TAXATION

There appears to be uniform acceptance by common law jurisdictions of the principle that government officials are considered employees for income tax purposes. This amounts to a common law rule of taxation and yields a result in harmony with the underlying principles of the taxation system established by the Federated States of Micronesia Income Tax Law. Rauzi v. FSM, 2 FSM R. 8, 12 (Pon. 1985).

A Pohnpei state government official is an employee for purposes of the Federated States of Micronesia Income Tax Law. Rauzi v. FSM, 2 FSM R. 8, 12 (Pon. 1985).

There is a common law of taxation which addresses the status of public officials as employees. Rauzi v. FSM, 2 FSM R. 8, 17 (Pon. 1985).

The FSM Income Tax Law's distinction between employees and businesses obviously reflects congressional expectation that businesses and employees are generally distinguishable on the basis of whether generation of their income would require substantial expenditures by them. Rauzi v. FSM, 2 FSM R. 8, 19 (Pon. 1985).

The Federated States of Micronesia Income Tax Law confirms that it is the nature of the services performed and the person performing the services, rather than the stated identity of the contracting party, which determines the tax treatment for the compensation under the contract. It is of no import that the "contractor" was identified as a corporation rather than as an individual when the contract makes clear that the primary services to be rendered were those of an individual and the corporation was merely a name under which the individual conducted business. Heston v. FSM, 2 FSM R. 61, 64 (Pon. 1985).

A taxpayer who held the high public office of Chief of Finance, whose contract gave him a wide degree of discretion in carrying out governmental powers; and who was not an outside consultant who could merely suggest or advise but was an integral part of the governmental operation is a governmental official, therefore an employee for purposes of the FSM Income Tax Law. Heston v. FSM, 2 FSM R. 61, 65 (Pon. 1985).

All government officials are employees of the government within the meaning of the Federated States of Micronesia Income Tax Law. Heston v. FSM, 2 FSM R. 61, 65 (Pon. 1985).

Although plaintiff incurred expense in carrying out his obligations under contract, they were well below ten percent of the amount he received under the contract. Such expenditures are insufficient to alter plaintiff's status from an "employee" to a "business" under the FSM Income Tax Law. Heston v. FSM, 2 FSM R. 61, 66 (Pon. 1985).

The statement in 54 F.S.M.C. 144(2) that penalties provided in chapter 1 will apply to the gross revenue tax law does not preclude the penalty specified in 54 F.S.M.C. 902 from applying. FSM v. George, 2 FSM R. 88, 91 (Kos. 1985).

Public Law No. 3-32, the predecessor of 54 F.S.M.C. 902 is subject to the interpretation that it was to be a catch-all provision applicable to all taxes which subsequently might be established by Congress. FSM v. George, 2 FSM R. 88, 94 (Kos. 1985).

The penalty provisions of 54 F.S.M.C. 902 apply to failure to make timely payment of the gross revenue tax imposed under 54 F.S.M.C. 141. FSM v. George, 2 FSM R. 88, 94 (Kos. 1985).

The gross revenue tax levied by the national government under 51 F.S.M.C. §§ 141-44 is distinguishable from a sales tax in several ways. Ponape Federation of Coop. Ass'ns v. FSM, 2 FSM R. 124, 127 (Pon. 1985).

The power granted to Congress by FSM Constitution article IX, section 2(e) "to impose taxes on income" includes the power to tax gross revenue. Afituk v. FSM, 2 FSM R. 260, 264 (Truk 1986).

The gross revenue tax as enacted by the Congress of Micronesia continued in effect in the Federated States of Micronesia by virtue of the transition article of the FSM Constitution but, because it was subsequently amended by the FSM Congress and was included in the codification of FSM statutes, may now be considered a law enacted by Congress. Afituk v. FSM, 2 FSM R. 260, 264 (Truk 1986).

Statutory provisions designed to enhance the capacity of the government to enforce penalties for failure to pay taxes are penal, not remedial, and should be strictly construed. In re Island Hardware, Inc., 3 FSM R. 428, 432 (Pon. 1988).

On a claim for declaratory relief from an unconstitutional excise tax, the FSM Supreme Court trial division will not abstain, where the issue could later be certified to the FSM Supreme Court appellate division and result in delay, where the trial court has already retained the case longer than contemplated, where the issue is narrowly posed and not capable of varying resolutions, and where it appears that a greater service may be provided by deciding the issue. Gimnang v. Yap, 4 FSM R. 212, 214 (Yap 1990).

In the Federated States of Micronesia Income Tax Law, 54 F.S.M.C. 111 *et seq.*, cooperatives are not singled out in any way within the definition of business and there is no indication in the tax law that cooperatives are to be treated differently than corporations or any other forms of businesses. KCCA v. Tuuth, 5 FSM R. 68, 70 (Pon. 1991).

Each exclusion from the definition of "gross revenue" in 54 F.S.M.C. 112(5) seems to represent one or another of three possible purposes: to prevent dual taxation of revenue of a single taxpayer, to make allowances for special situations, or to exclude funds received by the taxpayer on behalf of another such as refunds and rebates, moneys held in a fiduciary capacity, cash discounts taken on sales, or proceeds of sales of goods returned by customers when the sale price was refunded in cash or by credit. KCCA v. Tuuth, 5 FSM R. 68, 70-71 (Pon. 1991).

Patronage refunds paid by a cooperative to its members are not refunds within the meaning of 54 F.S.M.C. 112(5)(a) and are not excludable from gross revenue under the FSM Tax Law. KCCA v. Tuuth, 5 FSM R. 68, 71 (Pon. 1991).

A sales tax is oriented toward individual transactions, not total income, and is tied to the price of the goods sold, rather than to the overall success of the taxpayers. Youngstrom v. Kosrae, 5 FSM R. 73, 76 (Kos. 1991).

An income tax typically applies to practically all income, with rates payable based on the

total income of the taxpayer, after giving allowance to certain exemptions, and normally extends to all forms of income, including wages and salaries, interest, royalties, fees and returns on capital, as well as income realized through the sale of goods. Youngstrom v. Kosrae, 5 FSM R. 73, 76 (Kos. 1991).

Limitation of the definition of "business" under the FSM income tax law to "all activities . . . carried on within the Federated States of Micronesia" strongly implies that activities carried on elsewhere by a business functioning within the Federated States of Micronesia are not subject to FSM income tax. 54 F.S.M.C. 112(1). Bank of the FSM v. FSM, 5 FSM R. 346, 348 (Pon. 1992).

While there is a presumption that all revenue of a business is derived from sources within the Federated States of Micronesia, the presumption may be rebutted and the tax "levied only on that portion which is earned or derived from sources or transactions within the Federated States of Micronesia." 54 F.S.M.C. 142. Bank of the FSM v. FSM, 5 FSM R. 346, 349 (Pon. 1992).

The statutory scheme emphasizes the location of the business activity which generates the revenue in question. Therefore revenue derived from banking investment transactions in Honolulu and Chicago are not taxable since they are not derived from sources or transactions within the Federated States of Micronesia. Bank of the FSM v. FSM, 5 FSM R. 346, 349 (Pon. 1992).

Where regulations existed referring to a patronage refund as a "bonus or refund" at the time Congress enacted the statute excluding refunds from the definition of gross revenue, the statute unambiguously excludes patronage refunds from gross revenue. KCCA v. FSM, 5 FSM R. 375, 379-80 (App. 1992).

Patronage refunds are not voluntarily paid refunds because the regulations compel the allocation of patronage refunds. Therefore they are properly excludable from gross revenue. KCCA v. FSM, 5 FSM R. 375, 380 (App. 1992).

Under 54 F.S.M.C. 902, a monthly penalty is imposed on delinquent payment of any tax specified in Title 54, including gross revenue tax. Setik v. FSM, 5 FSM R. 407, 409 (App. 1992).

54 F.S.M.C. 143(2) mandates that all businesses compute gross revenue tax liability using the accrual accounting method. NIH Corp. v. FSM, 5 FSM R. 411, 413 (Pon. 1992).

By statute, a taxpayer is liable for penalties and interest on any underpayment of his gross revenue tax liability regardless of the reason for underpayment, unless some other principle of law applies to afford the taxpayer relief. NIH Corp. v. FSM, 5 FSM R. 411, 413-14 (Pon. 1992).

Where the government's prior audit methods had the effect of permitting gross revenue tax computation on the cash basis and where the government's attempts to advise businesses that they are required to use the accrual method have for many years been woefully inadequate, the government will be barred by equitable estoppel from assessing penalties and interest on any underpayment of taxes that was the result of being led to believe that the cash basis was an acceptable method of tax computation. NIH Corp. v. FSM, 5 FSM R. 411, 415 (Pon. 1992).

Moneys held in a fiduciary capacity are specifically excluded by statute from the definition of

gross revenue. 54 F.S.M.C. 112(5)(b). The term "fiduciary capacity" is not restricted to technical or express trusts, but extends to money that is not the taxpayer's own, but which is handled for the benefit of another. NIH Corp. v. FSM, 5 FSM R. 411, 416 (Pon. 1992).

A taxpayer who owes social security taxes to the government as employer contributions under the FSM Social Security Act is liable for reasonable attorney's fees if the tax delinquency is referred to an attorney for collection; however, the court may exercise discretion in determining the reasonableness of the fees assessed in light of the particular circumstances of the case. FSM Social Sec. Admin. v. Mallarme, 6 FSM R. 230, 232 (Pon. 1993).

Among the factors which the court may consider in determining the amount of attorney's fees recoverable in an action brought under 53 F.S.M.C. 605 is the nature of the violation, the degree of cooperation by the taxpayer, and the extent to which the Social Security Administration prevails on its claims. FSM Social Sec. Admin. v. Mallarme, 6 FSM R. 230, 232-33 (Pon. 1993).

Rents are income taxable under the FSM Income Tax Statute, and a state tax on gross rental receipts combines to create vertical multiple taxation of a form of income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 119 (App. 1995).

The name given a tax by a taxing authority is not necessarily controlling as to the type of tax it is. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 119 (App. 1995).

The interval in which a tax is reported and collected and whether it is imposed without regard to profit or loss does not alter whether it is an income tax. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 119 (App. 1995).

The Social Security Administration is entitled to summary judgment for unpaid taxes when it supported its motion with an affidavit detailing the a taxpayer's audit and other evidence indicating the taxpayer's liability, and the taxpayer has provided no evidence to indicate otherwise. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 442, 445-46 (Pon. 1996).

