

TITLE 12
TAXATION

TITLE 12 TAXATION

CHAPTER

- 1 GENERAL PROVISIONS**
- 2 SALES TAX**
- 3 USE TAX [DECLARED UNCONSTITUTIONAL]**
- 4 HOTEL AND VEHICLE RENTAL TAX**
- 5 [RESERVED – LUXURY TAX]**
- 6 [RESERVED – FUEL SALES TAX]**
- 7 BUSINESS LICENSE FEES NEXUS ACT**

CHAPTER 1 GENERAL PROVISIONS

Section

Part A General Provisions

- 1-101 Short title
- 1-102 Applicability
- 1-103 Provisions of other laws
- 1-104 Definitions
- 1-105 Remedies of Government of Pohnpei are supplemental
- 1-106 Rules and regulations

Part B Assessment, Payment, and Delinquency

- 1-107 Assessment of tax; presumption of correctness
- 1-108 Limitation on assessment by the Commissioner
- 1-109 Compromise of taxes; closing agreements
- 1-110 Installment payments of taxes; installment agreements
- 1-111 Delinquent taxpayer

Part C Security For Taxes Due

- 1-112 Deposit of security; amounts; sales of security; return of surplus
- 1-113 Failure to furnish security

Part D Tax Lien and Priority

- 1-114 Assessment or demand as lien
- 1-115 Exemptions
- 1-116 Notice of lien
- 1-117 Priority of tax claim or lien; subordination to prior recorded lien; other debts
- 1-118 Foreclosure of lien
- 1-119 Release or extinguishment of lien; limitation on actions to enforce lien
- 1-120 Department may release or subordinate lien
- 1-121 Evidentiary effect of certificate of release or subordination

Part E Judgments for Taxes

- 1-122 Permanence of tax debt; civil actions to collect tax
- 1-123 Application for judgment; filing of certificate of delinquency
- 1-124 Evidentiary effect of certificate of delinquency
- 1-125 Order to show cause; notice; hearing; entry of judgment
- 1-126 Judgment lien

1-127 Execution; issuance; sale

Part F Warrant for Collection of Tax

1-128 Warrant for collection of tax; issuance; effect; levy and sale

1-129 Contents of tax warrant

1-130 Fees for services of police

1-131 Liability for fees and charges

1-132 Transfer or disposition of property or debt prohibited; bank deposits

1-133 Surrender of property subject to levy; penalty

1-134 Notice of seizure

1-135 Release of levy

1-136 Notice of sale; contents; mailings; broadcasts

1-137 Requirement of sale

1-138 Sale of indivisible property

1-139 Redemption before sale

1-140 Minimum prices

1-141 Sale; delivery of bill of sale or deed; disposition of unsold portion

1-142 Legal effect of certificate of sale

1-143 Legality of deed to real property

1-144 Proceeds of levy and sale

1-145 Successive seizures

Part G Enjoining Continuation of Business

1-146 Enjoining delinquent taxpayer from continuing in business

Part H Successor's Liability for Taxes and Payment of Taxes on Sale or Termination of Business

1-147 Disclosure of taxes due

1-148 Successor or assignee to withhold tax from purchase price

1-149 Request for certificate of clearance or notice of tax status; release

1-150 Demand of payment; application of payment

1-151 Failure to withhold

1-152 Personal liability of corporate officer for unpaid taxes

Part I Interest and Penalties

1-153 Penalty, interest for failure to pay tax; amount, rates

1-154 Collection of penalties and interest

1-155 Payment by bad check

1-156 Attempts to evade or defeat tax

1-157 False and fraudulent statement

1-158 Interference with administration of tax laws

1-159 Assault and battery of a government employee

Part J Review and Appeal by Taxpayers

1-160 Administrative hearing; procedure

1-161 Appeals from Director's decision and order

1-162 Exhaustion of administrative remedies

Part K Miscellaneous

1-163 Address of notices and payments; timely mailing constitutes timely filing or making

1-164 Timeliness when last day for performance falls on Saturday, Sunday or legal holiday

1-165 Records required; accounting methods

1-166 Administrative regulations, ruling instructions and orders; presumption of correctness

1-167 Investigative authority and powers

1-168 Enforcement officials

1-169 Limitation of actions

1-170 Reciprocal enforcement of tax judgments

1-171 Application of payments

1-172 Severability

PART A GENERAL PROVISIONS

§1-101. Short title. — This title is known and may be cited as the “Pohnpei Comprehensive Taxation Reform Act of 1997.”

Source: S.L. No. 4L-35-97 §1-1, 5/10/97

§1-102. Applicability. — This title applies to and governs:

(1) The levy, collection, and enforcement of the following taxes, as they now exist or as they may be amended hereafter:

- (a) Sales tax on alcohol, tobacco, motor vehicles, and general merchandise;
- (b) Luxury tax on various merchandise, motor vehicles, boats, and motors;
- (c) Sales tax on all fuels, lubes, and greases;
- (d) Use tax on general merchandise, alcohol, motor vehicles, tobacco, boats, and motors; and
- (e) Hotel tax and vehicle rental tax;

(2) The levy, collection, and enforcement of taxes set forth in the laws specified in §1-103, to the extent that this title is made applicable thereto; and

(3) The collection and enforcement of all other state revenues that the Division of Revenue and Taxation is charged with collecting.

Source: S.L. No. 4L-35-97 §1-2, 5/10/97

§1-103. Provisions of other laws. —

(1) The following laws are superseded by the provisions of this title with respect to and on the date that the taxes imposed thereunder are replaced by the taxes imposed under Chapters 2 through 6; PROVIDED, HOWEVER, that such laws shall remain in full force and effect with respect to the levy, enforcement, and collection of taxes which were levied thereunder prior to the date such taxes are superseded by the taxes set forth in Chapters 2 through 6; PROVIDED FURTHER that upon the replacement of such taxes under the laws herein listed and in addition to such collection and enforcement provisions which are prescribed under said laws, the Director of the Department of Treasury and Administration and the Commissioner of the Division of Revenue and Taxation may undertake such actions as are available to the government for the enforcement and collection of state taxes as provided by Parts B through H, J, and K of this title for such taxes for which taxpayers liable for payment under said laws are found to be delinquent under the terms of §1-111 – D.L. No. 3L-8-72, D.L. No. 3L-14-72, D.L. No. 3L-127-75, D.L. No. 4L-57-76, D.L. No. 4L-61-76, D.L. No. 4L-78-77, D.L. No. 4L-187-79, P.L. 28-68, P.L. 120-68, P.L. 126-68, P.L. 128-68, P.L. 130-68, P.L. 131-68, P.L. 2L-183-70, D.L. No. 2L-224-71, and S.L. No. 2L-40-80.

(2) If the provisions of this title and the requirements of other statutes govern the same subject, then the provisions of both shall be applicable, if possible, and, in the event such an interpretation is not reasonably possible, then:

- (a) The provisions of this title shall prevail with regard to the taxes listed in §1-102(1); or
- (b) The provisions of such other laws shall prevail with regard to all other state revenues that the Division is charged with collecting.

Source: S.L. No. 4L-35-97 §1-3, 5/10/97

§1-104. Definitions. — Unless the context clearly requires otherwise, the following definitions shall apply to this title:

- (1) “Commissioner” means the Chief of the Division of Revenue and Taxation.
- (2) “Department” means the Department of Treasury and Administration.
- (3) “Director” means the Director of the Department of Treasury and Administration.
- (4) “Division” means the Division of Revenue and Taxation of the Department of Treasury and Administration.
- (5) “Person” means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other association and the successor of any of the above by any of the above, such as when an individual dies, he is succeeded by his estate, which shall automatically be responsible for any amounts due under this title.
- (6) “Property” means any property, tangible or intangible, real or personal, and all rights thereto, whether choate or inchoate, and includes money or its equivalent and deposits of money.
- (7) “Security” means money, property, bond, or surety used as collateral to secure performance or nonperformance of some act.

(8) “State” means the state of Pohnpei.

(9) “Tax” means the total amount of each tax or charge imposed and required to be paid, or withheld and paid, or collected and paid by provision of any law subject to collection and enforcement pursuant to this title, and, unless the context otherwise requires, includes the amount of any interest, penalty or other charge relating thereto.

(10) “Taxpayer” means a person liable for payment of any tax or charge levied under this title or subject to collection under this title; or a person responsible for withholding and paying or collecting and paying any tax or charge subject to this title; or a person to whom a demand has been made by the Division under this title.

Source: S.L. No. 4L-35-97 §1-4, 5/10/97

§1-105. Remedies of Government of Pohnpei are supplemental. — The remedies of the Government of Pohnpei provided in this title are intended to supplement any other available remedies. The remedies of the Government of Pohnpei provided in this title are cumulative, and no action taken by the Government of Pohnpei constitutes an election by the Government of Pohnpei to pursue any remedy to the exclusion of any other remedy described in this title.

Source: S.L. No. 4L-35-97 §1-5, 5/10/97

§1-106. Rules and regulations. — The Department of Treasury and Administration shall prescribe, within 120 days of the effective date of this title [*effective date is May 10, 1997*], rules and regulations that shall further govern the levy and collection of taxes as defined and provided for in this title.

Source: S.L. No. 4L-35-97 §1-6, 5/10/97

Note: S.L. No. 4L-35-97 §1-7 number, gender, and captions provision has been omitted.

