

I MINA 'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
RESOLUTION STATUS

Resolution No.	Sponsor	Title	Date Intro	Date of Presentation	Date Adopted
310-34 (COR)	Michael F.Q. San Nicolas	Relative to respectfully petitioning the United States Congress, pursuant to 48 USC §1423k, to enact legislation amending the Organic Act of Guam to include a provision of Guam Public Law 26-74 for the Government of Guam to deposit a required percentage of tax collections into the Guam Income Tax Refund Efficient Payment Trust Fund for the payment of income tax refunds, and that any such amendment be referenced as the "Vicente C. Pangelinan Amendment".	12/15/17 3:32 p.m.		

I MINA'TRENTAI KUATTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

Resolution No. 310-34 (COR)

Introduced by:

Michael F.Q. San Nicolas 

Relative to respectfully petitioning the United States Congress, pursuant to 48 USC §1423k, to enact legislation amending the Organic Act of Guam to include a provision of Guam Public Law 26-74 for the Government of Guam to deposit a required percentage of tax collections into the Guam Income Tax Refund Efficient Payment Trust Fund for the payment of income tax refunds, and that any such amendment be referenced as the “Vicente C. Pangelinan Amendment”.

1 **BE IT RESOLVED BY I LIHESLATURAN GUÅHAN:**

2 **WHEREAS**, in the Twenty-Sixth (26th) Guam Legislature, Senator Vicente
3 C. Pangelinan introduced Bill No. 247 (COR), which was enacted as Public Law
4 26-74 on March 7, 2002, that establishes the Income Tax Refund Efficient
5 Payment Trust Fund and requires that the Government of Guam directly deposit
6 within ten (10) days at the end of each month or quarter to the Trust Fund
7 percentages of the Payroll Withholding Tax collections, Self-Employed Payroll
8 Withholding Tax collections, and Income Tax collections (Exhibit 1); and

9 **WHEREAS**, Public Law 26-74 recognizes the Government of Guam’s
10 responsibility to promptly process income tax returns and pay income tax refunds
11 to Guam’s taxpayers, seeking to remedy a long history of deficit spending and
12 bond borrowing that has negatively compromised the fiscal stability of the
13 Government of Guam; and

14 **WHEREAS**, the United States commonly uses Withholding Tax collections
15 to pay income tax refunds, while the Government of Guam uses such collections to

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1 fund government operations, resulting in shortfalls or delays in the payment of
2 income tax refunds; and

3 **WHEREAS**, the Government of Guam was unable to set aside money to
4 pay for income tax refunds for nearly two decades and has relied on accumulated
5 deficits and subsequent borrowing on the bond market to pay accrued income tax
6 refund payments owed to taxpayers; and

7 **WHEREAS**, in August 1994, the Government of Guam borrowed Forty-
8 five Million dollars (\$45,000,000) on the bond market, all of which were used to
9 pay for 1993 tax refunds, under the General Obligation Bonds 1994 Series A, as
10 authorized by Public Law 22-138; and

11 **WHEREAS**, in June 1995, the Government of Guam borrowed One
12 Hundred Fifteen Million dollars (\$115,000,000) on the bond market, of which
13 Forty-one Million dollars (\$41,000,000) were used to pay for 1994 tax refunds,
14 under the General Obligation Bonds 1994 Series A, as authorized by Public Law
15 22-138; and

16 **WHEREAS**, in June 2009, the Government of Guam borrowed Two
17 Hundred Seventy-one Million Seventy Thousand dollars (\$271,070,000) on the
18 bond market, of which One Hundred Twelve Million dollars (\$121,000,000) were
19 used to pay for delinquent tax refunds for prior years, under the General Obligation
20 2009 Bonds, Series A, as authorized by Public Law 30-24; and

21 **WHEREAS**, in December 2011, the Government of Guam borrowed Two
22 Hundred Thirty-five Million dollars (\$235,000,000) on the bond market, of which
23 One Hundred Ninety-eight Million dollars (\$198,000,000) were used to pay for
24 2010 tax refunds and prior years, under the Business Privilege Tax Bonds Series
25 2011A, as authorized by Public Law 30-24; and

26 **WHEREAS**, in June 2012, the Government of Guam borrowed One
27 Hundred Eight Million Seven Hundred Thousand dollars (\$108,700,000) on the

1 bond market, of which Sixty Million dollars (\$60,000,000) was used to pay for
2 2010 and 2011 tax refunds, under the Business Privilege Tax Bonds Series 2012B,
3 as authorized by Public Law 30-24; and

4 **WHEREAS**, in April 2011, a class action lawsuit filed on behalf of Guam
5 residents Jeffrey and Rea Paeste, and Sharon and Glenn Zapanta, challenged the
6 Government of Guam’s failure to pay tax refunds to its taxpayers in a timely
7 manner; and

8 **WHEREAS**, in January 2013, District Court Judge Consuelo Marshall
9 issued a permanent injunction in the case of *Paeste, et al. v. Government of Guam*
10 (Exhibit 2), ordering that the Government of Guam must pay most tax refunds no
11 later than six (6) months after tax returns are due; and

12 **WHEREAS**, in December 2011, the Guam Office of Public Accountability
13 released a report of the performance audit of the Income Tax Refund Efficient
14 Payment Trust Fund (Exhibit 3), and concluded that the Government of Guam
15 failed to pay Forty-one Million dollars (\$41,000,000) for Fiscal Year 2011, citing
16 that the Government of Guam Department of Administration failed to adhere to the
17 requirements of P.L. 26-74 when it did not always deposit funds directly into the
18 Trust Fund and when it commingled income tax collections in the General Fund;
19 and

20 **WHEREAS**, the taxpayers of Guam have seen a historic pattern of the
21 Government of Guam failing to set aside sufficient money to pay income tax
22 refunds, as mandated in Guam Public Law 26-74, relying on federal Section 30
23 funds to cover shortfalls (Exhibit 4), despite the budget of the Government of
24 Guam increasing every fiscal year (Exhibit 5); and

25 **WHEREAS**, the Government of Guam’s reliance on federal Section 30
26 funds that arrive at the end of the fiscal year continues to slow the rate of the

1 issuance of income tax refunds, with taxpayers having to wait longer and being
2 pushed farther along the issuance schedule; and

3 **WHEREAS**, federal Section 30 funds are being expended in the fiscal year
4 they are received to fund income tax refund shortfalls, yet continue to be factored
5 in the ensuing fiscal year they are intended to fund, resulting in immediate deficit
6 spending that makes fiscal year budgets unbalanced upon enactment; and

7 **WHEREAS**, the Government of Guam does not have a locally enacted
8 Constitution and, instead, operates under the Organic Act of Guam; and the
9 enactment of an amendment to the Organic Act of Guam including the provisions
10 of Guam Public Law 26-74, requiring that the Government of Guam deposit tax
11 collections in the Income Tax Refund Efficient Payment Trust Fund as
12 enumerated, would prevent further unbalanced budgeting, deficit spending, chronic
13 borrowing, and future burdens on the taxpayers of Guam; now therefore be it

14 **RESOLVED**, that *I Mina'Trentai Kuåttro Na Liheslaturan Guåhan* does
15 hereby, on behalf of the people of Guam, respectfully petition the United States
16 Congress, pursuant to 48 USC §1423k, to enact legislation amending the Organic
17 Act of Guam to include a provision of Guam Public Law 26-74 for the
18 Government of Guam to deposit a required percentage of tax collections into the
19 Guam Income Tax Refund Efficient Payment Trust Fund for the payment of
20 income tax refunds, and that any such amendment be referenced as the “Vicente C.
21 Pangelinan Amendment”; and be it further

22 **RESOLVED**, that the Speaker certify, and the Legislative Secretary attest
23 to, the adoption hereof, and that copies of the same be thereafter transmitted to the
24 Honorable Vice President Mike Pence, President of the United States Senate; the
25 Honorable Speaker Paul Ryan, United States House of Representatives; Honorable
26 Representative Madeleine Z. Bordallo, Guam’s Delegate to the United States

- 1 House of Representatives; and the Honorable Eddie Baza Calvo, *I Maga'låhen*
- 2 *Guåhan*.

DULY AND REGULARLY ADOPTED BY *I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN* ON THE ___ DAY OF _____, 2017.

BENJAMIN J.F. CRUZ
Speaker

RÉGINE B. LEE
Legislative Secretary

Exhibit 1



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<u>[Signature]</u>
Time	<u>4:30 PM</u>
Date	<u>3/7/02</u>

MAR 07 2002

The Honorable Joanne M. S. Brown
Legislative Secretary
I Mina'Bente Sais na Liheslaturan Guåhan
Twenty-Sixth Guam Legislature
Suite 200
130 Asपाल Street
Hagåtña, Guam 96910

Dear Senator Brown:

Enclosed please find Bill No. 247 (COR) "AN ACT TO ADD CHAPTER 51 AND TO AMEND § 50104 BOTH OF TITLE 11 AND TO ADD §§ 4102(a)(17) AND 4102.1 TO TITLE 4, ALL OF THE GUAM CODE ANNOTATED, RELATIVE TO MAXIMIZING REVENUES FROM THE "INCOME TAX REFUND RESERVE FUND" AND FOR OTHER PURPOSES" which I have signed into law as **Public Law No. 26-74**.

In better economic times, this bill would be a good method of managing funds to pay for tax processing and tax refund payments. These are not good economic times. What this legislation would mean is that approximately \$5 Million in cash would have to be set aside every month. With the short cash flow, this would impact on the payment of vendors, payroll, retirement benefits, and other daily obligations of the government. In fact, if this amount of cash each month has to be idle, further cuts of government payments, and even payroll, will need to be made. While this legislation does not take effect until October 1, 2002, this will leave a window of time to revisit the method of cash management contained in this bill. The end result is that this legislation further erodes flexibility of cash management.