The Social Security Administration is entitled to a penalty of not more than $1,000 and interest of 12% on unpaid taxes. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 442, 446-47 (Pon. 1996).

A taxpayer is liable to the Social Security Administration for reasonable attorney's fees and costs when unpaid taxes are referred to an attorney for collection to the extent which the Social Security Administration prevails on its claims. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 442, 447 (Pon. 1996).

It is unavailing in tax cases, except in special circumstances, to seek a preliminary injunction against enforcement or to have the taxes escrowed pending the outcome. This is in order not to disrupt the financial stability of the governmental unit. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 127 (Chk. 1997).

Under 53 F.S.M.C. 605(3) an employer is delinquent each quarter that it fails to both file a report and pay within ten days after the end of the quarter. Therefore an employer may be subject to the maximum penalty of $1,000 each time (quarter) it is delinquent. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 132 (App. 1997).

Both interest, 53 F.S.M.C. 605(4), and penalties, 53 F.S.M.C. 605(3), may be applied to an employer who is delinquent, as was intended by Congress. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 132-33 (App. 1997).

The following factors are relevant to determining whether fishing fees are taxes: 1) the source of the levy – whether the entity imposing the tax is legislative or administrative; 2) the effect of the levy on the general public – whether the assessment is imposed upon a broad or narrow class; 3) the means by which the levy is made – whether it is voluntary, and produces a benefit to the payor which is commensurate with the payment; and 4) the relationship between the levy and government costs – whether the revenue generated bears a relationship to the costs of the government in administering the particular program. Chuuk v. Secretary of Finance, 8 FSM R. 353, 382-83 (Pon. 1998).

Cases distinguishing between taxes and fees often examine the source of the levy as an indicator of whether the particular payment should be considered a tax or a fee. An assessment imposed directly by the legislature is more likely to be a tax than one imposed by an administrative agency. The classic tax is imposed by a legislature upon many, or all citizens; the classic regulatory fee is imposed by an agency on those subject to its regulation. Chuuk v. Secretary of Finance, 8 FSM R. 353, 383 (Pon. 1998).

Courts also consider whether a governmental levy is directed at the general public, or whether it is imposed on a discrete subsection of the public, in distinguishing between a tax and a fee. An assessment imposed on a broad class of parties is more likely to be a tax than one imposed on a narrow class. One distinguishing characteristic of a fee is that the public agency normally may exact a fee for a grant which, presumably, bestows a benefit on the applicant, not shared by other members of society. Chuuk v. Secretary of Finance, 8 FSM R. 353, 383 (Pon. 1998).

Another distinction between a tax and a fee is whether the levy is exacted voluntarily in exchange for a benefit to the payor. Taxation is a legislative function, and Congress, which is the sole organ for levying taxes, may act arbitrarily and disregard benefits bestowed by the Government on a taxpayer and go solely on ability to pay, based on property or income. A fee, however, is incident to a voluntary act, *e.g.*, a request that a public agency permit an applicant to practice law or medicine or construct a house or run a broadcast station. Chuuk v. Secretary of Finance, 8 FSM R. 353, 384 (Pon. 1998).

A fee for use of property which is controlled by the government is not necessarily a tax, because the government is entitled to receive the benefits of its property just like any private landowner. As a sovereign, the government levies taxes, but as property owner it may charge fees for the use of its property. These fees are paid by choice and in exchange for a particular benefit, the use of government property, just as rents are freely paid for the use of private property. Chuuk v. Secretary of Finance, 8 FSM R. 353, 385 (Pon. 1998).

Revenues from natural resources are not taxes. The constitutional definition of tax was not meant to include amounts received by the national government from disposal of natural resources over which it has control. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386-87 (Pon. 1998).

Although the government is not precluded from charging and trying, in one information,

violations of two or more separate provisions of the FSM codes which arise from the same course of conduct, but when the case involves conduct specifically addressed by the tax code (which has comprehensive civil and criminal penalties established for a clearly stated purpose) the government cannot also seek to charge the defendant with alternative violations of criminal code sections providing for criminal penalties up to ten times greater than those allowed under the tax code and which were not clearly intended to apply to tax crimes. FSM v. Edwin, 8 FSM R. 543, 546 (Pon. 1998).

The legislative history of Title 54 indicates that it was created as a system primarily aimed at recovering revenue rather than punishing wrongdoers with lengthy prison sentences and that the fines and criminal penalties adopted in it were thought to be commensurate with the specified wrongdoing. FSM v. Edwin, 8 FSM R. 543, 547 (Pon. 1998).

There is no clearly expressed Congressional intent for the criminal code to be used to prosecute tax crimes. Since the FSM had existing laws with comprehensive civil and criminal penalties applicable to tax crimes at the time the criminal code was adopted, the implication is that the criminal code was not intended for the purpose of prosecuting such crimes. FSM v. Edwin, 8 FSM R. 543, 549 (Pon. 1998).

The penalties applicable to criminal mischief pertain to deterring the commission of the crime not for the primary purpose of raising revenue as with the tax code which has comprehensive civil and criminal penalties designed specifically for that purpose. FSM v. Edwin, 8 FSM R. 543, 549 (Pon. 1998).

A four-part analysis is applied to determine whether fishing fees are taxes: 1) the source of the levy, 2) the effect of the levy on the general public, 3) the means by which the levy is made, and 4) the relationship between the levy and government costs. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

Whether fishing fees are uniform is immaterial to a finding that fishing fees do not constitute a tax. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

How Congress appropriates fishing fees is irrelevant to whether they are a tax. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

For tax purposes, the FSM Telecommunications Corp. is deemed part of the national government thereby making it exempt from a state use tax. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 292, 294 (Pon. 1999).

Because a Congressional statute set up Telecom to serve the public interest and foster economic development, because Telecom may seek appropriations from Congress and, to the extent approved by the President, grants from sources outside of the FSM, because Telecom's board of directors must submit an annual report reflecting its activities, including financial statements, to the government, and because Telecom has no independent shareholders and is fully owned by the national government, Telecom is deemed, for taxation purposes, to be a part of the national government, and its efforts to carry out its mission should not be hindered by any state's efforts to tax its business activities. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 385 (Pon. 2000).

By making the taxing powers allocated between the national and state governments of

Micronesia exclusive and distinct and allocating the exclusive power to tax income and imports, the Constitution's framers sought to avoid vertical multiple taxation and ensure a consistent fiscal policy for Micronesia. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 387-89 (Pon. 2000).

A normal English language reading of the phrase "the revenues" in article IX, section 5's second sentence necessarily refers to those revenues mentioned in section 5's first sentence – national taxes. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

The Constitution delegates to the national government the power to impose only two types of taxes – that based on imports and that on income. Money collected through these forms of taxation are the revenues of which half must be paid into the treasury of the state where collected. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

Fishing fees are not income taxes because the national government's power to impose them does not derive from its power to tax income. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

Not less than half of the national taxes must be paid to the state where collected, but fishing fees are not national taxes because they are imposed, not under the national government's power to impose taxes, but under its power to regulate exploitation of natural resources within the FSM exclusive economic zone. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

Fishing fees are not an income tax because they are not a tax. The national government has the exclusive sovereign right to control access to and exploitation of the natural resources in the FSM's exclusive economic zone and when it imposes fishing fees, the national government is selling access to the exclusive economic zone's living resources to its fishing licensees and it is selling the licensees the opportunity to reduce some of those resources to the licensees' proprietary ownership. Chuuk v. Secretary of Finance, 9 FSM R. 424, 436 (App. 2000).

Gross revenue is defined as the gross receipts of the taxpayer derived from trade, business, commerce, or sales and business is defined to mean any undertaking carried on for pecuniary profit carried on within the FSM for economic benefit either direct or indirect. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 29 (Pon. 2001).

Once the Secretary of Finance determines that a taxpayer has failed to pay the gross revenue tax it owes, he notifies the taxpayer and demands that the tax be paid. If the taxpayer fails within 30 days to make and file a return and pay the tax which has been assessed, it is appropriate for the Secretary to make a return for the taxpayer from the information available to the Secretary and to assess that amount against the taxpayer. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 31 (Pon. 2001).

Pursuant to 54 F.S.M.C. 152(3), the Secretary's gross revenue tax assessment is be presumed to be correct unless and until it is proved incorrect by the person, business, or employer disputing the amount of the assessment. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 31 (Pon. 2001).

When the taxpayer has failed to meet its the burden of showing that the Secretary's

assessment was incorrect and has failed to put forth competent evidence in opposition to the Secretary's summary judgment motion and its lengthy opposition contained only legal argument, the taxpayer has failed to submit evidence establishing that the Secretary's assessment was incorrect and summary judgment in the Secretary's favor is appropriate. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 31 (Pon. 2001).

Import taxes are an exclusive national power, and as such it is a power that is prohibited to the states. MGM Import-Export Co. v. Chuuk, 10 FSM R. 42, 44 (Chk. 2001).

When a plaintiff is due what he should have been paid during the two-week notice period that was required by his contract, but was not paid, the court will award that as damages and the employee's share of taxes should be deducted from this amount and paid to the appropriate taxing agencies as required by law and the employer's share of applicable taxes should not be deducted from this amount, but should be paid to the appropriate taxing agencies as required by law. Reg v. Falan, 14 FSM R. 426, 435 (Yap 2006).

When "first sale" is defined as "the sale first made after the date of receipt in Chuuk State of taxable tangible items, a tax on first sale in the State of Chuuk of all tangible items, except gasoline and unprocessed and unpackaged items, means that in order for an item to be taxable, there must be "receipt of the item" in Chuuk. The only reasonable inference to be drawn from the definition of "first sale" is that items which have never left Chuuk, that is, locally produced goods are not subject to the statute because they have no "date of receipt" in Chuuk. K&I Enterprises v. Francis, 15 FSM R. 414, 418 (Chk. S. Ct. Tr. 2007).

The Chuuk service tax is to be paid by the customer, person, company, or entity obtaining the services, and must be collected by the person, company, or entity providing the services. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 156 (Chk. 2010).

When Chuuk has warned Continental that it is required to collect a service tax as set forth in a regulation implementing a tax statute and that criminal penalties may be imposed on Continental or its employees for failure to comply, the question of whether the Chuuk service tax on Continental passengers and freight shippers is lawful is sufficiently ripe to support a suit seeking declaratory judgment. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 157-58 (Chk. 2010).

