

**Government of Guam  
Layon Landfill Tax Credits Program**

**Performance Audit  
January 1, 2008 through December 31, 2014**

**OPA Report No. 15-02  
May 2015**



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May 2015**

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**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
	<b>Total</b>		<b>\$ 25,115,683</b>	<b>\$ 3,410,000</b>	<b>\$ 21,705,683</b>	<b>\$ 8,709,628</b>	<b>\$ 10,970,863*</b>	<b>\$ 19,444,448</b>

\*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.

Doris Flores Brooks, CPA, CGFM  
Public Auditor



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## Introduction

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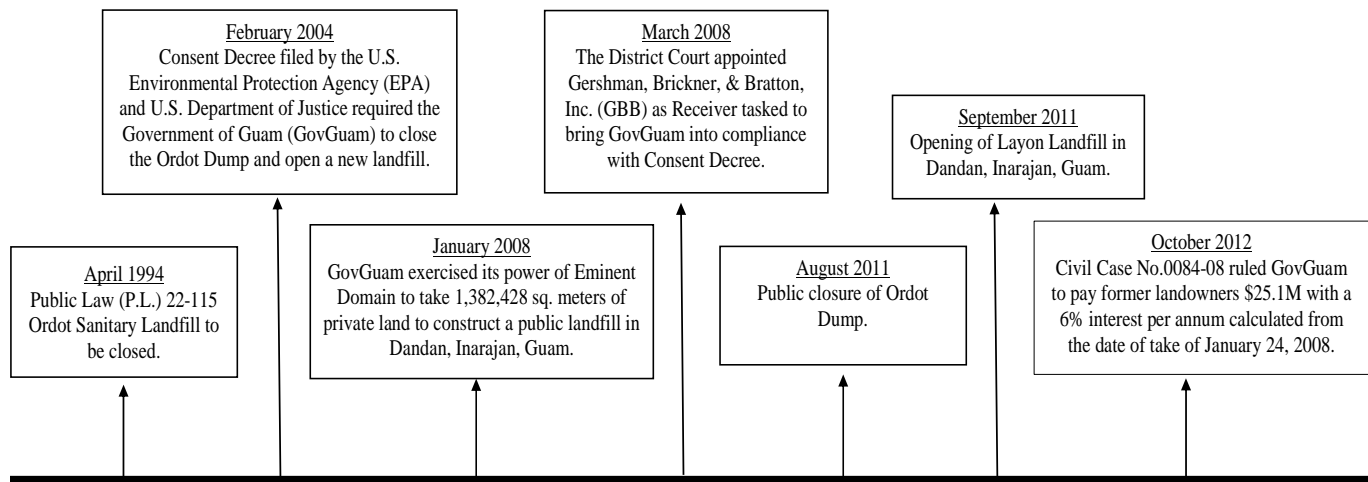
This report presents the results of our audit of the Layon Landfill Tax Credits Program from January 1, 2008 to December 31, 2014 [calendar year (CY) 2008 to CY 2014] and other pertinent periods. The audit objectives were to:

- (1) Quantify the amount of tax credits authorized in lieu of cash payments to the former landowners of the Layon Landfill property as of December 31, 2014;
- (2) Determine the amount of tax credits claimed as of December 31, 2014; and
- (3) Determine whether processes were in place to monitor the tax credits.

The audit was requested by a Senator in the 32<sup>nd</sup> Guam Legislature, and is also Part B of our three-part audit series on tax credits. Part A of our audit series was on the Tiyan Campus Tax Credits Performance Audit (OPA Report No. 14-07) and was issued in December 2014. Part C of our audit series will be a follow-up audit of the Tax Credits Programs Performance Audit (OPA Report No. 07-15), which was issued in November 2007.

The objectives, scope, methodology, and prior audit coverage are detailed in Appendices 1 and 2.

## Historical Timeline



## Background

Public Law (P.L.) 22-115 stipulated that the Ordot Sanitary Landfill was to be closed no later than three years after April 15, 1994 and the Governor was to initiate steps to determine a new site for a public sanitary landfill.

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. Due to delays in meeting stipulated deadlines under the Consent Decree,

the U.S. District Court of Guam placed the Solid Waste Division of the Department of Public Works in Receivership. The Receiver, Gershman, Brickner, & Bratton, has been tasked with bringing GovGuam into compliance with the Consent Decree, including the environmental closure of Ordot Dump in compliance with the engineering standards and regulations required by the EPA. On August 31, 2011, Ordot Dump was finally closed to the public. The Receiver continues engineering design work to ensure that Ordot Dump is closed in a manner that protects both human and environmental health.

