including but not limited to grants or other donated funding; and

(f) money deducted for the operations of the Authority pursuant to section 752 of this chapter.

(5) The Authority may borrow upon such terms and conditions as the Board may approve, any sums required by the Authority to meet any of its obligations or to perform any of its functions.

(6) The Authority shall, to the extent practicable, maintain its funds in the form of liquid, interest bearing bank deposits.

(7) The Authority shall conserve its funds by performing its functions and exercising its powers under this chapter so as to ensure that the total revenues of the Authority are sufficient to meet all sums properly chargeable to its revenue account including depreciation and interest on capital.

(8) The funds of the Authority do not include National and State taxes, or any interest or penalty in relation to such taxes, collected by the Authority on behalf of the FSM National Government or the Governments of the several States.

Source: PL 16-75 § 27.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Government Finance and Contracts are found in title 55 of this code. Chapter 2 of title 55 is on Financial Management.

§ 752. Funding of Authority operations.

(1) Unless otherwise provided by an Act of Congress, the Authority shall deduct from the National Government's share of the National taxes collected during the current year an amount not exceeding the prescribed percentage as funds for its operations in collecting National taxes in the ensuing year. Such deductions shall be deemed appropriated as if set forth in the comprehensive budget Act for the relevant fiscal year.

(2) The Authority's operations in collecting each state's taxes will be funded pursuant to a Memorandum of Understanding described in section 759 of this chapter and any law enacted by a state to give effect to such Memorandum of Understanding.

Source: PL 16-75 § 28.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 753. Taxes collected by the Authority held in trust for National or State Governments.

(1) The National taxes collected by the Authority are held by the Authority in trust for the FSM National Government and the Governments of the several States in the proportion specified in section 758 of this chapter.

(2) The State taxes collected by the Authority on behalf of a State are held by the Authority in trust for the State in the proportion specified in section 758 of this chapter.

(3) The amounts referred to in subsections (1) and (2) of this section do not form part of the assets of the Authority available to meet the claims of creditors of the Authority.

Source: PL 16-75 § 29.

§ 754. Expenditure to be charged on funds of the Authority.

- (1) The funds of the Authority shall be expended for the purposes of:
 - (a) paying any expenditure lawfully incurred by the Authority in the performance of its functions or the exercise of its powers under the revenue laws;
 - (b) discharging any obligations and liabilities of the Authority and making any payments that the Authority is required or authorized to make; and
 - (c) paying any expenses for carrying into effect the provisions of the revenue laws.
- (2) The FSM National Government and the Governments of the several States are not liable for any debts incurred by the Authority unless all the Governments have agreed otherwise in relation to a particular debt or debts.

Source: PL 16-75 § 30.

§ 755. Bank accounts.

- (1) The Authority shall maintain one or more bank accounts into which funds of the Authority shall be deposited and from which operational expenses are paid. Funds of the Authority shall be deposited into the appropriate account no later than the next business day following receipt of such funds.
- (2) The Authority shall maintain a separate bank account for each Government. The Authority shall deposit the funds held in trust pursuant to section 753 of this chapter into the respective account of each Government. Such funds collected by the Authority shall be deposited into the appropriate account no later than the next business day following receipt of such funds. The Authority shall not commingle funds.
- (3) No withdrawal or payment of money from an account opened under subsection (1) of this section can be made without the signature of the CEO or his/her designee. No withdrawal or payment of money from an account opened under subsection (2) of this section can be made without the signature of the CEO or his/her designee and the signature of the Chief Financial Officer of the Authority or his/her designee.
- (4) No amount can be withdrawn from an account opened under subsection (2) of this section except in making a refund of tax deposited into the account or in the transfer of the balance of the account of the FSM National Government or a State Government in accordance with section 758 of this chapter.
- (5) The Authority shall maintain in each account a sufficient balance to meet minimum bank balance requirements as set by the bank.

Source: PL 16-75 § 31.

§ 756. Annual budget and costs of administration.

- (1) At such time and in such manner as the Board may prescribe, but not later than six months prior to the close of the current fiscal year, the CEO shall submit to the Board a detailed estimate of the budget for the next ensuing fiscal year for the proper conduct of the Authority. This submission shall include:
 - (a) for the last completed fiscal year;
 - (i) audited accounts indicating the amount of revenue collected by the Authority on behalf of the FSM National Government and the Governments of the several States;
 - (ii) the amount of other income of the Authority;

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- (iii) the amount of all expenditures incurred by the Authority; and
- (iv) the closing balance of all bank accounts maintained by the Authority;

(b) for the fiscal year in progress, a statement showing the estimated amount of revenue to be collected on behalf of the FSM National Government and the Governments of the several States, the estimated amount of other income of the Authority, and the estimated amount of all expenditures to be incurred by the Authority, together with such summaries, schedules, and supporting data as the Board or the President may require by notice in writing to the CEO; and

(c) for the next ensuing fiscal year, a budget showing the estimated amount of revenue to be collected on behalf of the FSM National Government and the Governments of the several States, the estimated amount of other income of the Authority, and the estimated amount of all expenditures to be incurred by the Authority, including salaries and wages, purchases of office supplies, operational expenses, and the cost of maintaining branch offices.

(2) The annual budget of the Authority shall be no more than ten percent (10%) of the National Government's share of National taxes, expressed as the prescribed percentage authorized by Congress; PROVIDED, HOWEVER, that the Board may designate in writing a lower budget cap, within the prescribed percentage.

Source: PL 16-75 § 32.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 757. Accounts, annual report, and audit.

(1) The Authority must keep accounts of its transactions and financial affairs, and must ensure that:

- (a) all moneys received by the Authority are properly recorded and accounted for;
- (b) all payments by the Authority are properly authorized and recorded;
- (c) adequate control is maintained over the Authority's property and the incurring of liabilities; and
- (d) the accounts are kept in accordance with Generally Accepted Accounting Principles.

(2) Within three months after the end of each fiscal year, the CEO must prepare a report of the Authority's activities during the fiscal year (referred to as the "Annual Report"), and submit a copy of the report to the Board, the President, the Governor of each State, and the Finance Officials.

(3) The annual report must contain, among other things:

- (a) a statement of financial performance, including a statement of the financial position of the Authority;
- (b) a statement of cash flows;
- (c) a statement of distribution of revenues to the States pursuant to section 758 of this chapter;
- (d) a copy of the most recent budget submitted pursuant to section 756 of this chapter;
- (e) a report of the Authority's operations for the year; and
- (f) such other information as is required to give a true and fair view of the Authority's financial affairs.

(4) The annual accounts of the Authority must be audited by the Public Auditor or, if the Public Auditor indicates in writing that an audit cannot be completed within six months of the end of the

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financial year, by an independent accounting firm satisfactory to the Board. For this purpose, the CEO must, within three months after the end of each financial year, submit to the Auditor:

- (a) the accounts of the Authority for the year; and
- (b) the annual report for the year prepared in accordance with subsection (2) of this section.

(5) The Board shall cause a copy of the annual report and a copy of the auditor's opinion of the Authority's accounts for a financial year to be laid before Congress and the State legislatures within 30 days following receipt of the Auditor's opinion.

(6) The CEO shall, from time to time as the Board may require, and no less than once each fiscal quarter, submit to the Board an interim report accounting for estimated and actual revenue collections, as well as estimated and actual expenditures of the Authority.

Source: PL 16-75 § 33.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 758. Distribution of revenues.

(1) The Authority shall pay the following amounts to the treasury of each State Government:

(a) one hundred percent (100%) of the net tax collected pursuant to the Value Added Tax Act of the State;

(b) one hundred percent (100%) of the net tax collected pursuant to any other taxes imposed by the State;

(c) eighty percent (80%) of the net tax collected pursuant to section 221 of this title in relation to the import of gasoline and diesel fuels into the State;

(d) fifty percent (50%) of the net tax collected pursuant to section 121 of this title in relation to wages and salaries received by employees in the State;

(e) fifty percent (50%) of the net tax collected pursuant to section 221 (other than section 221 of this title in relation to the import of gasoline and diesel fuels into the State) of this title in relation to the import of goods into the State; and

(f) fifty percent (50%) of the net tax collected pursuant to:

(i) sections 521 and 522 of this title in relation to business carried on through a permanent establishment in the State as determined under section 512 of this title;

(ii) section 524 of this title in relation to the carriage of passengers, livestock, mail, merchandise, or goods embarked in the State or to the insurance of risks in the State; and

(iii) section 525 of this title in relation to interest, royalties, a natural resource amount, or a management fee derived by a non-resident person from sources in the State determined under section 513 of this title on the basis that the reference in that section to FSM is a reference to the State.

(2) The Authority shall pay the following amounts to the treasury of the National Government:

(a) twenty percent (20%) of the net tax collected pursuant to section 221 of this title in relation to the import of gasoline and diesel fuels into the State;

(b) fifty percent (50%) of the net tax collected pursuant to section 121 of this title in relation to wages and salaries received by employees in the State;

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(c) fifty percent (50%) of the net tax collected pursuant to section 221 (other than section 221 of this title in relation to the import of gasoline and diesel fuels into the State) of this title in relation to the import of goods into the State; and

(d) fifty percent (50%) of the net tax collected pursuant to:

(i) sections 521 and 522 of this title in relation to business carried on through a permanent establishment in the State as determined under section 512 of this title;

(ii) section 524 of this title in relation to the carriage of passengers, livestock, mail, merchandise, or goods embarked in the State or to the insurance of risks in the State; and

(iii) section 525 of this title in relation to interest, royalties, a natural resource amount, or a management fee derived by a non-resident person from sources in the State determined under section 513 of this title on the basis that the reference in that section to FSM is a reference to the State.

(3) All distributions referenced in this section shall include any interest accrued while the funds have been held by the Authority in trust.

(4) The timing of the distribution of revenue shall be as follows:

(a) By no later than the last day of each month the Authority shall distribute to each Government the net taxes collected and deposited by the Authority during the previous month.

(b) Refunds to taxpayers shall be paid from the subsequent month's distribution of revenue to the Governments.

Source: PL 16-75 § 34.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 759. Memorandum of Understanding.

(1) The FSM National Government and the Governments of the several States shall enter into a Memorandum of Understanding to give effect to each Government's commitments in relation to the establishment of the Authority, including the states' commitments to fund the Authority's operations in collecting state taxes.

(2) The amendment of this chapter or the regulations promulgated without the unanimous consent by all parties to the Memorandum of Understanding will constitute a ground for withdrawal by any party from the Memorandum of Understanding.

Source: PL 16-75 § 35.

SUBCHAPTER VI Miscellaneous

Editor's note: Section 36 of PL 16-75 added a new subchapter VI of this chapter 7 entitled Miscellaneous.

§ 761. Limitation of liability.

(1) Except as provided in subsection (3) of this section, no civil proceedings shall lie against the Authority or an officer, employee, or director of the Authority for anything done or said, or a failure to do or say anything in the course of the operation of the Authority, unless it is shown that the

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Authority, director, officer, or employee acted in bad faith or with intentional disregard for the rights or safety of others, or unless it is shown that such action or failure to act constitutes a violation of a revenue law.

(2) Unless waived, no action for damages shall lie against the FSM National Government or a Government of the several States for any act or omission on the part of the Authority, or any of its directors, revenue officers or of its CEO.

(3) Nothing in this section shall be construed as a limitation on the power of the Authority to sue and be sued in its own name.

Source: PL 16-75 § 37.

§ 762. Authority as agent of the Government.

(1) In exercising its powers and duties under the revenue laws, no action, claim, suit or statement made by the Authority in its own name shall affect its status as agent of the FSM National Government and the Governments of the several States for the purpose of tax collection and revenue administration, and all actions, statements or communications undertaken by the Authority as agent are effective as if made by the Authority in its own name, and vice-versa.

(2) To the extent necessary for enforcement, any tax claims administered by the Authority as agent of the FSM National Government or the Governments of the several States are deemed assigned to the Authority for the purpose of collection and administration.

Source: PL 16-75 § 38.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 763. Claims for and payments of tax refunds.

All claims for refunds or offsets made by any person with respect to any sum collected by the Authority on behalf of the FSM National Government or the Governments of the several States shall constitute, first, a claim against those funds held within the trust accounts maintained by the Authority pursuant to section 753(2) of this chapter that are allocated or allocable to the government or governments for whose benefit the original tax was collected, and second, against the Government itself or the Governments themselves, as the case may be.

Source: PL 16-75 § 39.

§ 764. Proceedings conducted by revenue officers.

Subject to section 767 of this chapter, a properly qualified revenue officer authorized in writing by the CEO may appear in civil proceedings in a court of competent jurisdiction on behalf of such Government for the recovery of any unpaid tax under the respective revenue law.

Source: PL 16-75 § 40.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 765. Vesting of assets and liabilities, contracts and proceedings; transitional provisions.

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(1) All property, except real property or such property as the CEO may determine, that immediately before the commencement of this chapter was vested in the FSM National Government for the use of the CTA for the purpose of giving effect to the taxes and duties imposed under title 54 of this code is, on the date of commencement of this chapter, and without further assurance, vested in the Authority subject to all interests, liabilities, charges, obligations and trusts affecting the property.

(2) Except as otherwise provided in subsection (1) of this section in relation to property, all contracts, debts, engagements and liabilities of the FSM National Government attributable to the CTA remain vested in the FSM National Government and may be enforced by or against the FSM National Government.

(3) All legal proceedings and claims in respect of taxes and duties imposed under title 54 of this code pending at the commencement of this chapter are to be continued or enforced by or against the Authority in the same manner as they would have been continued or enforced if this chapter had not been enacted.

(4) The Authority will offer contracts of employment to all existing revenue authority employees in good standing provided that the Authority is not required to hire the employees at the same salaries or to fill the same positions. In the event employees of a pre-existing revenue authority are employed by the Authority, all accrued benefits, sick leave, annual leave and other contractual obligations owed by the pre-existing revenue authority to its employees remain the obligation of that authority and are not assumed by the Authority, except to the extent directed by the Board.

(5) The employees of the Authority are not subject to the requirements or rights contained in title 52 of this code, the National Public Service System Act, or any of its subsidiary regulations.