It is inconceivable that a party could be made to suffer criminal or civil penalties for the failure to collect a tax but would not have standing to challenge the tax's constitutionality (and thus the requirement that the party must collect it). The inability of a party required by law to collect a tax to challenge that tax's validity would deprive that party of its property (compliance costs, tax collection costs, remittance costs, etc.) without any due process of law. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 158-59 (Chk. 2010).

The unconditional 50% transfer of national taxes to the state treasuries is part of the constitutional framework that, through mandatory revenue sharing, allows the states a high degree of fiscal autonomy while at the same time avoiding undesirable vertical multiple taxation. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 530 n.3 (Chk. 2011).

The Constitution expressly grants the national government, not the state governments, the power to regulate foreign and interstate commerce, and taxation is a form of regulation. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 531 (Chk. 2011).

Pohnpei's first commercial sales tax is assessed against the seller on the first commercial sale within the state. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 31 (Pon. 2011).

The court cannot accept an interpretation that operating a business within Pohnpei is, in and of itself, sufficient to establish the applicability of Pohnpei state tax law due to minimum contact analysis because to accept it would be to accept that a business whose task it is to act as an intermediary or broker between two clients – a producer and a consumer – who are both based outside the FSM would be assessed the Pohnpei first commercial sales tax, even if the tangible personal property never entered Pohnpei since this is the very heart and soul of international commerce. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 32 (Pon. 2011).

When a procurement contract clearly contemplated that the transaction would not be complete until Chuuk had had a chance to inspect, certify, and verify the goods which were the subject of the contract, and thereby accept them; when the procurement contract secured this by withholding payment of the final 25% of the contract amount until acceptance; when the risk of loss remained with the Pohnpei seller until the goods were duly delivered and accepted in Chuuk; and when, although Chuuk eventually paid for the shipping, the seller took on the initial burden and risk by paying for it up front, the locus of performance of the contract was in Chuuk. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 33-34 (Pon. 2011).

Retailers pass on sales taxes to their customers at the cash register, which is commonly and appropriately known as the point of sale. In such retail operations, a customer takes delivery of the goods and perhaps even inspects them at the point of sale. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 34 (Pon. 2011).

Goods cannot properly be deemed to have been sold until both parties to the sale have performed. Performance by the buyer requires payment in full or execution of some sort of instrument of credit which the seller is willing to accept in lieu of payment in full. Performance by the seller requires delivery. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 34 (Pon. 2011).

When the buyer, did not pay in full until it had a chance to inspect the goods at one of two specified warehouses in Chuuk and the seller did not complete performance until it had delivered the goods there, the goods were not sold until both performances were completed. Since the locus of performance was Chuuk, the locus of the transaction was likewise in Chuuk – *i.e.*, the goods were sold in Chuuk and because the goods were sold in Chuuk, the Pohnpei state sales tax could not attach to the transaction. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 34 (Pon. 2011).

The Chuuk cigarette tax is part of a tax on the first sale in Chuuk of all tangible items, except unprocessed and unpackaged items. Cigarettes are taxed at the rate of two dollars per pack of 20 cigarettes or at a rate of 10 cents per one cigarette. The statute requires that all sellers keep accurate sales records of taxable sales and that they are to compute their tax liability from those records, and cigarettes are presumed sold within four months of receipt in Chuuk unless the importer can prove the contrary. The importer has the burden of overcoming this statutory presumption and proving that there were no taxable sales. Harper v. Chuuk State

Dep't of Admin. Servs., 19 FSM R. 147, 153-54 (Chk. 2013).

Unless a cigarette importer produces evidence to overcome the Chuuk tax act's presumption that the cigarettes were sold after importation, the statutory presumption that he sold the cigarettes he brought into Chuuk would stand and he therefore would be liable to the state for the sales tax he should have collected from the buyers when the cigarettes were sold. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

The Chuuk State Tax Act of 2012 provides that if the taxes it imposes are due and unpaid, including penalties charged, the taxes are debts to the state and will constitute liens in favor of the state on all property belonging to the person, business, association, or corporation liable for the tax, and such taxes and penalties may be collected by levy upon such property in the manner as the levy of an execution. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

The Chuuk Legislature can grant a state administrative agency the power to levy in the manner of a levy of an execution for statutory liens held by the state so long as due process concerns are addressed by such mechanisms as a prompt post-levy (or post-execution) hearing being available. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

The determination of whether an assessment is a tax or a fee involves a three-part test that looks to different factors: 1) what entity imposes the charge; 2) what population is subject to the charge; and 3) what purposes are served by the use of the monies obtained by the charge. The classic tax is imposed by a legislature upon many, or all, citizens. It raises money contributed to a general fund, and spent for the benefit of the entire community. The classic regulatory fee is imposed by an agency upon those subject to its regulation. It may serve regulatory purposes indirectly by, for example, raising money placed in a special fund to help defray the agency's regulation-related expenses. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

When the health care assessments or premiums are not imposed by the Chuuk Legislature but are imposed by a public corporation, the Chuuk Health Care Plan through its Board and when the assessments or premiums are not deposited in the Chuuk General Fund but into a special trust fund, these attributes of the premium assessments are characteristic of a classic fee and the opposite of a classic tax. Even though the funds raised will be spent, at least indirectly, for the benefit of the entire Chuuk community since the funds will be spent for the benefit of people needing or using health care services, which is nearly everyone in Chuuk at one time or another, the premium assessments lie nearer the fee end of the spectrum than the tax end. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

Courts facing cases that lie near the mid-point of the spectrum between the classic tax and the classic fee have tended to emphasize the revenue's ultimate use, asking whether it provides a general benefit to the public of a sort often financed by a general tax, or whether it provides more narrow benefits to regulated companies or defrays the agency's costs of regulation. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

When the health insurance premiums and assessments are not raised for general revenue purposes and cannot be used for any Chuuk state government activity and can only be used for the purposes of the Health Care Plan Act and when the premiums or assessments help defray

the cost of providing medical care, the benefits they provide are not of the sort often financed by a general tax. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

Generally, an assessment may be a fee rather than a tax when it is not used for general purposes but is used to defray the expense of performing the duties imposed on the agency and for the general purposes and expense of carrying an act into effect. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

A "fee" is a charge fixed by law for services of public officers and is regarded as compensation for services rendered, but a charge having no relation to services rendered, assessed to provide general revenue rather than compensation, is a "tax." Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

Any payment exacted by the state or its municipal subdivisions as a contribution toward the cost of maintaining governmental functions, where special benefits derived from their performance are merged in general benefit, is a "tax," while a "fee" is generally regarded as a charge for some particular service. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

The primary purpose of a "tax" is to obtain revenue for the government, while the primary purpose of a "fee" is to cover expense of providing a service or of regulation and supervision of certain activities. In distinguishing fees from taxes, fees are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22-23 (App. 2015).

There is a three-part test to determine whether an assessment is a tax or a fee: 1) what entity imposes the charge; 2) what population is subject to the charge; and 3) what purposes are served by the use of the monies obtained by the charge. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23 (App. 2015).

Fees that are paid into the general public treasury, and disbursable for general public expenses, are taxes. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23 (App. 2015).

If the premiums collected were a tax, the funds would be deposited into the Chuuk treasury, which can only be appropriated by law for a public purpose. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23 (App. 2015).

When all revenues received under a system of medical or health insurance, and all other revenues received by the Health Department as payment for medicine and medical services, must be separated from any general fund established by the Legislature and used only for medical purposes, this supports the position that premiums collected by the insurance plan do not fall under the characteristics of a tax because the funds collected are mandated to be separated from other funds collected. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23-24 (App. 2015).

When, although it is the employed residents of Chuuk who are making health insurance premium contributions, the benefit of medicines and medical services are applied to the general public this would favor considering the payments a tax instead of a fee. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 24 (App. 2015).

Generally, an assessment may be a fee rather than a tax when it is not used for a general purpose but is used to defray the expense of performing the duties imposed on the agency and for the general purpose and expense of carrying an act into effect. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 24 (App. 2015).

The statutory scheme grants the national government the authority to determine the amount of tax due and to collect those taxes. Under 54 F.S.M.C. 152(3), the Secretary of Finance's assessment of the tax amount is presumed correct unless and until it is proven incorrect. The statutory scheme also permits a tax levy on the lien created by 54 F.S.M.C. 153. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125-26 (Pon. 2015).

It is not a bank's duty to challenge the tax authorities' assessment of the amount of tax due from a taxpayer depositor. It is the taxpayer's responsibility to dispute any tax assessed that it disagrees with and for the taxpayer to resolve the issue with the FSM tax authorities. It also is not the bank's responsibility to challenge the constitutionality of 54 F.S.M.C. 153 or the FSM's interpretation of that statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

Usually, notice and an opportunity to be heard is given prior to deprivation, but a government does not need to follow this in the case of taxes. The government must, however, provide a post-deprivation opportunity to challenge the tax and a clear and certain remedy. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

Judicial review of an adverse Secretary of Finance decision may be had by an aggrieved taxpayer filing a petition naming the Secretary or his successor in office as the defendant and setting forth assignments of all errors alleged to have been committed by the Secretary in his determination of the tax assessment, the facts relied upon to sustain such assignments of errors, and a prayer for appropriate relief. It will not be dismissed merely because it was labeled a "Complaint" and not called a "Petition" because, regardless of what a party has chosen to call the papers they have filed, those papers are what they are based on their function or the relief they seek, and the court must treat them as such. Fuji Enterprises v. Jacob, 20 FSM R. 279, 280 (Pon. 2015).

When a complaint meets 54 F.S.M.C. 156(1)'s procedural requirements for judicial review of a tax assessment and when the relief that is prayed for is permitted by 6 F.S.M.C. 702(1) (claims for recovery of taxes and penalties) and possibly 6 F.S.M.C. 702(2), (4), and (5) (claims for damages from governmental actions), the court cannot say that it fails to state a claim for which the court can grant relief. Fuji Enterprises v. Jacob, 20 FSM R. 279, 281 (Pon. 2015).

Since 6 F.S.M.C. 702(2) specifically waives the FSM's sovereign immunity for claims for damages, injunction, or mandamus arising out of alleged improper administration of FSM laws, the FSM has waived its sovereign immunity for a suit by a state alleging that the FSM failed to comply with the FSM Constitution's mandate that not less than 50% of the national tax revenues be paid into the treasury of the state where collected. Chuuk v. FSM, 20 FSM R. 373, 375 (Chk. 2016).