Prior to 2008, landowners of Lot B divided the land in Dandan, Inarajan, Guam into four parts: Tract 3531, Lot B-1, Lot B-3, and Lot B-3REM. 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 order to construct a public landfill. The public landfill became known as the Layon Landfill, which was opened on September 1, 2011. The 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**

	Landowner	Ownership Interest	Principal Amount	Less Initial GovGuam Deposit	Remaining Principal Amount
1	Landowner A	50%	12,557,842	1,705,000	10,852,842
2	Landowner B	25%	6,278,921	852,500	5,426,421
3	Landowner C	8%	2,009,255	272,800	1,736,455
4	Landowner D	8%	2,009,255	272,800	1,736,455
5	Landowner E	5%	1,255,784	170,500	1,085,284
6	Landowner F	1.50%	376,735	51,150	325,585
7	Landowner G	1.243%	312,188	42,386	269,802
8	Landowner H	0.8325%	209,088	28,388	180,700
9	Landowner I	0.4245%	106,616	14,475	92,141
	<b>Total</b>		<b>25,115,683</b>	<b>3,410,000</b>	<b>21,705,683</b>

Title 11 Guam Code Annotated (GCA) § 38101 stipulates 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) provides that no real property or property other than money may be accepted by DRT as settlement for any outstanding tax liability nor may be received by GovGuam pursuant to § 38101 without prior specific statutory authority for the transaction. As a condition of any such transfer, the taxpayer shall waive confidentiality.

GovGuam has issued tax credit certificates to all but one of the nine landowners as of December 31, 2014.

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## **Results of Audit**

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OPA was denied full access to Layon Landfill Tax Credits data, despite 11 GCA § 15101(b)'s provision that a taxpayer receiving tax credits as compensation for government-condemned land waive its 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 we were provided, we found that 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 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 the date of take of January 24, 2008. One landowner has not claimed any of the tax credits he/she is entitled to.

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

Generally Accepted Government Auditing Standards (GAGAS) require auditors to obtain sufficient and appropriate evidence to provide a reasonable basis for their findings and conclusions (GAGAS paragraph 6.56). Evidence is not sufficient or not appropriate when it has significant limitations, given the audit objectives and intended use of the evidence. Also, the evidence is not sufficient and appropriate if it does not provide an adequate basis for addressing the audit objectives (GAGAS paragraph 6.71b).

OPA's enabling legislation states that every government agency is subject to a review and shall offer its complete cooperation to the Public Auditor so that the review may be accomplished (1 GCA § 1917). The legislation also states that disclosure of privileged communication or information in violation of Section 1909.1 shall be a felony of the third degree (1 GCA § 1909.1(d)).

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 (11 GCA § 38101). As a condition of any such transfer as settlement for land acquired by GovGuam, the taxpayer shall waive confidentiality (11 GCA § 15101(b)).

The audit team contacted DRT in January 2015, informing the Director and the Acting Taxpayer Service Administrator that OPA was beginning its second audit on tax credits, specifically the audit of the Layon Landfill tax credits, and requested data be provided. DRT requested that the audit be delayed for at least two weeks due to a heavy schedule on DRT's end, and the audit team granted the request.

After numerous email and phone call attempts to follow-up on the requested data between February and March 2015, DRT submitted a database on the Layon Landfill tax credits in late March 2015. However, the data received was incomplete, as it was missing the names (or some type of indicator) of the landowners who claimed the credits. The audit team was unable to perform certain analyses of the data provided. The team again attempted to contact DRT to obtain the additional information, but have been unsuccessful. The team also requested a physical inspection



and visit to DRT to review the supporting files related to information in DRT's database, but was not granted access.

As of report issuance date, DRT has yet to provide the requested additional information. As a result, the audit team could not perform tests to verify the completeness, reliability, and accuracy of the data.

In our audit of the Hotel Occupancy Taxes (OPA Report No. 14-04) in December 2014, we recommended that the Guam 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. Since we again experienced a scope limitation during this audit, we foresee similar barriers for future tax-related audits. Therefore, we reiterate our recommendation to allow OPA access to audit tax information.