(6) Subject to satisfactory arrangements with the FSM National Government and the governments of the several States, the Authority is to acquire, lease or otherwise take over in any lawful manner the books, property, and operations of any preexisting revenue authority; PROVIDED, HOWEVER, that ownership of books and records herein conveyed, and the right of access thereto, shall remain with each respective government.

Source: PL 16-75 § 41.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

Editor's note: The words “the Code of the Federated States of Micronesia” in subsections (1), (3), and (5) of this section are changed to “this code” to comport with standard code format.

§ 766. References in other laws.

A reference in any other legislation, regulation, order, or other enactment or in any agreement, deed, instrument, application, notice, or other document whatsoever to:

- (1) the person charged with the responsibility of enforcement of a revenue law to which this chapter applies must be read as a reference to the CEO; or
- (2) a preexisting revenue authority must be read as a reference to the Authority.

Source: PL 16-75 § 42.

§ 767. Controlling laws.

(1) Notwithstanding anything in this chapter to the contrary, no policy or procedure adopted, decision made, business transacted, or action taken by or under the authority of the Board, CEO, or the Authority shall be valid, insofar as applying to the administration or enforcement of a revenue law of a

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government, unless such policy, procedure, decision, business transaction, or action is not inconsistent with a revenue law of such government.

(2) The applicability of and consistency with a law of a Government shall be determined by the chief legal officer of such Government.

Source: PL 16-75 § 43.

§ 768. Regulations.

The Board shall adopt such regulations as may be necessary for the enforcement of this chapter, and such regulations shall have the force and effect of law if they are not in conflict with the express provisions of this chapter or other applicable laws.

Source: PL 16-75 § 44.

§ 769. Commencement of Administration.

(1) The provisions of this chapter become effective on October 1, 2011.

(2) The Authority shall commence administration of the revenue laws 12 months after this chapter becomes law.

Source: PL 16-75 § 45.

CHAPTER 8
Revenue Administration

Editor's note: Another version of chapter 8 of this title is provided following this chapter. This second version of this chapter is for reference purposes only, as of the time of this codification, the second version of chapter 8 was null and void pursuant to section 87 of PL 17-50, as amended by section 1 of PL 17-83 (section 934 of chapter 8 of the version that follows).

SECTIONS

- § 801. Tax liens.**
- § 802. Civil action of enforcement.**
- § 803. Rules and regulations—Promulgation by Secretary of Finance.**
- § 804. Transactions to be recorded; Penalties for violations.**
- § 805. Distribution of revenues.**

§ 801. Tax liens.

Any taxes imposed or authorized under this title upon property shall be a lien upon the property and may be collected by levy upon it in the same manner as the levy of an execution.

Source: TT Code 1966 § 1147(a); TT Code 1970, 77 TTC 151; TT Code 1980, 77 TTC 151.

Cross-reference: The statutory provisions on lien on property are found in § 153 and § 226 of this title.

§ 802. Civil action of enforcement.

Any taxes or license fees imposed or authorized under this title or under any district law may also be collected by a civil suit brought either in the name of the taxing unit concerned or in the name of the person authorized to collect the same. In such civil suit a written statement of the treasurer of the unit concerned, as to the amount of tax due, the fact that it is unpaid, and who is authorized to collect it, shall be sufficient evidence of these matters unless the contrary is expressly shown.

Source: TT Code 1966 § 1147(b); TT Code 1970, 77 TTC 152; TT Code 1980, 77 TTC 152.

Cross-reference: The statutory provisions on the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedures are found in title 6 of this code.

§ 803. Rules and regulations---Promulgation by Secretary of Finance.

(1) The Secretary of Finance, with the approval of the President of the Federated States of Micronesia, shall prescribe such rules and regulations as are necessary to collect all taxes, fees, and charges levied or imposed under this title and all such taxes, fees, and charges shall be deposited in the General Fund of the Federated States of Micronesia for appropriation by the Congress of the Federated States of Micronesia.

(2) Such rules and regulations shall wherever practicable require payment in full of all taxes, fees, and charges immediately upon assessment, and in the case of import taxes, no later than 15 days after the departure of the vessel or planes on which the products subject to import taxes arrived and before any merchandise is released by the carrier or his agent to the importer and, in the case of export taxes, before any merchandise is loaded on any vessel or aircraft.

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Source: COM PL 3-32 § 1 (part); TT Code 1970 77 TTC 154; TT Code 1980 77 TTC 154; PL 1-83 § 1(1); PL 4-114 § 12.

Errata: In subsection (2), “plans” is changed to “planes” to correct a typographical error. PL 4-114 § 12.

§ 804. Transactions to be recorded; Penalties for violations

(1) Every person, firm, corporation, or association engaging in any transaction subject to a tax, fee or charge levied or imposed under this title shall keep a full and accurate record of each such transaction engaged in by him and such record shall be available for examination by the Secretary of Finance or his authorized representative for at least three years after the date of such transaction.

(2) Any person, firm, corporation, or association willfully failing to keep or make available for examination such records shall be guilty of a misdemeanor and upon conviction thereof shall be punished in accordance with the terms of section 901 of this title, and, in addition thereto, shall be subject to the immediate revocation of any relevant existing license to do business in the Federated States of Micronesia.

Source: COM PL 3-32 § 1 (part); TT Code 1970, 77 TTC 155; TT Code 1980, 77 TTC 155; PL 1-83 § 1(2).

§ 805. Distribution of revenues.

(1) (a) The treasurer of the Federated States of Micronesia shall pay eighty percent of the net taxes collected pursuant to section 221(9) of this title and, beginning January 1, 2004 and continuing thereafter, 50 percent of all other net taxes collected pursuant to sections 121, 141, and 221 of this title into the treasury of the State government to which the taxes are attributable for appropriation by the State legislature.

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

(c) Except as specifically provided in parts (a) and (b) of this subsection, all net taxes collected shall be part of the General Fund of the Federated States of Micronesia, subject to appropriation by Congress pursuant to title 55 of this code.

(2) “Net taxes” as used in subsection (1) of this section means gross collections of taxes, penalties, interest, or other related charges less refunds.

Source: COM PL 3-32 § 1 (part); TT Code 1970, 77 TTC 156; COM PL 4C-4 § 2; COM PL 5-91 § 1; COM PL 6-52 § 4; COM PL 6-118 § 4; TT Code 1980, 77 TTC 156; PL IC-26 § 3; PL 4-114 § 13; PL 7-41 § 4; PL 9-139 § 58; PL 10-68 § 1; PL 13-21 § 1; PL 13-60 § 2; PL 15-24 § 1.

Cross-reference: Title 55 of this code is on Government Finance and Contracts. The statutory provisions on the FSM Congress are found in title 3 of this code.

Editor’s note: PL 7-41 § 5 repealed § 806 of this chapter.

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CHAPTER 8
Revenue Administration
[FOR REFERENCE ONLY]

Editor's note: This version of chapter 8 of this title is included here for reference only, as at the time of this codification the provisions of section 87, that set forth codified section 934 of PL 17-50, as amended by section 1 of PL 17-83, made this Act null and void.

Section 1 of PL 17-83 states:

Section 1. Section 934 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 17-50, is hereby amended to read as follows:

§ 934. If any of the four states of the Federated States of Micronesia have not passed into law value added tax legislation as of midnight July 19, 2013, this act is null and void.

PL 17-83 was signed into law by Vice President Alik L. Alik on April 19, 2013.

SUBCHAPTER I
General Provisions
[FOR REFERENCE ONLY]

SECTIONS

- § 801. Short title.
- § 802. Definitions.
- § 803. References to terms used in other laws.

SUBCHAPTER II
Tax Returns
[FOR REFERENCE ONLY]

SECTIONS

- § 806. Extension of time to file a tax return.
- § 807. Tax return duly made.

SUBCHAPTER III
Tax Decisions
[FOR REFERENCE ONLY]

SECTIONS

- § 810. Self-assessments.
- § 811. Assessment of person who fails to file a tax return.
- § 812. Advanced tax assessments.
- § 813. Amendment of tax assessments.
- § 814. Validity of tax decisions.
- § 815. Correctness of tax decisions.
- § 816. Rectification of mistakes.

SUBCHAPTER IV
Objections and Appeals

[FOR REFERENCE ONLY]

SECTIONS

- § 819. **Objection to tax decision.**
- § 820. **Judicial review.**
- § 821. **General provisions relating to objections and appeals.**

SUBCHAPTER V
Recovery of Unpaid Tax
[FOR REFERENCE ONLY]

SECTIONS

- § 824. **Payment of tax.**
- § 825. **Extension of time to pay tax.**
- § 826. **Trustees, liquidators, and executors.**
- § 827. **Recovery of unpaid tax from third party.**
- § 828. **Seizure of goods.**
- § 829. **CEO may require security.**
- § 830. **Taxpayer leaving the FSM.**
- § 831. **Temporary closure of business.**

SUBCHAPTER VI
Levy and Execution
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SECTIONS

- § 834. **Tax as lien on property.**
- § 835. **Warrant for collection of tax; issuance; effect; levy and sale.**
- § 836. **Surrender of property subject to levy; penalty and notice.**
- § 837. **Notice of sale; redemption.**
- § 838. **Sale; delivery of bill of sale; disposition of unsold portion.**
- § 839. **Proceeds of levy and sale.**

SUBCHAPTER VII
Record Keeping and Information Collection
[FOR REFERENCE ONLY]

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- § 842. **Accounts and records.**
- § 843. **Power to enter and search.**
- § 844. **Administrative summons.**
- § 845. **Audit of taxpayer's tax affairs.**
- § 846. **Issue of Taxpayer Identification Numbers.**
- § 847. **Cancellation of Taxpayer Identification Number.**
- § 848. **Quotation of Taxpayer Identification Number.**

SUBCHAPTER VIII
Representatives
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SECTIONS

- § 851. **Liabilities and obligations of representatives.**
- § 852. **Liability for tax payable by a company left with insufficient assets.**

SUBCHAPTER IX
Rulings
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SECTIONS

- § 855. **Binding public rulings.**
- § 856. **Making a public ruling.**
- § 857. **Withdrawal of a public ruling.**
- § 858. **Binding private rulings.**
- § 859. **Refusing an application for a private ruling.**
- § 860. **Making a private ruling.**
- § 861. **Withdrawal of a private ruling.**
- § 862. **Publication of private rulings.**

SUBCHAPTER X
Interest and Administrative Remedies
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SECTIONS

- § 865. **Late payment interest.**
- § 866. **Penalty for failure to file a tax return or lodge other document.**
- § 867. **Penalty for failure to pay tax by due date.**
- § 868. **Penalty for failure to maintain proper records.**
- § 869. **Penalty for making false or misleading statement.**
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SUBCHAPTER XI
Taxation Offenses
[FOR REFERENCE ONLY]

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- § 873. **Offense for failure to file tax return.**
- § 874. **Offense for failure to comply with obligations under this chapter.**
- § 875. **Offense for failure to maintain proper records.**
- § 876. **Offenses for improper use of Taxpayer Identification Number.**
- § 877. **Offense for making false or misleading statements.**
- § 878. **Offense for obstruction of revenue officer.**

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- § 879. Offense for aiding or abetting a taxation offense.
- § 880. Offense relating to seized goods or temporarily closed premises.
- § 881. Offenses by revenue officers.
- § 882. Offenses by companies.
- § 883. Failure to comply with a court order.

SUBCHAPTER XII
Forms and Notices
[FOR REFERENCE ONLY]

SECTIONS

- § 886. Forms and notices; authentication of documents.
- § 887. Manner of lodging documents.
- § 888. Service of notices.
- § 889. Electronic returns and notices.
- § 890. Due date for documents and tax payments.

SUBCHAPTER XIII
Final Provisions
[FOR REFERENCE ONLY]

SECTIONS

- § 893. Regulations.
- § 894. Transition.
- § 895. Commencement of administration.
- § 896. Nullification.

SUBCHAPTER I
General Provisions
[FOR REFERENCE ONLY]

Editor's note: This version of chapter 8 of this title is included here for reference only, as at the time of this codification the provisions of section 87, that set forth codified section 934 of PL 17-50, as amended by section 1 of PL 17-83, made this Act null and void.

Section 1 of PL 17-83 states:

Section 1. Section 934 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 17-50, is hereby amended to read as follows:

§ 934. If any of the four states of the Federated States of Micronesia have not passed into law value added tax legislation as of midnight July 19, 2013, this act is null and void.

§ 801. Short title.

This chapter may be cited as the Revenue Administration Act of 2012.

Source: PL 17-50 § 2.

TITLE 54 – TAXATION AND CUSTOMS

Editor's note: Section 1 of PL 17-50 designated sections 801, 802, and 803 of chapter 8 as subchapter I entitled General Provisions. Sections 2, 3, and 4 of PL 17-50 repealed their current sections and enacted new sections as set forth below. Sections 5 and 6 of PL 17-50 repealed sections 804 and 805, respectively.

§ 802. Definitions.

Wherever used in this chapter, unless the subject matter, context, or sense otherwise requires:

- (1) “Arrangement” means any contract, agreement, plan, or understanding whether expressed or implied and whether or not enforceable in legal proceedings.
- (2) “Associate” has the meaning in section 515 of this title.
- (3) “Authority” means the FSM Unified Revenue Authority established under section 711 of this title.
- (4) “Board” means the Board of Directors of the Authority appointed under chapter 7 of this title.
- (5) “CEO” means the Chief Executive Officer appointed under chapter 7 of this title.
- (6) “FSM” means the Federated States of Micronesia.
- (7) “Installment of tax” means an installment of tax payable under chapter 5 of this title.
- (8) “Late payment interest” means late payment interest imposed under section 865 of this title.
- (9) “Net profit tax” means net profit tax imposed under chapter 5 of this title.
- (10) “Objection decision” means the decision referred to in section 819(5) of this title.
- (11) “Person” means an individual, company, corporation, partnership, unincorporated association or other business entity, trust, estate, government, political subdivision of a government, or public international organization.
- (12) “Prescribed” means prescribed by the Secretary in regulations.
- (13) “President” means the President of the FSM.
- (14) “Presumptive tax” means the presumptive tax imposed under chapter 5 of this title.
- (15) “Private ruling” means a ruling made under sections 858, 859, 860, 861, and 862 of this title.
- (16) “Public ruling” means a ruling made under sections 855, 856, and 857 of this title.
- (17) “Representative” means:
 - (a) in the case of an individual under a legal disability, the guardian or manager who receives or is entitled to receive income on behalf, or for the benefit, of the individual;
 - (b) in the case of a company or corporation, the chief executive officer, public officer, managing director, or any director of the company;
 - (c) in the case of a partnership, any partner in the partnership;
 - (d) in the case of a trust, any trustee of the trust;
 - (e) in the case of an unincorporated association or other business entity (other than a company, corporation, or partnership), any individual responsible for accounting for the receipt or payment of moneys or funds on behalf of the association;
 - (f) in the case of the National or a State Government, or a local authority in the FSM, any individual responsible for accounting for the receipt or payment of moneys or funds on behalf of the Government or local authority;
 - (g) in the case of a foreign government, political subdivision of a foreign government, or public international organization, any individual responsible for accounting for the receipt or payment of moneys or funds in the FSM on behalf of the government, political subdivision of the government, or organization;

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(h) in the case of a non-resident person, any person controlling the person's affairs in the FSM, including any manager of any business of such person and, in relation to customs, the person's customs agent; or

(i) in the case of a person to whom section 826 of this title applies, the trustee of the person under that section, and includes any person that the CEO has, by notice in writing, declared to be a representative of a person for the purposes of this chapter.