Since the national government, and therefore Congress, has no discretion but must remit the first 50% of the national tax collected to the state treasury of the state it was collected in, a dispute about that first 50% would not be a nonjusticiable political question, although a dispute over a percentage higher than 50% would be a nonjusticiable political question textually committed to a discretionary Congressional decision. Chuuk v. FSM, 20 FSM R. 373, 376 (Chk.

2016).

Under 54 F.S.M.C. 152(3), the Secretary of Finance's assessment of taxes is presumed correct unless and until it is proven incorrect. Fuji Enterprises v. Jacob, 21 FSM R. 355, 362 (App. 2017).

Title 54, chapter 3, the Corporate Income Tax Act of 2004, is the FSM's tax regime for major corporations, which are defined as those corporations that are not principally engaged in business in the Federated States of Micronesia as a bank, that were formed after January 1, 2005, and whose shareholders' equity or paid in capital is $1 million or more, or whose control group has a shareholders' equity or paid in capital of $10 million or more, or that are Title 37 captive insurance companies. These, otherwise foreign, entities incorporate in, and pay income taxes to, the FSM on their world-wide taxable revenue. Chuuk v. FSM, 22 FSM R. 85, 89 (Chk. 2018).

The Constitution expressly grants the FSM national government the power to tax income, and the further provides that not less than 50% of the tax revenues be paid into the treasury of the state where collected. Chuuk v. FSM, 22 FSM R. 85, 90 (Chk. 2018).

The Constitution's framers intended that at least half of all income taxes and import taxes received by the national government would be paid to the states. Chuuk v. FSM, 22 FSM R. 85, 90-91 (Chk. 2018).

The Constitution's framers contemplated and created a system wherein (at least) half of the income tax money received by the national government would go into one or another state treasury. Chuuk v. FSM, 22 FSM R. 85, 91 (Chk. 2018).

The revenue collected under Title 54, chapter 3 is from an income tax. These Title 54, chapter 3 major corporations' income taxes are paid to the FSM national government because these business entities, although they earn their revenue elsewhere in the world, are incorporated in the FSM. Chuuk v. FSM, 22 FSM R. 85, 91 (Chk. 2018).

While the FSM's gross revenue tax (Title 54, chapter 1, subchapter IV) is imposed on the gross income that a business derived, or was presumed to have derived, from sources within the FSM, and not on revenue from sources elsewhere in the world, the major corporations that pay Title 54, chapter 3 income taxes, are generally exempt from the gross revenue tax, 54 F.S.M.C. 323, since they do not conduct business within the FSM, but are subject to taxation on income regardless of the location of the business activity that generated that income. Chuuk v. FSM, 22 FSM R. 85, 91 (Chk. 2018).

The state share of a major corporation's income tax should be paid into state treasury of the state of incorporation and this share is determined after the Micronesia Registrar Advisor has first taken its percentage of the corporate income taxes paid by the major corporations it induced to incorporate in the FSM – the state's 50% share should be calculated from the net amount "collected" by the national government, that is, 50% of the amount of tax levied after the Registration Advisor's percentage is deducted. Chuuk v. FSM, 22 FSM R. 85, 92 (Chk. 2018).

National government revenues derived from constitutional provisions other than its authority to tax income and imports, are not (with one exception) constitutionally subjected to revenue-sharing. Chuuk v. FSM, 22 FSM R. 85, 93 (Chk. 2018).

Businesses are required by law to maintain both gross revenue and wage and salary information records. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 182 (Pon. 2019).

Department of Finance and Administration personnel cannot be required to produce in any court any matter or thing relating to the income taxes imposed except when it is necessary to do so for the purpose of enforcing the FSM tax laws. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 183 (Pon. 2019).

Wages and salaries do not include any wages and salaries received by an employee, who is not an FSM citizen, while employed by an international organization, foreign contractor, or other foreign entity performing services or otherwise conducting business in furtherance of a foreign aid agreement entered into by the FSM, the terms of which require that such wages and salaries will not be subject to taxation by the FSM government. Basu v. Amor, 22 FSM R. 557, 565 (Pon. 2020).

Generally, an employer is required to withhold the wages and salaries tax from its employees' pay, and the penalties and interest imposed for the failure to withhold the wages and salaries tax from an employee's pay are imposed upon the employer, not the taxpayer. Basu v. Amor, 22 FSM R. 557, 567 (Pon. 2020).

– Constitutionality

State excise tax which levies tax at the port of entry on items imported into a state and which must be paid prior to release of those items from the port of entry, is an import tax within the meaning of FSM Constitution article IX, section 2(d). Wainit v. Truk (II), 2 FSM R. 86, 87 (Truk 1985).

The tax on gross revenues falls squarely within the constitutional authorization given to Congress by article IX, section 2(e) to tax income. Ponape Federation of Coop. Ass'ns v. FSM, 2 FSM R. 124, 126 (Pon. 1985).

That Congress may tax "gross income" is plainly and unmistakably provided for in the words of article IX, section 2(e) of the Constitution. Ponape Federation of Coop. Ass'ns v. FSM, 2 FSM R. 124, 127 (Pon. 1985).

The national power to impose taxes based on imports is exclusive, and not shared by the states. Innocenti v. Wainit, 2 FSM R. 173, 182 (App. 1986).

Taxes imposed on goods because of their entry into a port of entry of the State of Truk, levied at the port of entry in amounts based upon the quality or value of imported goods, and which must be paid to the Division of Revenue prior to release of the items from the port of entry, are taxes based on imports. Such a tax represents an effort to exercise powers expressly delegated to the national government, is beyond the powers of the state, and is null and void. Innocenti v. Wainit, 2 FSM R. 173, 183-84 (App. 1986).

Although retroactive application of a decision holding a state tax unconstitutional would impose hardship upon a state, where funds collected under the tax have already been committed, such a result is not inequitable where the state legislature pushed on with the tax act despite the strong resistance of business people to the tax in the form of a petition and

establishment of an escrow account to hold contested payments, and a veto message by the governor of the state, and there is no evidence that the legislature seriously considered the constitutionality of the legislation. Innocenti v. Wainit, 2 FSM R. 173, 186 (App. 1986).

Taxation of gross revenue of business at different amounts and rates depending upon the amount of each business's annual gross revenue is rationally related to the legitimate legislative purposes of requiring businesses who receive less to pay lower tax and of administrative simplicity and therefore does not violate the due process or equal protection provisions of the FSM Constitution. Afituk v. FSM, 2 FSM R. 260, 263 (Truk 1986).

The power granted to Congress by FSM Constitution article IX, section 2(e) "to impose taxes on income" includes the power to tax gross revenue. Afituk v. FSM, 2 FSM R. 260, 264 (Truk 1986).

There is no evidence in the journal of the Constitutional Convention that the phrase "to impose taxes on income" in FSM Constitution, article IX, section 2(e) was derived from the sixteenth amendment of the United States Constitution which permits the United States Congress to "lay and collect taxes on income" so in determining the meaning of the Federated States of Micronesia constitutional provision, no particular weight should be given to the United States cases. Afituk v. FSM, 2 FSM R. 260, 264 (Truk 1986).

A state excise tax imposed on imports is unconstitutional, regardless of the manner of tax payment. Gimnang v. Yap, 4 FSM R. 212, 215 (Yap 1990).

When the record is barren of any relationship between the license fee imposed and the business regulation or licensing objectives and the fee is exacted for the sole purpose of granting a business permission to do business and possesses no attributes of a licensing statute, a municipality's power and authority to impose tax on the income of a business are foreclosed. Bruton v. Moen, 5 FSM R. 9, 12 (Chk. 1991).

The power of the national government under article IX, section 2(e) of the Constitution, "to impose taxes on income," is an exclusive national power that may not be exercised by the states. Youngstrom v. Kosrae, 5 FSM R. 73, 74 (Kos. 1991).

The Kosrae transaction tax of KC 9.301 is a selective tax rather than an income tax and is not an encroachment upon the national government's exclusive power to tax income. Youngstrom v. Kosrae, 5 FSM R. 73, 76 (Kos. 1991).

A municipal license fee ordinance which separately defines banking and insurance businesses and specifically imposes a different rate upon those businesses than would be imposed upon other kinds of businesses on its face appears to be an effort to regulate banking and insurance and is unconstitutional and void. Actouka v. Kolonia Town, 5 FSM R. 121, 122 (Pon. 1991).

The national government has the exclusive power to tax income and imports. The power to levy other taxes, unless specifically barred by the Constitution, is an exclusive state power. Sigrah v. Kosrae, 6 FSM R. 168, 169-70 (App. 1993).

A transaction tax oriented toward individual transactions and not total income, and only triggered by the transactions it covers, even though paid by the vendor, is analogous to a

selective sales tax and is not an unconstitutional encroachment on the national government's exclusive power to tax income. Sigrah v. Kosrae, 6 FSM R. 168, 170 (App. 1993).

A Chuuk state tax on a lessor or landowner who rents or leases land, building or housing unit, for residential, or office space, or other use is not an unconstitutional encroachment on the national government's exclusive power to tax income. Truk Continental Hotel, Inc. v. Chuuk, 6 FSM R. 310, 311 (Chk. 1994).

The Constitution prohibits state and local governments from imposing taxes which restrict interstate commerce. Stinnett v. Weno, 6 FSM R. 312, 313 (Chk. 1994).

Since, given the social and geographic configuration of the State of Chuuk and the structure of the transportation services available, a travel agency would necessarily be essentially interstate commerce, a tax aimed solely at a travel agency restricts or is restrictive of interstate commerce and therefore may not be levied by a state or local government. Stinnett v. Weno, 6 FSM R. 312, 313-14 (Chk. 1994).

Only the national government may constitutionally tax income. The states' taxing power does not include the power to tax income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 119 (App. 1995).

If a state wishes to obtain funding from a consumption tax, it can avoid a constitutional confrontation by making the taxable incident the sale or rental transaction, and by expressing the requirement that the tax be paid by the consumer. Therefore a state tax on the gross rental receipts of a landlord is an unconstitutional tax on income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 120 (App. 1995).

The general grant of the taxing power to the state, which allows taxing power to be delegated to the municipalities, is not an exclusive grant preventing municipalities from levying taxes. Wainit v. Weno, 7 FSM R. 121, 123 (Chk. S. Ct. Tr. 1995).

A municipality in Chuuk has the power to tax so long as the state has not preempted the area. Wainit v. Weno, 7 FSM R. 121, 123 (Chk. S. Ct. Tr. 1995).

The power to tax is vested in the state which may delegate certain taxing powers to a municipality. Without such delegation a municipality has no power to tax. Stinnett v. Weno, 7 FSM R. 560, 561 (Chk. 1996).

