

EIGHTEENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

SEVENTH SPECIAL SESSION, 2015

CONGRESSIONAL BILL NO. 18-274, C.D.1,
C.D.2

P.C. NO. 18-490

PUBLIC LAW NO. 18-124

AN ACT

To amend sections 402, 403, 404, 406, 407, 408, 409, 420, 422, 423, 424 and 425 of title 30 of the Code of the Federated States of Micronesia (Annotated), as authorized by Public Law No. 18-96, by increasing the percentage of corporate income tax above a certain level to be invested in a FSM venture fund, accelerating redemption payments while eliminating interest payments, providing for a fund management fee, allowing subsequent contributions to the venture fund for an extended three year period, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Section 402 of title 30 of the Code of the
2 Federated States of Micronesia (Annotated), as authorized by
3 Public Law No. 18-96, is hereby amended to read as follows:

4 “Section 402. Purpose. The purpose of this act is to
5 encourage the establishment of Venture Funds in the
6 Federated States of Micronesia, hereinafter referred to
7 as ‘FSM’, and to provide an incentive for large foreign-
8 owned companies to register Major Corporations in the
9 FSM. The Congress finds it desirable and necessary to
10 promote the continued expansion of the tax base of the
11 nation. The Congress believes that agreeing to invest a
12 portion of large corporate income tax payments by Major
13 Corporations in Venture Funds, to be managed by parents
14 or affiliates of such Major Corporations, would attract
15 large foreign-owned enterprises to more seriously
16 consider registering Major Corporations in the FSM and
17 directing larger amounts of profitable business through

1 such Major Corporations. Such new FSM corporations with
2 intellectual property could continue to generate income
3 over the coming years and decades. The government will
4 be able to then tax these incomes, thus expanding the
5 tax base that is needed by the government to provide the
6 services that the citizens and residents of the FSM
7 demand. It is recognized that the nation currently does
8 not have the resources to make investments in these new
9 industries and that a private-public partnership is
10 needed to finance and grow these industries. Therefore,
11 it is in the best interests of the FSM and its people
12 that incentives are provided for Major Corporations to
13 establish professionally managed funds that will
14 consider new business opportunities and make wise
15 investments.”

16 Section 2. Section 403 of title 30 of the Code of the
17 Federated States of Micronesia (Annotated), as authorized by
18 Public Law No. 18-96, is hereby amended to read as follows:

19 “Section 403. Creation.

20 (1) Any Major Corporation that pays corporate income
21 tax to the FSM exceeding \$100,000,000 but not exceeding
22 \$500,000,000 in any one calendar year may require that
23 an amount equivalent to up to fifty percent (50%) of the
24 amount of income taxes it paid will be invested by the
25 FSM into a FSM Venture Fund, and that the Major

1 Corporation may also select the Fund Manager for this
2 Fund.

3 (2) Any Major Corporation that pays corporate income
4 tax to the FSM exceeding \$500,000,000 in any one
5 calendar year may require that an amount equivalent to
6 up to 50% of \$500,000,000 and up to 100% of the amount
7 in excess of \$500,000,000 of income taxes it paid will
8 be invested by the FSM into a FSM Venture Fund, and that
9 the Major Corporation may also select the Fund Manager
10 for this Fund.

11 (3) If a Major Corporation has paid corporate income
12 tax to the FSM in any one calendar year so that a Fund
13 has consequently been established pursuant to paragraph
14 (1) or (2) above, and such Major Corporation thereafter
15 pays corporate income tax exceeding \$100,000,000 to the
16 FSM in any subsequent calendar year during the term of
17 the Fund, then the Major Corporation may require that an
18 amount equivalent to up to fifty percent (50%) of the
19 amount of income tax it paid in such subsequent calendar
20 year be invested by the FSM into the existing Fund,
21 until the Major Corporation has paid an aggregate amount
22 of corporate income tax to the FSM equal to
23 \$500,000,000. Seventy-five percent (75%) of the
24 remaining tax payment made in the first calendar year
25 after the establishment of the Fund, exclusive of fees,

1 shall be deposited to the Trust Fund established under
2 the Trust Fund Agreement between the Government of the
3 United States and the Government of the Federated States
4 of Micronesia implementing sections 215 and 216 of the
5 Compact of Free Association, as amended. After the
6 Major Corporation has paid an aggregate amount of
7 corporate income tax to the FSM in excess of
8 \$500,000,000, then the Major Corporation may require
9 that an amount equivalent to up to one-hundred percent
10 (100%) of the amount of income tax it paid in such
11 subsequent calendar year be invested by the FSM into the
12 Fund. The number of Fund ownership interests received
13 by the Fund Investors in connection with such subsequent
14 investments will be calculated based on the net asset
15 value per Fund ownership interest in effect in the date
16 of each such subsequent investment. For the purposes,
17 the aggregate amount of corporate income tax paid by the
18 Major Corporation to the FSM will include the income
19 taxes paid in the initial calendar year in respect of
20 which the Fund was originally established and in all
21 subsequent calendar years.