This legislation sets up another fund for the payment of income tax refunds. Currently, money to pay income tax refunds is set aside in the "Income Tax Refund Reserve Fund," and paid from that fund. This legislation creates another fund, the "Income Tax Refund Efficient Payment Trust Fund." This second fund is created by placing, at the end of each month, a percentage collected from Payroll Withholding Taxes and income tax collections, along with, at the end of each quarter, a percentage collected from Self-Employed Payroll Withholding Taxes.

The second fund is supposed to gather interest and investment earnings. These interest and investment earnings are then to be used for hiring temporary income tax returns processors for up to 3 months each tax season. The interest is subject to legislative

0713

Legislative Secretary
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Page 2

appropriation for this purpose, after a budget for this purpose is submitted to the Legislature.

Finally, when refunds are due to be paid out, money from the second fund, the "Income Tax Refund Efficient Payment Trust Fund", is shifted into the first fund, the "Income Tax Refund Reserve Fund", and then paid out to the taxpayer. The interest and investment earnings do not get shifted to the first fund.

The second fund, or trust fund, and method of hiring seasonal employees to process returns, is effective for next fiscal year, starting October 1, 2002.

The legislation, finally, provides for \$100,000 to be used for extra personnel hired to process the currently due tax returns.

Very truly yours,



Carl T. C. Gutierrez
I Maga'Lahen Guahan
Governor of Guam

Attachments: original bill for vetoed legislation or
copy of bill for signed or overridden legislation
and legislation enacted without signature

cc: The Honorable Antonio R. Unpingco
Speaker

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2002 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Bill No. 247 (COR) "AN ACT TO ADD CHAPTER 51 AND TO AMEND § 50104 BOTH OF TITLE 11 AND TO ADD §§ 4102(a)(17) AND 4102.1 TO TITLE 4, ALL OF THE GUAM CODE ANNOTATED, RELATIVE TO MAXIMIZING REVENUES FROM THE 'INCOME TAX REFUND RESERVE FUND' AND FOR OTHER PURPOSES," was on the 28th day of February, 2002, duly and regularly passed.

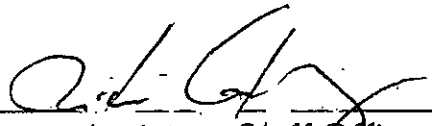


ANTONIO R. UNPINGCO
Speaker

Attested:


JOANNE M.S. BROWN
Senator and Legislative Secretary

.....
This Act was received by *I Maga'lahen Guåhan* this 28 day of Feb, 2002,
at 11:50 o'clock PM.M.


Assistant Staff Officer
Maga'lahi's Office

APPROVED:


CARL T. C. GUTIERREZ
I Maga'lahen Guåhan

Date: 3-7-02

Public Law No. 26-74

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2002 (SECOND) Regular Session

Bill No. 247 (COR)

As amended by the Author and
amended on the Floor.

Introduced by:

V. C. Pangelinan

K. S. Moylan

A. R. Unpingco

J. F. Ada

T. C. Ada

F. B. Aguon, Jr.

J. M.S. Brown

E. B. Calvo

F. P. Camacho

M. C. Charfauros

Mark Forbes

L. F. Kasperbauer

L. A. Leon Guerrero

A. L.G. Santos

J. T. Won Pat

**AN ACT TO ADD CHAPTER 51 AND TO AMEND §
50104 BOTH OF TITLE 11 AND TO ADD §§ 4102(a)(17)
AND 4102.1 TO TITLE 4, ALL OF THE GUAM CODE
ANNOTATED, RELATIVE TO MAXIMIZING
REVENUES FROM THE "INCOME TAX REFUND
RESERVE FUND" AND FOR OTHER PURPOSES.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that each year, the Department of Revenue and Taxation ("DRT") finds
4 itself in a difficult situation, trying to find ways to promptly process Guam's
5 taxpayers' income tax returns and timely pay the refunds due. Each year,

1 DRT cites shortage of staff as the reason for delays in processing the income
2 tax returns. *However*, through legislative hearings and discussions, the
3 Director of DRT testified that *if* such staff shortages were filled, another cause
4 of delay would be the lack of office equipment, such as computers.

5 Such problems in the delay of processing the income tax returns have
6 greatly burdened Guam's taxpayers financially, as they patiently wait for
7 their income tax returns so critical to making ends meet.

8 Therefore, it is the intent of *I Liheslaturan Guåhan* to develop a program
9 to provide the resources to DRT to promptly process income tax returns, and
10 to issue the refunds to Guam taxpayers.

11 Section 2. Chapter 51 is hereby *added* to Division 2 of Title 11 of the
12 Guam Code Annotated to read as follows:

13 **"Chapter 51.**

14 **Income Tax Refund Efficient Payment Trust Fund Act of 2002.**

15	Section 51101.	Creation of the Income Tax
16		Return Efficiency Trust Fund.
17	Section 51102.	Deposit of Funds.
18	Section 51103.	Expenditures from the
19		Trust Fund.
20	Section 51104.	Contracts.
21	Section 51105.	Prohibitions Against
22		Encumbrances.
23	Section 51106.	Reports.
24	Section 51107.	No Transfer Authority.

1 **Section 51108. Effective Date.**

2 **Section 51101. Creation of the Income Tax Refund Efficient**
3 **Payment Trust Fund.**

4 (a) There is hereby created, separate and apart from all
5 other funds of the government of Guam, a trust fund known as
6 the Income Tax Refund Efficient Payment Trust Fund ('Trust
7 Fund'). The Trust Fund shall *not* be commingled with the General
8 Fund or any other funds of the government of Guam, and it shall
9 be maintained in a separate bank account, administered by the
10 Tax Commissioner. The Trust Fund's interest and investment
11 earnings shall be subject to legislative appropriation and shall be
12 expended *exclusively* for the purposes set forth under § 51103 of
13 this Act.

14 (b) The deposits made to the Trust Fund pursuant to §
15 51102 shall be invested or reinvested into interest bearing
16 instruments, United States treasury notes, investment grade and
17 insured corporate notes, and other like instruments which are
18 readily convertible to cash needed to pay income tax refunds.

19 **Section 51102. Deposit of Funds.**

20 (a) The Director of the Department of Administration
21 ('DOA') shall directly deposit within ten (10) days at the end of
22 each month to the Trust Fund a percentage of the Payroll
23 Withholding Taxes collections for the month equal to its
24 percentage of the budgeted forecasted amount set aside for

1 income tax refunds, earned income tax credits and child tax
2 credits adopted in that fiscal year's budget, so that at the end of
3 the calendar year, the total amount set aside for income tax
4 refunds, earned income tax credits and child tax credits shall have
5 been deposited into the Trust Fund. The funds deposited in the
6 Trust Fund by the Director of DOA shall *automatically* be
7 transferred to the Income Tax Reserve Fund once the Tax
8 Commissioner is ready to make the necessary payments pursuant
9 to § 50105 of Chapter 50, Division 2 of Title 11 of the Guam Code
10 Annotated. The interest and investment earnings shall remain
11 within the Trust Fund.

12 (b) The Director of DOA shall directly deposit within ten
13 (10) days at the end of each quarter to the Trust Fund a percentage
14 of the Self-Employed Payroll Withholding Taxes collections for the
15 quarter equal to its percentage of the budgeted forecasted amount
16 set aside for income tax refunds, earned income tax credits and
17 child tax credits adopted in that fiscal year's budget, so that at the
18 end of the calendar year, the total amount set aside for income tax
19 refunds, earned income tax credits and child tax credits shall have
20 been deposited into the Trust Fund. The funds deposited into the
21 Trust Fund by the Director of DOA shall *automatically* be
22 transferred to the Income Tax Reserve Fund, once the Tax
23 Commissioner is ready to make the necessary payments pursuant
24 to § 50105 of Chapter 50, Division 2 of Title 11 of the Guam Code

1 Annotated. The interest and investment earnings shall remain
2 within the Trust Fund.

3 (c) The Director of DOA shall directly deposit within ten
4 (10) days at the end of each month to the Trust Fund a percentage
5 of income tax collections for the month equal to its percentage of
6 the budgeted forecasted amount set aside for income tax refunds,
7 earned income tax credits and child tax credits adopted in that
8 fiscal year's budget, so that at the end of the calendar year, the
9 total amount set aside for income tax refunds, earned income tax
10 credits and child tax credits shall have been deposited into the
11 Trust Fund. The funds deposited into the Trust Fund by the
12 Director of DOA shall *automatically* be transferred to the Income
13 Tax Reserve Fund, once the Tax Commissioner is ready to make
14 the necessary payments pursuant to § 50105 of Chapter 50,
15 Division 2 of Title 11 of the Guam Code Annotated. The interest
16 and investment earnings shall remain within the Trust Fund.

17 **Section 51103. Expenditures from the Trust Fund.** In order
18 for *I Liheslaturan Guåhan* to make the proper legislative appropriation
19 pursuant to § 51101(a) of this Act, the Tax Commissioner shall submit to
20 *I Liheslaturan Guåhan* on the 15th day of January each year a detailed
21 budget request of itemized cost of allowable expenditure, for an
22 appropriation from the earnings of the Trust Fund. All interest and
23 investment earnings from the Trust Fund pursuant to § 51101(b) of this
24 Act shall be *exclusively* expended for the following purposes:

1 (a) Notwithstanding other provisions of law, the Department of
2 Revenue and Taxation is hereby authorized to either enter into contracts
3 with *temporary* income tax returns processors ('processors'), or to hire
4 seasonal employees, as deemed necessary by the Tax Commissioner
5 anytime during the period of filing dates established by the Internal
6 Revenue Service for a period of *not more than* three (3) months to process
7 income tax returns.

8 (1) The Department of Revenue and Taxation shall
9 prioritize the processing of income tax returns according to their
10 filing date.

11 (2) The Department of Revenue and Taxation shall submit
12 to *I Liheslaturan Guåhan* a monthly report on the status of the
13 income tax processing, which shall include the following:

14 (i) number of income tax returns processed;

15 (ii) number of income tax refunds issued and the

16 total dollar amount;

17 (iii) number of income tax returns waiting to be
18 processed;

19 (iv) expected date of completion for the processing of
20 income tax returns pending; *and*

21 (v) any other pertinent information.

