

3/1/71

A BILL FOR AN ACT

To levy taxes on salaries, wages, and gross revenues of businesses; to prescribe the procedures for payment and collection; to provide penalties therefor, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF MICRONESIA:

1 Section 1. Definitions. Wherever used in this act, unless the subject
2 matter, context, or sense otherwise requires:

3 (a) "Employer" includes any individual, corporation, association,
4 joint stock company, bank, insurance company, credit union, cooperative,
5 or other entity or group employing any person, and also includes the
6 Treasurer of the Trust Territory Government, the treasurer of any adminis-
7 trative district, the treasurer of any municipality, whether chartered or
8 not, and any other officer or agent of the Trust Territory, or any district
9 or municipality, charged with the disbursement of public monies as salaries
10 or wages to employees of the Trust Territory Government, ~~district/~~
11 any district government, any district legislature, or any municipality, or
12 any department or agency thereof, as the case may be, insofar as such
13 disbursements are concerned. "Employer" also includes the United States
14 and instrumentalities of the United States.

15 (b) "Employee" means any individual who, under the usual common
16 law rules applicable in determining the employer-employee relationship,
17 has the status of an employee.

18 (c) "Wages" or "Salaries" means and includes commissions, fees,
19 compensation, emoluments, bonuses, and every and all other kinds of
20 compensation paid for, credited or attributable to personal services
21 performed by an individual, which services have been performed by such person
22 as an ~~employee/wage/collectible/total/~~
23 ~~employee/wage/collectible/total/~~
24 ~~employee/wage/collectible/total/~~
25 ~~employee/wage/collectible/total/~~

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1 not exceed any comparable Trust Territory Government rates.

2 (3) Rental value of a home or rental allowance (to the
3 extent used by him to rent or to provide a home) furnished to a minister
4 of the gospel.

5 (4) Any payment on account of sickness or accident
6 disability or medical or hospitalization expenses other than wages or
7 salaries or any part thereof, made by an employer to or on behalf of
8 an employee.

9 (5) Any payment made to or on behalf of an employee or
10 to his beneficiary from a trust or annuity.

11 (6) Remuneration paid in any medium other than cash to
12 an employee for service not in the ordinary course of the employer's
13 trade or business or for domestic service in a private home of an
14 employer.

15 (7) remuneration paid for casual or intermittent labor
16 not performed in the ordinary course of the employer's trade or business
17 for more than one week in each calendar month.

18 (8) Any payment made to an employee while he is a
19 full-time, bona fide student at an accredited educational institution
20 within the Trust Territory.

21 (d) "Director" means the Director of the Department of
22 Finance of the Trust Territory Government.

23 (e) "Month" means calendar month.

24 (f) "Year" means calendar year.

25 (g) "Gross Revenue" means revenue of a business as defined

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1 herein, from all sources and from wherever obtained except as excluded

2 herein, from all sources and from wherever obtained except as excluded

3 herein, from all sources and from wherever obtained except as excluded

4 herein, from all sources and from wherever obtained except as excluded

5 herein, from all sources and from wherever obtained except as excluded herein. Gross revenue shall not include

6 the following:

7 (1) Refunds, rebates and returns.

8 (2) Monies held in a fiduciary capacity.

9 (3) Income in the form of wages and salaries which are

10 taxed under other provisions of this act.

11 (h) "Business" means any profession, trade, manufacture or
12 other undertaking carried on for pecuniary profit and includes all
13 activities whether personal, professional or incorporated, carried on
14 within the Trust Territory of the Pacific Islands for economic benefit
15 either direct or indirect, and excludes casual sales, as determined by the
16 Director/, however, one who qualifies as an employee under this section
17 shall not be considered as a business. Unincorporated copra producers
18 shall not be deemed collectively and severally as business under this
19 definition.

