IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
APPELLATE DIVISION

STATE OF CHUUK, STATE OF KOSRAE, STATE OF POHNPEI and STATE OF YAP, Appellants, vs. SECRETARY OF DEPARTMENT OF FINANCE and FEDERATED STATES OF MICRONESIA, Appellees.	APPEAL CASE NO. P4-1999 CIVIL ACTION NO. 1995-085 Rec'd 1/04/00 OPINION

Argued: April 22, 2000
Decided: June 30, 2000

BEFORE:

Hon. Richard H. Benson, Associate Justice, FSM Supreme Court
Hon. Martin G. Yinug, Associate Justice, FSM Supreme Court
Hon. Aliksa B. Aliksa, Temporary Justice, FSM Supreme Court*

*Acting Chief Justice, Kosrae State Court, Lelu, Kosrae

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COURT'S OPINION

RICHARD H. BENSON, Associate Justice:

This appeal arises from the trial court's grant of summary judgment in favor of the defendants, the national government and its Secretary of Finance, Chuuk v. Secretary of Finance, 8 FSM Intrm. 353 (Pon. 1998), and the trial court's later denial of the plaintiff four states' motion to alter or amend its judgment, Chuuk v. Secretary of Finance, 9 FSM Intrm. 99 (Pon. 1999). The four states seek a judgment that they are the underlying owners of the resources in the Federated States of Micronesia's exclusive economic zone (EEZ) and, as such, are entitled to the net proceeds from all fishing fees the national government collected from the EEZ; or, in the alternative, a judgment that these fishing fees are income taxes which the national government is constitutionally obligated to share equally with the state where collected. The four states also seek payment of all such funds, plus interest, that they believe that they should have received since 1979.

We hold that the four states are not entitled to the net fishing fees from the FSM exclusive economic zone on the basis of ownership and that the exclusive economic zone fishing fees are not revenues that the Constitution requires the national government to share with the states. The trial court's judgment is thereby affirmed. Our reasoning follows.

I. Background

These issues came before the trial court on the four states' motion, and the national government's cross motion, for summary judgment. The trial court granted the national government's motion and denied the states'. It concluded that Article I of the Constitution gave no guidance in determining whether the states or the national government were owners of the marine resources beyond 12 miles or of the fishing fees derived therefrom, Chuuk v. Secretary of Finance, 8 FSM Intrm. at 368; that under Article IX, section 2(m) and Article VIII, section 1 the national government had the exclusive power to collect and distribute EEZ fishing fees, id. at 370-71, 374, 376; that Micronesian custom and tradition could not be used to determine whether the states or the national government were entitled to EEZ fishing fees, id. at 378; and that the states cannot claim ownership of the EEZ resources as *parens patriae* for their citizens, id. at 379 & n.21. To determine if the fishing fees were taxes that the national government must constitutionally share with the states, the trial court adopted a four-prong test to analyze whether the fishing fees were regulatory fees or were taxes, id. at 383, and concluded that they were not taxes, id. at 385-86.

The four states then moved to alter or amend the trial court's judgment on the ground that the court had committed manifest errors of law when it found that the fishing fees did

not constitute a tax under Article IX, section 5 of the Constitution; when it found that if the fees were a tax they would be unconstitutional because they were not uniform; and when it found that custom and tradition could not be relied upon to determine whether the national or state governments were entitled to the fishing fee revenues. The trial court rejected these arguments and denied the motion. Chuuk v. Secretary of Finance, 9 FSM Intrm. at 101-02. The four states then timely filed this appeal.