22 (b) proper training of employees hired pursuant to Subsection
23 (a) of this Section.

24 (c) computers and other equipments necessary to quickly
25 process the income tax returns.

1 **Section 51104. Contracts.** *If the Department of Revenue and*
2 *Taxation chooses to enter into contracts with temporary income tax*
3 *returns processors, the Department of Revenue and Taxation shall*
4 *promulgate rules and regulations governing the contract. The*
5 *processors under contracts shall be deemed independent contractors*
6 *and not employees of the government of Guam, nor shall they be*
7 *entitled to any benefits otherwise available to government of Guam*
8 *employees, including, but not limited to, sick leave, annual leave,*
9 *retirement, worker's compensation, group life insurance, group medical*
10 *insurance, or periodic or other step increases in wages.*

11 **Section 51105. Prohibitions Against Encumbrances.** Any and
12 all expenditures from the Trust Fund shall be for the payment outlined
13 in § 51103, and for no other purpose. The Trust Fund shall *not* be
14 subject to or permit *I Maga'lahaen Guåhan* to pledge the Trust Fund for
15 payments or repayments of any government of Guam general fund
16 obligations or obligations of any autonomous agency, public
17 corporation or government instrumentality.

18 **Section 51106. Reports.** The Tax Commissioner and the
19 Director of the Department of Administration shall report to *I*
20 *Maga'lahaen Guåhan* and *I Liheslaturan Guåhan* every deposit and the
21 current balance of the Trust Fund within fifteen (15) days of every
22 deposit made to the Trust Fund.

1 **Section 51107. No Transfer Authority.** The money placed
2 in the Trust Fund is *not* subject to any transfer authority of *I Maga'laha*
3 *Guåhan*.

4 **Section 51108. Effective Date.** The provisions of the Income
5 Tax Refund Efficient Payment Trust Fund Act of 2002 shall be effective
6 on October 1, 2002."

7 **Section 3.** Section 50104 of Chapter 50, Division 2 of Title 11 of the
8 Guam Code Annotated is hereby *amended* to read as follows:

9 **"Section 50104. Revenues Reserved for Income Tax Refunds,**
10 **Earned Income Tax Credits and Child Tax Credits.**

11 (a) In accordance with the formula provided for in § 50103
12 of this Chapter, the Director of Administration shall set aside all
13 money reserved for income tax refunds, earned income tax credits
14 and child tax credits from income tax receipts."

15 ~~Section 4. Section 4102(a)(17) is hereby *added* to Article 1, Chapter 4 of~~
16 Title 4 of the Guam Code Annotated to read as follows:

17 "(17) persons employed on a seasonal basis."

18 **Section 5.** Section 4102.1 is hereby *added* to Article 1, Chapter 4 of Title
19 4 of the Guam Code Annotated to read as follows:

20 **"Section 4102.1. Seasonal Employment.**

21 (a) **Appropriate Use.** Seasonal employment
22 allows an agency to develop an experienced cadre of employees
23 under career appointment to perform work which recurs

1 predictably year-to-year, with work expected to last *no more than*
2 three (3) months.

3 (b) **Length of Season.** Agencies determine the length
4 of the season, *unless* prescribed by law, subject to the condition
5 that it be clearly tied to nature of the work. The season must be
6 defined as closely as practicable so that an employee will have a
7 reasonable clear idea of how much work that person can expect
8 during the year.

9 (c) **Employment Agreement.** An employment agreement
10 must be executed between the agency and the seasonal employee
11 *prior* to the employee's entering on duty. At a minimum, the
12 agreement must inform the employee:

13 (1) that the employee is subject to periodic release
14 and recall as a condition of employment;

15 (2) the minimum and maximum period the
16 employee can expect to work;

17 (3) the basis on which release and recall procedures
18 will be effected; *and*

19 (4) that there shall be no benefits to which the
20 employee will be entitled while in a non-pay status.

21 (d) **Release and Recall Procedures.** A seasonal employee
22 is released to non-pay status at the end of a season and recalled to
23 duty the next season. Release and recall procedures must be
24 established in advance and uniformly applied. They may be

1 based upon performance, seniority, veterans' reference, other
2 appropriate indices, or a combination of factors. If an agency
3 intends to have an employee work less than the minimum amount
4 of time specified in the employment agreement, the agency may
5 develop a new employment agreement to reflect changing
6 circumstances.

7 (e) **Unclassified Service.** It is impracticable for seasonal
8 employees to be under the classified service, as seasonal
9 employment is *not* required on a permanent day-to-day basis.
10 Seasonal employees are only utilized for a short period each year,
11 performing work that is expected to last *no more than* three (3)
12 months. Therefore, seasonal employees shall be under the
13 unclassified service. In addition, seasonal employees shall *not* be
14 entitled to any benefits otherwise available to other government of
15 Guam employees, including, but *not* limited to, sick leave, annual
16 leave, retirement, worker's compensation, group life insurance,
17 group medical insurance, or periodic or other step increases in
18 wages."

19 **Section 6.** Notwithstanding any other law, the Department of Revenue
20 and Taxation is hereby authorized to extend the employment of the
21 individuals hired pursuant to Public Law Number 26-50, and to pay overtime
22 hours for current employees until the appropriation made in § 7 of this Act is
23 fully expended, in order to process outstanding income tax returns.

1 **Section 7.** There is hereby appropriated the sum of One Hundred
2 Thousand Dollars (\$100,000.00) from the General Fund to the Department of
3 Revenue and Taxation to be used for the funding pursuant to Section 6 of this
4 Act.

5 **Section 8. Severability.** *If* any provision of this Law or its
6 application to any person or circumstance is found to be invalid or contrary to
7 law, such invalidity shall *not* affect other provisions or applications of this
8 Law which can be given effect without the invalid provisions or application,
9 and to this end the provisions of this Law are severable.

Exhibit 2

FILED

DISTRICT COURT OF GUAM

JAN 30 2013

JEANNE G. QUINATA
CLERK OF COURT

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UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

RIA MIALIZA O. PAESTE, et al.,
Plaintiffs,

v.

GOVERNMENT OF GUAM, et al.,
Defendants.

No. CV 11-00008 CBM

PERMANENT INJUNCTION AND
FINAL JUDGMENT

On August 21, 2012, the Court held a hearing on Plaintiffs' motion for summary judgment. (Doc. No. 153.) Following argument by the parties, the Court granted Plaintiffs' motion as to both claims, granted Plaintiffs' request for declaratory relief, and then issued a minute order to that effect. (Doc. No.171.) The Court issued in a separate document findings of fact and conclusions of law in support of its ruling and in support of the permanent injunction and final judgment set forth below.

1 **I. TERMS OF THE PERMANENT INJUNCTION**

2 **A. Timely Payment of Refunds**

3 For purposes herein, a “claim for refund” refers to a valid tax return or other
4 claim for refund recognized by the Internal Revenue Code in effect on Guam. The
5 Government of Guam is required to comply with this Court’s Order regarding the
6 timely payment of refunds beginning one month from the entry of this Order, and
7 the time limits imposed apply not only to claims for refund filed in the future, but
8 also to claims for refund that have already been filed as of the date of the entry of
9 this Order.

10 1. For any GTIT claim for refund designated “E” status (or otherwise
11 determined to contain an error which must be corrected before a refund can be
12 paid) that is later amended, supplemented, or otherwise corrected such that a
13 refund is determined to be owed, the Government of Guam shall pay the refund no
14 later than six months after the claim for refund is designated “A” status or
15 otherwise determined to have a refund owed, or six months from the due date for
16 filing the claim for refund, whichever is later in time.

17 2. For any GTIT claim for refund designated “S” status (or otherwise subject
18 to audit, investigation, or some other such practice that is expressly authorized by
19 the provisions of the Internal Revenue Code in effect on Guam) that is later
20 designated as “A” status or otherwise determined to have a refund owed, the
21 Government of Guam shall pay the corresponding refund no later than six months
22 after the claim for refund is designated “A” status or otherwise determined to have
23 a refund owed, or six months from the due date for filing the claim for refund,
24 whichever is later in time.

25 3. For any GTIT claim for refund designated “A” status or otherwise
26 determined to have a refund owed that have not previously been designated as “E”
27 or “S” status, the Government of Guam shall pay the corresponding refund no
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1 later than six months after the filing of the claim for refund or six months from the
2 due date for filing the claim for refund, whichever is later in time.

3 4. No part of this Order shall be construed to interfere with the Government of
4 Guam's right to conduct offsets, garnishments, audits, or any other such processes
5 or procedures that are expressly authorized by the provisions of the Internal
6 Revenue Code in effect on Guam.

7 **B. Reporting Requirements**

8 5. For a period of five years, beginning one month from the date of this Order,
9 Defendants shall serve on Class Counsel a written report, on a quarterly basis, that
10 states, separately for each tax year:

11 a. The number and dollar value of GTIT refunds paid during the quarter
12 leading up to the date the report is served.

13 b. The number and dollar value of GTIT refunds paid during the quarter
14 leading up to the date the report is served, which were paid more than six
15 months after the corresponding claims for refund were filed.¹

16 c. For each of the following categories, the number of claims for
17 refunds that have not yet been paid and the total dollar amount owed:

18 i. Claims for GTIT refunds the DRT has designated as "A status"
19 (or otherwise processed and concluded that refunds were owed).

20 ii. Claims for GTIT refunds the DRT has designated as "E status"
21 or "S status" (or some other designation indicating a problem that
22 needs to be resolved before a refund can be paid).

23 iii. Claims for GTIT refunds that were filed at least six months
24 ago.

25
26 ¹ For the purposes of this paragraph, the date on which a claim for GTIT refund was filed shall
27 be the later of (i) the filing due date for the claim, (ii) the actual filing date of the claim, and (iii)
28 the date on which the refund was converted to "A status" if it was initially marked "E status" or
"S status" (or some other designation indicating a problem that needed to be resolved before the
refund could be paid).