20 (i) "Military or Naval Forces of the United States" and
21 "Armed Forces of the United States" means all regular and reserve
22 components of the uniformed services which are subject to the jurisdiction
23 of the Secretary of the Army, Navy or Air Force; and also includes the
24 Coast Guard.

25 Section 2. Tax on wages and salaries. There shall be assessed,

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1 levied, collected, and paid a tax of three percent (3%) per year upon
2 ~~the~~ ~~of~~ ~~all~~ ~~wages~~ ~~and~~ ~~salaries~~ ~~received~~ ~~by~~ ~~every~~
3 employee, as defined. ~~which~~ ~~shall~~ ~~be~~ ~~collected~~ ~~and~~ ~~paid~~ ~~by~~ ~~the~~ ~~employer~~ ~~on~~ ~~or~~ ~~before~~ ~~the~~ ~~twentieth~~ ~~day~~ ~~of~~ ~~each~~ ~~quarter~~ ~~to~~ ~~wit~~ ~~:~~ ~~on~~ ~~or~~ ~~before~~
4 ~~April~~ ~~20~~, ~~July~~ ~~20~~, ~~October~~ ~~20~~ ~~and~~ ~~January~~ ~~20~~, ~~pay~~ ~~the~~ ~~tax~~ ~~withheld~~,
5 ~~and~~ ~~make~~ ~~a~~ ~~full~~, ~~true~~ ~~and~~ ~~correct~~ ~~return~~ ~~showing~~ ~~all~~ ~~wages~~ ~~and~~ ~~salaries~~
6 ~~covered~~ ~~by~~ ~~Section~~ ~~3~~ ~~paid~~ ~~by~~ ~~him~~ ~~during~~ ~~the~~ ~~preceding~~ ~~three~~ ~~months~~ ~~three~~

7 Section 3. Withholding by the employer. The tax imposed shall
8 be collected by the employer of the employee, by deducting and with-
9 holding three percent (3%) of any wages and salaries ~~not~~ ~~over~~ ~~\$10,000~~,
10 ~~and~~ ~~by~~ ~~deducting~~ ~~and~~ ~~withholding~~ ~~three~~ ~~percent~~ ~~(3%)~~ ~~of~~ ~~any~~ ~~wages~~ ~~and~~ ~~salaries~~ ~~not~~ ~~over~~ ~~\$10,000~~,
11 ~~and~~ ~~pay~~ ~~such~~ ~~tax~~ ~~to~~ ~~the~~ ~~District~~ ~~Finance~~ ~~Officer~~ ~~of~~ ~~the~~ ~~administrative~~ ~~district~~ ~~in~~ ~~which~~ ~~the~~ ~~employer~~ ~~has~~ ~~his~~ ~~principal~~ ~~place~~ ~~of~~ ~~business~~,
12 credited to the employee in any one year. Every employer required to
13 deduct and withhold the tax hereby imposed shall be liable for the
14 payment and shall pay such tax to the District Finance Officer of the
15 administrative district in which the employer has his principal place
16 of business, or to the Director, if the employer has no place of
17 business in the Trust Territory. Any employer who violates any of
18 the provisions of this section shall be subject to the penalties
19 prescribed in this act.

20 Section 4. Employer to file return covering tax on compensation.

21 (a) The employer shall, on or before the twentieth day of
22 ~~each~~ ~~quarter~~, after the close of each quarter, to wit: on or before
23 April 20, July 20, October 20 and January 20, pay the tax withheld,
24 and make a full, true and correct return showing all wages and salaries
25 covered by Section 3 paid by him during the preceding ~~three~~ three

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1 months, and showing the tax due and withheld thereon, which return shall
2 be filed at the place prescribed in Section 3 for payment of the tax
3 and shall include such other information as shall be required or prescribed
4 by the Director. With respect to salaries and wages paid out of public
5 monies, the Director at his discretion may prescribe special forms for,
6 and different procedures and times for, the filing of such returns by
7 employers paying such compensation, or may, upon such conditions and
8 subject to such rules as he may prescribe from time to time, waive the
9 filing of any such returns.