II. Issues on Appeal

Chuuk's, Kosrae's, and Yap's opening brief states the issues on appeal as whether the assessments imposed on fishing licensees in the EEZ pursuant to Title 24 of the FSM Code are taxes and the money thus collected are revenues within the meaning of Article IX, section 5 of the Constitution; whether the states are entitled to a share of the revenues derived from the living marine resources within their boundaries; and whether Article IX, section 2(m) grants the national government unlimited discretion to control all of the revenues derived from exploiting the marine resources within the EEZ. Pohnpei's separate opening brief states the issues as whether the revenues from foreign fishing licenses are taxes which must be divided between the states and the national government pursuant to Article IX, section 5 of the Constitution; whether the national government holds any proprietary ownership right

to the natural resources in the EEZ; whether the states are entitled to the revenues derived by the national government from the harvesting of marine resources within state boundaries; and whether the states can be constitutionally deprived of a share of the nation's second largest source of revenue. As evident from the parties' presentations at oral argument and in their briefs' organization, these issues may be fairly summarized as whether the four states are the underlying owners of the living marine resources within the FSM EEZ and thereby entitled to all of the net revenue derived therefrom, and whether the fishing fees collected by the national government are taxes which it must share equally with the states under Article IX, section 5 of the Constitution.

III. Standard of Review

We apply the same standard in reviewing a trial court's grant of a summary judgment motion that the trial court initially employed under Rule 56(c). We, viewing the facts in the light most favorable to the party against whom judgment was entered, determine *de novo* whether genuine issues of material fact are absent and whether the prevailing party is entitled to judgment as a matter of law. Taulung v. Kosrae, 8 FSM Intrm. 270, 272 (App. 1998); Iriarte v. Etscheit, 8 FSM Intrm. 231, 236 (App. 1998); Nahnken of Nett v. United States, 7 FSM Intrm. 581, 585-86 (App. 1996); Tafunsak v. Kosrae, 7 FSM Intrm. 344, 347 (App. 1995).

IV. Analysis

It is undisputed that since 1979 the national government has derived significant revenue from fishing fees collected from vessels engaged in exploiting the exclusive economic zone's living resources, that these fees are substantially in excess of the sums that the Micronesian Maritime Authority expends on regulating access to and exploitation of the exclusive economic zone, and that the national government does not claim that it owns the fish in the exclusive economic zone. There are thus no genuine issues of material fact.

A. *Ownership of Exclusive Economic Zone Resources*

The four states assert that they are the underlying owners of the resources in the FSM's exclusive economic zone and are thus entitled to the net proceeds from all fishing fees collected by the national government from the EEZ since 1979.[1] The states base their conclusion on the constitutional language in Article I, sections 1 and 2; on the assertion that prior to the Federated States of Micronesia's formation the states had separate sovereign ownership of the EEZ's resources and never relinquished it; and on the assertion that early statutes enacted by the FSM Congress recognized the states' underlying sovereign ownership. The states, at oral argument,

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[1]The answer raised a statute of limitations defense. The trial court, dismissing all claims on their merits, did not address that defense. Nor, because of our holding, do we need address to what time period the statute of limitations defense would apply.

stressed that they claim sovereign, not proprietary ownership. The states explain that there are three types of resource ownership: national sovereign ownership, state sovereign ownership, and proprietary ownership. By not claiming proprietary ownership the states appear to be abandoning their earlier claim of ownership based on the doctrine of *parens patriae* for their citizens, because such a claim would necessarily be based on a family's, or a clan's, or a village's claim of proprietary ownership.

The four states contend that the constitutional language in Article I, section 1 confirms that the waters and the resources are owned by the adjacent state. In particular, the states refer to the following sentence: "Unless limited by international treaty obligations assumed by the Federated States of Micronesia, or by its own act, the waters connecting the islands of the archipelago are internal waters regardless of dimensions." FSM Const. art. I, § 1. The states emphasize the term "internal waters" as proof of their position that the states were to be the owners of the exclusive economic zone's resources. This language does not show any such intention. Internal waters are those waters on the landward side, or inside, of the baselines of the territorial sea. 18 F.S.M.C. 102(2); U.N. Convention on the Law of the Sea art. 8. Regardless of where the baselines were finally drawn, there would still be an exclusive economic zone starting twelve

nautical miles seaward of the baseline and extending outward for another 188 nautical miles, and this lawsuit is concerned only with that zone's resources. A desire to maximize the area that might be included within the baselines, subject to the FSM's international treaty obligations, cannot be interpreted as a recognition of state ownership of the ocean resources 12 to 200 nautical outside of those baselines when drawn. The states' reliance on section 1 is misplaced.