1 These reports will be due on March 31, June 30, September 30, and December 31
2 of each year unless these dates fall on a weekend or court holiday, in which case
3 the reports will be due the following court workday. The first report shall be filed
4 no later than April 1, 2013, as March 31, 2013 falls on a Saturday.

5 6. The written reports shall contain the signature of at least one Defendant
6 who attests that the report is compiled based on the information obtained from
7 electronically stored DRT records.

8 **C. Suspension and Discontinuation of Expedited Refund Payments**

9 7. The Government of Guam and Defendants Calvo, Mangloña, and Camacho
10 shall immediately suspend and discontinue the operation of the GTIT expedited
11 refund program, i.e., prioritizing the payment of refunds to some taxpayers based
12 on hardship, need, or any other reason. The Department of Revenue and Taxation
13 shall prioritize the processing of claims for GTIT refunds and the payment of
14 GTIT refunds according to the filing date of the claim for refunds.

15 8. If, within five years of entry of this order, Defendants move for
16 modification of this injunction to initiate a new practice of prioritizing certain

17 GTIT refunds based on taxpayer need, Defendants shall first present Class
18 Counsel with written notice, 30 days in advance, of their intent to do so. Any such
19 motion must include a detailed description of the laws, regulations, and/or rules
20 that will underlie the practice. The proposed practice must comport with the
21 Organic Act of Guam, the United States Constitution, and all other applicable
22 laws. Class counsel shall have the right to object to and take discovery related to
23 any proposal before a decision on its legality will be made.

24 **D. Enforcement**

25 9. If, after six months following the entry of this Order, Defendants have
26 failed to fully comply with the terms of this injunction, Plaintiffs may file a
27 motion with the Court requesting appointment of a receiver pursuant to Fed. R.
28 Civ. P. 66, sequestration of government funds, initiation of contempt proceedings,

1 or any other order necessary to ensure compliance with the terms of this
2 injunction.

3 **E. Miscellaneous**

4 10. This Order shall be deemed to have been served upon Defendants at the
5 time of its execution by the Court. The injunction shall bind Defendants and all
6 other persons and entities listed in Rule 65(d)(2) of the Federal Rules of Civil
7 Procedure, including Defendants' successors in office. *See* Fed. R. Civ. P. 25(d);
8 *Salt River Project Agr. Imp. & Power Dist. v. Lee*, 672 F.3d 1176, 1180 (9th Cir.
9 2012). Defendants shall, within five (5) days of the date of this Order, email a
10 copy of this Order to DRT and DOA personnel involved in the processing and
11 payment of Guam income tax refunds.

12 11. Plaintiffs shall file their motion for attorney's fees and costs no later than 14
13 days after the entry of this Order. *See* generally Fed. R. Civ. P. 54.

14 12. The Court shall retain jurisdiction over this matter for all proceedings
15 involving the interpretation, enforcement, or modification of this Permanent
16 Injunction.

17 **II. CONCLUSION**

18 The Clerk of Court is directed to enter judgment in this matter in favor of
19 Plaintiffs and against Defendants.

20
21 **IT IS SO ORDERED.**

22
23 DATED: January 30, 2013

By 

CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

Exhibit 3



Government of Guam Income Tax Refund Efficient Payment Trust Fund

**Performance Audit
October 2010 through September 2011**

**OPA Report No. 11-10
December 2011**

Distribution:

Governor of Guam
Lt. Governor of Guam
Speaker, 31st Guam Legislature
Senators, 31st Guam Legislature
Director, Department of Administration
Director, Department of Revenue and Taxation
Director, Bureau of Budget and Management Research
Guam Media via E-Mail



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Executive Summary

Government of Guam Income Tax Refund Efficient Payment Trust Fund OPA Report No. 11-10, December 2011

The Income Tax Refund Efficient Payment Trust Fund (Trust Fund) was established to contain the mandated set-aside portion of income tax revenues to pay tax refunds in a timelier manner. Using the formula prescribed in the Trust Fund Act of 2002, we calculated that, from October 1, 2010 to September 30, 2011, \$93.1 million (M) should have been deposited in the Trust Fund. Of the total, \$50.3M was paid out in prior year refunds and \$1.8M remains in the Trust Fund. Contrary to the law's intent, \$41M was used to fund government operations. DOA's Deputy Financial Manager told us that cash shortfalls restrict the department's ability to transfer the required portion to the Fund.

As stated in previous audits, overestimating anticipated revenues and expending beyond appropriations continue to fuel GovGuam's penchant to live beyond its means. With an overestimation of revenues by nearly \$38M, FY2011 was no different. Similarly, expenditures totaled \$524M, not including year-end accruals, unbudgeted expenditures such as the Mental Health receiver of \$16M, and audit adjustments, all of which add up significantly.

GovGuam's FY 2010 financial audit reported the tax refund liability to be \$278.3M, prompting enactment of P.L. 31-76 authorizing the sale of the bonds not to exceed \$343.7M, of which \$198M would pay a portion of long overdue tax refunds, plus interest. After Standard & Poor's gave GovGuam its highest investment rating, bonds totaling \$235M sold quickly, and tax refund checks totaling \$198M were paid out in December 2011. Despite the payouts, however, the tax refund liability stands at \$127.6M as of December 2011 and continues to grow.

Tax Refund Payments Short \$41M

Income tax revenues for FY 2011 totaled \$363.8M, of which \$93.1M (25.6%) should have been deposited into the Trust Fund. As specified in §51102 of Title 11 GCA, the set-aside amount is calculated by taking income tax collections and multiplying the ratio of the FY 2011 Budget Act tax refund provision (\$100.1M) to total projected income taxes (\$391.4M). We found that DOA did not procedurally comply with directly depositing the set-aside amounts into the Trust Fund for subsequent transfer to the Income Tax Reserve Fund to pay tax refunds. Although some tax refunds were paid, the Fund was shortchanged by \$41M as a result of GovGuam's ongoing cash deficiency and inability to reduce expenditures in light of declining revenues. See the table below for details.

	A	B = A*25.6%	C	D= C-B
Month	Actual Income Tax Collections	Required Deposits	Tax Refund Payments	Variance
10-Oct	\$24,886,116	\$6,370,846	\$8,059,903	\$1,689,057
10-Nov	19,806,368	5,070,430	7,719,376	2,648,946
10-Dec	35,818,109	9,169,436	3,453,239	(5,716,197)
11-Jan	38,292,291	9,802,826	2,032,190	(7,770,636)

	A	B = A*25.6%	C	D= C-B
Month	Actual Income Tax Collections	Required Deposits	Tax Refund Payments	Variance
11-Feb	18,203,470	4,660,088	2,739,248	(1,920,840)
11-Mar	33,153,259	8,487,234	2,160,935	(6,326,299)
11-Apr	51,507,272	13,185,862	4,859,843	(8,326,019)
11-May	19,342,913	4,951,786	6,747,673	1,795,887
11-Jun	38,348,257	9,817,154	4,337,703	(5,479,451)
11-Jul	23,581,787	6,036,937	2,587,929	(3,449,008)
11-Aug	21,384,813	5,474,512	3,183,759	(2,290,753)
11-Sep	39,541,751	10,122,688	2,444,534	(7,678,154)
Subtotals	\$363,866,406	\$93,149,800	\$50,326,332	(\$42,823,468)
		Trust Fund Balance as of 9/30/11		\$1,804,085
			Total Variance	(\$41,019,383)

According to the Bureau of Budget and Management Research's (BBMR) September 30, 2011 Consolidated Revenue and Expenditures Report, only \$363.8M in income taxes was actually collected, \$27.6M short of the \$391.4M projected in the FY 2011 Budget Act. Actual total revenues amounted to \$620.2M, nearly \$38M short of the \$658M anticipated and budgeted. In response to lesser-than-anticipated revenue collections, the administration implemented a three-percent reserve in the third quarter of FY 2011.

DOA Complicated the Process for Tax Refunds by not Complying with the Trust Fund Act

DOA did not adhere to other procedural requirements which complicated the process of reconciling Trust Fund deposits with the amounts remitted in tax refunds. DOA did not always deposit funds directly into the Trust Fund. Contrary to law, income tax collections were comingled in the General Fund. Additionally, transfers from the Trust Fund can only be made upon the Tax Commissioner's written request to pay refunds, but we noted that transfers were made to fund GovGuam operations.

Conclusion

The Office of Public Accountability was mandated by the Supplemental Appropriations Act of 2011 (P.L. 31-74) to audit the Trust Fund, which was established to ensure the availability of cash to pay tax refunds at the end of the fiscal year. As of September 30, 2011, GovGuam paid \$50.3M in tax refunds, \$41M short of the \$93.1M that should have been available. Without the \$41M infusion, government operations would have been negatively impacted. So long as GovGuam continues to spend more than it makes and overestimate what it thinks it will collect, operations will continue to need subsidies and tax refund liabilities will continue to grow.

DOA acknowledged that the government has not been in compliance with the law due to cash challenges resulting from the ongoing General Fund deficit. Going forward DOA intends to comply with the procedural requirements of the Trust Fund Act.

Doris Flores Brooks, CPA, CGFM
Public Auditor



Introduction

This report presents the results of our audit of the Income Tax Refund Efficient Payment Trust Fund as mandated in the Supplemental Appropriations Act of 2011, Public Law (P.L.) 31-74. Our objective was to determine the amount of income tax refunds paid between October 1, 2010 and September 30, 2011 in accordance with §51102 of the Trust Fund Act of 2002, Chapter 51 of Title 11, Guam Code Annotated (GCA).

The audit scope and methodology are detailed in Appendix 1.

