

A BILL FOR AN ACT

To establish an export tax on garment products made or assembled in Koror and exported out of Koror, and on fish and fish products processed in, and exported from, Koror.

THE PEOPLE OF KOROR REPRESENTED IN THE LEGISLATURE OF THE STATE OF KOROR DO ENACT AS FOLLOWS:

SECTION 1. FINDINGS.

The Fourth Koror State legislature hereby finds that significant amounts of commercial activity are carried on within the State of Koror for the purpose of manufacturing, preparing, processing, or otherwise producing goods or materials which are sold or intended for use outside of the State of Koror. Particularly, garment manufacturers and commercial fishing operations which process fish in Malakal Harbor contribute to the environmental impact in and on the State of Koror, while the products of the commercial activity are destined for use or consumption elsewhere. In order for this commercial activity to occur, manufacturers and other producers are importing labor and materials, and they are contributing to the burden on the environment of the State of Koror by such activities. The people of Koror are subject to such environmental impacts, and are subject to all of the burdens of such commercial activity, without receiving any benefits from the commercial activity carried on for the purpose of producing garments or processing fish and fish products for export from the State of Koror.

The Legislature further finds that pursuant to 40 PNC 2101, et seq.; the state governments are prohibited from enacting any tax or fee which is charged by the National Government; the tax imposed by this Act is a tax upon goods, products, and other materials exported from the State of Koror or from the Republic of Palau, and the National Government does not have any tax or fee on such exported goods, products, or materials. In addition,

the National Government does not charge a tax or fee upon the processing of highly migratory fish in Koror, and no tax or fee is charged by the National Government upon garments and other clothing goods manufactured or processed in Koror which are intended for sale, use, or consumption outside of Koror or of the Republic of Palau. By recognizing the existence of 40 PNC 2101, et seq., and by conforming to such laws, the Legislature does not ratify 40 PNC 2101 et seq., nor does the Legislature admit or acknowledge the validity of 40 PNC 2101 et seq., under the Palauan Constitution.

SECTION 2. DEFINITIONS.

A. The following work, as used in this Act, shall have the definitions set forth herein:

1. "Person" shall mean any natural person, corporation, trust, partnership, business association, joint venture, sole proprietorship, club association, or any other form of association which may be engaged in any enterprise for economic gain. When used in the singular, it shall also refer to the plural. The word "he" or "his" shall also refer to "person", and shall mean the masculine as well as the feminine "person".

2. "Export" shall mean to remove or otherwise transport a product or products out of the State of Koror with the intent to place that product or products in international commerce; this shall include, but is not limited to, any fish or fish product, or garments and other clothing products, that will be sold, used, consumed, or otherwise made available outside of the State of Koror.

3. "Products" shall mean any highly migratory fish or byproduct thereof, or any garment or other clothing goods, which are assembled, manufactured, packaged, prepared for shipment, produced, processed, or otherwise prepared within the State of Koror.

4. "Director" shall mean the Director of Finance of Koror State Government.

5. "Administrator" shall mean the Koror State Executive Administrator.

6. "Tax" or "the tax" shall mean the tax imposed by this Act.

SECTION 3. ESTABLISHMENT OF TAX.

There shall be assessed, levied, collected, and paid a tax of three percent (3%) ad valorem on all products as defined in this Act. This Act applies specifically to the following activities: the receiving, storing, preparing, packing for shipment, or other processing of any form of highly migratory fish, including but not limited to all species of tuna, wahoo, barracuda, sharks, billfish, and ersuuch; and the sewing, assembling, producing, or manufacturing in Koror of clothing from native raw materials or from materials imported into Koror; all of which are intended for sale, use, or consumption outside of the State of Koror, and which are intended to be placed in international commerce. This Act shall not apply to any goods or materials placed in interstate commerce within the Republic of Palau.

SECTION 4. ASSESSMENT AND COLLECTION.

A. For the purposes of this Act, the value of a product for export shall be the value as of the time of sale, whether such sale occurs within or outside of the State of Koror, and regardless of where the payment for such products is actually made. Any person who must pay any tax under this Act shall, in addition to the specific records described below, maintain records and receipts setting forth a description of the product, the amount or weight of the product, the date of the sale of the product, and the sale price of all products to which this Act applies.

B. Every person engaging in any transaction subject to the tax levied or imposed under this Act shall keep a full and accurate record of each such transaction engaged in by him and such record shall be available for examination by the Administrator or his authorized representative for at least three years after the date of such transaction. Every person subject to the tax shall keep the following records and documents:

1. Any and all documents showing the value of the items to be exported, the sale product, price: and date including but not limited to contracts of sale, invoices, receipts-for money paid or received, records of accounts and accounts receivable, credit slips, and billing statements.