10 The Director may ~~at his discretion~~ require more frequent
11 ~~returns and payments as he in his discretion feels are advisable, but~~
12 ~~in no case shall an employer be required to make returns and payments~~
13 ~~more frequently than monthly.~~ returns and payments as he in his discretion feels are advisable, but
14 in no case shall an employer be required to make returns and payments
15 more frequently than monthly. The Director, for good cause, may extend
16 the time for making returns and payments, but not beyond the twentieth
17 day of the second month next succeeding the regular due date thereof.

18 (b) Every employer required to deduct and withhold any tax
19 on the salaries and wages of any employee shall furnish to each such
20 employee on or before January 31 of the succeeding year (or, if his
21 employment is terminated before the close of such calendar year, on
22 the day on which the last payment of compensation is made) a written
23 statement, showing the wages or salaries paid by the employer to such
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1 employee during the year, and the amount of the tax deducted and
2 withheld or paid with respect to such compensation. Such employer
3 shall include with his final return for the calendar year, or shall
4 file on or before January 31, a duplicate copy of each such statement,
5 at the place prescribed in Section 3 for payment of the tax. The
6 Director may grant to any employer a reasonable extension of time, not
7 in excess of sixty days, with respect to any statement required by
8 this subsection to be furnished to an employee or to be filed, and may
9 by regulation provide for the furnishing or filing of statements at
10 such other times and containing such other information as may be
11 required for the administration of this act. The Director shall
12 prescribe the form of statement required by this subsection and may
13 adopt any United States Federal Income Tax form appropriate for the
14 purpose.

15 (c) Any employer who violates any of the provisions of
16 this section shall be subject to penalties prescribed in this act.

17 Section 5. Taxes withheld by employer held in trust: employer's
18 liability. All taxes withheld by any employer under Section 3 shall
19 be held in trust by such employer for the Government and for payment
20 to the Director in the manner and at the time required by this act.
21 If any employer shall fail, neglect, or refuse to deduct and withhold
22 from the compensation paid to an employee, or to pay over, the amount
23 of the tax imposed by this act, such employer shall, moreover, be
24 liable to pay to the Government the amount of the tax, which amount
25 shall (whether or not tax withholdings constituting trust funds have

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1 been commingled with said employer's assets) form a lien on the
2 employer's entire assets, having priority over all other claims and
3 liens. Any employer may recover from an employee any amount which he
4 should have withheld but did not withhold from such employee's wages
5 and salaries, if he has been required to pay and has paid the amount
6 to the Government out of his own funds pursuant to this section.

7 Section 6. No cause of action against employer for withholding.

8 No employee shall have any right of action against his employer with
9 respect to any monies deducted from such employee's salaries and
10 wages in compliance or intended compliance with this act, and paid to
11 the person designated in Section 3.

12 Section 7. Individual to file return of earned income. Any
13 individual who is paid or credited wages or salaries from an employer
14 who does not have a place of business in the Trust Territory and does
15 not have an agent within the Trust Territory responsible for making the
16 returns, withholdings and payments of taxes on compensation required by
17 this act, shall file a return ~~is/at/that/time/present~~ with and pay the
18 tax due under this act to, the District Finance Officer of the adminis-
19 trative district in which he resides or ~~is/at/that/time/present~~ in which
20 he is present at the time for payment as may be required by the rules of
21 the Director, or, if he is not at the time within the Trust Territory,
22 then with and to the Director. Any individual who is paid or credited
23 wages or salaries from the United States or an instrumentality thereof
24 shall be under the same duty as an individual who is paid or credited
25 wages or salaries from an employer who does not have a place of business

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1 in the Trust Territory, unless the tax has been withheld from such
2 salaries and wages as provided by Section 3 of this act.

