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Doris Flores Brooks, CPA, CGFM
Public Auditor

32-14-1605
Office of the Speaker
Judith T. Won Pat, Ed. D.
Date: 5.1.14
Time: 2:30pm
Received by: [Signature]

April 30, 2014

Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina Trentai Dos Na Liheslaturan Guåhan
155 Hesler Place
Hagåtña, Guam 96910

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Dear Speaker Won Pat:

Hafa Adai! Transmitted herewith is OPA Report No. 14-02, Government of Guam (GovGuam) Use Tax. Our audit found that the Guam Customs and Quarantine Agency (CQA), the Department of Revenue and Taxation (DRT), and the Department of Administration (DOA) are involved with Use Tax but not one of the three agencies has taken full responsibility for monitoring, reviewing, reconciling, and collecting Use Tax revenues. As a result, there is a high probability of lost revenues for GovGuam and susceptibility to fraud, waste, and abuse due to non-assessment and improper exemptions of Use Tax.

Based on discussion with the three agencies, we recommend the following:

- DRT, CQA, and DOA must clearly define their roles regarding Use Tax, which would be solidified in finalizing and implementing the Inter-Agency Cooperative Agreement between the three agencies;
- DOA should write-off the outstanding accounts receivable balance as agreed by the agencies due to the unreliability of the current amounts, the resources to be spent to reconcile them, and the substantial allowance provided;
- DRT, as the tax regulatory agency for GovGuam, should be responsible for reviewing, reconciling, monitoring, and collecting Use Tax assessments. In addition, it should be responsible for ensuring exemptions are granted in accordance with law; and
- A process should be implemented where business license number and other relevant business information can be shared between the three agencies.

For your convenience, you may also view and download the report in its entirety at www.guamopa.org.

Should you have any questions, please contact Auditor-in-Charge Jerrick Hernandez at 475-0390 ext. 203 or jhernandez@guamopa.org.

Senseramente,

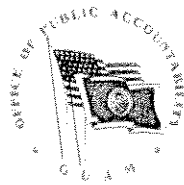
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Public Auditor

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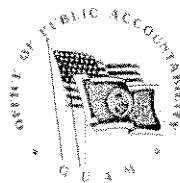
Government of Guam Use Tax

**Performance Audit
October 2010 through September 2013**

**OPA Report No. 14-02
April 2014**

Distribution:

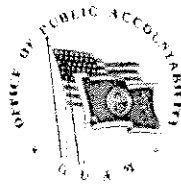
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EXECUTIVE SUMMARY
Government of Guam Use Tax
Report No. 14-02, April 2014

Our audit found that the Government of Guam (GovGuam) Use Tax process is problematic and in need of significant improvements. Specifically:

1. The total amount of Use Tax assessments and collections is unknown;
2. No GovGuam agency is collecting outstanding receivables which according to the Department of Administration's (DOA) records have amounted to \$4.9M in Fiscal Year (FY) 2013. These receivables are not recorded in the Department of Revenue and Taxation (DRT)'s system; and
3. There is no documentation to support that Use Tax exemptions are granted in accordance with law.

As a result, there is a high probability of lost revenues for GovGuam and susceptibility to fraud, waste, and abuse due to non-assessment and improper exemptions of Use Tax. These conditions occurred because there is no GovGuam agency who is fully responsible for reviewing, monitoring, reconciling, or collecting Use Tax.

While DRT is responsible for enforcing Guam's tax laws and collecting tax revenues, they have relied on the Guam Customs and Quarantine Agency (CQA) for the enforcement and collection of Use Tax. DRT cites the Use Tax law which states CQA is tasked to assess and collect on behalf of DRT. However, CQA is a line agency of GovGuam and relies on DOA for its accounting, financial reporting, records management, accounts receivable, and cash management. Therefore, all Use Tax documents including assessments and collections by CQA are forwarded to DOA and not to DRT.

Total Use Tax Assessments and Collections is Unknown

The total amount of Use Tax assessed and collected between FY 2011 and 2013 is unknown as management at CQA, DOA, and DRT is unable to ascertain the true amounts of Use Tax collections and assessments. The three agencies provided the following sets of Use Tax data that do not reconcile.

FY	CQA	DOA	DRT	*GovGuam Financial Stmts.
2011	\$ 1,212,564	\$ 2,549,493	\$ 337,242	\$ 2,549,493
2012	\$ 1,909,590	\$ 2,458,327	\$ 292,251	\$ 2,459,927
2013	\$ 2,690,735	\$ 2,725,994	\$ 278,674	\$ 2,725,994
Total	\$ 5,812,888	\$ 7,733,814	\$ 908,167	\$ 7,735,414

* FY 2013 GovGuam Financials Statements are unaudited numbers.

Data provided by the three agencies is problematic and incomplete. Specifically:

- CQA does not maintain accurate and reliable data as evidenced by several discrepancies. For example, there were several months of missing data and current year data included prior-year assessments; therefore, we cannot verify the completeness and accuracy of the data.
- DOA's data is inclusive of collections and accounts receivables based on data provided by CQA. Being the centralized processing agency, the data captured by DOA has the most information among the three agencies, and is the basis for the numbers recorded in GovGuam's Basic Financial Statements. However, based on DRT's review of the accounts receivable listing, amounts recorded at DOA may be overstated as it does not account for exemptions filed with gross receipt taxes (GRT).
- DRT data is based only on what is reported by businesses that file GRT. Non-business filers who paid at CQA and Treasurer of Guam are not being captured by DRT, as they do not file GRT. In addition, Use Tax receivables recorded at DOA are not being captured at DRT.

No Agency Following-up on Use Tax Receivables

We found that neither CQA, DRT nor DOA is charged with ensuring Use Tax receivables are reviewed, monitored, reconciled, and followed up to ensure complete and accurate Use Tax information. As a result, the accounts receivable for Use Tax is a cumulative amount that goes back to 1998 and is continuously increasing, going from \$4.1M in FY 2011 to \$4.9M in FY 2013.

While CQA assesses and collects Use Tax payments made upfront, it also receives subsequent payments and forwards all invoices of unpaid Use Tax to DOA for posting and collection. DOA acknowledged that while it receives the invoices from CQA, it only posts the receivables and tracks payments made at the Treasurer of Guam and CQA against the receivable. DOA does not follow up on the collection of these receivable.

DRT only reports Use Tax filed using the GRT form, but does not track total Use Tax of non-filers. Because DRT does not receive any data and documents from CQA or DOA on Use Tax assessment, collections, and receivables, it has not had any involvement in Use Tax collection.

No Documentation to Support Use Tax Exemptions are Granted in Accordance with Law

The majority of exemptions are granted by CQA officers based on their judgment during the initial assessment of incoming cargo; however, CQA does not maintain documentation to ensure the granting of these exemptions are in accordance with law. For example, CQA does not have a complete log of incoming cargo that can be used to verify goods that may have been subject to Use Tax. Further, there is no documentation to show which goods and amounts that were given an exemption versus those that were assessed a Use Tax. As a result, GovGuam is unable to justify whether the exemptions were warranted and in accordance with the law. Due to the lack of documentation, the impact of this finding cannot be determined.

In a few cases, the only documentation that is maintained in regards to exemption amounts is when a consignee's cargo was originally assessed Use Tax by CQA (i.e. CQA had invoiced the consignee and forwarded the document to DOA) and the consignee contests the assessment. In these cases, the consignee must provide documentation to CQA showing that the cargo is exempted from Use Tax. If the cargo is truly exempted, CQA issues a memo to DOA voiding the Use Tax assessment. When DOA receives the memo voiding the Use Tax assessment from CQA, they record the Individual Use Tax Exemption and adjust the accounts receivable. Use Tax exemptions in these cases amounted to only \$19K in the three year period.

