

AN ACT

To tax tobacco products within Koror State.

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

SECTION 1. POLICY.

It is the policy of the State of Koror to make more effective and comprehensive and to increase the current sales and property tax upon certain tobacco products in order to provide further for the public health and welfare.

SECTION 2. DEFINITIONS.

A. "Administrator" means the person appointed, pursuant to the Koror Constitution Arts. VI and VII, as the Koror State Executive Administrator.

B. "Buyer" means any person who purchases or otherwise obtains for valuable consideration (regardless of whether for cash, credit, exchange, or set-off) any tobacco products from a seller.

C. "Person" means any individual human being or a club, cooperative, partnership, joint venture, corporation, company, sole proprietor-
or, business, estate, trust, government entity (other than the national government of the Republic of Palau), or, other association however organized or operated.

D. "Sale" includes and means the acts of transferring, for valuable consideration, title, possession, and ownership of a thing from one person to another person.

E. "Seller" means every person who executes or performs a sale of or sells or conveys ownership (regardless of whether for cash, credit, exchange, or set-off) of any tobacco product to another person.

F. "State" means the State of Koror.

G. "Tobacco" means all and any solanaceous plant of the genus

L Nicotiana (or of other similar genera) and especially means the species N. Tabacum, whose leaves are prepared for smoking, chewing, or

other consumption by human beings.

H. Tobacco products includes all items derived or made from tobacco, and especially means all items that are commonly known as cigars, cigarettes, pipe tobacco, chewing or plug tobacco, and snuff.

SECTION 3. IMPOSITION OF TAX; COLLECTION; PAYMENT.

A. Amount of Tax.

Beginning April 1, 1989, the following taxes, payable to the State, are imposed:

- (1) ten one-hundredths dollar (\$.10) upon each pack (of 25 or fewer cigarettes) of cigarettes;
- (2) ten one-hundredths dollar (\$.10) upon each cigar;
- (3) ten one-hundredths dollar (\$.10) upon each one ounce or part thereof of chewing or plug tobacco, snuff, or other type of tobacco product.

B. Time and Person Upon Whom Tax Imposed.

Such tax is imposed and assessed upon the following persons at the following time:

- (1) If the first owner of the tobacco product within the State is a person who operates both wholesale and retail businesses and if such owner transfers such product from its wholesale operations to its retail sales outlets for sale at such retail outlet, then the tax is imposed at the time of each such transfer upon such first owner, who shall be deemed a seller.
- (2) For every owner who is not covered by above subsection (1), then the tax is imposed, at the time of such owner/seller's first sale of such tobacco product, upon the first buyer thereof. Such first owner/seller shall collect from such buyer such tax at the time of such first owner/seller's sale of such tobacco product.
- (3) The Administrator shall have the option, if he has cause to believe that the taxes required by above subsections (1) and (2) are not being paid pursuant to this Act, to require that any airline, shipping company, or other carrier within the State, if it has in its custody any tobacco products to be delivered or consigned to a person in the State, shall, before it releases such tobacco products from

its custody, require such person to pay to it the taxes imposed by this Act. Such carrier shall forward to the Administrator such taxes (2) promptly upon its receipt of them and a statement showing the name and address of the person to whom the tobacco products were delivered, the date of such delivery, the amount of such tobacco products, and other information as the Administrator may require.

There is hereby created a presumption that, if the seller's place of business is within the State, then the seller's first sale of the item took place within the State.

C. Time of Payment of Taxes to State.

By the fifteenth day of every month immediately following the end of each quarter (viz. April, July, October, and January) beginning January, 1989, such seller shall:

(1) pay to the State all such taxes as were due to or collected by it, pursuant to Section 3 of this Act, from sales in the previous quarter, and

(2) submit to the State a statement on forms to be supplied by the State, signed by the seller's representative under oath, stating:

(a) for cigars and cigarettes, the number of packages of cigarettes and number of cigars that it (i) sold in the previous quarter and (ii) had in its inventory in the State on the first day and on the last day of such previous quarter; and:

(b) for chewing or plug tobacco, snuff, and other types of tobacco products, the number of cans and other containers of each size of such tobacco product that it (i) sold in the previous quarter and (ii) had in its inventory in the State on the first day and on the last day of such previous quarter; the seller shall attach to the statement invoices, receipts, and other documents to support such statement.

SECTION 4. ENFORCEMENT; PENALTIES.

A. Seller's Liability.

If a seller shall fail to comply with Section 3 above, the seller shall nevertheless be fully liable for all taxes imposed by this Act but not collected by such seller and paid by such seller to the State.