In January 2015, a Senator in the 33<sup>rd</sup> Legislature introduced Bill 31-33 to address the recommendation made in OPA Report No. 14-04. The OPA submitted testimony in support of this bill's passage in March 2015. See Appendices 4 and 5 for Bill 31-33 and the Public Auditor's testimony. However, no further action has been taken on Bill 31-33 as of this report's issuance.

### **\$28.9M in Tax Credits Authorized per DRT**

The DRT-provided database indicated that a total of \$28.9M in tax credits were authorized to eight of the nine former landowners of the Layon Landfill property as of December 31, 2014. Of the \$28.9M, \$20.6M was for principal and \$8.3M was for the interest calculated at 6% per annum from January 24, 2008. One former landowner has not claimed any tax credits thus far.

We found that eight of the nine former landowners had claimed portions of their tax credits from August 2013 to December 2014, and expected DRT's calculation of interest to be lower than the \$9M we estimated. When we recalculated interest based on eight of the landowners' principal amounts of \$20.6M and excluding the lone landowner who had not claimed any tax credits through December 2014, the 6% interest was \$8.5M, which was \$268 thousand or 3% more than DRT's calculated interest of \$8.3M. The variance between the audit team and DRT's calculated interest amounts may be due to the reduction of principal amounts for certain landowners that are accounted for in DRT's database, but our team is unable to verify due to the data access restriction imposed by DRT.

### **\$13.9M Tax Credits Claimed**

Based on the data received from DOA, eight of the nine landowners have redeemed approximately \$11M in tax credits between FY 2013 and FY 2014 as noted in Table 2. Since the data from DRT did not have any indicators of the landowners (i.e., Landowner A, B, C, etc.), the audit team was unable to verify whether the amounts claimed in DOA's database match those reported by DRT.

**Table 2: Tax Credits Claimed (per DOA) as of 9/30/14**

	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
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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
	<b>Total</b>		<b>\$ 25,115,683</b>	<b>\$ 3,410,000</b>	<b>\$ 21,705,683</b>	<b>\$ 8,709,628</b>	<b>\$ 10,970,863*</b>	<b>\$ 19,444,448</b>

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

While the DRT-provided database specified the amount and type of taxes that the tax credits were claimed against, the database did not specify which of the landowners claimed the tax credits. Our analysis of the DRT-provided database indicated that the former landowners claimed \$13.9M of the authorized tax credits against 17 tax types as of December 31, 2014.

**Table 3: Tax Credits Claimed (per DRT) Against 17 Tax Types as of 12/31/14**

	Tax Type	FY 2013	FY 2014	1st Qtr. of FY 2015	Grand Total
1	Cigarettes GRT	\$ 747,810	\$ 5,896,627	\$ 2,093,400	\$ 8,737,837
2	Retail GRT		1,903,437	509,848	2,413,285
3	Insurance Premiums GRT	138,014	1,061,800	164,971	1,364,785
4	Commissions GRT	83,607	184,600	84,433	352,640
5	Rent Real Property GRT		220,848	55,957	276,805
6	Other Tobacco GRT	6,510	126,000	102,440	234,950
7	Malted Beverages GRT	28,027	120,268		148,295
8	Interest GRT	24,323	74,705	3,657	102,685
9	Rental Others GRT		41,869	39,369	81,238
10	Real Property Taxes		51,459		51,459
11	Distilled Spirits GRT	9,828	37,584		47,412
12	Service GRT		25,623	16,414	42,037
13	Vinous Beverages GRT	4,282	27,067		31,348
14	Inventory Used GRT		10,155	2,177	12,332
15	Cigars GRT	429	3,289		3,718
16	Wholesale GRT		330	52	381
17	Others GRT		26		26
	<b>Total</b>	<b>\$ 1,042,830</b>	<b>\$ 9,785,686</b>	<b>\$ 3,072,717</b>	<b>\$ 13,901,233</b>

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

## **DOA and DRT Reconciliation**

Coordination between the DOA and DRT is needed to ensure the tax credits for the named landowners are properly issued and monitored.

Per the DRT database, the first of nine landowners began claiming its authorized tax credits in August 2013, approximately 10 months after the decision was rendered in Civil Case no. CV0084-08 in October 2012. We reviewed the AS400, to determine whether DRT and 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 noted a variance of \$142,447 between DOA and DRT, which has since been cleared as DOA posted an adjusting entry to reconcile to DRT's \$10.8M.