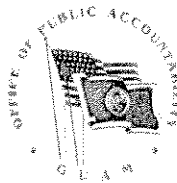
Recommendations

Based on our audit, we recommend the following:

- DRT, CQA, and DOA should clearly define their roles regarding Use Tax, which would be solidified in finalizing and implementing the Inter-Agency Cooperative Agreement between the three agencies;
- DOA should write-off the outstanding receivable balance as agreed by the agencies, due to unreliability of the amounts, the resources to be spent to reconcile them and the substantial allowance already provided.
- DRT, as the tax regulatory agency for GovGuam, should be responsible for reconciling, monitoring, and collecting Use Tax assessments. In addition, they should be responsible for ensuring exemptions are granted in accordance with law.
- A process should be implemented where business license number and other relevant business information can be shared between the three agencies;

In several meetings held with CQA, DRT, and DOA, management agreed to the recommendations.

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Introduction

This report presents the results of our audit of Government of Guam (GovGuam) Use Tax. The audit of Use Tax was initiated due to a finding identified in the GovGuam Internal Control over Financial Reporting since 2011, which involved the lack of enforcement and collection of Use Tax. Our objectives were to determine:

- 1) The total Use Tax assessed versus collected during FY 2011 to 2013;
- 2) Whether Use Tax revenues are collected in an efficient and effective manner; and
- 3) Whether Use Tax exemptions were granted in compliance with applicable laws and regulations.

The audit objectives, scope and limitations, and methodology are detailed in Appendix 2.

Background

The assessment, collection, data processing, and record keeping of GovGuam Use Tax is being handled by the three government agencies, Guam Customs and Quarantine (CQA), Department of Revenue and Taxation (DRT) and Department of Administration (DOA).

While DRT is responsible for enforcing tax laws of Guam and collecting tax revenues, it relied on the CQA for the enforcement and collection of Use Tax. DRT cites the Use Tax law [Title 11, Guam Code Annotated (GCA) §28105 which states that CQA is tasked to assess and collect on behalf of DRT. At the forefront of the islands ports of entries, CQA does assess Use Tax on cargo coming in both at the commercial port and the international airport and collects upfront Use Tax payments. Because CQA is a line agency of GovGuam, it relies on DOA for its accounting, financial reporting, records management, accounts receivable, and cash management. CQA forwards all Use Tax collections to Treasurer of Guam (TOG), a division under DOA, and documents (including assessments) to DOA and not to DRT.

Memorandum of Understanding (MOU)

In 2013, CQA, DOA, and DRT met and drafted an MOU in response to Internal Control over Financial Reporting findings concerning the growing Use Tax receivable balance. See Appendix 3 for Prior Audit Coverage. The purpose of the MOU is to improve the cooperation and coordination between the three key agencies and raising the enforcement and collection of Use Taxes applicable to goods imported into Guam. Although the MOU has been drafted, it has yet to be implemented. See Appendix 6 for the draft MOU. Based on our review, certain changes could be made to the draft MOU.

Use Tax Law

The Use Tax Law is outlined in Chapter 28 of Title 11 GCA, and states that every person who imports into Guam, or acquires in Guam from any other person, any property for his use or consumption shall

be subject to 4% Use Tax based on the landed value of such property. This is not applicable to items imported for resale. The taxable properties are as follows:

- Taxable property which comes in at the Guam Commercial Port, or any other seaport in Guam;
- Taxable property which comes in as freight or unaccompanied baggage at the A. B. Won Pat International Airport Authority or any other airport in Guam;¹ and
- Construction equipment for the performance of a construction contract.

Pursuant to 11 GCA §28106, Use Tax Exemptions are allowed for the following:

- a. Any property which cannot be legally taxed under the Constitution or laws of the United States;
- b. Property acquired or imported into Guam prior to July 1, 1967;
- c. Any personal property taxed or exempted under Title 11 GCA, Chapter 26;
- d. Property belonging to and being brought into Guam by residents returning after completion of studies under government scholarships or in-service training;
- e. All property imported into Guam by a Foreign Sales Corporation (FSC) which is non-Guam property as defined in 12 GCA §2431(d), and
- f. All passenger luggage.

¹ For the purpose of our audit, Use Tax derived from accompanied baggage was not included.

Audit Results

Our audit found that the GovGuam Use Tax process is problematic and in need of significant improvements. Specifically:

1. Total amount of Use Tax assessments and collections is unknown;
2. No GovGuam agency is collecting outstanding receivables which according to the DOA's records have accumulated to \$4.9M in FY 2013. These receivables are not recorded in DRT's system; and
3. There is no documentation to support that Use Tax exemptions are granted in accordance with law.

As a result, there is a high probability of lost revenues for GovGuam and susceptibility to fraud, waste, and abuse due to non-assessment and improper exemptions of Use Tax. These conditions occurred because there is no GovGuam agency who is fully responsible for reviewing, monitoring, reconciling, or collecting Use Tax.

Total Use Tax Assessments and Collections is Unknown

The total amount of Use Tax assessed and collected between FY 2011 and 2013 is unknown as there are three sets of data regarding Use Tax between the three agencies that do not reconcile. See Table 1 below for details and Appendix 4 for a complete breakdown.

Table 1: Amount of Use Tax FY 2011- 2013

FY	CQA	DOA	DRT	*GovGuam Financial Stmts.
2011	\$ 1,212,564	\$ 2,549,493	\$ 337,242	\$ 2,549,493
2012	\$ 1,909,590	\$ 2,458,327	\$ 292,251	\$ 2,459,927
2013	\$ 2,690,735	\$ 2,725,994	\$ 278,674	\$ 2,725,994
Total	\$ 5,812,888	\$ 7,733,814	\$ 908,167	\$ 7,735,414

* FY 2013 GovGuam Financials Statements are unaudited numbers.

CQA Use Tax Data

Currently CQA assesses the Use Tax on cargo coming in both at the commercial port and the international airport. However, CQA does not have a complete log of all incoming cargo received to verify what is assessed or exempted from Use Tax. In addition, there is a difference in the process at the commercial port and the airport.

At the commercial port, CQA collects the Use Tax it assesses prior to releasing cargo to the importer. At the airport, CQA only collects a portion of Use Tax it assesses because it is unable to require payment of Use Tax before it releases the cargo. Unlike at the commercial port, CQA must release the air cargo even when Use tax is not paid due to a legal opinion from the Office of the Attorney General. The opinion stated that CQA may not refuse clearance of goods brought by freight forwarders for delivery. In response, CQA's policy is to release the air cargo, and allow up to seven days for payment of Use

Tax. In the event payment is not received within seven days, the unpaid Use Tax Invoice is forwarded to the DOA, not to DRT, for collection.

Up until FY 2013, all Use Tax assessments and collections processed at CQA are recorded in their point of sale system and subsequent transmittals are forwarded to DOA. The CQA point of sale system is linked to DOA's AS 400, but not to DRT's system.² Additionally, no documents are forwarded to DRT.

We found there were many discrepancies regarding the data from CQA, such as data from prior years in current year data, and therefore we cannot rely on the completeness and accuracy of this data. At the forefront in the Use Tax process, CQA needs to make improvements in its data collection process, including the recording of all Use Tax assessments when it is initially assessed, regardless if it is a cash collection or a receivable.