Background

The Income Tax Refund Efficient Payment Trust Fund was established in March 2002 to ensure that projected income tax refunds would be paid in a timely manner according to a formula prescribed in law. Specifically, 11 GCA § 51102 prescribed that a portion of income tax collections be set aside in the following manner:

The DOA Director shall directly deposit, upon receipt of any payment of income tax, including, but not limited to, individual, corporate and withholding taxes, interest and penalties, to the Trust Fund a portion of the tax payment received to be calculated by multiplying the amount of the tax payment received by the quotient derived by the provision for tax refunds (the dividend) divided by the total income taxes, including, but not limited to, individual, corporate and withholding taxes, interest and penalties, (the divisor) amounts adopted in the pertinent government of Guam fiscal year budget, so that, at the end of the fiscal year, the total amount set aside in said budget for income tax refunds, the earned income tax credit and advanced child tax credits shall have been deposited in said Fund.

Revenues in the Trust Fund were authorized to be invested so that the Department of Revenue of Taxation (DRT) could utilize the interest and investment earnings to promptly process income tax returns. Authorized expenditures include: a) Contracting temporary tax return processors or hiring seasonal employees; (b) Training processors or seasonal employees; and (c) Purchasing computers and other equipment necessary to quickly process income tax returns.¹ Because of nominal deposits, the Trust Fund earned only \$3,395 in interest for Fiscal Year (FY) 2011.

The Trust Fund Act also mandated the following:

- The Trust Fund shall not be commingled with the General Fund or any other funds of the Government of Guam (GovGuam);

¹ P.L. 26-74.

- Trust Fund deposits should be invested or reinvested into interest bearing instruments, United States Treasury notes, investment grade and insured corporate notes, and other like instruments which could readily be converted to cash to pay tax refunds; and
- Transfers from the Trust Fund should be made only to the Income Tax Reserve Fund (Reserve Fund) upon the written request of the Tax Commissioner to pay income tax refunds, earned income tax credits, advanced child tax credits, tax rebates and for no other purpose.

Results of Audit

Between October 1, 2010 and September 30, 2011, GovGuam collected \$363.8 million (M) in income taxes. Based on the formula in law, \$93.1M should have been deposited into the Trust Fund, but due to continuing cash shortages, only \$50.3M was paid in tax refunds; approximately \$41M was used to pay government operations and a balance of \$1.8M remains. DOA did not follow other procedural requirements of the Trust Fund Act, which complicated the process of reconciling Trust Fund deposits and tax refund payments.

The Trust Fund's creation was well-intended, but the practicality of setting aside funds to provide investment earnings is doubtful. As evidenced by the General Fund's FY 2010 deficit of \$336.4M, GovGuam lacks the cash reserves to comply with the requirement to invest. In addition, income tax revenues for FY 2011 were overestimated by \$27.6M. The figure adopted in the Budget Act was \$391.4M, but only \$363.8M was actually collected. Preliminary expenditures total \$524M compared to appropriations of \$542.5M, or an available balance of \$18.5M. However, the \$524M does not include year-end accruals, unbudgeted expenditures such as the Mental Health receiver of \$16M, and audit adjustments, all of which add significantly to this number.

The tax refund liability reported in the FY 2010 GovGuam financial audit was \$278.3M, prompting the authorization to issue bonds. P.L. 31-76 authorized the Governor to issue one or more series of bonds not to exceed \$343.7M, of which \$198M would be utilized to pay a portion of past tax liabilities plus interest. With Standard & Poor's giving GovGuam its highest investment rating this year, \$235M in bonds were sold in November 2011. Although past due refunds totaling \$198M were paid down from bond proceeds, the estimated tax liability as of December 31, 2011 is \$127.6M. Because no cash reserves have been established to pay down this liability, GovGuam will continue to struggle to pay tax refunds in compliance with the Trust Fund Act.

Tax Refund Payments Short \$41M

As specified in 11 GCA §51102, the set-aside amount is calculated by applying to income tax collections the ratio of the FY 2011 Budget Act provision for tax refunds (\$100.1M) to total projected income taxes (\$391.4M), or 25.6%. By September 30, 2011, total tax collections came to \$363.8M, as shown in the table below. Appendix 3 is a breakdown by month.

Table 1: FY 2011 Income Tax Collections

Acct No.	Income Taxes		Total
310051101	Individual		\$67,005,493
310051102	Corporation		107,882,788
310051103	Withholding		183,038,152
310051104	Withholding - COLA		125,020
310051189	Interest	\$3,023,592	
310051190	Penalty-Inc Tax	2,728,056	
310051191	Penalty-IT no SS	62,604	
310051192	Penalty-EITC	700	

Acct No.	Income Taxes	Total
	Subtotal Interest & Penalties	5,814,953
	Total Income Taxes	\$363,866,406

As of September 2011, Trust Fund deposits should have totaled \$93.1M (\$363.6M x 25.6%), which should have been transferred to the Reserve Fund. We found, however, that GovGuam was not collecting revenues as estimated and that the Trust Fund was not just being used to pay tax refunds. The overestimation in revenues and nominal efforts to reduce expenditures caused DOA to limit tax refund payments and instead fund operations. DOA's AS 400 accounting system revealed that only \$50.3M was paid in refunds. Of the remaining \$42.8M, \$41M was utilized to pay government operations, leaving the Trust Fund's balance at \$1.8M. See Appendix 2 and Table 2 below for details.

Table 2: Estimated vs. Actual Tax Refund Payments

	A	B = A*25.6%	C	D = C-B
Month	Actual Income Tax Collections	Required Deposits	Tax Refund Payments	Variance
10-Oct	\$24,886,116	\$6,370,846	\$8,059,903	\$1,689,057
10-Nov	19,806,368	5,070,430	7,719,376	2,648,946
10-Dec	35,818,109	9,169,436	3,453,239	(5,716,197)
11-Jan	38,292,291	9,802,826	2,032,190	(7,770,636)
11-Feb	18,203,470	4,660,088	2,739,248	(1,920,840)
11-Mar	33,153,259	8,487,234	2,160,935	(6,326,299)
11-Apr	51,507,272	13,185,862	4,859,843	(8,326,019)
11-May	19,342,913	4,951,786	6,747,673	1,795,887
11-Jun	38,348,257	9,817,154	4,337,703	(5,479,451)
11-Jul	23,581,787	6,036,937	2,587,929	(3,449,008)
11-Aug	21,384,813	5,474,512	3,183,759	(2,290,753)
11-Sep	39,541,751	10,122,688	2,444,534	(7,678,154)
Subtotals	\$363,866,406	\$93,149,800	\$50,326,332	(\$42,823,468)
		Trust Fund Balance as of 9/30/11		\$1,804,085
		Total Variance		(\$41,019,383)

Tax Refund Process Complicated by Non-Compliance

Our audit noted noncompliance with other procedural matters. For instance, we found that all tax collections are deposited into the General Fund, despite 11 GCA § 51102's prohibition against the co-mingling of funds and its requirement to deposit set-aside amounts for income tax payments directly into the Trust Fund. Though few, we did find transfers from the General Fund to the Trust Fund.

Only upon the Tax Commissioner's written request can cash from the Trust Fund be transferred to the Reserve Fund for payment of tax refunds and credits. However, we found that transfers from Trust Fund were made to other income tax refund-related accounts (such as the Income Tax Reserve Fund) or to GovGuam operational accounts. In other instances, the Trust Fund was bypassed and transfers were made from the General Fund directly to other accounts to process tax refunds. See Illustration 1 for the actual transaction flow to and from the Trust Fund. See illustration 2 for the process prescribed by law and should have been followed.