3 All such returns shall be filed, and the payments thereon shall
4 be made, at the times and in the manner prescribed in Sections 3 and
5 4(a) of this act and each return shall state the name of the individual
6 filing the same, the name, residence and address of his employer, the
7 total of all compensation received for the preceding ~~year~~ three months
8 and the tax due thereon, and shall include such other information and
9 be upon such form as the Director shall require or prescribe.

10 Failure to comply with the provisions of this section shall be
11 punishable under the penalty prescribed in this act. The Director,
12 upon request of a taxpayer required by this section to make returns,
13 may permit ~~quarterly~~ semiannual returns and payments of tax with
14 respect to salaries and wages, and in granting such permission shall
15 fix the date or dates for such filing of returns and payment of taxes.
16 The Director, for good cause, may extend the time for making returns
17 and payments, but not beyond the twentieth day of the second month
18 succeeding the regular due date thereof.

19 Section 8. Tax on gross revenue. There shall be assessed, levied,
20 collected, and paid a tax of forty dollars (\$40) per year upon that
21 portion of the amount of gross revenues received by every business
22 subject to the provisions of this act which does not exceed ten thousand
23 dollars (\$10,000) per year, and there shall be assessed, levied,
24 collected, and paid a tax of one percent (1%) per year upon that
25 portion of the amount of gross revenues received by every business

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1 subject to the provisions of this act which is in excess of ten
2 thousand dollars (\$10,000) per year.

3 Section 9. Returns, withholdings, and payment of tax on gross
4 revenue from businesses.

5 (a) Every business, on or before ~~January 31/68/each year~~
6 ~~January 31/1972~~ the twentieth day after the close of each quarter,
7 to wit: on or before April 20, July 20, October 20, and January 20,
8 shall ~~deduct~~ pay, based on its gross revenue of the preceding ~~year~~
9 ~~January 31/1972~~ three months, the amount of tax imposed by this act
10 ~~and shall pay/thereof/60/deducted~~ to the District Finance Officer
11 in which the business has its principal place of business in the Trust
12 Territory, or to the Director. Each such business shall, on or before
13 ~~January 31/68/each year/January 31/1972~~ the date provided for payment
14 of tax under this subsection, make a full, true, and correct return
15 showing all such gross revenue received, accrued, or earned, and the
16 amounts deducted and set aside on account thereof during the preceding
17 ~~year/January 31/1972~~ three months, which return shall be filed at
18 the place in this section prescribed for payment of the tax and shall
19 include such other information as shall be required or prescribed
20 by the Director. The Director, for good cause, may extend the time
21 for making payments and returns, but not beyond the twentieth day of
22 the second month succeeding the regular date thereof.

23 (b) Every business shall be liable for the payment of the
24 tax required to be deducted and paid by it to the Government.
25 Section 10. Apportionment.

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1 (a) If an employee is credited or paid salaries or wages
2 derived from, or attributable to, personal services performed or
3 rendered both within and without the Trust Territory during any given
4 month, then the whole of the salaries or wages shall be presumed to
5 have been earned within the Trust Territory; provided, however, that
6 the employer paying the tax or the employee whose compensation is
7 taxed may file for an apportionment of the tax on a form prescribed
8 by the Director and the tax shall be levied only on that portion of
9 the salary or wages which is attributable to personal services performed
10 or rendered within the Trust Territory.

11 (b) If any business earns or derives its gross revenue from
12 business activities or undertakings both within and without the Trust
13 Territory during the taxable year, then the whole of its gross revenue
14 shall be presumed to have been derived from sources within the Trust
15 Territory; provided, however, that the business may file for an
16 apportionment of the tax on a form prescribed by the Director and the
17 tax shall be levied only on that portion which is earned in, or
18 derived from sources or transactions or parts of transactions within
19 the Trust Territory.

20 Section 11. Tax forms. The Director shall prescribe the forms
21 of all returns required to be furnished under the provisions of this
22 act and may provide in such forms for the giving of such information
23 as he may deem necessary or advisable. All information required by
24 the form of any return must be included in the return by the person,
25 employer, company, or business responsible for making the return.