Extended legislative history: 1. Sales Tax On General Merchandise was created by D.L. No. 3L-8-72 5/23/72; D.L. No. 3L-8-72 §1 was amended by S.L. No. 2L-40-80 §1, 11/10/80. 2. Sales Tax On Alcohol And Tobacco was created by PDC §§2-100 – 106, 3/71, PDC §2-100 was amended by D.L. No. 3L-6-72 §1, 5/23/72; D.L. No. 4L-57-76 §1, 1/1/77; and further amended by D.L. No. 4L-78-77 §1, 5/9/77. 3. Hotel Tax was created by D.L. No. 3L-12-72, 5/24/72, and was repealed in its entirety and superseded by D.L. No. 4L-61-76, 12/7/76. 4. Sales Tax On Motor Vehicles was created by PDC §§2-125 – 134, 3/71; PDC §2-126, 3/71 was amended by D.L. No. 3L-14-72 §1, 5/25/72. 5. Use Tax On General Merchandise was created by D.L. No. 3L-127-75 6/3/75; D.L. No. 3L-127-75 §1, 6/3/75 was amended by D.L. No. 4L-187-79 §1, 4/5/79. D.L. No. 3L-127-75 §2, 6/3/75 repeals §§2-200 – 2-206 of Chapter 2 of the Ponape District Code. 6. Intergovernmental Tax Immunity was created by D.L. No. 2L-224-71, 6/16/71.

PART B ASSESSMENT, PAYMENT, AND DELINQUENCY

§1-107. Assessment of tax; presumption of correctness. —

(1) When the Commissioner determines that a taxpayer is liable for taxes that have not been previously assessed to such taxpayer, the Commissioner shall promptly assess the amount thereof to the taxpayer.

(2) Assessments are effective:

(a) When a taxpayer’s return is received by the Division showing a liability for taxes; or

(b) When a notice of assessment of taxes is mailed or delivered to the taxpayer or other person against whom the liability for tax is asserted, stating the nature and amount of the taxes allegedly owed and demanding the immediate payment thereof.

(3) The Division shall make any necessary inquiries and investigations to determine the amount of tax to be assessed. The tax assessed may be computed on the presumptions authorized by law or in any other manner that is calculated to make a reasonably accurate estimate of the tax due. All assessments and demands for payment made by the Division are presumed to be correct and the burden of proving that the assessment is incorrect shall be borne by the taxpayer.

(4) To be effective, any notice of assessment or other notice or demand must briefly inform the taxpayer of his rights of appeal under §§1-160 through 1-162, and inform the taxpayer of the consequences of failing to appeal.

(5) When taxes have been assessed to a taxpayer and remain unpaid, and if a protest or claim has not been filed as provided by §1-160, then the Division may commence any procedure under this title to collect the amounts due.

Source: S.L. No. 4L-35-97 §2-1, 5/10/97

§1-108. Limitation on assessment by the Commissioner. —

(1) Except as provided otherwise in this section, no assessment may be issued by the Commissioner more than six years after the date when payment of the tax first came due. Appropriate assessments may be issued by the Commissioner at any time within six years from the date when payment of the tax first came due.

(2) If a taxpayer's return understates the tax liability by more than ten percent (10%) for the period to which the return relates, or a false or fraudulent return is filed by a taxpayer with the intent to evade a tax, the amount thereof may be assessed at any time within ten years from the date when payment of the tax first came due.

(3) If a taxpayer fails to complete or file a required tax return, the tax relating to the period for which the return was required may be assessed at any time within eight years from the date when payment of the tax first came due.

(4) No proceeding for the collection of any tax may be pursued without the timely assessment thereof as provided in this section. If, however, the taxpayer signs a waiver of the time limits imposed by this section, an assessment of tax may be made or collection procedures may be pursued without regard to when payment of the tax was due.

Source: S.L. No. 4L-35-97 §2-2, 5/10/97

§1-109. Compromise of taxes; closing agreements. —

(1) If, after the assessment has been issued, the Commissioner has reasonable doubt as to the taxpayer's liability for payment of the tax, he may compromise, pursuant to rules and regulations, the asserted liability by entering into a written agreement with the taxpayer. Such agreement shall be identified as a closing agreement, and is subject to the prior approval of the Director and of the Attorney General of the Government of Pohnpei.

(2) If the closing agreement is reached after the court acquires jurisdiction of the matter, it shall be made part of a stipulated order or judgment disposing of the case.

(3) As a condition of the closing agreement, the Director may require, pursuant to rules and regulations, that the taxpayer furnish security for payment of any taxes due.

(4) A closing agreement is conclusive as to the taxpayer's liability or non-liability for payment of assessed taxes covering the periods stated in the agreement and, except upon a showing of fraud, malfeasance, misrepresentation or concealment of a material fact:

(a) The closing agreement shall not be modified by any officer, employee or agent of the Government of Pohnpei; and

(b) In any suit, action or proceeding, the closing agreement or any determination, assessment, collection, payment, abatement, refund or credit made in accordance therewith shall not be annulled, modified, set aside or disregarded.

Source: S.L. No. 4L-35-97 §2-3, 5/10/97

§1-110. Installment payments of taxes; installment agreements. —

(1) Whenever justified by the circumstances, the Commissioner may enter into a written agreement with any taxpayer wherein the taxpayer admits conclusive liability for the stated amount of taxes due and agrees to make monthly installment payments thereof according to the terms of the

agreement, but not for a period longer than 18 months. The Commissioner shall include, as permitted by and as set forth in rules and regulations, penalties and an interest charge not to exceed the rate set out in §1-153.

(2) The agreement provided for in this section shall be identified as an installment agreement. If entered into after any court acquires jurisdiction of the matter, the agreement shall be part of a stipulated order or judgment disposing of the case.

(3) At the time of entering into an installment agreement, the Commissioner shall require the taxpayer to furnish security, in accordance with §§1-112 and 1-113, for payment of the taxes admitted to be due. If the taxpayer fails to provide such security, the Director shall cause a notice of lien to be filed and may pursue any remedies available to the state.

(4) An installment agreement is conclusive as to liability for payment of the amount of taxes specified therein, but does not preclude the assessment of any additional tax.

(5) After entering into an installment agreement, no further attempts to enforce payment of the tax shall be made except when, in the judgment of the Director, there are indications that the installments may not be paid. If installment payments are not made on or before the times specified in the agreement, if any other condition contained in the agreement is not met, or if the taxpayer does not pay any other taxes as they fall due, the Director may proceed to enforce collection of the tax as if the agreement had not been made or may proceed against the security furnished as provided in §1-112.

Source: S.L. No. 4L-35-97 §2-4, 5/10/97

§1-111. Delinquent taxpayer. — If any taxpayer to whom taxes have been assessed or upon whom demand for payment has been made does not either make payment thereof before 30 days after the date of assessment or demand for payment, or, within that time, enter an installment agreement, or furnish security acceptable to the Director for payment thereof, he becomes a delinquent taxpayer and remains such until he pays all such taxes or until he enters an installment agreement or furnishes such security for the payment thereof.

Source: S.L. No. 4L-35-97 §2-5, 5/10/97

PART C SECURITY FOR TAXES DUE

§1-112. Deposit of security; amounts; sales of security; return of surplus. —

(1) To ensure compliance with the Government of Pohnpei's tax laws, the Director shall require any taxpayer to provide such security as the Director may determine pursuant to guidelines set forth by rules and regulations. Retention by the taxpayer of such security shall be conditioned upon the compliance and performance with the state's tax laws and such other conditions as the Director deems appropriate.

(2) The Director, subject to rules and regulations, shall fix the amount of the security that, except as noted below, may not be greater than three times the taxpayer's estimated average liability if monthly returns are required, or \$20,000, whichever amount is the lesser.

(3) In the case of taxpayers who are habitually delinquent in their tax obligations, as defined by rules and regulations, the amount of the security may not be greater than six times the taxpayer's estimated average monthly liability, or \$50,000, whichever amount is the lesser.

(4) The amount of the taxpayer's estimated liability shall be calculated as set forth by rules and regulations. The limitations provided in this section apply regardless of the type of security placed with the Division.

(5) The amount of the security may be increased or decreased and the type of security may be changed or substituted at the Director's discretion, subject to rules and regulations and subject to the limitations provided in this section.

(6) The Division may sell the security at a public auction when it is necessary to recover any tax, interest, penalty or other charges collectible under this title. Notice of the sale must be served personally or by certified or registered mail upon the person who placed the security. Announcement and conduct of the sale shall be as provided by §§1-136 through 1-145, unless provided otherwise by regulations duly promulgated by the Director. The foregoing notwithstanding, stocks, bonds, certificates of deposit or other securities which have a specific value or prevailing market price may be sold by the Division at a private sale at a price not lower than the specific price or prevailing market price.

(7) Proceeds of the sale shall be distributed as provided in §1-144.

Source: S.L. No. 4L-35-97 §3-1, 5/10/97

§1-113. Failure to furnish security. — If, after notice and demand to furnish security, any taxpayer neglects or refuses to comply, the Director may institute any proceeding or pursue any remedy to collect the amounts due, including, but not limited to, enjoining the taxpayer from doing business as provided in this title. The taxpayer shall be given a minimum of seven business days from the date of mailing or delivering the notice and demand to provide the security, or such additional time as the Director may allow.

Source: S.L. No. 4L-35-97 §3-2, 5/10/97

PART D TAX LIEN AND PRIORITY

§1-114. Assessment or demand as lien. —

(1) If any taxpayer neglects or refuses to pay, or withhold and pay, or collect and pay any tax that is due after assessment or demand for payment as provided in this title, the amount of the tax shall be a lien in favor of the Government of Pohnpei on all the property of that taxpayer as allowed under this title.

(2) The lien imposed by Subsection (1) of this section shall arise at the time that the assessment or demand has been made as provided in this title, and shall continue until the liability for payment of the amount assessed or demanded is satisfied or extinguished.

