

**Government of Guam
Tax Credit Programs**

**Performance Audit
As of September 30, 2006**

**OPA Report No. 07-15
November 2007**



OFFICE OF THE PUBLIC AUDITOR

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**OFFICE OF THE PUBLIC AUDITOR
EXECUTIVE SUMMARY**

Government of Guam Tax Credit Programs
Report No. 07-15, November 2007

This report represents the results of our performance audit of the government of Guam's various tax credit programs. The objectives of this audit were to determine: (1) the effectiveness of the government of Guam's monitoring of tax credit programs' compliance with applicable laws, rules, and regulations, and (2) the financial impact these tax credit programs have on government of Guam revenues.

As of September 30, 2006, we identified nine public laws that authorized a minimum of \$23.6 million (M) in tax credits to taxpayers who contribute property, materials, labor, services, or cash to the government of Guam for various programs.¹ Four of the tax credit programs do not limit the amount of tax credits, therefore, the maximum impact on the reduction of government revenues is not known.

As of March 2007, the Department of Revenue and Taxation (DRT) offset \$6.3M against various companies' taxes for their participation in three on-going tax credit programs administered by the Guam Economic Development and Commerce Authority (GEDCA): the Guam Raceway Park, the Paseo Stadium, and the Comprehensive Soccer Stadium. \$15.4M will be offset when companies submit claims for the balances and when pending programs are implemented.

	Public Law	Purpose	Amount Authorized in Law	Drawdowns Authorized by GEDCA	Amount Applied by DRT	Balance of Potential Tax Credits
1	28-150	Past Due MIP Billings Offset	\$11,059,643 ²	\$ -	\$ -	\$11,059,643
2	28-142	Guam Registered Apprenticeship Program	Not specified	-	-	Unknown
3	27-130	UOG Multi-Sports Complex	1,000,000	-	-	1,000,000
4	27-114	GPSS Sports Facilities	1,000,000	-	-	1,000,000
5	27-85	Soccer Stadium	1,000,000	566,490	467,151	433,510
6	26-166	Paseo Stadium	1,500,000	1,001,256	887,630	498,744
7	24-254	Local Commuter Air Svcs.	Not specified	-	-	Unknown
8	24-141	Guam Raceway Park	8,000,000	6,631,177	4,950,607	1,368,823
9	14-69	Payment for Privately Owned Lands	Not specified	-	-	Unknown
		Total	\$23,559,643	\$ 8,198,923	\$ 6,305,388	\$15,360,720

GEDCA Not Effectively Monitoring Current Tax Credit Programs

GEDCA authorized tax credits of \$6.6M for the Raceway Park, \$1M for the Paseo Stadium, and \$566,490 for the Soccer Stadium without ensuring that laws, rules, and regulations were followed. This occurred because GEDCA allowed related special-interest groups to make key decisions, while GEDCA merely processed tax credits as a perfunctory duty and did not report on the overall program benefits, costs, and the impact to government revenues. We found:

- Lack of public announcements to invite companies to participate in any of the tax credit programs allowed groups to select favored companies. Public announcements were required by Public Law (P.L.) 25-27 for the Raceway Park; however, the project manager and Guam Racing Federation

¹ Our search for tax credit laws was limited to the searchable Guam Code Annotated at www.guamcourts.org/CompilerofLaws and other applicable laws may not have been identified by the search engine.

² FY 2006 audited government of Guam Basic Financial Statements, MIP Fund liabilities. P.L. 28-150 did not specify a maximum amount. Therefore, the effect on future general fund revenues cannot be determined with certainty.

(GRF) selected 12 companies to receive tax credits. Public announcements were not required for the Soccer Stadium, which allowed the Guam Football Association (GFA) to select only one company.

- GRF did not remit the \$2 Raceway Park admissions fee required by P.L. 24-141 to the government. The amount of lost revenue to the government is not known.
- In March 2007, GFA remitted \$502 for Soccer Stadium admissions for two events. The amount of lost revenue to the government is not known.
- \$231,377 in excess tax credits was authorized by GEDCA and granted to one company that charged a 17% overhead rate for construction of the Raceway Park, although P.L. 25-27 allowed only 5%.
- Lack of detailed inspection reports and independent certification of invoices and expenditures for Raceway Park tax credits as required by P.L. 25-27. However, we were provided with three months of dated photos of the construction in progress.
- Lack of verification and documentation of the dollar for dollar matching requirement paid by GFA amounting to \$595,440 for the Soccer Stadium tax credit program
- A potential breach of standards of conduct for public officers and employees as outlined in 4 G.C.A. §15204 may have occurred when:
 - A former GEDCA Acting Administrator authorized four Soccer Stadium tax credits of \$398,663 for the subsidiary company and was hired by the parent company; and
 - A current GEDCA Acting Administrator authorized tax credits of \$167,827 to the subsidiary company where a close relative is employed by the parent company.

In March 2007, Standard & Poor's acknowledged "income and gross receipts taxes have been relatively stable over the past years. However, the continued implementation of exemptions and credits has prevented those revenues from realizing stronger growth." While we recognize the Legislature's authority to provide tax credits for public goals, tax credits reduce government revenues and can distort the government's spending priorities. Tax credit programs receive a higher funding priority than public education, health, and safety because they do not compete for annual appropriations. It is not clear whether the tax credit programs identified would have been funded through the normal appropriations process. Revenues forgone by tax credit programs—unless offset by increased taxes or decreased spending—increases the overall deficit of the government of Guam.

Conclusion and Recommendations

Guidelines to administer and monitor pending programs and track the effects of tax credits on general fund revenues are required. GEDCA and DRT should assess on-going tax credit programs to determine whether these programs meet public needs and are worth the forgone revenues. Given the government of Guam's FY 2006 deficit of \$524 million, we made various recommendations including the repeal of certain tax credits; for DRT to provide to the Bureau of Budget and Management Research (BBMR) an estimate of revenues forgone via tax credits; and for BBMR to incorporate these tax credits in the annual budget process.

The GEDCA, DRT and BBMR Directors generally concurred with the findings and recommendations of this report. However, GEDCA legal counsel disagreed with the contention that there were possible breaches of standards of conduct by the current and former Acting Administrators. OPA is required by 1 G.C.A. §1909(h) to report possible violations of law that come to our attention to the OAG. See Appendices 7, 8, and 9 for their respective management responses.



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Public Auditor



OFFICE OF THE PUBLIC AUDITOR

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Introduction

This report represents the results of our performance audit of the government of Guam's various tax credit programs authorized by public laws. This audit was initiated as part of our ongoing review of all government of Guam tax credit programs and as a result of OPA Report No. 06-18, Paseo Stadium Lease Agreement, issued in December 2006. Subsequent to our initiation, a senator in the 29th Guam Legislature requested a review of tax credit programs. Our review did not include the Guam Economic Development and Commerce Authority's (GEDCA) Qualifying Certificate programs.

The objectives of this audit were to determine: (1) the effectiveness of the government of Guam's monitoring of tax credit programs' compliance with applicable laws, rules, and regulations, and (2) the financial impact these tax credit programs have on government of Guam revenues.

The scope, methodology, and prior audit coverage are detailed in Appendices 2 and 3.

Background

Tax credits are revenue reductions, which result in cash revenue not received by the government. Tax credits grant special tax relief for certain taxpayers. Tax credits do not require or compete for appropriations in the annual budget process and therefore are less visible and not scrutinized to the degree that appropriated programs are.

Tax credits entice private companies to contribute resources that the government of Guam lacks due to financial constraints. The advantage for private companies to participate in tax credit programs is that it reduces certain taxes dollar for dollar. Tax credits are different from tax deductions. A tax deduction reduces the company's taxable income, depending on the tax bracket. For example, if the company is in the 25% bracket, a \$1,000 deduction lowers its taxes by \$250. A \$1,000 tax credit, on the other hand, lowers the tax by the full \$1,000. This provides a tax advantage to the participating company, but the lost revenue is a disadvantage to the government of Guam.

Generally, companies deduct any applicable tax credits from taxes due on Form-GRT, which is submitted to the Department of Revenue and Taxation (DRT) to report their monthly taxes for business privilege,¹ occupancy, liquid fuel, automotive surcharges, tobacco, and alcoholic beverages.

¹ In May 2007, Chapter VI, Section 28 of P.L. 29-02 replaced "Business Privilege Tax" for all references to Gross Receipts Tax (GRT). Business privilege tax and GRT are used interchangeably in this report.

Results of Audit

Our audit found that GEDCA did not ensure that the applicable laws, rules, and regulations were followed before authorizing tax credits totaling \$8.2 million of the \$10.5 allowed by law: \$6.6 million for the development of the Guam Raceway Park (Raceway Park), \$1 million for the Paseo Stadium, and \$566,000 for the Soccer Stadium. This occurred because GEDCA allowed key decisions to be made by the benefiting special interest groups and merely processed tax credits in a perfunctory manner and did not report on the overall benefits and costs of the programs. Specifically, we found:

- Lack of public announcements to invite companies to participate in any of the tax credit programs allowed groups to select favored companies. Public announcements were required by Public Law (P.L.) 25-27 for the Raceway Park; however, the project manager and the Guam Racing Federation (GRF) selected 12 companies to receive tax credits for the Raceway Park program. Public announcements were not required for the Soccer Stadium, which allowed the Guam Football Association (GFA) to select only one company to benefit from the tax credits.
- The GRF did not remit the \$2 Raceway Park admissions fee required by P.L. 24-141 to the government of Guam. In March 2007, the GFA remitted \$502 for Soccer Stadium admissions charged for two events held at the Soccer Stadium in 2005 and 2006. The amount of lost government revenues for both programs is not known.
- \$231,377 in excess tax credits was authorized by GEDCA and granted to one company that charged a 17% overhead rate for construction of the Raceway Park, although P.L. 25-27 allowed only 5%.
- Lack of detailed inspection reports and independent certification of invoices and expenditures for Raceway Park tax credits as required by P.L. 25-27. Although we were provided with three months of dated photos of the construction in progress, they were not sufficient for an appropriate assessment.
- Lack of verification and documentation of the dollar for dollar matching requirement paid by GFA amounting to \$595,440 for the Soccer Stadium tax credit program pursuant to P.L. 27-85.
- A potential breach of standards of conduct for public officers and employees as dictated in 4 G.C.A. §15204 may have occurred when:
 - A former GEDCA Acting Administrator authorized four Soccer Stadium tax credits of \$398,663 to a subsidiary of the parent company which hired the former Administrator shortly after authorizing the subsidiary's largest tax credit of \$233,091; and

- A current GEDCA Acting Administrator authorized three Soccer Stadium tax credits of \$167,827 to a subsidiary of the parent company where a close relative is employed.