DOA Use Tax Data

DOA receives transmittals from CQA on Use Tax assessed and collected, and has access to data inputted by CQA in the point of sale system via AS 400, when POS was still operable. This allows DOA to record the Use Tax revenue. Total Use Tax revenue in the AS 400 is inclusive of cash and receivables.

As the centralized processing agency, the data captured by DOA has the most information among the three agencies, and is the basis for the numbers recorded in GovGuam's Basic Financial Statements. However, DOA does not verify the accuracy of the data against the data maintained by CQA or DRT. Therefore, Use Tax revenues and receivables reported in the GovGuam's Basic Financial Statements may be under or overstated.

DRT Use Tax Data

In terms of legal requirements, each taxpayer against whom Use Tax is levied shall make and file monthly tax returns with DRT no later than the twentieth (20th) day of the following month, summarizing the tax due. The monthly return shall be filed and any tax then due shall be paid no later than the 20th day of the following month.

Use Tax information at DRT is only based on GRT filings; therefore, only businesses with GRT accounts are captured. Non-business filers who paid at CQA or TOG are not being captured by DRT, as they do not file GRT. In addition, Use Tax receivables recorded at DOA are not being captured at DRT, which explains the significant variance when compared to amounts reported by CQA and DOA. DRT confirmed that they do not receive any Use Tax data and documents from CQA or DOA. There is no coordination and reconciliation between DRT's system and DOA's AS 400 with regards to Use Tax receivables, receipts, and collections. As a result, data from DRT cannot be relied upon for completeness and accuracy.

The inability for management at CQA, DRT, and DOA to ascertain the accuracy of Use Tax collection and assessment is due to no one agency taking full responsibility for monitoring, reviewing, reconciling, and collecting Use Tax. In addition, there is no centralized location to obtain data pertaining to Use Tax. Data inputted into each of these agency's systems do not interface. We recommend these three agencies

² During the latter part of FY 2013, CQA ceased posting into the point of sale system when it became inoperable, but cash collections continued to be forwarded to TOG while unpaid Use Tax assessments were sent to DOA for recording and posting.

clearly define their roles regarding Use Tax, which would be solidified in finalizing and implementing the MOU between the three agencies. (See Appendix 6 for draft MOU.)

DRT, as the tax regulatory agency for GovGuam, should be the lead agency coordinating, collecting, and housing Use Tax data. DOA, as the official recorder for GovGuam financials, needs access to Use Tax data for official financial reporting purposes. CQA, at the forefront of the Use Tax process should also have access to certain Use Tax information, such as business license data. A process should be implemented and agreed upon by the three agencies where Use Tax information can be shared for more efficient and effective assessment, collection, recording, and reconciliation of Use Tax.

No Agency Following-up on Use Tax Receivables

As previously stated, there is no one agency fully responsible for reviewing, monitoring, reconciling and collecting Use Tax receivables. As a result, the accounts receivable for Use Tax is a cumulative amount that goes back to 1998 and is continuously increasing, going from \$4.1M in FY 2011 to \$4.9M in FY 2013. See Table 2 below for a complete breakdown of Use Tax Receivables and Appendix 5 for the complete Accounts Receivable balances by year.

Table 2: Use Tax Accounts Receivable (AS 400 data)

FY	Balance
2011	\$ 4,086,853
2012	\$ 4,476,971
2013	\$ 4,945,911

There are 95 importers who have account balances ranging from greater than \$10K to \$150K and totaling \$2.7M and 11,585 importers with account balances less than \$1K. See ranges in Table 3 below.

Table 3: Range of Account Receivable Balances

Range of Balances	No. of Importers	Total Amount
\$100K to \$150K	3	\$ 375,478
\$50K to \$100K	8	\$ 586,821
\$40K to \$50K	9	\$ 398,411
\$30K to \$40K	7	\$ 233,491
\$20K to \$30K	18	\$ 424,532
\$10K to \$20K	50	\$ 689,001
\$1K to \$10K	496	\$ 1,449,900
\$.01 to \$999.99	6071	\$ 791,954
\$.00 to (\$1640.15)	5018	\$ (3,678)
Total	11680	\$ 4,945,911

Based on our discussions with the three agencies, we found that there is confusion and lack of coordination on who is responsible for collecting outstanding receivables due to conflicting laws and SOPs, and this is evident even in the draft MOU. Specifically:

- While CQA assess the Use Tax, it collects Use Tax payments made upfront, receives subsequent payments and forwards all invoices of unpaid Use Tax to DOA for posting and collection;

- While DOA receives the invoices from CQA, it only posts the receivable and track payments made at TOG and CQA against the receivables. DOA does not follow-up on collections for the receivables; and
- DRT only records Use Tax filed on GRT forms, and does not track total Use Tax and non-GRT filers, DRT noted that it does not receive any data and documents from CQA or DOA on Use Tax assessments, collections, and receivables. Therefore, it has not had any involvement in Use Tax collection.

We concur with DOA's financial manager's recommendation to write off the Use Tax Receivables as there is no reconciliation of the data among the three agencies. Because these receivables are only on DOA's books and not DRT, the cost-benefit of attempting to reconcile and collect these receivables is doubtful. Accordingly, DOA has provided a \$4.1M allowance for uncollectible Use Tax receivables, leaving a balance of \$859 thousand (K).

Although the Use Tax law states that CQA shall collect the Use Tax on behalf of DRT, CQA noted that they do not have the authority to enforce collections similar to DRT tax agents. Because DRT is charged with the enforcement of tax laws of Guam and the collection of revenue,³ it is ultimately responsible for Use Tax collection and administration.

As previously stated, in order to eliminate the confusion, DRT, CQA, and DOA must clearly define their roles regarding Use Tax by finalizing and implementing the MOU. While the current draft MOU states that each of the three agencies will collect Use Tax from importers, we recommend that it be modified to clearly identify DRT as the agency responsible for collecting Use Tax receivables, while CQA and DOA would directly receive Use Tax payments from importers.

No Documentation to Support Use Tax Exemptions are Granted in Accordance with Law

The majority of exemptions are granted by CQA officers based on their professional judgment during the initial assessment of incoming cargo; however, CQA does not maintain documentation to ensure the granting of these exemptions are in accordance with law. For example, CQA does not have a complete log of incoming cargo that can be used to verify goods that may have been subject to Use Tax. Further, there is no documentation to show which goods and amounts were given an exemption versus those that were assessed a Use Tax. As a result, GovGuam is unable to justify whether the exemptions were warranted and in accordance with the law. Due to the lack of documentation, the impact of this findings cannot be determined.

In a few cases, the only documentation maintained on exemption amounts are those is when a consignee contests the Use Tax assessment of its cargo based on the CQA invoices forwarded to DOA. In these cases, the consignee must provide documentation to CQA showing that the cargo is exempted from Use Tax. If the cargo is truly exempted, CQA issues a memo to DOA voiding the Use Tax assessment. When DOA receives the memo from CQA voiding the Use Tax assessment, it records the amounts in the Individual Use Tax Exemption account and remove the accounts receivable. Use Tax exemptions in these cases amounted to \$19K between 2011 and 2013. See Table 4 below for breakdown.

³ 11 GCA §1103

Table 4: Use Tax Individual Exemption (AS 400 data)

FY	Amount
2011	\$ 5,440
2012	\$ 7,960
2013	\$ 5,160
Total	\$ 18,560

The only role DRT plays in the exemption process is to confirm whether a consignee has a valid business license, and whether the imported goods are subject to GRT versus Use Tax. Use Tax is not to be assessed on property used for resale and the use of property as material, which is or is to be incorporated by the taxpayer into a finished or saleable product.