A municipal ordinance levying taxes did not continue in effect after the effective date of the Chuuk Constitution because it is inconsistent with that Constitution. Stinnett v. Weno, 7 FSM R. 560, 562 (Chk. 1996).

A litigant may seek a declaratory judgment without first exhausting its administrative remedies where the jurisdiction of the taxing authorities is challenged on the ground that the statute is unconstitutional or that the statute by its own terms does not apply in a given case. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

The language, "and may delegate certain taxing powers to the municipal governments by statute," contemplates that municipal governments are invested with the power to tax only insofar as they receive that power from the state government. Without express delegation to a

municipality of the authority to tax, the municipality lacked this power. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

The Chuuk Constitution provides for the creation of the state taxing power and its delegation, as the state government may elect, to the municipal governments. Article XIII, section 1 of the Chuuk Constitution provides that the two levels of government are state and municipal. As between these two levels of government the one holding the right to delegate is superior. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

Because the express provision for delegation of the taxing authority is inconsistent with the notion that municipalities already had this power, in the absence of specific legislative action authorizing a municipality to impose taxes, the municipality does not have the authority to impose business license fees. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

When the Chuuk Constitution says the state "may delegate certain taxing powers to the municipal governments by statute," it is plain that "certain" in this context means nothing more, and nothing less, than that the state government may delegate such of its taxing powers as it sees fit – the point is that the option is the state government's. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

The only conclusion to be fairly drawn from the deletion of a sentence giving the municipal governments the exclusive power to levy head taxes and business license fees from the proposal as adopted is that the Chuuk Constitution's framers did not intend that the municipal governments should have the power to levy head taxes and business license fees. Weno v. Stinnett, 9 FSM R. 200, 208 (App. 1999).

Because a man who denies the legality of a tax should have a clear and certain remedy, justice may require that he should be at liberty to pay promptly and bring suit on his side. Weno v. Stinnett, 9 FSM R. 200, 212 (App. 1999).

The filing of a suit to contest the legality of a tax, which the trial court found to be the plaintiffs' only remedy, obviates the need for demonstrating duress and notice of protest, as required by the common law, for payments made after suit is instigated. The filing of suit is protest of the most emphatic sort, and allowing a claim for recovery for payments made thereafter without regard to duress recognizes the "implied duress" under which contested taxes are paid. Weno v. Stinnett, 9 FSM R. 200, 212 (App. 1999).

Duress and protest need not be shown to state a claim for recovery of tax payments extracted under an unconstitutional enactment when the plaintiffs seek refund of payments made after instigation of suit in a court having jurisdiction over the parties, and when such a lawsuit is the plaintiff's only remedy. Weno v. Stinnett, 9 FSM R. 200, 212 (App. 1999).

The taxing authority, if it opts not to provide predeprivation process, must by way of postdeprivation process provide a clear and certain remedy for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one. A clear and certain remedy is one designed to render the opportunity to challenge a tax meaningful by preventing any permanent unlawful deprivation of property. Weno v. Stinnett, 9 FSM R. 200, 213 (App. 1999).

When deciding the question of retroactivity of a decision declaring a tax unconstitutional, a court considers three factors: 1) whether a decision enunciates a new and unanticipated principle; 2) whether retroactive application to this case would promote implementation of the rule at issue, taking into consideration the rule's history; and 3) the equities of the case as they are associated with retroactive application. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

Because the Chuuk Constitution is clear that only the state government has the power to tax, it cannot be said that such a resolution could not be predicted. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

To permit taxes to be retained that were extracted under an unconstitutional statute would have the effect of prolonging the viability of an ordinance that runs afoul of the Chuuk Constitution, at the expense of establishing the correct rule. The better course is to permit recovery of the taxes. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

When litigation over the constitutionality of a municipality's taxes was pending for five years, the municipality was put on notice early on that the taxes collected under the ordinances were subject to a claim for refund, and nothing prevented the municipality from planning for this eventuality. Having failed to do so, it cannot now claim hardship. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

A state use tax is a tax on imports which impermissibly interferes with interstate commerce such that the use tax is in violation of the FSM Constitution, FSM Const. art. IX, §§ 2(d), 2(g); FSM Const. art. VIII, § 3. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 292, 294 (Pon. 1999).

For tax purposes, Telecom is deemed to be part of the national government and is exempt from any and all state tax liability because it functions are so closely intertwined with the national government that it is appropriate to view it as a national government agency for the purpose of taxation and because, although the FSM Constitution does not specifically delegate the power to establish a telecommunications network to the national government, the circumstances presently existing in the FSM support a conclusion that such a power is of an indisputably national character beyond the control of any state. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 384 (Pon. 2000).

Because the FSM Constitution expressly delegates to Congress the power to regulate interstate commerce and because the existence, availability and quality of telecommunication services in the FSM clearly impacts on interstate commerce, the FSM government is constitutionally authorized to establish the FSM Telecommunications Corporation and may similarly exempt it from taxes or assessments. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 384 (Pon. 2000).

A state "use tax" that instead of collecting the tax at the port in order to release the goods, requires the taxpayer to fill out a form prior to release of the goods after which collection of the assessment is deferred for sixty days, is, despite its name, a tax on imports and an unauthorized action to usurp the national government's exclusive power to impose taxes, duties, and tariffs based on imports. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 386 (Pon. 2000).

A state "use tax" calculated on the value of items brought into the state plus the cost of

shipping, handling, insurance, labor or service cost, transportation charges or any expenses whatsoever, has nothing to do with benefits provided by the state associated with the use of the item and cannot be justified as having a substantial nexus with the state. It only serves as an unauthorized burden on interstate commerce. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 386 (Pon. 2000).

Imposing taxes, duties, and tariffs based on imports is a power expressly delegated to Congress. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 579 (App. 2000).

When "commencement of use or consumption" equals importation as it applies to the nonexempt merchandise subject to a use tax, any semantic distinction resulting from making the tax payable upon "commencement of use or consumption" does not render it any less a tax on imports because the name given a tax by a taxing authority is not controlling and because extending the time for payment to 60 days after importation does not change the nature of the tax. The Pohnpei use tax violates the constitutional reservation to Congress of the power to tax imports. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 581 (App. 2000).

As to interstate commerce, Article VIII, section 3 contains the negative counterpart to Article IX, section 2(g)'s positive grant of power by prohibiting state and local governments from imposing taxes which restrict interstate commerce. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 582 (App. 2000).

Since the event triggering the Pohnpei use tax is the unqualified "use or consumption" in Pohnpei of nonexempt goods, the statute applies to goods brought into Pohnpei from Yap, Chuuk, and Kosrae, as well as from locations outside the FSM. It is thus clear that the statute directly regulates or restricts interstate commerce in the same way it does imports. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 582 (App. 2000).

As to goods making their way from any of the other three states into Pohnpei, the direct nexus between the simultaneous arrival of the goods and imposition of the Pohnpei use tax points to direct regulation of interstate commerce. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 582 (App. 2000).

Even assuming that the Pohnpei use tax apportionment clause could be interpreted to remedy concerns about discrimination against interstate commerce, the fact remains that the use tax is indissolubly linked to the event of importation, and no semantic calisthenics liberate the tax from this inherent defect. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 583 (App. 2000).

A state tax that is unconstitutional as an import tax, if applied to interstate commerce, is also restrictive of interstate commerce. The Constitution does not permit a state to erect tax barriers to the free movement of goods among the states. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 583 (App. 2000).

A state use tax that is a tax on imports in violation of Article IX, section 2(d); and that regulates and restricts interstate commerce in violation of Article IX, Section 2(g), and Article VIII, section 3, respectively of the FSM Constitution contravenes the Constitution. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 583 (App. 2000).

A state alcoholic beverage possession tax for which liability is triggered by the act of

importation although actual payment may be delayed five days, is an import tax, and as such unconstitutional. MGM Import-Export Co. v. Chuuk, 10 FSM R. 42, 44 (Chk. 2001).

The Chuuk Constitution bans taxes on real property. In re Engichy, 12 FSM R. 58, 69 n.6 (Chk. 2003).

When Continental has alleged a sufficient stake in the action's outcome and is threatened not only with substantial costs if it complies but also with civil and criminal penalties if it does not and these threatened injuries are all traceable to the Chuuk service tax and would be addressed by a favorable decision, it may therefore challenge the legal requirement that it collect the tax (and remit it to the State) even if technically, only the statutorily defined taxpayer has the legal ability to challenge the tax's validity. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 159 (Chk. 2010).

When Chuuk made the taxable incident the purchase of a plane ticket or of freight service and made the tax payable by the purchaser, it avoided one constitutional confrontation – the service tax is not an income tax since the service tax is a tax on the buyer, not the seller. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160 (Chk. 2010).

A service tax on plane passengers does not have only an incidental effect on foreign commerce; its only effect is on foreign commerce. A tax on shipping cargo or freight affects only foreign commerce or interstate commerce since the airline does not fly to anywhere in Chuuk except Weno. Since state and local governments are prohibited from imposing taxes which restrict interstate commerce, to the extent that the tax is imposed on freight or cargo shipped from Chuuk to other FSM states, would appear to be specifically barred by the Constitution and to the extent it is imposed on cargo or freight shipped elsewhere, it would be regulation of foreign commerce – in effect, an export tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160 (Chk. 2010).

When the FSM Supreme Court appellate division has held that if a state wishes to obtain funding from a consumption tax, it can avoid a constitutional confrontation by making the taxable incident the sale or rental transaction, and by expressing the requirement that the tax be paid by the consumer and when the Chuuk service tax makes the taxable incident the purchase of a plane ticket or the purchase of freight service and expresses the requirement that the tax be paid by the purchaser, the Chuuk service tax, as applied to Continental, is not an unconstitutional income tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 531 (Chk. 2011).

The Chuuk service tax on plane passengers does not have only an incidental effect on foreign commerce. Its main effect (and its sole intended effect) is on foreign commerce. By its terms, it is to be imposed only on those passengers whose "final destination" would be "outside of the FSM." The Chuuk service tax on outgoing paying airline passengers is thus an unconstitutional regulation of foreign commerce. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 531-32 (Chk. 2011).