As a result of GEDCA's ineffective monitoring, other unimplemented tax credit programs may continue to reduce general fund revenues by a minimum of \$13.1 million. The tax credit programs' inconsistent laws further hampered the monitoring function as follows:

- The tax credit programs identified were not founded on a government-wide uniform regulation. Rather, each program had different requirements, such as monitoring agencies, processes, thresholds, and type of tax offset.
- The Soccer Stadium program required a dollar for dollar matching contribution from the GFA by P.L. 27-85, while the Raceway Park program did not.
- The Raceway Park program was required to advertise for participants to the tax credit program, while others were not required.
- Four of the tax credit programs do not limit the amount of allowable tax credits. At a minimum, an estimated \$23.6 million is allowed, however, the maximum impact of these tax credits on lost government revenues is not known.
- Only one of the nine programs had a sunset provision while the remaining eight tax credit programs were for an indefinite period. The Guam Registered Apprenticeship Program allowed for a 12-year period which includes a four-year optional extension. However, this period may be inordinately long given the \$524 million deficit of the government of Guam.

Tax Credit Programs Reduce Government Revenues

Since 1977, the Guam Legislature enacted nine public laws² authorizing a minimum of \$23.6 million in tax credits to taxpayers who have contributed property, materials, labor, services, or cash to the government of Guam. See Appendix 4 for a listing of all nine programs. Four of the programs do not limit the amount of allowable tax credits, therefore, the maximum impact on the reduction of government revenues is not known.

We found that the tax credit programs identified were not founded on a government-wide uniform regulation. Each program had different requirements, such as monitoring agencies, processes, thresholds, and types of tax offset. The Legislature assigned the responsibility to develop rules and regulations to GEDCA for six of the nine programs, DRT was assigned to develop two, and the Department of Labor (DOL) was assigned to develop one.

All the programs cited a benefit for the public, albeit some for special interest groups, i.e., the Guam Racing Federation, the Guam Football (Soccer) Association, and the Guam Baseball Federation. Public laws authorized \$10.5 million in tax credits for the construction, design, and development of the Raceway Park, the Paseo Stadium,³ and the Soccer Stadium. These are tax credit programs in progress and near completion. GEDCA administers these programs and authorizes the amounts that the companies may reduce their taxes.



Image 1: Earth-moving equipment at the Guam Raceway Park

As of March 2007, various companies applied for and DRT offset gross receipt and excise taxes by \$6.3 million. As of July 2007, GEDCA authorized business privilege and excise tax credits of \$8.2 million for these ongoing programs. The remaining \$1.9 million may be applied when companies apply for and submit these claims to DRT. However, \$2.3 million is still available for tax credits, unless the balances are repealed. See Table 1.

² Our research on tax credit laws was limited to the Guam Code Annotated at www.guamcourts.org/CompilerofLaws, therefore, other applicable laws may not have been identified.

³ OPA Report No. 06-18 issued in December 2006.

Table 1: Tax Credits Authorized Against GRT and Excise Tax by Fiscal Year

Fiscal Year	Raceway Park*	Paseo Stadium**	Soccer Stadium*	Subtotal	Other Pending Programs⁴	Total
Total authorized in law [A]	\$ 8,000,000	\$ 1,500,000	\$ 1,000,000	\$ 10,500,000	\$ 13,059,643	\$ 23,559,643
2000	174,138	-	-	174,138	-	174,138
2001	1,127,596	-	-	1,127,596	-	1,127,596
2002	1,427,731	-	-	1,427,731	-	1,427,731
2003	1,997,336	-	-	1,997,336	-	1,997,336
2004	606,370	-	-	606,370	-	606,370
2005	957,286	786,755	-	1,744,041	-	1,744,041
2006	133,289	214,502	-	347,791	-	347,791
Up to Aug. 2007	207,429	-	566,490	773,919	-	773,919
Total Credits Authorized [B]	\$ 6,631,175	\$ 1,001,257	\$ 566,490	\$ 8,198,922	\$ -	\$ 8,198,922
Total Applied by DRT [C]	\$ 4,950,607	\$ 887,630	\$ 467,151	\$ 6,305,388	\$ -	\$ 6,305,388
Remaining Credits to be Applied [B-C]	\$ 1,680,568	\$ 113,627	\$ 99,339	\$ 1,893,534	\$ -	\$ 1,893,534
Balance of Tax Credits to Be Authorized [A-B]	\$ 1,368,825	\$ 498,743	\$ 433,510	\$ 2,301,078	\$ 13,059,643	\$ 15,360,721

*Gross Receipts Tax

**Excise Tax

Over \$13 million is available to companies for pending tax credit programs when they are eventually implemented.

Tax credit programs do not require or overtly compete for appropriations in government of Guam's annual budget process. In effect, these programs are prioritized over discretionary spending subject to the annual appropriations process, such as education, health, and safety because the tax credit certificate holders receive immediate relief from paying taxes when they submit their Form-GRT along with their certificate. It is not known whether the \$10.5 million in tax revenue reductions authorized for the Raceway Park, Paseo Stadium, and the Soccer Stadium would have been funded through the regular appropriation process.

Government revenues forgone through tax credits - unless offset by increased taxes or lower spending - increase the overall budget deficit because cash is being diverted from the general fund. Therefore, monitoring these on-going programs and reporting on overall benefits versus tax revenue reductions is essential to ensuring that these prioritized programs are successful and achieve the desired goals.

As of July 2007, a balance of \$2,301,078 in tax credits would be saved if the Raceway Park (\$1,368,825 balance), Paseo Stadium (\$498,744 balance), and Soccer Stadium (\$433,510

⁴ Other Tax Credit Programs include the Medically Indigent Patients (MIP) Billings Offset (\$11.1 million), the University of Guam (UOG) Multi-sports Complex (\$1 million), and the Public School Facilities (\$1 million). Three programs: the Guam Registered Apprenticeship Program, Local Commuter Air Services, and Payment for Privately Owned Lands do not specify a maximum amount for tax credits.

balance) tax credit programs are repealed. Therefore, we recommend GEDCA and DRT conduct an overall assessment of on-going tax credit programs to determine whether program objectives were achieved and whether the tax credit programs should be closed if they have met their legislative purpose.

Possible Double Tax Benefit

None of the tax credit rules prohibit claiming contributions as both a tax credit and a tax deduction. For example, a participating company contributing materials or labor for a project would claim these expenses as a tax credit on Form-GRT. Without an explicit prohibition in Guam's tax credit rules and regulations, the company could also claim these contributions as a charitable deduction. The Internal Revenue Code (IRC) expressly prohibits this double benefit in its tax publications.

We were unable to determine whether double tax benefits were claimed because DRT did not allow OPA to review the information. Therefore, we recommend DRT conduct such reviews to ensure that companies did not avail themselves of both tax deductions and tax credits. We also recommend that DRT incorporate this standard review in current and future rules and regulations governing tax credit programs.

GEDCA Not Effectively Monitoring Current Programs

Our review found that GEDCA, the monitoring authority, did not ensure that the Raceway Park, the Paseo Stadium, and the Soccer Stadium tax credit programs were managed in accordance with laws, rules, and regulations. The rules and regulations were adjudicated to provide a sufficient level of control and monitoring to ensure that the tax credits authorized are used for intended purposes.

We noted several instances of non-compliance in the Raceway Park tax credit program including:

- No publicized notices to solicit from all companies to participate in the program;
- No remittance to the government of Guam for the required portion of event admissions;
- Tax credits of \$231,377 in the form of excessive overhead costs allowed for one company; and
- No inspection reports by GEDCA.

The Soccer Stadium tax credit program weaknesses include:

- No public announcements were made to publicly offer this opportunity for tax credits to other companies;
- Financial statements for 2006 have not been remitted to the Speaker of the Guam Legislature, the Public Auditor, and the GEDCA Administrator; and
- Possible conflicts of interest by the current and a former GEDCA Acting Administrator as outlined in 4 G.C.A. §15205.⁵ The former Acting Administrator authorized Soccer

⁵ 4 G.C.A., Chapter 15: Standard of Conduct for Elected Officers, Appointed Officers, and Public Employees of the Government of Guam.

Stadium tax credits and was hired by the parent company shortly afterward. The current GEDCA Acting Administrator also authorized Soccer Stadium tax credits for the same company where a close relative is employed.

Similar weaknesses and instances of non-compliance were found in our Paseo Stadium audit.

These instances of noncompliance occurred because GEDCA merely processed tax credits in a perfunctory manner and allowed the benefiting special interest groups to solely make key decisions. No cost/benefit assessment reports were compiled. As of July 2007, \$8.2 million was authorized for tax offset to companies for contributions towards the development of these facilities. Continued poor monitoring will result in further reduction of general fund revenues without any assurance of the programs' benefits.