(3) As against any mortgagee, pledgee, purchaser, judgment creditor, lienor or other encumbrance for value, the lien imposed by Subsection (1) of this section shall not be considered to have arisen or have any effect whatever unless notice of the lien has been filed as provided in §1-116.

Source: S.L. No. 4L-35-97 §4-1, 5/10/97

§1-115. Exemptions. — Notwithstanding any other provision of this title, the following described property shall be exempt from the taking of liens and subsequent attachment and execution as imposed under this title:

(1) *Personal and household goods.* All necessary household furniture, cooking and eating utensils, and all necessary wearing apparel, bedding, and provisions for household use sufficient for four months;

(2) *Necessities for trade or occupation.* All tools, implements, utensils, work animals and vehicles that are not used for personal transportation, including travel from residence to place of employment and return thereto, and equipment necessary to enable the person against whom the attachment or execution is issued to carry on his usual occupation; and

(3) *Certain interests in land.*

(a) All interests in land within the state held by a natural person, inclusive of equitable and leasehold interests, except where such interests can be shown to have been acquired to avoid attachment or execution with respect to the cause of action to which the attachment or

execution is ordered, or where attachment or execution against such interest in land is specifically permitted under a real property mortgage statute or real property deed of trust statute for the state; and

(b) Such other interests in land held by such other entities or organizations as may be otherwise specifically exempted from attachment or execution, or both, by Pohnpei statute; and

(c) Where permitted by this title, execution sales of land shall be limited to purchasers who are Pohnpeian citizens who are also pwilidak of Pohnpei, as provided for in Article 12 §2 of the Pohnpei Constitution.

Source: S.L. No. 4L-35-97 §4-2, 5/10/97

§1-116. Notice of lien. — To perfect the state's tax lien imposed by §1-114, a notice of the lien must be filed in the Pohnpei Supreme Court and a copy thereof sent by certified or registered mail to the taxpayer affected. The notice of lien must be filed not less than 45 days after the assessment or demand for payment as provided in this title. The filing of such notices shall be without charge. The notice of lien:

(1) Shall identify the taxpayer whose liability for taxes is sought to be enforced, the type or nature of the tax, the amount of the tax due on the date that the notice is filed plus any penalty or interest that may be chargeable, the date or approximate date on which the tax became due, and the date on which the assessment or demand for payment was delivered or mailed;

(2) Shall state that the Government of Pohnpei claims a lien for the entire amount of tax asserted to be due, including applicable interest and penalties; and

(3) Shall state that the lien covered by the notice includes any additional amounts that may become due after the notice is filed.

Source: S.L. No. 4L-35-97 §4-3, 5/10/97

§1-117. Priority of tax claim or lien; subordination to prior recorded lien; other debts. —

(1) The amount of tax due and any interest and penalties thereon shall be satisfied first in any of the following cases:

(a) Whenever the taxpayer is insolvent;

(b) Whenever the taxpayer makes a voluntary assignment of his assets;

(c) Whenever the estate of the taxpayer in the hands of executors, administrators or heirs prior to distribution is insufficient to pay all the debts due from the deceased; or

(d) Whenever the estate and effects of an absconding, concealed or absent taxpayer owing any tax, penalty or interest are levied upon by process of law.

(2) This section does not give the Government of Pohnpei a preference over:

(a) Any lien which the Division had actual notice prior to the date when the unpaid tax became a lien; or

(b) Any costs of administration, funeral expenses, expenses of last illness, family allowances or debts preferred under state or national law.

Source: S.L. No. 4L-35-97 §4-4, 5/10/97

§1-118. Foreclosure of lien. — Except as provided in §1-115, the lien imposed by this title may be foreclosed or satisfied by seizure and sale of property as provided in this title or in any other lawful manner.

Source: S.L. No. 4L-35-97 §4-5, 5/10/97

§1-119. Release or extinguishment of lien; limitation on actions to enforce lien. —

(1) When any substantial part of the amount of tax due from a taxpayer is paid, the Director may file with the Clerk of the Pohnpei Supreme Court a document completely or partially releasing the lien.

(2) When a notice of lien for taxes, penalties, and interest has been filed under §1-116 and a period of ten years has passed from the date the assessment or demand for payment was delivered or mailed as stated in the notice of lien, the amounts claimed in the notice of lien shall be conclusively presumed to have been paid. The Court Clerk shall enter in his records on the notice of lien the words “canceled by law” and the lien shall be deemed extinguished in accordance with this section. No action shall be brought to enforce any lien extinguished in accordance with this section.

Source: S.L. No. 4L-35-97 §4-6, 5/10/97

§1-120. Department may release or subordinate lien. — The Director may release, at any time, all or any portion of the property subject to any tax lien, or subordinate the lien to other liens and encumbrances if he determines that the amount of taxes, interest, and penalties are secured sufficiently by a lien on other property or that the release or subordination of the lien will not jeopardize the collection of the amounts due.

Source: S.L. No. 4L-35-97 §4-7, 5/10/97

§1-121. Evidentiary effect of certificate of release or subordination. — A certificate by the Department to the effect that any property has been released from the lien, or that the lien has been subordinated to other liens and encumbrances, is conclusive evidence that the property has been released, or that the lien has been subordinated as provided in the certificate.

Source: S.L. No. 4L-35-97 §4-8, 5/10/97

PART E JUDGMENTS FOR TAXES

§1-122. Permanence of tax debt; civil actions to collect tax. — The total amount of all taxes due and assessed or demanded is a personal and or continuing debt of the taxpayer to the Government of Pohnpei until paid and may be collected by civil action commenced by the Director through the Attorney General of the Government of Pohnpei. Such actions may be commenced in addition to or in lieu of any other remedy provided by law and in any court of competent jurisdiction. Final judgments for taxes may be enforced in appropriate courts of other states by the Attorney General of the Government of Pohnpei pursuant to agreement between the other state and this state, or by attorneys in that other state retained by the Department or the Attorney General of the Government of Pohnpei.

Source: S.L. No. 4L-35-97 §5-1, 5/10/97

§1-123. Application for judgment; filing of certificate of delinquency. — If any tax required to be paid to the state is not paid when due, the Director may file, within ten years after the assessment or demand for payment was delivered or mailed, in the office of the Clerk of the Pohnpei Supreme Court or any other court of competent jurisdiction a certificate of delinquency specifying the amount required to be paid, the interest and penalties due, the name and address of the taxpayer liable for payment as it appears on the records of the Division, the Division’s compliance with the applicable provisions of this title in relation to the determination of the amount required to be paid, and a request that judgment be entered against the taxpayer in the amount required to be paid, including interest and penalties. The certificate of delinquency shall be attested to, under oath, by the Director.

Source: S.L. No. 4L-35-97 §5-2, 5/10/97

§1-124. Evidentiary effect of certificate of delinquency. — In a judicial action to collect taxes, interest, penalties and other charges due, the Division’s certificate of delinquency shall be prima facie

evidence of the determination of the tax due, of the delinquency of such other amounts set forth therein, and of the compliance by the Division with this title in relation to the computation and determination of the amounts due, and compliance with the preliminary procedures for collection.

Source: S.L. No. 4L-35-97 §5-3, 5/10/97

§1-125. Order to show cause; notice; hearing; entry of judgment. —

(1) The court, upon filing of the certificate of delinquency, shall issue an order requiring the taxpayer liable for payment to show cause why a judgment should not be entered against him in the amount required to be paid, including interest and penalties, as set forth in the certificate of delinquency. The order shall specify the time and place of hearing and shall be served upon the taxpayer liable for payment at least ten days prior to the time set for hearing.

(2) The court shall hear and determine the case and render judgment thereon. The judgment shall be entered in the judgment book as in other cases.

Source: S.L. No. 4L-35-97 §5-4, 5/10/97

§1-126. Judgment lien. — Except as provided in §1-115, from the time judgment is entered by the court, it shall become a lien upon all property in the state owned by the judgment debtor at the time, or that he may afterward acquire, until the lien expires. The lien shall have the force, effect and priority of a judgment lien.

Source: S.L. No. 4L-35-97 §5-5, 5/10/97

§1-127. Execution; issuance; sale. — Upon request of the Department, execution shall issue upon the judgment entered against the delinquent taxpayer. Execution shall be conducted in the same manner as execution of other judgments, and sales shall be held under such execution as provided by law.

Source: S.L. No. 4L-35-97 §5-6, 5/10/97

PART F WARRANT FOR COLLECTION OF TAX

§1-128. Warrant for collection of tax; issuance; effect; levy and sale. —

(1) If, after the notice of lien is filed pursuant to §1-116, the delinquent taxpayer fails or refuses to pay the same or enter other arrangements for payment of the same, as provided in this title, the Department may issue a tax warrant for the enforcement of such lien and for the collection of any tax. Upon issuing the tax warrant, any property of the delinquent taxpayer, except as provided in §1-115, may be levied and converted to money in accordance with this title.

(2) A levy shall be executed by taking possession of the taxpayer's property pursuant to authority contained in the tax warrant or by serving the warrant upon the taxpayer, upon any other person in possession of property of the taxpayer, or upon any person or depository, including any officer or employee of the state or any political subdivision or agency of the state, who owes or who will owe money to the taxpayer, who is holding funds of the taxpayer, and ordering him to reveal the extent thereof and surrender it to the state forthwith or agree to surrender it or the proceeds therefrom in the future, but, in any case, on the terms and conditions stated in the tax warrant.

(3) The tax warrant shall be directed to and executed by the Department of Public Safety. Except as provided otherwise in this title or as provided by regulations duly promulgated hereunder, the tax warrant shall be levied and the sale or other disposal made in the same manner and with the same effect as a levy and sale under a writ of execution.