22 (4) The FSM may designate any other investor that is
23 authorized to invest pursuant to section 408 (such
24 designated investor, together with the FSM, "Fund
25 Investors") to provide a portion of the amounts

1 required to be invested into the Fund by the FSM
2 pursuant to paragraph (2) or (3) above.

3 (5) For the purposes of calculating the corporate
4 income tax paid by a Major Corporation under paragraphs
5 (1), (2) or (3) above, corporate income taxes paid to
6 the FSM by any other entity that directly or indirectly
7 controls, is controlled by, or is under common control
8 with, the Major Corporation will be deemed paid by such
9 Major Corporation.

10 (6) Within 30 days of the date of the letter described
11 in section 404, (i) the Secretary of Finance and
12 Administration shall authorize the establishment of each
13 FSM Venture Fund, hereinafter referred to as a 'Fund',
14 and (ii) the Fund Manager shall establish the Fund in a
15 jurisdiction selected by it.

16 (7) In order to effectuate the FSM Venture Fund under
17 this section, the investment by the FSM shall be deemed
18 appropriated from the General Fund as if set forth in an
19 appropriation act.'

20 Section 3. Section 404 of title 30 of the Code of the
21 Federated States of Micronesia (Annotated), as authorized by
22 Public Law No. 18-96, is hereby amended to read as follows:

23 "Section 404. Letter of intent. Each of the Major
24 Corporation that intends to establish a Fund must
25 deliver a letter to the President of the Federated

1 States of Micronesia Development Bank, between 60 days
2 and 90 days after the delivery of its payment of
3 corporate income tax to the FSM, signed by a director of
4 the Major Corporation, (i) stating that it intends to
5 establish a Fund, (ii) specifying the amount of
6 investment, being the capital amount pursuant to section
7 403, in that Fund at the initial closing of such Fund,
8 and (iii) selecting the Fund Manager of the Fund. The
9 letter will also describe the Designated Entity for the
10 Fund, give evidence that the Designated Entity meets the
11 requirements listed in section 409 below, and describe
12 the mechanism by which the Designated Entity elects to
13 meet its obligations under section 409. Attached to
14 this letter must be an Investment Statement that
15 describes the qualifications, capabilities, and
16 experience of the Fund Manager, the general strategy of
17 the Fund along with the projected allocation of the
18 investments by industry, stage of development, and
19 country.”

20 Section 4. Section 406 of title 30 of the Code of the
21 Federated States of Micronesia (Annotated), as authorized by
22 Public Law No. 18-96, is hereby amended to read as follows:
23 “Section 406. Deadline for depositing funds. All Fund
24 Investors must have deposited their monies into the Fund
25 no later than the end of the 60th day after publication

1 of the notice described in section 405. The President
2 of the Federated States of Micronesia Development Bank
3 will ensure that the government and all other investors
4 have their funds deposited into the Fund by this date.

5 The Secretary of Finance and Administration is
6 authorized and required to deposit into the Fund such
7 tax revenue as may be required pursuant to sections 403
8 and 404 of this Chapter."

9 Section 5. Section 407 of title 30 of the Code of the
10 Federated States of Micronesia (Annotated), as authorized by
11 Public Law No. 18-96, is hereby amended to read as follows:

12 "Section 407. Duration of funds. Settlement; capital
13 return; management fee. The term of each Fund will be
14 as specified by the Fund Manager, but no Fund may have a
15 term beyond September 30, 2043. For any Fund with a
16 term beyond September 30, 2033, the Secretary of Finance
17 and Administration will have the option to end such term
18 on September 30, 2033 by delivering a notice thereof to
19 the Fund Manager at least three years in advance. At
20 the end of the life of a Fund, the following amounts
21 must be paid to each investor: (1) the capital amounts
22 invested in the Fund by that investor, net of all
23 amounts of invested capital previously returned to that
24 investor; and (2) with respect to any amount remaining
25 in the Fund after repayment of the invested capital