Guam Raceway Park Tax Credit Program

In 1998, P.L. 24-141 authorized \$8 million in business privilege tax credits for the Raceway Park program. The development of the Raceway Park was predicated on the potential benefits to Guam, including a safe and supervised racing facility to reduce illegal racing on public roads. Other foreseen benefits include a facility for a driving school, tourist attractions, auto shows, other large outdoor events, and a testing facility for Asian car manufacturers.

In June 1998, the GRF entered into a 20-year license agreement with the Chamorro Land Trust Commission (CLTC) for 250 acres of real property in Yigo. In OPA Report No. 05-09, Performance Audit of the CLTC Non-Appropriated Funds issued in December 2005, we found that GRF may have been granted favorable terms and conditions.

- The GRF was the largest licensed property but was the second lowest rental rate at less than 4 cents per square meter annually.
- Rental payments were waived for two years and the GRF adhered to a written yet, unsigned addendum, resulting in lost CLTC revenue of \$89,550.
- The GRF was allowed to retain 50% or \$104,027, of proceeds derived from the sale of the property's coral.



Image 2: Guam Raceway Park Drag Strip

As of the date of this report, CLTC did not confirm whether GRF was current in its lease payments.

In 1999, the GRF selected a licensed professional engineer to develop a Master Plan, monitor the Raceway Park construction as project manager, and certify the completion of the various construction phases. The project manager, along with the GRF, selected 12 companies to

participate in the construction of the Raceway Park and allocated the \$8 million in tax credits amongst the companies.

The entire amount allocated was not immediately credited to the companies' business privilege taxes. Since there were different phases in the construction, GEDCA required the companies to draw down the applicable portion of the completed phase. We determined that from January 14, 2000 through February 15, 2007, GEDCA authorized 79 tax credit drawdown requests totaling \$6,631,177 for the Guam Raceway Park.

Lack of Public Notice to Potential Beneficiaries of the Raceway Park Tax Credits

Pursuant to P.L. 25-27, Section 1.05(f), the GRF was required to give at least two notices in local newspapers for the proposed construction of the Raceway Park in order to solicit bids or proposals from contractors. The GRF General Manager confirmed that public notices were not published and the companies selected for the program were not selected through competitive means. Despite this requirement, GEDCA authorized tax credits for the companies without first ensuring that the companies were selected by competitive means. There is no assurance that the companies selected were not given preferential selection over other companies that may have wanted to participate.

Another benefit of competition is to ensure that tax credits are given at the most economical amounts. Government funds for purchases (including revenues forgone by tax credits) should be competitively procured to ensure that the funds expended are used in the most economical and equitable manner. Procurement regulations outlining a system to ensure competitive biddings should have been implemented, documented, and kept on file for review.

Guam Raceway Park Events Admission Fees Not Remitted

Pursuant to P.L. 24-141, Section 6, "the organizers of any event held at the Raceway Park for which an admissions fee is charged are required to pay the government of Guam two dollars (\$2.00) for each paid admission." The Treasurer of Guam (TOG), DOA Acting Controller, and the GRF General Manager confirmed that no admissions fees were deposited to the government of Guam. In fact, DOA Acting Controller stated that no specific revenue account was established for this purpose.

The GRF General Manager stated that he thought that the admissions fees did not have to be remitted until the completion of the Raceway Park, which is expected in 2012. The law did not state that the fees were contingent upon the Raceway Park's completion.

The 2003 and 2004 GRF financials statements, submitted to DRT in August 2006, reported gate admissions fee income of \$12,105. However, we were unable to project the amount of admissions fees due to the government of Guam because the GRF does not keep records of the number of spectators. Local media reported the 25th annual Smokin' Wheels event held in April 2007 expected over 5,000 spectators with a \$10 admission fee. Based on this estimate, at least \$10,000 may have been required to be paid to the government of Guam.

We recommend that GEDCA determine the amount of admission fees required to be remitted to the government of Guam. We also recommend that the Office of the Attorney General (OAG)

determine whether legal action is necessary to cause the required admissions fees to be remitted by the Guam Racing Federation.

Excessive Overhead Authorized

P.L. 25-27, Section 1.02(i) authorized companies to apply a maximum of five percent (5%) of the overhead rate for materials, supplies, or out-of-pocket cost of design or labor towards their tax credit. As a result, GEDCA allowed one company to receive an excess of \$231,377 in overhead costs for its tax credit transactions. See Appendix 5 for details.

This occurred because GEDCA did not thoroughly review the charges before authorizing the tax credits for the company. According to Section 2.04 of the rules, tax credits can be drawn down against authorized amounts after a public accountant certifies completed invoices and prepares financial statements confirming the amount expended. Although an accounting firm attested to four of these tax credit transactions, the firm's agreed upon procedures only attested that construction services for the Raceway Park were rendered and not whether the companies were in compliance with the 5% overhead allowance. The accounting departments of the companies confirmed the remaining invoices.

As the authorizing agency for the tax credits, GEDCA still has the responsibility to review the overhead calculation to ensure they were allowable under the conditions of P.L. 25-27. We recommend that GEDCA immediately revoke the tax credits totaling \$231,377 for this particular company unless additional documentation can support the appropriateness of the expenditures for overhead and tax credits.

Lack of Required Inspections

Pursuant to P.L. 25-27, Section 1.06, GEDCA was required to conduct inspections semi-annually and within 30 to 60 days *prior to* the completion of each phase of construction of the Raceway Park. During these inspections, GEDCA was to review documentation provided by the GRF to monitor adherence to the rules and regulations. In Section 1.07(a), the project manager was required to provide GEDCA with inspection and status reports of the phases of construction made available to the public.



Image 3: Guam Raceway Park Main Office

During our review of the Raceway Park tax credit files, we were unable to locate any inspection or status reports. Although GEDCA provided us with dated photos of the construction in progress from July through September 2002, the photos were not sufficient to indicate whether GEDCA had adhered to the applicable rules and regulations of the Guam Raceway Park. These were the only photos provided since the project began in 2000.

We did not find GRF's audited financial statements as required by Section 1.06(d)(vii) in GEDCA's files. In lieu of audited financial statements, the GRF General Manager provided OPA with the annual Form-990⁶ DRT filings as of 2004. However, as of the date of this report, the 2005 and 2006 tax filings were not provided to OPA. Although the forms were filed, DRT's Tax Examination Supervisor stated that the GRF is not recognized as a tax-exempt organization. We recommend the DRT determine the appropriate tax filing and reporting requirements for GRF and whether the GRF is required to pay taxes on income earned if they are not a tax-exempt organization.

In summary, we found that the GRF:

- Did not publicize notices to solicit from all companies to participate in the program as required by P.L. 25-27;
- Did not remit its portion of event admissions to the government of Guam as required by P.L. 24-141; and
- Is not a tax-exempt entity.

Additionally, we found that GEDCA:

- Authorized excessive overhead costs of \$231,377 in tax credits to one company; and
- Did not prepare inspection reports indicating the completed phases of the construction of the Raceway Park or review documents to determine whether GRF had adhered to the Raceway Park rules and regulations.

Based on the instances of non-compliance, we recommend the Governor and the Legislature repeal the tax credits balance of \$1.4 million for the construction of the Guam Raceway Park.

Soccer Stadium Tax Credit Program

In 2004, P.L. 27-85 authorized \$1 million in business privilege tax credits to construct a comprehensive Soccer Stadium that complies with international standards, attracts international soccer competitions, and provides an after-school and weekend venue for soccer competition. The GFA has been leasing 30,000 square meters of land in Dededo for the Soccer Stadium from the Department of Parks and Recreation for \$1 per year for 30 years.

Matching Requirement Not Verified

The difference between the Soccer Stadium tax credit program and other tax credit programs is the requirement that the GFA match every dollar of tax credits given for the Soccer Stadium. Therefore, the government of Guam could fund up to \$1 million of a \$2 million project.

We determined that from October 6, 2006 through July 27, 2007, GEDCA authorized seven tax credit certificates totaling \$566,490 for lighting, parking, and the construction of a futsal⁷ field. As of July 2007, the GFA had contended that the amount was matched by \$595,440 in GFA expenditures for the project. See Appendix 6.

However, OPA could not determine whether the matching requirement was satisfied because of a lack of sufficient evidence of GEDCA's review and approval. We found no evidence in the

⁶ Form-990 provides a public source of information about tax-exempt organizations.

⁷ Futsal is the official word for indoor soccer.

files that GEDCA verified the matching amounts through inspections, certified invoices or copies of checks paid to vendors for the construction of the Soccer Stadium. The only evidence in GEDCA's files was an Excel spreadsheet indicating the matching amounts given by the GFA.

Further, GEDCA provided no evidence of inspections to independently verify invoices submitted for the tax credits although certified by the project manager as required by the rules and regulations.

Due to the uncertainty of the GFA's dollar for dollar matching funds, we recommend GEDCA pursue and obtain from the GFA documentation to verify the \$566,490 in Soccer Stadium tax credits to ensure the GFA met the matching requirements. The examination should also ensure that matching funds are not double counted as a tax credit as well as a matching fund and should be certified by the GEDCA Administrator, as well as the GFA.

Admission Fees

Similar to the Raceway Park tax credit program, organizers of events held at the Soccer Stadium are required by P.L. 27-85 to pay \$2 per paid admission, or 10% of the paid admissions, whichever is less, to the government of Guam. In March 2007 and in response to OPA Report No. 06-18, Paseo Stadium Lease Agreement, GEDCA notified GFA of the admissions assessment. In March 2007, GFA remitted \$502 to the TOG for paid admissions for soccer events. The GFA Deputy General Secretary stated that because the fees are nominal, most events at the Soccer Stadium are free to spectators. We recommend that GEDCA ensure that future Soccer Stadium admission fees are remitted.



Image 4: Guam Football Association office in Dededo.

