NITIJELA OF THE MARSHALL ISLANDS

25TH CONSTITUTIONAL REGULAR SESSION, 2004 **BILL NO:33ND1**

P.L. 2004-15

AN ACT

to amend certain provisions of the Income Tax Act, 1989, and to insert new language therein in order to strengthen enforcement of the Gross Revenue Tax provisions and to provide for higher and additional penalties for the violation of any of the provisions of the Income Tax Act.

BE IT ENACTED BY THE NITIJELA OF THE MARSHALL ISLANDS

Section 1. **Short Title**

This Act may be cited as the Income Tax (Amendment) Act, 2004.

Section 2. **Amendments.**

(1) The following provisions of the Income Tax Act, 1989 are hereby amended in the following manner;

§110. Returns, withholdings and payment of tax on gross revenue from business.

(1) Every business, on or before the last day of the month following the close of each quarter (on or before April 30, July 31, October 31 and January 31) shall pay, based on its gross revenue of the preceding quarter, the amount of tax imposed by this Chapter to the Secretary of Finance. Each business shall, on or before the date provided for payment of the tax under this subsection, make a full, true and correct return showing all such gross revenue received, accrued or earned, and the amounts deducted and set aside on account thereof during the preceding quarter, and which

shall be required by the Secretary of Finance. The Secretary of Finance, for good cause, may extend the time for making payments and returns, but not beyond the last day of the first month succeeding the regular due date thereof.

(2) Notwithstanding subsection (1) above, the Secretary of Finance is authorized to, and may enter into an arrangement with any business for the payment of gross revenue taxes or for the filing of gross revenue returns on a bi-weekly or monthly basis. The arrangement referred to herein means an arrangement to pay current gross revenue taxes and for the filing of current gross revenue returns, as distinguished from an arrangement to settle any past due and outstanding taxes or returns.

(3) Every business shall be liable for the payment of tax required to be deducted and paid by it to the Government of the Republic.

(4) Failure to comply with the provisions of this Section shall be punishable by the penalties prescribed by this Chapter.

§129. Examinations of books and witnesses.

(1) For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any tax or the liability at law or in equity of any transferee of any person of in respect of any tax, or collecting any such liability, the Secretary or his delegate, is authorized :

(a) to examine any books, papers, records, or other data which may be

relevant or material to such inquiry;

(b) to summon the person liable for tax or required to perform the act, or any officer or employee of such person or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under the oath, as may be relevant or material to such inquiry; and

(c) to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(d) to inspect all daily sales records and to obtain correct copies of such records for the purposes of this Chapter.

(2) A new Section 137 is hereby inserted to read as follows.

§137. Requirement for legible and accurate Records

All persons, corporations or business associations and entities, doing business in the Republic, are hereby required to maintain at all times, in the English language, legible and accurate business records of sales and other business transactions that are subject to tax requirements under this Act. Such records shall be maintained in the standard accounting format.

§141. Civil penalties.

The criminal penalties imposed by Section 140 of this Chapter for violation of provisions of this Chapter shall be separate from, and in addition to, all other penalties or interest provided for in this Section. The following civil penalties are hereby levied and shall be assessed and collected:

(a) except as may be permitted by the Secretary of Finance pursuant to Section 108 of this Chapter, if any taxpayer fails to make and file a return required under this Chapter, on or before the date set, unless prior to the date such taxpayer applied for and received an extension for reasonable cause, two percent (2%) of the tax shall be added to the tax for each thirty (30) days or fraction thereof between the due date of the return and the date on which it is actually filed; provided, however, that the minimum penalty under this Paragraph shall be fifty dollars ($50.00)

(b) any employer required to furnish a written statement prescribed in Section 105(2) of this Chapter who willfully fails to file such statements on the date prescribed therein, shall pay a penalty of five dollars fifty dollars ($50.00) for each such failure;

(c) after demand, in any case where the Secretary of Finance makes a return and assesses a tax after a taxpayer's failure or refusal to make and file a return and pay the tax required by this Chapter, the taxpayer shall pay a penalty of twenty-five

percent (25%) of the tax assessed, in addition to the penalty in Paragraphs (a) and (b) of this Section;

(d) if any part of any deficiency is due to fraud, with intent to evade the tax or any portion thereof, fifty percent (50%) of the total amount of such deficiency, in addition to the penalties provided in Paragraphs (a), (b) and (c) of this Section and in Section 144 below, shall be assessed and added to the deficiency amount; and

(e) if any tax or penalty imposed by this Chapter is not paid on or before the date prescribed for such payment, there shall be collected, in addition to such tax and penalties, interest on the unpaid balance of the tax principal, at the rate of one per cent (1%) month from its due date until the date it is paid.

(f) Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. The term "person", as used in this corporation, or a member or employee of a partnership who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(g) The following provisions shall apply with respect to the enforcement of a levy:

(i) Any person who fails or refuses to surrender any property or rights to property, subject to levy, upon demand by the Secretary, shall be liable in his own person and estate to the Republic in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum from the date of such levy. Any amount (other than costs) recovered under this Paragraph shall be credited against the tax liability for the collection of which levy was made.

(ii) In addition to the personal liability imposed by subparagraph (i) of this Paragraph, if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall be liable for a penalty equal to fifty percent of the amount recoverable under subparagraph (i). No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.

(2) The following new provisions are hereby inserted into the Act:

§144. Suspension and Revocation of Business License.

(1) In addition to the penalties set out under sections 140 and 141 and the courses of action available to the Secretary of Finance under sections 142 and 143, businesses that violate the provisions of this Act shall also be liable as follows:

(a) for a first offense, the business shall be liable to the penalties contained in sections 140, 141 and the procedures under sections 142 and 143.

(b) for a second offense, the Secretary of Finance shall recommend to the appropriate Local Government to suspend the businesses license for a period of three (3) months.

(c) for a third offense, the Secretary of Finance shall recommend to the appropriate Local Government to permanently revoke the business' license.

(2) For the purposes of this Section, the Secretary of Finance shall, enter into a Memorandum of Understanding with all Local Governments concerned, setting out a procedure for the suspension or revocation of a business license. The terms of such a Memorandum of Agreement shall first be approved by Cabinet.

§145. Incentive Fee

(1) Any person who has information that a violation of the provisions of this Act has been committed, or is about to be committed, and provides such information to the Secretary of Finance, and which information results in the successful conviction of the offender, such person shall be entitled to an incentive fee in an amount equal to five per cent (5%) of the fine payable under Section 140 of this Act. Such incentive fee shall be payable from the proceeds realized as penalties under Part IX herein.

(2) Any person who makes any false and frivolous complaints under Section 228 above shall be liable to a civil penalty in the amount of one thousand dollars ($1,000).

(3) "Person" as used in subsection (1) above does not include employees

of the Public Service Commission and other agencies of government who, by nature of their employment, are required to report such violations.

Section 3. **Effective Date**

This Act shall take effect on the date of certification in accordance with the Constitution and the Rules of Procedures of the Nitijela.

CERTIFICATE

I hereby certify:

(1) that the above Nitijela Bill No. **33ND1** was passed by the Nitijela of the Marshall Islands on the 25th day of October 2004; and

(2). that I am satisfied that Nitijela Bill No. **33ND1** was passed in accordance with the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela..

I hereby place my signature before the Clerk of the Nitijela on this 22nd day November 2004.

Attest:

Litokwa Tomeing
Speaker,
Nitijela of the Marshall Islands

Joe E Riklon
Clerk,
Nitijela of the Marshall Islands