



OFFICE OF PUBLIC ACCOUNTABILITY
Doris Flores Brooks, CPA, CGFM
Public Auditor

December 1, 2014

32-14-2305
Office of the Speaker
Judith T. Won Pat, Ed.D

Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'Trentai Dos Na Liheslaturan Guåhan
155 Hesler Place
Hagatna, Guam 96910

Date: 12-03-14
Time: 10:14am
Received By: [Signature]

Dear Speaker Won Pat:

Hafa Adai! Transmitted herewith is OPA Report No. 14-04, Department of Revenue and Taxation (DRT) Hotel Occupancy Tax (HOT).

Due to DRT's interpretation of the law to protect taxpayer confidentiality, the Office of Public Accountability (OPA) was denied access to HOT data. As a result, we could not verify the HOT data's completeness, reliability, and accuracy. Therefore, we have no assurance whether HOT filings, payments, and collections were in compliance with Public Law 32-068 for the six calendar years (CY) 2008 to 2013.

Based on our limited analysis, we found:

- Accuracy of \$3 million (M) in uncollected HOT receivables could not be verified;
- Inconsistent and uncomparable data pertaining to the number of hotels reported;
- \$2.2M HOT exemptions claimed by eight taxpayers within CY 2008 and CY 2013 could not be verified; and
- Between CY 2008 and CY 2013, taxes due from 10 taxpayers were inaccurately assessed at the obsolete HOT tax rate of 10% instead of the current HOT tax rate of 11% or the Gross Receipts Tax rate of 4%.

Based on discussions with DRT and members of the 32nd Guam Legislature, we recommend that the Legislature clarify the law to allow OPA full access to taxpayer returns and other information in the conduct of audits and reviews of local Guam taxes, consistent with the duties outlined by 1 GCA § 1909.

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 Rodalyn Gerardo, Audit Supervisor at 475-0390 ext. 204, or Michele Brillante, Audit Staff at ext. 205.

Senseramente,

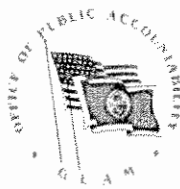
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RECEIPT ACKNOWLEDGED:

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Date: 12/1

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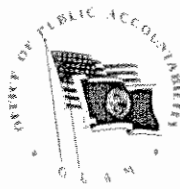
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Department of Revenue and Taxation Hotel Occupancy Tax

Compliance Audit January 2008 through December 2013

OPA Report No. 14-04 December 2014

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Table of Contents

	Page
Executive Summary.....	1
Introduction.....	3
Background.....	3
Overview of DRT.....	3
Overview of DOA.....	4
Audit Scope Limitation Due to Restricted Access to HOT Data.....	5
Accuracy of \$3M in Uncollected HOT Receivables Could Not Be Verified.....	7
Inconsistent and Uncomparable Number of Hotels Reported.....	10
\$2.2M HOT Exemptions Are Not Verifiable.....	10
Inaccurate Assessment at 10% Rate.....	12
Systems Not Fully Interfaced.....	14
Conclusion and Recommendation.....	16
Management Response and OPA Reply.....	17
Appendices	
1: Classification of Monetary Amounts.....	18
2: Objective, Scope, and Methodology.....	19
3: Prior Audit Coverage.....	22
4: Laws, Rules, and Regulations.....	24
5: Additional Background on HOT Audit.....	28
6: DRT Memo Re: Forensic Audit of HOT.....	29
7: Form GRT (April 2004).....	31
8: Form GRT-1 (November 2008).....	33
9: DRT Management Response.....	35



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EXECUTIVE SUMMARY
Department of Revenue and Taxation Hotel Occupancy Tax
OPA Report No. 14-04, December 2014

Due to the Department of Revenue and Taxation (DRT)'s interpretation of the law to protect taxpayer confidentiality, the Office of Public Accountability (OPA) was denied access to Hotel Occupancy Tax (HOT) data. As a result, we could not verify the HOT data's completeness, reliability, and accuracy. Therefore, we have no assurance whether HOT filings, payments, and collections were in compliance with Public Law 32-068 for the six calendar years (CY) 2008 to 2013.

As the Tourist Attraction Fund (TAF)'s primary source of revenue, HOT is annually audited by contracted, independent auditors Deloitte and Touche, LLP (DTT). Because DTT is required to comply with the American Institute of Certified Public Accountants (AICPA) Auditing Standards and the Government Auditing Standards, OPA places general reliance on DTT's annual TAF financial audits.

HOT is an excise tax assessed at 11% that hotels are required to collect and file with DRT and pay at Treasurer of Guam (TOG) on a monthly basis. The tax payments are deposited into the TAF and recorded by the Department of Administration (DOA).

Audit Scope Limitation Due to Restricted Access

DRT management directed its staff, as well as DOA and DTT to provide only redacted HOT data to OPA.

DRT's Taxpayer Service Division (TSD) Administrator provided data for HOT filings with "hotel" code names, while DRT's Tax Enforcement Division (TED) Acting Tax Collection Supervisor provided a summary of HOT accounts receivable with "taxpayer" code names. The redacted information made it difficult, if not impractical, to perform data analyses. For example, TSD and TED's data: (1) did not specify whether the code names represented the hotel or other lodging facility (establishment) or taxpayer; (2) did not specify whether the reported amounts were based on the establishment or taxpayer; and (3) used code names that could not be matched between taxpayers and the establishment they owned.

We requested HOT tax payment data from DRT, DOA, and DTT. DRT stated it was difficult to extract the payment information from its financial management system (AS400) due to: (1) the period when tax payments were due, (2) the timing of when tax payments are made, and (3) the actual amounts paid. DOA provided only monthly summaries of total HOT payments from fiscal year (FY) and CY 2009 to 2013. DTT provided redacted hard copies of HOT payments from FY 2009 to FY 2013. We made numerous attempts to reconcile, but the redacted data provided by DRT (HOT filings detail), DOA (HOT payments summary), and DTT (HOT payments detail) did not reconcile.

We requested to review the redacted filings and payments for two specific prominent hotels. DRT's TED Administrator did not honor our request because it is specific to two hotels. We subsequently obtained confirmation of taxes due and payments from these two hotels. However, since all the information we obtained from DRT was redacted, we could not readily match the figures for one of the hotels.

Based on numerous attempts to reconcile the redacted data, we found:

- **Accuracy of \$3 million (M) in uncollected HOT receivables could not be verified.** As of May 2014, five taxpayers owed a cumulative balance of \$3M in HOT from CY 2002 to CY 2013, with outstanding balances from \$120 thousand (K) to \$1.6M. While DRT may seize the debtor's property to collect on unpaid taxes, DRT has not seized properties since the 1990s;
- **Inconsistent and Uncomparable data pertaining to the number of hotels reported.** DRT does not have a comprehensive list of all hotels subject to HOT. We attempted to verify the 38 hotels in DRT TSD's CY 2013 HOT filings against other listings from DRT TED, Bureau of Statistics and Plans, Guam Visitors Bureau, and Guam Hotel and Restaurant Association. TSD's HOT filings data did not match or were not comparable with the other listings. In addition, we could not verify whether TSD's HOT filings included all hotels subject to HOT;
- **\$2.2M HOT exemptions claimed by eight taxpayers within CY 2008 and CY 2013 could not be verified.** In our analysis of the redacted tax returns, we found instances where Hotel 9 consistently claimed identical exemptions for both HOT and Gross Receipts Tax (GRT) totaling \$1.2M whereas the other seven taxpayers did not. In addition, there were missing exemption schedules and the amounts on amended returns were not reflected on the database provided; and
- **Between CY 2008 and CY 2013, taxes due for 10 taxpayers were inaccurately assessed at the obsolete HOT tax rate of 10%.** As a result of our inquiry, DRT determined that at least one taxpayer should have been assessed at the 11% HOT tax rate and others at the 4% GRT tax rate. These errors resulted in over- and understatements in both HOT and GRT, which cumulatively understated HOT by \$9.2K. As suggested, DRT updated the GRT tax return by changing line 20's tax rate from 10% to 11% in June 2014.

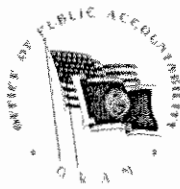
Systems Not Fully Interfaced

Since 2011, DRT and DOA's AS400 systems have not interfaced so as to have complete HOT information. The lack of system interface between DRT, DOA, and TOG, as described in OPA Report No. 13-01, contributed to major delays during the TAF and Government of Guam financial audits of FY 2012 and FY 2013. In FY 2013, DRT and TOG's systems interfaced incorrectly and resulted in the creation of a \$64M suspense account, which had an adjusting entry as high as \$1.1 billion. DOA and DRT subsequently reconciled to \$270K as of June 2014. As of report issuance, DRT continues to manually input tax returns in the AS400.