Lack of Public Notice to Potential Beneficiaries of the Soccer Stadium Tax Credits

As of July 2007, one company, solely selected by the GFA board, received seven tax credits totaling \$566,490 for the construction of the Soccer Stadium. Unlike the Guam Raceway tax credit program, but similar to the Paseo Stadium program, the Soccer Stadium tax credit program was not required by law to publicly announce the opportunity for businesses to participate in the program. However, limiting this opportunity invites favoritism and even the mere perception of favoritism may place a cloud over the success of the program.

From a public benefit perspective, a reasonable person would expect the government to get the best value for this project. Publicly announcing the availability of tax credits to companies that pay GRT would increase the likelihood that the government did in fact receive the best value.

Financial Statements Not Submitted

P.L. 27-85 also requires GFA to submit a copy of their financial statements to the Speaker of the Guam Legislature, the Public Auditor, and the GEDCA Administrator. GFA submitted their 2005 financial statements in July 2006. As of the issuance of this report, the GFA has yet to submit its 2006 financial statements which were due 15 days after their reporting period, or January 15, 2007.

The GFA is recognized by DRT as a tax-exempt non-profit organization.

Possible Breach of Standards of Conduct

The former GEDCA Acting Administrator (former Administrator) who authorized the four tax credits of \$398,663 was hired by the parent company of a subsidiary company shortly after authorizing the subsidiary's largest tax credit of \$233,091 in February 2007. The former Administrator also approved three tax credits of \$165,572 for the subsidiary in October 2006.

The current Acting Administrator authorized three credits of \$167,827 although a close relative is employed with the same parent company of the subsidiary that received these credits. See Appendix 6 for a breakdown of the seven tax credits issued thus far.

This may constitute a breach of standards of conduct for public officers and employees:

- 4 G.C.A. §15204 prohibits government employees from seeking other employment by use or attempted use of the individual's office or position.
- 4 G.C.A. §15205 prohibits government employees from assisting businesses in a representative capacity for compensation on any transaction involving official action by the agency if the employee has official authority over that agency.
- There may be other potential violations including 4 G.C.A. §15210, Restrictions on Post Employment, and 5 G.C.A. §5632, Restrictions on Employment of Present and Former Employees.

We have referred this matter to the OAG to determine whether any legal action is warranted.

In order to avoid the potential conflicts, the Acting Administrators could have referred the approval or disapproval of the tax credit certificates for this company to the GEDCA Board.

In summary, we found the following non-compliance and program weaknesses:

- GEDCA did not verify the GFA matching payments;
- GFA did not publicly announce the opportunity for businesses to participate in the program, thus limiting fair and open competition to other companies who may have wished to participate in the program;
- GFA did not submit a copy of their 2006 financial statements as required by law;
- The former GEDCA Administrator may have breached the standards of conduct for public officers and employees by authorizing four tax credits of \$398,663 for a subsidiary company whose the parent company hired the Administrator shortly thereafter; and
- The current GEDCA Administrator may have breached the standards of conduct for public officers and employees by authorizing three tax credits of \$167,827 for a subsidiary company whose parent company employed a close relative.

Based on the above, we recommend the Governor and the Legislature repeal the available tax credit balance of \$433,510 for the construction of the Soccer Stadium.

Update on Paseo Stadium Tax Credit Program

In December 2006, OPA issued Report No. 06-18, a performance audit of DPR Paseo Stadium Lease Agreement. As a result of our audit, the OAG filed a complaint against the Commissioner of the Guam Baseball Federation (GBF) requesting the transfer of the Municipal Stadium Operating Fund to the DPR Director. The OAG also requested the GBF to account for \$12,000 that the sole beneficiary of the Paseo Stadium tax credit program received. This matter has yet to be resolved.

As of the date of this report, GEDCA authorized \$1 million of the \$1.5 million in tax credits. We recommend the Governor and Legislature repeal the remaining \$500,000 in tax credits for the Paseo Stadium.

Pending Tax Credit Programs

Four of the nine programs we identified are still in the Administrative Adjudication process and have not yet been implemented. The programs include:

- GRT offset for past due MIP billings;
- Guam Registered Apprenticeship Program;
- University of Guam Outdoor Multi-Sports Complex; and
- Public School Sports Facilities.

The following is a summary of the pending programs.

GRT Offset for MIP Billings

In the FY 2007 Budget Act, P.L. 28-150 authorized DRT to offset health care providers' GRT by claims for medical services or supplies of the Medically Indigent Program (MIP) that remain unpaid after 90 days by the government of Guam. The tax credits are to be reimbursed by the Department of Public Health and Social Services (DPHSS) or other government agency⁸, however, is unclear as to who will provide the reimbursement and how this kind of reimbursement will occur.

P.L. 28-150 did not specify a maximum amount for the tax credits and allowed the carry over of unused credits to subsequent tax periods. However, in the FY 2006 audited financial statements of the government of Guam, the MIP Payment Revolving Fund⁹ liabilities were \$11.1 million, down from the \$14.9 million reported in FY 2005. Therefore, the effect on future general fund revenues cannot be determined with certainty.

The MIP tax credit program has not been implemented because the required rules and regulations for the MIP tax credits have not been finalized. OPA can provide consultation to

⁸ P.L. 29-19, the General Appropriations Act of 2008, codified this tax credit in 11 G.C.A. §26216.

⁹ Created by P.L. 25-164 in September 2000 to pay for MIP obligations.

review the proposed rules and advise if the necessary controls (checks and balances) are adequate.

Once the program is authorized, both the Administration and the Legislature should make some allowance for a reduction in revenues from these tax credits. If the Governor and the Legislature elect not to repeal this tax credit program, we recommend that a cap on the amount and time limitations be included in the program rules and regulations.

Guam Registered Apprenticeship Program

In July 2006, P.L. 28-142 authorized the Department of Labor (DOL) to administer the Guam Registered Apprenticeship Program (GRAP) business privilege tax credit program. The GRAP was established to reduce the shortage of highly skilled workers on Guam. Businesses that employ apprentices can claim the tax credits for 50% of eligible training costs incurred provided that:

- Apprenticeships are for occupations on the skilled occupations list approved by the Governor and Legislature annually.
- Apprentices complete the program according to U.S. Department of Labor Bureau of Apprenticeship and Training standards and work at least 120 hours a month. Pre-apprentices do not qualify.
- The business does not hold a GEDCA Qualifying Certificate.
- Apprenticeship training costs paid by other government of Guam or federal funds shall not be eligible for tax credits.

The DOL Director is responsible for monitoring the GRAP. Thirty days after each fiscal year, the DOL Director is required to provide a written report to the Legislature and post this report on the DOL website. The report should include the names of all participants, total amounts of tax credits claimed, a listing of participants by occupational trade, and other statistical information that the Legislature deems appropriate. If the Director fails to create and submit this report 30 days after it is due, then all tax credits will cease until the report is submitted.

P.L. 28-142 did not impose a maximum amount for tax credits, but did include a sunset provision for the law to be repealed on December 30, 2014, with the option to the Legislature to extend to 2018. During the discussions of the rules and regulations, DOL's rules committee did not provide an estimated amount of eligible training costs for tax credits. Thus, the potential effect the GRAP tax credits will have on the reduction of General Fund tax revenues is unknown.

The GRAP tax credit rules and regulations were effective October 16, 2007. After reviewing the rules and regulations, we suggest the following to ensure proper notification is given to the public about this program and for effective monitoring of companies that participate:

- Require DOL to give public notice of the proposed tax credit program by placing at least two (2) notices in a newspaper of general circulation on Guam soliciting participants or proposals from interested companies;
- Set a threshold on the amount of tax credits for this program;

- Allow DOL to conduct interviews with apprentices to ensure participants are eligible and properly identified;
- Conduct periodic site inspections at the apprentice's job site to ensure they are present and accounted for; and
- Reduce the length of time for this program to increments of five years to reaffirm commitments from participating companies, rather than the 12 years maximum.

UOG Multi-Sports Complex

In December 2004, P.L. 27-130 authorized GEDCA to administer the UOG Multi-Sports Complex tax credit program for the development, construction, financing, maintenance, and improvement of an outdoor multi-sports complex at the University of Guam. This tax credit program authorized no more than \$300,000 per year up to \$1 million for Guam companies to offset their excise taxes, but allowed carry over of unused credits to subsequent tax periods.

The UOG Multi-Sports Complex tax credit program has not been implemented because an economic impact statement is being completed before rules and regulations are composed for a public hearing. Almost three years have passed since this program was authorized in law. Therefore, we recommend the Governor and Legislature repeal this program and fund the UOG Multi-Sports Complex through the normal appropriation process similar to the \$500,000 from DOA each year for the payment of debt service for the School of Business and Public Administration.

If the Governor and the Legislature elect not to repeal this tax credit program, we recommend an expiration date for the program and its tax credits. We also caution GEDCA to avoid the pitfalls of the previous tax credit programs while developing the rules and regulations for this program.

Public School Sports Facilities

In December 2004, P.L. 27-114 authorized GEDCA to administer the Public School Sports Facilities tax credit program for the construction, development, upgrading, repair, or maintenance of any public school gymnasium. This tax credit program authorized \$1 million for individuals, corporations, or limited liability companies making contributions to this project to offset their GRT. P.L. 27-114 allowed carry over of unused credits to subsequent tax periods.

This tax credit program is currently going through the Administrative Adjudication Law process. Given the length of time lapsed since its enactment, we recommend its repeal. Additionally, the FY 2008 Budget Act appropriated \$29.5 million for GPSS capital projects from the bond proceeds authorized in Chapter VIII, Section 1. Therefore, the tax credit program no longer seems warranted.

If the Governor and the Legislature elect not to repeal this tax credit program, we again recommend that a length of time be placed to complete this project and caution that there should be rules and regulations in place to avoid the pitfalls of earlier tax credit programs.