As previously mentioned, the Use Tax law provides six instances for Use Tax exemptions. DRT only records the value of the goods that is exempted, as reported in the Use Tax section of the GRT form. Based on the data provided, DRT reported goods with total value of \$972K which were exempted between FY 2011 to 2013, and would have amounted to \$39K in Use Tax if assessed at the 4% rate. See Table 5 below.

Table 5: DRT Use Tax Exemption

FY	Value Amount	Use Tax Exemption
2011	\$ 747,025	\$ 29,881
2012	\$ 71,056	\$ 2,842
2013	\$ 154,012	\$ 6,160
Total	\$ 972,093	\$ 38,884

In line with the previous findings, neither of these agencies was fully responsible for monitoring, reviewing, and reconciling Use Tax exemptions. We recommend that exemption procedures be established and included in the MOU between CQA, DOA, and DRT, while DRT should be responsible for ensuring exemptions are granted in accordance with law.

Import Documents Not Validated for Proper Application of Use Tax

During our walkthroughs we learned that CQA does not review or analyze documents for cargo not assessed Use Tax. These include air way bills and other shipping documents, which specify the imported goods and their values. Instead, these documents are filed and stored away, and have not been reviewed by any agency to determine the validity of non-assessment of Use Tax. Due to the magnitude of documents and time needed for review, the validity of non-assessment of Use Tax will be the subject of a future audit.

Coordinated Efforts to Improve Use Tax Process

OPA coordinated several meetings with CQA, DRT, and DOA during the course of the audit where the three agencies came to a consensus for the following Use Tax assessment and collection process slated for implementation by the end of fiscal year 2014.

- 1.) CQA and DRT will develop a form appropriate for Use Tax assessment and that is mutually acceptable to the three agencies.
 - a. When Use Tax is being paid on the spot, CQA will accept the payment, prepare a DOA Invoice, and forward the cash collections, applicable assessment form, and DOA Invoices to DOA via TOG.
 - b. When Use Tax is not being paid up front, CQA will mark "charge" on the applicable assessment form and forward this form directly to DRT. CQA will no longer issue a DOA Invoice.
 - c. CQA will continue to maintain and store the files of Bills of Lading, Airway Bills and other shipping documents.
- 2.) DOA will accept the Use Tax collection via TOG, record the payment into the AS 400 system, and forward the applicable assessment form and invoices for paid Use Tax to DRT. DOA will not keep any documents of Use Tax assessments and will no longer maintain any accounts receivables sub ledgers.
- 3.) DRT will accept the applicable assessment form and DOA Invoices for both the paid and unpaid Use Tax from DOA. DRT will record the unpaid Use Tax in their system, and maintain the files for the paid and unpaid Use Tax. DRT will be the sole record keeper of all Use Tax assessments, collections, and will maintain all account receivables ledgers.
- 4.) Modifications to the MOU are being made to reflect the new process. The MOU is proposed to be called Inter-Agency Cooperative Agreement and changes will be finalized and implemented no later than the end of this fiscal year.

Conclusion and Recommendations

CQA, DRT, and DOA are involved with Use Tax but not one of the three agencies has taken full responsibility for monitoring, reviewing, reconciling, and collecting Use Tax revenues. As a result of this lack of oversight, Use Tax revenues as reported in the Basic Financial Statements of GovGuam may be over or understated; the accounts receivable will continue to increase; and the Use Tax process may be susceptible to fraud, waste, and abuse for non-assessment, illegal exemptions of Use Tax, and lost revenues.

Based on discussion with the three agencies, we recommend the following:

- DRT, CQA, and DOA must clearly define their roles regarding Use Tax, which would be solidified in finalizing and implementing the Inter-Agency Cooperative Agreement between the three agencies;
- DOA should write-off the outstanding accounts receivable balance as agreed by the agencies due to the unreliability of the current amounts, the resources to be spent to reconcile them, and the substantial allowance provided;
- DRT, as the tax regulatory agency for GovGuam, should be responsible for reviewing, reconciling, monitoring, and collecting Use Tax assessments. In addition, it should be responsible for ensuring exemptions are granted in accordance with law; and
- A process should be implemented where business license number and other relevant business information can be shared between the three agencies.

The three agencies identified and delegated the following agency representatives to address the recommendations:

CQA – Assistant Chief and
Administrative Service Officer

DRT – Taxpayer Services Division Administrator and
Business Privilege Tax Division Supervisor

DOA – Acting Controller and
Accountant I

Management Response & OPA Reply

A draft report was transmitted to DRT, CQA, and DOA in April 2014, for their official responses. In April 2014, we met individually with officials from these agencies to discuss the audit findings and recommendations.

In our meeting with DOA, the Financial Manager suggested the write-off of the receivables as this was provided with an allowance of \$4.1M or 83% of the total amount. DOA is amenable to the recommendation that DOA will only record cash collections, no longer record the receivables, will not maintain sub ledgers, and will not store the assessment documents.

CQA agreed with DOA's suggestion to write off the receivables. CQA generally agreed with OPA's findings and recommendations, however the following provided clarifications:

- **There is no documentation to support Use Tax Exemptions are granted in accordance with the law**

CQA stated that by statute, use tax assessments are only required when commodities that fall within the scope of the use tax law are present. For these reasons, CQA does not execute an assessment or keep logs on items not subject to Use Tax but rather keeps them on file for record.

Auditor's comment: Noted in CQA Standard Operating Procedures provided to OPA, it states that All logging of any documents such as (Seizures, Arrivals, Departures, Container Holds, EPA, and PIS etc.) will be logged into the Computer utilizing the E-Log system, which may include specific breakdowns of the various entries. In addition, proper documentation is needed for an independent reviewer to determine whether Use Tax was properly assessed or exempted. Therefore, the statement remains.

- **Import documents not validated for proper application of Use Tax**

CQA Response: CQA reviews and analyzes every document for Use Tax and other regulated items. Once completed, the import documents are filed. Supervisors perform periodic reviews of processed documents for quality control purposes.

Auditors Comment: While CQA acknowledges that they do conduct periodic reviews, there was no documentation provided to auditors to verify the reviews were conducted. Therefore the statement remains.

CQA also agreed with the proposal that DRT will be the official record keeper of Use Tax data and will enforce collection on receivables.

DRT is also amenable to DOA's suggestion to write-off the receivables and is still in the process of developing the appropriate form to be used in the Use Tax assessment. It plan to enhance the Transaction Processing System (TPS) by incorporating Use Tax similar to other taxes. It generally agreed to the audit findings and recommendations except on the following:

- **A process should be implemented where taxpayers' business information (i.e. business license number and other relevant identifiers) can be shared between the three agencies.**

DRT Response: DRT maintains the position that established IRS Safeguard Procedures are adhered to, particularly as it relates to taxpayer identification and tax information. It is imperative

that DRT comply with tax disclosure provisions mandated by law. Access to DRT's computer data base for purposes of accessing this type of information is prohibited.

Auditor's Comment: Based on our meeting with DRT on April 2014, DRT agreed to share information with CQA & DOA with regards to business license number and relevant business information only. We have revised our recommendation to conform to what was agreed in the meeting.

The Director stated that they are in need of additional staff resources and to incorporate changes to their systems to begin monitoring, recording, and collecting Use Tax.