(18) "Revenue law" means:

(a) any chapter under this title;

(b) a law of the FSM imposing a tax or duty if the law provides that the Authority has the responsibility for administering the tax or duty; and

(c) a law of a State imposing a tax that the Authority is permitted to administer by virtue of the laws of such State.

(19) "Revenue officer" means the CEO and any officer of the Authority appointed under section 732 of chapter 7 of this title.

(20) "Secretary" means the Secretary of the FSM Department of Finance and Administration.

(21) "Self-assessment" means a self-assessment of net profits tax, presumptive tax, or VAT.

(22) "Self-assessment return" means a tax return required to be furnished by a self-assessment taxpayer.

(23) "Self-assessment taxpayer" means a person liable for net profit tax, presumptive tax, or VAT.

(24) "State" means a State of the FSM.

(25) "Tax" means any tax, duty, or penalty imposed under a revenue law, and includes an installment of tax and withholding tax.

(26) "Tax assessment" means:

(a) an assessment of wages and salaries tax under section 152 of this title;

(b) a self-assessment;

(c) an assessment under subchapter III of this chapter, including an amended assessment; and

(d) an assessment of penalty under section 870 of this title.

(27) "Tax decision" means:

(a) a tax assessment; or

(b) a decision in relation to a revenue law on any matter left to the discretion, judgment, direction, opinion, approval, consent, satisfaction, or determination of the CEO, other than such decision made by the CEO in relation to the making of a tax assessment or to take action on subchapter VI of this chapter.

(28) "Tax period" means:

(a) in the case of tax imposed on wages and salaries payable by the employer by withholding under section 132 of this title or payable by the employee under section 138 of this title, the quarter;

(b) in the case of the net profits tax or presumptive tax, the tax year;

(c) in the case of installments of net profit tax, the period to which the installment relates;

(d) in the case of tax withheld from a payment under chapter 5 of this title, the period to which the withholding relates;

(e) in the case of VAT, the VAT period; or

(f) in any other case, the period for which the tax or duty is reported.

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- (29) “Tax return” means a return required to be filed under a revenue law.
- (30) “Tax warrant” means a warrant issued under section 835 of this title.
- (31) “Taxpayer” means a person liable for any tax or duty imposed under a revenue law and includes:
- (a) an employer liable to withhold tax from a payment of wages and salaries under section 132 of this title; and
 - (b) a person liable to withhold tax from a payment under chapter 5 of this title.
- (32) “Taxpayer Identification Number” means a Taxpayer Identification Number issued under section 846 of this title.
- (33) “VAT” means valued added tax imposed under a revenue law.
- (34) “Wages and salaries tax” means the tax imposed under section 121 of this title.
- (35) “Withholding tax” means the amount that a payer is required to withhold from a payment as tax.

Source: PL 17-50 § 3.

Editor’s note: The reference in subsection (2) of this section refers to a section 515 of this title and the references to chapter 5 of this title in subsections (7), (9), (14), (28)(d), and (31)(b) refer to a chapter 5 that does not exist. C.B. No. 17-16, the Net Profit Tax Act, proposed to add a new chapter 5 of this title. Thus, the Revenue Administration Act, P.L. 17-50, makes multiple references to a chapter 5, since the plan was to pass the Net Profit Tax Act as soon as all four FSM states adopted a VAT. Since all four FSM states did not adopt a VAT, the Net Profit Tax Act was never enacted and chapter 5 of this title 54 remains reserved.

§ 803. References to terms used in other laws.

When this chapter applies in respect of a revenue law, any term not defined in this chapter has the meaning that it has for the purposes of the revenue law.

Source: PL 17-50 § 4.

Editor’s note: Section 1 of PL 17-50 designated sections 801, 802, and 803 of chapter 8 as subchapter I entitled General Provisions. Sections 2, 3, and 4 of PL 17-50 repealed their current sections and enacted new sections as set forth below. Sections 5 and 6 of PL 17-50 repealed sections 804 and 805, respectively.

SUBCHAPTER II Tax Returns [FOR REFERENCE ONLY]

Editor’s note: This version of chapter 8 of this title is included here for reference only, as at the time of this codification the provisions of section 87, that set forth codified section 934 of PL 17-50, as amended by section 1 of PL 17-83, made this Act null and void.

Section 1 of PL 17-83 states:

Section 1. Section 934 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 17-50, is hereby amended to read as follows:

§ 934. If any of the four states of the Federated States of Micronesia have not passed into law value added tax legislation as of midnight July 19, 2013, this act is null and void.

Section 7 of PL 17-50 added a subchapter II of chapter 8 entitled Tax Returns.

§ 806. Extension of time to file a tax return.

(1) A taxpayer required to file a tax return may apply, at any time and in writing, to the CEO for an extension of time to file the return.

(2) The CEO may, upon satisfaction that there is reasonable cause (as defined in regulations issued from time to time by the Authority), grant an application under subsection (1) of this section and must serve notice of the decision on the applicant.

(3) An extension of time granted under this section does not change the date for payment of tax due as specified in the revenue law under which the return has been made, but shall extend the date from which penalties shall be payable with respect to the late filing of a return.

Source: PL 17-50 § 8.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 811 to 806 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 807. Tax return duly made.

A tax return purporting to be filed by or on behalf of a taxpayer is treated as having been filed by the taxpayer or with the taxpayer's authority unless the contrary is proved.

Source: PL 17-50 § 9.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 812 to 807 to allow all of the sections in this chapter to have eight hundred section numbers.

**SUBCHAPTER III
Tax Decisions
[FOR REFERENCE ONLY]**

Editor's note: This version of chapter 8 of this title is included here for reference only, as at the time of this codification the provisions of section 87, that set forth codified section 934 of PL 17-50, as amended by section 1 of PL 17-83, made this Act null and void.

Section 1 of PL 17-83 states:

Section 1. Section 934 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 17-50, is hereby amended to read as follows:

§ 934. If any of the four states of the Federated States of Micronesia have not passed into law value added tax legislation as of midnight July 19, 2013, this act is null and void.

Section 10 of PL 17-50 added a subchapter III of chapter 8 entitled Tax Decisions.

§ 810. Self-assessments.

(1) For the purposes of this chapter:

(a) a self-assessment taxpayer who has filed a self-assessment return is treated as having made an assessment of the amount of tax payable for the tax period to which the return relates being that amount as set out in the return; and

(b) a self-assessment return furnished by a self-assessment taxpayer is treated as a notice of the assessment served by the CEO on the taxpayer on the date the return was filed.

(2) Reserved.

Source: PL 17-50 § 11.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 821 to 810 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 811. Assessment of person who fails to file a tax return.

(1) If a taxpayer liable for tax on an assessment basis under a revenue law fails to file a tax return for a tax period as required under the revenue law, the CEO may, at any time, make an assessment of the tax payable by the taxpayer.

(2) The CEO must serve a taxpayer assessed under subsection (1) of this section with notice of the assessment as soon as is practicable after making the assessment. The notice must state:

- (a) the amount of tax payable;
- (b) the amount of interest or penalty (if any) payable in respect of the tax payable;
- (c) the tax period in respect of which the assessment relates;
- (d) the date of issue of the notice; and
- (e) the due date for payment of the tax payable under the notice.

Source: PL 17-50 § 12.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 822 to 811 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 812. Advanced tax assessments.

(1) The CEO may make an assessment of the tax payable for the tax period and the tax is payable on the date set out in the notice of assessment served on the taxpayer if, in any tax period:

- (a) a taxpayer liable for tax on an assessment basis under a revenue law ceases to carry on a trade, business, profession, vocation, or employment; or
- (b) the CEO has reasonable grounds to believe that a taxpayer liable for tax on an assessment basis under a revenue law may leave, or has left, the FSM without filing a return as required under the revenue law for the tax period.

(2) The CEO must serve a taxpayer assessed under subsection (1) of this section with notice, in writing, of the assessment as soon as is practicable after making the assessment, and such notice must set out the matters specified in section 811(2) of this title.

(3) An assessment made under subsection (1) of this section can be amended under section 813 of this title so that the taxpayer is assessed in respect of the whole of the tax period to which the assessment under subsection (1) of this section relates.

Source: PL 17-50 § 13.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine

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hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 823 to 812 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 813. Amendment of tax assessments.

(1) Subject to this section, the CEO may amend a tax assessment by making such alterations or additions to the assessment as the CEO considers necessary to ensure that a taxpayer is liable for the correct amount of tax payable in respect of the tax period to which the assessment relates.

(2) A self-assessment taxpayer can apply to the CEO within the time specified in subsection (3)(b) of this section for the CEO to make an amendment in accordance with subsection (1) of this section to a self-assessment and the CEO shall serve the taxpayer with notice of the decision on the application as soon as is practicable after the making of the assessment.

(3) The amendment of a tax assessment under subsection (1) of this section may be made:

(a) in the case of fraud or willful neglect, within six years of the date the CEO served notice of the assessment on the taxpayer or within one year after the fraud or willful neglect is discovered, whichever is the later; or

(b) in any other case, within six years of the date the CEO served notice of the assessment on the taxpayer.

(4) As soon as practicable after making an amended assessment under this section, the CEO must serve the taxpayer with notice of the amended assessment.

(5) Subject to subsection (6) of this section, if a notice of assessment (referred to as the “original assessment”) has been amended under subsection (1) of this section, the CEO may further amend the original assessment within the later of:

(a) six years after the CEO served notice of the original assessment on the taxpayer;

or

(b) one year after the CEO served notice of the amended assessment on the taxpayer.

(6) If subsection (5)(b) of this section applies, the CEO is limited to amending the alterations and additions made in the amended assessment to the original assessment.

(7) An amended assessment is treated in all respects as a tax assessment for the purposes of this chapter (other than subsection (1) or (2) of this section) and the revenue law under which the original assessment has been made.

(8) The making of an amended assessment does not preclude the liability for any interest and penalty in relation to the tax assessed under amended assessment arising from the date that tax was due under the original assessment.

Source: PL 17-50 § 14.

Editor’s note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 824 to 813 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 814. Validity of tax decisions.

(1) The validity of a tax decision, a notice of a tax decision, or any other document purporting to be made or executed under a revenue law, if it is, in substance and effect, in conformity with the law under which it has been made, issued, or executed and the person assessed, or intended to be assessed or affected by the decision or document, is designated in it according to common understanding:

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- (a) cannot be quashed or deemed to be void or voidable for want of form; or
 - (b) is not affected by reason of any immaterial mistake, defect, or omission therein.
- (2) Reserved.

Source: PL 17-50 § 15.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 825 to 814 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 815. Correctness of tax decisions.

- (1) Except in proceedings under subchapter IV of this chapter:
- (a) no tax decision can be disputed in any court or in any other proceedings on any ground whatsoever;
 - (b) the production of the original notice of a tax assessment or a document under the hand of the CEO purporting to be a copy of a notice of such assessment is conclusive evidence of the making of the assessment and that the amount and particulars of the assessment are correct; and
 - (c) in the case of a self-assessment taxpayer, the production of the original self-assessment return or a document under the hand of the CEO purporting to be a copy of such return is conclusive evidence of the contents of the return.
- (2) A court must, in all proceedings, take judicial notice of the signature of the CEO in either the original or copy of a notice of a tax decision.

Source: PL 17-50 § 16.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 826 to 815 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 816. Rectification of mistakes.

If the CEO is satisfied that an order made or document issued by the CEO under a revenue law contains a mistake that is apparent on the face of the record or document and the mistake does not involve a dispute as to the interpretation of the law or facts of the case, the CEO may, for the purposes of rectifying the mistake, amend the order or document any time before the expiry of six years from the date of making or issuing the order or document.

Source: PL 17-50 § 17.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 827 to 816 to allow all of the sections in this chapter to have eight hundred section numbers.

SUBCHAPTER IV
Objections and Appeals
[FOR REFERENCE ONLY]

Editor’s note: This version of chapter 8 of this title is included here for reference only, as at the time of this codification the provisions of section 87, that set forth codified section 934 of PL 17-50, as amended by section 1 of PL 17-83, made this Act null and void.

Section 1 of PL 17-83 states:

Section 1. Section 934 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 17-50, is hereby amended to read as follows:

§ 934. If any of the four states of the Federated States of Micronesia have not passed into law value added tax legislation as of midnight July 19, 2013, this act is null and void.

Section 18 of PL 17-50 added a subchapter IV of chapter 8 entitled Objections and Appeals.

§ 819. Objection to tax decision.

(1) A person dissatisfied with a tax decision must lodge an objection to the decision with the CEO within 30 days of service of the notice of the decision.

(2) If the CEO has amended an assessment under section 813 of this title, the taxpayer has no further right of objection that the taxpayer would have had if the amendment had not been made, except to the extent that by reason of the amendment a fresh liability is imposed on the taxpayer or an existing liability is increased.

(3) An objection must substantially comply with the prescribed form and state fully and in detail the grounds upon which the person objecting relies to support the objection.