2. A daily record of all cash receipts of products for export, showing the date, total cash receipts, cash sales, payments on accounts receivable and miscellaneous receipts. Supporting documents comprised of cash register tapes, sales, slips, receipts, and other documents relating to cash received shall be retained in chronological sequence for examination.

3. A daily record of credit sales of products for export, showing date, name of purchaser, invoice/receipt number, amount, and consisting of sales invoices or receipts shall be retained in chronological sequence for examination.

4. Such other records as the Administrator may require.

C. Any person who intends to export any products from Koror shall personally, or through an authorized agent, appear at the office of Koror state Government to pay the tax called for in this Act on a quarterly basis, as set forth below. Such person shall provide the information set forth in subsection "E" below, shall show satisfactory proof of the value at the time of sale of the products exported, and shall pay the tax called for in this

Act. The receipt issued by Koror State Government shall be stained by the person liable for the tax established by this Act.

D. All taxes due and payable under this Act shall be paid at the Koror State Government office, and shall be payable to the Koror State Government Treasury. Upon payment of the tax, Koror State Government shall issue a receipt describing the items taxed, the weight of the items taxed, the value of the items taxed, the amount of tax paid, the name of person paying the tax, and the date of payment of the tax. No receipt shall be issued unless the person paying the tax provides all of the information required to be submitted under this Act.

E. All persons subject to the tax established under this Act shall file on a quarterly basis a true and correct return which provides all of the following information and documents:

1. the name of the person liable for and paying the tax;
2. a detailed description of all products for export subject to the tax which were exported during the previous quarterly reporting period, including but not limited to the volume, quantity, and weight;
3. the total value of the products exported during the quarterly reporting period;
4. copies of all documents such as invoices, bills, statements, contracts, receipts, vouchers, or other documents which show the value of the products as of the time of sale;
5. copies of all documents showing when the sale price, or portions thereof, were received by the taxpayer;
6. the total amount of the tax to be paid for the quarterly reporting period;
7. a statement that the return is true and correct, and signed under penalty of perjury.

F. The tax liability established by this Act shall commence on October 1, 1993, and shall apply to all sales of products on or after October 1, 1993; the months of October 1993, November 1993, and December 1993 shall be the first quarterly reporting period, and the first payment of the tax, and the filing of the first return, shall be due by January 31, 1994. Thereafter, all taxes shall be paid, and all returns shall be filed, on a quarterly basis and shall be paid and filed by April 30th, July 31st, October 31st, and January 31st of each year thereafter. For the purposes of this Act, all taxes

shall be payable for the quarterly reporting period in which the sales price, or portion thereof, is received by the person subject to the tax; in the event of installment payments or partial payments, the tax shall be paid quarterly on the amounts of the sale price received by the person subject to the tax during each quarterly reporting period.

SECTION 5. FAILURE TO PAY TAX.

A. Any person who fails to pay any tax as called for by this Act, or who fails to file a return or to provide the information called for at the time of payment of the tax, shall have the value of the tax assessed and collected as follows:

1. The Administrator may demand that the person comply with the provisions of this Act by filing a return and by providing the required information, or by paying the tax, or both.

2. If any person fails to meet all of the terms of the demand of the Administrator within fifteen (15) days of delivery of such demand to the person or the person's duly authorized agent, then the Administrator may cause an audit and inspection and an assessment of the tax due, as set forth below.

3. The duly authorized agent or representative of Koror State Government may audit and inspect all financial records and books of account of the person liable for the tax, including any subsidiaries or other persons who are subject to the provisions of this Act. Such agent may inspect any and all documents which show the information required to be maintained by this Act, and may specifically inspect and audit the documents, data, and other documents required by Sections "4.A." and "4.B." hereinabove.