## **Tax Form 1099's 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. Therefore, 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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## **Conclusion & Recommendation**

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OPA was denied full access to Layon Landfill Tax Credits data, despite 11 GCA § 15101(b)'s provision that a taxpayer receiving tax credits as compensation for the 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 GovGuam authorized \$28.9M in tax credits to eight of the nine former landowners of the Layon Landfill property as of December 31, 2014, \$13.9M has been claimed against BPT, such as cigarettes, retail, and insurance premium taxes.

Due to the audit scope limitation imposed by DRT, we reiterate the recommendation made in OPA Report No. 14-04, for the Legislature to 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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## Management Response and OPA Reply

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We transmitted a draft report to DOA and DRT in April 2015 for their official response. We met with DRT officials to discuss the audit results in April 2015. We also provided draft reports and met separately with the Legislative Vice Speaker and Oversight Chairperson in May 2015.

We received DRT's official management response on April 30, 2015. DRT expressed the continuation to perform their due diligence in administering tax credit programs in accordance with the respective mandates and acknowledged that it is unfortunate that the statute governing the disclosure resulted in the inability for OPA to verify the completeness, reliability, and accuracy of DRT's Layon Landfill tax credits database. Refer to Appendix 6 for DRT's management response.

We received DOA's official management response on May 1, 2015. DOA acknowledged that the \$142K variance between DOA and DRT has been reconciled. In addition, DOA plans to reconcile tax credits on a quarterly rather than yearly basis. Refer to Appendix 7 for DOA's management response.

We appreciate the assistance shown during the course of this audit by the management and staff of DRT and DOA.

OFFICE OF PUBLIC ACCOUNTABILITY



Doris Flores Brooks, CPA, CGFM  
Public Auditor

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**Appendix 1:**  
**Classification of Monetary Amounts**

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Finding No.	Finding Description	Questioned Cost <sup>1</sup>
1	Audit Scope Limitation Due to Restricted Access to Layon Landfill Tax Credits Data	\$ -
2	\$28.9M in Tax Credits Authorized per DRT	\$ -
3	\$13.9M in Tax Credits Claimed	\$ -
4	DOA and DRT Reconciliation	\$ -
5	Tax Form 1099's Not Issued	\$ -
<b>Totals</b>		<b>\$ -</b>

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<sup>1</sup> Questioned Costs are the costs questioned because of:

- (a) An alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds;
- (b) A finding that, at the time of the audit, such cost is not supported by adequate documentation; or
- (c) A finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable.

Our audit of the Layon Landfill Tax Credits Program was requested by a Senator in the 32<sup>nd</sup> Guam Legislature, and is also Part B of our three-part audit series on tax credits. Part A of our audit series was on the Tiyan Campus Tax Credits Performance Audit (OPA Report No. 14-07) and was issued in December 2014. Part C of our audit series will be a follow-up audit on the Tax Credits Programs Performance Audit (OPA Report No. 07-15), which was issued in November 2007.

Our audit objectives for this engagement were to:

- (1) Quantify the amount of tax credits authorized in lieu of cash payments to the former landowners of the Layon Landfill property as of December 31, 2014;
- (2) Determine the amount of tax credits claimed as of December 31, 2014; and
- (3) Determine whether processes were in place to monitor the tax credits.

The scope of this engagement was from January 1, 2008 to December 31, 2014 (CY 2008 to CY 2014) and other periods deemed necessary.

### **Scope Limitation**

The audit team contacted DRT in January 2015, informing management that OPA was beginning its second audit on tax credits, specifically the audit of the Layon Landfill tax credits and requested for data to be provided. DRT requested that the audit be delayed for at least two weeks due to a heavy schedule on DRT's end, and the audit team granted the extension request.

After numerous email and phone call attempts to follow-up on the requested data between February and March 2015, the DRT submitted a database on the Layon Landfill tax credits in late March 2015. However, the data received was incomplete, as it was missing the name of the landowners who claimed the credits, and the audit team was unable to perform certain analysis with the data provided. The team again attempted to contact DRT to obtain the additional information, but have been unsuccessful. The team also requested to visit DRT to review the supporting files related to information in the DRT database, but was not granted access.

As of report issuance date, DRT has yet to provide the requested additional information. As a result, the audit team could not perform tests to verify the completeness, reliability, and accuracy of the data.

