

TITLE 54
TAXATION AND CUSTOMS

CHAPTERS**1 Taxation of Wages, Salaries, and Gross Revenues (§§ 111-157)****SUBCHAPTERS****I General Provisions (§§ 111-118)****II Taxation of Wages and Salaries: Taxes Applicable (§§ 121-124)****III Taxation of Wages and Salaries: Withholding and Reporting (§§ 131-139)****IV Taxation of Gross Revenues (§§ 141-144)****V Enforcement (§§ 151-157)****2 Duties and Customs (§§ 211-270)****SUBCHAPTERS****I General Provisions (§§ 211-213)****II Import Duties (§§ 221-227)****III Customs Procedures (§§ 231-270)****3 Income Tax Regime for FSM Corporations (§§ 311-378)****SUBCHAPTERS****I General Provisions (§§ 311-315)****II Taxation (§§ 321-323)****III Credits (§§ 331-332)****IV Accounting (§§ 341-342)****V Administration (§§ 351-360)****VI Enforcement (§§ 370-378)****4 [RESERVED]****5 [RESERVED]****6 [RESERVED]****7 FSM Unified Revenue Authority (§§ 701-769)**

SUBCHAPTERS

- I General Provisions (§§ 701-702)**
- II Establishment, Membership, and Meetings of the Authority (§§ 711-721)**
- III Service of the Authority (§§ 731-735)**
- IV Functions, Duties and Powers of the Authority (§§ 741-742)**
- V Financial Provisions and Reporting (§§ 751-759)**
- VI Miscellaneous (§§ 761-769)**

8 Revenue Administration (§§ 801-805)

8 Revenue Administration (§§ 801-896) [FOR REFERENCE ONLY]

SUBCHAPTERS

- I General Provisions (§§ 801-803) [FOR REFERENCE ONLY]**
- II Tax Returns (§§ 806-807) [FOR REFERENCE ONLY]**
- III Tax Decisions (§§ 810-816) [FOR REFERENCE ONLY]**
- IV Objections and Appeals (§§ 819-821) [FOR REFERENCE ONLY]**
- V Recovery of Unpaid Tax (§§ 824-831) [FOR REFERENCE ONLY]**
- VI Levy and Execution (§§ 834-839) [FOR REFERENCE ONLY]**
- VII Record Keeping and Information Collection (§§ 842-848)
[FOR REFERENCE ONLY]**
- VIII Representatives (§§ 851-852) [FOR REFERENCE ONLY]**
- IX Rulings (§§ 855-862) [FOR REFERENCE ONLY]**
- X Interest and Administrative Remedies (§§ 865-870) [FOR REFERENCE ONLY]**
- XI Taxation Offenses (§§ 873-883) [FOR REFERENCE ONLY]**
- XII Forms and Notices (§§ 886-890) [FOR REFERENCE ONLY]**
- XIII Final Provisions (§§ 893-896) [FOR REFERENCE ONLY]**

9 Penalties (§§ 901-903)

CHAPTER 1

Taxation of Wages, Salaries, and Gross Revenues

SUBCHAPTER I

General Provisions

SECTIONS

- § 111. Short title.
- § 112. Definitions.
- § 113. Taxes collected declared realization of Congress.
- § 114. Regulations.
- § 115. Tax returns—Information required.
- § 116. Preservation and disclosure of information.
- § 117. Restrictions on outside employment.
- § 118. Penalties for violations of sections 116 and 117.

SUBCHAPTER II

Taxation of Wages and Salaries:

Taxes Applicable

SECTIONS

- § 121. Tax on wages and salaries.
- § 122. Deduction from tax; Claim for refund.
- § 123. Refunds of taxes on wages and salaries.
- § 124. Source of wages.

SUBCHAPTER III

Taxation of Wages and Salaries:

Withholding and Reporting

SECTIONS

- § 131. Resident employers—Withholding of tax.**
- § 132. Resident employers—Employers to file tax returns—Reporting and payments.**
- § 133. Resident employers—Withholding statements to employees.**
- § 134. Resident employers—Liability to penalties.**
- § 135. Employer’s responsibility for withheld taxes.**
- § 136. No cause of action for withholding.**
- § 137. Nonresident employers—Employees to file returns.**
- § 138. Nonresident employers—Employee returns—Requirements.**
- § 139. Nonresident employers—Employee returns—Extension of time; Penalties.**

SUBCHAPTER IV

Taxation of Gross Revenues

SECTIONS

- § 141. Tax on gross revenues; Exemption.**
- § 142. Source of gross revenue; Apportionment.**
- § 143. Returns and payment of tax on taxable gross revenue.**
- § 144. Liability for payment of tax; Penalties.**

SUBCHAPTER V

Enforcement

SECTIONS

- § 151. Records; Inspection and audit.**
- § 152. Tax assessment on failure to file or pay.**
- § 153. Lien on property.**
- § 154. Criminal penalties.**

- § 155. **Civil penalties.**
- § 156. **Judicial review.**
- § 157. **Summons.**

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.

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 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).

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 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.

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).

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.

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).

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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.

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.

(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.

(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).

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, 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).

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 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.

(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 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 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.