The tax on shipping air cargo or air freight on Continental affects only foreign commerce or interstate commerce, and since state governments are prohibited from imposing taxes which restrict interstate commerce, to the extent that it is imposed on freight or cargo shipped from Chuuk to other FSM states, the Chuuk service tax would be specifically barred by the

Constitution, and to the extent the tax is imposed on cargo or freight shipped elsewhere, it would be regulation of foreign commerce – an export regulation and tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

Even if the Chuuk service taxes on air passenger tickets and courier services were not unconstitutional taxes, they would still be invalid when the regulatory enforcement and interpretation of the service tax statute exceeded or limited that statute's reach. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

Even if Pohnpei cannot assess a first commercial sale tax against a business and that business benefits from the business environment which the State of Pohnpei has provided, Pohnpei may recoup the costs of providing infrastructure and business environment through the gross revenue tax. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 32 (Pon. 2011).

Since the term "within the state" in the Pohnpei tax statute modifies the term "sold commercially," the tax would attach only to those sales that are completed within the state. Under such an interpretation the tax would attach only to in-state commercial transactions and the impact on interstate commerce would be minimal and the statute therefore constitutional. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 33 (Pon. 2011).

Because sales taxes paid to Nett under protest depend on the validity of the Pohnpei state tax, Nett and Pohnpei are, jointly and severally, liable for the amount paid to Nett under protest, plus statutory interest. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 34 (Pon. 2011).

Generally, the court avoids unnecessary constitutional adjudication. Thus, when the court has resolved the underlying administrative appeal without the need to address the constitutionality of Pohnpei's tax statute, any declaratory relief as to the tax statute's constitutionality would be inappropriate. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 35 (Pon. 2011).

A tax computed as a percentage of any form of income is a tax on that income. Only the national government can impose a tax on income. A state cannot impose a tax on income. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

When the State Tax Act provides that no person shall have a right of action to challenge the validity of any tax levied by the Act unless that person first pays to the state the tax in question, under protest, and when the state has seized by tax levy $2,931.29, and the state rightly considers that seizure to be a partial payment under protest, the court, without having to analyze it further, unquestionably has jurisdiction over a challenge to the cigarette tax because a cigarette tax payment was made under protest. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 152 (Chk. 2013).

Only the national government can impose taxes on imports and no state may impose taxes that restrict interstate commerce. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 153 (Chk. 2013).

Since imported cigarettes are not taxable unless sold (or presumed sold) and may be

nontaxable if not, the Chuuk cigarette tax appears to be a sales tax and not an import tax because the taxable event is their sale not their importation. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

If the Chuuk cigarette tax is imposed on the buyer (customer) and collected by the seller from the buyer for remittance to the state, then the tax statute was carefully crafted to avoid constitutional infirmity. The hallmark of a constitutionally sound state sales tax is that the sale is the taxable incident and the tax is paid by the buyer – the customer or consumer – and not the seller; otherwise it is an unconstitutional income tax. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

Since the Chuuk health care premium assessments are used for the care of the ill and injured and for the general purpose and expense of carrying the Chuuk Health Care Plan Act into effect and since, weighing all the attributes of the Plan's current assessment of Chuuk health care premiums and looking at the totality of the circumstances, the Plan's payroll assessment, even though calculated as a percentage of wages and salaries, is a fee and not a tax. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

When the purpose of the collected funds is specifically for health and medical services and the Chuuk Legislature cannot appropriate the funds collected as premiums and use those funds for other public purposes and when, although the medical services are applied to the general public, the insurance premiums collected are not a tax and thus the method used to calculate premiums is not an unconstitutional tax on income. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 24 (App. 2015).

Taxing income and taxing imports are both powers reserved exclusively to the national government, and therefore forbidden to municipal governments. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

When a hotel owner with 10 rooms pays the same $50 business license fee annually regardless of how much or how little income is derived from that hotel; when a hotel owner with 31 rooms pays the same $300 regardless of how much or how little income those 31 rooms actually generate; and when, if the owner of a 31-room hotel adds five more rooms and generates even more income, the owner would still pay only $300 annually for a business license, the license fees, even though those license fees are actually taxes, are not taxes on income. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

A municipal "road service" fee is not a tax on imports since it does not vary based on the amount or value of the goods brought into the municipality and since it does it vary based on the origin of those goods. It is a flat annual fee or a tax that does not violate the Constitution's prohibition of local taxes which restrict interstate commerce because the road service fee does not restrict or hinder interstate commerce or impose an import tax, but it does restrict or hinder intrastate or inter-municipal commerce, a type of commerce the FSM Constitution does not grant the national government the power to regulate. Isamu Nakasone Store v. David, 20 FSM R. 53, 57-58 (Pon. 2015).

The constitutional command that all national taxes be "imposed uniformly" is not a prerequisite for revenue-sharing only. It commands Congress impose all taxes uniformly. Chuuk v. FSM, 22 FSM R. 85, 93 (Chk. 2018).

The major corporation income tax complies with the constitutional command that national taxes be "uniformly imposed." Chuuk v. FSM, 22 FSM R. 85, 93 (Chk. 2018).

The FSM major corporation income tax rate is a national tax – a tax imposed by the national government pursuant to the national government's constitutional power to tax income. Chuuk v. FSM, 22 FSM R. 85, 93 (Chk. 2018).

The national government has the power to impose only two types of taxes – that based on imports and that on income. Chuuk v. FSM, 22 FSM R. 85, 93 (Chk. 2018).

– License and Permit Fees

A municipality may legislate and impose licensing fees to regulate activities within its jurisdiction subject to a requirement that the licensing fee at least tends to promote the public health, morals, safety or welfare. Bruton v. Moen, 5 FSM R. 9, 12 (Chk. 1991).

When the record is barren of any relationship between the license fee imposed and the business regulation or licensing objectives and the fee is exacted for the sole purpose of granting a business permission to do business and possesses no attributes of a licensing statute, a municipality's power and authority to impose tax on the income of a business are foreclosed. Bruton v. Moen, 5 FSM R. 9, 12 (Chk. 1991).

A municipal license fee ordinance which separately defines banking and insurance businesses and specifically imposes a different rate upon those businesses than would be imposed upon other kinds of businesses on its face appears to be an effort to regulate banking and insurance and is unconstitutional and void. Actouka v. Kolonia Town, 5 FSM R. 121, 122 (Pon. 1991).

The following factors are relevant to determining whether fishing fees are taxes: 1) the source of the levy – whether the entity imposing the tax is legislative or administrative; 2) the effect of the levy on the general public – whether the assessment is imposed upon a broad or narrow class; 3) the means by which the levy is made – whether it is voluntary, and produces a benefit to the payor which is commensurate with the payment; and 4) the relationship between the levy and government costs – whether the revenue generated bears a relationship to the costs of the government in administering the particular program. Chuuk v. Secretary of Finance, 8 FSM R. 353, 382-83 (Pon. 1998).

Cases distinguishing between taxes and fees often examine the source of the levy as an indicator of whether the particular payment should be considered a tax or a fee. An assessment imposed directly by the legislature is more likely to be a tax than one imposed by an administrative agency. The classic tax is imposed by a legislature upon many, or all citizens; the classic regulatory fee is imposed by an agency on those subject to its regulation. Chuuk v. Secretary of Finance, 8 FSM R. 353, 383 (Pon. 1998).

Courts also consider whether a governmental levy is directed at the general public, or whether it is imposed on a discrete subsection of the public, in distinguishing between a tax and a fee. An assessment imposed on a broad class of parties is more likely to be a tax than one imposed on a narrow class. One distinguishing characteristic of a fee is that the public agency

normally may exact a fee for a grant which, presumably, bestows a benefit on the applicant, not shared by other members of society. Chuuk v. Secretary of Finance, 8 FSM R. 353, 383 (Pon. 1998).

Another distinction between a tax and a fee is whether the levy is exacted voluntarily in exchange for a benefit to the payor. Taxation is a legislative function, and Congress, which is the sole organ for levying taxes, may act arbitrarily and disregard benefits bestowed by the Government on a taxpayer and go solely on ability to pay, based on property or income. A fee, however, is incident to a voluntary act, *e.g.*, a request that a public agency permit an applicant to practice law or medicine or construct a house or run a broadcast station. Chuuk v. Secretary of Finance, 8 FSM R. 353, 384 (Pon. 1998).

One characteristic of a fee is that it must be no greater than the government's costs, but in considering costs it is appropriate to consider the government's "real cost," which is not limited to the government's actual expenditures. Chuuk v. Secretary of Finance, 8 FSM R. 353, 384 (Pon. 1998).

A fee for use of property which is controlled by the government is not necessarily a tax, because the government is entitled to receive the benefits of its property just like any private landowner. As a sovereign, the government levies taxes, but as property owner it may charge fees for the use of its property. These fees are paid by choice and in exchange for a particular benefit, the use of government property, just as rents are freely paid for the use of private property. Chuuk v. Secretary of Finance, 8 FSM R. 353, 385 (Pon. 1998).

The level of fishing fees is set at a measure of the value of the asset to the payor, a percentage of the value of the estimated weighted catch. The measure of the value of the service to the payor can be an appropriate measure for a fee. That the value received by the government exceeds the cost of administration is not dispositive when a valuable resource is being removed from the government's control by fishing fees payors. The government is entitled to compensation for its asset like any private property owner. Chuuk v. Secretary of Finance, 8 FSM R. 353, 385-86 (Pon. 1998).

The FSM Constitution contains a provision by which the net revenues from offshore mineral resources are to be divided equally between the states and the national government, FSM Const. art. IX, § 6. There would be no need to specify the division of income from such resources if such revenues were taxes to be automatically divided under article IX, section 5. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386 (Pon. 1998).

Revenues from natural resources are not taxes. The constitutional definition of tax was not meant to include amounts received by the national government from disposal of natural resources over which it has control. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386-87 (Pon. 1998).

A four-part analysis is applied to determine whether fishing fees are taxes: 1) the source of the levy, 2) the effect of the levy on the general public, 3) the means by which the levy is made, and 4) the relationship between the levy and government costs. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

Whether fishing fees are uniform is immaterial to a finding that fishing fees do not constitute a tax. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

How Congress appropriates fishing fees is irrelevant to whether they are a tax. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

The FSM national government has the exclusive right to regulate and harvest living marine resources in the EEZ and is therefore entitled to a reasonable compensation from those whom it allows to share that right. A determination of ownership of the living marine resources does not affect the national government's right. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

Chuuk municipalities are barred from imposing taxes except as specifically permitted by state statute. Municipalities have been delegated, by statute, the authority to require persons to obtain and pay for a business license before engaging or continuing in a business within the municipality in which the business is located. Ceasar v. Uman Municipality, 12 FSM R. 354, 358 (Chk. S. Ct. Tr. 2004).