### **Audit Methodology**

Our audit methodology included a review of laws, policies, and other information pertinent to the Layon Landfill Tax Credits program. We also performed the following:

1. Interviewed and conducted walkthroughs with key officials from DRT and DOA;
2. Obtained and analyzed DRT's Layon Landfill tax credits database;
3. Verified DOA recordings in the AS 400 related to the Layon Landfill tax credits;
4. Reviewed the Government-Wide FY 2009 to FY 2013 audited Basic Financial Statements and other financial audits as deemed necessary; and
5. Performed other reviews and procedures as deemed necessary to address the audit objectives.

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. Except for the scope limitation noted, we believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



**OPA Report No. 14-07, Tiyan Campus Tax Credits Program**

The Tiyan Campus [Tiyan High School and Guam Department of Education's (GDOE) Central Office and other facilities] will cost a total of \$260.3M. There is a maximum of \$44.1M in tax credits that may be claimed in relation to the lease and purchase of the Tiyan Campus.

Tax credits that have been claimed or will be claimed are:

- \$21.5M for lease payments from FY 2010 to FY 2013;
- \$7.5M for collateral equipment for Tiyan High School and the GDOE Central Office and other facilities; and
- \$15.1M for 2014 and 2015 base rent and additional rent.

**OPA Report No. 14-01, Public Debt**

As GovGuam's public indebtedness is limited, GovGuam obtained other financing sources not subject to the debt ceiling, such as COPs, notes payables, and other loans not backed by the full faith of general government taxes and revenues. Certain other obligations which are not issued upon the pledge of governmental taxes and revenues are not generally subject to the Organic Act debt-limitation provision. Therefore, tax credits do not affect the debt ceiling imposed by the Organic Act.

**OPA Report No. 13-03, Real Property Taxes**

OPA conducted a performance audit of DRT's real property taxes and found \$15.7M in unrealized, lost and forgone tax revenues due to the lack of interface between Department of Public Works (DPW) and Department of Land Management (DLM). In addition, \$858k in question costs were identified during OPA's testing and review. OPA made several recommendations:

- DRT Director to work with the Guam Legislature and Governor of Guam to amend 11 GCA § 24306 to authorize DRT to utilize current values for real property assessments, place a moratorium on senior citizen and home expansions, and amend 11 GCA § 24110 by raising eligibility for senior citizens from age 55 to 65 to receive a reduction in real property taxes.
- Director of DRT to issue request for proposal for appraisal and revaluation services, establish a communication protocol with DPW and DLM, and place controls on DRT's database to limit input on accessibility and secondary review of management.

**OPA Report No. 07-15, Tax Credit Programs**

OPA conducted a performance audit that examined Guam's various tax credit programs. The audit identified nine public laws that authorized a minimum of \$23.6M in tax credits to taxpayers who contributed property, materials, labor, services or cash to the government of Guam for various programs. Four of these programs do not limit amounts of tax credits given. GEDA authorized tax credits of \$6.6M for the Guam Raceway Park.

Several recommendations were made to specific agencies such as (1) GEDA to coordinate with DRT to assess all tax programs to include overall benefits and costs, (2) GEDA to revoke \$231,377 in excess Raceway Park tax credits applied above the allowed 5% overhead, (3) DRT to provide to the Legislature and Bureau of Budget Management and Research (BBMR) quarterly and annual reports of revenues forgone via tax credits in FY 2007 and estimate tax credits for FY 2008 and FY 2009 for the purposes of facilitating the annual budget, (4) Director of BBMR to incorporate estimated tax credits in the annual budget, (5) Office of the Attorney General (AGO) to determine the legal action necessary to cause the admissions fees to be remitted by the Guam Racing Federation and (6) the Governor and Legislature to repeal several programs including the Raceway Park (balance \$1,368,823) and Tax Credits for Privately Owned Landowners (balance unknown). However, the Legislature and Administration have not taken any action on the recommendations.

**OPA Report No. 06-18, Paseo Stadium Lease Agreement**

OPA conducted a compliance audit of the Paseo Stadium Lease Agreement between the Department of Parks and Recreation (DPR) and the Guam Baseball Federation (GBF). The audit found that DPR and GBF did not comply with terms and conditions of the Stadium Lease Agreement and P.L. 27-27. We found that:

- Over \$1M in Paseo Stadium rehabilitation projects were not procured in accordance with Guam Procurement Law.
- Only 1 company was selected to benefit from the tax credits for stadium projects.
- GEDA did not scrutinize the tax credit program and relied on GBF's assertions that contributions were received and projects were completed.
- GBF did not pay the required 4% of accrued gross revenues to DPR for 2004 and 2005.
- DPR did not independently safeguard the MSOF (a government account), against loss and misuse.