(4) A person may apply, in writing, to the CEO for an extension of time to lodge an objection and the CEO may, if satisfied there is reasonable cause, grant an application under this section and must serve notice of the decision on the applicant as soon as is practicable after making the decision.

(5) Subject to subsection (6) of this section, the CEO must consider the objection and either allow the objection in whole or part, or disallow it, and the CEO’s decision is referred to as an “objection decision”.

(6) The CEO is not required to consider an objection unless and until the person objecting has complied with all the requirements under this chapter or the revenue law to which the objection relates in relation to the making of tax returns and payment of tax.

(7) The CEO must serve notice of the objection decision on the person objecting as soon as practicable after making the decision.

Source: PL 17-50 § 19.

Editor’s note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 831 to 819 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 820. Judicial review.

(1) A person dissatisfied with an objection decision may institute an action for review in a court of competent jurisdiction in the FSM. Such action is commenced by filing a petition, within 60 days after service of notice of the objection decision, setting forth:

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- (a) assignments of errors alleged to have been committed by the CEO in making the objection decision;
 - (b) the facts relied upon to sustain such assignments of errors; and
 - (c) a prayer for appropriate relief.
- (2) The CEO is the defendant in proceedings under subsection (1) of this section.
- (3) The payment of the amount of tax in dispute, in whole or part, after the filing of a petition under subsection (1) of this section does not deprive the court of jurisdiction.
- (4) When the decision of the court or an appeal there from becomes final, the CEO must, upon presentment of a certified copy of the decree, make such adjustments to comply with the decree as are necessary to correct, amend, or abate the assessment, and determine whether an additional amount of tax is to be assessed.
- (5) This section shall not condition or limit the right of a taxpayer to seek immediate judicial review of any action taken or to be taken under subchapter VI of this chapter.

Source: PL 17-50 § 20.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 832 to 820 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 821. General provisions relating to objections and appeals.

- (1) In any proceeding under this chapter:
- (a) in the case of a tax assessment, the burden is on the taxpayer to prove that the assessment is excessive; or
 - (b) in the case of a tax decision (other than a tax assessment), the burden is on the person objecting to the decision to prove that the decision should not have been made or should have been made differently.
- (2) In an action for review by a court under section 820 of this title, the person bringing the action is limited to the grounds stated in the person's objection to the CEO.
- (3) To the extent necessary for the making of a decision and when presented, the reviewing court shall decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any action taken by the CEO.
- (4) The reviewing court shall:
- (a) compel any action of the CEO unlawfully withheld or unreasonably delayed; and
 - (b) hold unlawful and set aside any actions and decisions of the CEO found to be:
 - (i) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (ii) contrary to constitutional right, power, privilege, or immunity;
 - (iii) in excess of statutory jurisdiction, authority, or limitations, or a denial of legal rights;
 - (iv) without substantial compliance with the procedures required by law; or
 - (v) unwarranted by the facts.

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(5) Subject to subsection (6) of this section, the tax due under a tax assessment is payable notwithstanding that an objection has been lodged or an action for judicial review under section 820 of this title has been instituted by the taxpayer in respect of the assessment.

(6) The CEO may, upon application in writing by a taxpayer, agree to stay recovery of a tax in dispute under a tax assessment up to a maximum of fifty percent (50%) of the disputed tax, but only if the taxpayer has paid the entire amount of tax due under the assessment that is not in dispute.

Source: PL 17-50 § 21.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 833 to 821 to allow all of the sections in this chapter to have eight hundred section numbers.

SUBCHAPTER V Recovery of Unpaid Tax [FOR REFERENCE ONLY]

Editor's note: This version of chapter 8 of this title is included here for reference only, as at the time of this codification the provisions of section 87, that set forth codified section 934 of PL 17-50, as amended by section 1 of PL 17-83, made this Act null and void.

Section 1 of PL 17-83 states:

Section 1. Section 934 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 17-50, is hereby amended to read as follows:

§ 934. If any of the four states of the Federated States of Micronesia have not passed into law value added tax legislation as of midnight July 19, 2013, this act is null and void.

Section 22 of PL 17-50 added a subchapter V of chapter 8 entitled Recovery of Unpaid Tax.

§ 824. Payment of tax.

(1) A taxpayer must pay tax in the prescribed manner.

(2) Any unpaid tax may be sued for and recovered in any court of competent jurisdiction by the CEO suing in his or her official capacity as collection agent for the National or State Governments, as the case may be.

(3) In any suit under subsection (2) of this section, the production of a certificate signed by the CEO stating the name and address of the taxpayer and the amount of tax due is sufficient evidence that the amount of tax is due by the taxpayer and sufficient authority for the court to give judgment with full costs of suit against the taxpayer.

Source: PL 17-50 § 23.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 841 to 824 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 825. Extension of time to pay tax.

(1) A taxpayer may apply, in writing, to the CEO for an extension of time to pay tax due under a revenue law.

(2) If an application has been made under this section, the CEO may, having regard to the circumstances of the case:

- (a) grant the taxpayer an extension of time for payment of the tax due; or
- (b) require the taxpayer to pay the tax due in such installments as the CEO may determine, and the CEO must serve the taxpayer with written notice of the decision.

(3) If a taxpayer permitted to pay tax by installments defaults in the payment of an installment, the whole balance of the tax outstanding, at the time of default, is immediately payable.

(4) The grant of an extension of time or permission to pay tax due by installments does not preclude the liability for late payment interest arising from the original date the tax was due for payment.

Source: PL 17-50 § 24.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 842 to 825 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 826. Trustees, liquidators, and executors.

(1) In this section:

(a) “trustee” means:

- (i) a liquidator of a company being wound up;
- (ii) a receiver for debenture holders who has taken possession of any assets of a company;
- (iii) a trustee in bankruptcy;
- (iv) a mortgagee in possession;
- (v) an executor of a deceased estate; or
- (vi) any other person holding a similar office or acting in a similar capacity;

and

(b) “taxpayer”, in relation to a trustee, means the person whose assets are in the possession or control of the trustee, including if the trustee is an executor, the estate of the deceased person.

(2) A trustee must, within 14 days after becoming a trustee in respect of, or assuming the control of assets of a taxpayer in the capacity as trustee, give written notice thereof to the CEO.

(3) The CEO must notify the trustee, in writing, of the amount of any tax that is payable by the taxpayer and such notice must be served on the trustee within one month of the CEO being served with a notice under subsection (2) of this section.

(4) Subject to subsection (5) of this section, a trustee:

- (a) must not, without the leave of the CEO, dispose of any asset of the taxpayer until a notice has been served on the trustee under subsection (3) of this section;

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(b) must set aside, out of the assets available for the payment of tax due by the taxpayer, assets to the value of the amount notified under subsection (3) of this section, or the whole of the assets if their value is less than the amount notified; and

(c) is, to the extent of the value of the assets required to be set aside, liable for the tax due by the taxpayer.

(5) A trustee may pay the expenses properly incurred by the trustee in the capacity as such, including the trustee's remuneration, in priority to the amount notified under subsection (3) of this section.

(6) If two or more persons are trustees in respect of a taxpayer, the obligations and liabilities under this section apply jointly and severally to the trustees but may be discharged by any of them.

(7) The amount that a trustee is liable for under subsection (4)(c) of this section is treated as if it were tax payable by the trustee as taxpayer for the purposes of this subchapter, subchapter VI of this chapter, and section 851 of this title.

Source: PL 17-50 § 25.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 843 to 826 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 827. Recovery of unpaid tax from third party.

(1) In this section, "payer" means a person who:

- (a) owes or may subsequently owe money to a taxpayer;
- (b) holds or may subsequently hold money, for or on account of, a taxpayer;
- (c) holds money on account of some other person for payment to a taxpayer; or
- (d) has authority from some other person to pay money to a taxpayer.

(2) This section applies if a taxpayer is liable to pay tax and the tax has not been paid by the taxpayer by the due date for payment. This remedy shall be in addition to any right of levy and execution set forth in subchapter VI of this chapter.

(3) If this section applies, the CEO may, by notice in writing, require a payer in respect of the taxpayer to pay the amount specified in the notice to the CEO, being an amount that does not exceed the amount of tax that has not been paid.

(4) A payer must pay the amount specified in a notice under subsection (3) of this section by the date specified in the notice, being a date that is not before the date that the amount owed to the taxpayer becomes due to the taxpayer or held on the taxpayer's behalf.

(5) If a notice served under subsection (3) of this section requires a payer to deduct amounts from wages or salaries, the amount required to be deducted by the payer from each payment must not exceed 20 percent of the amount of each payment of wages or salaries.

(6) If a person served with a notice under subsection (3) of this section is unable to comply with the notice by reason of lack of moneys owing to, or held for, the taxpayer, the person must notify the CEO, in writing, setting out the reasons for the person's inability to comply.

(7) If a notice is served on the CEO under subsection (6) of this section, the CEO may, by notice in writing:

- (a) accept the notification and cancel or amend the notice issued under subsection (3) of this section; or
- (b) reject the notification.

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(8) The CEO must, by notice in writing to the payer, revoke or amend a notice served under subsection (3) of this section if the taxpayer has paid the whole or part of the tax due or has made an arrangement satisfactory to the CEO for payment of the tax.

(9) A copy of a notice served on a payer under this section must be served on the taxpayer.

(10) An amount deducted from a payment by a payer pursuant to a notice served on a payer under this section is held by the payer in trust for the Authority.

(11) A payer making a payment under this section is treated as acting under the authority of the taxpayer and of all other persons concerned and is hereby indemnified in respect of the payment.

(12) The CEO must apply any amount paid by a payer under this section to the tax owing by the taxpayer.

(13) A payer who, without reasonable cause, fails to comply with a notice under this section is personally liable for the amount specified in the notice.

(14) The amounts referred to in subsections (10) and (13) of this section are treated as if they were tax payable by the payer as taxpayer for the purposes of this subchapter, subchapter VI of this chapter, and section 851 of this title.

Source: PL 17-50 § 26.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 844 to 827 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 828. Seizure of goods.

(1) In addition to any other right of levy and execution set forth in subchapter VI of this chapter and the powers of forfeiture under subchapter IV of chapter 2 of this title, the CEO or a revenue officer authorized by the CEO in writing for the purposes of this section may seize any goods if the VAT that is payable in respect of the supply or the import duty in respect of the import of those goods has not been paid or the CEO or authorized officer has reasonable grounds to believe that such VAT or import duty will not be paid.

(2) Any goods seized under this section must be stored in a place approved by the CEO or authorized officer for the storage of seized goods.

(3) If goods have been seized under subsection (1) of this section, the CEO or authorized officer must, as soon as is practicable after the seizure, serve on the owner of the goods or the person who had custody or control of the goods immediately before the seizure, a notice in writing:

(a) identifying the goods;

(b) stating that the goods have been seized under this section and the reason for seizure; and

(c) setting out the terms of subsections (6), (7), and (8) of this section.

(4) The CEO or authorized officer is not required to serve a notice under subsection (3) of this section if, after making reasonable enquiries, the CEO or authorized officer does not have sufficient information to identify the person on whom the notice should be served.

(5) If subsection (4) of this section applies, the CEO or authorized officer may serve a notice under subsection (3) of this section on any person claiming the goods, provided the person has given the CEO or authorized officer sufficient information to enable the notice to be served.

(6) The CEO or authorized officer may authorize any goods seized under subsection (1) of this section to be delivered to the person on whom a notice under subsection (3) of this section has been

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served if that person has paid, or makes an arrangement satisfactory to the CEO or authorized officer for payment of, the VAT that is payable in respect of the supply or import duty in respect of the import of the goods.

(7) Except if subsection (6) of this section applies, the CEO or authorized officer must detain the goods seized under subsection (1) of this section:

(a) in the case of perishable goods, for such period as the CEO or authorized officer considers reasonable having regard to the condition of the goods; or

(b) in any other case, for ten days after seizure of the goods.

(8) If the detention period in subsection (7) of this section has expired, the CEO or authorized officer may sell the goods by public auction or, in the case of perishable goods, may sell the goods in such manner as the CEO or authorized officer determines, and apply the proceeds of sale as follows:

(a) first towards the cost of taking, keeping, and selling the goods seized;

(b) then towards payment of any VAT that is payable in respect of the supply or import duty in respect of the import of the goods;

(c) then towards payment of any other tax due by the person whose goods have been seized; and

(d) the remainder of the proceeds, if any, must be paid to the person whose goods have been seized.

(9) If the proceeds of disposal are less than the sum of the cost of taking, keeping, and selling the goods seized and the VAT or import duty due, the CEO or authorized officer may proceed under this chapter to recover the excess.

(10) The costs of taking, keeping, and selling the seized goods is treated as if they were tax payable by the person whose goods have been seized as taxpayer for the purposes of this subchapter and section 851 of this title.

Source: PL 17-50 § 27.

Editor's note: The reference to subchapter IV of chapter 2 of this title in subsection (1) of this section is retained even though a subchapter IV of chapter 2 of this title does not exist. See editor's note to section 802 of this chapter.

The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 845 to 828 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 829. CEO may require security.

The CEO may, for the purposes of securing payment of any tax that is or will become due, require a taxpayer to give security in such amount and in such manner as the CEO thinks fit.

Source: PL 17-50 § 28.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 846 to 829 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 830. Taxpayer leaving the FSM.

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(1) If the CEO has reasonable grounds to believe that a taxpayer may leave the FSM before the due date for payment of any tax and the taxpayer has not made an arrangement satisfactory to the CEO for payment of the tax, the tax is due on such date as specified by the CEO by notice in writing to the taxpayer.

(2) If the CEO has reasonable grounds to believe that a taxpayer may leave the FSM without paying tax due, the CEO may issue a certificate containing those grounds and the particulars of the tax due to the FSM Department of Justice and requesting the prevention of the taxpayer from leaving the FSM until the taxpayer:

- (a) makes payment of the tax due in full; or
- (b) makes an arrangement satisfactory to the CEO for payment of the tax due.

(3) The CEO must serve a copy of a certificate issued under subsection (2) of this section on the taxpayer named in the certificate if it is practicable to do so.

(4) Payment of the tax specified in the certificate to a customs or immigration officer or the production of a certificate signed by the CEO stating that the tax has been paid or satisfactory arrangements for payment have been made is sufficient authority for allowing the taxpayer to leave the FSM.