Source: S.L. No. 4L-35-97 §6-1, 5/10/97

§1-129. Contents of tax warrant. — A tax warrant shall:

- (1) Bear on its face a statement of the authority for its issuance and service, compel compliance with its terms, and shall be attested to, under oath, by the Director;
- (2) Identify the taxpayer whose liability for taxes is sought to be enforced, the amount thereof, and the date or approximate date on which the tax became due;
- (3) State that the Government of Pohnpei claims a lien for the entire amount of tax asserted to be due, including applicable interest and penalties;
- (4) Order the person on whom it is served to reveal all property in his possession, custody or control that belongs to the taxpayer and the extent of his own interest therein; and to reveal the amount and kind of property of the taxpayer that, to the best of his knowledge, is in the possession, custody or control of others;
- (5) Order the person on whom it is served to surrender the property forthwith, but may allow him to agree, in writing, to surrender the property or the proceeds therefrom on a certain date in the future when the taxpayer's right to it would otherwise mature; and
- (6) State on its face the penalties for willful failure by any person upon whom it is served to comply with its terms.

Source: S.L. No. 4L-35-97 §6-2, 5/10/97

§1-130. Fees for services of police. — The services of the Department of Public Safety officers and personnel involved with the enforcement of the tax warrant shall be provided without charge to the Department. Appropriate arrangements for the advancement, payment or reimbursement of the charges and expenses incurred or anticipated by the Department of Public Safety for the levy and execution of the tax warrant shall be made with the Department of Public Safety.

Source: S.L. No. 4L-35-97 §6-3, 5/10/97

§1-131. Liability for fees and charges. — A reasonable fee for the services of the Department of Public Safety personnel directly involved with the levy and execution of the tax warrant, plus the actual charges and expenses incurred for said levy and execution, are the obligation of the taxpayer and may be collected from him by virtue of the warrant or in any other manner provided in this title or by other lawful procedure.

Source: S.L. No. 4L-35-97 §6-4, 5/10/97

§1-132. Transfer or disposition of property or debt prohibited; bank deposits. —

(1) After receiving the warrant, the person so notified may not transfer or otherwise dispose of the money, property or debts in his possession, custody or control, unless the Director consents, in writing, to a transfer or other disposition.

(2) If the warrant prevents the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice must be delivered or mailed to the branch or office in this state. If a bank withholds any deposit or other credits or personal property required to be withheld in which the delinquent taxpayer and another person or persons have an interest, or holds in the name of a third party or parties in which it is ultimately determined that the delinquent taxpayer does not have an interest, the bank shall not be liable therefor to any of such persons unless the deposit or other credits or personal property is released or transferred to the delinquent taxpayer.

Source: S.L. No. 4L-35-97 §6-5, 5/10/97

§1-133. Surrender of property subject to levy; penalty. —

(1) Upon receipt of the warrant, any person in possession or control of property subject to levy under a tax warrant shall immediately surrender the property or discharge the obligation to the Director; but not that part of the property that is already the subject of a bona fide attachment,

execution, levy or other similar process. Such levy is further subject to the redemption provisions of §1-139.

(2) Any person who receives a tax warrant and wrongfully fails or refuses to comply therewith shall be liable in his own person and estate to the state in a sum equal to the value of the property not so surrendered or paid over, but not exceeding the amount of the taxes for the collection of which such levy has been made, together with penalties and interest on such sum from the date of such levy at the rate set out in §1-153, plus the costs of executing the warrant.

Source: S.L. No. 4L-35-97 §6-6, 5/10/97

§1-134. Notice of seizure. — As soon as practicable after the levy, the Director shall notify the taxpayer of the amount and kind of property seized and of the total amount demanded in payment of tax.

Source: S.L. No. 4L-35-97 §6-7, 5/10/97

§1-135. Release of levy. — The Director, pursuant to rules and regulations, may release the levy upon all or part of the property if there is a determination that such action will facilitate the collection of the liability, but the release shall not operate to prevent any subsequent levy.

Source: S.L. No. 4L-35-97 §6-8, 5/10/97

§1-136. Notice of sale; contents; mailings; broadcasts. —

(1) As soon as practicable after the levy and seizure of the property, the Director shall decide on a date, subject to the terms of §1-137, time and place for the sale of the property, shall make a diligent inquiry as to the identity and whereabouts of the owner of the property and persons having an interest therein, and shall notify the owner and such persons of the time and place for the sale.

(2) Notice of the sale must be given to the delinquent taxpayer, in writing, at least 30 days before the date set for the sale in the following manner:

(a) The notice must be sent by certified or registered mail addressed to the taxpayer at his last-known residence or place of business in this state. Postage must be prepaid.

(b) The time, date and place of the sale, the property to be sold, and other terms and conditions of the sale must also be broadcast over the public radio station at least three times on separate days. The third broadcast must be at least ten days before the date set for the sale.

(3) The written notice must also contain a description of the property to be sold, a statement of the amount due, including interest, penalties and costs, the name of the delinquent taxpayer, and a statement that, unless the amount due plus interest, penalties and costs are paid on or before the time fixed in the notice for the sale, the property, or so much of it as is necessary, will be sold in accordance with law and the notice.

(4) The fact that any person entitled thereto does not receive the notice provided for in this section does not affect the validity of the sale.

Source: S.L. No. 4L-35-97 §6-9, 5/10/97

§1-137. Requirement of sale. — No sale of imperishable property shall be held until after the expiration of 30 days from the date of the levy thereon. Perishable property may be sold immediately after seizure without broadcast or notice of the sale. The Director shall make special efforts pursuant to rules and regulations to give notice of the sale to persons with a particular interest in special property, and, apart from the requirements stated above, shall advertise the sale in a manner appropriate to the kind of property to be sold.

Source: S.L. No. 4L-35-97 §6-10, 5/10/97

§1-138. Sale of indivisible property. — If any property of the taxpayer subject to levy cannot be reasonably divided so as to enable the Director to sell a part thereof to raise the whole amount of the

tax and expenses, the whole of the taxpayer's interest in the property shall be sold. The sale is, however, subject to redemption before sale according to §1-139.

Source: S.L. No. 4L-35-97 §6-11, 5/10/97

§1-139. Redemption before sale. —

(1) The levy and sale shall not be made, or the levy and sale shall be terminated and released if the taxpayer pays the entire amount due, furnishes security, or makes other arrangements for payment that are acceptable to the Director as provided in this title. Upon making such payment or arrangements the Director shall restore the property to the taxpayer, and all further proceedings in connection with the levy and sale of the property shall cease from the time of the payment or signing of an agreement with the Department.

(2) Any person who has sufficient interest in the property levied to entitle him to redeem it from sale and who pays the amount due and accomplishes the redemption shall have a lien against the property in the amount paid and may file a notice thereof with the Clerk of the Pohnpei Supreme Court, who may foreclose the lien as provided by law. The nature of the interest required to exercise this right of redemption shall be established in the regulations promulgated by the Director.

Source: S.L. No. 4L-35-97 §6-12, 5/10/97

§1-140. Minimum prices. — Before the sale, the Director shall determine a minimum price, pursuant to formulas set forth by rules and regulations, for which the property shall be sold, and if no person offers the minimum price at the sale, the property shall not be sold, but the sale shall be readvertised and held at a later time. In determining the minimum price, the Director shall take into account the expenses of conducting the levy and sale.

Source: S.L. No. 4L-35-97 §6-13, 5/10/97

§1-141. Sale; delivery of bill of sale or deed; disposition of unsold portion. —

(1) Except as provided in Subsection (4) of this section, the Department shall sell the property at a public auction and in accordance with the notice of sale, and shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold.

(2) Except as provided in Subsection (4) of this section, payment must be in full, in cash or its equivalent, and made immediately after the acceptance of a bid for the property.

(3) The unsold portion of any property seized may be left at the place of sale at the risk and cost of the delinquent taxpayer.

(4) The foregoing notwithstanding, stocks, bonds, certificates of deposit, promissory notes or other securities which have a specific value or prevailing market price may be sold by the Department at a private sale at a price not lower than the specific price or prevailing market price and in accordance with the regulations promulgated by the Director. The sale may not occur sooner than the date scheduled for the sale as stated in the notice.

Source: S.L. No. 4L-35-97 §6-14, 5/10/97

§1-142. Legal effect of certificate of sale. — In all cases of sale of property other than real property, the document conveying title to the property shall:

(1) Be prima facie evidence of the right of the Director to make the sale, and conclusive evidence of the regularity of the conduct of the sale;

(2) Transfer to the purchaser all right, title and interest of the delinquent taxpayer in and to the property sold, subject to all outstanding prior interests and encumbrances of record and free of any subsequent encumbrance;

(3) If such property consists of stock certificates, then when the document conveying title is received by the corporation, it shall be notice of the sale and transfer, and the authority to such corporation to record the transfer on its books and records as if the stock certificates were transferred or assigned by the owner of record;

(4) If the property consists of promissory notes or other evidences of debt, the document shall be conclusive evidence that the holder thereof has the right to pursue the collection of such debt; and

(5) If such property consists of a motor vehicle as represented by its title, the document conveying title shall be notice of the transfer to any public official charged with the registration of title to motor vehicles and authorizing that official to record the transfer on his books and records in the same manner as if the certificate of title to the motor vehicle were transferred or assigned by the owner of record.

Source: S.L. No. 4L-35-97 §6-15, 5/10/97

§1-143. Legality of deed to real property. — In the case of the sale of real property:

(1) The deed delivered pursuant to §1-141 shall be prima facie evidence of the facts stated therein;

(2) If the proceedings have been in accordance with law, the deed shall be considered and operate as a conveyance of all the right, title and interest of the delinquent taxpayer in and to the real property thus sold at the time the notice of lien was filed as provided in §1-116; and

(3) The taxpayer or anyone claiming through or under him may bring an action to challenge the conveyance no later than six months after the date of sale.