All three agencies provided management responses noting they generally concurred with OPA's findings and recommendations, and will be commencing implementation of the recommendations not later the end of fiscal year 2014. See Appendix 7 to 9 for all management responses.

The legislation creating OPA requires agencies to prepare a corrective action plan to implement audit recommendations, to document the progress of the implementation of the recommendations, and to endeavor to have implementation completed no later than the beginning of the next fiscal year. We appreciate the cooperation and assistance shown by DRT, CQA, and DOA.

OFFICE OF PUBLIC ACCOUNTABILITY

Doris Flores Brooks, CPA, CGFM
Public Auditor

Appendix 1:
Classification of Monetary Amounts

Results of Audit	Potential Lost Revenue
1.) Total Use Tax Assessments and Collections is Unknown	\$ -
2.) No Agency Following-up on Use Tax Receivables	\$ 4,945,911
3.) No Documentation to Support Use Tax Exemptions are granted in Accordance with Law	\$ -
*TOTAL	\$ 4,945,911

Notes:

Finding No. 1: Data provided by the three agencies do not reconcile; therefore, the financial impact of this finding cannot be determined.

Finding No. 3: Management could not provide supporting documentation of all goods assessed or exempted Use Tax; therefore, the financial impact of Finding No. 3 cannot be determined.

Appendix 2:**Objectives, Scope, and Methodology**

Our audit objectives were to determine:

- 1) What is the total Use Tax assessed versus collected during FY 2011 to 2013;
- 2) Whether Use Tax revenues are collected in an efficient and effective manner ; and
- 3) Whether Use Tax exemptions were granted in compliance with applicable laws and regulations.

Our scope included reviewing the pertinent procurement laws, policies, procedures, regulations, prior audits, and other information relative to Use Tax in the period between October 1, 2010 and September 30, 2013.

Scope Limitation

Data provided by CQA, DRT, and DOA were incomplete, therefore the true amount of Use Tax assessed and collected during FY 2011 and 2013 could not be determined to address our first objective.

In addition, no agency could provide documentation to show which goods and amounts were given an exemption versus those that were assessed, therefore we could not determine whether exemptions were granted in compliance with applicable laws and regulations to address our third objective. However, based on subsequent information from CQA, documentation for all imported goods are filed and stored. Due to the magnitude of documents to review, this will be the subject of a separate OPA audit.

Use Tax assessed and collected on property accompanied as baggage or collected and assessed on other ports of entry was not included in this audit.

Methodology

To accomplish our objectives, we performed the following:

1. Interviewed key DRT, CQA, and DOA officials as to their responsibility in the Use Tax assessment and collection process.
2. Collected data for FY 2011 to 2013 and Conducted analysis on Use Tax assessment and collection.
3. Conducted walkthroughs of the Use Tax assessment and collection process at CQA, DOA, and DRT.

We conducted this audit 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 our audit objectives 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 above, we believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix 3:
Prior Audit Coverage

We reviewed prior Office of Public Accountability audits and the Government of Guam financial audits, and did not identify any performance audits related to GovGuam Use Tax.

We also reviewed the Government of Guam Financial Audit and found:

In the 2011 Internal Control over Financial Reporting (Finding No. 2011-09), the receivable balance due from vendors for import and Use Taxes continued to increase. At September 30, 2011, the recorded receivable balance amounted to \$4.7M. Auditors identified this finding as a material weakness and recommended that the CQA work with the DRT to collect unpaid import and Use Taxes. This was a repeat finding in the 2012 Internal Control over Financial Reporting (Finding No. 2012-6), but was identified as a significant deficiency.

DOA concurred with the findings and recommendations, and established communication with the management of CQA and DRT.

Appendix 4:

Comparison of Use Tax Data between DRT, CQA, and DOA

	Date	Customs & Quarantine Agency				DRT	DOA
		PORT	GIAA	7 Day Charge	Total		
		Adjusted Total (OPA)	Adjusted Total (OPA)	Adjusted Total (OPA)	Per CQA (OPA Adjusted)		
FY 2011	Oct-10	\$ 77,036.08	\$ 26,437.20	Not available			
	Nov-10	\$ 144,201.62	\$ 28,131.69	Not available			
	Dec-10	\$ 111,093.09	\$ 13,628.70	Not available			
	Jan-11	Not available	\$ 21,808.80	Not available			
	Feb-11	Not available	\$ 14,687.01	Not available			
	Mar-11	\$ 300,882.64	\$ 16,759.65	Not available			
	Apr-11	Not available	\$ 30,149.49	Not available			
	May-11	\$ 113,913.63	\$ 29,861.69	\$ 241.06			
	Jun-11	\$ 122,664.18	\$ 19,218.36	\$ 12,340.54			
	Jul-11	\$ 76,041.12	\$ 18,018.44	Not available			
	Aug-11	Not available	\$ 26,099.11	Not available			
	Sep-11	Not available	\$ 9,271.80	\$ 77.92			
	Total	\$ 945,832.36	\$ 254,071.94	\$ 12,659.52	\$ 1,212,563.82	\$337,242.00	\$ 2,549,492.66
FY 2012	Oct-11	Not available	\$ 26,053.01	\$ 70,817.50			
	Nov-11	\$ 119,091.89	\$ 17,234.75	\$ 42,995.78			
	Dec-11	Not available	\$ 37,144.80	\$ 74,875.14			
	Jan-12	\$ 155,055.12	\$ 8,484.51	\$ 42,873.17			
	Feb-12	\$ 62,495.03	\$ 13,308.44	\$ 25,163.18			
	Mar-12	\$ 97,965.96	\$ 19,204.89	\$ 81,100.93			
	Apr-12	\$ 31,688.73	\$ 11,986.50	\$ 47,553.91			
	May-12	\$ 144,045.22	\$ 14,796.37	\$ 37,765.33			
	Jun-12	\$ 119,116.25	\$ 12,113.98	\$ 55,744.44			
	Jul-12	\$ 178,245.75	\$ 12,392.51	\$ 53,439.47			
	Aug-12	\$ 80,198.02	\$ 14,370.13	\$ 47,635.40			
	Sep-12	\$ 64,601.31	\$ 34,946.52	\$ 55,085.89			
	Total	\$ 1,052,503.28	\$ 222,036.41	\$ 635,050.14	\$ 1,909,589.84	\$ 292,251.00	\$ 2,458,326.74
FY 2013	Oct-12	\$ 122,072.07	\$ 36,599.64	\$ 59,794.99			
	Nov-12	\$ 165,577.99	\$ 49,574.71	\$ 91,789.86			
	Dec-12	\$ 98,147.92	\$ 26,507.35	\$ 63,707.41			
	Jan-13	\$ 97,416.71	\$ 16,918.70	\$ 68,093.83			
	Feb-13	\$ 62,757.61	\$ 23,845.07	\$ 75,856.86			
	Mar-13	\$ 106,247.91	\$ 39,047.23	\$ 129,407.49			
	Apr-13	\$ 88,489.26	\$ 33,580.13	\$ 83,868.50			
	May-13	\$ 82,855.74	\$ 25,870.29	\$ 69,339.95			
	Jun-13	\$ 93,486.52	\$ 16,256.02	\$ 75,390.41			
	Jul-13	\$ 172,735.41	\$ 67,218.27	\$ 40,191.19			
	Aug-13	\$ 218,745.22	\$ 22,324.07	\$ 61,269.64			
	Sep-13	\$ 79,488.08	\$ 25,218.64	\$ 101,043.90			
	Total	\$ 1,388,020.44	\$ 382,960.12	\$ 919,754.03	\$ 2,690,734.59	\$ 278,674.00	\$ 2,725,994.29
	Grand Total	\$ 3,386,356.08	\$ 859,068.48	\$ 1,567,463.69	\$ 5,812,888.25	\$ 908,167.00	\$ 7,733,813.69