4. After the audit and review described hereinabove, the Administrator shall deliver a "Notice of Assessment and Notice to Pay Delinquent Tax" to the person who failed to provide the information or to pay the tax, or both. Such notice shall contain the following:

- a. the date that the sales subject to this Act occurred;
- b. a description of the products;
- c. a description of the quantity or weight of the products, or other quantitative information;
- d. the sale price of the product;
- e. the amount of the tax due and owing, and the date it was due and owing;
- f. the amount of all interest accrued as of the date of

such notice;

g. the following notice shall also appear in a conspicuous place:
"YOU MUST PAY THE TOTAL AMOUNT STATED IN THIS NOTICE WITHIN THIRTY (30) DAYS, OR YOU MUST REQUEST IN WRITING A REVIEW OF THE TOTAL AMOUNT WITHIN THIRTY (30) DAYS, AND SUCH REQUEST FOR REVIEW MUST BE RECEIVED BY THE STATE EXECUTIVE ADMINISTRATOR WITHIN THIRTY (30) DAYS, OR YOU WILL AUTOMATICALLY BE LIABLE FOR THE TOTAL AMOUNT, AND COLLECTION EFFORTS MAY BE INSTITUTED AGAINST YOU".

5. If the taxpayer fails to comply with the "Notice of Assessment and Notice to Pay Delinquent Tax" by providing information or by paying the tax within thirty (30) days of delivery of such notice to the taxpayer, or if the taxpayer fails to deliver a written request for review of the Notice of Assessment and Notice to Pay Delinquent Tax to the administrator within thirty (30) days of delivery of such notice to the taxpayer, then the amounts set forth in the Notice of Assessment and Notice to Pay Delinquent Tax shall be presumed to be correct, and the Administrator may collect all amounts due and owing by any lawful means.

6. If the taxpayer makes a written request for review of the total assessment of the Administrator within thirty (30) days of delivery of such notice to the taxpayer, then the Administrator shall allow the taxpayer to refute the items and amounts assessed, and to produce any and all documents in support of the taxpayer's claim. The Administrator and the Director of the Koror State Finance Department shall be present to review the assessment and the evidence provided by the taxpayer. The Administrator shall cause a "Final Notice of Assessment and Notice to Pay Delinquent Tax" to be delivered to the taxpayer; such notice shall be in the form set forth in Section "5.A.4." hereinabove, but shall not contain the notice called for by Section "5.A.4.h." hereinabove, and such notice shall be delivered to the taxpayer within fifteen (15) days of the review by the Director and Administrator as described hereinabove.

7. If, after a review with the Director and the Administrator, the taxpayer disputes the "Final Notice of Assessment and Notice to Pay Delinquent Tax" as described in Section "5.A.6." hereinabove, then the taxpayer must file a petition with the Supreme Court of the Republic of Palau, Trial Division, within one (1) year of the date of delivery of such final notice to the taxpayer or the taxpayer's duly authorized agent. If the taxpayer desires to

contest the Notice of Assessment and Notice to Pay Delinquent Tax which becomes binding pursuant to Section "5.A.5," hereinabove, then such person must file an action in the Trial Division within one (1) year of the date of the Notice of Assessment and Notice to Pay Delinquent Tax. The taxpayer must pay to the Koror State Treasury all amounts called for by the Notice of Assessment and Notice to Pay Delinquent Tax, and the Final Notice of Assessment prior to the filing of any action in the Trial Division, such actions shall be dismissed. If the taxpayer fails to pay the amounts assessed and fails to file an action in the Trial Division within the time limit set forth above, then all such amounts assessed, including interest, shall be presumed to be correct, and the Administrator may proceed by any lawful means to collect all amounts assessed. The taxpayer shall have the burden of proof of rebutting all assessments of the Administrator with clear and convincing evidence.

8. Any petition filed in the Trial Division shall comply with the Palau Rules of Civil Procedure. In the event that the taxpayer is determined by the Court to be liable for any amount disputed by the taxpayer, then the taxpayer shall pay, in addition to all amounts determined to be due and owing and all interest, the costs and expenses, including attorney's fees, incurred by Koror State Government.

9. The interest called for by this Act shall continue to accrue from the time it attaches as set forth in this Act until the time all such amounts due and owing to Koror State under this Act are paid in full. Partial payment shall be credited first to interest, then to other costs or expenses, and finally to the principal amount of the tax due and owing.

10. The Administrator may compromise or settle any disputed claim only with the advice and consent of the Director, and only if such amounts are consented to by the Director. Any compromise or settlement must set forth in writing the name of the taxpayer, the amounts originally assessed, the amount of the compromise or settlement, and a statement of facts justifying such compromise or settlement.

11. The Administrator shall be responsible for maintaining records of all Notices of Assessment and Notices to Pay Delinquent Tax, including the Final Notice of Assessment and Notice to Pay Delinquent Tax, all written requests or other communications from the taxpayer, all relevant documents or attachments in support of any demand or assessment and notice to pay delinquent tax,

all communications from Koror State to the taxpayer, any compromise or settlement of claim, and any other information in support of any assessment or demand by the Administrator, or in support of any adverse claim by any taxpayer.