1 amounts under the preceding clause (1), net of
2 withholdings for taxes due upon, and costs and expenses
3 of, liquidation (such remaining amount hereinafter
4 referred to as the "Net Gain"), a pro-rata portion of
5 an amount equal to twenty percent (20%) of the first
6 \$100,000,000 of Net Gain, plus a pro-rata portion of an
7 amount equal to ten percent (10%) of any Net Gain in
8 excess of \$100,000,000. Each investor's pro-rata
9 portion of the Net Gain will be in proportion to such
10 investor's Fund ownership interests. Any remaining Net
11 Gain not paid to the investors under clause (2) above
12 will be paid to the Fund Manager. Notwithstanding the
13 preceding paragraph, in fiscal year 2023 each Fund must
14 return to the investors in aggregate an amount equal to
15 twenty percent (20%) of the net asset value of the Fund
16 as of the end of the preceding fiscal year (in addition
17 to the previous returns of invested capital to the
18 investors made pursuant to the following paragraph of
19 this section 407). Such amount will be paid to the
20 investors within 120 days of the beginning of fiscal
21 year 2023. With respect to each fiscal year during the
22 term of the Fund, an annual partial return of invested
23 capital equal to two percent (2%) of the greater of
24 (a) the net asset value of the Fund as of the end of the
25 preceding FSM National Government fiscal year and

(b) the capital amounts invested in the Fund by the investors will also be paid to the investors in aggregate within 120 days after the beginning of the fiscal year, except that (i) the initial partial return of invested capital will be based on the amounts deposited in the Fund by the deadline specified in section 406 of this chapter; (ii) payment in respect of the final fiscal year of the Fund may be made on or prior to the Fund's liquidation; and (iii) Fund ownership interests received by the Fund Investors pursuant to section 403(3) of this chapter will instead be entitled to an annual partial return of invested capital so payable to the Fund Investors at the rate of three percent (3%) per annum. Notwithstanding the preceding sentence, if, with respect to any fiscal year during the term of the Fund, any partial return of invested capital payable to the investors pursuant to the foregoing provisions would result in the investors receiving in aggregate, including all prior partial returns of invested capital paid to the investors, an amount greater than if in each year the investors had received two percent (2%) or three percent (3%), as applicable, of the capital amounts invested in the Fund by the investors, then the Fund Manager shall be entitled to pay to the investors, in respect of such

1 fiscal year, such amount so that the partial returns of
2 capital paid to the investors each year, in aggregate,
3 do not exceed two percent (2%) or three percent (3%), as
4 applicable, of the capital amounts invested in the Fund
5 by the investors. Furthermore, with respect to each
6 fiscal year during the term of the Fund, the Fund
7 Manager may require that the Fund pay an annual
8 management fee equal to up to two percent (2%) of the
9 net asset value of the Fund as of the end of the
10 preceding fiscal year to the Fund Manager within 120
11 days after the beginning of the fiscal year, except that
12 (i) the initial management fee will be based on the
13 amounts deposited in the Fund by the deadline specified
14 in section 406 of this chapter and (ii) payment of the
15 management fee owed with respect to the final fiscal
16 year of the Fund may be made on or prior to the Fund's
17 liquidation."

18 Section 6. Section 408 of title 30 of the Code of the
19 Federated States of Micronesia (Annotated), as authorized by Public
20 Law No. 18-96, is hereby amended to read as follows:

21 "Section 408. Investment in Venture Funds by Federated
22 States of Micronesia citizens and corporations. As
23 provided in this Chapter, citizens and corporations of
24 the Federated States of Micronesia may invest in a Fund
25 any time that the FSM is required to invest in such Fund

1 pursuant to section 403. The minimum investment shall
2 be \$100,000.''

3 Section 7. Section 409 of title 30 of the Code of the
4 Federated States of Micronesia (Annotated), as authorized by Public
5 Law No. 18-96, is hereby amended to read as follows:

6 "Section 409. Repayment of capital amounts. If at the
7 liquidation of a Fund the amounts payable to the Fund
8 Investors, together with all amounts of invested capital
9 previously returned to the Fund Investors, would not be
10 sufficient to return to the Fund Investors in aggregate
11 an amount equal to the aggregate capital amount invested
12 in the Fund by the Fund Investors, then the Fund Manager
13 shall return to the Fund Investors such portion of the
14 aggregate management fees paid to it to remedy such
15 capital shortfall. In addition, upon establishment of a
16 Fund the Designated Entity will, at its option, either
17 guarantee the repayment to Fund Investors of the capital
18 amounts invested in a Fund by the Fund Investors at the
19 end of the life of the Fund or commit to provide
20 supplemental capital to remedy any such capital
21 shortfall. "Designated Entity" means the Fund
22 Manager, its parent organization or an unrelated party.
23 The Designated Entity must be rated at least investment
24 grade rated by Moody's or Standard and Poor's or Fitch
25 or a national rating organization acceptable to the