The OPA recommended:

- DPR Director to work with the Office of the Attorney General to determine viable options to enforce or terminate the Paseo lease agreement.
- DPR Employees Association to pay the MSOF of \$542;
- The Legislature to ensure that there is defined monitoring mechanisms incorporated into all future tax credit programs;
- GEDA Administrator to incorporate procedures into the current rules and regulations to ensure that expenditures for tax credits are procured according to Guam Procurement Law.
- GEDA Administrator to temporarily revoke \$64,690 of the Beneficiary tax credits until evidence of proper authorization and supporting receipts are provided by GBF.

*MINA' TRENTAI TRES NA LIHESLATURAN GUÁHAN*  
2015 (FIRST) Regular Session

Bill No. 31-33 (COR)

Introduced by:

B.J.F. Cruz 

2015 JAN 22 PM 4: 05



**AN ACT TO AMEND § 26120 OF CHAPTER 26 OF TITLE 11 OF THE GUAM CODE ANNOTATED; RELATIVE TO THE INSPECTION OF TAX RETURNS AND OTHER INFORMATION REQUIRED TO BE FILED OR FURNISHED BY THE TAXPAYER.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** § 26120 of Chapter 26 of Title 11, Guam Code Annotated is  
3 hereby *amended* to read:

4 **“§ 26120. Inspection of Tax Returns and Information:**  
5 **Prohibition.** Tax returns and other information required to be filed or  
6 furnished by the taxpayer, or any other person, shall not be open for public  
7 inspection or divulged except when testifying in any judicial or  
8 administrative proceeding in which the government of Guam, or any of its  
9 officials in an official capacity, are a party, and in which the government of  
10 Guam has an interest in the result; except that any committee of the  
11 Legislature, duly created, authorized by resolution of the Legislature, may  
12 require that it be furnished any data contained in any tax return for use by  
13 such committee in executive session only. Nothing in this section shall limit  
14 the ability of the Public Auditor to access tax returns and other information  
15 required to be filed or furnished by the taxpayer in the administration of his  
16 duties, unless such information is specifically privileged by the Internal  
17 Revenue Code of the United States.”

**Appendix 5:**

**OPA Testimony on No. Bill 31-33**



OFFICE OF THE PUBLIC AUDITOR  
Doris Flores Brooks, CPA, CGFM  
Public Auditor

March 12, 2015

Honorable Michael F.Q. San Nicolas  
Senator and Chairman Committee on Finance Taxation, General Government  
Operations, and Youth Development  
33<sup>rd</sup> Guam Legislature  
155 Hesler Street  
Hagatna, Guam

Re: Bill 31-33... Relative to the Inspection of Tax Returns and Other  
Information Required to be filed or furnished by the Taxpayer...

Hafa Adai Senator San Nicolas and Committee Members:

This is to express our support for Bill 31 that would allow the Public Auditor and staff access to tax returns and other information required to be filed by the taxpayer. We especially want to thank the main sponsor of the Bill, Vice Speaker Cruz, for introducing this bill to clarify the law.

As background, during the course of OPA's audit of Hotel Occupancy Taxes (HOT) Report No. 14-04, which was an audit mandated by P. L. 32-068, the Department of Revenue and Taxation (DRT) denied OPA auditors access to HOT tax returns. DRT emphasized that the law (Title 11 GCA Section 26210) and their due diligence to protect confidential taxpayer information" are what prevented OPA auditors access.

I note that even the Internal Revenue Code, at 26 U.S.C. § 6103(d)(2), provides that returns and return information are open to inspection by state audit agencies.

We suggest that inspections in Guam be expanded to ensure access of tax information to OPA contracted auditors. Deloitte and Touché, the auditors currently contracted for the annual government-wide financial audit, are also denied taxpayer access. These auditors have done their best to work around this restriction and have done an admirable job despite the restriction. However, access to taxpayer information would make their audit much easier and timelier to complete the annual financial audits.

We urge the committee's full support of this measure.