When the state statute authorizing municipal tax powers reserved the state's right to enact legislation to assess, levy and collect taxes on any subject for which a tax has been assessed and levied by municipal ordinance and provided that in the event that the state enacted legislation on that same subject, the enactment would repeal the ordinance on the same subject, and when the state has in fact enacted legislation imposing fees on businesses engaged in alcoholic beverage sales, any municipal ordinance imposing business license fees on businesses engaged in alcoholic beverage sales is repealed and a municipality does not have the authority to impose business license fees or taxes on alcoholic beverage sellers. Ceasar v. Uman Municipality, 12 FSM R. 354, 358-59 (Chk. S. Ct. Tr. 2004).

A "fee" is a charge fixed by law for services of public officers and is regarded as compensation for services rendered, but a charge having no relation to services rendered, assessed to provide general revenue rather than compensation, is a "tax." Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

Any payment exacted by the state or its municipal subdivisions as a contribution toward the cost of maintaining governmental functions, where special benefits derived from their performance are merged in general benefit, is a "tax," while a "fee" is generally regarded as a charge for some particular service. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

The primary purpose of a "tax" is to obtain revenue for the government, while the primary purpose of a "fee" is to cover expense of providing a service or of regulation and supervision of certain activities. In distinguishing fees from taxes, fees are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22-23 (App. 2015).

There is a three-part test to determine whether an assessment is a tax or a fee: 1) what entity imposes the charge; 2) what population is subject to the charge; and 3) what purposes are served by the use of the monies obtained by the charge. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23 (App. 2015).

Fees that are paid into the general public treasury, and disbursable for general public expenses, are taxes. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23 (App. 2015).

If the premiums collected were a tax, the funds would be deposited into the Chuuk treasury, which can only be appropriated by law for a public purpose. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23 (App. 2015).

When all revenues received under a system of medical or health insurance, and all other revenues received by the Health Department as payment for medicine and medical services, must be separated from any general fund established by the Legislature and used only for medical purposes, this supports the position that premiums collected by the insurance plan do not fall under the characteristics of a tax because the funds collected are mandated to be separated from other funds collected. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23-24 (App. 2015).

When, although it is the employed residents of Chuuk who are making health insurance premium contributions, the benefit of medicines and medical services are applied to the general public this would favor considering the payments a tax instead of a fee. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 24 (App. 2015).

Generally, an assessment may be a fee rather than a tax when it is not used for a general purpose but is used to defray the expense of performing the duties imposed on the agency and for the general purpose and expense of carrying an act into effect. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 24 (App. 2015).

Pohnpei state law provides that wholesalers and taxi services operating in more than one local government jurisdiction do not have to pay a fee in other than the local jurisdiction where their business establishment is located and that local governments cannot levy business license fees on businesses that do not have any business establishment located within their territory. A "business establishment" is a permanent physical structure operating as a business, and a vehicle does not constitute a business establishment unless such vehicle is fixed in a permanent location. Isamu Nakasone Store v. David, 20 FSM R. 53, 56 (Pon. 2015).

A characteristic of a fee is that it must be no greater than the government's costs – the government's "real cost," which is not limited to the government's actual expenditures. Taxation is a legislative function generally to raise revenue, and the legislature may act arbitrarily and disregard benefits bestowed by the government on a taxpayer and go solely on the taxpayer's ability to pay. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

When a municipality's business license fees are set arbitrarily at the municipal legislature's prerogative and go on the fee-payer's ability to pay, the license fees are revenue-raising taxes. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

When a hotel owner with 10 rooms pays the same $50 business license fee annually regardless of how much or how little income is derived from that hotel; when a hotel owner with 31 rooms pays the same $300 regardless of how much or how little income those 31 rooms actually generate; and when, if the owner of a 31-room hotel adds five more rooms and generates even more income, the owner would still pay only $300 annually for a business license, the license fees, even though those license fees are actually taxes, are not taxes on income. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

A municipal "road service" fee is not a tax on imports since it does not vary based on the

amount or value of the goods brought into the municipality and since it does it vary based on the origin of those goods. It is a flat annual fee or a tax that does not violate the Constitution's prohibition of local taxes which restrict interstate commerce because the road service fee does not restrict or hinder interstate commerce or impose an import tax, but it does restrict or hinder intrastate or inter-municipal commerce, a type of commerce the FSM Constitution does not grant the national government the power to regulate. Isamu Nakasone Store v. David, 20 FSM R. 53, 57-58 (Pon. 2015).

– Recovery of Taxes

The question whether taxes paid by plaintiffs under a taxing statute subsequently found to be unconstitutional may be refunded to them turns upon whether the tax was voluntarily paid. Innocenti v. Wainit, 2 FSM R. 173, 187 (App. 1986).

Where taxpayers informed the government that they protested the tax as unconstitutional, and had to pay the tax in order to receive the taxed property, the payments are coerced, not voluntary, and taxpayers are entitled to the refund of all amounts paid. Innocenti v. Wainit, 2 FSM R. 173, 187 (App. 1986).

The FSM Supreme Court will abstain from a claim for recovery of taxes where the defendant state requests abstention, the claim is for monetary relief, and the state has endeavored to develop a body of law in the areas of excise taxes and sovereign immunity. Gimnang v. Yap, 4 FSM R. 212, 214 (Yap 1990).

Under traditional constitutional analysis, taxpayers' efforts to recover tax moneys unlawfully extracted from them by a state may be relegated to state procedures and decision-makers so long as there is a reasonable procedure under state law whereby the taxpayer may obtain meaningful relief. Gimnang v. Yap, 5 FSM R. 13, 23-24 (App. 1991).

Prior to November 25, 1986, a plaintiff had a common law right to recover taxes paid pursuant to an unconstitutional Yap statute if he could show payment was made under duress and under protest. Gimnang v. Yap, 7 FSM R. 606, 607, 610-11 (Yap S. Ct. Tr. 1996).

After November 25, 1986, a claim for recovery of taxes paid under an unconstitutional Yap statute is subject to a two-year statute of limitations. Gimnang v. Yap, 7 FSM R. 606, 607, 611 (Yap S. Ct. Tr. 1996).

The general rule is that to entitle a taxpayer to a refund of a tax paid pursuant to an unconstitutional law, the tax must have been paid under duress and protest. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 125 (Chk. 1997).

Refund of taxes paid pursuant to an unconstitutional ordinance is an action for restitution, not damages. The principles governing recovery of payment which preclude recovery of voluntary payments are applicable to the recovery of tax payments. The "voluntary payment rule" has barred recovery in restitution. The general rule is that money paid voluntarily under a claim of right to the payment, and with knowledge of the facts by the person making the payment, cannot be recovered back on the ground that the claim was illegal. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 125 (Chk. 1997).

The reason the voluntary payment rule bars recovery in restitution of unlawful taxes is that

litigation should precede payment. It thus does not apply to payments made after the commencement of litigation because the rule ceases with the reason on which it is founded. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 125-26 (Chk. 1997).

Normally, notice and an opportunity to be heard is given prior to governmental deprivation of property, but governments need not follow this in the case of taxes. Governments must, however, provide a post-deprivation opportunity to challenge the tax and a clear and certain remedy. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 126 (Chk. 1997).

It is unavailing in tax cases, except in special circumstances, to seek a preliminary injunction against enforcement or to have the taxes escrowed pending the outcome. This is in order not to disrupt the financial stability of the governmental unit. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 127 (Chk. 1997).

Refund of taxes unlawfully paid after commencement of suit is favored by the Innocenti guidelines concerning retrospective application of court decisions where the court decision was clearly foreshadowed by the Chuuk Constitutional provision, where there was no merit to be found in preventing the taxpayers from recovering unlawful taxes paid after the institution of litigation, and where the equitable considerations favor the taxpayers. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 127-28 (Chk. 1997).

For a plaintiff to recover payments made under an unconstitutional tax statute, he must demonstrate that he made those payments under both duress and notice of protest. Weno v. Stinnett, 9 FSM R. 200, 211 (App. 1999).

Because a man who denies the legality of a tax should have a clear and certain remedy, justice may require that he should be at liberty to pay promptly and bring suit on his side. Weno v. Stinnett, 9 FSM R. 200, 212 (App. 1999).

The filing of a suit to contest the legality of a tax, which the trial court found to be the plaintiffs' only remedy, obviates the need for demonstrating duress and notice of protest, as required by the common law, for payments made after suit is instigated. The filing of suit is protest of the most emphatic sort, and allowing a claim for recovery for payments made thereafter without regard to duress recognizes the "implied duress" under which contested taxes are paid. Weno v. Stinnett, 9 FSM R. 200, 212 (App. 1999).

Duress and protest need not be shown to state a claim for recovery of tax payments extracted under an unconstitutional enactment when the plaintiffs seek refund of payments made after instigation of suit in a court having jurisdiction over the parties, and when such a lawsuit is the plaintiff's only remedy. Weno v. Stinnett, 9 FSM R. 200, 212 (App. 1999).

The taxing authority, if it opts not to provide predeprivation process, must by way of postdeprivation process provide a clear and certain remedy for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one. A clear and certain remedy is one designed to render the opportunity to challenge a tax meaningful by preventing any permanent unlawful deprivation of property. Weno v. Stinnett, 9 FSM R. 200, 213 (App. 1999).

Because the Chuuk Constitution is clear that only the state government has the power to tax, it cannot be said that such a resolution could not be predicted. Weno v. Stinnett, 9 FSM R.

200, 214 (App. 1999).

To permit taxes to be retained that were extracted under an unconstitutional statute would have the effect of prolonging the viability of an ordinance that runs afoul of the Chuuk Constitution, at the expense of establishing the correct rule. The better course is to permit recovery of the taxes. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

When litigation over the constitutionality of a municipality's taxes was pending for five years, the municipality was put on notice early on that the taxes collected under the ordinances were subject to a claim for refund, and nothing prevented the municipality from planning for this eventuality. Having failed to do so, it cannot now claim hardship. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

If a taxing authority chooses not to provide a pre-deprivation process, it must by way of a post-deprivation process provide a clear and certain remedy for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one. A clear and certain remedy is one designed to render the opportunity to challenge a tax meaningful by preventing any permanent unlawful deprivation of property. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 158 (Chk. 2010).