Conclusion and Recommendation

DRT did not concur with majority of the audit findings and emphasized that the law [Title 11 Guam Code Annotated (GCA) § 26120] and their "due diligence to protect confidential taxpayer information" are what prevented them from allowing OPA access to un-redacted HOT data. Due to this scope limitation, we could not verify the completeness, reliability, and accuracy of DRT's redacted HOT data. As such, we have no assurance that all HOT filings, payments, and collections were made in accordance to law. Based on discussions with DRT and some members of the 32nd Guam Legislature, we recommend that the Legislature clarify the law to allow OPA full access to taxpayer returns and other information in the conduct of audits and reviews of local Guam taxes, consistent with the duties outlined by 1 GCA § 1909.

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Introduction

This report presents the results of our compliance audit of the Department of Revenue and Taxation (DRT)'s Hotel Occupancy Tax (HOT) for a six-year period from January 1, 2008 to December 31, 2013 or calendar years (CY) 2008 to 2013. In October 2012, the Department of Administration (DOA) provided certain senators with a list of 10 taxpayers who did not timely remit HOT payments. DRT stated that the list was overstated, not finalized, and should not have been disclosed. Although Public Law (P.L.) 32-068 called for a forensic audit of HOT, the Vice Speaker of the 32nd Guam Legislature agreed to the Office of Public Accountability (OPA) conducting a compliance audit of HOT. Our audit objective was to determine the compliance of HOT filings, return payments, and collections with applicable laws and regulations. The objective, scope, methodology, prior audits, and monetary impact are detailed in Appendices 1 to 3.

Background

HOT is a monthly excise tax assessed and collected from transient occupants of room(s) in a hotel, lodging house, bed and breakfast, or similar facility [establishment] in Guam. The tax rate is 11% of the rental price charged or paid per occupancy per day. The tax is collectible when a sale is made and is paid by the consumer to the operator or owner of the hotel or rooming house facility¹.

HOT payments are paid through the Treasurer of Guam (TOG) with the monthly returns filed with DRT on or before the 20th day of the following month in which the tax was incurred. The general provisions of the Business Privilege Tax (BPT) Law apply with respect to penalties for failure to file timely returns, informal hearings, adjustments, review, stay of collection, suits for refund, perfecting appeals, decisions, interest, perjury, examination of books and witnesses, and inspection of tax returns and information and other administrative matters referred to therein². DRT administers HOT, while DOA records HOT payments. See relevant laws and additional background on HOT in Appendices 4 to 6.

Overview of DRT

DRT is charged with the enforcement of Guam tax laws and the collection of revenue. Additionally, DRT is responsible for licensing and registration, as well as allied and connected enforcement functions³. DRT's mission "is to promote quality service to all taxpayers, and increase taxpayer's voluntary compliance by helping them understand and meet their responsibilities by applying the tax law with integrity and fairness to all"⁴. Within DRT, the Taxpayer Service

¹ Title 11 of the Guam Code Annotated (GCA) §30101

² 11 GCA §30103

³ Chapter 1 of Title 11 GCA

⁴ Department of Revenue and Taxation. (n.d.). Our Mission. Retrieved from <https://www.guamtax.com/about/mission.html>.

Division (TSD) and Tax Enforcement Division (TED) are responsible for the administration and enforcement of HOT filings, return payments, and collections.

Taxpayer Service Division

TSD is responsible for the administration of Guam Territorial Income Tax and BPT laws. The division is charged with providing a comprehensive taxpayer service program which includes timely assessment of taxes due, identification of non-filers, maintenance of accounts receivables, tax compliance clearances, and maintenance and storage of all taxpayer records. TSD is comprised of six branches: Income Tax Assistance and Processing, BPT, Electronic Data Processing, State Wage and Information Collection Agency, Accounting, and Central Files.

Tax Enforcement Division

TED, as DRT's enforcement arm, is responsible for executing Guam tax laws. TED is comprised of the Collection, Examination, and Criminal Investigation branches for which each function is separate yet interrelated to instill taxpayers' voluntary compliance with tax laws. TED administers and collects taxes.

Overview of DOA

DOA is responsible for maintaining the financial data of all Government of Guam (GovGuam) line agencies, except for the Department of Education. In regards to HOT, DOA is responsible for: (1) the fair presentation in the basic financial statements of the Tourist Attraction Fund (TAF), as well as (2) establishing and maintaining effective internal control over the financial reporting of TAF. Within DOA, the Division of Accounts is charged with providing a uniform financial management system and internal accounting controls for line organizations of the government, in order to provide accurate and timely financial information for management to comply with statutory requirements. Within the Division of Accounts, TOG and Revenue Accounting branches are primarily involved in the recording of HOT payments.

Tourist Attraction Fund

TAF was established to fund various recreational projects and visitor industry activities. All HOT collections are to be deposited into TAF, not to be commingled with the General Fund, and kept in a separate bank account. TAF expenditures, including funding of the Guam Visitors Bureau (GVB)'s operations, are made through legislative appropriation. TAF's financial statements are annually audited by contracted, independent auditors.

Treasurer of Guam

The Treasury Office (TOG)'s responsibilities include daily cash collections, deposit and investment of GovGuam revenues, and control of receipts and cash for government services and charges through the Point-of-Sale system in conjunction with DRT. TOG provides a centralized depository system for funds received and paid on behalf of GovGuam.

Revenue Accounting Branch

This Accounting Branch has several responsibilities including: (1) recording of government revenues collected throughout the fiscal year; (2) reviewing documents attached to journal vouchers and payments on drawbacks and rebates prepared by DRT to ensure proper entries and payment requirements; and (3) reconciling cash and suspense accounts.

Results of Audit

Due to the DRT's interpretation of the law to protect taxpayer confidentiality, OPA was denied access to HOT data. Therefore, we could not verify the HOT data's completeness, reliability, and accuracy. As such, we have no assurance whether HOT filings, payments, and collections were in compliance with P.L. 32-068 for the six-year period of CY 2008 to 2013. However, as TAF's primary source of revenue, HOT is annually audited by contracted, independent auditors [Deloitte and Touche, LLP (DTT)]. Because DTT is required to comply with the American Institute of Certified Public Accountants (AICPA) Auditing Standards and Government Auditing Standards, OPA places general reliance on DTT's annual TAF financial audits.

HOT data provided by DRT, DOA, and DTT was redacted to maintain taxpayer confidentiality. After numerous attempts to work with the redacted data, we could not verify the reliability of DRT's HOT data due to limitations identified.

Based on our limited analysis, we found:

- Accuracy of \$3 million (M) in uncollected HOT receivables could not be verified;
- Inconsistent and uncomparable data pertaining to the number of hotels reported;
- \$2.2M HOT exemptions claimed by eight taxpayers within CY 2008 and CY 2013 could not be verified; and
- Between CY 2008 and CY 2013, taxes due from 10 taxpayers were inaccurately assessed at the obsolete HOT tax rate of 10% instead of the current HOT tax rate of 11% or the Gross Receipts Tax (GRT) rate of 4%.

Since 2011, DRT and DOA's AS400 systems have not fully interfaced to have complete HOT information. The lack of system interface between DRT, DOA, and TOG, as described in OPA Report No. 13-01, contributed to major delays during the TAF and Government of Guam (GovGuam) financial audits of fiscal year (FY) 2012 and FY 2013. In FY 2013, DRT and TOG's systems interfaced incorrectly and resulted in the creation of a \$64M suspense account for GRT collections (including HOT), which was subsequently reconciled to down to \$270 thousand (K) as of June 2014. DRT continues to post tax returns manually.

Audit Scope Limitation Due to Restricted Access to HOT Data

Generally Accepted Government Auditing Standards (GAGAS) require auditors to obtain sufficient and appropriate evidence to provide a reasonable basis for their findings and conclusions.⁵ Evidence is not sufficient or not appropriate when it has significant limitations, given the audit objectives and intended use of the evidence or the evidence does not provide an adequate basis for addressing the audit objectives.⁶

OPA's enabling legislation states that every government agency is subject to a review and shall offer its complete cooperation to the Public Auditor so that the review may be accomplished.⁷ The

⁵ GAGAS paragraph 6.56

⁶ GAGAS paragraph 6.71b

⁷ 1 GCA, §1917

legislation also states that disclosure of privileged communication or information in violation of Section 1909.1 shall be a felony of the third degree.⁸

The TAF financial audit contract with DTT states that the independent auditor is required to conform to the requirements imposed by the law establishing the OPA and must allow the OPA access to their work papers and draft reports.