Thank you and Sensesramente

Doris Flores Brooks, CPA, CGFM  
Public Auditor

Suite 401, DNA Building  
238 Archbishop Flores Street, Hagåtña, Guam 96910  
Tel (671) 475-0390 • Fax (671) 472-7951  
www.guamopa.org • Hotline: 47AUDIT (472-8348)

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**Appendix 6:**  
**DRT's Management Response**

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Dipårtamenton Kontribusion yan Adu'ána

DEPARTMENT OF  
**REVENUE AND TAXATION**  
GOVERNMENT OF GUAM      Gubetnamenton Guåhan

EDDIE BAZA CALVO, Governor  
Maga'låhi  
RAY TENORIO, Lt. Governor  
Tiñente Gubetnadot

JOHN P. CAMACHO, Director  
Direktot  
MARIE M. BENITO, Deputy Director  
Sigundo Direktot


April 30, 2015

Doris Flores Brooks, CPA, CGFM  
Public Auditor  
Office of Public Accountability  
Suite 401, DNA Building  
238 Archbishop Flores Street  
Hagatna, GU 96910

In Re: Draft Audit Report—Layon Landfill Tax Credits Program

Dear Ms. Brooks:

The Department of Revenue & Taxation (DRT) hereby submits its official response on the aforementioned. It is unfortunate that the statute governing the disclosure of tax information resulted in the inability of your office to verify the completeness, reliability, and accuracy of DRT's Layon landfill tax credits database. DRT, however, will continue to perform its due diligence in administering this tax credit program in accordance with its respective mandates.

  
JOHN P. CAMACHO  
Director

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
BY: CP  
DATE: 4/30/15  
TIME: 1615       AM  PM

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**Appendix 7:**  
**DOA's Management Response**

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*Eddie Baza Calvo*  
Governor  
*Ray Tenorio*  
Lieutenant Governor

**Department of Administration**  
(DIPATTAMENTON ATEMENSTRASION)  
**DIRECTOR'S OFFICE**  
(UFISINAN DIREKTOT)

Post Office Box 884 Hagatña, Guam 96932  
Tel: (671) 475-1101/1250 - Fax: (671) 477-6788



*Anthony C. Blaz*  
Acting Director  
*Alfred F. Duenas*  
Deputy Director

April 30, 2015

Doris Flores Brooks, CPA, CGFM  
Public Auditor  
Office of Public Accountability  
Suite 401, DNA Building  
238 Archbishop Flores Street  
Hagatna, Guam 96910

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
BY: Reg  
DATE: 05/01/2015  
TIME: 11:05  AM  PM

Re: Draft Audit Report – Layon Landfill Tax Credits Program

*Buenas yan Håfa Adai* Ms. Brooks,

We have prepared a response to address the variance amount of -142,447 for FY2014 on Page 9 of the OPA Draft Report on Government of Guam Wide Layon Landfill Tax Credits Program Performance Audit from October 1, 2013 to September 30, 2014.

Please note that as of 9-30-2014, the variance amount of -142,447 has been reconciled between DOA and DRT so there is no longer a variance. The table should be updated to reflect this.

Moving forward, we plan to reconcile tax credits between DOA and DRT on a quarterly basis rather than on a yearly basis, so records are updated more frequently.

Thank you for performing the audit on the Layon Landfill Tax Credits Program and giving us the opportunity to review and make comments on the audit.

*Senseramente,*

**ANTHONY C. BLAZ**

ACB/rgb



**Government of Guam Layon Landfill Tax Credits Program  
Report No. 15-02, May 2015**

## **ACKNOWLEDGEMENTS**

**Key contributions to this report were made by:**

Ashley Gaerlan, Audit Staff  
Rodalyn Gerardo, CIA, CGFM, CPA, CGAP, CGMA, Audit Supervisor  
Doris Flores Brooks, CPA, CGFM, Public Auditor

## **MISSION STATEMENT**

**To ensure the public trust and assure good governance,  
we conduct audits and administer procurement appeals,  
independently, impartially, and with integrity.**

## **VISION**

**The Government of Guam is the model for good governance in the Pacific.**

## **CORE VALUES**

**Objectivity: To have an independent and impartial mind.**

**Professionalism: To adhere to ethical and professional standards.**

**Accountability: To be responsible and transparent in our actions.**

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- **Visit our website at [www.opaguam.org](http://www.opaguam.org)**
- **Call our office at 475-0390**
- **Fax our office at 472-7951**
- **Or visit us at Suite 401, DNA Building in Hagåtña**

**All information will be held in strict confidence.**