Based on our review of tax credit programs already in effect and to ensure programs set to begin are effectively monitored, the rules should include at a minimum the following:

- Designate the agency and official responsible for monitoring.
- Require, at a minimum, reports to the Legislature analyzing the cost of the program (i.e., impacts on taxes and general fund revenues) with the benefits derived, whether the program is achieving its overall objectives and goals, and monitoring efforts by the responsible agency (i.e., a checklist of whether requirements were met and supported by documentation). These reports should be posted on the monitoring agencies' websites.
- Specify the roles and responsibilities of all agencies involved and the coordination between the agencies.
- Specify terms for the revocation of tax credits if companies do not comply with any of the terms of the law or rules.
- Require documentation of all elements of the tax credit process, including reviews by DRT before credits are applied.
- Set limits to the amounts and applicable periods if not specified in the law.
- Require public announcements to ensure competition, hereby ensuring that the government is obtaining the best possible arrangement.

We recommend GEDCA, DOL, UOG, GPSS, and DRT incorporate these provisions into the pending tax credit programs if they are not repealed.

As described in the previous sections, we identified three current tax credit programs that were not adequately monitored by GEDCA and resulted in tax credits issued to private companies that were not in accordance with laws, rules, and regulations. Clear guidelines should incorporate proper monitoring to administer the programs and track the effects on general fund revenues for the annual budgets.

Additionally, we recommend DRT provide quarterly and annual reports to the Legislature and the Bureau of Budget and Management Research (BBMR) indicating the type of tax offset (i.e. GRT, excise tax) and amounts applied within 30 days after the quarter has ended. In order to project tax offsets for the FY 2009 budget, DRT should report on the amount of tax credits applied in FY 2007 and project the FY 2008 tax credits to be applied. This report will give the Legislature and BBMR valuable information as to the forgone tax revenues. We recommend that BBMR incorporate the estimated tax credit revenue reductions in the annual budget process.

Unimplemented Tax Credit Programs

The tax credits offered for two of the nine programs identified have yet to be implemented and utilized after significant time has passed since their enactment.

Guam's Local Commuter Air Services

In August 1998, P.L. 24-254 authorized GEDCA to administer the Commuter Air Services Development tax credit program. The program was created to offer either business privilege or income tax credits (not to exceed 10% of total tax obligations) for companies that make monetary donations to GEDCA for the promotion and enhancement of Guam's local commuter air service industry.

The Commuter Air Services tax credit program was never implemented and the responsible agency, GEDCA, was not aware of its existence.

Tax Credit for Privately Owned Lands

In October 1977, P.L. 14-69 authorized DRT to administer the Tax Credit in Lieu of Cash Payment tax credit program. Landowners can receive a tax credit that can offset any form of taxes, except income taxes, when the government of Guam acquires the landowner's property and cannot make cash payments for it.

The Tax Credit in Lieu of Cash Payment tax credit program was never implemented. The responsible agency, DRT, could not provide documentation of any tax credits given for this thirty-year old program.

We recommend the Governor and the Legislature repeal these two dormant tax credit programs.

Conclusion

When Standard & Poor's downgraded Guam's credit rating in March 2007, it acknowledged that "income and gross receipts taxes have been relatively stable over the past years. However, the continued implementation of exemptions and credits has prevented those revenues from realizing stronger growth."

While we recognize the Legislature's authority to provide tax credits for public goals and programs, it should be pointed out that tax credits reduce government revenues available to fund other programs. The government's spending priorities are distorted because tax credit programs do not require appropriations or compete with the annual budget's spending priorities and, in effect, receive a higher funding priority than public education, safety, and health. It is not known whether these tax credit programs would have been funded through the regular appropriation process.

Furthermore, revenues forgone through tax credit programs increase the overall deficit of the government of Guam because cash is diverted to special interest programs and not received to fund existing programs. We identified \$23.6 million in tax credits authorized in public laws of which \$6.3 million has already been applied against tax revenues.

Given the government of Guam's deficit of \$524 million as of September 30, 2006 and continuing financial difficulties, an overall assessment of tax credit programs already implemented is necessary to assess whether these programs are relevant to public needs and whether the benefits are worth the forgone revenues. The taxes foregone should also be acknowledged as a revenue reduction in the annual budget process.

It is not known if the on-going tax credit programs achieved desired goals because GEDCA failed to adequately monitor the programs and merely processed the tax credits without conducting analyses of the costs and benefits of the programs. The tax credit programs' inconsistent laws further hampered the monitoring function.

We make several recommendations to the Governor and Legislature to repeal the balances of on-going and unimplemented tax credit programs, which will reduce the impact to the General Fund. If the Governor and Legislature elect not to repeal these programs, then we recommend the responsible entities establish the proper rules and regulations to ensure the programs are monitored and tax credits are not approved in a perfunctory manner. It is important to prevent the same non-compliance issues from re-occurring and focus efforts on monitoring. The rules and regulations for these programs should clearly specify responsible authorities, set limits on amounts and expiration dates for tax credits, and require reports on the benefits and costs of the programs to be submitted to the Legislature on a regular basis.

Recommendations

To the Administrator of the Guam Economic Development and Commerce Authority:

1. In coordination with DRT, conduct an assessment of all tax credit programs to include overall benefits and costs.
2. Determine the amount of admission fees collected by the GRF for the Raceway Park to remit to the government of Guam and continue to ensure that all admission fees are remitted by the GRF and the GFA.
3. Revoke \$231,377 in excess Raceway Park tax credits applied above the allowed 5% overhead, until sufficient documentation is provided.
4. Pursue and obtain documentation from the GFA to verify the \$566,490 in Soccer Stadium tax credits to ensure the GFA met the matching requirements.

To the Director of the Department of Revenue and Taxation:

5. Determine whether companies that participated in the tax credit programs availed of both tax credits and deductions.
6. Determine the appropriate tax filings for GRF and determine its tax liability if applicable.
7. Provide the Legislature and BBMR with quarterly and annual reports of revenues foregone via tax credits in FY 2007, estimate tax credits for FY 2008 and FY 2009 and future years to facilitate the annual budget process.

To the Director of the Bureau of Budget Management and Research:

8. Incorporate the estimated tax credit reductions provided by DRT in the annual budget process.

To the Office of the Attorney General of Guam:

9. Determine whether legal action is necessary to cause the required admissions fees to be remitted by the Guam Racing Federation.
10. Determine whether a breach of standards of conduct for public officers and employees occurred when the former GEDCA Acting Administrator authorized tax credits prior to leaving the government and was then hired by the parent company of the subsidiary company that received the tax credit.

11. Determine whether a breach of standards of conduct for public officers and employees occurred when the current GEDCA Acting Administrator authorized tax credits to a subsidiary company whose parent company employs a close relative.

To the Governor and the Guam Legislature:

12. Repeal the following tax credit programs:
 - a. Completed
 - 1) Raceway Park (balance \$1,368,823)
 - 2) Paseo Stadium (balance \$498,744)
 - 3) Soccer Stadium (balance \$433,510)
 - b. Unimplemented or Dormant
 - 1) MIP Billings (\$11,059,643)
 - 2) UOG Multi-Sports Complex (\$1,000,000)
 - 3) Public School Sports Facilities (\$1,000,000)
 - 4) Guam's Local Commuter Air Services (Unknown)
 - 5) Tax Credit for Privately Owned Lands (Unknown)

If the Governor and the Legislature determine not to repeal these programs, the responsible entities (GEDCA, DOL, UOG, GPSS, and DRT) should incorporate additional provisions into rules and regulations to ensure the programs have appropriate checks and balances and are properly monitored.

13. Reduce the length of time for the Guam Registered Apprenticeship Program tax credits and set a threshold on the amount of tax credits authorized.

Management Response and OPA Reply

A preliminary draft report was transmitted to the DRT Director, the GEDCA Acting Administrator, and the BBMR Director on October 17, 2007. We met with the DRT Director on October 26, 2007 and the GEDCA Acting Administrator on November 15, 2007 to discuss the preliminary draft report.

The GEDCA, DRT and BBMR Directors generally concurred with the findings and recommendations of this report. After discussions with GEDCA officials, the recommendation to revoke Soccer Stadium tax credits was modified. After discussions with DRT officials, a recommendation addressed to DRT to determine Raceway Park admissions fees due to the government of Guam was modified and re-addressed to GEDCA. See Appendices 7, 8, and 9 for their respective management responses.

On November 21, 2007, GEDCA legal counsel submitted a response on behalf of the GEDCA Administrator who clarified that the relationship of a company that received Soccer Stadium tax credits. The company is a subsidiary of the parent company that employs the former GEDCA Acting Administrator and the current GEDCA Acting Administrator's close relative. Legal counsel contends that the company that received the tax credit is not the same company that employs the former Acting Administrator and the close relative of the current Acting Administrator. We disagree. There is still a parent/subsidiary relationship between the two companies and may still create a conflict or the appearance of a conflict.

In his response, the legal counsel disagreed that there were possible breaches of conduct. However, the OPA is required by 1 G.C.A. §1909(h) to report possible violations of law that come to our attention to OAG. The decision to pursue any legal action will ultimately be made by the OAG.

The legislation creating the Office of the Public Auditor requires agencies to prepare a corrective action plan to implement audit recommendations, to document the progress of the implementation of the recommendations, and to endeavor to have implementation completed no later than the beginning of the next fiscal year. Accordingly, our office will be contacting GEDCA, DRT, BBMR, and the OAG to establish the target date and title of the official responsible for implementing the recommendations.

We appreciate the cooperation shown by the Guam Economic Development and Commerce Authority, Department of Revenue and Taxation, Guam Racing Federation, and Guam Football Association.