Appendix 5:

Summary of Use Tax Receivables

Summary

Year	Amount
1998	\$ 416,235
1999	\$ 19,507
2000	\$ 155,729
2001	\$ 80,726
2002	\$ 243,129
2003	\$ 520,494
2004	\$ 523,266
2005	\$ 566,362
2006	\$ 256,546
2007	\$ 113,587
2008	\$ 289,226
2009	\$ 268,454
2010	\$ 436,461
2011	\$ 311,028
2012	\$ 424,960
2013	\$ 320,203
Total	\$ 4,945,911

MEMORANDUM OF UNDERSTANDING
between the
CUSTOMS AND QUARANTINE AGENCY
and the
DEPARTMENT OF ADMINISTRATION
and the
DEPARTMENT OF REVENUE AND TAXATION

THIS MEMORANDUM OF UNDERSTANDING, is made and entered into between the Customs and Quarantine Agency, hereinafter referred to as CQA, the Department of Administration, hereinafter referred to as DOA, and the Department of Revenue and Taxation, hereinafter referred to as DRT.

WHEREAS, pursuant to Title 11, Chapter 28, §28105 of the Guam Code Annotated, it is the responsibility of CQA to collect the use tax on behalf of the DRT on taxable property which comes in at the Guam Commercial Port, or any other seaport in Guam, with any tax for which an exemption is not claimed, to be collected prior to release; taxable property which comes in as freight or unaccompanied baggage at the A.B. Won Pat International Airport, or any other airport in Guam; and taxable property which comes in as accompanied baggage at the A.B. Won Pat International Airport, or any other airport in Guam;

WHEREAS, pursuant to Title 5, Chapter 22, Article 2 of the Guam Code Annotated, it is the responsibility of DOA to receive, and account for all monies, from whatever source, giving proper authenticated receipts for the same, and to maintain a daily cash blotter in which shall be entered all cash transactions in detail, showing dates of all receipts and disbursements, names or persons making payments or receiving payments and amounts;

WHEREAS, pursuant to Title 11, Chapter 1, Division 1 of the Guam Code Annotated, it is the responsibility of DRT to enforce the tax laws of Guam, to collect revenue, and to administer and enforce Title 11, Chapter 1, Division 2 and the taxes levied therein;

WHEREAS, pursuant to Title 11, Chapter 1, Division 2 of the Guam Code Annotated, it is the responsibility of DRT to collect delinquent and past due taxes;

WHEREAS, the purpose of this agreement is to improve cooperation and coordination between agencies that have a key role in the collection of Use Taxes;

WHEREAS, it is goal of this coordinated effort to facilitate and heighten the collection of Use Taxes applicable upon goods imported into Guam;

WHEREAS, the specific objectives of this agreement are to:

1. Clearly delineate each agency's role in the Use Tax assessment and collection process;

2. Identify each agency's duties and responsibilities within the collection and adjudication process of the Use Tax Program;
3. Identify and assign the appropriate level of personnel within each agency that are needed to effectively carry out the identified duties and responsibilities;
4. Improve the gathering, compilation, preparation, reporting, updating, and maintenance of Use Tax assessments and the amounts due for use by the primary agencies;
5. Identify and provide appropriate equipment and program software within each enforcement area as needed to establish an effective record and accounting system;
6. Provide new, refresher and recurring training to participating personnel as needed to ensure and maintain their proficiency in the administration and enforcement of an effective Use Tax collection program;
7. Increase the scope and coverage of enforcement of Use Tax and its assessments and collections upon goods imported into Guam;
8. Obtain funding as may be necessary to effectively administer and collect Use Taxes on Guam; and
9. Cooperatively develop and implement statutory amendments/additions and/or rules and regulations as may be necessary to effectively carry out an efficient Use Tax Program on Guam.

WHEREAS, CQA personnel are needed to inspect goods imported into Guam, to assess the Use Tax upon applicable goods, and to collect and reconcile Use Tax payments at the ports of entry to the extent possible or as may be required or allowed by law;

WHEREAS, DOA personnel are needed to collect payments, to maintain the overall accounting of, and records on, assessments and collections, to reconcile payments, and to maintain the data systems needed to facilitate the accounting and tracking of Use Tax assessments and collections;

WHEREAS, DRT personnel are needed to collect Use Tax payments, record payments into the accounting system, issue billings on delinquent and past due Use Taxes, and to adjudicate appeals on Use Tax assessments;

WHEREAS, it is the intention of all parties hereto that such coordination and cooperation shall be for their mutual benefit and the benefit of the people of Guam.

NOW THEREFORE, the parties hereto do hereby mutually agree with each other as follows:

A. The Customs and Quarantine Agency Agrees to:

1. Assess the Use tax on applicable goods imported via the various ports of entry;
2. Verify and enter the Use Tax and Importer information into the government of Guam accounting database;
3. Forward all Use Tax documents to DRT for use and reference if needed;
4. Hold taxable shipments pending the payment of use tax as may be required or authorized in accordance with applicable laws;
5. Collect payments of the Use Tax from importers;
6. Enter payments of the Use Tax received by CQA into the Government of Guam accounting database;
7. Provide the training, forms, supplies, and equipment as may be needed for CQA personnel to perform their duties and responsibilities as outlined under this agreement;
8. Establish internal duties, responsibilities, and procedures for CQA personnel who will be performing the assessment, collection, and data entry of the Use Tax; and
9. Identify and assign that number of personnel necessary for the proper performance of the duties and responsibilities of this agreement, subject to the availability of funding and resources.

B. The Department of Administration Agrees to:

1. Collect the Use Tax from importers;
2. Maintain the overall accounting of, and records on, Use Tax assessments and collections;
3. Reconcile outstanding debts and payments;
4. Establish, provide, and maintain the automated data systems and other equipment needed to facilitate the data entry, accounting, tracking, and payment of Use Tax assessments and collections;
5. Provide the training, forms, supplies, and equipment as may be needed for DOA personnel to perform their duties and responsibilities as outlined under this agreement;
6. Provide the assessment, collection, and data entry training and equipment to the cooperating agencies as may be needed for those agencies to perform their duties and responsibilities as outlined under this agreement
7. Establish internal duties, responsibilities, and procedures for CQA personnel who will be performing the assessment, collection, and data entry of the Use Tax;

8. Identify and assign that number of personnel necessary for the proper performance of the duties and responsibilities of this agreement, subject to the availability of funding and resources; and
9. Other Support - To provide technical support to the cooperating agencies on the proper use and operation of data entry equipment used in the assessment and collection of the Use Tax.