Illustration 1: Flowchart of Actual Trust Fund Activity

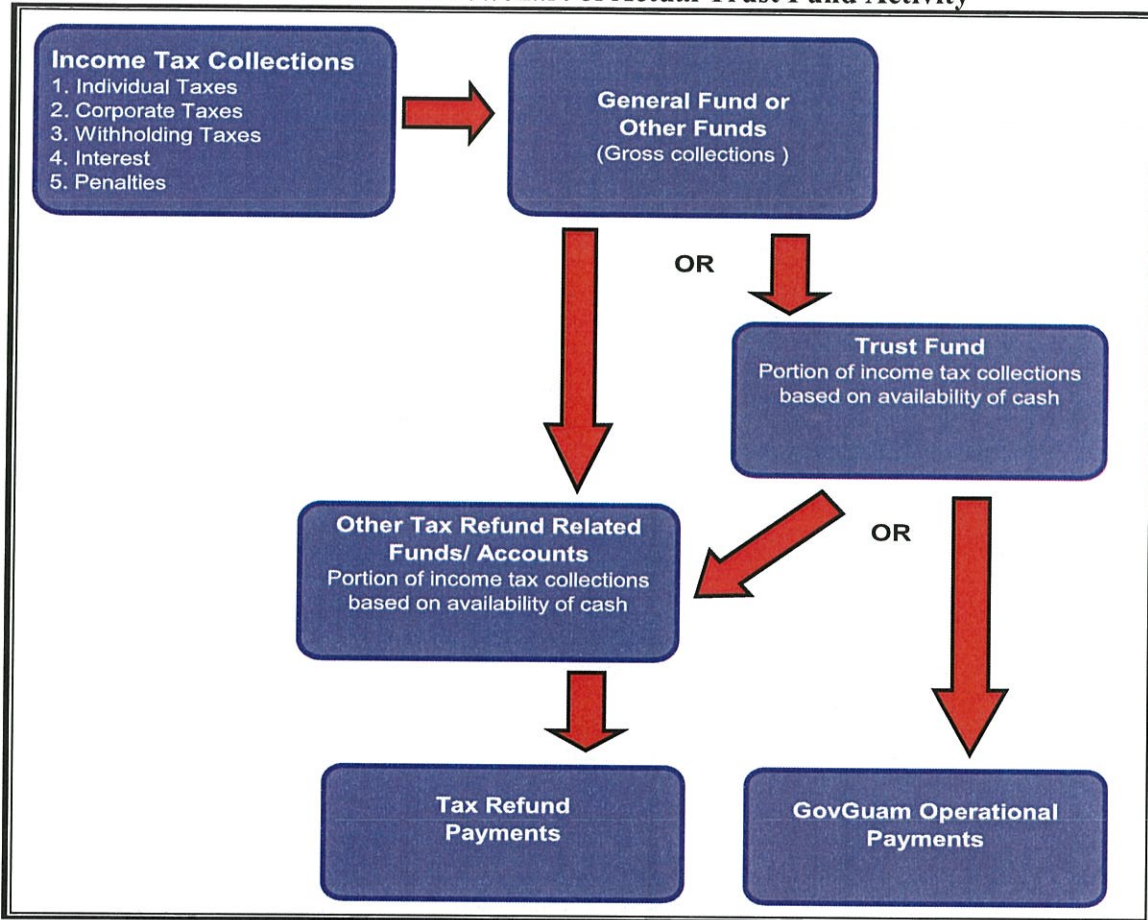
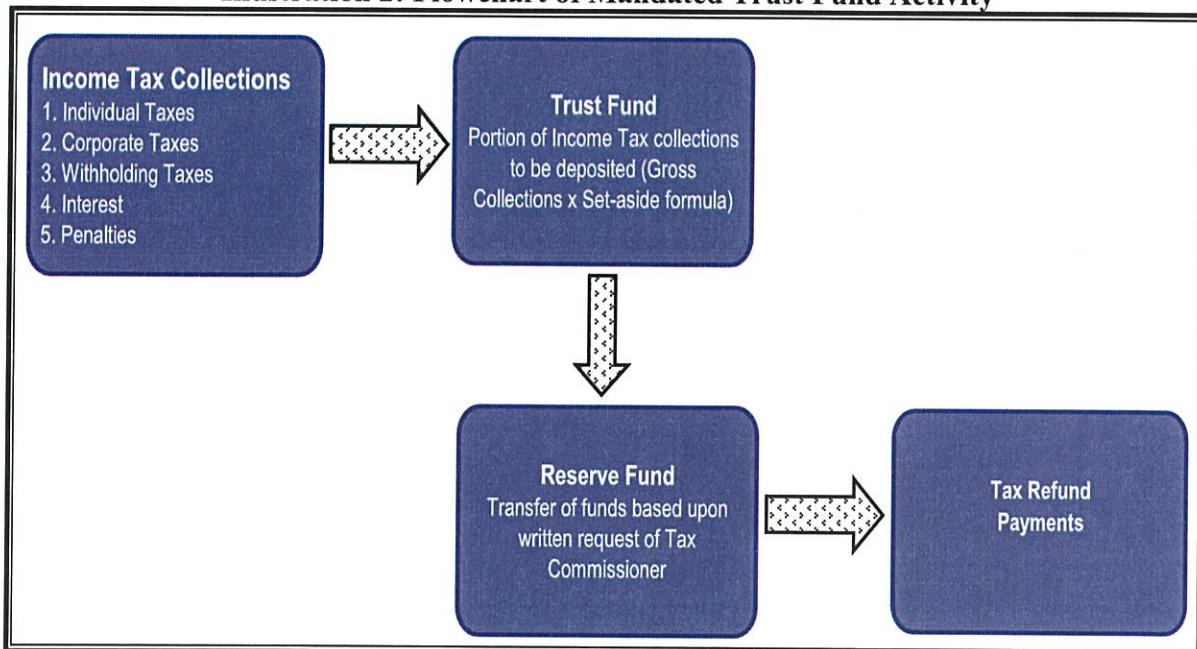


Illustration 2: Flowchart of Mandated Trust Fund Activity



As a result of the non-compliance with mandated procedures, deposits into the Trust Fund for FY 2011 amounted to only \$28.5M, thus resulting in only \$3,395 of interest. We also found that none of the transfers went to the Reserve Fund. However, \$1M did go to an account associated with the payment of tax refunds. The remaining \$25.7M in transfers funded GovGuam operations. Specifically, \$22.2M was transferred to the General Fund and \$3.5M was transferred to a DOA payroll account. As of September 30, 2011, the Trust Fund's balance is \$1.8M. See Table 3 for an overview of Trust Fund activity. See Table 4 for Trust Fund details.

Table 3: FY 2011 Trust Fund Activity

Deposits:	
Set-Aside	\$28,488,290
Interest	\$3,395
Total Deposits	\$28,491,685
Transfers Out:	
Transfer to General Fund	(\$22,155,685)
Transfer to Payroll Account	(\$3,531,914)
Transfer to Income Tax Related Account	(\$1,000,000)
Total Transfers Out	(\$26,687,600)
Trust Fund Balance	\$1,804,085

Table 4: FY 2011 Trust Fund Transaction Details

Date	TRANCODE	AMOUNT
10/29/2010	SET ASIDE	\$4,816,875.00
10/31/2010	INTEREST	49.60
11/10/2010	Transfer Out to General Fund	(1,000,000.00)
11/11/2010	Transfer Out to DOA Payroll Account	(1,501,914.33)
11/12/2010	Transfer Out to General Fund	(1,245,540.28)
11/15/2010	Transfer Out to Income Tax Related Account	(1,000,000.00)
11/30/2010	INTEREST	184.13
11/30/2010	Transfer Out to General Fund	(70,000.00)
12/31/2010	INTEREST	0.07
1/31/2011	INTEREST	0.07
2/7/2011	SET ASIDE	1,651,500.00
2/28/2011	INTEREST	124.49
3/16/2011	SET ASIDE	550,500.00
3/17/2011	SET ASIDE	201,735.79
3/22/2011	SET ASIDE	3,303,000.00
3/31/2011	INTEREST	329.06
4/21/2011	SET ASIDE	2,202,000.00
4/26/2011	SET ASIDE	821,555.94
4/29/2011	INTEREST	675.89
5/17/2011	SET ASIDE	1,651,500.00
5/30/2011	Transfer Out to General Fund	(3,800,000.00)
5/31/2011	INTEREST	985.83
6/7/2011	Transfer Out to General Fund	(2,400,000.00)
6/9/2011	Transfer Out to General Fund	(1,000,000.00)

Date	TRANCODE	AMOUNT
6/10/2011	Transfer Out to DOA Payroll Account	(930,000.00)
6/10/2011	SET ASIDE	1,651,500.00
6/10/2011	Transfer Out to General Fund	(2,647,234.59)
6/10/2011	Transfer Out to General Fund	(1,000,000.00)
6/10/2011	Transfer Out to General Fund	(253,000.00)
6/14/2011	SET ASIDE	1,000,000.00
6/15/2011	SET ASIDE	1,000,000.00
6/22/2011	SET ASIDE	2,000,000.00
6/23/2011	SET ASIDE	5,000,000.00
6/30/2011	INTEREST	486.93
7/8/2011	SET ASIDE	1,119,955.19
7/8/2011	Transfer Out to DOA Payroll Account	(1,100,000.00)
7/8/2011	Transfer Out to General Fund	(4,500,000.00)
7/8/2011	Transfer Out to General Fund	(1,119,955.19)
7/8/2011	Transfer Out to General Fund	(1,119,955.19)
7/29/2011	INTEREST	403.82
8/8/2011	Transfer Out to General Fund	(2,000,000.00)
8/31/2011	INTEREST	78.39
9/22/2011	SET ASIDE	1,518,167.92
9/30/2011	INTEREST	76.27
Balance		<u>\$1,804,084.81</u>

According to DOA, if all \$28.5M in deposits went to tax refunds, government operations could not have been sustained. Moreover, ongoing cash shortfalls limited the amount of tax refunds that could be processed. As of September 2011, the Bureau of Budget and Management Research (BBMR) reported actual gross revenues (before income tax accruals) to be \$620.2M or \$37.7M below the FY 2011 Budget Act's anticipation of \$657.9M. However, there was no corresponding effort to reduce appropriated expenditures by a similar amount, except for three-percent reserve in the third quarter. See Appendix 4 for BBMR's Consolidated Revenue and Expenditure Report.

Income Tax Refund Liability

Of the required \$93.1M set-aside deposit to the Trust Fund in FY 2011, \$50.3M was paid out in prior year refunds. Ideally, the \$93.1M should have been sitting in a bank account earning interest as of September 30, 2011 so that when tax returns are filed up to April 15, 2012, refund checks can be processed timely.

Although the proceeds from the Business Privilege Tax Bonds (Series 2011A) paid \$198M in refunds, GovGuam's income tax liability, as of December 2011, is estimated to be \$127.6M. See Table 5 below for details. Because no cash reserves have been set aside to pay down this liability, GovGuam will continue to struggle to pay tax refunds, despite the intention of the Trust Fund Act.

Table 5: FY 2011 Trust Fund Transaction Details

Income Tax Liability	
Beginning Balance (FY 2010 Income Tax Liability):	\$278,286,760
Less: Tax refunds processed during FY 2011	50,326,332
Plus: Estimated FY 2011 Tax Liability*	78,750,000
Estimated FY 2011 Income Tax Liability (9/30/11)	306,710,428
Less: Tax refunds processed during October and November 2011	7,396,726
Less: Tax refunds paid through the Business Privilege Tax Bonds, Series 2011A (December 2011)	198,000,000
Plus: Estimated FY 2011 Tax Liability**	26,250,000
Estimated Ending Balance (as of 12/31/11)	\$127,563,702

Notes:

*Amount equals to estimated CY 2011 Tax Liability (\$105,000,000) multiplied by 75% or (9/12 months applicable to FY 2011).

**Amount equals to estimated CY 2011 Tax Liability (\$105,000,000) - \$78,750,000 that was accrued for 9/30/11.

Other Matters

P.L. 31-74 mandated OPA to conduct a monthly audit of the Trust Fund. However, due to DOA's inability to close its books on a quarterly basis and provide regular statements of revenues, expenditures, and changes in deficit, we recommend amending the law to conduct an *annual* Trust Fund audit.

Conclusion

We found that the Trust Fund was not being administered in accordance with the provisions of the Trust Fund Act, that the Trust Fund should have held \$93.1M, that only \$50.3M was processed for tax refunds, and that the \$41M went for government operations. We also found that continuing budgetary shortfalls in actual revenue collections and minimal reduction in expenditures restricted DOA's ability to set-aside the required funds. DOA's lack of monitoring and failure to comply with procedural requirements of the Trust Fund Act complicated our reconciliation of the amount of tax refunds processed. We therefore recommend DOA assign personnel to monitor the Trust Fund and ensure compliance with the Trust Fund Act.