The four states contend that section 2's delimitation of marine boundaries between adjacent states by "applying the principle of equidistance," FSM Const. art. I, § 2, means that the states own the marine resources within the exclusive economic zone. The states contend that by defining the marine boundaries between the states on an equidistance basis the Constitution's framers intended to recognize the states as the sovereign owners of all resources within those boundaries. As support, the states point to the section's accompanying committee report which stated that it was the committee's intent that the equidistance method be used "to establish fair and equitable marine boundaries in the event marine resource revenue should accrue to the State wherein the resources are found." SCREP No. 9, II J. of Micro. Con. Con. 776, 777 (1975). This does not indicate state ownership. The Constitution does explicitly provide for an event when such revenues would accrue to the state – when ocean floor mineral

resources are exploited. FSM Const. art. IX, § 6. That event has not yet occurred. The trial court was correct when it concluded that when the Constitution defined state boundaries, the Constitution's framers did not intend to confer on the states the ownership of the exclusive economic zone's resources or all the revenues derived from them. Chuuk v. Secretary of Finance, 8 FSM Intrm. at 368.

The four states contend that each of the four states had been the sovereign owners of all of the offshore resources prior to the Federated States of Micronesia's formation and that they have continued to retain this ownership. Although this contention rests on the dubious proposition that under the Trust Territory each district the administering authority created was a separate sovereign rather than sovereignty having been vested in the Trust Territory or its people as a whole it need not be considered. What is important is not how the states imagine it might have been in Trust Territory times, but what presently exists under the provisions of the Constitution, which the people of all four states ratified. The Constitution delegates exclusively to the national government the power "to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the Federated States of Micronesia beyond 12 miles from island baselines." FSM Const. art. IX, § 2(m). The states concede that this necessarily includes the power to assess and

collect fees from those whose use of the exclusive economic zone it regulates. The states, however, contend that while the national government has the power to levy and collect its assessments, it does not have the power to disburse any of what it collects beyond its costs of collection - in other words, that the net revenues are the states' alone to appropriate. This cannot be so. We hold that when a government has the power to collect money, it has the power to disburse those money at its discretion unless the Constitution or applicable laws should provide otherwise. Therefore, because regulating the ownership, exploration, and exploitation of the exclusive economic zone's natural resources is a power expressly and exclusively delegated to the national government and because the incidental power[2] to collect assessments levied pursuant to that delegated power is indisputably a national power, the power to disburse those funds is also a national power, except where the Constitution provides otherwise[3] (such as in Article IX, section 6). *See* FSM Const. art. VIII, § 1 ("A power expressly delegated to the

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[2]The Constitution's "broadly stated express grants of power [to the national government] contain within them innumerable incidental or implied powers," as well as certain inherent powers. SCREP No. 33, II J. of Micro. Con. Con. 813, 814-15.

[3]The four states' alternative claim that the Constitution does provide otherwise because the fishing fees are taxes which must be shared with the states is discussed below in part IV B.

national government, or a power of such an indisputably national character as to be beyond the power of a state to control, is a national power."). Thus even were we to conclude that the states were the underlying owners of the exclusive economic zone's resources, which we do not, such a conclusion would not entitle the states to the exclusive economic zone's revenues except where the Constitution so provides.

The four states also contend that the national government's disavowal of ownership of the marine resources in the exclusive economic zone implies its recognition of the states' sovereign ownership of those marine resources. The national government's position is consistent with the international treaty obligations it has assumed. Under the United Nations Convention on the Law of the Sea ("Convention"), an international treaty to which the Federated States of Micronesia has acceded and which is now in effect, coastal nations do not have sovereign ownership of the resources in their exclusive economic zones. Coastal nations only have "sovereign rights for the purpose of exploring and exploiting, conserving and managing natural resources, whether living or non-living . . . ." Convention art. 56(1)(a). These rights are subject to numerous duties, Convention arts. 56(1)(c), 56(2), 58, including the duty to allow other nations access to the living resources of its exclusive economic zone if the coastal nation does not have the domestic capacity to