Source: S.L. No. 4L-35-97 §6-16, 5/10/97

§1-144. Proceeds of levy and sale. —

(1) Money realized by levy or sale under this title shall be first applied against the expenses of the proceedings;

(2) The amount remaining, if any, then shall be applied to the liability for the tax, interest and penalties for which the levy was pursued;

(3) Except as provided in Subsections (4) and (5) of this section, the balance, if any, shall be returned to the taxpayer or the person legally entitled thereto and a receipt obtained;

(4) If, before the sale, any person having an interest in or lien upon the property files with the Department notice of his interest or lien, the Department shall withhold any excess, pending a determination of the rights of the respective parties to it by a court of competent jurisdiction;

(5) If for any reason the taxpayer is not available or cannot be found to accept the excess, the Department shall deposit it with the Government of Pohnpei, as trustee for the owner, subject to the order of a court of competent jurisdiction, the taxpayer, or his heirs, successors or assigns, or subject to any other disposition authorized by law.

Source: S.L. No. 4L-35-97 §6-17, 5/10/97

§1-145. Successive seizures. — Whenever any property upon which levy has been made by virtue of a tax warrant is not sufficient to satisfy the claim for which levy is made, the Director, thereafter, and as often as may be necessary, may proceed to levy in like manner upon any other property of the taxpayer against whom the claim exists, until the amount due from him is fully paid.

Source: S.L. No. 4L-35-97 §6-18, 5/10/97

PART G ENJOINING CONTINUATION OF BUSINESS

§1-146. Enjoining delinquent taxpayer from continuing in business. —

(1) In order to ensure or to compel payment of taxes and to aid in the enforcement of this title, the Director may apply to the Pohnpei Supreme Court to have any delinquent taxpayer or person who may be or may become liable for payment of any tax enjoined from engaging in business until he ceases to be a delinquent taxpayer or until he complies with other requirements reasonably necessary to protect the revenues of the Government of Pohnpei.

(2) Upon application to the court for issuance of an injunction against a delinquent taxpayer, the court may forthwith issue an order temporarily restraining him from doing business. The court shall hear the matter within ten days and, upon a showing by the preponderance of the evidence that:

- (a) The taxpayer is delinquent;
- (b) The taxpayer has been given notice of the hearing as required by law;
- (c) That the taxpayer has not furnished security or made other arrangements for payment of the taxes as provided in this title; and
- (d) The Director considers the collection of the amounts due or reasonably expected to come due to be in jeopardy, then the court shall enjoin the taxpayer from engaging in business in the state until he ceases to be a delinquent taxpayer. Upon issuing an injunction, the court may also order the business premises of the taxpayer to be sealed by the Department of Public Safety officers and may allow the taxpayer access thereto only upon approval of the court.

(3) No temporary restraining order or injunction shall be issued pursuant to this section against any person who has furnished security in accordance with §1-112, or who has made other arrangements for payment in full that is acceptable to or has been accepted by the Director. Upon a showing to the court by any person against whom a temporary restraining order or writ of injunction was issued that he has furnished such security or has made such other arrangements for payment in full, the court shall dissolve or set aside the temporary restraining order or injunction.

Source: S.L. No. 4L-35-97 §7-1, 5/10/97

PART H SUCCESSOR'S LIABILITY FOR TAXES AND PAYMENT OF TAXES ON SALE OR TERMINATION OF BUSINESS

§1-147. Disclosure of taxes due. — Any taxpayer who sells his business or stock of goods, or quits his business, shall obtain from the Commissioner a certificate of clearance or notice of tax status for presentation to his purchaser, successor or assigns, hereinafter cumulatively referred to as "purchaser." Any purchaser of a business or stock of goods shall obtain from the seller or the Commissioner a certificate of clearance or notice of tax status issued by the Commissioner. Failure by a taxpayer or purchaser to obtain such certificate of clearance or notice of tax status shall be considered an attempt to evade or defeat taxes due punishable under §1-156.

Source: S.L. No. 4L-35-97 §8-1, 5/10/97

§1-148. Successor or assignee to withhold tax from purchase price. — Upon receipt of the certificate of clearance or notice of tax status which indicates that the seller owes taxes, the purchaser shall withhold a sufficient amount of the purchase price to cover the amount owed the state until the delinquent taxpayer presents a certificate of tax clearance issued by the Division stating that all amounts due have been paid, or that no amount is due. Otherwise, said amount shall be paid over to the Division upon demand by the Director.

Source: S.L. No. 4L-35-97 §8-2, 5/10/97

§1-149. Request for certificate of clearance or notice of tax status; release. —

(1) Within 30 days after receiving a written request from the taxpayer or purchaser for a certificate of tax clearance or notice of the taxpayer's status, or within 30 days from the date the delinquent taxpayer's records are made available for audit, whichever period expires later, but not later than 60 days after receiving the request, the Division shall issue a certificate of tax clearance indicating that all amounts have been paid, or a notice of tax status indicating the amount that must be paid as a condition of issuing the certificate of tax clearance. The certificate or notice shall be sent to the purchaser, by certified or registered mail, to his address as it appears on the records of the Division.

(2) Failure of the Division to mail the notice of tax status within the time required releases the purchaser from any further obligation to withhold the purchase price.

Source: S.L. No. 4L-35-97 §8-3, 5/10/97

§1-150. Demand of payment; application of payment. —

(1) If, after a business or its assets are sold, any tax for which the former owner is liable remains due, the Commissioner shall make demand upon the purchaser for payment of that amount and the purchaser shall comply with the demand. The time within which the obligation of a purchaser may be enforced begins at the time the taxpayer sells or transfers his business or stock of goods.

(2) Upon the payment of the amount required to be withheld as provided by §1-148, the balance, if any, may be released to the taxpayer or otherwise disposed of in any lawful manner. The taxpayer shall be credited with the payment of tax.

Source: S.L. No. 4L-35-97 §8-4, 5/10/97

§1-151. Failure to withhold. —

(1) If the purchaser of a business or stock of goods fails to withhold the purchase price as required or fails to make payment or delivery within 30 days after demand by the Commissioner, he becomes a delinquent taxpayer and is personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money.

(2) The purchaser hereunder may completely discharge his responsibility under this section by surrendering and assigning all of his interest in the tangible and intangible property acquired or the proceeds thereof to the Commissioner for disposition by him in a manner that is substantially the same as the disposition of property levied upon pursuant to a tax warrant.

Source: S.L. No. 4L-35-97 §8-5, 5/10/97

§1-152. Personal liability of corporate officer for unpaid taxes. —

(1) Upon termination, dissolution or abandonment of a corporate business, any officer or other person who is charged with the control of, supervision of, or responsibility for filing of returns or the payment of tax, or who is under a duty to act for the corporation in complying with any requirement of this title, shall be personally liable for any unpaid taxes, interest, penalties and other charges concerning those taxes, if such officer or other person willfully fails to pay or to cause to be paid any taxes due from the corporation pursuant to this title.

(2) The officer or other person shall be liable only for taxes, interest, penalties and charges which become due during the period he had the control, supervision, responsibility or duty to act for the corporation described in Subsection (1) of this section.

(3) The sum due for the liability under this section may be collected under any procedure set out in this title or the pursuit of any other remedy.

Source: S.L. No. 4L-35-97 §8-6, 5/10/97

PART I INTEREST AND PENALTIES

§1-153. Penalty, interest for failure to pay tax; amount, rates. —

(1) If a taxpayer fails to pay any tax within the time required due to negligence or disregard of the rules and regulations, but without intent to defraud or evade taxes, the Commissioner shall assess, pursuant to rules and regulations, a penalty against such taxpayer of ten percent (10%) of the amount of the tax due per month or portion thereof that such taxes remain unpaid; PROVIDED that the penalty under this subsection shall not exceed one hundred percent (100%) of the taxes due.

(2) In addition to the penalty imposed by Subsection (1) of this section, if the taxpayer fails to file a return due to negligence or disregard of rules and regulations, but without intent to defraud or evade

taxes regardless of whether or not any tax is due, the Commissioner, pursuant to rules and regulations, shall assess a penalty against the taxpayer of up to \$200 per month or portion of a month from the date the return was required to be filed.

(3) In case a taxpayer fails to pay any tax when due with intent to defraud the Government of Pohnpei or evade taxes or fails to file a timely return with intent to defraud the Government of Pohnpei or evade taxes, there shall be assessed a penalty against such taxpayer of twenty percent (20%) of the amount of tax due per month or portion thereof that such taxes remain unpaid, or up to \$500 per month or portion of a month until the return is filed; PROVIDED that the penalty under this subsection shall not exceed two hundred percent (200%) of the taxes due.

(4) In addition to any of the foregoing penalties, there shall be assessed, pursuant to rules and regulations, interest at the rate of one percent (1%) per month or fraction of a month from the date on which the tax became due to the date of payment.

(5) Unless the rules and regulations provide otherwise, such penalties and interest may be imposed irrespective of any extensions for payment, security provided to the Government of Pohnpei, or installment payment agreements.

(6) Nothing in this section shall be construed to impose interest on interest, or interest on the amount of any penalty, nor penalty on penalty nor penalty on the amount of any interest.

Source: S.L. No. 4L-35-97 §9-1, 5/10/97

§1-154. Collection of penalties and interest. — Any amount of penalty and interest may be collected in the same manner as and concurrently with the amount of tax to which it relates, without assessment or separate proceedings of any kind.

