

CHAPTER 2

General Powers of the Secretary;

National Preemption

SECTIONS

§ 201. General powers and duties of the Secretary.

§ 202. National preemption.

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(1) *General powers.* The Secretary is empowered to perform such acts, to conduct such investigations, to issue and amend such orders, and to make and amend such general or special rules, regulations, and procedures, necessary to carry out the provisions of this title.

(2) *Cooperation with other government agencies and departments.* The Secretary is empowered to confer with or to hold joint hearings with any other national or state government agencies or departments, in connection with any matter arising under this title within its jurisdiction, and to avail itself of the cooperation, services, records, and facilities of such agencies or departments as fully as may be practicable in the administration and enforcement of this title.

(3) *Exchange of information.* The Secretary, is empowered to exchange with other governments, through appropriate agencies of the Federated States of Micronesia, information pertaining to aeronautics.

(4) *Foreign aid.*

(a) Under such terms and conditions as are prescribed by the laws of the Federated States of Micronesia, the Secretary, after consultation and in cooperation with the Department of External Affairs, may accept, receive, disburse, and expend moneys from foreign governments or other international organizations, and other moneys, public or private, made available by grant or loan to accomplish, in whole or in part, any of the purposes of this title.

(b) No moneys from any foreign government or international organization shall be accepted under and pursuant to this title unless:

(i) the funds are made available upon such terms and conditions as are prescribed by, or are consistent with or allowed under, the laws of the Federated States of Micronesia; and

(ii) the Secretary has consulted with the Department of External Affairs and obtained clearance from the Attorney General to enter into any contracts which may be required in connection therewith.

(c) Foreign aid received by the Secretary under the provisions of this section shall be paid to a special airport trust account to be expended only for the purpose specified by the grantor and in compliance with the provisions of subsection (b) of this section, or if the grantor has not restricted such purpose, to be used at the discretion of the Secretary for:

(i) matching funds for airport development projects in the states, including, but not limited to,

maintenance of runways and navigational aids; improvements, expansion, and maintenance of the terminal buildings; and other matters related to airport operations; and

(ii) other purposes which directly foster and advance the development of civil aeronautics and air commerce in the Federated States of Micronesia.

Source: PL 9-138 § 6.

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

§ 202. National preemption.

(1) No state or political subdivision thereof shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates charged by, routes established or served by, or services provided by any air carrier having authority to provide air transportation in the Federated States of Micronesia.

(2) The provisions of subsection (1) of this section shall not apply to fees or rates charged by airport operators to air carriers having the authority to provide air transportation in the Federated States of Micronesia; however, such fees, rates and other charges levied by airport operators upon air carriers shall remain subject to the Secretary's ultimate review and approval under the provisions of sections 305(3), 703(4), 1002, and any other applicable provisions of this title.

Source: PL 9-138 § 7.

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.

Case annotations: A service tax on plane passengers does not have only an incidental effect on foreign commerce; its only effect is on foreign commerce. A tax on shipping cargo or freight affects only foreign commerce or interstate commerce since the airline does not fly to anywhere in Chuuk except Weno. Since state and local governments are prohibited from imposing taxes which restrict interstate commerce, to the extent that the tax is imposed on freight or cargo shipped from Chuuk to other FSM states, would appear to be specifically barred by the Constitution and to the extent it is imposed on cargo or freight shipped elsewhere, it would be regulation of foreign commerce in effect, an export tax. *Continental Micronesia, Inc. v. Chuuk*, 17 FSM R. 152, 160 (Chk. 2010).

Although Chuuk may "own" the airport, airport runway, tarmac, and terminal buildings, and these are all services an airline uses, the airline already pays the State for the use of the various airport facilities through landing fees for its aircraft, rental fees for office space, and other service fees (and it also pays a 3% gross revenue tax to the national government, half of which is shared with the states), and its passengers departing Chuuk already pay for Chuuk's airport services through a \$20 departure fee collected at the airport. *Continental Micronesia, Inc. v. Chuuk*, 17 FSM R. 152, 160-61 & n.1 (Chk. 2010).

The Chuuk service tax on plane passengers does not have only an incidental effect on foreign commerce. Its main effect (and its sole intended effect) is on foreign commerce. By its terms, it is to be imposed only on those passengers whose "final destination" would be "outside of the FSM." The Chuuk service tax on outgoing paying airline passengers is thus an unconstitutional regulation of foreign commerce. *Continental Micronesia, Inc. v. Chuuk*, 17 FSM R. 526, 531-32 (Chk. 2011).

"Courier services" is a much more limited concept than all freight and cargo. Courier services are generally those services that provide expedited delivery of small, high-value goods or documents. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

Even if the Chuuk service taxes on air passenger tickets and courier services were not unconstitutional taxes, they would still be invalid when the regulatory enforcement and interpretation of the service tax statute exceeded or limited that statute's reach. *Continental Micronesia, Inc. v. Chuuk*, 17 FSM R. 526, 533 (Chk. 2011).

Article 15 of the 1944 Convention on International Aviation, which bars fees, dues, or other charges being imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons thereon, does not bar a tax only on outgoing passengers, freight, or cargo from Chuuk. *Continental Micronesia, Inc. v. Chuuk*, 17 FSM R. 526, 533-34 (Chk. 2011).