harvest the entire allowable catch in its exclusive economic zone, Convention art. 62(2). Thus under the Law of the Sea Convention, a coastal nation does not "own" the fish in its exclusive economic zone. But a coastal nation does "own," if "own" is the right word, the sovereign right to exploit those fish and control who is given the access to its exclusive economic zone and the opportunity to reduce those fish to proprietary ownership. The FSM's sovereign rights in its exclusive economic zone under the Law of the Sea Convention are consistent with its constitutional powers in Article IX, section 2(m). The national government's disavowal of ownership of the exclusive economic zone's fish thus cannot be considered a recognition of state ownership thereof.

The four states also contend that early statutes passed by the FSM Congress recognize the states' ownership of the exclusive economic zone's resources. For this the states rely on two statutes: Public Law No. 7-71 and Public Law No. IC-3. Public Law No. 7-71 was enacted, not by the FSM Congress, but by the Seventh Congress of Micronesia, the legislative body for the entire Trust Territory, and signed into law by the Trust Territory High Commissioner on October 18, 1977. Public Law No. 7-71, by its terms, was not to take effect in the fishing zone seaward of the three-mile territorial sea until after June 30, 1979. Pub. L. No. 7-71, § 1 (52 TTC 151; 52 TTC 154(1)), § 6, 7th Cong. of Micro., 1st Spec. Sess.

(1977).[4] The section of the act creating an "Extended Fishery Zone"[5] extending seaward from twelve to two hundred nautical miles from the baselines (codified at 52 TTC 54) was not to take effect until July 1, 1979. Pub. L. No. 7-71, § 6(1), 7th Cong. of Micro., 1st Spec. Sess. (1977). Since Public Law No. IC-3, passed by the FSM Interim Congress, took effect January 1, 1979, the Public Law No. 7-71 provisions requiring licenses in fishing zones other than the three-mile territorial sea were never in effect. Any reliance on Public law No. 7-71 is misplaced.

The states also rely on section 58 of Trust Territory Code Title 52 (enacted as part of Pub. L. No. 7-71, § 1), which allowed a Trust Territory district to remove itself from the application of Public Law No. 7-71 and enact its own fishery zones legislation. Section 58 also acknowledged the obvious – any part of Micronesia that achieved a "separate sovereignty through political separation from the remaining districts of Micronesia w[ould] thereby attain sovereign rights to its sea area," which merely meant that the FSM would not claim sovereign rights to waters around islands that became a part of a different country. Section 58 was repealed

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[4]The whole act was to automatically expire 180 days after the trusteeship's termination. Pub. L. No. 7-71, § 6(3), 7th Cong. of Micro., 1st Spec. Sess. (1977).

[5]This is now called the Exclusive Economic Zone. 18 F.S.M.C. 104.

in its entirety one year later. Pub. L. No. IC-3, § 20, Intrm. Cong., 1st Sess. (1978) (repealing 52 TTC 58).

Public Law No. 7-71 was enacted at a time of flux when it was uncertain which districts would become a part of the Federated States of Micronesia and which would go their separate ways. Accordingly, the states can derive no support for their constitutional interpretation from Public Law No. 7-71's transitory provisions, most of which never took effect.

Public Law No. IC-3 also offers the four states' position no support. The avowed purpose of its passage by the FSM Interim Congress was to bring the fisheries statutes in conformity with the Constitution's division of power between the state and national governments. The states place undue reliance on the committee report accompanying Public Law IC-3 as evidence that Congress recognized that either the states owned the EEZ's resources or that the national government is required to share the fishing fees with the states. The language referred to reads "the division [of fishing fees] shall be as mutually determined by the Micronesian Maritime Authority and the state involved."[6] SCREP No. IC-12, House J. of Intrm. Cong., 1st Sess. 271, 272 (1978) (emphasis in original). This does not reflect any Congressional recognition that the states are constitutionally entitled to