OFFICE OF THE PUBLIC AUDITOR



Doris Flores Brooks, CPA, CGFM
Public Auditor

Appendix 1:
Classification of Monetary Impact

Finding Area	Future Tax Credit	Current Tax Credit Balances	Past Tax Credits Questioned	Total
1 Tax Credit Programs Reduce Government				
Guam Raceway Park	\$ -	\$ 1,368,823	\$ -	\$ 1,368,823
Soccer Stadium	\$ -	\$ 433,510	\$ -	\$ 433,510
Paseo Stadium	\$ -	\$ 498,744	\$ -	\$ 498,744
2 GEDCA Not Effectively Monitoring Current Programs				
Guam Raceway Park				
Excessive Overhead Authorized	\$ -	\$ -	\$ 231,377	\$ 231,377
Soccer Stadium				
Matching Requirement Not Verified	\$ -	\$ -	\$ 566,490	\$ 566,490
Breach of Standards of Conduct	\$ -	\$ -	\$ 398,663 ¹⁰	\$ -
Breach of Standards of Conduct	\$ -	\$ -	\$ 167,827 ¹¹	\$ -
3 Pending Tax Credit Programs				
GRT Offset for MIP Billings	\$ 11,059,643	\$ -	\$ -	\$ 11,059,643
UOG Multi-Sports Complex	\$ 1,000,000	\$ -	\$ -	\$ 1,000,000
Public School Sports Facilities	\$ 1,000,000	\$ -	\$ -	\$ 1,000,000
4 Unimplemented Tax Credit Programs	\$ -	\$ -	\$ -	\$ -
Total:	\$ 13,059,643	\$ 2,301,077	\$ 797,867	\$ 16,158,587

¹⁰ Former GEDCA Acting Administrator. This amount not included in total because it is already questioned under “Matching Requirement Not Verified.”

¹¹ Current GEDCA Acting Administrator. This amount not included in total because it is already questioned under “Matching Requirement Not Verified.”

Appendix 2:
Scope and Methodology

The audit scope included a review of all government of Guam tax credit programs that we were able to identify through applicable public laws as of September 30, 2006. We also reviewed tax credit drawdown requests from various companies between January 2000 through July 2007. The audit was conducted at GEDCA's office in Tamuning, DRT's office in Barrigada, the Guam Raceway Park in Yigo, and the Soccer Stadium in Harmon. We conducted interviews with those who oversee or have involvement in the tax credit programs.

The audit methodology included identifying tax credit programs and gaining an understanding of the policies, procedures, and applicable laws and regulations. We tested drawdown requests from the various companies that participated in the Guam Raceway Park and Soccer Stadium tax credit programs. We determined that from January 14, 2000 through February 15, 2007, GEDCA authorized 79 tax credit drawdown requests totaling \$6,631,177 for the Guam Raceway Park. We also determined that from October 6, 2006 through July 27, 2007, GEDCA authorized seven tax credit certificates totaling \$566,490 for the Soccer Stadium. We tested five of seven tax credit requests and certificates as of March 2007 to determine compliance with applicable rules and regulations.

We did not include tax exemptions and tax rebates, administered by DRT, promissory notes for tax offsets administered by DOA, or qualifying certificates administered by GEDCA in our review. While DRT provided the required data for tax credits that have been applied for the Guam Raceway Park, we could not perform procedures to satisfy ourselves as to the effectiveness of the system surrounding the tax credit programs.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix 3:
Prior Audit Coverage

Office of the Public Auditor (OPA)*Paseo Stadium Lease Agreement*

In December 2006, OPA issued Report No. 06-18, a performance audit of DPR regarding the Paseo Stadium Lease Agreement for the period beginning June 1, 2004 through June 30, 2006. We found that GEDCA was tasked to certify compliance with the lease agreement and contributions for tax credits. GEDCA did not scrutinize \$1,001,256 in expenditures that became tax credits. GEDCA relied on the Guam Baseball Federation's assertions and maintained that it was DPR's responsibility to monitor the tax credit program. GEDCA did not inquire whether Guam Procurement Laws were being followed by GBF or DPR. Of seven recommendations, one remains outstanding.

In May 2007, the Office of the Attorney General (OAG) filed a complaint against the Commissioner of the Guam Baseball Federation (GBF) requesting the Municipal Stadium Operating Fund (MSOF) be transferred to the Director of the Department of Parks and Recreation. The OAG also requested the GBF account for \$12,000 that the sole beneficiary of the Paseo Stadium tax credit program received. This matter has yet to be resolved.

Chamorro Land Trust Commission Non-Appropriated Funds

In December 2005, OPA issued Report No. 05-09, a performance audit of the CLTC's non-appropriated funds for the period beginning October 1, 1999 through September 30, 2004. We found that the CLTC did not provide an effective system of checks and balances to ensure that (1) commercial licenses of Chamorro homelands were awarded in accordance with rules and regulations, (2) revenues derived from commercial leases and licenses were collected and spent in the best interest of the Commission's beneficiaries, and (3) lessees' loans guaranteed by the Commission were monitored. Of nine recommendations, six remain outstanding.

Appendix 4:
Government of Guam Tax Credit Programs

	Public Law	Date	Purpose	Amount Allowed	Responsible Government Agency	Status
1	28-150	9/30/2006	Offset against GRT for past due MIP billings	\$11,059,643 ¹²	DRT	Awaiting rules and regulations by DRT and Legislative approval before program can proceed.
2	28-142	7/18/2006	Guam Registered Apprenticeship Program	50% of eligible training costs paid or incurred by the business	DOL and DRT	Rules and regulations went into effect on October 17, 2007.
3	27-130	12/20/2004	Outdoor multi-purpose sports complex at UOG	\$1,000,000	GEDCA and UOG	Awaiting economic impact statement, rules and regulations, and Legislative approval before program can proceed.
4	27-114	12/2/2004	Construction, development, upgrading, repair, and maintenance of any public school sports facility	\$1,000,000	GEDCA and GPSS	Awaiting economic impact statement, rules and regulations, and Legislative approval before program can proceed.
5	27-85	4/30/2004	Construction of a comprehensive soccer stadium	\$1,000,000	GEDCA	As of July 2007, \$566,490 in business privilege tax credits issued to one company.
6	26-166	1/5/2003	Rehabilitation, development, and maintenance of Paseo Stadium	\$1,500,000	GEDCA and DPR	\$1,001,256 in excise tax credits issued to one company as reported in OPA Report 06-18. Lease agreement has been revoked and charges pending for former GBF Commissioner.
7	24-254	8/14/1998	Enhancement and improvement of Guam's local commuter air services	Not to exceed 10% of the donor's total annual tax obligation.	GEDCA	This program was never initiated. Recommended for repeal.

¹² FY 2006 Government of Guam Basic Financial Statements Medically Indigent Program Payment Revolving Fund accounts payable.

Government of Guam Tax Credit Programs

	Public Law	Date	Purpose	Amount Allowed	Responsible Government Agency	Status
8	24-141	2/2/1998	Contractors, designers, and materials for the development of a racing park for the Guam Racing Federation	\$8,000,000	GEDCA and Guam Racing Federation	As of July 2007, \$6,631,177 in business privilege tax credits issued to several companies.
9	14-69	10/20/1977	Tax credit in lieu of cash payment for privately owned lands	Authorized cash compensation for the property.	DRT	This program was never initiated. Recommended for repeal.

Appendix 5:
Excessive Overhead Calculations – Guam Raceway Park

			A	B	(A-B)	
	Invoice Date	Cost of Materials	Cost of Labor	Overhead Claimed	OPA Calculation of Overhead (Materials and Labor * 5%¹³)	Excess Overhead Claimed
1	4/30/2002	\$ 45,251	\$ 8,145	\$ 22,629	\$ 2,670	\$ 19,959
2	5/15/2002	37,873	7,447	19,207	2,266	16,941
3	10/15/2002	37,012	18,441	23,501	2,773	20,729
4	10/15/2002	33,190	13,523	19,797	2,336	17,461
5	10/16/2002	28,418	13,754	17,873	2,109	15,764
6	10/16/2002	21,522	25,644	19,989	2,358	17,631
7	3/22/2004	15,673	24,470	17,012	2,007	15,006
8	3/22/2004	27,989	22,922	21,576	2,546	19,031
9	8/16/2005	35,203	9,863	19,099	2,253	16,846
10	7/3/2006	38,110	12,618	21,499	2,536	18,962
11	2/15/2007	100,551	41,369	60,145	7,096	53,049
Total		\$ 420,792	\$ 198,196	\$ 262,327	\$ 30,950	\$ 231,377

¹³ Percentage authorized by Public Law 25-27.

Appendix 6:**Guam Football Association Matching Payments - Soccer Stadium**

		GFA Matching Payments (50% Match)	Company Contribution (50% Match)	Grand Total	Tax Credits Applied
1	August-06	\$ 54,640	\$ -	\$ 54,640	\$ -
2	September-06	\$ 17,100	\$ -	\$ 17,100	\$ -
3	October-06	\$ 8,100	\$ 165,572	\$ 173,672	\$ 165,572*
4	November-06	\$ 137,825	\$ -	\$ 137,825	\$ -
5	December-06	\$ 136,250	\$ -	\$ 136,250	\$ -
6	January-07	\$ 4,725	\$ -	\$ 4,725	\$ -
7	February-07	\$ 109,000	\$ 233,091	\$ 342,091	\$ 233,091*
8	March-07	\$ 73,300	\$ 68,488	\$ 141,788	\$ 68,488**
9	April-07	\$ -	\$ -	\$ -	\$ -
10	May-07	\$ -	\$ -	\$ -	\$ -
11	June-07	\$ 54,500	\$ -	\$ 54,500	\$ -
12	July-07	\$ -	\$ 99,339	\$ 99,339	\$ 99,339**
Total:		\$ 595,440	\$ 566,490	\$ 1,161,930	\$ 566,490

*Approved by former Acting Administrator for lighting and parking lot

**Approved by current Acting Administrator

Details of Matching Payments:

The GFA indicated 13 matching payments totaling \$595,440 were made beginning in August 2006. Of these payments:

- Eight payments totaling \$512,550 went to the GFA Building;
- Two payments totaling \$74,650 went to the parking lot, lights, and futsal field;
- One payment of \$8,100 went to drawing non-goal projects; and
- Two payments totaling \$140 went to permits.