C. The Department of Revenue and Taxation Agrees to:

1. Collect the Use Tax payments from importers;
2. Record payments into the data accounting system
3. Maintain the physical Use Tax assessment in accordance with the Government of Guam tax document retention laws for use and reference during the billing, collection, and/or appeal phases;
4. Review the overall accounting of, and records on, Use Tax assessments and collections;
5. Identify outstanding/delinquent Use Tax debts and past due payments;
6. Issue billings to importers with delinquent Use Taxes past due;
7. Assess and collect applicable tax penalties for failures to pay the Use Tax in accordance with the tax laws;
8. Assess tax liens, garnish wages/returns, and/or deny licenses in accordance with tax laws as may be necessary from those persons/businesses with outstanding taxes due;
9. Adjudicate in accordance with the tax laws any verbal or written appeal of the Use Tax assessment, the amount owed, and/or any penalties levied thereupon;
10. Notify the cooperating agencies as to any repeal, modification, or adjustment of the Use Tax owed by the importer for information purposes;
11. Record any repeal, modification, or adjustment of the Use Tax owed and/or paid by importers into the data accounting system for verification and reconciliation purposes by the cooperating agencies;
12. Notify the cooperating agencies as to any repeal, modification, or adjustment of the Use Tax owed by the importer for information purposes;
13. Provide the training, forms, supplies, and equipment as may be needed for DRT personnel to perform their duties and responsibilities as outlined under this agreement;
14. Provide the training and Use Tax forms (in duplicate) as needed by the cooperating agencies to perform their duties and responsibilities as outlined under this agreement;
15. Establish internal duties, responsibilities, and procedures for DRT personnel who will be performing the collection, adjudication, and/or data entry of the Use Tax;
16. Identify and assign that number of DRT personnel necessary for the proper performance of the duties and responsibilities of this agreement, subject to the availability of funding and resources; and
17. Provide technical support to the cooperating agencies on matters pertaining to the proper assessment and/or collection of the Use Tax.

D. It is Mutually Understood and Agreed:

1. That this Memorandum shall be governed by the laws of Guam, and will serve to establish the Parties' responsibilities and agreements in carrying out a more effective Use Tax collection program on Guam, and to define certain details on which the Parties concerned will cooperate.
2. That this memorandum of Understanding is to define in general terms the basis on which the parties concerned will cooperate, and does not constitute a financial obligation to serve as a basis for the expenditures by either party. Each party will handle and expend its own funds;
3. That each party is responsible for securing funding specifically to perform its duties and responsibilities assumed by each party, and are contingent upon funds being available from which expenditures may legally be met. This Memorandum does not constitute a financial obligation to serve as a basis for expenditures. Each signatory Party is to use and manage its own funds in carrying out the purpose of this Memorandum. No transfer of funds will be required under this Memorandum; and
4. That the parties shall indemnify and hold harmless from and against any and all manner of actions, liabilities, and claims of any persons arising out of or in connection with the services to be performed under this Memorandum of Understanding.

E. Effective Date and Duration of Understanding

This Memorandum of Understanding shall become effective upon the date of final signature, and shall continue indefinitely, but may be amended at any time by mutual agreement of the cooperating parties. This Memorandum of Understanding may be terminated by either party with ninety (90) days advanced written notice of the termination date desired.

APPROVED:

Customs and Quarantine Agency
770 East Sunset Blvd.
Suite 240 Tiyan, Guam 96913

Department of Administration
Manuel F.L. Guerrero Building
212 Aspinall Avenue
Hagatna, Guam 96910

Col. Raffaele Sgambelluri
Director of Customs, Acting

Ms. Benita Manglona
Director of Administration, Acting

Department of Revenue & Taxation
1240 Army Drive
Barrigada, Guam 96913

Office of the Governor
Ricardo J. Bordallo Governor's Complex
Adelup, Guam 96910

Mr. John P. Camacho
Director of Revenue & Taxation, Acting

Honorable Eddie Baza Calvo
Governor of Guam

**APPROVED AS TO
FORM AND CONTENT**

Office of the Attorney General
287 W. O'Brien Drive
Agana, Guam 96910

Honorable Leonardo M. Rapadas
Attorney General of Guam



CUSTOMS & QUARANTINE AGENCY, GUAHAN

Guam's First Line of Defense • Protecting Our Island, Our People, Our Resources

Director's Office

Director -- Pedro A. Leon Guerrero, Jr.
Chief of Customs -- Raffaele M.J. Spambellari

Doc. Ref. No.: CQA-DIR-101-14

April 14, 2014

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

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
BY: A. Arata
DATE: 4/15/14
TIME: 9:00 AM PM

Subject: Comments on Draft Audit Report

Dear Mrs. Brooks,

Buenas yan saludas! Thank you for the opportunity to review and comment on the draft audit report dated April 4, 2014 relative to the Government of Guam Use Tax program. Your report is very comprehensive and insightful, and will help us address many of the issues facing this program for the last few years. As per your request, we would like to provide the following comments as it pertains to this draft report. They are:

1. Page 2, Paragraph 3. Point of clarification - CQA collects payments made upfront and those that are paid later.
2. Page 2, Paragraph 5. Point of clarification - By statute, use tax assessments are only required when commodities that fall within the scope of the use tax law are present. For these reasons, CQA does not execute an assessment or keep logs on items not subject to the use tax, but rather, keeps them on file for record.
3. Page 3, paragraph titled "Memorandum of Understanding". Within this paragraph, we suggest changing the "...MOU has been drafted, it has yet to be fully implemented..." to "...MOU has been drafted, it has yet to be adopted..."
4. Page 4, bullets of use tax exemptions. Point of clarification - Just for further review and clarification, these bullets set forth several items/conditions exempt from, or outside the scope of, the use tax law. As discussed in item 2, it is our understanding that no tax assessment documents are needed to be made on these items.

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Mrs. Doris Flores Brooks
Comments on Draft Audit Report
April 14, 2014

13. Page 11, Paragraph 1, Point of Clarification and Adjustment - This comment is relative to the last sentence of paragraph 1, "...as a result of this lack of oversight, there is a high probability of fraud, waste, and abuse for non-assessment and illegal exemptions of use tax and lost revenues for GovGuam...". As described in comments 2 and 5 above, we are somewhat reluctant to agree that there is a high probability of fraud, waste, and abuse unless there is evidence that this is occurring. Perhaps there may be a more befitting means of describing the situation that exists. For example:

"Due to the lack of appropriate coordination and accountability systems between the key agencies, there is a greater possibility for use taxes to go unassessed and/or uncollected ...thus resulting in loss revenue for GovGuam."

In this regard, thank you again for the opportunity to comment on the draft audit report pertaining to the Use Tax assessment and collection program. We hope that our comments are useful to you and for helping us to improve in this area of public service. If you should have any questions or would like to discuss these comments further, please contact Major Paul Toves or myself at 475-6202/6243. We are available at your convenience. Thank you.

Senseramente,



PEDRO A. LEON GUERRERO, JR.
Director of Customs

Mrs. Doris Flores Brooks
Comments on Draft Audit Report
April 14, 2014

5. Page 5, Paragraph 1, Item 3. Point of Clarification - This paragraph states that there is a high probability of loss revenue for fraud, waste, and abuse to occur for non-assessment and improper exemptions of use tax. Although there may be a high probability for the occurrence of loss revenue due to poor coordination and recordings between agencies involved in the program, we are not sure it would be fitting to say at this point that there is a high probability of fraud, waste, and abuse. The Public Auditor is a very prestigious office and the public does take the OPA's findings in high regard. Unless there is evidence of fraud, waste, and abuse, could it be said that the hardworking employees of the Government of Guam are doing their due diligence to collect the use tax instead?
6. Page 6, Paragraph 2. Point of Clarification - All use tax assessments and collections processed at CQA are actually not recorded in the Point of Sales (POS) system. Rather, both paid and unpaid assessments are forwarded to DOA and recorded there. The POS system has been inoperable for at least the past six (6) months and was used to record only payments received by CQA.
7. Page 6, Paragraph 4. Again, the POS is no longer operable.
8. Page 7, Paragraph 1. Point of Clarification - CQA also needs access to the Department of Revenue and Taxation's (DRT) records on any use tax payment exemptions.
9. Page 7, Paragraph 4. Point of Clarification - CQA also collects used tax payments from those who make payment at a later date.
10. Page 8, Paragraph 5. Again, tax payers are only required to file documentation when taxable commodities exist as outlined on items 2 and 4 above.
11. Page 9, Paragraph 4. Point of Clarification - CQA does review and analyze every document for use tax and other regulated items. Once completed, the import documents are filed for record. Supervisors do perform periodic reviews of processed documents for quality control purposes.
12. Page 10, Items 1, 2, and 3. Point of Clarification - Since the last meeting, recommendations to modify certain areas of the draft Use Tax Flow Chart and MOU were submitted by the participating agencies and subsequently made where appropriate.