Source: PL 17-50 § 29.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 847 to 830 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 831. Temporary closure of business.

(1) If a taxpayer fails to pay VAT or tax withheld from wages and salaries on or before the due date, the CEO or a revenue officer authorized by the CEO, in writing, for the purposes of this section may notify the taxpayer in writing of the intention to close down part or the whole of the taxpayer's business unless the taxpayer pays the tax due within seven days of the date of the notice.

(2) If a taxpayer fails to comply with a notice under subsection (1) of this section, the CEO or authorized officer may issue an order to close down part or the whole of the business of that person for a period not exceeding 14 days.

(3) The CEO or authorized officer may, at any time, enter any premises described in an order issued under subsection (2) of this section for the purposes of executing the order and shall require a police officer to be present while the order is being executed.

(4) The CEO or authorized officer shall affix, in a conspicuous place on the front of the premises of the business or part of the business which has been closed under an order issued under subsection (2) of this section, a notice in the following words 'CLOSED TEMPORARILY FOR NOT COMPLYING WITH TAX OBLIGATIONS BY ORDER OF THE CEO OF THE FSM UNIFIED REVENUE AUTHORITY UNDER SECTION 831 OF THE REVENUE ADMINISTRATION ACT'.

(5) If the tax due is paid in full within the period of closure, or a satisfactory arrangement is reached with the CEO with respect to payment of the tax, the order issued under subsection (2) of this section ceases to have effect and the CEO must immediately arrange for removal of the notice referred to in subsection (4) of this section.

Source: PL 17-50 § 30.

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Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 848 to 831 to allow all of the sections in this chapter to have eight hundred section numbers.

SUBCHAPTER VI Levy and Execution [FOR REFERENCE ONLY]

Editor's note: This version of chapter 8 of this title is included here for reference only, as at the time of this codification the provisions of section 87, that set forth codified section 934 of PL 17-50, as amended by section 1 of PL 17-83, made this Act null and void.

Section 1 of PL 17-83 states:

Section 1. Section 934 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 17-50, is hereby amended to read as follows:

§ 934. If any of the four states of the Federated States of Micronesia have not passed into law value added tax legislation as of midnight July 19, 2013, this act is null and void.

Section 31 of PL 17-50 added a subchapter VI of chapter 8 entitled Levy and Execution.

§ 834. Tax as lien on property.

(1) If any taxpayer neglects or refuses to pay, or withhold and pay, or collect and pay any tax that is due after assessment or demand for payment as provided in this title, the amount of the tax shall be a lien in favor of the Authority on all the property of that taxpayer as allowed hereunder.

(2) The lien imposed by subsection (1) of this section shall arise at the time that the assessment or demand has been made as provided in this chapter, and shall continue until the liability for payment of the amount assessed or demanded is satisfied or extinguished.

(3) As against any mortgagee, pledgee, purchaser, judgment creditor, lienor or other encumbrance for value, the lien imposed by subsection (1) of this section shall not be considered to have arisen or have any effect whatever unless notice of the lien has been filed. Against all subsequently arising interests, the lien shall have priority.

(4) The notice of lien must be filed in the Supreme Court of the State in which the property is located and a copy thereof sent by certified or registered mail to the taxpayer not less than 45 days after the assessment or demand for payment as provided in this title. The notice of lien:

(a) shall identify the taxpayer whose liability for taxes is sought to be enforced, the type or nature of the tax, the amount of the tax due on the date that the notice is filed plus any penalty or interest that may be chargeable, the date or approximate date on which the tax became due, and the date on which the assessment or demand for payment was delivered or mailed; and

(b) shall state:

(i) that the Authority claims a lien for the entire amount of tax asserted to be due, including applicable interest and penalties, and including any additional amounts that may become due after the notice is filed; and

(ii) that the lien may result in the levy and sale of the property if the amounts asserted to be due are not paid in full.

(5) Notwithstanding any other provision of this chapter, the following described property shall be exempt from the taking of liens and subsequent attachment and execution as imposed under this chapter:

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(a) *personal and household goods.* All necessary household furniture, cooking and eating utensils, and all necessary wearing apparel, bedding, and provisions for household use sufficient for four months;

(b) *necessities for trade or occupation.* All tools, implements, utensils, work animals and vehicles that are not used for personal transportation, including travel from residence to place of employment and return thereto, and equipment necessary to enable the person against whom the attachment or execution is issued to carry on his usual occupation; and

(c) *certain interests in land.* All interests in land, exclusive of leasehold interests, except where such interests can be shown to have been acquired to avoid attachment or execution with respect to the cause of action to which the attachment or execution is ordered, or where attachment or execution against such interest in land is specifically permitted under a real property mortgage statute or real property deed of trust statute for the State in which the interest is located.

Source: PL 17-50 § 32.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 851 to 834 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 835. Warrant for collection of tax; issuance; effect; levy and sale.

(1) If, within 30 days' time following filing of the notice of lien pursuant to section 834 of this title, the delinquent taxpayer fails or refuses to pay all sums secured by the same, or to enter into other arrangements for the payment of the same, as provided in this title, the Authority may issue a tax warrant for the enforcement of such lien and for the collection of any tax secured by the lien. Upon issuing the tax warrant, any property of the delinquent taxpayer, except as provided in section 834(5) of this title, may be levied and converted to money in accordance with this chapter.

(2) A levy shall be executed by taking possession of the taxpayer's property pursuant to authority contained in the tax warrant or by serving the warrant upon the taxpayer, upon any other person in possession of property of the taxpayer, or upon any person or depository, including any officer or employee of any governmental entity, subdivision or agency, who owes or who will owe money to the taxpayer, who is holding funds of the taxpayer, and ordering him to reveal the extent thereof and surrender it to the state forthwith or agree to surrender it or the proceeds therefrom in the future, but, in any case, on the terms and conditions stated in the tax warrant.

(3) The tax warrant shall be directed to and executed by the Department of Justice of the Federated States of Micronesia, or, to the extent required by State law, by the Attorney General of the State in which the property may be located. Except as provided otherwise by this title, the tax warrant shall be levied and the sale or other disposal made in the same manner and with the same effect as a levy and sale under a writ of execution.

(4) A tax warrant shall:

(a) bear on its face a statement of the authority for its issuance and service, compel compliance with its terms, and shall be attested to, under oath, by the CEO;

(b) identify the taxpayer whose liability for taxes is sought to be enforced, the amount thereof, and the date or approximate date on which the tax became due;

(c) state that the Authority claims a lien for the entire amount of tax asserted to be due, including applicable interest and penalties;

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(d) order the person on whom it is served to reveal all property in his possession, custody or control that belongs to the taxpayer and the extent of his own interest therein; and to reveal the amount and kind of property of the taxpayer that, to the best of his knowledge, is in the possession, custody or control of others;

(e) order the person on whom it is served to surrender the property forthwith, but may allow him to agree, in writing, to surrender the property or the proceeds therefrom on a certain date in the future when the taxpayer's right to it would otherwise mature; and

(f) state on its face the penalties for willful failure by any person upon whom it is served to comply with its terms.

(5) Whenever any property upon which levy has been made by virtue of a tax warrant is not sufficient to satisfy the claim for which levy is made, the CEO, thereafter, and as often as may be necessary, may proceed to levy in like manner upon any other property of the taxpayer against whom the claim exists, until the amount due from the taxpayer is fully paid.

Source: PL 17-50 § 33.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 852 to 835 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 836. Surrender of property subject to levy; penalty and notice.

(1) Upon receipt of a tax warrant issued pursuant to section 835 of this title, any person in possession or control of property subject to levy under a tax warrant shall immediately surrender the property or discharge the obligation to the CEO; PROVIDED, HOWEVER, that the property or part of the property, that is already the subject of a *bona fide* attachment, execution, levy or other similar process need not be surrendered.

(2) Any person who receives a tax warrant and wrongfully fails or refuses to comply therewith shall be liable in his own person and estate to the Authority in a sum equal to the value of the property not so surrendered or paid over, but not exceeding the amount of the taxes for the collection of which such levy has been made, together with penalties and interest on such sum from the date of such levy, plus the costs of executing the warrant.

(3) As soon as practicable after the levy, the CEO shall notify the taxpayer of the amount and kind of property seized and of the total amount demanded in payment of tax.

Source: PL 17-50 § 34.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 853 to 836 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 837. Notice of sale; redemption.

(1) As soon as practicable after the levy and seizure of the property pursuant to section 835 of this title, the CEO shall decide on a date, time and place for the sale of any property, excepting cash or liquid deposits, which may be immediately applied pursuant to section 839 of this title, and shall make a diligent inquiry as to the identity and whereabouts of the owner of the property and persons having an interest therein, and shall notify the owner and such persons of the time and place for the sale.

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(2) Notice of the sale must be given to the delinquent taxpayer, in writing, at least thirty (30) days before the date set for the sale. Such notice shall contain a description of the property to be sold, a statement of the amount due, including interest, penalties and costs, the name of the delinquent taxpayer, and a statement that, unless the amount due plus interest, penalties and costs are paid on or before the time fixed in the notice for the sale, the property, or so much of it as is necessary, will be sold in accordance with law and the notice.

(3) No sale of imperishable property shall be held until after the expiration of thirty (30) days from the date of the levy thereon; PROVIDED, HOWEVER, that perishable property may be sold immediately after seizure without notice of the sale. The CEO shall make special efforts pursuant to rules and regulations to give notice of the sale to persons with a particular interest in special property, and, apart from the requirements stated above, shall advertise the sale in a manner appropriate to the kind of property to be sold.

(4) If any property of the taxpayer subject to levy cannot be reasonably divided so as to enable the CEO to sell a part thereof to raise the whole amount of the tax and expenses, the whole of the taxpayer's interest in the property shall be sold.

(5) The levy and sale shall not be made, or the levy and sale shall be terminated and released if the taxpayer pays the entire amount due, furnishes security, or makes other arrangements for payment that are acceptable to the CEO as provided in this title. Upon making such payment or arrangements the CEO shall restore the property to the taxpayer, and all further proceedings in connection with the levy and sale of the property shall cease from the time of the payment or signing of an agreement with the Authority.

Source: PL 17-50 § 35.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 854 to 837 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 838. Sale; delivery of bill of sale; disposition of unsold portion.

(1) Except as provided in subsection (4) of this section, the Authority shall sell the property, excluding cash and liquid deposits, at a public auction and in accordance with the notice of sale, and shall deliver to the purchaser a bill of sale for the property sold.

(2) Except as provided in subsection (4) of this section, payment must be in full, in cash or its equivalent, and made immediately after the acceptance of a bid for the property.

(3) The unsold portion of any property seized may be left at the place of sale at the risk and cost of the delinquent taxpayer.

(4) The foregoing notwithstanding, stocks, bonds, certificates of deposit, promissory notes or other securities which have a specific value or prevailing market price may be sold by the Authority at a private sale at a price not lower than the specific price or prevailing market price, or may otherwise be liquidated to their cash value in accordance with the regulations promulgated by the CEO. No such liquidation may occur sooner than the date scheduled for the sale as stated in the notice.

Source: PL 17-50 § 36.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine

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hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 855 to 838 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 839. Proceeds of levy and sale.

(1) Money realized by levy or sale under this title shall be first applied against the expenses of the proceedings;

(2) The amount remaining, if any, then shall be applied to the liability for the tax, interest and penalties for which the levy was pursued;

(3) Except as provided in subsection (4) of this section, the balance, if any, shall be returned to the taxpayer or the person legally entitled thereto and a receipt obtained;

(4) If, before the sale, any person having an interest in or lien upon the property files with the Authority notice of his interest or lien, the Authority shall withhold any excess, pending a determination of the rights of the respective parties to it by a court of competent jurisdiction.

Source: PL 17-50 § 37.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 856 to 839 to allow all of the sections in this chapter to have eight hundred section numbers.

SUBCHAPTER VII Record Keeping and Information Collection [FOR REFERENCE ONLY]

Editor's note: This version of chapter 8 of this title is included here for reference only, as at the time of this codification the provisions of section 87, that set forth codified section 934 of PL 17-50, as amended by section 1 of PL 17-83, made this Act null and void.

Section 1 of PL 17-83 states:

Section 1. Section 934 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 17-50, is hereby amended to read as follows:

§ 934. If any of the four states of the Federated States of Micronesia have not passed into law value added tax legislation as of midnight July 19, 2013, this act is null and void.

Section 38 of PL 17-50 added a subchapter VII of chapter 8 entitled Record Keeping and Information Collection.

§ 842. Accounts and records.

(1) Every taxpayer must, for the purposes of a revenue law, maintain in the FSM such accounts, documents, and records (including in electronic form) as may be required under the revenue law and such accounts, documents, and records must be retained by the taxpayer for six years after the end of the tax period to which they relate.

(2) If any accounts, documents, or records referred to in subsection (1) of this section are not in English, the CEO may, by notice in writing, require the person keeping the accounts, documents, or records to provide, at the person's expense, a translation into English by a translator approved by the CEO.

Source: PL 17-50 § 39.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 861 to 842 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 843. Power to enter and search.

(1) For the purposes of administering a revenue law, the CEO or a revenue officer authorized by the CEO, in writing, for the purposes of this section:

(a) must have, upon presentation of a warrant issued by a court of competent jurisdiction, full and free access to any premises, place, property, book, record, or data storage device;

(b) may, upon presentation of a warrant issued by a court of competent jurisdiction, make an extract or copy of any accounts, documents, books, or records (including in electronic form) to which access is obtained under paragraph (a) of this subsection;

(c) may, upon presentation of a warrant issued by a court of competent jurisdiction, seize any accounts, documents, books, or records that, in the opinion of the CEO or authorized officer, afford evidence that may be material in determining the tax liability of a taxpayer;

(d) may retain any accounts, documents, books, or records seized under paragraph (c) of this subsection for as long as they may be required for determining a taxpayer's tax liability or for any proceeding under a revenue law; and

(e) may, if a hard copy or copy on data storage media of information stored on a data storage device is not provided, seize and retain the device for as long as is necessary to copy the information required.