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[6]The four states, at oral argument, complained that the states are still waiting for this mutual determination.

a share of the fees from the exclusive economic zone. At the time, the Micronesian Maritime Authority was the agent responsible for negotiating fishing agreements for both the exclusive economic zone and for state waters inside the twelve-mile limit.[7] Id. at 271. The committee report language about mutual determination referred to what became section 18 of Public Law No. IC-3, which read:

> Fees collected by the Authority [MMA] pursuant to Section 154(7) shall be distributed as follows:
> (a) That portion attributable to the foreign catch within the Territorial Sea and Exclusive Fishery Zone of a State as mutually determined by the Authority and the State affected shall be deposited in the General Fund of the State Legislature;
> (b) The remainder shall be deposited in the General Fund of the Interim Congress of the Federated States of Micronesia, or its successor.

Pub. L. No. IC-3, § 18, Intrm. Cong., 1st Sess. (1978) (amending 52 TTC 206). At the time, the territorial sea was still only three nautical miles in breadth, id. § 6; 52 TTC 52, and the "Exclusive Fishery Zone" was an area contiguous to the territorial sea that extended outward to twelve nautical miles from the baselines, 52 TTC 53. As this statutory language shows, the only portion of the fishing fees subject to mutual determination was that attributable to the foreign catch within twelve nautical miles of the baselines, an area whose natural resources, all parties correctly agree, the

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[7]Its responsibility for negotiating fishing agreements for within twelve miles lapsed when the Constitution became effective. *See* 24 F.S.M.C. 408 (formerly 24 F.S.M.C. 416).

Constitution places under state control. The rest of the fishing fees – those for the extended fishery zone, an area now known as the exclusive economic zone – went directly to the national government. Pub. L. No. IC-3, § 18(b). The states' reliance on the committee report's "mutually determined" language is thus misplaced and their reference to it is misleading. It does not show any recognition that the states were the sovereign owners of the marine resources in the exclusive economic zone or were entitled to any share of the fishing fees attributable to the catch in the exclusive economic zone.

Accordingly, the four states are not entitled to the net proceeds of revenues from exploitation of the living resources in the FSM exclusive economic zone on the basis of ownership.

B. *Whether Fishing Fees Are Taxes That Must Be Shared*

In the alternative, the four states make two arguments that the fishing fees collected from the EEZ are taxes of which they are entitled to at least half. First, they read Article IX, section 5 to mean that all national government revenues are taxes that must be shared equally with the states. Second, they contend that the fishing fees are an income tax, which must thus be shared equally with the states.

The critical Constitutional provision reads: "National taxes shall be imposed uniformly. Not less than 50% of the revenues shall be paid into the treasury of the state where

collected." FSM Const. art. IX, § 5. The four states would have us read the "the revenues" phrase in the second sentence as *all* revenues, of whatever kind, and that since fishing fees are revenues the states must be paid 50% of the fees. We cannot read it that way. To do so would, for instance, entitle the states to not only what they seek in this suit but also to 50% of all other revenues, such as half of every postage stamp sold to a philatelist (stamp collector). We adopt a normal English language reading of the phrase. The "the revenues" phrase in section 5's second sentence necessarily refers to those revenues mentioned in section 5's first sentence – "[n]ational taxes." The Constitution delegates to the national government the power to impose only two types of taxes – that based on imports, FSM Const. art. IX, § 2(d), and that on income, FSM Const. art. IX, § 2(e). Money collected through these forms of taxation are "the revenues" of which half must "be paid into the treasury of the state where collected." FSM Const. art. IX, § 5.

