



EXECUTIVE SUMMARY

Government of Guam Limited Gaming Tax and Guam Memorial Hospital Authority Trust Fund Fees

OPA Report No. 16-06, August 2016

Since July 2013, Public Law (P.L.) 32-60 imposed a new four percent (4%) Limited Gaming Tax (LGT) on gross receipts from certain authorized limited gaming activities (including electronic gaming devices, bingo/lottery, cockfighting, and Liberation Day gaming activities) and an additional new 4% Guam Memorial Hospital Authority (GMHA) Trust Fund Fee on income from licensed electronic gaming devices (Liberty, Symbolix, and Match Play). The Department of Revenue and Taxation (DRT) created Form 3260 to report both the self-assessed LGT and GMHA Trust Fund Fee. The form is still temporary, since a gaming commission has not been empaneled to create an official form. Form 3260 is manually processed by DRT and gaming entities are unable to file electronically.

For 27-month period from July 2013 to September 2015, the Department of Administration (DOA) reported \$3.9 million (M) in LGT and \$3.7M in GMHA Trust Fund Fees, a total of \$7.6M from these new taxes based on \$117.7M of Form 3260 gaming gross receipts filed by 44 entities. The LGT is allocated up to one-third each to the Mayors' Council of Guam (MCOG), Department of Parks and Recreation (DPR), and Department of Education (DOE) for capital, team sponsorships, and uniforms. These agencies each received \$923 thousand (K) for a total of \$2.8M of the \$3.9M LGT. However, these amounts do not reconcile with each agency's available financial records. GMHA received \$3.3M of the \$3.7M in GMHA Trust Fund Fees. GMHA has not submitted quarterly expenditure reports required by P.L. 32-60 to the Governor and Legislature.

We found that DRT's predominantly manual processes do not ensure that LGT and GMHA Trust Fund Fees are accurately collected and allocated to GMHA, GDOE, DPR, and MCOG. DOA reported \$7.6M was collected for LGT and GMHA Trust Fund Fees. However, DRT reported \$4.7M, a difference of \$2.9M.

Gambling Winnings Not Consistently Reported

Gaming entities are required to issue a Form W-2G to certain gambling winners by January 31 of each year, and file at DRT the required information returns monthly (Form 3260) and annually (Form 1096). A winner must report all gambling winnings on their Form 1040 as "Other Income". Based on tax years (TY) 2013 through 2015 Form 1096 filings, only \$33.3M in gambling winnings were reported by eight gaming entities of the 44 entities. Form 1096 summarizes the Forms W-2G provided to recipients. The top gaming entity, with gross receipts in excess of \$60.1M, did not report any gambling winnings for TY 2013 through 2015. The Internal Revenue Service subjects entities to a \$250 penalty, while P.L. 32-60 outlines other penalties, per failure to furnish an information return. However, DRT has not assessed failure to file penalties.

Enforcement Efforts Need Improvement

There is a high probability of revenue loss as DRT is not enforcing the limited gaming laws and not reviewing information provided by gaming entities for a predominantly "cash industry". DRT

indicated that there is not enough data to adequately review the LGT and GMHA Trust Fund Fee because this law is fairly new. As gaming entities self-report this new tax, DRT should monitor, audit, and send regular non-filing notices at a minimum. After almost three years, we found that sufficient information has been established for DRT to begin monitoring and review. DRT is further hampered as Form 3260 is manually filed and therefore, manually inputted into their system. Thus, data from electronic filings is not readily available for analysis and susceptible to human errors. In addition to the lack of review, there are no formalized procedures to monitor limited gaming activities.

Liberty and Symbolix Gaming Entities Not Paying LGT

Gaming entities operating Liberty, Symbolix, and Match Play electronic gaming devices must pay the 4% GMHA Trust Fund Fee, in addition to the 4% LGT. We found six entities did not pay \$17K of the required LGT for gaming activities during FY 2014 through FY 2015. There are also inconsistencies in payment for both gaming taxes and no follow-up by DRT for failure to file.

Other Limited Gaming Activities Universe Unknown

Other limited gaming activities include pinball, kiddie rides, children's video games, and music producing machines to name a few. DRT is unable to identify which gaming entity should be filing Form 3260. We found that only 44 gaming entities filed Form 3260 and most filed sporadically throughout FY 2013 to FY 2015. DRT stated that the LGT and GMHA Trust Fund Fee do not have a zero return requirement, unlike the business privilege tax. The listing of potential Form 3260 gaming entities provided by DRT did not match the actual filers. Many of these gaming entities did not file Form 3260 and DRT made no follow-ups of these potential filers. Without a complete list of gaming entities licensed to conduct gaming activities, the potential revenue loss increases as DRT is unable to determine who should be assessed the LGT and GMHA Trust Fund Fee.

Inconsistent and Unreconciled Financial Information

We found that the gaming entities' published financial information, Form 1096, and Form 3260 were inconsistent and not reconciled. Our analysis of the available data showed that:

- DOA and DRT's reported LGT and GMHA Trust Fund Fee balances did not reconcile. The unreconciled balance is currently being addressed by both agencies.
- DRT did not accurately assess \$189K in penalties for 34 noncompliant gaming entities.
- No follow-up was performed to compel gaming entities to issue Forms W-2G to gambling winners.

Conclusion and Recommendations

Self-reported limited gaming gross receipts require aggressive enforcement for a predominantly cash industry. With the manual filing and inputting of the gaming taxes, DRT is further hampered by not being provided the additional staff needed to properly analyze, review, monitor, and collect these new taxes. Audits or reviews of selected gaming entities, robust LGT and GMHA Trust Fund Fee analysis, and routine monitoring of reported gaming gross receipts should occur regularly. We made five recommendations for DRT to address these new gaming taxes and for GMHA to submit the required quarterly expenditure reports.

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