(2) A revenue officer is not entitled to enter or remain on any premises or place if, upon request by the owner or lawful occupier, the officer is unable to produce the CEO's written authorization permitting the officer to exercise powers under subsection (1) of this section.

(3) The CEO or authorized officer may require a police officer to be present for the purposes of exercising powers under this section.

(4) Upon presentation by the CEO or authorized officer of a warrant issued by a court of competent jurisdiction, the owner or lawful occupier of the premises or place to which an exercise of power under subsection (1) of this section relates must provide all reasonable facilities and assistance to the CEO or authorized officer.

(5) A person whose accounts, documents, books, or records have been seized under subsection (1) of this section may examine them and make copies, at the person's expense, during office hours.

(6) A person whose data storage device has been seized under subsection (1) of this section may have access to the device during office hours on such terms and conditions as the CEO or authorized officer may specify.

(7) The CEO or authorized officer must sign for all accounts, documents, books, records, or data storage devices removed and retained under this section and return them to the owner within 14 days of the conclusion of the investigation to which they relate and all related proceedings.

(8) This section has effect notwithstanding:

(a) any law relating to privilege or the public interest with respect to the giving of information or the production of any property, accounts, documents, books, or records (including in electronic form); or

(b) any contractual duty of confidentiality.

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Source: PL 17-50 § 40.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 862 to 843 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 844. Administrative summons.

- (1) The CEO may, for the purposes of administering any revenue law, by notice in writing, require any person:
 - (a) to furnish such information as the CEO may require;
 - (b) to attend and give evidence concerning that person's or any other person's tax affairs; or
 - (c) to produce all accounts, books, documents, and records (including in electronic form) in the person's custody or under the person's control relating to that person's or any other person's tax affairs.
- (2) If a notice served under subsection (1) of this section requires the production of accounts, books, documents, or records (including in electronic form), it is sufficient if such accounts, books, documents, or records are described in the notice with reasonable certainty.
- (3) A notice issued under this section must be served personally upon the person to whom it is directed or left at the person's last known usual place of business or abode and the certificate of service signed by the person serving the notice is conclusive evidence of the facts stated therein.
- (4) The CEO may require the information or evidence referred to in subsection (1) of this section to be given under oath, verbally or in writing, and, for that purpose, the CEO may administer the oath.
- (5) This section has effect notwithstanding:
 - (a) any law relating to privilege or the public interest with respect to the giving of information or the production of any property, accounts, documents, books, or records (including in electronic form); or
 - (b) any contractual duty of confidentiality.

Source: PL 17-50 § 41.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 863 to 844 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 845. Audit of taxpayer's tax affairs.

- (1) The CEO may select any taxpayer for an audit of the taxpayer's tax affairs for the purpose of a revenue law having regard to:
 - (a) the taxpayer's history of compliance or non-compliance with the revenue law or any other revenue law;
 - (b) the amount of tax payable by the taxpayer;
 - (c) the class of business conducted by the taxpayer; or
 - (d) any other matter that the CEO considers relevant to ensuring the collection of tax due.

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(2) The fact that a taxpayer has been audited in relation to a tax period does not preclude the taxpayer from being audited again in the relation to the next and following tax periods if there are reasonable grounds for the audits, particularly having regard to the matters referred to in subsection (1) of this section.

(3) An audit of a taxpayer's tax affairs may be conducted for the purposes of more than one revenue law.

Source: PL 17-50 § 42.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 864 to 845 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 846. Issue of Taxpayer Identification Numbers.

(1) The CEO may, for the purposes of identification and cross-checking, require a taxpayer to apply for a Taxpayer Identification Number.

(2) An application for a Taxpayer Identification Number must be:

- (a) in the prescribed form;
- (b) accompanied by documentary evidence of the person's identity as prescribed; and
- (c) lodged in the prescribed manner.

(3) If a person has applied for a Taxpayer Identification Number under subsection (1) of this section and the CEO is satisfied that the applicant's identity has been established, the CEO must issue a Taxpayer Identification Number to the applicant by written notice.

(4) The CEO must refuse an application under this section:

- (a) if the CEO is not satisfied as to the applicant's true identity;
- (b) if the applicant has already been issued with a Taxpayer Identification Number that is still in force; or
- (c) for any other reason the CEO considers appropriate.

(5) The CEO must serve the applicant with written notice of the decision to refuse an application under this section within 14 days after making the decision.

(6) The CEO may, without an application being made, issue a Taxpayer Identification Number to any person liable for tax under a revenue law.

Source: PL 17-50 § 43.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 865 to 846 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 847. Cancellation of Taxpayer Identification Number.

(1) A person who ceases to be a taxpayer must apply to the CEO, in the prescribed form, for cancellation of the person's Taxpayer Identification Number within 30 days of the date on which the person ceased to be a taxpayer.

(2) The CEO must, by notice in writing, cancel a Taxpayer Identification Number:

- (a) if the person has ceased to be a taxpayer;

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(b) if a Taxpayer Identification Number has been issued to the person under an identity that is not the person's true identity;

(c) if the person has already been issued with a Taxpayer Identification Number that is still in force; or

(d) for any other reason the CEO considers appropriate.

(3) The CEO may, at any time, by notice in writing, cancel the Taxpayer Identification Number issued to a person and issue the person with a new Taxpayer Identification Number.

Source: PL 17-50 § 44.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 866 to 847 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 848. Quotation of Taxpayer Identification Number.

The CEO may require a taxpayer to state the taxpayer's Taxpayer Identification Number in any tax return, notice, or other document used for the purposes of any revenue law.

Source: PL 17-50 § 45.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 867 to 848 to allow all of the sections in this chapter to have eight hundred section numbers.

SUBCHAPTER VIII Representatives [FOR REFERENCE ONLY]

Editor's note: This version of chapter 8 of this title is included here for reference only, as at the time of this codification the provisions of section 87, that set forth codified section 934 of PL 17-50, as amended by section 1 of PL 17-83, made this Act null and void.

Section 1 of PL 17-83 states:

Section 1. Section 934 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 17-50, is hereby amended to read as follows:

§ 934. If any of the four states of the Federated States of Micronesia have not passed into law value added tax legislation as of midnight July 19, 2013, this act is null and void.

Section 46 of PL 17-50 added a subchapter VIII of chapter 8 entitled Representatives.

§ 851. Liabilities and obligations of representatives.

(1) Every representative of a taxpayer is responsible for performing any duties or obligations imposed by a revenue law on the taxpayer, including the payment of tax.

(2) A representative making a payment of tax on behalf of a taxpayer is treated as acting under the authority of the taxpayer and is hereby indemnified in respect of the payment.

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(3) Subject to subsection (4) of this section, any tax that, by virtue of subsection (1) of this section, is payable by a representative of a taxpayer is recoverable from the representative only to the extent of any assets of the taxpayer that are in the possession or under the control of the representative.

(4) Subject to subsection (5) of this section, a representative is personally liable for the payment of any tax due by the representative in that capacity if, while the amount remains unpaid, the representative disposes of or parts with any moneys or funds belonging to the taxpayer that are in the possession of the representative or which come to the representative after the tax is payable, if such tax was required by law to have been paid from or out of such moneys or funds.

(5) Nothing in subsection (3) of this section prevents a representative paying an amount on behalf of a taxpayer that has priority over the revenue payable by the taxpayer.

(6) If there are two or more representatives of a taxpayer, the duties or obligations referred to in this section apply jointly and severally to the representatives but may be discharged by any of them.

(7) Nothing in this section relieves a taxpayer from performing any duties or obligations imposed on the taxpayer under a revenue law that the representative of the taxpayer has failed to perform.

(8) The amount that a representative is liable for under subsection (4) of this section is treated as if it were tax payable by the representative for the purposes of subchapters V and VI of this chapter, and section 865 of this title.

Source: PL 17-50 § 47.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 871 to 851 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 852. Liability for tax payable by a company left with insufficient assets.

(1) This section applies if an arrangement has been entered into with the intention of rendering a company unable to satisfy a current or future tax liability under a revenue law.

(2) Subject to subsection (3) of this section, if this section applies, every person who was a director or controlling shareholder of the company at the time the arrangement was entered into is jointly and severally liable for the tax liability of the company.

(3) The amount that a person is liable for under subsection (2) of this section is treated as if it were tax payable by the person for the purposes of subchapters V and VI of this chapter, and section 865 of this title.

(4) A director of a company is not liable under this section for the tax liability of the company if the CEO is satisfied that the director derived no financial or other benefit from the arrangement and:

(a) the director has, on becoming aware of the arrangement, formally recorded with the company his or her dissent and notified the CEO, in writing, of the arrangement; or

(b) the director satisfies the CEO that, at the time the arrangement was entered into:

(i) the director was not involved in the executive management of the company; and

(ii) the director had no knowledge of, and could not reasonably have been expected to know of the arrangement.

(5) For the purposes of this section, a controlling shareholder of a company is any person who beneficially holds, either alone or together with an associate or associates:

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- (a) more than fifty percent (50%) of the voting rights in the company;
- (b) more than fifty percent (50%) of the rights to dividends; or
- (c) more than fifty percent (50%) of the rights to capital.

Source: PL 17-50 § 48.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 872 to 852 to allow all of the sections in this chapter to have eight hundred section numbers.

SUBCHAPTER IX Rulings [FOR REFERENCE ONLY]

Editor's note: This version of chapter 8 of this title is included here for reference only, as at the time of this codification the provisions of section 87, that set forth codified section 934 of PL 17-50, as amended by section 1 of PL 17-83, made this Act null and void.

Section 1 of PL 17-83 states:

Section 1. Section 934 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 17-50, is hereby amended to read as follows:

§ 934. If any of the four states of the Federated States of Micronesia have not passed into law value added tax legislation as of midnight July 19, 2013, this act is null and void.

Section 49 of PL 17-50 added a subchapter IX of chapter 8 entitled Rulings.

§ 855. Binding public rulings.

(1) The CEO may make a public ruling in accordance with section 856 of this title setting out the CEO's interpretation on the application of a revenue law.

(2) A public ruling made in accordance with section 856 of this title is binding on the CEO until withdrawn.

(3) A public ruling is not binding on a taxpayer.

Source: PL 17-50 § 50.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 881 to 855 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 856. Making a public ruling.

(1) The CEO shall print and maintain a gazette or other publication of public rulings to be made available free of charge to the public. The CEO shall make a public ruling by publishing a notice of the ruling in such gazette.

(2) A public ruling must state that it is a public ruling and have a number and subject heading by which it can be identified.

(3) A public ruling applies from the date specified in the ruling and if no date is specified, from the date of publication in the gazette identified in subsection (1) of this section.

Source: PL 17-50 § 51.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 882 to 856 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 857. Withdrawal of a public ruling.

- (1) The CEO may withdraw a public ruling, in whole or part, by publishing notice of the withdrawal in the gazette identified in section 856 of this title.
- (2) If legislation is passed, or the CEO makes another public ruling, that is inconsistent with an existing public ruling, the existing ruling is treated as withdrawn to the extent of the inconsistency.
- (3) The withdrawal of a public ruling, in whole or part, has effect:
 - (a) if subsection (1) of this section applies, from the date specified in the notice of withdrawal and if no date is specified, from the date notice of the withdrawal is published in the gazette; or
 - (b) if subsection (2) of this section applies, from the date of application of the inconsistent legislation or public ruling.
- (4) A public ruling that has been withdrawn in whole or in part:
 - (a) continues to apply to a transaction commenced before the public ruling was withdrawn; and
 - (b) does not apply to a transaction commenced after the ruling was withdrawn to the extent that the ruling is withdrawn.

Source: PL 17-50 § 52.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 883 to 857 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 858. Binding private rulings.

- (1) Subject to section 859 of this title, the CEO shall, upon application in writing by a taxpayer, issue to the taxpayer a private ruling setting out the CEO's position regarding the application of a revenue law to a transaction entered into, or proposed to be entered into, by the taxpayer.
- (2) If the taxpayer has made a full and true disclosure of all aspects of the transaction relevant to the making of a private ruling and the transaction has proceeded in all material respects as described in the taxpayer's application for the ruling, the ruling is binding on the CEO in relation to the taxpayer.
- (3) A private ruling is not binding on the taxpayer to whom it is issued.
- (4) If a private ruling is inconsistent with an existing public ruling, the private ruling has priority to the extent of the inconsistency.

Source: PL 17-50 § 53.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine

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hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 884 to 858 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 859. Refusing an application for a private ruling.

(1) The CEO may refuse an application for a private ruling if:

(a) the CEO has already decided the matter that is the subject of the application in a tax assessment;

(b) the CEO is of the opinion that an existing public ruling adequately covers the matter that is the subject of the application;

(c) the application relates to a matter that is the subject of a tax audit or an objection;

(d) the application is frivolous or vexatious;

(e) the arrangement to which the application relates has not been carried out and there are reasonable grounds to believe that it will not be carried out;

(f) the applicant has not provided the CEO with sufficient information to make a private ruling; or

(g) in the opinion of the CEO, it would be unreasonable to comply with the application having regard to the resources needed to comply and any other matters the CEO considers relevant, such as disadvantage to other taxpayers.

(2) The CEO shall serve the applicant with a written notice of the refusal to make a private ruling.

Source: PL 17-50 § 54.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 885 to 859 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 860. Making a private ruling.

(1) The CEO must make a private ruling unless section 859 of this title applies.

(2) The CEO makes a private ruling by serving written notice of the ruling on the applicant.

(3) The CEO may make a private ruling on the basis of assumptions about a future event or other matter as considered appropriate.

(4) A private ruling must set out the matter ruled on identifying:

(a) the taxpayer;

(b) the revenue law relevant to the ruling;

(c) the tax period to which the ruling applies;

(d) the arrangement to which the ruling relates;

and

(e) any assumptions on which the ruling is based.

(5) A private ruling is made at the time the applicant is served with notice of the ruling and remains in force for the period specified in the ruling.

(6) The making of a private ruling is not a tax decision for the purposes of this chapter.

Source: PL 17-50 § 55.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine

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hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 886 to 860 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 861. Withdrawal of a private ruling.