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1 Every return shall be signed by the employer or other person
2 liable to make the return, or by someone authorized to do so in behalf
3 of such person or business. The Director may require that, if any
4 person or persons actually prepare or sign a return for another person
5 or business, a form stating such facts and authorizing such person to
6 sign such return be signed by the person so preparing or signing the
7 return, and the Director may by regulations define the classes of
8 persons to whom this provision shall apply. Any other provision of
9 law to the contrary notwithstanding, no oath shall be required upon
10 any tax return.

11 Section 12. Rules. The Director shall, subject to approval of
12 the High Commissioner, prescribe and have printed reasonable rules for
13 the enforcement of this act and such rules shall have the force and
14 effect of law if they are not in conflict with the express provisions
15 of this act or other laws of the Trust Territory. Such rules shall
16 also provide for the making of returns concerning any taxes imposed
17 by this act, and the payment thereof, in any situations not specifically
18 covered by this act.

19 Section 13. Penalties. Any person or business convicted under
20 the provisions of this act shall be fined not more than \$1,000, or
21 (if a natural person) imprisoned not more than one year, or both. If
22 (a) any individual or other person liable under the provisions of this
23 act to make and file a return of wages and salaries paid or credited
24 to such person, or if any business liable to make and file a return of
25 gross revenue, or (b) any employer or business liable under the provisions

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1 of this act to withhold any tax on compensation and make a return
2 thereof and pay the same to the Director, shall fail, neglect or
3 refuse to make and file such return within the time or in the manner
4 and form prescribed, or shall decline to authenticate such return, if
5 made, as provided in Section 11, the Director may make a return for
6 such person, employer or business from the best information obtainable
7 and may levy and assess a tax upon the amount of wages, salaries, or
8 gross revenue shown by such return (and, in the case of such employer
9 or business, determine the amount of such tax and assess the amount
10 of the same against such employer or business). Such assessment shall
11 be presumed to be correct until and unless, upon an appeal duly taken
12 as provided by this act, the contrary shall be proven by the person,
13 employer or business for whom the return is made, and the burden of
14 proof upon such appeal shall be on such person, employer or business
15 to disapprove such assessment. Notice of assessment shall be given,
16 and an appeal therefrom may be taken, in the manner and time as any
17 ordinary civil suit.

18 Section 14. Separate civil penalties. The criminal penalties
19 imposed by Section 13 for violation of the provisions of this act shall
20 be separate from, and in addition to, all other penalties or interest
21 provided for in this section. The following civil penalties are
22 hereby levied and shall be assessed and collected by the Director:

23 (a) Failure to file return on time. Except as may be
24 permitted by the Director pursuant to Sections 7 and 9 of this act, if
25 any taxpayer fails to make and file a return required under this act

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1 on or before the date set, unless prior to that date such taxpayer
2 applied for and received an extension for reasonable cause, one
3 percent (1%) of the tax shall be added for each thirty days or fraction
4 thereof elapsing between the due date of the return and the date on
5 which it is actually filed: Provided, however, that the minimum
6 penalty under this subsection shall be five dollars (\$5).

7 (b) Failure to file return after demand. If any taxpayer,
8 upon notice and demand by the Director, fails or refuses within
9 thirty days after receipt of said notice and demand, to make and file
10 a return and pay the tax required by this act, the Director may
11 estimate the tax base and compute and assess the tax due on any
12 information available to him. In such case twenty-five percent of the
13 tax assessed, in addition to the penalties of Subsection (a) of this
14 section, shall be added thereto.

15 (c) False and fraudulent returns. If any part of any
16 deficiency is due to fraud with intent to evade the tax, or any portion
17 thereof, fifty percent of the total amount of such deficiency, in
18 addition to the penalties provided in Subsections (a) and (b) of this
19 section, shall be assessed and added to the deficiency assessment.