B. If any person finds or determines that any tax or penalty or interest, or other charge, was erroneously paid, then the taxpayer must make a written demand for the return of all monies erroneously paid, along with a statement in support of such demand. Such notice shall be delivered to the Administrator along with relevant evidence, within one (1) year of such erroneous payment, or such payment is presumed to be correct. The Administrator may accept or reject the demand only upon the advise and consent of the Director. The Administrator shall inform the taxpayer of the decision within thirty (30) Jays of submission of the written demand by the taxpayer. This subsection shall only apply to persons who pay the taxes and penalties and interest called for by this Act prior to the written demand of the Administrator as set forth .n Section "5.A.1." hereinabove.

C. In addition to collecting any delinquent tax, interest, or other charge or fee by any lawful method, the Administrator may suspend any and all business licenses issued by the State of Koror to the person liable for the tax imposed by this Act. If the tax is not paid in full, including all interest and other charges, within thirty (30) days of the suspension of a business license or licenses, then such business license or licenses may be revoked by the Administrator until all taxes, penalties, interest, and other charges have been paid in full.

D. The Administrator may make any further rules or regulations in writing for the purpose of implementing this Act, but such rules or regulations may not be inconsistent with this Act.

SECTION 6. PENALTIES.

A. Interest shall accrue on all unpaid taxes at the rate of 3% (three percent) for every (30) day period, or fraction thereof, that such tax remains unpaid in full. Interest shall accrue only on the amount of tax due, and shall continue to accrue at all times until the full amount of all taxes are paid, including the times when the taxpayer disputes or contests the amount of tax assessed under this Act. The interest described herein attaches the day after the deadline for the filing of a return and the payment of the tax.

B. Any person who violates any other provision of this Act shall, upon conviction, pay the following fines:

1. \$1,000.00 for the first offense
2. \$2,500.00 for the second offense;
3. \$10,000.00 for the third and all subsequent offenses.

C. In addition to the penalties described above, any person who violates any provision of this Act may have his business license, and the privilege of doing business, suspended for up to one year for the first offense, and may have such license revoked for the second and all subsequent offenses.

D. The penalties set forth in paragraph "B." hereinabove may also be enforced by Koror State Government in a civil action' for the purpose of collecting such penalties.

SECTION 7. PURPOSE.

A. The revenues generated by this Act shall be used for the following purposes, and in the following order:

- (1) to pay for any audits or reviews of taxpayer records;
- (2) to pay for the costs, including equipment, labor, and materials, for the regular maintenance and improvement of secondary and tertiary roads in the State of Koror, and to pay for the costs of erecting and maintaining road signs, divider lines, and other road safety features;
- (3) to pay for equipment, labor, and materials for the regular maintenance and clean-up of all public park areas in the State of Koror;
- (4) to pay for the purchase of trash collection vehicles, and to pay for the manpower to collect trash in Koror, and to improve the dump site located at M-Dock in Koror to prevent the overflow or movement of debris out of the dump into adjacent land and water areas;
- (5) to pay for equipment, labor, and materials to be used for the upgrade and regular maintenance and clean-up of Malakal Harbor, M-Dock, T-Dock, Skozio ra Meyuns, and other public park areas in the State of Koror;
- (6) to pay for the development and improvement of the dump site at M-Dock in Koror, in the event that such site is eventually closed and relocated;
- (7) to pay for any other impact on the environment of Koror as a result of business activities carried on for the purpose of exporting products from Koror, as determined and appropriated by the Koror State Legislature.

8. The tax shall be levied, assessed, and collected for as long as products are exported from the State of Koror.

SECTION 8. SEVERABILITY.

If a court of competent jurisdiction holds that a part or parts of this Act are invalid, the remaining portions shall not be affected and shall continue in full force and effect.

SECTION 9. EFFECTIVE DATE.

This Act shall become effective upon its approval and determination, pursuant to 40 PNC 2101, et seq., that this Act does not charge a tax or fee on activities charged a tax or fee by the national government.

PASSED ON JUNE 18, 1993

CERTIFIED BY: /s/ _____
SALVADOR TELLAMES
SPEAKER

ATTESTED BY: /s/ _____
MARLENA SATO
ASSISTANT CLERK

APPROVED ON THIS 12TH DAY OF July 1993.

/s/
Ibedul Yutaka M. Gibbons
Paramount Chief
House of Traditional Leaders