Source: S.L. No. 4L-35-97 §9-2, 5/10/97

§1-155. Payment by bad check. — If any payment required to be made by this title is attempted to be made by check which is not paid upon presentment, such dishonor is deemed nonpayment and subject to the penalties and interest imposed by §1-153, as if payment had never been made.

Source: S.L. No. 4L-35-97 §9-3, 5/10/97

§1-156. Attempts to evade or defeat tax. — In addition to such other liabilities and penalties as may be prescribed by law:

(1) Any person who willfully attempts to evade or defeat any tax or the payment thereof of a cumulative value of less than \$1,000 in one year shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or imprisoned not more than six months, or both such fine and imprisonment.

(2) Any person who willfully attempts to evade or defeat any tax or the payment thereof of a cumulative value of \$1,000 or more in one year shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000 or imprisoned not more than five years, or both such fine and imprisonment.

Source: S.L. No. 4L-35-97 §9-4, 5/10/97

§1-157. False and fraudulent statement. — In addition to such other liabilities and penalties as may be prescribed by law, any individual or person who willfully makes or subscribes to any tax return, statement or other document which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter or with the intent to evade or defeat the payment or collection of any tax, or knowing that the probable consequences of this title will be to evade or defeat the payment or collection of any tax, removes, conceals or releases property on which the levy is authorized or which is liable for payment of tax, or aids or causes the accomplishment of any of the foregoing, is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned not more than three years, or both such fine and imprisonment.

Source: S.L. No. 4L-35-97 §9-5, 5/10/97

§1-158. Interference with administration of tax laws. — Whoever forcibly or by bribe, threat or other corrupt practice obstructs or impedes or attempts to obstruct or impede the due administration of this title, upon conviction thereof, shall be fined not less than \$250 nor more than \$10,000 or imprisoned for not less than six months nor more than one year, or both such fine and imprisonment, together with costs of prosecution.

Source: S.L. No. 4L-35-97 §9-6, 5/10/97

§1-159. Assault and battery of a government employee. — Whoever assaults and batters or attempts to assault and batter an employee of the Department or the Department of Public Safety acting within the scope of such employee's employment with intent to obstruct or impede the due administration of this title, or whoever assaults and batters or attempts to assault and batter a member of the immediate family of an employee of the Department or the Department of Public Safety with the intent to obstruct or impede the due administration of this title, upon conviction thereof, shall be fined not less than \$500 nor more than \$5,000, or be imprisoned for not less than six months nor more than two years, or both so fined and imprisoned, together with the costs of prosecution.

Source: S.L. No. 4L-35-97 §9-7, 5/10/97

PART J REVIEW AND APPEAL BY TAXPAYERS

§1-160. Administrative hearing; procedure. —

(1) A taxpayer may dispute the application or calculation of any tax or the application of this title by filing, in writing, a protest or claim for refund with the Director, therein stating the nature of the taxpayer's complaint and the affirmative relief requested.

(2) A protest or claim by a taxpayer shall be filed within 30 days of the date of the mailing by certified or registered mail or delivery to him by the Commissioner of the notice of assessment or other notice or demand, or the date of mailing or filing his return. If the protest or claim is not filed within that time or such other reasonable time not to exceed 30 additional days as the Director may grant pursuant to rules and regulations, the Director may proceed to enforce collection of the amounts due and all rights to appeal or contest the amounts due, the application or calculation of any tax or the application of this title, whether to the Department or to the courts, shall be barred.

(3) No proceedings other than those to enforce collection of any amount assessed as tax are stayed by timely filing of a protest under this section.

(4) Upon timely receipt of a protest or a request for hearing after denial of a claim for refund, the Director shall set, within ten days, a date for hearing and, on that date, hear the protest or claim.

(5) In appropriate cases, the Director may provide for an informal conference before setting a hearing of the protest or acting on any claim for refund.

(6) Taxpayers may appear at a hearing for themselves or be represented by a bona fide employee, an attorney, or public accountant. Hearings shall not be open to the public except upon request of the taxpayer, and may be postponed for up to 30 days or continued at the discretion of the Director.

(7) The technical rules of evidence shall not apply in hearings before the Director, but when ruling on the admissibility of evidence, the Director may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

(8) In hearings before the Director, the rules of civil procedure shall not apply, but the hearing shall be conducted so that both complaints and defenses are amply and fairly presented.

(9) In the case of the hearing of any protest or claim for a refund, the Director shall make and preserve a record of the proceedings. A verbatim record, however, is not required. The Director may announce his decision at the conclusion of the hearing or may take the matter under advisement, but in either case, within 30 days he shall inform, in writing, the protestant or claimant of his decision, at the same time informing such protestant or claimant of his right to and the requirements for perfection of

an appeal from the decision to the courts and of the consequences of his failure to appeal. The written decision shall embody an order granting or denying the relief requested or granting such part thereof as is appropriate. All decisions and orders shall be in the name of the Director.

(10) Nothing in this section shall be construed to authorize any criminal proceedings hereunder, nor to authorize an administrative protest of the issuance of a subpoena or summons.

Source: S.L. No. 4L-35-97 §10-1, 5/10/97

§1-161. Appeals from Director's decision and order. —

(1) If the protestant or claimant is dissatisfied with the action and order of the Director after a hearing, he may appeal to the courts for further relief, but only to the same extent and upon the same theory as was asserted in the hearing before the Director. All such appeals shall be upon the record made at the hearing and shall not be de novo. All such appeals shall be taken within 30 days of the date of mailing or delivery of the written decision and order of the Director to the protestant or claimant and, if not so taken, the decision and order shall be final and conclusive.

(2) The procedure for perfecting an appeal under this section consists of the payment of the entire amounts due as determined, assessed or demanded by the Director and of the timely filing of a complaint on appeal, naming only the Department of Treasury and Administration as defendant, with a copy attached of the decision and order from which appeal is taken. Sufficient copies of the record on appeal, as the court may require, shall be supplied at the expense of taxpayer. If the appellant is successful on appeal, the state shall reimburse the cost of providing copies of the record. Under limited circumstances, pursuant to rules and regulations, the Director may waive the requirement that a taxpayer pay the entire amount due before he may perfect an appeal.

(3) The record on appeal shall consist of:

- (a) The entire proceedings;
- (b) Portions thereof as the Director and taxpayer may stipulate; or
- (c) A statement of the case agreed to by the Director and taxpayer.

(4) Upon appeal, the court shall set aside a decision and order of the Director only if such decision or order is found to be:

- (a) Arbitrary, capricious or an abuse of discretion; or
- (b) Not in accordance with the law; or
- (c) Due to an error in the technical calculation of the tax, penalties, interest, or other payments to the Government of Pohnpei being adjudicated.

Source: S.L. No. 4L-35-97 §10-2, 5/10/97

§1-162. Exhaustion of administrative remedies. — No court of this state has jurisdiction to entertain any proceeding by a taxpayer in which such taxpayer calls into question his liability for any tax or the application to him of this title, except as a consequence of an appeal by him to the court from an action and order of the Director, all as specified in §§1-160 and 1-161.

Source: S.L. No. 4L-35-97 §10-3, 5/10/97

PART K MISCELLANEOUS

§1-163. Address of notices and payments; timely mailing constitutes timely filing or making. —

(1) Unless otherwise provided in this title, any notice required or authorized by this title to be given by mail is effective if mailed, via certified or registered mail, or served by the Commissioner or Director to the taxpayer at the last address shown in such taxpayer's registration certificate, tax return or any other record of the Department. Any notice, return, application or payment required or authorized to be delivered to the Department, the Director or the Commissioner shall be addressed to the Department or the Division at the address set forth in the regulations promulgated by the Director.

(2) All assessments, demands, notices, returns, applications, payments or other documents authorized or required to be made or given by mail are considered timely if they are mailed on or before the date on which they are required.

Source: S.L. No. 4L-35-97 §16-1, 5/10/97

§1-164. Timeliness when last day for performance falls on Saturday, Sunday or legal holiday. — When, by any provision of this title, the last day for performing any act falls on Saturday, Sunday or a legal state or national holiday, the performance of the act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal state or national holiday.

Source: S.L. No. 4L-35-97 §16-2, 5/10/97

§1-165. Records required; accounting methods. —

(1) All taxpayers shall maintain books of accounts or other records in a manner that will permit the accurate computation and verification of state taxes and shall provide, upon request, such records to the Division in Pohnpei with supporting documents to substantiate the accuracy of all reports filed. A taxpayer who fails to maintain the records required by this subsection or who fails to provide such records to the Division when requested shall be fined not more than \$1,000 or imprisoned not more than one year, or both so fined and imprisoned, together with the costs of prosecution.

(2) Methods of accounting shall be consistent for the same business. A taxpayer engaged in more than one business may use a different method of accounting for each business.

(3) Any taxpayer who changes the method of accounting used by him in keeping his books and records shall notify the Commissioner in writing. If such notice is not given, the Commissioner, upon audit, may require the taxpayer to compute the amount of tax due on the basis of the accounting method earlier used.

(4) Every taxpayer subject to the sale tax who has commercial sales in excess of \$10,000 per month shall record such sales on an individual basis using a cash register that has the ability to record at least four categories of sales or shall use a method of recording, accumulating and reporting sales that is certified in writing by the Tax Commissioner to be acceptable in lieu of using a cash register. A taxpayer who does not comply with the above requirement, upon notification in writing by the Tax Commissioner that the taxpayer is not in compliance with this subsection, shall be fined \$500 per month or fraction thereof in excess of two months that such taxpayer remains in noncompliance with this subsection.

(5) Whenever a taxpayer does not maintain records that are adequate, as determined by the Tax Commissioner, to accurately record the sale price, the sale price shall be deemed to be the maximum allowed by 39 PC 3-104, relating to price control on items sold in Pohnpei State, to the extent said law is applicable.