- (1) The CEO may, for reasonable cause, withdraw a private ruling, in whole or part, by written notice served on the applicant.
- (2) If legislation is passed, or the CEO publishes a public ruling, that is inconsistent with a private ruling, the private ruling is treated as withdrawn to the extent of the inconsistency.
- (3) The withdrawal of a private ruling, in whole or part, has effect:
 - (a) if subsection (1) of this section applies, from the date specified in the notice of withdrawal; or
 - (b) if subsection (2) of this section applies, from the date of application of the inconsistent legislation or public ruling.
- (4) A private ruling that has been withdrawn:
 - (a) continues to apply to a transaction commenced before the ruling was withdrawn; and
 - (b) does not apply to a transaction commenced after the ruling was withdrawn to the extent that the ruling is withdrawn.
- (5) A decision to withdraw a private ruling is not a tax decision for the purposes of this chapter.

Source: PL 17-50 § 56.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 887 to 861 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 862. Publication of private rulings.

The CEO shall include in the gazette or other publication referred to in section 856(1) of this title an edited version of a binding private ruling issued to a taxpayer. The edited version must not disclose the identity of the taxpayer.

Source: PL 17-50 § 57.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 888 to 862 to allow all of the sections in this chapter to have eight hundred section numbers.

SUBCHAPTER X

Interest and Administrative Remedies

[FOR REFERENCE ONLY]

Editor's note: This version of chapter 8 of this title is included here for reference only, as at the time of this codification the provisions of section 87, that set forth codified section 934 of PL 17-50, as amended by section 1 of PL 17-83, made this Act null and void.

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Section 1 of PL 17-83 states:

Section 1. Section 934 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 17-50, is hereby amended to read as follows:

§ 934. If any of the four states of the Federated States of Micronesia have not passed into law value added tax legislation as of midnight July 19, 2013, this act is null and void.

Section 58 of PL 17-50 added a subchapter X of chapter 8 entitled Interest and Administrative Penalties.

§ 865. Late payment interest.

(1) A person who fails to pay any tax due on or before the due date for payment is liable for late payment interest at the rate of six percent per annum on the amount unpaid calculated from the date the payment was due to the date the payment is made.

(2) Late payment interest paid by a person under subsection (1) of this section must be refunded to the person to the extent that the principal amount to which the interest relates is found not to have been payable.

(3) Late payment interest payable by a person is borne personally by the person and is not recoverable from any other person:

(a) in respect of tax withheld by the person under chapter 1 or 5 of this title from a payment made by the person; or

(b) in respect of an amount referred to in sections 826(7), 827(14), or 851(8) of this title payable by the person.

(4) Late payment interest payable under this section is simple interest.

(5) Late payment interest payable under this section is treated as tax payable by a taxpayer for the purposes of subchapter V of this chapter and section 851 of this title.

(6) Late payment interest payable under this section is in addition to any penalty imposed under this subchapter or any fine or imprisonment imposed under subchapter XI of this chapter in respect of the same act or omission.

Source: PL 17-50 § 59.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 891 to 865 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 866. Penalty for failure to file a tax return or lodge other document.

(1) A person who fails to file a tax return or lodge any other document as required under any revenue law is liable:

(a) in the case of a failure to file a tax return under which tax is payable, for a penalty of one percent (1%) of the amount of tax payable under the return for each month or part of a month that the return remains unfiled; or

(b) in any other case, for a penalty of ten dollars (\$10) for each day of default.

(2) A taxpayer served with a notice of assessment by the CEO under section 811 of this title is liable for a penalty of twenty five percent (25%) of the tax assessed (taking into account any subsequent amendment of the assessment) in addition to the penalty imposed under subsection (1)(a) of this section.

(3) For the purposes of subsection (1)(b) of this section, a person ceases to be in default at the time the document is received by the CEO.

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Source: PL 17-50 § 60.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 892 to 866 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 867. Penalty for failure to pay tax by due date.

(1) A taxpayer who fails to pay a tax when due is liable for a penalty equal to 10 percent of the amount of tax due for each month, or part of a month, that the tax remains unpaid subject to a maximum penalty of 100 percent of the unpaid tax.

(2) The penalty imposed under subsection (1) of this section is in addition to interest payable under section 865 of this title for late payment of tax. The ceiling on the amount of penalty payable under subsection (1) of this section does not apply to or take into account interest payable under section 865 of this title.

(3) The reference to “tax” in subsection (1) of this section does not include penalty.

Source: PL 17-50 § 61.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 893 to 867 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 868. Penalty for failure to maintain proper records.

(1) A taxpayer who fails to maintain accounts, documents, or records as required under a revenue law is liable:

(a) if the failure was knowingly or recklessly made, for a penalty equal to 50 percent of the amount of tax payable by the taxpayer for the tax period to which the failure relates; or

(b) in any other case, for a penalty equal to ten percent of the amount of tax payable by the taxpayer for the tax period to which the failure relates.

(2) [Reserved].

Source: PL 17-50 § 62.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 894 to 868 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 869. Penalty for making false or misleading statement.

(1) This section applies to a person:

(a) who makes a statement to a revenue officer that is false or misleading in a material particular or omits from a statement made to a revenue officer any matter or thing without which the statement is false or misleading in a material particular; and

(b) whose statement results in the tax liability of any person computed on the basis of the statement being less than it would have been if the statement had not been false or misleading (the difference being referred to as the “tax shortfall”).

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- (2) Subject to subsection (3) of this section, a person to whom this section applies is liable:
 - (a) if the statement or omission was made knowingly or recklessly, for a penalty equal to 50 percent (50%) of the tax shortfall; or
 - (b) in any other case, for a penalty equal to ten percent (10%) of the tax shortfall.
- (3) No penalty is payable under subsection (2) of this section if:
 - (a) the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular; or
 - (b) the tax shortfall arose as a result of a self-assessment taxpayer taking a reasonably arguable position on the application of a revenue law to the taxpayer's circumstances in filing a self-assessment return.
- (4) Nothing in subsection (3) of this section prevents the imposition of late payment interest under section 865 of this title in respect of a tax shortfall if the tax is not paid by the due date.
- (5) A reference in this section to a statement made to a revenue officer means a statement made in writing or orally to a revenue officer acting in the performance of the officer's duties under a revenue law, and includes a statement made:
 - (a) in any application, certificate, declaration, notification, tax return, objection, or other document furnished or lodged under a revenue law;
 - (b) in any information required to be furnished under a revenue law;
 - (c) in any document furnished to a revenue officer;
 - (d) in answer to a question asked of a person by a revenue officer; or
 - (e) to another person with the knowledge or reasonable expectation that the statement would be passed on to a revenue officer.

Source: PL 17-50 § 63.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 895 to 869 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 870. Collection of penalty.

- (1) A liability for penalty is calculated separately with respect to each section imposing a penalty under this subchapter.
- (2) If a penalty has been paid under this title and the CEO institutes a prosecution under subchapter XI of this chapter in respect of the same act or omission, the CEO must refund the amount of the penalty paid, and no penalty is payable unless the prosecution is withdrawn.
- (3) The CEO must:
 - (a) make an assessment of penalty imposed under this subchapter; and
 - (b) serve a notice of the assessment on the person subject to the penalty, which notice must state the amount of penalty payable and the due date for payment.
- (4) A person liable to pay a penalty may apply, in writing, to the CEO for remission of the penalty payable.
- (5) The CEO may, upon application under subsection (4) of this section or on the CEO's own motion, remit, in whole or in part, any penalty payable by a person.

Source: PL 17-50 § 64.

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Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 896 to 870 to allow all of the sections in this chapter to have eight hundred section numbers.

**SUBCHAPTER XI
Taxation Offenses
[FOR REFERENCE ONLY]**

Editor's note: This version of chapter 8 of this title is included here for reference only, as at the time of this codification the provisions of section 87, that set forth codified section 934 of PL 17-50, as amended by section 1 of PL 17-83, made this Act null and void.

Section 1 of PL 17-83 states:

Section 1. Section 934 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 17-50, is hereby amended to read as follows:

§ 934. If any of the four states of the Federated States of Micronesia have not passed into law value added tax legislation as of midnight July 19, 2013, this act is null and void.

Section 65 of PL 17-50 added a subchapter XI of chapter 8 entitled Taxation Offenses.

§ 873. Offense for failure to file tax return.

(1) A taxpayer who, without reasonable excuse, fails to file a tax return by the due date is guilty of an offense.

(2) *Penalty.* A person convicted of an offense under this section shall be subject to a fine not exceeding five hundred dollars (\$500), or, if a natural person, imprisoned for not more than six months, or both.

Source: PL 17-50 § 66.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 901 to 873 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 874. Offense for failure to comply with obligations under this chapter.

(1) A person is guilty of an offense:

(a) who, without reasonable cause, fails to:

(i) comply with section 826 of this title;

(ii) comply with a notice served on the person under section 827 of this title;

(iii) provide security as required under section 829 of this title;

(iv) provide facilities and assistance as required by section 826(4) of this title;

or

(v) comply with a notice under section 844 of this title; or

(b) who, knowing that a certificate has been issued under section 830(2) of this title, leaves or attempts to leave the FSM without paying the tax due or making an arrangement satisfactory to the CEO for payment.

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(2) *Penalty.* A person convicted of an offense under this section shall be subject to a fine not exceeding five hundred dollars (\$500), or, if a natural person, imprisoned for not more than six months, or both.

Source: PL 17-50 § 67.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 902 to 874 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 875. Offense for failure to maintain proper records.

(1) A taxpayer who knowingly or recklessly fails to maintain accounts, documents, or records as required under a revenue law is guilty of an offense.

(2) *Penalty.* A taxpayer convicted of an offense under subsection (1) of this section shall be subject to a fine not exceeding one thousand dollars (\$1,000), or, if a natural person, imprisoned for not more than one year, or both.

(3) A taxpayer convicted of an offense under subsection (1) of this section is subject to the immediate revocation of any existing license to do business in the FSM that has been issued to the taxpayer.

Source: PL 17-50 § 68.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 903 to 875 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 876. Offenses for improper use of Taxpayer Identification Number.

(1) A person who uses a false Taxpayer Identification Number on any tax return or document prescribed or used for the purposes of a revenue law is guilty of an offense.

(2) *Penalty.* A person convicted of an offense under subsection (1) of this section shall be subject to a fine not exceeding one thousand dollars (\$1,000), or, if a natural person, imprisoned for not more than one year, or both.

(3) A person who uses the Taxpayer Identification Number of another person is treated as having used a false Taxpayer Identification Number, unless the Taxpayer Identification Number has been used with the permission of that other person on a document relating to the tax affairs of that other person.

(4) A person who fails to apply for cancellation of the person's Taxpayer Identification Number as required under section 847 of this title is guilty of an offense.

(5) *Penalty.* A person convicted of an offense under subsection (4) of this section shall be subject to a fine not exceeding five hundred dollars (\$500).

Source: PL 17-50 § 69.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 904 to 876 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 877. Offense for making false or misleading statement.

(1) A person is guilty of an offense if the person knowingly or recklessly:

(a) makes a statement to a revenue officer that is false or misleading in a material particular; or

(b) omits from a statement made to a revenue officer any matter or thing without which the statement is false or misleading in a material particular.

(2) *Penalty.* A person convicted of an offense under this section shall be subject to a fine not exceeding fifty thousand dollars (\$50,000), or, if a natural person, imprisoned for not more than one year, or both.

(3) Section 869(5) of this title applies in determining whether a person has made a statement to a revenue officer.

Source: PL 17-50 § 70.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 905 to 877 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 878. Offense for obstruction of revenue officer.

(1) A person who obstructs a revenue officer in the performance of duties under any revenue law is guilty of an offense.

(2) *Penalty.* A person convicted of an offense under this section shall be subject to a fine not exceeding one thousand dollars (\$1,000), or, if a natural person, imprisoned for not more than one year, or both.

Source: PL 17-50 § 71.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 906 to 878 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 879. Offense for aiding or abetting a taxation offense.

A person who aids, abets, assists, incites, or induces another person to commit an offense under a revenue law (referred to as the “principal offense”) is guilty of an offense and is liable for the same penalty as imposed for the principal offense.

Source: PL 17-50 § 72.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 907 to 879 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 880. Offense relating to seized goods or temporarily closed premises.

(1) A person is guilty of an offense if the person:

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(a) takes any goods that have been seized under section 828 of this title or that are the subject of a warrant under subchapter VI of this chapter or that are in premises the subject of an order under section 831 of this title; or

(b) before, or at, or after, any seizure of goods under section 828 of this title or proceedings under subchapter VI of this chapter, staves, breaks or destroys any goods, or documents relating to any goods, to prevent:

(i) the seizure or the securing of the goods; or

(ii) the proof of an offence; or

(c) enters premises the subject of an order under section 831 of this title without the permission of the CEO.

(2) *Penalty.* A person convicted of an offense under this section shall be subject to a fine not exceeding one thousand dollars (\$1,000), or, if a natural person, imprisoned for not more than one year, or both.

Source: PL 17-50 § 73.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 908 to 880 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 881. Offenses by revenue officers.

(1) A revenue officer who directly or indirectly asks for, or takes in connection with any of the officer's duties, any payment or reward whatsoever, whether pecuniary or otherwise, or promise or security for any such payment or reward, not being a payment or reward that the officer was lawfully entitled to receive is guilty of an offense.

(2) *Penalty.* A person convicted of an offense under subsection (1) of this section shall be subject to a fine not exceeding fifty thousand dollars (\$50,000), or imprisoned for not more than one year, or both.

(3) A revenue officer who enters into or acquiesces in any agreement to do any act or thing, abstain from doing any act or thing, permit or connive in the doing of any act or thing, or conceal any act or thing, whereby the National or a State Government is or may be defrauded of revenue, or that is contrary to the provisions of a revenue law or to the proper execution of the officer's duty is guilty of an offense.

(4) *Penalty.* A person convicted of an offense under subsection (3) of this section shall be subject to a fine not exceeding fifty thousand dollars (\$50,000), or imprisoned for not more than one year, or both.

(5) A person who directly or indirectly offers or gives to a revenue officer any payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any payment or reward, not being a payment or reward that the officer was lawfully entitled to receive, is guilty of an offense.

(6) *Penalty.* A person convicted of an offense under subsection (5) of this section shall be subject to a fine not exceeding fifty thousand dollars (\$50,000), or, if a natural person, imprisoned for not more than one year, or both.

