

CHAPTER 3
Income Tax Regime
for FSM Corporations

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

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

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SUBCHAPTER I

General Provisions

§ 311. Short title.

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

Source: PL 13-71 § 2.

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

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§ 312. Definitions.

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

- (a) the corporation,
 - (b) other corporations in which the corporation owns directly or indirectly 80% or more of the shares,
 - (c) other corporations that own directly or indirectly 80% or more of the shares of the corporation,
- and,

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

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

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

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

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

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

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

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

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

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

§ 313. Applicability of this chapter.

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

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

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

§ 314. Filing of report.

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

- (1) the true and correct name of the major corporation;
- (2) the taxpayer identification number or other identifying number, if any, of the major corporation;
- (3) the mailing and office address of the major corporation;

- (4) the name, address, telephone, and fax numbers of the authorized representative for the major corporation;
- (5) the nature of the major corporation's principal business; and
- (6) the last day of the major corporation's fiscal year.

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

Source: PL 13-71 § 5.

§ 315. Continued applicability of this chapter.

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

Source: PL 13-71 § 6.

SUBCHAPTER II

Taxation

§ 321. Tax imposed.

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

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

§ 322. Taxable income defined.

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

Source: PL 13-71 § 8; PL 16-52 § 4.

§ 323. Exemption from Taxation of Gross Revenues.

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

Source: PL 13-71 § 9.

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

SUBCHAPTER III

Credits

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

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

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

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

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

Source: PL 13-71 § 10; PL 16-52 § 5.

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

§ 332. Refundable Credit for overpayment of tax.

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

Source: PL 13-71 § 11.

SUBCHAPTER IV

Accounting

§ 341. Change of Fiscal Year.

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

Source: PL 13-71 § 12.

§ 342. Method of accounting.

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

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

Source: PL 13-71 § 13; PL 16-52 § 6.

SUBCHAPTER V

Administration

§ 351. Filing of annual returns.

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

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

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

§ 352. Payment of tax due.

Taxes shall be paid as follows:

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

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

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

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

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

(b) If the major corporation pays, including the Tax Deposit by the end of the eighth (8th) month during the fiscal year, as per paragraph (a) of this subsection, an amount less than the tax due as shown on the

annual tax return by the last business day of the six month period following the last day of the corporation's fiscal year, it shall pay interest on the delinquent tax balance of one half of one percent (0.5%) for each full month until the full amount is paid.

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

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

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

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

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

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

Source: PL 13-71 § 16.

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

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

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

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

SUBCHAPTER VI

Enforcement

§ 370. Regulations.

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

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

Source: PL 13-71 § 17; PL 16-52 § 9.

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

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

§ 371. Tax returns—information required.

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

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

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

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

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

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

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

Source: PL 16-52 § 10.

§ 372. Records, inspection and audit.

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

Source: PL 16-52 § 11.

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

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

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

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

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

Source: PL 16-52 § 12.

§ 374. Lien on property.

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

Source: PL 16-52 § 13.

§ 375. Criminal penalties.

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

Source: PL 16-52 § 14.

§ 376. Civil penalties.

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

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

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

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

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

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

Source: PL 16-52 § 15.

§ 377. Judicial review.

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

(2) When the decision of the court or an appeal therefrom becomes final, the Secretary shall, upon presentation of a certified copy of the decree, make such adjustments as are necessary to correct, amend, or abate the

assessment, and to determine whether any additional amount should be assessed.

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

Source: PL 16-52 § 16.

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

§ 378. Summons.

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

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

Source: PL 16-52 § 17.