20 (d) Interest. If any tax or penalty imposed by this act is
21 not paid on or before the date prescribed for such payment, there
22 shall be collected, in addition to such tax and penalties, interest on
23 the unpaid balance of the tax principal at the rate of six percent
24 (6%) per annum from its due date until the date it is paid.

25 Section 15. Lien on property. All taxes imposed or authorized

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

4 Section 16. Disposition of proceeds; refunds.

5 (a) If it shall be shown, upon application of an employee,
6 that there has been withheld from his wages or salaries any tax not
7 due thereon or more than the amount of tax due thereon or if in the
8 case of a business it is shown upon application of the business that
9 it has paid an amount greater than the tax to be levied under this
10 act, then the Director shall refund the amount found to have been
11 overpaid or otherwise not due and shall pay such refund out of current
12 collections of the tax; provided the Director shall be satisfied that:

13 (1) the amount so overpaid or otherwise not due has
14 been paid to the Government;

15 (2) the amount of refund claimed has not been used as
16 a credit against any tax or taxes due and payable to the Government
17 from such employee; and

18 (3) application for such refund was filed within one
19 year after the end of the calendar year in which the amount to be
20 refunded was withheld.

21 (b) The net tax collections remaining after the refunds
22 authorized by law shall be paid to the Government.

23 Section 17. Review.

24 (a) If a decision of the Director is adverse to the
25 taxpayer, in whole or in part, the taxpayer shall have the right within

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1 one year from the date of such decision to institute an action for
2 review, irrespective of the amount, in the Trial Division of the High
3 Court of the Trust Territory. Such action shall be commenced by
4 filing a petition setting forth assignments of all errors alleged to
5 have been committed by the Director in his determination of the assess-
6 ment, the facts relied upon to sustain such assignments of errors, and
7 a prayer for appropriate relief. The Director or his successor in
8 office shall be the respondent in such proceeding.

9 (b) When the decision of the Court or an appeal therefrom
10 becomes final, the Director shall, upon presentation of a certified
11 copy of the decree, make such adjustments as are necessary to correct,
12 amend or abate the assessment, and to determine whether any additional
13 amount should be assessed.

14 (c) Where the assessment is paid, in whole or in part,
15 after the filing of the petition, the Court shall not thereby be
16 deprived of jurisdiction.

17 (d) The Court shall have authority to implement, by rule,
18 proceedings authorized by this act.

19 Section 18. Severability. If any part, sentence, clause or
20 phrase of this act which is reasonably separable from the remaining
21 portions of this act, or the application thereof to any person,
22 taxpayer or circumstance, is for any reason determined to be inconsistent
23 with any laws of the Trust Territory which are superior to this act,
24 such determination shall not affect the remainder of this act, nor,
25 will the application of any such provision to other persons, taxpayers

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1 or circumstances, be affected thereby.

2 Section 19. Taxes collected declared realization of Congress.

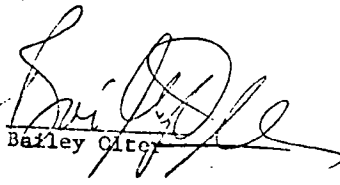
3 The taxes levied, assessed, and collected under and pursuant to this
4 act shall become part of the General Fund of the Congress of Micronesia
5 from the moment of collection and shall be paid to the Treasurer of
6 the Trust Territory as local revenue realization available for
7 appropriation by the Congress of Micronesia.

8 Section 20. Appropriation. The sum of \$40,000, or so much
9 thereof as may be necessary, is hereby appropriated from the General
10 Fund of the Congress of Micronesia to carry out the purposes and
11 intent of this act.

12 Section 21. Effective Date. Upon approval by the High
13 Commissioner, or upon its becoming law without such approval, this
14 act shall take effect on ~~June~~ July 1, 1971.

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16 Date: _____

Introduced by:


Bailey Citer

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