Source: S.L. No. 4L-35-97 §16-3, 5/10/97; S.L. No. 4L-92-99 §4, 3/1/99

§1-166. Administrative regulations, ruling instructions and orders; presumption of correctness. —

(1) The Director and the Commissioner are empowered to promulgate rules, regulations, rulings, instructions or orders necessary to implement and enforce this title and any tax law covered by this title. This subsection shall be liberally construed to fully and effectively accomplish the purposes of this title.

(2) The aforementioned directives issued by the Director shall be substantially as follows:

(a) Rules and regulations are written statements of the Director of general application to taxpayers, interpreting and exemplifying the statutes to which they relate. Regulations adopted by the Director pursuant to the Administrative Procedures Act, Title 8 Chapter 1, as such law may be amended or superseded, shall have the force and effect of law.

(b) Rulings are written statements of the Commissioner of limited application to one or a small number of taxpayers, interpreting the statutes to which they relate, ordinarily issued in

response to a request for clarification of the tax consequences of a specified set of circumstances.

(c) Orders are written statements of the Director or Commissioner to implement his decision.

(d) Instructions are other written statements or directives of the Commissioner not dealing with the merits of any tax but otherwise in aid of the accomplishment of the duties of the Commissioner.

(3) Any rule, regulation, ruling, order or instruction issued by the Director or Commissioner is presumed to be a proper implementation of the tax laws.

Source: S.L. No. 4L-35-97 §16-4, 5/10/97

§1-167. Investigative authority and powers. —

(1) For the purpose of establishing or determining the extent of any person's tax liability, for the purpose of collecting any tax, or for the purpose of enforcing any statute administered by the Division, the Commissioner is authorized to examine equipment, shipping containers, storage areas and other places where taxable goods may be stored or displayed, to examine and require, upon request, the production in the state of all account books, bank books, bank statements and paid checks, vouchers, purchase records, sales invoices and records, taxpayer's copies of Federated States of Micronesia business gross revenue tax returns, and any and all other records or documents and evidences having any relevancy to the determination of taxes due, to require the presence in the state of any person and to require him to testify under oath concerning the subject matter of the inquiry, and to make a permanent record of the proceedings. If it is necessary to travel outside Pohnpei State in order to perform an examination under this subsection, and should such examination reveal a finding that more than \$1,000 in taxes are due and payable to the state, the delinquent taxpayer shall be responsible to reimburse the Division for travel costs computed under government travel regulations. Such costs shall be in addition to any taxes due and shall be assessed in the same manner as taxes.

(2) To accomplish the matters referred to in Subsection (1) of this section, the Director is hereby invested with the power to issue subpoenas and summonses. In no case shall a subpoena or summons be made returnable less than ten days from the date of service.

(3) Any subpoena or summons issued by the Director shall state, with reasonable certainty, the nature of the evidence required to be produced, the time and place of the hearing, the nature of the inquiry or investigation, the consequences of failure to obey the subpoena or summons, and shall be attested to by the Director.

(4) After service of a subpoena or summons upon him, if any person neglects or refuses to appear in Pohnpei in response to the summons, or neglects or refuses to produce in Pohnpei records or other evidence, or neglects or refuses to allow the inspection of equipment or shipping containers, storage areas and other places where taxable goods may be stored or displayed in response to the subpoena, or neglects or refuses to appear in Pohnpei or give testimony as required, the Director may invoke the aid of the court in the enforcement of the subpoena or summons. In the event judicial assistance is required, in addition to any other penalty or order imposed by the court, the state shall be entitled to all costs and attorneys' fees incurred thereby, which amount shall be set by the court.

Source: S.L. No. 4L-35-97 §16-5, 5/10/97

§1-168. Enforcement officials. — Every individual to whom the Director or Commissioner delegates the function of applying or enforcing this title:

(1) Shall be furnished with credentials identifying such individual; and

(2) May request the assistance of the Department of Public Safety and the Office of the Attorney General of the Government of Pohnpei in order to perform his duties, which assistance shall be afforded in appropriate circumstances.

Source: S.L. No. 4L-35-97 §16-6, 5/10/97

§1-169. Limitation of actions. — Except as may be provided otherwise in this title or any other state law, no action or proceeding shall be brought to collect taxes administered by the Department and due under an assessment or demand for payment of the taxes after ten years from the date of such assessment or demand.

Source: S.L. No. 4L-35-97 §16-7, 5/10/97

§1-170. Reciprocal enforcement of tax judgments. —

(1) The courts of the state shall recognize and enforce the tax judgments of other jurisdictions to the same extent to which the courts of the other jurisdictions would recognize and enforce similar tax judgments of this state or its political subdivisions, agencies or instrumentalities.

(2) The Attorney General of the Government of Pohnpei may employ members of the bars of other jurisdictions to recover taxes due to this state and may fix their fees.

Source: S.L. No. 4L-35-97 §16-8, 5/10/97

§1-171. Application of payments. — Unless otherwise required under this title, other law, court order, closing agreement or installment agreement, payments and collections shall be applied, first, to tax due; second, to interest due; third, to penalties due; and fourth, to any other charges or fees that are due and payable to Pohnpei State by the taxpayer.

Source: S.L. No. 4L-35-97 §16-9, 5/10/97

§1-172. Severability. — If any provision of this title, or the application thereof to any person, entity or circumstance is held invalid, the invalidity does not affect other provisions or applications of the title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

Source: S.L. No. 4L-35-97 §16-10A, 5/10/97

Note: §16-10A was inserted by S.L. No. 4L-92-99 §5, 3/1/99.

CHAPTER 2 SALES TAX

Section

2-101 Definitions	2-104 Returns and payments
2-102 Imposition of sales tax	2-105 Presumption
2-103 Sales tax exemptions, exclusions, and allocations	

§2-101. Definitions. — As used in Chapters 2, 5, and 6, unless the context otherwise requires:

(1) “Commercial sale” means a transaction in which any tangible personal property is sold commercially in the course of business operations within the state. Commercial sale does not include casual or isolated sales by private parties nor sales by primary producers of such property who have within their employ fewer than two full- or part-time employees; PROVIDED, HOWEVER, that the burden of proof shall be upon the seller that he has not engaged in a commercial sale. Commercial sale also includes the sale of tangible personal property that is produced, extracted, manufactured, assembled or sewed in the state, excluding sales to out-of-state purchasers of such property.

(2) “Foodstuffs” means substances that can be used or prepared for use as food to be consumed by humans, including, but not limited to: rice, meats, seafood, fruits, vegetables, grains, baked goods, sauces, soups, condiments, spices, eggs, sugar, water, milk and milk products, non-alcoholic beverages and mixes, coffee, tea, candies etc., that may be fresh, dried, frozen, canned, bottled, boxed or wrapped.

(3) “Merchandise” means tangible personal property which may be seen, weighed, measured, felt, or touched, or in any other manner perceptible to the senses, including any tangible personal property which may become a fixture or part of the real estate, but not including stocks, bonds, notes, insurance or other obligations or securities.

(4) “Sale price” means the total price paid by the purchaser in a commercial sale, as defined in this chapter, exclusive of taxes applicable under this title. Such sale price shall be valued in money, whether received in money or otherwise.

(5) “Seller” includes every person making a commercial sale, as defined, and includes an individual, broker, agent, partnership, club, society, cooperative, association, corporation or any combination of individuals acting as a unit, including religious organizations.

Source: S.L. No. 4L-35-97 §11-1, 5/10/97; S.L. No. 4L-113-99 §1, 7/13/99

§2-102. Imposition of sales tax. — There is hereby levied on the first commercial sale in Pohnpei State a sale tax in the following percentage on the sale price of the following merchandise:

(1) Tobacco and alcohol products, including all cigarettes, cigars, chewing tobacco, snuff, beer, ale and malt beverages, wine and distilled spirits: twenty-five percent (25%);

(2) Fuels, including gasoline, diesel fuel, kerosene, propane or LP gas, or fuel oils used for the purpose of operating engines, motors, and turbines in motor vehicles, heavy equipment and machinery, aircraft, marine vessels and generators: two percent (2%);

(3) Motor vehicles, including, but not limited to, automobiles, vans, trucks, buses, utility vehicles, motorcycles, self-propelled construction equipment, ships, aircraft and the like: seven percent (7%);

(4) Food and foodstuffs: two percent (2%); and

(5) All other merchandise not listed above, including all clothing, building materials, furniture, office equipment, appliances, home furnishings, garden equipment, livestock, animal feed, outboard

motors, all mined and dredged material, soil, coral, asphalt, aggregates, and all other tangible personal property: five percent (5%).

Source: S.L. No. 4L-35-97 §11-2, 5/10/97; S.L. No. 4L-92-99 §1, 3/1/99; S.L. No. 4L-113-99 §2, 7/13/99

§2-103 Sales tax exemptions, exclusions, and allocations. —

(1) Sales of sacramental wines to missions or religious institutions shall be exempt from §2-102(1).

(2) The taxes collected pursuant to §2-102(1) shall be divided into two parts by the Department of Treasury and Administration. Three-fourths of the amount collected shall be deposited into the General Fund. One-fourth of the amount collected shall be deposited into the Health Care Premium Fund created by 17 PC 4-156.

(3) Petroleum products sold directly to the Pohnpei Utilities Corporation for use in generators to produce electricity shall be taxed at the rate of one percent (1%).

(4) The taxes collected pursuant to §2-102(2) shall be maintained by the Department of Treasury and Administration in a separate revenue fund of the Pohnpei Treasury to be available for future legislative appropriation for the maintenance and repair of paved roads in the state of Pohnpei and for the state's contributions to the Infrastructure Maintenance Fund required under the Compact of Free Association, as amended.