B. Seller's Records.

Every seller of any tobacco product within the State shall keep

records that show at least the following information: (1) the date of

(3)

receipt of and the number of cartons and packages of all tobacco products of each type that it received; (2) the date of each sale of, the identity of each buyer of, and the number of cases and cartons of each type of tobacco products that it sold to each buyer; and (3) any other information that the State may need in enforcing this Act. Such sellers, for at least two years after the date of sale, shall keep such records in good and intelligible order and shall allow the State to inspect and audit them during reasonable business hours.

C. Interest:

If a seller fails to make the payment to the, State that section 3C(1) above requires, then the seller shall be liable for interest at the rate of twelve percent (12%) per year on the payment not made.

D. Audit; Liability.

(1) If a seller submits the statement that section 3C(2) above requires, but the State's inspection and audit of such seller's business and financial records shows that the seller's statement is erroneous, then the seller shall be liable, in addition to any tax and interest thereon that may be due pursuant to Section 3 hereof, for (a) the expenses of such inspection and audit and (b) a civil penalty in the amount of twenty percent (20%,) of the tax that. such audit and accounting shows is due for such month.

(2) If a seller fails to submit the statement that Section 3C(2) above requires, then (a) the State may perform an audit and accounting of such seller's business and financial records and (b) the seller shall be liable, in addition to any tax and interest thereon that may be due pursuant to Section 3 hereof, for (i) the expenses of such audit and accounting and (ii) a civil penalty in the amount of twenty percent (20%) of the tax that such audit and accounting shows is due for such month.

E. Lien.

(1) Any taxes, penalties, or interest that this Act imposes but which the seller fails to pay in accordance with this Act constitute a lien upon all of the seller's property.

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(2) Any person who may purchase another person's property that is still subject to the taxes, interest, or penalties that this Act imposes shall be considered to have purchased it subject to the tax lien imposed herein.

F. Enforcement.

(1) The Administrator shall have the following powers:

(a) make all assessments and collect all taxes and other charges imposed by this Act;

(b) if a person fails to report and to pay the taxes due by this Act, or if the Administrator has good and substantial reason to question the amount of taxes reported and paid, he may assess taxes upon the person based upon his good faith estimate of what the taxes should be, provided that his estimate is based upon significant information;

(c) inspect the records, bank accounts and statements, checks, invoices, tax records, and other business and financial records of the seller and person liable for the taxes imposed by this Act;

(d) prescribe the forms and other documents necessary or appropriate to enforce this Act;

(e) refund taxes improperly paid;

(f) issue rules and regulations necessary or appropriate to implement this Act; and

(g) delegate functions and responsibilities hereunder.

(2) The State, if it believes that the seller or other person who is liable for the tax imposed by this Act, has the right to seek to enjoin the person's business from continuing to operate unless such taxes and other charges imposed by this Act are paid

G. Misdemeanor.

It shall be a misdemeanor for any person to violate any part of Section 3 of this Act or to fail to perform any other duty as required by this Act or by the regulations hereunder. Upon conviction of such violation, the offender may be punished by up to ninety (90) days in jail and a fine up to \$100,00.

H. Legal Costs.

Any person who fails to comply with this Act shall be liable for all the State's legal costs (including reasonable attorney fees) if the State must use an attorney or the judicial system to obtain relief against such person.

SECTION 5. APPEAL.

Any seller or other person who is aggrieved by any action of the Administrator may submit, within thirty (30) days after such action, a written appeal and request for a personal appearance to the House of Traditional Leaders and shall deliver to the Administrator a copy of such appeal and request. The House of Traditional Leaders, within 45 days of its receipt of such request, may provide a hearing to such person and shall give written notice thereof at least 5 days before such hearing to such person. Within forty-five (45) days after the later of either (1) the date on which the House of Traditional Leaders receives such written appeal or (2) the conclusion of the hearing (if one was held) and submission of all documents relating to the appeal to it, the House of Traditional Leaders shall issue its written decision thereon to such seller. SECTION 6. SEVERABILITY; SAVINGS CLAUSE; APPLICATION.

A. If a court of competent jurisdiction holds that a portion or portions of this Act are unlawful, such holding shall not affect or invalidate any of the remaining parts of this Act.

B. No provision of this Act shall apply or be construed in any way so as to conflict with the laws or Constitution of Palau.

SECTION 7. EFFECTIVE DATE.

This Act becomes effective upon its being approved by the House of Traditional Leaders or upon its becoming law without such approval.

SECTION 8. REPEAL.

This Act repeals Koror Ordinance No. 102-74 and all other acts and legislation that is inconsistent herewith.

PASSED: February 16, 1989.

CERTIFIED BY: _____/s/_____ ATTESTED TO BY: _____/s/_____
Roman Yano Rena Iluches
Speaker Clerk

Approved on this 17th day of March 1989 by the House of Traditional Leaders and is authenticated by:

_____/s/_____
Yutaka M. Gibbons
Ibedul