2

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CUSTOMS & QUARANTINE AGENCY, GUAHAN

Guam's First Line of Defense • Protecting Our Island, Our People, Our Resources

Director's Office

Director - Pedro A. Leon Guerrero, Jr.
Chief of Customs - Raffaele M.J. Symbellauri

Doc. Ref. No.: CQA-DIR-103-14

April 16, 2014

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

Subject: Supplemental
Ref: Draft Audit Report - Government of Guam Use Tax Program

Dear Mrs. Brooks,

Buenas yan saludas! Thank you again for the opportunity to submit comments on the Draft Audit Report, and for meeting with us Friday, April 11, 2014, to discuss these items further. Based on our submission and clarifications made at the meeting, CQA is in agreement with the findings and recommendations of the Office of Public Accountability report.

If you should have any questions or would like to discuss these comments further, please contact Major Paul Toves or myself at 475-6202/6243. We are available at your convenience. Thank you.

Senseramente,

PEDRO A. LEON GUERRERO, JR.
Director of Customs

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
BY: CC
DATE: 04/16/14
TIME: 8:25 8AM CPM

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Appendix 8:
DOA Management Response



Eddie Baza Calvo
Governor
Ray Tenorio
Lieutenant Governor

Department of Administration
(DIPATTAMENTON ATEMENSTRASION)
DIRECTOR'S OFFICE
(UFISINAN DIREKTOT)
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Benita A. Manglona
Director
Anthony C. Blaz
Deputy Director

April 21, 2014

Mrs. Doris Flores Brooks, CPA, CGFM
Public Auditor
Office of Public Accountability

Buenas yan Háfa Adai Public Auditor Brooks,

Thank you for the opportunity to discuss the preliminary results of the "Government of Guam Use Tax." We appreciate the work done by your office and recommendations that were proffered.

The Department of Administration (DOA) is currently working with the Department of Revenue and Taxation (DRT) and the Guam Customs and Quarantine Agency (CQA) on an Inter-Agency Cooperative Agreement for the handling of Use Taxes. In this agreement DOA's involvement would be limited to the following: (1) the Treasurer of Guam will receive payments for Use Taxes from CQA and bundle the receipts for submittal to DRT, (2) unpaid Use Tax invoices will be submitted directly from CQA to DRT, (3) DOA and DRT will work on a reconciliation between our current receivables after we perform an assessment and write off of aged accounts. DOA will no longer perform the subsidiary function for the Use Taxes. The subsidiary ledgers will be handled by DRT, which has the power to enforce the Use Tax collections.

The Department has appointed a General Accounting Supervisor and an Accountant I as agency representatives to address and oversee the implementation of your recommendations.

I applaud your efforts in streamlining the operations of the Use Taxes. If you have any questions or need any clarification, please feel free to contact me or Mrs. Kathrine Kakigi, Financial Manager, at 475-1169.

Senseramente,

Benita Manglona
Benita A. Manglona, CPA

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Dipattamenton Kontribusion yan Adu'ana
DEPARTMENT OF
REVENUE AND TAXATION
GOVERNMENT OF GUAM Gubetnamenton Guahan

EDDIE BAZA CALVO, Governor Mags'ikhi
RAY TENORIO, Lt. Governor Tiñente Gubetnadot

JOHN P. CAMACHO, Director
Direktor
MARIE M. BENITO,
Deputy Director
Segundo Direktor

April 25, 2014

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

Dear Ms. Brooks:

Transmitted herewith is the Department of Revenue and Taxation's Management Response to recommendations provided by the Office of Public Accountability under Audit Report No. 14-02 relative to Use Tax.

Sincerely,


John P. Camacho

Attachment

DRT Management Response

Audit Report No. 14-02 (Use Tax)
April 25, 2014

- **DRT, CQA and DOA must clearly define their roles regarding Use Tax, which would be solidified in finalizing and implementing the Memorandum of Understanding between the three agencies.**

RESPONSE

DRT will continue to work closely with CQA and DOA to help refine, develop and implement an Inter-Agency Cooperative Agreement in lieu of a Memorandum of Understanding. The Interagency Cooperative Agreement was recommended so that each agency can define their respective roles and responsibilities and to facilitate an immediate a plan of action. It was agreed by all agencies that a form and/or process be developed to report and record Use Tax declarations in a manner that addresses the needs of CQA, DRT and DOA. The plan of action will also ensure that all persons subject to Use Tax, business and non-business taxpayers alike, are properly assessed and accurate records are kept on Use Tax revenue henceforth.

- **DOA and DRT should review and correct the outstanding receivable balance and determine whether they are collectible.**

RESPONSE

DRT is amenable to DOA's suggestion to write-off the receivables identified in the audit. It was also noted that DOA will only record cash collections, no longer record receivables, will not maintain sub ledgers, and will not store the assessment documents. DRT acknowledges that it will become the repository of all Use Tax returns, assessment documents and record receivables.

- **DRT, as the tax regulatory agency for GovGuam, should be responsible for reviewing, reconciling, monitoring, and collecting Use Tax assessments. In addition, it should be responsible for ensuring exemptions are granted in accordance with law.**

RESPONSE

DRT has established programs to review, reconcile, monitor and collect Gross Receipts Tax (GRT) revenues on Form GRT-1 and coordinates this effort with DOA utilizing the Transaction Processing System (TPS) that was implemented on October 14, 2013. The same process shall be applied in the tracking of Use Tax revenues in the TPS via Form GRT-1 Part 2. DRT continues to encourage and promote voluntary compliance for all Guam taxpayers. If it is discovered that a person is non-compliant with the law, DRT will address the matter accordingly.

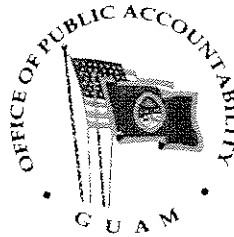
DRT Management Response

Audit Report No. 14-02 (Use Tax)
April 25, 2014

- **A process should be implemented where taxpayers' business information (i.e. business license number and other relevant identifiers) can be shared between the three agencies.**

RESPONSE

DRT maintains the position that established IRS Safeguard Procedures are adhered to, particularly as it relates to taxpayer identification and tax information. It is imperative that DRT comply with tax disclosure provisions mandated by law. Access to DRT's computer data base for purposes of accessing this type of information is prohibited.



**Government of Guam Use Tax
Report No. 14-02, April 2014**

ACKNOWLEDGEMENTS

Key contributions to this report were made by:
Thyrza Bagana, Audit Staff
Jerrick Hernandez, CGAP, Auditor-in-Charge
Llewelyn Terlaje, CGAP, 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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