The four states further contend that the fishing fees are income taxes. They note that, although there is a per boat fee, most of the fee is assessed based on a percentage, usually 5%, sometimes more, of the estimated value of the vessel's expected landed catch. The states also note that currently all foreign fishing agreements must be approved by Congress, so that they do carry the indicia of a

Congressionally imposed tax. The national government counters that the fees are collected before any fishing is done, are not based on actual income but on the vessel's projected ability to catch fish, and that while adjustments might be made in future years to a vessel's fee if that vessel again fishes in FSM waters, those adjustments are not based on what the vessel's actual catch or income was, but on other factors. The national government also states that the fees are negotiable and that at times in the past agreements for fewer than a certain number of vessels did not need Congressional approval and it contends that if the fees were taxes then these practices would have been unconstitutional delegations of Congress's taxing power. The national government concludes that fishing fees are not income taxes. The states reply that merely because the fees are levied in advance does not prevent them from being taxes.

We think these arguments miss the point. Although the fees, as currently assessed, may be related to a percentage of the expected landed catch's value – projected income – there is no legal or constitutional requirement that they be calculated that way. They could be assessed on a flat amount per day or per voyage basis, or some other method not related to income.

More importantly, the fishing fees are not assessed under the national government's constitutional authority to impose

taxes on income. They are levied instead under the national government's constitutional authority "to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the Federated States of Micronesia beyond 12 miles from island baselines." FSM Const. art. IX, § 2(m). Social security taxes, although imposed on actual earned income, are likewise levied pursuant to a constitutional authority other than that to impose taxes on income. They are levied under the national government's power "to establish systems of social security and public welfare." FSM Const. art. IX, § 3(d). Thus, although social security taxes are an "income" tax, they are not "national taxes" that the national government must pay half of to the state where collected.[8] We therefore conclude that, although income-related, neither the fishing fees levied under Article IX, section 2(m) nor the social security taxes levied under Article IX, section 3(d) are income taxes within the meaning of Article IX, section 2(e) or national taxes within the meaning of section 5.

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[8]The four states distinguish social security taxes from fishing fees because they are paid into a separate fund and not into the general fund as are the fishing fees. We do not think that this distinction makes a difference. The Constitution does not bar the deposit of social security taxes into the general fund. It is Congress that has decided instead to create a special social security fund, as it may do. *See* FSM Const. art. XII, § 1(a) (public moneys must "be deposited in a General Fund or special funds within the National Treasury").

The four states also cite a long line of FSM case law and precedent determining that various state and municipal fees and taxes were really income taxes and thus unconstitutional. They compare those taxes to the national government's fishing fees and conclude that the fishing fees must be income taxes. The states misunderstand the import of those cases. Those cases only determine whether the Constitution bars a state or municipal tax or fee as beyond their power to levy, not whether a national government levy qualifies as an income tax. Should a state at some future time permit commercial fishing in waters it controls, a ruling today that the national government's fishing fees are income taxes would prevent that state from assessing and collecting fishing fees from its waters in the same manner as the national government does in the EEZ. But as discussed above, fishing fees are not income taxes because the national government's power to impose them does not derive from its power to tax income. Those cases thus have no application to this appeal.

The four states also emphasize the framers' well-known intent that the Constitution require extensive unconditional revenue sharing with the states so that the states would not be dependent upon the national government for their finances. The Constitution provides three instances of mandatory unconditional revenue sharing, which the framers evidently thought enough. Unearmarked foreign financial assistance is

one. It is divided into equal shares for each state and the national government, FSM Const. art. XII, § 1(b), which means that the national government and every state each receive 20%. Although the fishing fees are paid by foreign entities, the states do not contend that the fees constitute foreign financial assistance. And as mentioned above, not less than half of the national taxes must be paid to the state where collected. FSM Const. art. IX, § 5. But as we have seen, fishing fees are not national taxes because they are imposed, not under the national government's power to impose taxes, FSM Const. art. IX, § 2(d), 2(e), but under its power to regulate exploitation of natural resources within the FSM marine space beyond the 12 mile-limit – the exclusive economic zone, FSM Const. art. IX, § 2(m). Sharing is also mandated for some EEZ revenues. "Net revenue derived from ocean floor mineral resources exploited under Section 2(m) shall be divided equally between the national government and the appropriate state government." FSM Const. art. IX, § 6. The four states contend that fishing fees were not mentioned as revenue to be shared in either the Constitution or in the Constitutional Convention committee reports because everyone understood or assumed they would be shared and because the framers did not want to confront the United States over the issue of whether coastal nations could unilaterally regulate highly migratory species such as tuna. We do not find this argument

persuasive. The framers, for instance, could easily have worded section 6 to also include all revenues derived from living resources while not stating which living resources the FSM would try to derive revenue from and leaving for later developments in international law or relations with the United States to determine whether exploitation of tuna would be included. The framers did not. The absence of such language is glaring.