During the Entrance Conference with DRT in February 2014, DRT management was open to OPA receiving HOT data. Five days later, during the second meeting with DRT, DRT officials explained that DRT's Disclosure Officer must review and approve HOT data prior to its release. The audit team was also required to sign DRT's Oath of Non-Disclosure acknowledging that the team will abide by the nondisclosure requirements of the Internal Revenue Code and 11 GCA §26120. These steps were taken in order to prevent public disclosure of taxpayer identities.

In March 2014, DRT's TSD Administrator provided OPA redacted data for HOT filings in Microsoft Excel spreadsheets from FY and CY 2008 to 2013. The data showed amounts for gross sales, exemptions taken, net gross, and taxes reported on GRT returns by taxpayers whose identities were replaced with inconsistent and randomly assigned "hotel" code names (e.g. Hotel 1 or Hotel JJJJ). DRT's TED Acting Tax Collection Supervisor also provided OPA a redacted summary of HOT accounts receivable. The data showed amounts of unpaid HOT taxes due, penalties, and interests of taxpayers identified by "taxpayer" code names.

The redacted information made it difficult, if not impractical, to perform data analyses. TSD and TED's data: (1) did not specify whether the code names represented the establishment or taxpayer; (2) did not specify whether the reported amounts were based on the establishment or taxpayer; and (3) used code names that could not be matched between taxpayers and the establishment they owned.

DRT did not provide HOT payments data to OPA because it purportedly required significant amount of time and effort for DRT to extract the information from its AS400. According to DRT's Disclosure Officer, organizing the data to reflect the payments in their true, separate sequences would be difficult. A taxpayer with multiple properties can make payment for three different hotels in a month. Additionally, DRT records the tax due amount for the return's reported period, instead of the actual payment received on the date received.

We requested HOT payments information from DOA, since it compiled the information for the TAF financial audit report. Because of DRT's restricted access, DOA provided only lump sum, monthly summaries of HOT revenues from FY and CY 2009 to 2013, itemized by collections through direct bank deposits, TOG cashiers, and mailed in check payments.

Our alternative method was to request HOT data from DTT. To avoid duplication of efforts, GAS allows auditors to use other auditor's completed audit work if it is related to the objectives of the current audit and may be facilitated by contractual arrangements that provide for full and timely access to appropriate audit documentation.⁹

⁸ 1 GCA §1909.1(d)

⁹ GAGAS paragraphs 6.41 and 6.85.

However, DTT stated that before they could release information to OPA, we must first obtain DRT's approval because the HOT data contained confidential taxpayer information. In addition, we learned that DTT received redacted HOT data for all the years in which they audited any tax-related information from DRT. DTT was not permitted to obtain any data on taxpayer identifications [company name, DBA (doing business as), and GRT (gross receipts tax) number]. DTT performed alternative procedures, such as direct confirmations of HOT tax payments.

In April 2014, we met with DRT, DOA, and DTT to discuss the possibility of permitting OPA full access to HOT data. DRT made it clear to all parties that only DRT-approved redacted data would be provided to OPA. Before any of the parties could release HOT-related data to OPA, DRT's Disclosure Officer must ensure that the data did not reveal any taxpayer's identity.

Subsequently, DTT provided redacted, hard copies of their TAF audit work papers from FY 2009 to FY 2013. The work papers used the same "hotel" code name as DRT TSD and showed HOT revenues collected for each month. The work papers indicated which hotels DTT verified against the monthly GRT tax return, written confirmations provided by hotels, and journal vouchers initiated by DRT. Additionally, the work papers showed the amount of audit adjustments made and, for FY 2013, amounts filed by the hotel, but were unpaid.

We requested DRT's permission to review the redacted filings and payments specifically for two prominent hotels. DRT's TED Administrator responded that DRT will not honor our request because it is specific to two hotels. DRT had not changed its position regarding the disclosure of any taxpayer information to OPA. Subsequently, we obtained confirmation of taxes due and payments from these two hotels. However, since all the information obtained from DRT was redacted, we could not readily match the figures for one of the hotels.

Due to timing of when payments are made and the payment amounts, we were unable to match the taxes due noted in TSD's HOT filings data with the payments information from DOA and the TAF revenues in the audited financials. As stated in the FY 2013 TAF Financial Audit Highlights, there are certain taxpayers who filed, but did not pay at the time of filing. On a rolling average, this approximates to \$600K. Although we ourselves could not verify the amount of HOT tax payments, since we are aware that DTT complies with the AICPA Auditing Standards and GAGAS, we place general reliance on their work related to the annual TAF audit.

Even with strict confidentiality rules and regulations governing OPA, DRT still imposed on DOA and DTT the requirement that only DRT-approved, redacted HOT data could be provided to OPA. As a result of DRT's directive, we could not reconcile, nor verify the accuracy and completeness of DRT's HOT data against DOA's HOT payments or DTT's HOT revenue work papers.

Accuracy of \$3M in Uncollected HOT Receivables Could Not Be Verified

The HOT rate is 11% of the rental price charged or paid per occupancy per day. The tax is collectible when a sale is made and is paid by the consumer to the operator or owner of the hotel or rooming house facility¹⁰.

¹⁰ 11 GCA §30101

In response to a Freedom of Information Act request from a member of the 32nd Guam Legislature, DRT reported that as of August 2013, there were 10 delinquent taxpayers who collectively owed \$2.2M in HOT dating back to CY 2004. After further reconciliation with DOA's records, DRT amended their prior statement three months later to report that as of August 2013, \$1.7M in delinquent HOT was owed by five taxpayers dating back to CY 2004.

Based on the HOT Summary of Accounts Receivable provided in March 2014, DRT reported that five taxpayers owed a cumulative balance of \$3.2M in HOT dating back to CY 2002. The largest amount owed was \$1.6M and the smallest was \$125K.¹¹ Although we could not verify whether these were the same taxpayers previously reported, we recognize that the outstanding balances change as the taxpayers make payments or as penalties and interest accumulate.

Title 11 GCA §26205 established the statute of limitations for collections of unpaid taxes due on GRT returns at 10 years after the tax is assessed. In accordance with the statute, Taxpayer D's taxes due for CY 2002 should have been collected no later than the end of CY 2012, and CY 2003's taxes due collected no later than the end of CY 2013. However, DRT's 2014 summary shows these past due amounts as collectible. Refer to Table 1 below.

Table 1: DRT's HOT Summary of Accounts Receivable as of March 17, 2014

	Taxpayer A	Taxpayer B	Taxpayer C	Taxpayer D	Taxpayer E	
	Total	Total	Total	Total	Total	
Tax Period	Balance Due	Balance Due	Balance Due	Balance Due	Balance Due	TOTAL
2002	\$ -	\$ -	\$ -	\$ 1,850	\$ -	\$ 1,850
2003	\$ -	\$ -	\$ -	\$ 42,501	\$ -	\$ 42,501
2004	\$ -	\$ -	\$ -	\$ 41,733	\$ -	\$ 41,733
2005	\$ -	\$ -	\$ -	\$ 38,019	\$ -	\$ 38,019
2006	\$ -	\$ -	\$ -	\$ 10,228	\$ -	\$ 10,228
2007	\$ -	\$ -	\$ -	\$ 2,962	\$ 3,010	\$ 5,972
2008	\$ -	\$ -	\$ -	\$ 14,288	\$ 31,012	\$ 45,300
2009	\$ 106,430	\$ 62,081	\$ 172,587	\$ 9,171	\$ 26,203	\$ 376,472
2010	\$ 111,144	\$ 224,925	\$ 441,257	\$ 4,496	\$ 24,589	\$ 806,411
2011	\$ 27,425	\$ 181,431	\$ 370,147	\$ -	\$ 19,520	\$ 598,523
2012	\$ 138,577	\$ 215,629	\$ 384,256	\$ -	\$ 15,498	\$ 753,959
2013	\$ 65,521	\$ 141,953	\$ 247,147	\$ -	\$ 5,291	\$ 459,912
TOTALS	\$ 449,097	\$ 826,018	\$ 1,615,394	\$ 165,248	\$ 125,122	\$ 3,180,879

In June 2014, an updated HOT Summary of Accounts Receivable was provided, reflecting a decrease of \$191K from \$3.2M as of March 2014 to \$3.1M as of May 2014. Refer to Table 2 below. The collection efforts of DRT for the five delinquent HOT taxpayers for the tax periods up to 2013 are as follows:¹²

- Taxpayer A's accounts receivable decreased by \$187K;
- Taxpayers B and C's outstanding balances did not change;
- Taxpayer D's delinquent balance increased by \$787; and

¹¹ The HOT Summary of Accounts Receivable, as of March 2014, reflected a sixth taxpayer (Taxpayer F), but this taxpayer was omitted from Table 1 because it had a zero balance.

