



EXECUTIVE SUMMARY
Layon Landfill Tax Credits Program
OPA Report No. 15-02, May 2015

The Office of Public Accountability (OPA) was denied full access to Layon Landfill Tax Credits data, despite Title 11 Guam Code Annotated (GCA) § 15101(b)'s provision that a taxpayer receiving tax credits as compensation for government-condemned land waive confidentiality. Similar to our audit of the Hotel Occupancy Taxes (OPA Report No. 14-04), we could not verify the tax credit data's completeness, reliability, and accuracy.

Based on the limited data the audit team was provided, we found that the Government of Guam (GovGuam) authorized \$28.9M in tax credits to eight of the nine former landowners of the Layon Landfill property as of December 31, 2014, of which \$13.9M has been claimed against Business Privilege Taxes (BPT), such as cigarettes, retail, and insurance premium taxes. Of the \$28.9M in authorized tax credits, \$20.6M is for principal and \$8.3M is the interest calculated at 6% from January 24, 2008. One landowner has not claimed any of the tax credits he/she is entitled to as of December 2014.

Superior Court Awards Former Landowners \$25.1M

In accordance with the 2004 Consent Decree jointly filed by the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Justice, GovGuam was required to close Ordot Dump and open a new landfill. On January 24, 2008, GovGuam exercised its power of eminent domain to take private land (namely Lot B-3REM and a portion of Lot B-3) totaling 1,382,428 square meters in Dandan, Inarajan, Guam, in order to construct a public landfill, which became known as the Layon Landfill. The nine former landowners filed a civil case with the Superior Court of Guam to determine the amount of just compensation for this land condemnation.

On October 31, 2012, the Superior Court found in Civil Case no. CV0084-08 that the former landowners were entitled to just compensation in the amount of \$25.1 million (M), less the \$3.4M that GovGuam already deposited with the Court. As a result, the former landowners were entitled to the remaining balance of \$21.7M plus 6% interest per annum calculated from January 24, 2008. See Table 1 below.

Table 1: Former Landowners' Share of the \$25.1M (Per DOA)

	Landowner	Ownership Interest	Principal Amount	Less Initial GovGuam Deposit	Remaining Principal Amount	Interest (1/24/08 to 9/30/14)	Tax Credits Claimed as of 9/30/14	Tax Credits Available as of 9/30/14
1	Landowner A	50%	\$ 12,557,842	\$ 1,705,000	\$ 10,852,842	\$ 4,354,814	\$ 2,310,787	\$ 12,896,869
2	Landowner B	25%	6,278,921	852,500	5,426,421	2,177,407	6,948,158	655,669
3	Landowner C	8%	2,009,255	272,800	1,736,455	696,770	291,675	2,141,550
4	Landowner D	8%	2,009,255	272,800	1,736,455	696,770	243,186	2,190,039
5	Landowner E	5%	1,255,784	170,500	1,085,284	435,481	-	1,520,766
6	Landowner F	1.50%	376,735	51,150	325,585	130,644	440,388	15,842
7	Landowner G	1.243%	312,188	42,386	269,802	108,261	364,935	13,128
8	Landowner H	0.8325%	209,088	28,388	180,700	72,508	244,415	8,792
9	Landowner I	0.4245%	106,616	14,475	92,141	36,972	127,320	1,793
	Total		\$ 25,115,683	\$ 3,410,000	\$ 21,705,683	\$ 8,709,628	\$ 10,970,863*	\$ 19,444,448

*We noted a variance of \$142,447 between DRT and DOA that was subsequently reconciled to \$10,828,516.

Audit Scope Limitation Due to Restricted Access to Layon Landfill Tax Credits Data

Title 11 GCA § 38101 states that when GovGuam cannot make cash payment for the acquisition of privately-owned lands due to the unavailability of funds or for other reasons, the owner of such real property acquired by the government may elect to receive tax credits in lieu of cash on any taxes, except income taxes. Title 11 GCA § 15101(b) notes that as a condition of any such transfer as settlement for land acquired by GovGuam, the taxpayer shall waive confidentiality.

The audit team made numerous attempts to obtain complete information and request full access to files pertaining to the Layon Landfill tax credits from DRT's Director, Deputy Director, and Acting Taxpayer Services Administrator, but DRT's management were unresponsive or provided limited information.

Due to the restrictions placed on OPA, the audit team was unable to perform tests and verify the completeness, reliability, and accuracy of the data provided.

Landowners Claimed \$13.9M in Tax Credits as of December 2014

The DRT-provided database indicated that \$28.9M in tax credits were authorized to eight of the nine former landowners. Of this amount, a total of \$13.9M was claimed against Business Privilege Taxes and Real Property Taxes during FY 2013, FY 2014, and the first quarter of FY 2015 (October 2014 to December 2014). The top five tax types claimed against were cigarettes (\$8.7M), retail (\$2.4M), insurance premiums (\$1.4M), commissions (\$352,640), and rental real property (\$276,805).

DOA and DRT Credit Reconciliation

We reviewed the AS400, to determine whether DRT and the Department of Administration (DOA) reconciled the Layon Landfill tax credits at year-end, the first one occurring as of September 2013 and the second one as of September 2014. No variance was noted in FY 2013. For FY 2014, the team initially identified a variance of \$142,447 between DOA and DRT, which has since been cleared as DOA posted an adjusting journal entry to reconcile with DRT's \$10.8M.

Tax Form 1099 Not Issued

Similar to other cash payments, GovGuam must record tax credits in lieu of cash payments and ensure that the recipients report these transactions in their tax returns. We learned that GovGuam has not issued tax form 1099's, or other appropriate tax form, to the tax credits recipients related to the Layon Landfill, Tiyan Campus, or other GovGuam tax credit programs. DOA acknowledged that it was unable to issue the 1099's because it needed DRT's assistance to obtain necessary details, such as the taxpayer identification numbers, taxpayer names, and tax credit amounts.

Conclusion

Due to the audit scope limitation imposed by DRT, we could not verify the completeness, reliability, and accuracy of DRT's Layon Landfill tax credits database. Therefore, we reiterate the recommendation made in OPA Report No. 14-04, which was that the Legislature clarify the law to allow OPA full access to taxpayer returns and other information in the conduct of audits and reviews of local Guam taxes, consistent with the duties outlined by 1 GCA §1909. OPA is in support of Bill 31-33, which was introduced in January 2015 to address our previous audit's recommendation, but no further action has been taken as of report issuance. In addition, we recommend that DOA and DRT coordinate to determine the appropriate agency to be vested with the responsibility to issue the 1099's, or other appropriate tax form, to the tax credits recipients for past tax credits received and on a going forward basis.

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