(5) §2-102(4) shall not apply to foodstuffs derived from the lands and waters of the Federated States of Micronesia where the seller has commercial sales of all products covered by §2-102 less than one-thousand dollars (\$1,000) in any given calendar month in which such taxes would otherwise apply.

(6) Commercial fishing.

(a) At the discretion of the Governor, but pursuant to rules and regulations adopted pursuant to Title 8 Chapter 1, relating to administrative procedures, complete or partial exemptions from the sales tax for petroleum products [§2-102(2)] may be granted to the principal operator of a commercial fishing vessel based in the state of Pohnpei that provides jobs or training opportunities to residents of the state of Pohnpei, other than the principal operator. Any exemption shall not exceed the total sales tax otherwise due under §2-102(2).

(b) As used in this subsection:

(i) "Commercial fishing vessel" means any water-borne vessel, boat, ship or other craft that is used for, equipped to be used for, or of a type that is normally used in trade or other business purposes, for:

(aa) Fishing; or

(bb) Aiding or assisting one or more vessels at sea in the performance of any activity related to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation or processing;

(ii) "Principal operator" means any individual or corporate taxpayer who derives at least fifty-one percent (51%) of that taxpayer's gross annual sales from commercial fishing operations.

Source: S.L. No. 4L-35-97 §11-2A, 5/10/97; S.L. No. 6L-30-05 §1, 5/12/05

Note: §11-2A was inserted by S.L. No. 4L-92-99 §2, 3/1/99.

§2-104. Returns and payments. — The sales taxes levied under §2-102 shall attach at the time of the first commercial sale as defined in §2-101. All taxes that have attached during a calendar month shall be paid by the first seller to the Division on or before the 15th day of the succeeding month; EXCEPT that the Commissioner may make special provision for the time of payment of taxes from the outer islands of the state. Taxes not paid within the time specified above shall be considered delinquent and subject to the addition of interest and penalties as provided for in this title. Every seller, on or before the 15th day after the close of each month, shall make and file a full, true and correct return, pursuant

to rules and regulations and on such forms as prescribed by the Division. Returns not filed within the time specified above shall be subject to penalties as provided for in this title.

Source: S.L. No. 4L-35-97 §11-3, 5/10/97

§2-105. Presumption. — It shall be presumed that all items taxed under §2-102 have been sold within a period of three full calendar months after the month in which they were received, produced, extracted, manufactured, assembled or sewed in the state.

Source: S.L. No. 4L-35-97 §11-4, 5/10/97

CHAPTER 3
USE TAX
[DECLARED UNCONSTITUTIONAL]

Note: see Department of Treasury v. FSM Telecom. Corp., 9 FSM Intrm. 575 (App. 2000)

CHAPTER 4 HOTEL AND VEHICLE RENTAL TAX

Section

4-101 Definitions	4-104 Tax to be stated and charged separately from rent
4-102 Imposition of hotel tax	4-105 Certificate of registration
4-103 [Reserved]	4-106 Returns and payment

§4-101. Definitions. — As used in this chapter, unless the context otherwise requires:

(1) “Hotel” means any building or buildings in which the public may obtain for a consideration living or sleeping accommodations, or an establishment which holds itself out to the public by offering such accommodations for rent, whether or not the major portion of its operation receipts is derived from such accommodations. The term includes, but is not limited to, hotels, motels, tourist homes, bed-and-breakfasts, cabins, houses, courts, lodging houses, inns, rooming houses, apartels, boarding houses and private clubs; PROVIDED that the term “hotel,” for purposes of this title, shall be limited to accommodations normally rented or offered for rent to an individual or individuals for a consecutive period of less than 30 days, though individual occupants may extend for periods in excess of 30 days.

(2) “Operator” means any person operating a hotel or vehicle-rental agency, whether as owner or proprietor or as lessee, sublessee, mortgagee-in-possession, licensee or otherwise.

(3) “Unit” means any living or sleeping accommodation consisting of one or more rooms that, in the usual and ordinary conduct of business by a hotel, is offered for occupancy to the public.

(4) “Vehicle” means automobiles, vans, jeeps, buses carrying ten or fewer passengers, pick-up trucks, motorcycles and motor scooters normally rented without a driver being provided by the vehicle rental agency, and normally rented or offered for rent on an hourly, daily or weekly basis for a consecutive period of less than 30 days, though individual rentals may be extended for periods in excess of 30 days.

Source: S.L. No. 4L-35-97 §15-1, 5/10/97

§4-102. Imposition of hotel tax. — There is hereby levied a tax of five percent (5%) on the sale of all units of a hotel in the state. The hotel tax shall be imposed upon the total price charged for the unit, which price shall include every service and other charge imposed by the operator on the occupancy of the unit but shall not include restaurant, laundry, telephone or other charges for the use of individual facilities of the hotel not connected with the occupancy of the hotel unit. There shall be exempt from the tax imposed by this section:

(1) Any hospital, sanitarium, convalescent home, nursing home or home for the aged, infirm, indigent or chronically ill; and

(2) Any establishment operated by a corporation or association organized and operated solely for religious, charitable or educational purposes when such operation of an establishment is solely for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Source: S.L. No. 4L-35-97 §15-2, 5/10/97

§4-103. [Reserved]

Note: This section was reserved in the original law.

§4-104. Tax to be stated and charged separately from rent. — The taxes imposed by §§4-102 and 4-103 shall be a tax upon the customer and shall be stated and charged separately from the rental cost of the unit or vehicle on any statement of charges or other evidence thereof furnished to customers of the hotel or vehicle rental agency.

Source: S.L. No. 4L-35-97 §15-4, 5/10/97

§4-105. Certificate of registration. — No later than the effective date of the taxes imposed by §§4-102 and 4-103 and annually thereafter, each operator shall register with the Division the name and address of each place of business within each of the municipalities, towns or districts of the state wherein he operates a hotel or vehicle-rental agency. In addition to all other license fees and other fees required by law, the operator shall pay the sum of \$25 for each registration, upon receipt of which the Division shall issue a certificate of registration for each place, which certificate shall attest that the registration has been made. The registration shall not be assignable, shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein, and at all times shall be conspicuously displayed at the place for which issued. Any person who fails to register and obtain a certificate as provided in this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both so fined and imprisoned, together with costs of prosecution.

Source: S.L. No. 4L-35-97 §15-5, 5/10/97

§4-106. Returns and payment. — Hotel and vehicle-rental agency taxes shall attach on a daily basis on all sales or rentals received, accrued or earned, and returns shall be filed and payment of taxes made in accordance with §2-104.

Source: S.L. No. 4L-35-97 §15-6, 5/10/97

CHAPTER 5 [RESERVED– LUXURY TAX]

CHAPTER 6 [RESERVED – FUEL SALES TAX]

CHAPTER 7 BUSINESS LICENSE FEES NEXUS ACT

Section	7-103 Business establishment nexus required for
7-101 Short title	business license fee
7-102 Findings and intent	7-104 Transition

§7-101. Short title. — This chapter is known and may be cited as the “Business License Fees Nexus Act of 2007”.

Source: S.L. No. 6L-103-07 §1, 8/2/07

§7-102. Findings and intent. — The Legislature finds that in an increasingly global economy, improved transportation and communication facilities have resulted in an interdependent economy within the state of Pohnpei. As a result of improved transportation and communication infrastructure in Pohnpei, goods and services are able to travel freely within the state, providing consumers with more choices and laying the groundwork for future economic development in Pohnpei. The Legislature finds that local government taxation of the free flow of goods and services within Pohnpei poses a serious threat to future economic development in Pohnpei. The Legislature also recognizes the need of the local governments of Pohnpei for adequate revenues, and the right of local governments to tax business establishments located within their jurisdictions.

The Legislature finds that, pursuant to Article 7, Section 2 of the Pohnpei Constitution, Pohnpei has the duty to promote economic development. The Legislature finds that, pursuant to Article 11, Section 2 of the Pohnpei Constitution, the local governments have the sole authority to levy business license fees. The Legislature further finds that, in order to ensure the harmonious coexistence of both Article 7, Section 2 and Article 11, Section 2 of the Pohnpei Constitution, a business license fees nexus statute is necessary. Such a statute guarantees the free flow of goods and services necessary for economic development, while at the same time preserving to local governments the exclusive right to levy business license fees.

Source: S.L. No. 6L-103-07 §2, 8/2/07

§7-103. Business establishment nexus required for business license fee. —

(1) Local governments shall have sole authority to levy business license fees on all businesses with one or more business establishments located within their territory; PROVIDED, however, that wholesalers and taxi services operating in more than one local government jurisdiction shall not have to pay a fee in other than the local jurisdiction where their business establishment is located. Local governments shall not levy business license fees on businesses that do not have any business establishment located within their territory.

(2) For purposes of this chapter, “business establishment” means a permanent physical structure operating as a business. A business may have more than one business establishment. A personal residence that is used for business purposes does constitute a business establishment. A vehicle or vessel shall not constitute a business establishment unless such vehicle or vessel is fixed in a permanent location.

Source: S.L. No. 6L-103-07 §3, 8/2/07

§7-104. Transition. — Nothing in this chapter shall be interpreted to authorize any person to receive a refund of any portion of a business license fee that was paid prior to the effective date of this chapter. Nothing in this chapter shall be interpreted to authorize any person not to pay a business license fee such person was required to pay prior to the effective date of this chapter.

Source: S.L. No. 6L-103-07 §4, 8/2/07

TITLES 13 – 15
[RESERVED]

(Next page is Volume II, Title 16, Division II divider)