¹² The HOT Summary of Accounts Receivable as of May 2014 reflected a sixth taxpayer (Taxpayer F), but this taxpayer was omitted from Table 2 because it had a zero balance.

- Taxpayer E's accounts receivable decreased by \$5K.

Table 2: DRT's HOT Summary of Accounts Receivable as of May 16, 2014

Tax Period	Taxpayer A	Taxpayer B	Taxpayer C	Taxpayer D	Taxpayer E	TOTAL
	Total Balance Due	Total Balance Due	Total Balance Due	Total Balance Due	Total Balance Due	
2002	\$ -	\$ -	\$ -	\$ 1,855	\$ -	\$ 1,855
2003	\$ -	\$ -	\$ -	\$ 42,691	\$ -	\$ 42,691
2004	\$ -	\$ -	\$ -	\$ 41,916	\$ -	\$ 41,916
2005	\$ -	\$ -	\$ -	\$ 38,186	\$ -	\$ 38,186
2006	\$ -	\$ -	\$ -	\$ 10,274	\$ -	\$ 10,274
2007	\$ -	\$ -	\$ -	\$ 2,976	\$ 2,736	\$ 5,712
2008	\$ -	\$ -	\$ -	\$ 14,397	\$ 28,956	\$ 43,352
2009	\$ 77,983	\$ 62,081	\$ 172,587	\$ 9,219	\$ 24,359	\$ 346,229
2010	\$ 48,132	\$ 224,925	\$ 441,257	\$ 4,521	\$ 23,607	\$ 742,441
2011	\$ 1,566	\$ 181,431	\$ 370,147	\$ -	\$ 20,237	\$ 573,381
2012	\$ 134,195	\$ 215,629	\$ 384,256	\$ -	\$ 16,570	\$ 750,650
2013	\$ -	\$ 141,953	\$ 247,147	\$ -	\$ 3,706	\$ 392,806
TOTALS	\$ 261,877	\$ 826,018	\$ 1,615,394	\$ 166,035	\$ 120,171	\$ 2,989,494

When taxes become delinquent, DRT's AS400 automatically calculates the 5% penalty and 0.01% interest on the taxpayer's account. The 5% penalty is assessed every 30 days on the taxes due amount, while the 0.01% interest is compounded daily on the total balance due. According to the DRT Tax Accounting Technician responsible for GRT (including HOT) receivables, invoices are printed daily for HOT delinquent accounts and then forwarded to DRT's Collection Branch.

The invoice is sent as the first collection notice to the taxpayer, for which they have ten calendar days to respond. Depending on the taxpayer's response, TED takes the following steps:

- If the taxpayer does not agree with the balance of taxes due, further research on the tax assessment or other tax delinquencies may be required from the Collection Agent;
- If the taxpayer is unable to pay off their taxes due in its entirety, the taxpayer has the option to make arrangements with the Collection Branch to settle their debt through an Installment Agreement.
- If the taxpayer neglects to, or refuses to, pay their overdue taxes, the Collection Branch may issue a lien or levy against the taxpayer's real or personal property. A lien is a claim used as security for the tax debt, while a levy is the actual seizure of property to satisfy the tax debt.

As the GovGuam agency responsible for the enforcement of Guam tax laws and the collection of revenue, DRT has certain legal powers to ensure taxpayers comply with tax law. The TED Administrator explained that TED's Collection Branch Revenue Officers "issue levies constantly", and while DRT is capable of conducting asset seizures, it has not conducted property seizures since the 1990s.¹³

In addition, DRT has the power to deny the issuance or renewal of business licenses without clearance from the DRT Director. Title 11 GCA § 70132 states that no person may obtain or renew

¹³ We believe that the DRT TED Administrator meant liens instead of levies. The Internal Revenue Service defines a levy as a legal seizure of property to satisfy a tax debt, while a lien is a claim used as security for the tax debt.

a business license without clearance that all income, BPT, and withholding tax returns (which are due) have been filed, and that all taxes due thereon have been paid; unless, DRT approved an extension (that has not expired) for the filing of tax returns or payment arrangements (that are current) have been made with DRT. DRT has not denied a HOT taxpayer's business license application due to a lack of clearance on tax filings and tax payments.

Inconsistent and Uncomparable Number of Hotels Reported

We found that while DRT maintains a listing of hotels subject to HOT, the redacted data provided by DRT's TED and TSD did not match. Since TSD's data was redacted, we counted the unique code names (e.g., Hotel 43 or Hotel CCCC) provided in the HOT filings data, which may have represented either taxpayers or hotels.

We attempted to compare TSD's inventory to those of DRT TED, GVB, Bureau of Statistics and Plans (BSP), and Guam Hotel and Restaurant Association (GHRA), but found that the listings were inconsistent and not comparable due mainly to the reports' timing and purpose. See Table 3.

Table 3: Inventory of Hotels¹⁴

	2008	2009	2010	2011	2012	2013
TSD	36	36	35	34	36	38
TED	n/a	34	34	39	41	42
GVB	n/a	n/a	n/a	n/a	n/a	44
BSP	35	34	35	35	35	n/a
GHRA	25	25	23	23	23	24

Based on GVB's listing, 44 hotels were likely subject to HOT as of December 2013, or six more than TSD's inventory for 2013. Meanwhile, the latest BSP listing was as of 2012, wherein it lists 35 establishments compared to the 36 establishments in TSD's 2012 data. Because GHRA's listing included only its members' data, it was deemed not comparable with TSD's count.

According to the TED Administrator, TSD's list may have a higher number of taxpayers than those recognized by GVB, BSP, and GHRA because TSD's listing "includes smaller entities that may no longer be active or are 'bed and breakfast' operations, TLAs 'temporary lodging accommodations', or consolidated entities due to sale/purchase."

However, we also found the listings between DRT's TSD and TED were not comparable. According to the list provided by DRT TED, for the business license term ending June 30, 2013, there were 37 taxpayers licensed to operate 42 hotels subject to HOT. TED's list was compiled based on the licenses issued for the "service rental" business category for the business license terms ending June 30, 2009 to 2014. Again, because TSD's data was redacted, we could not verify which of the hotels from TED's listing was not included in TSD's inventory.

\$2.2M HOT Exemptions Are Not Verifiable

Provided that the entities had obtained exempt status under provisions of the BPT law, HOT shall not apply to the proceeds from entities organized and operated exclusively for the benefit and

¹⁴ According to a Research and Statistics Analyst from GVB, GVB does not keep a hotel inventory from prior years.

promotion of the community and social welfare, such as religious, charitable, or educational purposes¹⁵. Based on DRT's database, between CY 2008 and CY 2013, eight taxpayers claimed a total of \$2.2M in HOT exemptions. The cumulative amounts claimed ranged from \$21 by Hotel L to \$1.1M by Hotel 9. The larger amount of exemptions claimed by Hotel 9 were during CY 2009 and CY 2010. Refer to Table 4 for details.

Table 4: TSD's HOT Exemptions Filed (CY 2008 to CY 2013)

Taxpayer	2008	2009	2010	2011	2012	2013	Grand Total
Hotel 9	\$ 71,366	\$ 318,491	\$ 732,834	\$ -	\$ -	\$ -	\$ 1,122,691
Hotel 14	\$ 89	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 89
Hotel 35	\$ 217,897	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 217,897
Hotel 36	\$ 503,439	\$ 33,687	\$ 93,739	\$ -	\$ -	\$ -	\$ 630,866
Hotel 38	\$ -	\$ -	\$ 98,049	\$ 162	\$ -	\$ 20,624	\$ 118,835
Hotel HH	\$ 88,401	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 88,401
Hotel HHHH	\$ 7,525	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,525
Hotel L	\$ -	\$ 21	\$ -	\$ -	\$ -	\$ -	\$ 21
Total	\$ 888,717	\$ 352,199	\$ 924,623	\$ 162	\$ -	\$ 20,624	\$ 2,186,325

The decline of exemptions filed beyond 2010 may have been due to the passage of P.L. 30-143 in May 2010. The public law repealed the exemption related to transactions involving a sale for any activity or function engaged in by any government. For example, if a hotel provided temporary lodging to active duty military personnel, then the active, military personnel would be exempted from paying the HOT and, as such, the hotel taxpayer would be exempted from remitting HOT from that sale. Again, due to restricted access to HOT data, the audit team could not verify whether the exemptions claimed by these taxpayers were in accordance with law.