Details of Authorized Tax Credit Certificates:

We identified seven tax credit certificates totaling \$566,490 for lighting, parking lot, and futsal field. Four tax credit certificates totaling \$398,663, were approved by the former GEDCA Acting Administrator. Three tax credit certificates totaling \$167,827, were approved by the current GEDCA Acting Administrator.

**Guam Economic Development and Commerce Authority's
Management Response**

LUJAN AGUIGUI & PEREZ LLP

ATTORNEYS AT LAW

November 21, 2007

Doris F. Brooks
Public Auditor
Office of the Public Auditor
238 Archbishop Flores Street
Suite 401
DNA Bldg.,
Hagatna, Guam 96910

RECEIVED
OFFICE OF THE PUBLIC AUDITOR
DATE: 11/21/07
TIME: 4:30 PM
BY: Ran

In reply, refer to G-0048

Subject: Draft Audit

Dear Doris:

Pursuant to our conference on November 15, 2007 in your Office, attended by yourself, Mr. Vince Duenas, Yuka Cabrera and Attorney Robert Cruz, representing the OPA Team, and the GEDCA Team being represented by Mr. Anthony C. Blaz, Deputy Administrator Christina D. Garcia, Ms. Rita Nauta, Attorney Delia S. Lujan, and myself, the following constitutes certain agreements concerning the following issues:

- 1) Recommendation to the GEDCA Administrator to "revoke the **Five Hundred Sixty Six Thousand Four Hundred Ninety Dollars (\$566,490.00)** in Soccer Stadium tax credits until a documented verification of the matching funds is performed to ensure the GFA met the matching requirements." This recommendation is listed as Recommendation Paragraph No. 7 to the Administrator of GEDCA of the Revised Draft, dated November 14, 2007.
- 2) GEDCA not effectively monitoring current programs as outlined on pages 6, 10 and 11 of this Draft Audit. The objection GEDCA has is specifically to the soccer stadium tax credit program. This will be addressed in a separate letter.
- 3) Possible breach of standards of conduct as shown on page 12 of the Revised Draft, specifically, as to a potential breach of 4 GCA§15204 by the former GEDCA Acting Administrator; 4 GCA§15204 by the former and current Acting Administrator. 4 GCA§15210 and 5 GCA§5632 by the former Acting Administrator.

PACIFIC NEWS BUILDING • SUITE 300 • 238 ARCHBISHOP FLORES STREET • HAGATNA, GUAM 96910
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**Guam Economic Development and Commerce Authority's
Management Response**

David J. Lujan to Doris Brooks
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Page 2

GEDCA's RESPONSE.

- I. GEDCA and the OPA agreed that revocation of the **Five Hundred Sixty Six Thousand Four Hundred Ninety Dollars (\$566,490.00)** may be premature and that the prudent course of action at this juncture would be for GEDCA to vigorously pursue from the GFA written verification as to its expenditure of the matching funds requirement. Therefore, GEDCA proffers that Paragraph 7 be revised to read as follows:

- 7) Pursue and obtain from the GFA all of its invoices, receipts, payments, checks, and other written instruments evidencing verification of its expenditures of the matching funds requirement as to the **Five Hundred Sixty Six Thousand Four Hundred Ninety Dollars (\$566,490.00)** in Soccer Stadium tax credits.

- II. The Revised Draft on page 12 discussing potential conflicts of interest, states as follows:

Possible Breach of Standards of Conduct

The former GEDCA Acting Administrator (former Administrator) who authorized the four tax credits of \$398,663 was hired by the same company shortly after authorizing the company's largest tax credit of \$233,091 in February 2007. The former Administrator also approved three tax credits of \$165,572 for this company in October 2006.

The current Acting Administrator authorized three credits \$167,827 although a close relative is employed with the same company. See Appendix 6 for a breakdown of the seven tax credits issued thus far.

- This may constitute a breach of standards for public officers and employees:
- 4 G.C.A. §15204 prohibits government employees from seeking other employment by use or attempted use of the individual's office or position.
 - 4 G.C.A. §15205 prohibits government employees from assisting businesses in a representative capacity for compensation on any transaction involving official action by the agency if the employee has official authority over that agency.
 - There may be other potential violations including 4 G.C.A. §15210, Restrictions on Post Employment, and 5 G.C.A. §5632, Restrictions on Employment of Present and Former Employees.

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Management Response**

David J. Lujan to Doris Brooks
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Page 3

We have referred this matter to the OAG to determine if any legal action is warranted.

In order to avoid the potential conflicts, the Acting Administrators could have referred the tax credit authorizations for this company to the GEDCA Board.

- I. The OPA cites 4 G.C.A. §§15204 and §15205 as sections which the current Acting Administrator and former Administrator violated. The pertinent provisions are set forth below:

§15204. Fair Treatment.

No employee shall use or attempt to use an official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment for himself or herself, a spouse, children, or others, including but not limited to the following:

- (a) seeking other employment or contract for services by the use or attempted use of the individual's office or position;

As to the current Acting Administrator, the OPA does not allege the official's actions were to benefit himself. Rather, it was to benefit a company where "a close relative is employed with the same company." The OPA is mistaken about this matter for the following reasons:

- i) The company being given the tax credit is [REDACTED]
- ii) The close relative referred to is the Acting Administrator's [REDACTED]
- iii) The close relative works for [REDACTED] [REDACTED] not [REDACTED]
- iv) While [REDACTED] is a subsidiary of [REDACTED], it is a wholly separate corporation. It is a different "person" from [REDACTED]
- v) [REDACTED] was not given a tax credit for [REDACTED] contributions to the soccer stadium tax credit program.
- vi) There is no factual basis to support any allegation that the close relative received a benefit from [REDACTED] for the tax credit granted to [REDACTED]

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Turning to the former Administrator, implicit in the OPA's revised audit is that this former official approved the tax credits in order to secure himself employment with the tax credit recipient, i.e., [REDACTED]. Again, the OPA is mistaken for the following reasons:

- i) [REDACTED] The former Administrator is not and was not employed by [REDACTED] after leaving GEDCA.
- ii) [REDACTED] The former Administrator is employed by [REDACTED], not [REDACTED].
- iii) [REDACTED] While [REDACTED] is a subsidiary of [REDACTED], it is a wholly separate corporation. It is a different "person" from [REDACTED].
- iv) [REDACTED] [REDACTED] was not given a tax credit for [REDACTED] contributions to the soccer stadium tax credit program.
- v) [REDACTED] There is no factual basis to support any allegation that the former Administrator received a benefit from [REDACTED] for the tax credit given to [REDACTED].

What the OPA fails to truly appreciate is that the approval of tax credit application is a non-discretionary function on the Administrator. Once it has been determined by a review of the applicant's receipts and the certification by the project manager that the applicant "shall be entitled to credit of business privilege taxes", the Administrator must approve the tax credit. See 1 G.C.A. §715(9) ("The following words have in this Code the meaning attached to them in this Section, unless otherwise specifically provided or apparent from the context: 9. *Shall* is mandatory."). If the application is deficient in some way because, for example, there is no project manager certification, there is no receipt, or the contribution exceeds the maximum total contributions for the soccer tax credit program, the Administrator must advise the applicant of the deficiency and how it can be corrected. If it is corrected, the tax credit is granted. The Administrator does not have the discretion to arbitrarily approve or disapprove tax credit applications in order to secure or grant an unwarranted privilege for himself, his spouse, or his child.

However, perhaps the OPA does appreciate that there is no discretion as to the granting of a tax credit once the prerequisites have been met when the OPA opined that the Acting Administrator could have referred the tax credit authorizations for this company to the GEDCA Board.

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David J. Lujan to Doris Brooks
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§15205. Conflicts of Interest.

- a) No employee shall take any official action directly affecting:
 - (1) business or other undertaking in which the employee has a financial interest; or
 - (2) private undertaking in which the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.
- e) No employee shall assist any person or business or act in a representative capacity before a territorial agency for a fee or other compensation, on any bill, contract, claim, or other transaction or proposal involving official action by the agency if the employee has official authority over that agency unless such employee has complied with the disclosure requirements of §15208.

As to §15205(a)(1), there is no factual basis to justify that the former Administrator or the current Acting Administrator has a business or financial interest in [REDACTED].

As to §15205(a)(2), there is no factual support to conclude that either the former Administrator or the current Acting Administrator engaged as legal counsel, advisor, consultant, representative, or other agency capacity when approving the tax credit applications by [REDACTED].

Financial interest is defined as:

An interest held by an individual, his or her spouse, dependent children, which is

- (1) an ownership interest in a business;
- (2) a creditor interest in an insolvent business;
- (3) an employment, or prospective employment for which negotiations have begun;
- (4) an ownership interest in personal or real property;
- (5) a loan or other debtor interest; or
- (6) a directorship or officership in business.

The current Acting Administrator has no financial interest in [REDACTED].
Further, the close relative works for [REDACTED].

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As to the former Administrator, there is simply no fact which has been alleged that would evidence he had or has a financial interest in [REDACTED]. Although [REDACTED] is a subsidiary of [REDACTED], they are separate and distinct companies having separate and distinct Board of Directors, Officers, legal obligations and liabilities, and the like.

- 2) The OPA further cites 4 G.C.A. §15210 and 5 G.C.A. §5632 as statutes that may also have been violated by the former Administrator and the current Acting Administrator.