There is no meaningful clear and certain post-deprivation remedy available to a Chuuk taxpayer when Chuuk's financial situation and its general inability to satisfy any court judgment make any purported post-deprivation remedy very unlikely. Thus any unlawful deprivation of a taxpayer's property would essentially be permanent and the opportunity to later contest the service tax would not be a meaningful one. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 158 (Chk. 2010).

When, under the State Tax Act, amounts paid under protest must be kept and deposited in a separate and restricted account which must be returned to the taxpayer if he prevails and since any funds levied by the state to pay the movant's assessed tax liability are rightly considered partial payments under protest and are therefore deposited into "a separate and restricted account," it does not seem that the movant will be irreparably harmed if an injunction does not issue because the return of his money would seem to adequately compensate him. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 153 (Chk. 2013).

A statute that permits a taxpayer to file an action in court to recover any challenged taxes is likely an inadequate substitute for a prompt post-seizure hearing before the tax authorities that might resolve the matter without the need for court proceedings and from which a still aggrieved taxpayer may then resort to a court suit. It may be that such an administrative hearing is available through the statute governing administrative hearings although that is not entirely clear. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

Under the voluntary payment rule, illegal taxes cannot be recovered unless they were paid under duress and under protest. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 289 (App. 2014).

Title 17, which codifies the Administrative Procedures Act, applies to challenges of administrative decisions raised under Title 54, which codifies the tax law. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 554 (Pon. 2014).

– Tax Liens

Liens under 54 F.S.M.C. 135 have priority even over liens which arose earlier in time. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 108 (Pon. 1987).

The statute 54 F.S.M.C. 153 does not require the government to give notice of its lien claims to any other creditors or even to the taxpayer. This statute, then, authorizes a lien which may be kept secret from interested parties. The effect of such a lien would be determined against the background of the strong general policy against secret liens. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 108 (Pon. 1987).

A section 153 lien should be treated as an equitable lien, its effect to be determined on a case-by-case basis with a view toward equitable considerations, especially when the government has taken reasonable and timely action to notify such other parties to the government's claims based upon tax delinquency. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 108 (Pon. 1987).

Any lien rights of the government under section 135(2) supersede even preexisting lien rights of any other party. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 110 (Pon. 1987).

The priority lien rights provided for the government in section 135(2) relate only to wage and salary tax claims and not to gross revenue taxes or other taxes. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 111 (Pon. 1987).

Under 54 F.S.M.C. 135(2), no other payment to creditors may be made from execution sale proceeds until all amounts owing for wage and salary taxes are paid in full to the government. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 297 (Pon. 1988).

Priority of national government's lien for unpaid business gross revenue taxes under 54 F.S.M.C. 153 is subject to requirement that government take reasonable and timely action to notify other parties of the government's claim, but filing of litigation is sufficient notification to all parties under 54 F.S.M.C. 153. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 297 (Pon. 1988).

53 F.S.M.C. 104 does not establish lien rights in the Trust Territory Social Security Board, and gives the board no lien or priority claim of any kind. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 299 (Pon. 1988).

Claims for wages asserted by low level employees and laborers are entitled to preference over all other claims, except wage and salary tax lien rights of the national government, which are given priority over all other claims and liens by 54 F.S.M.C. 135(2). In re Mid-Pacific Constr. Co., 3 FSM R. 292, 301 (Pon. 1988).

Attachment and seizure create statutory and possessory lien rights which will be unaffected by subsequent writs of execution, but will be subject to national government's wage and salary tax lien claims under 54 F.S.M.C. 135(2), to wage claims of low level employees and laborers, and to pre-existing national government lien rights under 54 F.S.M.C. 153. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 303 (Pon. 1988).

Under 54 F.S.M.C. 135(2), the government's judgment for wages and salary taxes constitutes a lien that is entitled to highest priority. In re Island Hardware, 3 FSM R. 332, 337 (Pon. 1988).

In order for the government's judgment for gross revenue taxes to have a highest priority lien, notice that the tax payments are overdue, not just that tax liability has accrued must be given. In re Island Hardware, 3 FSM R. 332, 338 (Pon. 1988).

Amounts owing for penalties and interest under the tax law, 54 F.S.M.C. 155 and 902, do not qualify for lien treatment under 54 F.S.M.C. 135 or 153. In re Island Hardware, Inc., 3 FSM R. 428, 433 (Pon. 1988).

Where the government is entitled to a lien on the debtor's assets as of the date it gave notice of its claim for those taxes the lien also becomes effective as of that date. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 585 (Pon. 1988).

Language in 54 F.S.M.C. 135(2) that the amount of wage and salary taxes formed "a lien on the employer's entire assets, having priority over all other claims and liens" meant that this statutory lien superseded the general rule of first in time, first in right. In re Engichy, 12 FSM R. 58, 64 (Chk. 2003).

All Social Security taxes, including penalties and interest, constitute a lien upon any property of the employer, having priority over all other claims and liens including liens for other taxes. This creates a lien for social security taxes that has priority over even other tax liens, such as the wage and salary tax liens given first priority in Island Hardware and Pacific Islands Distributing. In re Engichy, 12 FSM R. 58, 64 (Chk. 2003).

The social security tax lien arises by operation of law whenever social security taxes become due and are not paid. In re Engichy, 12 FSM R. 58, 64 (Chk. 2003).

Under 53 F.S.M.C. 607, Social Security taxes specifically take priority over other tax liens. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

A social security tax lien has priority over a mortgage because section 607 grants social security tax liens priority over all other liens regardless of whether the other liens arose earlier. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

Under the general rule a mortgage first in time has superior right in the absence of the applicability of a statutory provision to the contrary. Section 607 is a statutory provision to the contrary because it grants social security tax liens priority over all other liens regardless of whether the other liens arose earlier. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

Social Security's statutory priority tax lien is consistent with the general rule that acknowledges that the first-in-time priorities are also subject to legislative action that restructures the normal priorities. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

Social Security's tax lien priority is statutory, not equitable. Statutory law, as enacted by Congress, not equitable principles fashioned by the court, applies. The statute, 53 F.S.M.C. 607, expressly gives Social Security a tax lien superior to all other liens. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

As Congress clearly intended, social security tax liens must be given priority over all other claims and liens and paid first. In re Engichy, 12 FSM R. 58, 66 (Chk. 2003).

Social Security taxes do have a priority over all other claims and liens. FSM Social Sec. Admin. v. Yamada, 18 FSM R. 88, 89 (Pon. 2011).

Before garnishing tenants' rental payments to pay the lessor's tax liens, the court should be provided with information concerning the building, including current interests in the building, current leases, and any other facts that the court might require to rule on the garnishment request and any information on the defendant's dependence on the monthly rental income and other income at her disposal so that the court may order with particularity a writ of garnishment. FSM Social Sec. Admin. v. Yamada, 18 FSM R. 88, 89-90 (Pon. 2011).

Since, by statute, all taxes imposed or authorized under Title 54, chapter 1 are a lien upon any property of the person or business obligated to pay those taxes and since, by statute, those taxes may be collected by levy upon such property in the same manner as the levy of an execution, the statute does not require a court-issued writ of execution or a court judgment before issuance. Instead, it permits a levy in the same manner as the levy of an execution. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 (Pon. 2015).

The addition of the language "in the same manner as the levy of an execution" in 54 F.S.M.C. 153 shows that a different meaning was intended than if the statute had read "by writ of execution." Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 (Pon. 2015).

Since 54 F.S.M.C. 153 authorizes a tax levy to be made "in the same manner as the levy of an execution," it does not require a court-issued writ of execution. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 (Pon. 2015).

The statutory scheme grants the national government the authority to determine the amount of tax due and to collect those taxes. Under 54 F.S.M.C. 152(3), the Secretary of Finance's assessment of the tax amount is presumed correct unless and until it is proven incorrect. The statutory scheme also permits a tax levy on the lien created by 54 F.S.M.C. 153. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125-26 (Pon. 2015).

Since the nation's statutes are presumed to be constitutional, a bank is not required to challenge, on a depositor's behalf, the tax lien statute's constitutionality. The bank may rely on the statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

It is not a bank's duty to challenge the tax authorities' assessment of the amount of tax due from a taxpayer depositor. It is the taxpayer's responsibility to dispute any tax assessed that it disagrees with and for the taxpayer to resolve the issue with the FSM tax authorities. It also is not the bank's responsibility to challenge the constitutionality of 54 F.S.M.C. 153 or the FSM's interpretation of that statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

As long as the notice of levy and execution from the Division of Customs and Tax Administration is regular on its face, a bank is obligated to honor it. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

Usually, notice and an opportunity to be heard is given prior to deprivation, but a

government does not need to follow this in the case of taxes. The government must, however, provide a post-deprivation opportunity to challenge the tax and a clear and certain remedy. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

A writ of execution applies to all the judgment debtor's business assets and personal property under 53 F.S.M.C. 607. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 278 (Pon. 2015).

When the tax lien on a sole proprietorship's property was effectuated under 53 F.S.M.C. 607, well before the business transformed and became incorporated, the court will not create an avenue where an individual operating as a business avoids debt by simply morphing into an entity with the same name, albeit a different structure and characteristics. For the court to allow this would be detrimental to statutorily created entities attempting to collect taxes owed. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 278 (Pon. 2015).

When the issue of a bank releasing funds under 54 F.S.M.C. 153 is a matter of first impression, the court may look to case law of other jurisdictions, particularly the United States, for comparison and guidance. Fuji Enterprises v. Jacob, 21 FSM R. 355, 361 (App. 2017).

Under 54 F.S.M.C. 153, a delinquent taxpayer will have a lien placed on his property, and the lien will be collected in the similar manner as an execution, meaning it may be seized and sold to satisfy the taxes owed. Fuji Enterprises v. Jacob, 21 FSM R. 355, 361 (App. 2017).

The statutory scheme of 54 F.S.M.C. 153, in using the language "in the same manner as a levy of an execution," does not mean that a court-issued writ of execution is required before a levy. Fuji Enterprises v. Jacob, 21 FSM R. 355, 361 (App. 2017).

A bank does not have a duty to dispute a depositor's tax assessment, nor to challenge the constitutionality of 54 F.S.M.C. 153, as these are the account holder's responsibilities, and the bank is obliged to comply with the statutory levy, or face penalties under the law. Fuji Enterprises v. Jacob, 21 FSM R. 355, 362 (App. 2017).

The levy for failure to pay a national tax reaches all non-exempt property of the taxpayer whether in his possession or in the possession of third parties or agencies. Fuji Enterprises v. Jacob, 21 FSM R. 355, 362 (App. 2017).