During our exit meeting with DRT management in November 2014, DRT emphasized that the only way to verify the exemptions claimed by the taxpayers is for DRT to conduct tax audits on the specific hotels. DRT subsequently provided redacted tax returns for the hotels claiming exemptions. Based on our review, we found several anomalies, including:

- Hotel 9's tax returns for CY 2008 to CY 2010 indicated identical exemption amounts for line 3 (GRT Service) and line 19 (HOT) totaling \$1.2M. This was more than the \$1.1M total exemption shown in Table 4 above because DRT provided a tax return for February 2009, which was not recorded in TSD's database. In contrast, the other taxpayers that claimed exemptions on HOT generally did not claim any exemptions on line 3 (GRT Service).

¹⁵ 11 GCA §30106(d)

- In 13 exemption schedules for Hotel 9, the taxpayer provided a reason for the exemptions claimed for line 3 only, but not for line 19.
- In CY 2010, Hotel 36 claimed exemptions on HOT for “BR20 RENTAL” for three months totaling \$93,739. There were amended returns filed for July and August 2010, but the amended amounts were not reflected in TSD’s database. Although the exemptions were excluded in the amended returns, the amended gross amounts were identical to the taxable amounts found in the initial returns.
- Similarly, although Hotel 38’s May 2010 amended tax return and amended exemption schedule indicated a decrease in HOT exemption from the initial \$98,049 to the amended \$78,288, the amended amounts were not reflected in TSD’s database.

Figure 1. Hotel 9’s September 2010 redacted tax return showing identical exemptions for lines 3 and 19.

DEPARTMENT OF REVENUE AND TAXATION Form GRT-1
 GOVERNMENT OF GUAM
 FORM GRT-1 HOTEL/MOTEL RECEIPTS AND OCCUPANCY TAX RETURN

MONTH / YEAR ENDING: 09 2010
 TAXPAYER IDENTIFICATION NUMBER: [REDACTED]
 TAXPAYER TYPE: [REDACTED]
 TAXPAYER STATUS: [REDACTED]

1. GROSS RECEIPTS TAX (PART 1) GROSS RECEIPTS TAX @ 4% (G.94) (Amount Schedule GRT-1)

1. HOTELS/MOTEL	0	0	0
2. OTHER	[REDACTED]	0	[REDACTED]
3. TOTAL	3 8 1 8 6 7 1 1	2 2 1 5 8 0 0 0	1 6 0 1 8 7 1 1

14. STATE OF GRT TAXABLE AMOUNT - Enter the amount from line 1 of the Taxpayer's return. [REDACTED]

PART 2. OCCUPANCY TAX @ 10% (G.95)

1. HOTEL/MOTEL	3 7 0 0 4 2 8 3	2 2 1 5 8 0 0 0	1 4 8 3 8 2 8 3
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19. STATE OF OCCUPANCY TAXABLE AMOUNT - Enter the amount from line 1 of the Taxpayer's return. [REDACTED]

Under the penalties of perjury, I declare that I have prepared this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. It is prepared by a person other than taxpayer. The declaration is based on all information of which I have any knowledge.

DATE: 10/3/10

- The only HOT exemption claimed by Hotel HHHH was for 100% of the gross amount filed for HOT (\$7,525). However, the basis for exemption is unknown because the exemption schedule was not included.
- There were some instances in which the exemptions schedules were not provided with the tax returns. Acting TSD Administrator explained that the redacted tax returns were retrieved and printed directly from their system. Acting TSD Administrator could only assume that the missing exemption schedules were due to the way DRT’s Optical Image Scanner processed the tax returns. In addition, had DRT retrieved the hard copies from storage, it would have taken more time.

Inaccurate Assessment at 10% Rate

The HOT tax rate is 11% of the rental price charged or paid per occupancy per day.¹⁶ Prior to June 2014, the HOT section on Form GRT-1 had line 19 “hotel/motel” assessed at an 11% tax rate and line 20 “others” assessed at a 10% tax rate, which has not applied since March 31, 1995 per HOT

¹⁶ 11 GCA §30101

legislation. However, DRT failed to update its Form GRT (April 2004 version) and Form GRT-1 (November 2008 version) to reflect line 20 at the current 11% tax rate. Refer to Appendices 7 and 8 for details.

Between CY 2008 and CY 2013, 10 taxpayers had a cumulative amount of \$2M in HOT taxable income on line 20 for which the applied obsolete 10% tax rate derived a total of \$198K in HOT taxes due. Based on our inquiry, DRT indicated that at least one taxpayer should have been assessed at the 11% HOT tax rate and the others at the 4% GRT tax rate.

The inaccurate assessment of the 10% obsolete tax rate resulted in over- and understatements in both HOT and GRT. For the taxpayers that should have been assessed the 4% GRT tax rate, this was a \$4K understatement in GRT and a \$7K overstatement in HOT. For the taxpayers that should have been assessed the 11% HOT tax rate, this was a \$16K understatement in HOT. As a result, HOT was cumulatively understated by \$9K from CY 2008 to CY 2013. Refer to Table 5 for details.

Table 5: TSD's HOT Filed under Line 20 (CY 2008 to CY 2013)

CY	Taxpayer	Gross [A]	Exemption [B]	Net Gross [C]	Tax Due [D]	What Should Have Been Applied [E]	What Should Have Been Assessed (C x E) [F]	Variance (D - F) [G]
2008	Hotel GG	\$ 21,500	\$ -	\$ 21,500	\$ 2,150	11%	\$ 2,365	\$ (215)
2009	Hotel 38	\$ 1,819,569	\$ -	\$ 1,819,569	\$ 181,957	11%	\$ 200,153	\$ (18,196)
	Hotel J	\$ 1,684	\$ -	\$ 1,684	\$ 168	4%	\$ 67	\$ 101
	Hotel K	\$ 800	\$ 800	\$ -	\$ -	4%	\$ -	\$ -
	Hotel L	\$ -	\$ -	\$ -	\$ -	0%	\$ -	\$ -
	Hotel Q	\$ 6,000	\$ -	\$ 6,000	\$ 600	4%	\$ 240	\$ 360
2010	Hotel 24	\$ 77,457	\$ -	\$ 77,457	\$ 7,746	4%	\$ 3,098	\$ 4,647
	Hotel BB	\$ 38	\$ -	\$ 38	\$ 4	4%	\$ 2	\$ 2
2011	Hotel 24	\$ 23,768	\$ -	\$ 23,768	\$ 2,377	4%	\$ 951	\$ 1,426
2012	Hotel 17	\$ 14,991	\$ -	\$ 14,991	\$ 1,499	0%	\$ -	\$ 1,499
2013	Hotel 17	\$ 12,030	\$ -	\$ 12,030	\$ 1,203	0%	\$ -	\$ 1,203
	Hotel 31	\$ 50	\$ -	\$ 50	\$ 5	4%	\$ 2	\$ 3
Grand Totals		\$ 1,977,886	\$ 800	\$ 1,977,085	\$ 197,709		\$ 206,877	\$ (9,169)

Note: The highlighted rows indicate the clerical or system errors of DRT.

Upon our inquiry, the TSD Administrator realized that the line 20 amounts reported between CY 2008 and CY 2013 were due either to the taxpayer's reporting error or DRT's clerical error. Taxpayers mistakenly reported on line 20 instead of line 13 "others" under GRT. DRT mistakenly recorded the line 20 amounts in the wrong account or should have recorded the amount in line 19 under HOT.