The tax refund liability reported in the FY 2010 GovGuam financial audit was \$278.3M, inclusive of unpaid Earned Income Tax Credits and interest on unpaid prior-year tax refunds. Even after paying \$198M of bond proceeds for past tax liabilities, the FY 2011 income tax liability is estimated at \$127.6M. In addition, FY 2011's income tax collection of \$363.8M falls \$27.6M short of GovGuam's \$391.4M projection. While expenditures totaled \$524M, this does not include the year-end accruals, unbudgeted expenditures such as the Mental Health receiver of \$16M, and audit adjustments, all of which will add significantly to this number. The continuing shortfall in estimated revenues and inescapable growth in tax liability will undoubtedly affect DOA's ability to comply with the requirements of the Trust Fund Act.

Management Response & OPA Reply

In November 2011, we met with the DOA Director who generally concurred with our audit findings and recommendations. In its management response, DOA acknowledged that the government has not been in compliance with the law due to cash challenges resulting from the ongoing General Fund deficit. Going forward DOA intends to comply with the procedural requirements of the Trust Fund Act. Refer to Appendix 5 for DOA's management response.

We also met with the Chairman of the Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement and Land and the Office of Finance and Budget staff, who subsequently provided feedback and updates to the report, which were incorporated as appropriate.

The legislation creating the Office of Public Accountability requires agencies to prepare a corrective action plan to implement audit recommendations, to document the progress of implementing the recommendations, and to endeavor to complete implementation of the recommendations no later than the beginning of the next fiscal year. We will be contacting DOA to provide the target date and title of the official(s) responsible for implementing the recommendation.

We appreciate the cooperation given us by the officials of the Department of Administration; Department of Revenue and Taxation; Treasurer of Guam, and the Chairman of the Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement and Land; and the Office of Finance and Budget.

OFFICE OF PUBLIC ACCOUNTABILITY



Doris Flores Brooks, CPA, CGFM
Public Auditor

Appendix 1:**Scope, Methodology, and Prior Audit Coverage**

The objective of this engagement was to determine the amount of income tax refunds paid in accordance with §51102 of the Trust Fund Act of 2002, Chapter 51 of Title 11, Guam Code Annotated (GCA).

The scope of the audit is from October 1, 2010 and September 30, 2011, and other periods as deemed necessary. The audit was conducted at DOA in Hagatna and DRT in Barrigada.

Our methodology included reviewing the Income Tax Refund Efficient Payment Trust Fund Act of 2002 and other relevant laws, rules and regulations, policies, and transactions involving the Trust Fund. We interviewed pertinent officials from DOA, DRT and the Treasurer of Guam. Additionally, we obtained financial reports and other relevant information from these and other parties relevant to our engagement. We also reviewed transactions recorded in DOA's AS400 accounting system. However, we did not verify the accuracy or completeness of the data provided or recorded in the AS 400 system.

We conducted this assessment in accordance with the standards for performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America. These standards require that we plan and perform the assessment to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. The evidence obtained provides a reasonable basis for our assessment and conclusions based on our objectives. However, we did not assess internal controls relative to the Income Tax Refund Efficient Payment Trust Fund.

Prior Audit Coverage

We did not identify any prior audit related to our audit objective of determining the amount of income tax refunds paid in accordance with the Income Tax Refund Efficient Payment Trust Fund Act of 2002 (Chapter 51 of Title 11 of the Guam Code Annotated (GCA)); nor was DOA or DRT aware of any prior audits specific to the Trust Fund.

**Appendix 2:
AS 400 Tax Refunds**

Acct No.	Account Name	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11
110032110	Reserved for Income Tax Claims	\$7,837,473	\$7,489,671	\$3,338,688	\$1,895,762	\$1,636,877	\$2,043,321	\$2,427,099
110032115	Reserved for EITC Settlement Judgment	-	-	-	-	1,005,016	-	2,282,688
110032116	Reserved for Inc Tax Rebate - 2007	(6,080)	-	-	-	-	(6,083)	-
110072191	Interest on Tax Refund	228,298	229,705	114,551	136,428	97,354	123,419	150,056
110072191	Interest on Tax Refund	212	-	-	-	-	279	-
Total Tax Refunds Processed		\$8,059,903	\$7,719,376	\$3,453,239	\$2,032,190	\$2,739,248	\$2,160,935	\$4,859,843

BREAKDOWN OF TAX REFUNDS PROCESSED:

CHECKS PROCESSED:

110010416	BOG Income Tax Acct	\$7,736,241	\$7,387,494	\$3,283,202	\$1,870,502	\$1,482,752	\$1,739,817	\$1,951,814
130310220	EIC Settlement Tax Acct	-	-	-	-	913,927	-	2,112,485
110010416	BOG Income Tax Acct	7,150	-	-	-	-	10,110	-
Tax Refund Checks		7,743,392	7,387,494	3,283,202	1,870,502	2,396,679	1,749,927	4,064,299

OFFSETS/ GARNISHMENTS:

1100-111**	Inc Tax Receivable	(31,342)	(53,126)	(34,595)	(24,262)	(101,270)	(260,640)	(433,329)
1100-112**	GRT Receivable	(160)	(13,024)	(14,538)	(350)	(9,060)	(18,792)	(31,884)
1100-23178	OAG (Child Support) offset	56,108	69,174	24,197	11,828	67,573	31,289	74,668
1100-23691	GHURA offset	2,248	-	259	976	-	90	2,345
1100-23692	GMHA offset	211,605	169,903	60,491	119,276	117,064	55,908	167,904
1100-23695	UOG offset	-	-	-	-	-	3,539	6,267
1100-23696	District Court	5,312	4,872	-	-	769	-	3,480
1100-24312	GRT Revenues	31,342	53,126	34,595	24,262	101,270	260,640	433,329
1100-24313	Income Tax Revenues	160	13,024	14,538	350	9,060	18,792	31,884
3100-511**	DRT (Income Taxes)	39,907	70,757	67,102	29,176	139,717	291,574	491,498
3100-512**	DRT (Gross Receipts Taxes)	1,332	17,175	17,988	431	17,445	28,413	49,382
	Variance	-	-	-	-	-	195	-
Tax Refund Offsets		316,512	331,882	170,037	161,687	342,568	411,009	795,544
Total Tax Refunds Processed		\$8,059,903	\$7,719,376	\$3,453,239	\$2,032,190	\$2,739,248	\$2,160,935	\$4,859,843

**Appendix 2:
AS 400 Tax Refunds**

Acct No.	Account Name	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Totals
110032110	Reserved for Income Tax Claims	\$6,439,660	\$4,035,719	\$2,436,686	\$3,008,095	\$2,306,617	\$44,895,669
110032115	Reserved for EITC Settlement Judgment	-	-	-	2,025	-	3,289,729
110032116	Reserved for Inc Tax Rebate - 2007	-	-	(7,294)	3,753	-	(15,704)
110072191	Interest on Tax Refund	308,013	301,983	158,458	169,216	137,916	2,155,398
110072191	Interest on Tax Refund	-	-	80	669	-	1,241
Total Tax Refunds Processed		\$6,747,673	\$4,337,703	\$2,587,929	\$3,183,759	\$2,444,534	\$50,326,331

BREAKDOWN OF TAX REFUNDS PROCESSED:

CHECKS PROCESSED:

110010416	BOG Income Tax Acct	\$6,224,600	\$3,474,247	\$2,139,605	\$2,266,791	\$2,162,518	\$41,719,584
130310220	EIC Settlement Tax Acct	-	-	-	2,025	-	3,028,437
110010416	BOG Income Tax Acct	-	-	6,476	19,534	-	43,270
Tax Refund Checks		6,224,600	3,474,247	\$2,146,081	\$2,288,351	\$2,162,518	\$44,791,292

OFFSETS/ GARNISHMENTS:

1100-111**	Inc Tax Receivable	(163,916)	(394,522)	(224,201)	(523,223)	(103,735)	(2,348,159)
1100-112**	GRT Receivable	(49,102)	(65,104)	(40,074)	(83,388)	(42,396)	(367,873)
1100-23178	OAG (Child Support) offset	54,248	84,634	25,572	19,871	30,961	550,122
1100-23691	GHURA offset	-	8,283	364	-	1,710	16,275
1100-23692	GMHA offset	147,992	216,853	86,759	83,015	48,243	1,485,015
1100-23695	UOG offset	4,201	-	-	-	-	14,007
1100-23696	District Court	-	1,170	4,980	-	-	20,583
1100-24312	GRT Revenues	163,916	394,522	224,201	523,223	103,735	2,348,159
1100-24313	Income Tax Revenues	49,102	65,104	40,074	83,388	42,396	367,873
3100-511**	DRT (Income Taxes)	247,356	460,802	272,070	673,206	133,186	2,916,352
3100-512**	DRT (Gross Receipts Taxes)	67,616	91,714	52,103	119,301	67,916	530,816
	Variance	1,660	-	-	14	-	1,869
Tax Refund Offsets		523,073	863,456	441,848	895,394	282,016	5,533,170

Total Tax Refunds Processed		\$6,747,673	\$4,337,703	\$2,587,929	\$3,183,759	\$2,444,534	\$50,324,847
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**Appendix 3:
AS 400 Income Tax Revenues**