The Constitution grants the national government the exclusive right to regulate the exploitation of the natural resources within the EEZ, which necessarily includes the generation of revenue from the EEZ and the use of that revenue. The Constitution requires that of the EEZ-generated revenues, half of the net revenues derived from ocean floor mineral resources be given to the state governments. There is no Constitutional requirement that any revenue from the EEZ's living resources be shared with the state governments although the framers could have easily included one. We can neither read into the Constitution nor rewrite the Constitution to contain a provision that is not there. The constitutional provisions are plain and unambiguous. There is no need to go any further. In interpreting the Constitution, a court looks first to the language and words of the Constitution. When that language is plain and unambiguous, a court need not look any further. *See, e.g.*, M/V Hai Hsiang #36 v. Pohnpei, 7 FSM

Intrm. 456, 463 (App. 1996); Tafunsak v. Kosrae, 7 FSM Intrm. 344, 347 (App. 1995); Nena v. Kosrae (III), 6 FSM Intrm. 564, 568 (App. 1994). The national government is thus free to distribute or disburse its fishing fee revenues through its normal legislative process.

Finally, the fishing fees are not an income tax because they are not a tax. The trial court was near the mark when it characterized the fishing fees as a "sale of national assets." Chuuk v. Secretary of Finance, 8 FSM Intrm. at 386. As discussed above, if the national government owns anything, what it owns, its asset, if you will, is the exclusive sovereign right to control access to and exploitation of the natural resources in the FSM's exclusive economic zone. 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. If a state were to allow commercial fishing in any of its waters within the twelve-mile limit, it too would be selling its licensees access to the state's resources and the opportunity to reduce some of the state's living resources to the licensees' ownership.

Because we decide this issue on the basis of the Constitution's delegation of powers to the national government, we neither reject nor adopt the trial court's

four-part test for differentiating between taxes and regulatory fees. We also express no view on the trial court's opinion that if the fishing fees were taxes they would be unconstitutional because of their alleged lack of uniform imposition.

V. Conclusion

The four states are not entitled to the net proceeds of the fishing fees from the FSM's exclusive economic zone on the basis of ownership. Nor do the exclusive economic zone fishing fees constitute an income tax that the Constitution would require the national government to share with the states. The trial court's judgment is accordingly affirmed. The parties are to bear their own costs.

So ordered the 30th day of July, 2000.

Richard H. Benson
Richard H. Benson
Associate Justice

Martin Yinug
Martin Yinug
Associate Justice

/s/ Aliksa B. Aliksa
Aliksa B. Aliksa
Temporary Justice

Entered this 30th day of July, 2000.

Johsak K. Keller
Chief Clerk of Court

IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
APPELLATE DIVISION

STATE OF CHUUK, STATE OF KOSRAE, STATE OF POHNPEI and STATE OF YAP, Appellants, vs. SECRETARY OF DEPARTMENT OF FINANCE and FEDERATED STATES OF MICRONESIA, Appellees.	)	APPEAL CASE NO. P4-1999 JUDGMENT

Appeal from the Trial Division of the Supreme Court of the Federated States of Micronesia sitting in Pohnpei.

This cause came on to be heard at oral argument on April 22, 2000, and on the record from the Trial Division of the Supreme Court of the Federated States of Micronesia sitting in Pohnpei, and was duly submitted.

On consideration whereof, it is now hereby ordered and adjudged by this court that the dismissal by the Trial Division of the Supreme Court of the Federated States of Micronesia sitting in Pohnpei in this cause be, and hereby is, affirmed with costs.

Entered this 30th day of June, 2000.

Chief Clerk of Court