The line 20 errors may have been corrected sooner had DRT monitored taxpayer filings. The audit team suggested for DRT to update Form GRT-1 to remove the cause of confusion with line 20. Based on our suggestion, as of June 2014, Form GRT-1 was updated to have line 20 calculated at the current 11% HOT rate. Although this addressed the risk of assessing HOT at the obsolete rate of 10%, it does not address the risk of mistaking HOT's "others" (line 20) for GRT's "others" (line 13). As a line item for GRT, line 13 is assessed at the GRT rate of 4% and not 11%.

Systems Not Fully Interfaced

Since 2011, DOA's AS400 system has not interfaced with DRT's system. DRT has information on HOT taxes due, payments, and collections, while DOA has information on HOT payments through TOG. In addition, DRT's website does not have a feature for accepting tax payments online. Taxpayers who file their GRT forms online would still need to make payments at TOG, adding to the inefficient processing of tax returns, which continues to be manually inputted as of report issuance.

TOG's point-of-sale (POS) system¹⁷ was integrated and interfaced with DRT's AS400 system, prior to its expiration in November 2011. In response to the expired interface, DOA developed a bridge system that allowed DOA to view lump sum tax payments received by TOG. DOA had temporary access to tax returns in order to record the tax collections in the corresponding revenue accounts in DOA's AS400.

According to DRT, when DRT and DOA's management met in May 2013, the parties agreed that DOA would no longer be allowed to view tax returns in order to protect taxpayer confidentiality. Since then, DOA has to wait until DRT provides the breakdown of the GRT collections (including HOT). DRT's TSD manually inputs GRT collections by categories into DRT's AS400 before providing the figures to DOA. The restrictions placed on DOA's access to tax data, coupled with the lack of system interface between DRT, DOA, and TOG (as described in OPA Report No. 13-01) contributed to major delays during the TAF and GovGuam financial audits of FY 2012 and FY 2013.

Despite having regularly received redacted data from DRT, reconciliation of HOT revenues was problematic for DTT during the FY 2013 TAF financial audit. When DRT implemented a revised POS tax system in October 2013, it interfaced incorrectly with TOG's Payment Records System. This resulted in a \$64M GRT suspense account to temporarily house tax payments received; thus, resulting in additional work for DOA. As part of the reconciliation, we noted a \$1.1 billion adjustment in this suspense account. The \$64M suspense account impacts the specific analysis of GRT collections by source. According to DOA's Deputy Financial Manager, as of June 2014, DOA was able to bring down the FY 2013 GRT suspense account to \$270K.

According to a DRT Tax Accounting Technician III, the tax payments received by TOG are now interfaced with DRT's system on a daily basis, with the consolidation of tax data occurring only at night. The following day, all HOT payments can be viewed by TSD's Accounting staff. Still, with DOA's continued lack of interface with DRT's system, DOA attempts to manually extract HOT revenue amounts from the lump sum payments inputted by TOG.

We reiterate DTT's recommendation from the FY 2013 GovGuam Single Audit Reports that collections from the POS system be interfaced with TOG's Payment Records System, DRT's system, and DOA's system to minimize reconciliation complications. DRT and DOA should be able to view both information, real time, on their respective accounting systems without having to wait on each other for the information. Misclassifications can occur among revenue accounts based

¹⁷ POS system refers to the application software utilized by DOA and TOG for accounting and the receipt of HOT payments.

on the nature of the taxes paid, ultimately resulting in an understatement or overstatement of TAF tax revenues.

GRT E-Filing Payment Limitations

Within DRT, the BPT branch has only six employees processing monthly GRT returns filed. The employees continue to manually post tax returns into DRT's AS400. As previously mentioned, DOA conducts its own manual processing by attempting to distinguish HOT revenues from lump sum payments. These manual processes are labor-intensive and are susceptible to input errors, but can be reduced if taxpayers file GRT forms online (e-file).

While e-filing is currently available for taxpayers to file their tax returns, DRT's website currently does not offer the option to make payments online, which then forces taxpayers to visit TOG to make tax payments. Prior to FY 2012, taxpayers had the option to pay taxes online, but there were high bank charges associated with credit card transactions. In FY 2012, DOA shifted the cost of the convenience of credit card payments from the government to the taxpayers. This additional cost may be a disincentive for taxpayers to pay by credit card.

The DRT Director noted that approximately 1/3 of business taxpayers file online. Because e-filing does not require DRT staff to manually input tax return data, DRT encourages taxpayers to take advantage of this option.

In OPA Report No. 13-01, the OPA recommended that DRT establish and meet a specific target date for the transition to fully implement e-filing of GRT, inclusive of online payments. Should the associated bank charges decrease and online payments be made available, the number of taxpayers' e-filing may increase. An increase in e-filing could reduce BPT's manual processing of tax returns.

Conclusion and Recommendation

DRT management cited Title 11 of the Guam Code Annotated §26120 as its reason for denying OPA's access to HOT data. Therefore, we could not verify the completeness, reliability, and accuracy of DRT's redacted HOT data. As such, we have no assurance that all HOT filings, payments, and collections were made in accordance to law. Because the TAF annual financial audits are conducted by contracted, independent auditors that conducts its audits in accordance with AICPA Auditing Standards and GAGAS, OPA is placing general reliance on DTT's annual TAF financial audits.

Based on discussions with DRT and members of the 32nd Guam Legislature, we recommend that the Legislature clarify the law to allow OPA full access to taxpayer returns and other information in the conduct of audits and reviews of local Guam taxes, consistent with the duties outline by 1 GCA § 1909.

Management Response and OPA Reply

A draft report was transmitted to the management of both DRT and DOA in October 2014 for their official response. We met with DRT and DOA management in November 2014 to discuss the audit findings and recommendation. During our exit meeting and in DRT's management response, DRT did not concur with majority of the audit findings and emphasized that the law (11 GCA § 26120) and their "due diligence to protect confidential taxpayer information" are what prevented them from allowing OPA access to un-redacted HOT data. See Appendix 9 for DRT's official response.

DRT also stated they have not ever allowed any auditors or the Office of the Attorney General's Investigators access to tax returns, unless subpoenaed.

Although provided an opportunity to respond, DOA did not submit an official response.

We also met with and provided draft reports to the Vice Speaker and Oversight Chairperson in November 2014. During our meetings, the Senators acknowledged that OPA should have the authority to have full access to audit and review Guam taxes and concurred with our recommendation to clarify the law.

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

OFFICE OF PUBLIC ACCOUNTABILITY



Doris Flores Brooks, CPA, CGFM
Public Auditor

Classification of Monetary Amounts

Finding No.	Finding Description	Questioned Costs ¹⁸	Other Financial Impact ¹⁹
1	Audit Scope Limitation Due to Restricted Access to HOT Data	\$ -	\$ -
2	Accuracy of \$3M in uncollected HOT receivables could not be verified.	\$ -	\$ 3,100,032
3	Inconsistent and Uncomparable Data on the Number of Hotels Reported	\$ -	\$ -
4	\$2.2M HOT exemptions claimed by eight taxpayers within CY 2008 and CY 2013 are not verifiable.	\$ -	\$ 2,186,325
5	Inaccurate Assessment at Obsolete 10% Rate or 4% GRT Rate	\$ -	\$ 9,169
6	Systems Not Fully Interfaced	\$ -	\$ -
Totals		\$ -	\$ 5,295,526

¹⁸ Questioned Costs are the costs questioned because of:

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

¹⁹ Other Financial Impact is the amount of lost revenue opportunities and unrealized revenue to the government.

Our audit objective was to determine whether DRT complied with applicable laws, rules, and regulations in the administration of HOT filings, payments, and collections. The scope of this engagement was from January 1, 2008 to December 31, 2013 (CY 2008 to CY 2013).

Scope Limitation

During the Entrance Conference with DRT in February 2014, DRT management was open to OPA receiving HOT data. Five days later, during the second meeting with DRT, DRT officials explained that DRT's Disclosure Officer must review and approve HOT data prior to its release. The audit team was also required to sign DRT's Oath acknowledging that the team will abide by the confidential and nondisclosure requirements of the Internal Revenue Code and 11 GCA §26120. These steps were taken in order to prevent public disclosure of taxpayer identities.

In March 2014, DRT's TSD provided OPA redacted data for HOT filings in Microsoft Excel spreadsheets from FY and CY 2008 to 2013. The data showed amounts for gross sales, exemptions taken, net gross, and taxes reported on GRT returns by taxpayers whose identities were replaced with inconsistent and randomly assigned "hotel" code names (e.g. Hotel 1 or Hotel JJJJ). DRT's TED also provided OPA a redacted summary of HOT accounts receivable. The data showed amounts of unpaid HOT taxes due, penalties, and interests of taxpayers identified by "taxpayer" code names.