Acct No.	Income Taxes	Oct. 2010	Nov. 2010	Dec. 2010	Jan. 2011	Feb. 2011	Mar. 2011	Apr. 2011
310051101	Individual	\$4,221,328	\$6,812,509	\$1,873,301	\$7,042,025	\$1,284,240	\$5,168,317	\$23,156,176
310051102	Corporation	6,864,734	543,482	18,280,931	11,281,379	1,171,689	11,830,496	9,992,406
310051103	Withholding	13,518,255	12,270,101	15,219,151	17,989,802	15,420,085	15,907,980	17,295,079
310051104	Withholding - COLA	-	5,144	5,099	-	61,864	1,926	49,328
310051189	Interest	107,919	60,534	108,478	1,118,961	76,797	93,562	847,460
310051190	Penalty-inc Tax	171,074	113,270	330,273	859,525	187,965	150,413	165,406
310051191	Penalty-IT no SS	2,807	1,328	876	600	381	565	1,087
310051192	Penalty-EITC	-	-	-	-	450	-	250
	Subtotal Interest & Penalties	281,799	175,132	439,627	1,979,086	265,593	244,540	1,014,202
	Total Income Taxes	\$24,886,116	\$19,806,368	\$35,818,109	\$38,292,291	\$18,203,470	\$33,151,259	\$51,507,272

Acct No.	Income Taxes	May 2011	Jun. 2011	Jul. 2011	Aug. 2011	Sept. 2011	Total
310051101	Individual	\$1,710,213	\$4,161,342	\$3,283,446	\$3,161,567	\$5,130,029	\$67,005,493
310051102	Corporation	3,403,861	17,172,062	6,837,748	2,024,798	18,479,123	107,882,788
310051103	Withholding	13,994,830	16,645,668	13,280,572	15,844,682	15,651,948	183,038,152
310051104	Withholding - COLA	-	1,572	88	-	-	125,020
310051189	Interest	89,467	141,254	87,110	175,796	116,254	3,023,592
310051190	Penalty-inc Tax	106,257	222,114	90,411	172,010	159,338	2,728,056
310051191	Penalty-IT no SS	38,284	4,246	2,412	5,960	4,058	62,604
310051192	Penalty-EITC	-	-	-	-	-	700
	Subtotal Interest & Penalties	234,009	367,614	179,933	353,766	279,651	5,814,953
	Total Income Taxes	\$19,342,913	\$38,348,257	\$23,581,787	\$21,384,813	\$39,541,751	\$363,866,406



Eddie Baza Calvo
Governor
Ray S. Tenorio
Lieutenant Governor

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

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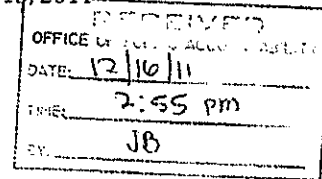


Benita A. Manglano
Director
George A. Santos
Deputy Director

MEMORANDUM

December 15, 2011

To: Public Auditor, Office of Public Accountability
From: Director, Department of Administration
Subject: Response to OPA Report: Government of Guam
Income Tax Refund Efficient Payment Trust Fund



This is in response to your Audit Report on the Government of Guam's Income Tax Refund Efficient Payment Trust Fund. Since the initial establishment of the Income Tax Refund Efficient Payment Trust Fund in 2002, the government has not been in full compliance of the law because of the cash challenges resulting from the General Fund deficit it continues to carry forward year after year.

In January, when the new administration took office, the Government of Guam was challenged with not only a cash management problem, but a budgetary shortfall for departments and agencies. The deficit increased by \$71 million to \$336 million as of September 30, 2010. There were negative cash balances with millions owed to restricted accounts, court ordered payments without fund sources or appropriations and, at the time, an anticipated budgetary shortfall for fiscal year 2011 of over \$40 million. The financial condition is the primary reason that this government has been unable to make prompt payments not only for deposits into the Income Tax Refund Efficient Payment Trust Fund for tax refunds, but for vendor payables, and other obligations. As of September 30, 2011, the Department of Administration was mandated to set aside or reserve over \$100 million to pay for the 2011 tax refunds. However, due to the cumulative deficit of over \$300 million, the increase in the deficit for fiscal year 2011, and the inherited negative cash balances at the beginning of the year, the funds actually set aside were used to pay prior years' tax refunds instead of the mandated set aside requirement for the 2011 tax refund year due and payable in 2012.

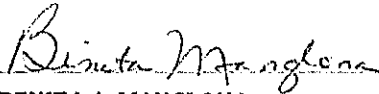
This was one of the primary reasons the administration requested for the \$344 million bond to pay off all tax refunds for tax year 2010 and prior as well as for 2011 tax refund obligations which will be due in 2012. Instead, the Legislature approved only \$235 million in Series A bond borrowing to pay for tax refunds up to 2010 only. We will need Series B to pay for the 2011 tax refunds since we were not able to set aside the funds as mandated

Management Response

because of the revenue shortfall and using current set aside for prior years' tax refunds. Since October 1, 2011, we have continued to pay for prior years' tax refunds when the law mandated DOA to set aside for the 2012 tax refunds. We will only be able to catch up if the government secures funds through the issuance of Series B which requires further legislative authorization. As a result, current set aside of funds for tax refunds will then become available when the 2012 tax returns are filed in 2013.

DOA concurs that other procedural requirements of the Trust Fund Act were not followed due to unanticipated economic revenue trends and court ordered mandates affecting the finances and operations of the Government of Guam. Cash collected on a daily basis is deposited directly to the general fund. Frequently before the Treasurer could even transfer the funds needed to go to the Tax Refund Efficient Payment Trust Fund, the cash collected is used directly to fund operations, meet required allotments to the Legislature, Judiciary, University of Guam, Guam Community College, and other required nondiscretionary disbursements. As a result, at the end of the day, the funds are depleted and the required set aside is not accomplished. If full compliance of this mandate is met without consideration of the cash flow, it will mean payless paydays and non-remittance to required nondiscretionary disbursements creating a situation as you explicitly illustrated of the government operations coming to a halt. Thus, set asides to the Trust Fund were not done according to the stipulated formula, but on a sporadic basis while transfer out from Trust Fund account to General Fund account were done on a regular basis to pay for DOA/DRT scheduled tax refund payments and for General Fund operations.

DOA also acknowledges and going forward intends to adhere to OPA's recommendation to comply with the procedural requirements of the Trust Fund Act where formulated set aside be directly deposited to the Trust Fund account.



BENITA A. MANGLONA

Monthly Cumulative Tax Refund By Fiscal Year

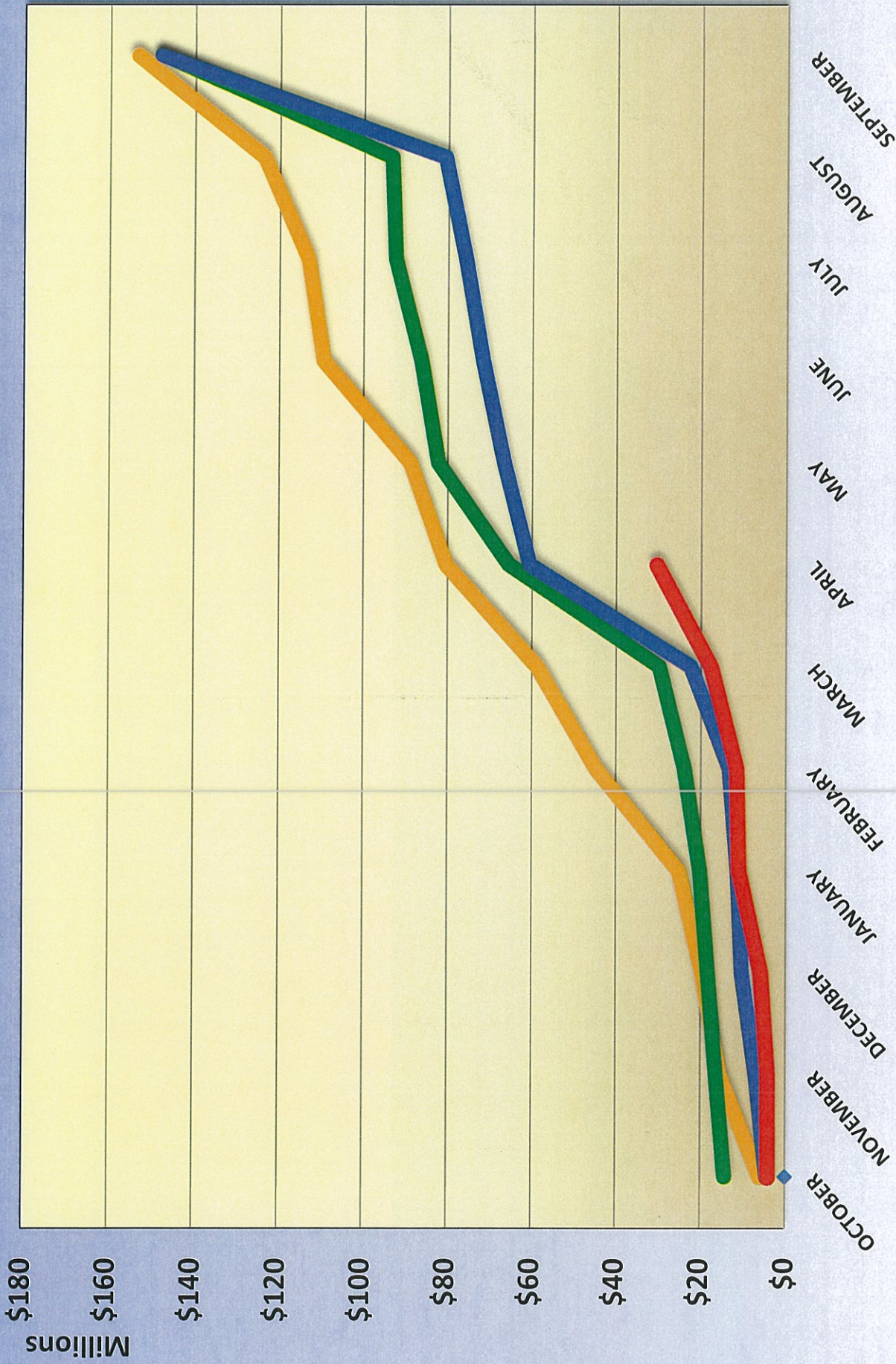


EXHIBIT 4

EXHIBIT 5 Fiscal Year Budget 2014-2017