§15210. Restrictions on Post Employment.

- (a) No former employee shall disclose any information which by law is not available to the public and which the employee acquired in the course of official duties or use the information for personal gain or the benefit of anyone.
- (b) No former employee shall, within twelve (12) months after termination from employment, assist any person or business, or act in a representative capacity for a fee or other consideration, on matters involving official action by the particular territorial agency with which the employee had actually served.
- (c) This Section shall prohibit any agency from contracting with a former employee to act on a matter on behalf of the Territory within the period of limitations stated herein, unless exempted by law.

Subsection (a) restricts a former employee from disclosing confidential government information that the employee acquired as a government employee.

Obviously this has no application to the current Acting Administrator.

As to the former Administrator, there is no factual allegation that he disclosed confidential information to a third party or to [REDACTED] or to benefit himself.

Subsection (b) restricts a former employee from assisting a person or entity on matters involving official action by the agency where the former employee worked.

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Again, this is not applicable to the current Acting Administrator.

As to the former Administrator, there are no allegations that after he stopped working for GEDCA, he assisted [REDACTED] or acted on behalf of [REDACTED] with respect to that company's application for a soccer stadium tax credit.

Subsection (c) restricts an agency from directly contracting with a former employee, not with the former employee's current employer.

Again, this is not applicable to the current Acting Administrator.

There is no basis to allege the former Administrator entered into a contract with GEDCA since his resignation.

§5632. Restrictions on Employment of Present and Former Employees.

(a) Contemporaneous Employment Prohibited. Except as may be permitted by regulations pursuant to this Chapter or pursuant to Title 4 GCA, or rulings of the Civil Service Commission pursuant to this Chapter, it shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the government body by whom the employee is employed. Notice of this provision shall be provided in accordance with regulations promulgated by the Civil Service Commission.

(b) Restrictions on Former Employees in Matters Connected with Their Former Duties.

- (1) Permanent Disqualification of Former Employee Personally Involved in a Particular Matter. It shall be a breach of ethical standards for any former employee knowingly to act as a principal, or as an agent for anyone other than the Territory, in connection with any:
- (i) judicial or other proceeding, application, request for a ruling, or other determination;
 - (ii) contract;

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- (iii) claim; or
- (iv) charge or controversy: in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the Territory is a party or has a direct and substantial interest.

(c) Disqualification of Business When an Employee Has a Financial Interest. It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the Territory, in connection with any:

- (1) judicial or other proceeding, application, request for a ruling, or other determination;
- (2) contract;
- (3) claim; or
- (4) charge or controversy: in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the Territory is a party or has a direct and substantial interest.

(d) Selling to the Territory After Termination of Employment is Prohibited. It shall be a breach of ethical standards for any former employee, unless the former employee's last annual salary did not exceed Twelve Thousand Dollars (\$12,000.00), to engage in selling or attempting to sell supplies, services other than personal services, or construction to the Territory for ninety (90) days following the date employment ceased. The term sell as used herein means signing a bid, proposal, or contract; negotiating a contract, contracting any employee for the purpose of obtaining, negotiating or discussing changes in specifications, price, cost allowances or other terms of a contract; settling disputes concerning performance of a contract; or any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefore is subsequently negotiated by another person; provided, however, that this Section is not intended to preclude a former employee from accepting employment with private industry solely because the former employee's employer is a contractor with this Territory, nor shall a former employee be precluded from serving as a consultant to this Territory.

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As to §5632(a), this provision deals with the procurement process. Neither the application for tax credit nor the approval of a tax credit is governed by this statute. Further, the OPA does not allege that the former Administrator or the Acting Administrator, while working for GEDCA, was or is concurrently working for [REDACTED].

As to subsection (b)(1) this pertains to former employees. Obviously, it has no applicability to the Acting Administrator. With regards to the former Administrator, there is no basis to support any allegation that he assisted [REDACTED] in its tax credit applications with GEDCA.

As to subsection(b)(2), this again pertains to former employees and, obviously, has no applicability to the Acting Administrator. With regards to the former Administrator, again there is no basis to support any allegation that, subsequent to his employment at GEDCA, he acted as a principal or an agent in the [REDACTED] tax credit applications with GEDCA.

As to subsection (c), this provision pertains to a restriction against a business in which an employee has a financial interest in said business. There is absolutely no allegation that either the former Administrator or the Acting Administrator has a financial interest in [REDACTED].

As to subsection (d), this pertains to a prohibition against a former employee selling supplies, services or construction to the Government of Guam. Obviously, since the Acting Administrator is a current employee, this section is inapplicable as to him. With regards to the former Administrator, there is absolutely no allegation that he sold supplies, services or construction to the Government of Guam within ninety (90) days following the date of his employment ceased.

**Guam Economic Development and Commerce Authority's
Management Response**

David J. Lujan to Doris Brooks
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Page 10

CONCLUSION

In closing, GEDCA's position is as follows:

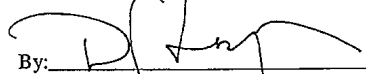
- 1) Paragraph 7 be revised as set forth herein.
- 2) Neither the former Administrator or the Acting Administrator violated the following statutes:
 - 4 G.C.A. §15204
 - 4 G.C.A. §15205
 - 4 G.C.A. §15210
 - 5 G.C.A. §5632

and that the OPA should delete this allegation in its Final Audit.

- 3) The referral of this matter to the OAG was and remains unwarranted, and should be retracted by the OPA.

Should you have any questions or require anything further, please let me know.

Cordially,
LUJAN AGUIGUI & PEREZ LLP
Conflicts Counsel

By: 
DAVID J. LUJAN.

cc: Mr. Anthony C. Blaz
Ms. Christina D. Garcia
Ms. Rita Nauta
GEDCA Board of Directors

Appendix 8:
Department of Revenue and Taxation Management Response



Dipårtamenton Kontribusion yan Adu'ána
DEPARTMENT OF
REVENUE AND TAXATION
GOVERNMENT OF GUAM Gubetnamenton Guåhan

FELIX P. CAMACHO, Governor Maga'låhi
MICHAEL W. CRUZ, MD, Lt. Governor Tinento Gubetnadot

ARTEMIO B. ILAGAN, Direktor
Direktor
JOHN P. CAMACHO, Deputy Direktor
Segundo Direktor

Doris Flores Brooks, CPA, CGFM
Public Auditor
Office of the Public Auditor
Suite 104, Pacific News Building
238 Archbishop Flores
Hagatna, Guam 96910

RECEIVED
OFFICE OF THE PUBLIC AUDITOR

DATE: 10/31/07

TIME: 3:40 PM

BY: T. Gumbart

Subject: Draft Audit Report – Government of Guam Tax Credit Programs

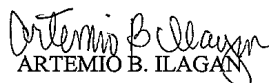
Dear Mrs. Brooks:

This is in response to your letter dated October 17, 2007 requesting for whether or not we concur with the recommendations as presented in your Draft Audit Report. The recommendations and responses are as follows:

- Determine whether companies that participated in the tax credit programs availed of both tax credits and deductions.**
We concur. Companies that received a benefit from the tax credits should not be allowed a deduction on the income tax return. This issue will be addressed by the Examination Branch
- Determine and collect the amount of admission fees from the GRF required by P.L. 24-141 to be remitted to the government of Guam.**
We do not concur. We do not have the resources to monitor this activity. This issue should be a compliance issue with GEDCA. If GRF is not following the law, then GEDCA should terminate this particular tax credit program due to non-compliance.
- Determine the appropriate tax filings for GRF and collect taxes on income earned.**
We concur. This issue will be addressed by the Examination Branch.
- Provide the Legislature and BBMR with quarterly and annual reports of revenues foregone via tax credits in FY 2007, estimate tax credits for FY2008 and FY 2009 to facilitate the budget process.**
We concur. We have provided the legislature and BBMR with reports of revenues foregone via tax credits and will continue to do so. We have never supported any legislation that ultimately erodes the government's tax base.

If you have any questions or need further assistance please do not hesitate to contact me.

Sincerely,


ARTEMIO B. ILAGAN

Appendix 9:
Bureau of Budget and Management Research Management Response



FELIX P. CAMACHO
GOVERNOR

MICHAEL W. CRUZ, M.D.
LIEUTENANT GOVERNOR

BUREAU OF BUDGET & MANAGEMENT RESEARCH

OFFICE OF THE GOVERNOR
Post Office Box 2950, Hagåtña Guam 96932

BERTHA M. DUENAS
DIRECTOR

November 23, 2007

Doris Flores Brooks, CPA, CGFM
Public Auditor
Office of the Public Auditor
Suite 104, Pacific News Building
238 Archbishop Flores
Hagatna, Guam 96910

Subject: Draft Audit Report – Government of Guam Tax Credit Programs

This is in response to your letter dated October 17, 2007, requesting that BBMR respond to the recommendations contained in subject draft report. Item 7 of Recommendations specific to BBMR reads as follows:

7. Incorporate the estimated tax credit reductions provided by DRT in the annual budget process.

We concur. The Department of Revenue and Taxation has provided BBMR these reports in the past and agree that the revenue voids to the General Fund caused by these tax credits be included in the annual budget process.

Sincerely,

Bertha Duenas

RECEIVED
OFFICE OF THE PUBLIC AUDITOR

DATE: 11/23/07

TIME: 4:55pm

BY: Vince D.

Do you suspect fraud, waste, or abuse in a government agency or department? Contact the Office of the Public Auditor:



- **Call our HOTLINE at 47AUDIT (472-8348);**
- **Visit our website at www.guamopa.org;**
- **Call our office at 475-0390;**
- **Fax our office at 472-7951;**
- **Or visit us at the PNB Building, Suite 401
In Hagåtña**

All information will be held in strict confidence.