The redacted information made it difficult, if not impractical, to perform data analyses. TSD and TED's data: (1) did not specify whether the code names represented the hotel or other lodging facility (establishment) or taxpayer; (2) did not specify whether the reported amounts were based on the establishment or taxpayer; and (3) used code names that could not be matched between taxpayers and establishment they owned.

DRT did not provide HOT payments data to OPA because it purportedly required significant amount of time and effort for DRT to extract the information. According to DRT's Disclosure Officer, organizing the data to reflect the payments in their true, separate sequences would be difficult. A taxpayer with multiple properties can make payment for three different hotels in a month.

We requested HOT payments information from DOA, since it compiled the information for the TAF financial audit report. Because of DRT's restricted access, DOA only provided lump sum, monthly summaries of HOT revenues from FY and CY 2009 to 2013, itemized by collections through direct bank deposits, TOG cashiers, and mailed in check payments.

Our alternative method was to request HOT data from DTT. To avoid duplication of efforts, GAS allows auditors to use other auditor's completed audit work if it is related to the objectives of the current audit and may be facilitated by contractual arrangements that provide for full and timely access to appropriate audit documentation [GAGAS paragraphs 6.41 and 6.85].

However, DTT stated that before they could release information to OPA, we must first obtain DRT's approval because the HOT data contained confidential taxpayer information. In addition, we learned that DTT had received redacted HOT data for all the years in which they audited any tax-related information from DRT, because DTT was not permitted to obtain any data on taxpayer identifications [company name, DBA (doing business as), and GRT (gross receipts tax) number]. Instead, DTT performed alternative procedures to confirm HOT tax payments.

In April 2014, we met with DRT, DOA, and DTT to discuss the possibility of permitting OPA full access to HOT data. DRT made it clear to all parties that only DRT-approved redacted data would be provided to OPA. Before any of the parties could release HOT-related data to OPA, DRT's Disclosure Officer must ensure that the data did not reveal any taxpayer's identity.

Subsequently, DTT provided redacted, hard copies of their TAF audit work papers from FY 2009 to FY 2013. The work papers used the same "hotel" code name as DRT TSD and showed HOT revenues collected for each month. The work papers indicated which hotels DTT verified against the monthly GRT tax return, written confirmations provided by hotels, and journal vouchers initiated by DRT. Additionally, the work papers showed the amount of audit adjustments made and, for FY 2013, amounts filed by the hotel but were unpaid.

We requested DRT's permission to review the redacted filings and payments specifically for two more prominent hotels. DRT's TED Administrator responded that DRT will not honor our request because it is specific to two hotels. DRT had not changed its position regarding the disclosure of any taxpayer information to OPA.

Due to timing of when payments are made and the payment amounts, we were unable to match the taxes due noted in TSD's HOT filings data with the payments information from DOA and the TAF revenues in the audited financials. As stated in the FY 2013 TAF Financial Audit Highlights, there are certain taxpayers who filed but did not pay at the time of filing. On a rolling average, this approximates to \$600K. Although we ourselves could not verify the amount of HOT tax payments, since we are aware that DTT complies with the AICPA Auditing Standards and GAGAS, we place general reliance of their work related to the annual TAF audit.

Methodology

The methodology included, but was not limited to:

1. Obtained and summarized applicable laws, regulations, policies, and procedures, relative to the administration, payment, and collection of HOT;
2. Obtained prior audit reports and hotline tips or citizen concerns to identify previous internal control weaknesses relative to HOT, such as the lack of system interface between DRT, TOG, and DOA;
3. Interviewed management and/or key personnel and performed a walkthrough to understand DRT's administration of HOT filings and collections, TOG's acceptance of HOT payments, DOA's recording of HOT payments, and DTT's auditing of HOT

- revenues;
4. Obtained copies of Form GRT (April 2004) and Form GRT-1 (November 2008);
 5. Obtained, reviewed, and analyzed HOT filings data (CY & FY 2008 to 2013) from DRT TSD to:
 - a. Calculate total amount of taxes due for each year from CY 2008 to CY 2013,
 - b. Identify any trends, such as the amount and frequency of exemptions taken,
 - c. Identify any abnormalities, such as the amounts reported under line 20;
 6. Obtained and attempted to compare total TAF HOT Revenue Summary (CY & FY 2009 to 2013) from DOA against DRT's total HOT taxes due from CY 2008 to CY 2013;
 7. Obtained and attempted to compare and trace HOT revenues data and hotel confirmations from DTT against DOA's total HOT payments and DRT's total HOT taxes due data per taxpayer per year from CY 2008 to CY 2013;
 8. Obtained and reviewed HOT Summary of Accounts Receivable data from DRT TED to:
 - a. Identify trends, such as number of taxpayers and amount of unpaid taxes due, and
 - b. Compare the HOT Summaries of Accounts Receivable on August 2013 and March and May 2014 against each other to determine DRT TED's collection efforts;
 9. Obtained and compared the following hotel data:
 - a. DRT TSD HOT Filings Summary (CY 2008 to 2013),
 - b. Listing of hotels with business licenses set to expire June 30, 2014 from DRT TSD,
 - c. Listing of hotels with business license numbers from June 30, 2009 to 2014 from DRT TED,
 - d. GVB Hotel Room Inventory as of December 2013, and
 - e. BSP 2012 Guam Statistical Yearbook's (Table 21-11) Hotel Occupancy Taxes Collected from 2008 to 2012 and (Table 21-12) Visitors Accommodations Inventory for 2012;
 10. Obtained print screens of DOA's AS400 HOT transactions and GRT suspense account;
 11. Requested for and was denied permission from DRT to view FY 2013 HOT filings, payments, and collections of two randomly selected hotels; and
 12. Obtained written confirmations of the two randomly selected hotels' HOT information:
 - a. When they filed their monthly HOT returns (month filed),
 - b. How much they reported they owe (amount filed),
 - c. When they paid the amount (date paid), and
 - d. How much they paid (amount paid).

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 objectives.

TAF Reports on Internal Control and Compliance (FY 2008 to FY 2013)

From FY 2008 to FY 2013, independent auditors DTT found that TAF's financial statements were presented fairly, in all material respects. Nor did DTT identify any material weaknesses or significant deficiencies with the internal control over TAF financial reporting during FY 2008 to FY 2012. However, in FY 2013, DTT identified a material weakness for the inability to timely reconcile tax revenues due to the lack of an adequate POS system in DRT. This resulted in an understatement of TAF revenue by \$1.5M. DRT was also unable to locate 28 tax returns due to its inadequate document retrieval system, with no scanning system to organize large amount of tax data and its manual processing of tax returns. Additionally, certain taxpayers do not pay their taxes due at the time of their filings. On a rolling average, this approximated \$600K.

GovGuam Financial Audit Reports and Single Audit Reports (FY 2011 to FY 2013)

In FY 2011 and FY 2012, DTT cited a material weakness with DRT's inability to scan tax returns for timely computations of the income tax refund liability. DRT obtained a scanner, which did not function as designed and caused DRT to formulate the tax refund liability based on manually processed tax returns.

Also in FY 2012, DTT cited a material weakness with the lack of interface between the TOG Payment Records System and DRT and DOA AS400. From December 2011 to March 2012, all cash receipts were entered into a non-POS system which did not interface with TOG Payment Records System or DRT's AS400. For this reason, a delay occurred in recording GRT collections to corresponding revenue accounts. As such, a GRT suspense account was created by DOA with a final unreconciled balance of \$5M, as of FY 2012 end. This was due to the termination of the previous POS and the installation of the new POS which delayed the posting and application of collections to the corresponding DRT receivable sub-ledgers and to the correct revenue sub-accounts. According to DTT, delays in collection efforts, misclassifications, and financial statement errors can result from the condition.

In FY 2013, the absence of an adequate POS system and the lack of interface between TOG's Payment Records System, DRT's AS400 and DOA's AS400 continued to be a material weakness. With still no adequate POS system in place during FY 2013, monthly GRTs, use tax, HOT, liquid fuel tax, automotive surcharges tax, tobacco tax, and alcoholic beverages tax were not completely reconciled to allow for timely distribution of revenue to the correct general ledger accounts. This resulted in an overstatement of approximately \$3.7M in GRT revenues, which resulted in a proposed audit adjustment. Furthermore, due to the termination of the interface between the TOG Payment Records System and DRT's AS400, a delay occurred in recording GRT collections to the corresponding revenue accounts (for monthly GRTs, use tax, HOT, liquid fuel tax, automotive surcharges tax, tobacco tax, and alcoholic beverages tax), which resulted in a suspense account being created in the General Fund.

