



EXECUTIVE SUMMARY
Non-Profit Organization Limited Gaming Tax
Report No. 19-03, March 2019

The Government of Guam lost the opportunity to collect \$2.6 million (M) in additional Limited Gaming Tax (LGT) from the top five Non-Profit Organizations (NPO) during calendar year (CY) 2014 through CY 2017. Bingo/Lottery (Bingo)¹, primarily conducted by NPOs, is Guam’s second largest gaming activity next to electronic gaming devices. As shown in Table 1, the top five NPOs grossed \$81.3M or an average of \$20.3M in Bingo income per CY. This income is subject to a four percent (4%) LGT. Of the \$81.3M, NPOs paid out \$66.1M to Bingo winners. However, LGT was only applied to gross receipts less payouts for winnings due to the inconsistency in the gross receipts definition in the Guam Code Annotated (GCA) and the Guam Administrative Rules and Regulations (GARR).

Table 1: CY 2014 ~ CY 2017 Top 5 Bingo NPOs’ Gross Income vs. Net Income

DESCRIPTION	CY 2014	CY 2015	CY 2016	CY 2017²	TOTAL	AVERAGE
GROSS INCOME	\$ 15,973,526	\$ 20,297,656	\$ 26,553,947	\$ 18,433,244	\$ 81,258,373	\$ 20,314,593
PAYOUTS/PRIZES	13,728,032	14,334,744	22,273,492	15,807,512	66,143,779	16,535,945
NET INCOME	\$ 2,711,495	\$ 6,024,962	\$ 4,372,412	2,625,732	\$ 15,734,602	\$ 3,933,650
LGT WITH PAYOUTS	638,941	811,906	1,062,158	737,330	3,250,335	812,584
LGT LESS PAYOUTS	108,460	240,998	174,896	105,029	629,384	157,346
LOST OPPORTUNITY	\$ (530,481)	\$ (570,908)	\$ (887,261)	(632,300)	\$ (2,620,951)	\$ (655,238)

Inconsistent Regulations on Gross Receipts Definitions

The LGT gross receipts definition in the GARR is inconsistent with the definition in the GCA. Based on Title 11 GCA §5201(a), the LGT is imposed on the gross receipts from limited gaming activities. However, Title 3 GARR §7102(q) defines “gross receipts” as the total revenue from gaming activities less payments for any winnings paid to generate said revenue. As authorized by Public Law (P.L.) 26-52, DRT filed the gaming control rules and regulations in January 2003. DRT noted this definition to stakeholders as part of their implementation of P.L. 32-60. As such, NPOs reported gross receipts less payouts when they file the Department of Revenue and Taxation (DRT) Temporary Form 3260 in accordance with 3 GARR §7102(q).

In August 2013, OAG filed suit seeking declaratory relief against the DRT Director, Governor of Guam, certain electronic gaming device license holders, and unnamed license holders. It sought a judgment declaring that 1) DRT’s 2003 regulations for licensing electronic gaming devices were void and without force or effect, and 2) P.L. 32-60 did not make those regulations valid and Guam Law continued to prohibit the licensing of electronic gaming devices. As of the date of this report, the matter is still in court. If the court finds the regulations to be invalid, the gross receipts less payments definition will not apply for LGT.

In addition, if the Superior Court finds the licensed amusement devices are illegal, the ruling will significantly affect the Limited Gaming Fund. Gross receipts from electronic gaming devices account

¹ Bingo and Lottery is combined when filing the Limited Gaming Tax on the Form 3260.

² These amounts reflect only two out of the top five NPOs.

for 79% of the Limited Gaming Fund. Until the court renders a ruling, DRT will continue to regulate the gaming devices in accordance with P.L. 32-60.

Form 3260s Not Timely Processed

As of January 2019, DRT provided LGT data as of November 2017. DRT has not keyed in and assessed LGT from December 2017 to December 2018. This was due to the lack of designated staff tasked with inputting and processing Form 3260s. Further, due to the turnover of Business Privilege Tax Branch staff, a logjam transpired and the branch remained in need of this additional staff to also analyze, review, and monitor, tax information. This backlog affects not only the assessment of LGT but also the Guam Memorial Hospital Authority Trust Fund Fee. Thus, Form 3260 data was not readily available for analysis and susceptible to human errors.

NPO Bingo Gross Receipts Underreported on NPO's Financial Statements

NPO gaming gross receipts were underreported as bingo income was inconsistently reported on their submitted financial reports. The financial statements and return filings' bingo income did not reconcile with the Power 7 database gross receipt. For example, NPO B reported \$62 thousand (K) in their CY 2015 financials. However, the Bingo/Lottery CY 2015 gross receipts in the Power 7 database was \$860K, a significant variance of \$798K.

NPOs Reported Gaming Winnings to DRT

Gaming entities are required to issue Form W-2Gs to winners of certain gambling activities no later than January 31st following the preceding tax year or CY. The top five NPOs of the Bingo entities reported \$55.5M in Bingo winnings based on CY 2014 through 2017 Form 1096 filings. Form 1096 summarizes the Forms W-2G provided to recipients. We did not review whether individuals reported the winnings on their individual income tax filings. Similar to IRS, DRT relies on taxpayers' voluntary inclusion to their gross income. DRT's method does not include a systemic matching of income from a taxpayer's W-2G or Form 1099 with the individual income tax return.

Senior Center Operations Bingo Activities' LGT Exemption

P.L. 32-68 established an LGT exemption for all Senior Center Operations (SCO) bingo activities for persons enrolled in the senior program. These activities are conducted during operational hours from 9 a.m. to 4 p.m., Monday to Friday. The responsibility falls on each village mayor for the management of each SCO bingo. The impact of this exemption to the overall LGT revenue is minimal compared to the revenues from the top five grossing NPOs.

Conclusion and Recommendation

NPOs limited gaming gross receipts will continue to require aggressive enforcement since this is primarily a cash business and bingo gross receipts may continue to go underreported. With the manual filing and inputting of the gaming taxes, DRT's backlog will continue to increase without the additional staff needed to properly input, review, and monitor tax information. We recommend DRT to:

- Amend the definition of "gross receipts" in GARR to identify all gaming activities revenue inclusive of payments for winnings;
- Update Form 3260 to include reporting of the NPO's gaming gross income, payouts, and LGT exemption;
- Consider electronic filing options for Form 3260; and
- Dedicate staff resources to ensure complete filing and payment of all LGT due.

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