



## **EXECUTIVE SUMMARY**

### **Department of Revenue and Taxation Assessments and Collections of Excise Taxes for Alcoholic Beverages and Tobacco Products OPA Report No. 23-02, February 2023**

Our audit of the Department of Revenue and Taxation's (DRT's) assessments and collections of excise taxes imposed upon alcoholic beverages and tobacco products found that the DRT Business Privilege Tax (BPT) Branch is not required by law to verify entries of taxes due for alcoholic beverages unless there is cause for an audit of a BPT return. Taxpayers are only required to reconcile their own records to determine how much is due for tobacco products withdrawn from a warehouse under bond. Due to the current staffing shortage at the BPT Branch, the procedures required for assessing tobacco taxes at warehouses under bond have affected the Branch's management of its other mandated procedures for delivering taxpayer services to over 1,200 businesses.

We also found conflicting presentations and reports of the actual monthly collections of excise taxes for alcoholic beverages and tobacco products. These conflicting reports caused concern among taxpayers and the Lieutenant Governor of Guam, which prompted the initiation of this audit. The conflicting information was due to the timing between when the reports are published and when tax payments are collected.

Lastly, our audit found the following:

1. One business was listed as an active licensed tobacco bonded warehouse wholesaler, despite having two active tax liens with a total BPT liability of \$15,104,183 (from 2015 to present).
2. Irregularities in licensing regulation. DRT's listed Guam-licensed wholesalers did not match the listed named taxpayers who filed BPT returns for alcoholic beverages and tobacco products.
3. Guam Customs and Quarantine Agency (CQA) data of imported and exported goods contains inconsistent data entries and does not always clearly segregate alcoholic beverages from tobacco products.

#### **Varying Presentations and Inconsistent Collections Data Reporting**

As shown in the table below, our comparative review of collections data in the monthly Special Revenue Funds Tracking (SRFT) Reports, the Government of Guam (GovGuam) Financial Statements, and a report of collections data submitted by DRT presented variances among the three data reports. According to DRT management, the variances are mainly due to the timing between when the information is published and when tax payments are collected.

As a result of the varying presentations, the Public Auditor requested for the 36<sup>th</sup> Guam Legislature to include an authorization in the General Appropriations Act of 2023 for a financial audit of the Healthy Futures Fund (HFF) to rectify compliance issues and collecting revenues necessary to meet the mandates of the HFF enabling legislation, as well as to

confirm that the variance in data is truly due to timing. As of the release of this report, our request for the audit was affirmed, and the provision was included in Public Law 36-107 (V:1(g)(8)).

### Comparisons of Tax Collections Data

Alcohol Tax Collections	SRFT Reports	DRT	Audited	Variance SRFT (-) Audited	Variance DRT (-) Audited
FY 2021	\$3,469,807	\$2,851,810	\$3,519,174	(\$49,367)	(\$667,364)
FY 2020	\$3,922,371	\$3,891,340	\$3,955,987	(\$33,616)	(\$64,647)
FY 2019	\$3,873,408	\$4,121,382	\$3,785,570	\$87,838	\$335,812
FY 2018	\$3,653,911	\$3,634,780	\$3,676,775	(\$22,864)	(\$41,995)

Tobacco Tax Collections	SRFT Reports	DRT	Audited	Variance SRFT (-) Audited	Variance DRT (-) Audited
FY 2021	\$36,492,690	\$21,224,156	\$34,977,877	\$1,514,813	(\$13,753,721)
FY 2020	\$38,213,266	\$33,245,165	\$35,817,232	\$2,396,034	(\$2,572,067)
FY 2019	\$32,980,951	\$35,818,151	\$35,448,719	(\$2,467,768)	\$369,432
FY 2018	\$28,986,143	\$23,957,990	\$28,562,068	\$424,075	(\$4,604,078)

### Wholesaler Remains Licensed for Tobacco in Violation of Tobacco Control Act, with Two Active Tax Debt Liens

Contrary to law, we found one wholesaler, “TP Taxpayer 2,” was listed as an “active” licensed tobacco bonded warehouse wholesaler, despite having two active tax liens, with a total BPT liability of \$15,104,183 (from 2015 to present). Although this taxpayer’s *tobacco bonded warehouse license* remains active, DRT’s records show that the taxpayer’s *alcoholic beverage wholesale license* has been cancelled, but DRT did not provide the cancellation date.

In a separate report provided by CQA, TP Taxpayer 2 continued to import and export tobacco products during the period audited (Fiscal Years (FY) 2018-2021). The Tobacco Control Act of 2006 states that the transportation or importation of tobacco products for delivery or use in Guam without payment of taxes is prohibited (11 GCA § 6602), and CQA is mandated to maintain a database of those in violation and to determine and administer violation charges. Further discussion with CQA and DRT is required for us to determine how and why this taxpayer was allowed to continue to engage in the importation of tobacco products.

We requested information from DRT about the status of audits or investigations that have been conducted on the tax returns filed by this taxpayer, but DRT Management advised that due to ongoing litigation, the information can only be provided upon completion of said litigation. We made a subsequent request for DRT to comment on how and why TP Taxpayer 2 was allowed to continue to renew their *tobacco product wholesaler business license* with outstanding taxes due to GovGuam.

### Irregularities in Licensing Regulation

We found the number of Guam-licensed wholesalers for alcoholic beverages did not match the number of taxpayers who filed BPT returns. DRT’s records show that six of the 25

businesses that paid alcoholic beverage taxes were *not* licensed wholesalers for alcoholic beverages.

### **Import/Export Information Provided by CQA Presents Unclear Data**

We found that the data of imported and exported goods contained variations of business names, and the information presented is not organized or segregated between alcoholic beverages and tobacco products—thus, the data cannot be used to compare with tax collections data.

### **Conclusion and Recommendations**

If taxpayers are required to pay for all alcoholic beverage and tobacco products immediately at the time taxes are attached and without delay, assessments and collections of all excise taxes could be performed more promptly and accurately and could improve tax administration. As of FY 2021, collections of taxes deposited into the HFF were approximately \$4 million (M) less than revenue projections. A reduction in revenues may result in a reduction in the programs and services funded by the HFF.

To help improve alcohol and tobacco tax collections, we made the following five recommendations:

1. We recommend the repeal of any provision of law that allows the delay of tax payments and that all taxes due for alcoholic beverages and tobacco products be collected immediately upon receipt of shipments at all points of entry.
2. We recommend for DRT management to conduct a full inspection to determine how one taxpayer's tobacco wholesale license continued to be renewed despite having two active tax debt liens, in violation of DRT policy and the Guam Business License Law.
3. We recommend for DRT Management to enforce strict licensee compliance with the Guam Business License Law to ensure that all licensees are, in fact, current with tax debts.
4. We recommend that the legislation for the authorization to conduct an annual financial audit of the HFF shall be continuous, so long as the collections of excise taxes for alcoholic beverages and tobacco products are deposited into the HFF.
5. We recommend that DRT and CQA include all imported alcoholic beverages in the use of Tracer Forms for DRT to verify entries of taxes due, and we further recommend that DRT require taxpayers to submit copies of Bills of Lading (where applicable) and Invoices upon filing tax returns for all alcohol and tobacco taxes.

  
Benjamin J.F. Cruz  
Public Auditor