(7) A person who proposes or enters into any agreement with a revenue officer in order to induce the officer to do any act or thing, abstain from doing any act or thing, permit or connive in the doing of any act or thing, or conceal any act or thing, whereby the National or a State Government is or

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may be defrauded of revenue, or that is contrary to the provisions of a revenue law or to the proper execution of the officer's duty is guilty of an offense.

(8) *Penalty.* A person convicted of an offense under subsection (7) of this section shall be subject to a fine not exceeding fifty thousand dollars (\$50,000), or, if a natural person, imprisoned for not more than one year, or both.

(9) For the purposes of this section, a revenue officer includes any person employed or engaged by the Authority in any capacity and includes a director or former director of the Board, a member or former member of a committee of the Board, a person invited to a Board or committee meeting, or a former officer or employee of the Authority.

Source: PL 17-50 § 74.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 909 to 881 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 882. Offenses by companies.

(1) If an offense under a revenue law is committed by a company, the offense is treated as having been committed by every person who, at the time the offense was committed, was:

- (a) the chief executive officer, public officer, managing director, a director, company secretary, or other similar officer of the company; or
- (b) acting or purporting to act in that capacity.

(2) Subsection (1) of this section does not apply to a person if:

- (a) the offense was committed without that person's consent or knowledge; and
- (b) the person, having regard to the nature of the person's functions and all the circumstances, has exercised reasonable diligence to prevent the commission of the offense.

Source: PL 17-50 § 75.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 910 to 882 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 883. Failure to comply with a court order.

Upon conviction of a person of an offense under this subchapter, and the failure of the person to comply with a court order, the person shall be subject to the provisions and penalties of section 119 of title 4 of this code.

Source: PL 17-50 § 76.

Cross-reference: Section 119 of title 4 (Judiciary) of this code is on Contempt.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 911 to 883 to allow all of the sections in this chapter to have eight hundred section numbers.

SUBCHAPTER XII
Forms and Notices
[FOR REFERENCE ONLY]

Editor’s note: This version of chapter 8 of this title is included here for reference only, as at the time of this codification the provisions of section 87, that set forth codified section 934 of PL 17-50, as amended by section 1 of PL 17-83, made this Act null and void.

Section 1 of PL 17-83 states:

Section 1. Section 934 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 17-50, is hereby amended to read as follows:

§ 934. If any of the four states of the Federated States of Micronesia have not passed into law value added tax legislation as of midnight July 19, 2013, this act is null and void.

Section 77 of PL 17-50 added a subchapter XII of chapter 8 entitled Forms and Notices.

§ 886. Forms and notices; authentication of documents.

(1) A form, notice, tax return, statement, table, or any other document prescribed or published by the CEO for the purposes of any revenue law may be in such form as the CEO determines for the efficient administration of the revenue laws.

(2) The CEO must make the documents referred to in subsection (1) of this section available to the public at the offices of the Authority and at such other locations, or by mail or such other means, as the CEO may determine.

(3) A notice or other document issued, served, or given by the CEO under a revenue law is sufficiently authenticated if the name or title of the CEO, or authorized officer, is printed, stamped, or written on the document.

Source: PL 17-50 § 78.

Editor’s note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 921 to 886 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 887. Manner of lodging documents.

Except as provided in section 924 of this title, a tax return, application, notice, or other document to be filed with the CEO under the revenue law must be delivered by personal delivery or registered post to an office of the Authority.

Source: PL 17-50 § 79.

Editor’s note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 922 to 887 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 888. Service of notices.

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(1) Subject to section 889 of this title and except as otherwise provided in a revenue law, a notice or other document required to be served by the CEO on a person for the purposes of a revenue law is treated as properly served on the person if:

- (a) personally served on the person;
- (b) left at the person's usual or last known place of abode or business in the FSM; or
- (c) sent by registered post to the person's usual or last known address in the FSM.

(2) If a notice or other document is served by registered post, service is, in the absence of proof to the contrary, deemed to have been effected at the time at which the notice or other document would be delivered in the ordinary course of post, and in proving such service it is sufficient to prove that the envelope containing the notice or other document was properly addressed and was posted.

(3) If the person to whom a notice or other document has been sent by registered post is informed of the fact that there is a registered letter awaiting the person at a post office, and the person refuses or fails to take delivery of the letter, and the letter consists of the notice or other document, service of the notice or other document is deemed to have been effected.

(4) The validity of service of a notice under a revenue law cannot be challenged after the notice has been wholly or partly complied with.

(5) The reference to "person" in this section includes the representative of the person.

Source: PL 17-50 § 80.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 923 to 888 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 889. Electronic returns and notices.

(1) The CEO may establish and operate a procedure (referred to as the "electronic notice system") for electronic filing of tax returns or other documents to the CEO and electronic service of notices and other documents by the CEO and, for this purpose, the CEO may provide written conditions for:

- (a) the registration of taxpayers to participate in the electronic notice system (referred to as "registered users");
- (b) the issuing and cancellation of authentication codes to registered users;
- (c) the tax returns and other documents that may be transmitted through the electronic notice system, including the form and manner in which they are to be transmitted;
- (d) the correction of errors in or amendments to electronic returns or other documents;
- (e) the use of the electronic notice system, including the procedure applicable if there is a breakdown or interruption in the system;
- (f) the use in any electronic transmission of symbols, codes, abbreviations, or other notations to represent any particulars or information required under a revenue law; and
- (g) any other matters for the better provision of the electronic notice system.

(2) A registered user may, in accordance with the conditions set by the CEO under subsection (1) of this section, file a tax return or other document to the computer account of the CEO.

(3) The CEO may, in accordance with the conditions set by the CEO under subsection (1) of this section, serve a notice or other document to the computer account of a registered user.

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(4) If a tax return or other document of a registered user has been transmitted to the computer account of the CEO using the authentication code assigned to the registered user either with or without the authority of the registered user, and before the registered user has applied to the CEO for cancellation of the authentication code, the return or other document is, for the purposes of the revenue law under which it has been filed, presumed to be filed by the registered user unless the registered user proves to the contrary.

(5) For the purposes of a revenue law, an electronic tax return, notice, or other document, or a copy thereof, shall not be ruled inadmissible in evidence merely on the basis that it was filed or served without the filing or delivery of any equivalent document or counterpart in paper form.

(6) If an electronic tax return, notice, or other document is admissible under subsection (5) of this section, it is presumed that, until the contrary is proved, the contents of the electronic return, notice, or other document have been accurately transmitted.

(7) Section 815 shall apply to:

(a) an electronic tax assessment served by the CEO on the basis that the reference in section 815(1)(b) of this title to a copy of a notice of a tax assessment includes a certificate under the hand of the CEO identifying the tax assessment, and stating the authentication code of the registered user and the device involved in the production and transmission of the electronic tax assessment; and

(b) an electronic tax return furnished by a registered user on the basis that the reference in section 815(1)(c) of this title to a copy of a tax return includes a certificate under the hand of the CEO identifying the tax return, and stating the authentication code of the registered user and the device (if known) involved in the production and transmission of the electronic tax return.

(8) A person furnishing an electronic tax return or other document on behalf of another person must not divulge or disclose the contents of the return or document, or a copy thereof, without the prior written consent of the CEO.

(9) A person who fails to comply with subsection (8) of this section is guilty of an offense.

(10) *Penalty.* A person convicted of an offense under subsection (8) of this section shall be subject to a fine not exceeding five hundred dollars (\$500), or imprisoned for not more than six months, or both.

Source: PL 17-50 § 81.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 924 to 889 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 890. Due date for documents and tax payments.

(1) If the due date for the following is a Saturday, Sunday, or public holiday, the due date is the next following business day:

- (a) filing a tax return, application, notice, or other document;
- (b) the payment of tax; or
- (c) taking any other action under a revenue law.

(2) Reserved.

Source: PL 17-50 § 82.

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Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 925 to 890 to allow all of the sections in this chapter to have eight hundred section numbers.

SUBCHAPTER XIII Final Provisions [FOR REFERENCE ONLY]

Editor's note: This version of chapter 8 of this title is included here for reference only, as at the time of this codification the provisions of section 87, that set forth codified section 934 of PL 17-50, as amended by section 1 of PL 17-83, made this Act null and void.

Section 1 of PL 17-83 states:

Section 1. Section 934 of title 54 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 17-50, is hereby amended to read as follows:

§ 934. If any of the four states of the Federated States of Micronesia have not passed into law value added tax legislation as of midnight July 19, 2013, this act is null and void.

Section 83 of PL 17-50 added a subchapter XIII of chapter 8 entitled Final Provisions.

§ 893. Regulations.

(1) The Secretary shall, subject to approval of the President, prescribe and have printed reasonable regulations for the enforcement of this chapter and such regulations shall have the force and effect of law if they are not in conflict with the express provisions of this chapter or other laws of the FSM.

(2) The regulations shall also provide for matters prescribed under the chapter to be made by regulation.

Source: PL 17-50 § 84.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 931 to 893 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 894. Transition.

(1) Subject to this section, this chapter applies to any act or omission occurring, or any taxation assessment made, before this chapter came into force.

(2) Any appeal or prosecution commenced before this chapter came into force shall be continued and disposed of as if this chapter had not come into force.

(3) If the period for any application, appeal, or prosecution had expired before this chapter came into force, nothing in this chapter shall be construed as enabling the application, appeal, or prosecution to be made under this chapter by reason only of the fact that a longer period is specified in this chapter.

(4) Any tax liability that arose before this chapter came into force may be recovered under this chapter, but without prejudice to any action already taken for the recovery of the tax.

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Source: PL 17-50 § 85.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 932 to 894 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 895. Commencement of administration.

Administration of this Act shall commence on the commencement of administration date of the Unified Revenue Authority Act as determined by section 769 of this title.

Source: PL 17-50 § 86.

Editor's note: The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 933 to 895 to allow all of the sections in this chapter to have eight hundred section numbers.

§ 896. Nullification.

If any of the four states of the Federated States of Micronesia have not passed into law value added tax legislation as of midnight July 19, 2013, this Act is null and void.

Source: PL 17-50 § 87; PL 17-83 § 1.

Editor's note: No section heading was included for section 934 in section 87 of PL 17-50. The section heading of Nullification has been used.

The sections of this chapter were numbered such that all of the sections were not numbered in the eight hundreds, but were also numbered in the nine hundreds. This created a problem because some of the nine hundred section numbers were already designated by chapter 9 of this title. This section was therefore renumbered from 934 to 896 to allow all of the sections in this chapter to have eight hundred section numbers.

CHAPTER 9
Penalties

SECTIONS

- § 901. Willful violation of revenue laws.**
§ 902. Monthly penalty upon unpaid taxes and fees.
§ 903. Waiver.

§ 901. Willful violation of revenue laws.

Except where another penalty is specified for a violation of a provision of this title, any person who willfully violates any of the provisions of this title, or any license, rule, or regulation issued thereunder, shall upon conviction be imprisoned for a period of not more than one year, or fined not more than \$500, or both.

Source: COM PL 3-32 § 1 (part); TT Code 1970, 77 TTC 201; TT Code 1980, 77 TTC 201; PL 9-139 § 59.

§ 902. Monthly penalty upon unpaid taxes and fees.

In case of failure to pay any tax levied or imposed under this title when due, there shall be added to the amount due five percent of the principal amount of such tax, if the failure is not for more than one month, with an additional one percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate, in addition to any penalties assessed under section 155 of this title.

Source: COM PL 3-32 § 1 (part); TT Code 1970, 77 TTC 202; TT Code 1980, 77 TTC 202; PL 13-61 § 5.

Case annotations: The statement in 54 F.S.M.C. 144(2) that penalties provided in chapter 1 will apply to the gross revenue tax law does not preclude the penalty specified in 54 F.S.M.C. 902 from applying. *FSM v. George*, 2 FSM R. 88, 91 (Kos. 1985).

PL 3-32, the predecessor of 54 F.S.M.C. 902, is subject to the interpretation that it was to be a catch-all provision applicable to all taxes which subsequently might be established by Congress. *FSM v. George*, 2 FSM R. 88, 94 (Kos. 1985).

The penalty provisions of 54 F.S.M.C. 902 apply to failure to make timely payment of the gross revenue tax imposed under 54 F.S.M.C. 141. *FSM v. George*, 2 FSM R. 88, 94 (Kos. 1985).

Statutory provisions designed to enhance the capacity of the government to enforce penalties for failure to pay taxes are penal, not remedial, and should be strictly construed. *In re Island Hardware, Inc.*, 3 FSM R. 428, 432 (Pon. 1988).

Under 54 F.S.M.C. 902, a monthly penalty is imposed on delinquent payment of any tax specified in Title 54, including gross revenue tax. *Setik v. FSM*, 5 FSM R. 407, 409 (App. 1992).

By statute, a taxpayer is liable for penalties and interest on any underpayment of his gross revenue tax liability regardless of the reason for underpayment, unless some other principle of law applies to afford the taxpayer relief. *NIH Corp. v. FSM*, 5 FSM R. 411, 413-14 (Pon. 1992).

Where the government's prior audit methods had the effect of permitting gross revenue tax computation on the cash basis and where the government's attempts to advise businesses that they are required to use the accrual method have for many years been woefully inadequate, the government will be barred by equitable estoppel from assessing

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penalties and interest on any underpayment of taxes that was the result of being led to believe that the cash basis was an acceptable method of tax computation. *NIH Corp. v. FSM*, 5 FSM R. 411, 415 (Pon. 1992).

§ 903. Waiver.

(1) Notwithstanding any other provision of this title, all civil penalties and interest under this title, which were levied or could have been levied prior to the effective date of this Act, shall be waived with respect to any taxpayer who, at any time between the effective date of this Act and January 1, 2008, pays the full amount of the tax owed by the taxpayer, except that no penalty assessed under section 155(4) of this title shall be waived.

(2) With respect to delinquent taxpayers who have a balance of zero (\$0) for their capital amount due, the Secretary of Finance and Administration is empowered for the duration of the period set forth in subsection (1) of this section to write off and discharge all penalties and interest currently owing.

Source: PL 13-61 § 6; PL 14-83 § 1.

Editor's note: This section did not have a title in PL 13-61 § 6 or PL 14-83 § 1. This section has been entitled "Waiver" based on its content.