1 President of the Federated States of Micronesia
2 Development Bank, or it must have a net worth of least
3 ten times the original capital of the Fund. The
4 President of the Federated States of Micronesia
5 Development Bank will ensure that the Designated Entity
6 meets the criteria set out in this section."

7 Section 8. Section 420 of title 30 of the Code of the
8 Federated States of Micronesia (Annotated), as authorized by
9 Public Law No. 18-96, is hereby amended to read as follows:

10 "Section 420. Section 420. Payment of partial capital
11 returns. The provisions of section 409 will also apply
12 with respect to the payment of partial capital returns
13 to the Fund Investors each fiscal year during the life
14 of the Fund under section 407 of this Chapter."

15 Section 9. Section 422 of title 30 of the Code of the
16 Federated States of Micronesia (Annotated), as authorized by
17 Public Law No. 18-96, is hereby amended to read as follows:

18 "Section 422. Reports. Within 90 days after the end
19 of each fiscal year during the term of the Fund, the
20 Fund Manager will issue a report to the Advisory Board
21 stating new investments, sales or other dispositions of
22 investments, the rationale for new investments and
23 dispositions of investments, the rationale for each
24 current holding, the net asset value of the Fund as of
25 the end of such fiscal year, the estimate of the value

1 of each investment as of the end of such fiscal year,
2 and the resulting gain or loss during such fiscal year
3 and since the inception of the Fund. The net asset
4 value of the Fund as of the end of each fiscal year as
5 well as the estimate of the value of each investment as
6 of the end of such fiscal year, and the resulting gain
7 or loss during such fiscal year and since the inception
8 of the Fund, must be approved by the Fund's auditor or
9 another independent appraiser."

10 Section 10. Section 423 of title 30 of the Code of the
11 Federated States of Micronesia (Annotated), as authorized by
12 Public Law No. 18-96, is hereby amended to read as follows:

13 "Section 423. Appraiser. Ninety days before the end
14 of the term of the Fund, an independent appraiser
15 qualified in the valuation of companies, appointed by
16 the Fund Manager and reasonably acceptable to the
17 Advisory Board, will value each of the holdings in the
18 Fund, and the overall Fund. The appraiser will issue a
19 report detailing the current value of each investment,
20 and the methodology for determining each investment's
21 valuation. The report will be signed by the appraiser
22 and sent to the Advisory Board 30 days before the end of
23 the term of the Fund. The cost of the appraiser will be
24 an appropriate expense of the Fund."

25 Section 11. Section 424 of title 30 of the Code of the

1 Federated States of Micronesia (Annotated), as authorized by
2 Public Law No. 18-96, is hereby amended to read as follows:

3 “Section 424. Advisory Board. Each Fund shall have an
4 Advisory Board that shall give advice to the Fund
5 Manager. The Board shall consist of at least 5 people
6 that are selected by the President of the Federated
7 States of Micronesia, with the advice and consent of the
8 Congress; provided, that each investor that invests in
9 aggregate \$10,000,000 or more but less than \$20,000,000
10 in the Fund shall be entitled to a representative in the
11 Advisory Board, and each investor that invests in
12 aggregate \$20,000,000 or more in the Fund shall be
13 entitled to two representatives in the Advisory Board.
14 The Board shall meet at least once a year in person at
15 the headquarters of the Fund Manager and shall give
16 advice to the Fund Manager. The costs of the Advisory
17 Board shall be an appropriate expense of the Fund.”

18 Section 12. Section 425 of title 30 of the Code of the
19 Federated States of Micronesia (Annotated), as authorized by
20 Public Law No. 18-96, is hereby amended to read as follows:

21 “Section 425. Expiration date. No new Fund may be
22 created pursuant to section 403 of this chapter, on or
23 after April 1, 2028, unless extended by law.”

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1 Section 13. This act shall become law upon approval by the
2 President of the Federated States of Micronesia or upon its
3 becoming law without such approval.

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May 8, 2015

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/s/ Manny Mori

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Manny Mori
President
Federated States of Micronesia

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