As suggested by DTT, the following recommendations would assist in the compliance with HOT filings, payments, and collections: (1) formalize the manner in which the tax data from DRT's POS tax system will interface with DOA, and (2) interface collections from the POS system and Non-POS system with TOG's Payment System Records, the DRT system, and the DOA AS0400 to minimize reconciliation complications.

OPA Performance Audit Report Nos. 13-01 and 14-02

OPA Report No. 13-01, DRT GRT Exemptions, reported no assurance that all GRT revenues were being collected and reported completely and accurately. From 2011 to 2012, DRT was unable to utilize its optical image scanner and system interface for processing GRT forms; did not have contingency procedures for handling system failure; and reverted to manual processing in the interim. Compensating controls with the recording of GRT payments at DOA and TOG were rendered ineffective due to incomplete data. Only cash payments made by taxpayers at TOG were recorded in TOG's POS and DOA's AS400 systems. DOA and DRT's AS400 systems were separate and independent rather than integrated or interfaced systems. The lack of interface between their systems was due to the expiration of the POS agreement between DOA, DRT, and the vendor.

OPA Report No. 14-02, GovGuam Use Tax, reported 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. The Customs and Quarantine Agency, DOA, and DRT were unable to ascertain the total amount of Use Tax assessed and collected between FY 2011 and FY 2013. Data from the three agencies were problematic, incomplete, and did not reconcile.

P.L. 32-068: Chapter X Section 14. Forensic Audit of Hotel Occupancy Tax

The sum of Fifty Thousand Dollars (\$50,000) is appropriated from the [TAF] to the [DOA] to procure a comprehensive audit of HOT filings, return payments, and collections. The audit must be conducted by a Certified Forensic Financial Analyst and the audit period shall be for no less than the five (5) tax years prior to the enactment of this Act. The Public Auditor shall administer said funds and shall assist in conducting the audit to the greatest extent possible. Notwithstanding the general provisions of § 30107.1, Chapter 30, Title 11 GCA and this Act, this appropriation shall continue to be available until expended.

I GCA Chapter 19: Public Auditor

§ 1909.1(d). Confidentiality of Investigations. Disclosure of a privileged communication or privileged information in violation of this Section shall be a felony of the third degree.

§ 1917. Program Evaluation and Justification Review. Every government agency (GovGuam line agencies, autonomous or semi-autonomous, boards, bureaus and commissions) shall be subject to a program evaluation and justification review by the Public Auditor. Each agency shall offer its complete cooperation to the Public Auditor so that such review may be accomplished. Every department head, agency head or head of a program in the government of Guam must maintain records in a manner consistent with the easy evaluation of program results and compliance with performance standards established by I Liheslaturan Guåhan. Every department, agency or program head in the government of Guam shall comply with recommendations made to them by the Public Auditor with respect to proper record keeping to facilitate the purposes of this Chapter.

11 GCA Chapter 30: Monthly Excise Tax on Occupancy of Hotel and Similar Lodging House Facilities

§ 30101. Imposition. An excise tax is hereby levied and imposed which shall be assessed and collected monthly, against transient occupants of [room(s)] in a hotel, lodging house, or similar facility located in Guam according to the following schedule:

- (1) From September 1, 1993 through March 31, 1995, the rate shall be ten percent (10%) of the rental price charged or paid per occupancy per day;
- (2) From April 1, 1995 and thereafter the rate shall be eleven percent (11%) of the rental price charged or paid per occupancy per day.

If the [room(s)] are rented more than once within a twenty-four (24) hour period, each time of occupancy shall be subject to the tax for such accommodations.

This tax applies and is collectible when the sale is made, regardless of the time when the price is paid or delivered. It shall be paid by the consumer to the operator or owner of the hotel or rooming house facility.

§ 30103. Payment of Tax; Penalties. The tax levied by § 30101 shall be paid to the Commissioner with the monthly return which shall be filed on or before the 20th day of the month following the

month during which such taxable incidents occurred. The general provisions of 11 GCA, Chapter 26, Article 1 are applicable with respect to penalties for failure to file timely returns, informal hearings, adjustments, review, stay of collection, suits for refund, perfecting appeals, decisions, interest, perjury, examination of books and witnesses, and inspection of tax returns and information and other administrative matters referred to therein.

§ 30106(d). Exclusions and Exemptions. The taxes imposed by this Chapter shall not apply to the proceeds of any transaction entered into by any of the following persons: corporations, associations, or societies organized and operated exclusively for religious, charitable, scientific or educational purposes, hospitals, infirmaries and sanitariums, business leagues, chambers of commerce, boards of trade, civic leagues, public schools, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare; provided, such persons have applied for and obtained exempt status under the provisions of 11 GCA, Chapter 26.

§ 30107. Creation of Tourist Attraction Fund. (a) Separate and apart from other funds of the GovGuam, a fund known as TAF. TAF shall not be commingled with the General Fund and shall be kept in a separate bank account. All proceeds from [hotel occupancy] taxes collected shall be deposited in the TAF and shall be expended exclusively for purposes authorized in § 9107 and § 9113 of 12 GCA.

TAF may also be used to fund the following projects:

- (1) Creation, improvement or beautification of roads, avenues, boulevards, parkways, intersections, bicycle paths, motor bike trails, footpaths, biking trails, stairways, rivers, streams, estuaries, lagoons, or other means of access and transportation;
- (2) Development and restoration of points of natural beauty or historic social or cultural significance, including means of access, parking, safety devices, concessions, restrooms, view points and information pavilions;
- (3) Construction of monuments, memorials, statues, fountains, arches, and similar projects;
- (4) Construction of buildings to be used for public purposes including zoos and aquariums, museums, athletic facilities, cultural centers, and performing arts complexes;
- (5) Landscaping, provision of decorations or the enhancement of beauty of any of the projects listed in this Section;
- (6) Accessory projects reasonably necessary to projects listed in this Section;
- (7) Projects and programs identified in the Tumon Bay Master Plan.

(b) All expenditures of the TAF shall be made exclusively by appropriation of the Legislature. The TAF shall not be used for any purposes other than those enumerated or reasonably inferred herein or for purposes other than those relating to Guam tourism.

11 GCA Chapter 26: Business Privilege Tax Law

§ 26111. Penalties. The following penalties are hereby levied and shall be assessed and collected by the Tax Commissioner:

Late payment. In case of failure to pay the amount shown as tax on any return required under this Chapter on or before the date prescribed for payment of such tax, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of five percent (5%) of the amount of such tax if the failure is not more than thirty (30) days, with the additional five percent (5%) for each additional thirty (30) days, or fraction thereof, not to exceed twenty-five percent (25%) in the aggregate. Provided, that the minimum penalty shall be the lesser of the amount of taxes due or Twenty-five Dollars (\$25.00).

§ 26120. Inspection of Tax Returns and Information: Prohibition. Tax returns and other information required to be filed or furnished by the taxpayer, or any other person, shall not be open for public inspection or divulged except when testifying in any judicial or administrative proceeding in which the government of Guam, or any of its officials in an official capacity, are a party, and in which the government of Guam has an interest in the result; except that any committee of the Legislature, duly created, authorized by resolution of the Legislature, may require that it be furnished any data contained in any tax return for use by such committee in executive session only.

§ 26205. Statute of Limitations for Collections. The statute of limitations for collections of unpaid taxes due on business privilege tax returns shall be ten years after the tax is assessed. For amendment, correction, adjustment, challenge, determination of correctness of the amount of taxes paid, or audit of income reported and the correctness of the amount of tax liability shown on the business privilege tax returns, the statute of limitations shall be three years after filing and payment of taxes due. There shall be no statute of limitations on unfiled business privilege tax returns or on the collection of taxes on revenues not shown or reported on Business Privilege Tax Returns.

11 GCA Chapter 70: General Provisions

§ 70132. Clearance Necessary that Taxes Due are Paid to Obtain Business License. No person may obtain or renew a business license without clearance from the Director of [DRT] that all income tax returns, [BPT] returns and withholding tax returns which are due from that person have been filed (or an extension has been approved or granted thereon by the Director of [DRT], which extension has not expired), and that all taxes due thereon have been paid or arrangements have been made with the Director for payment thereon and such arrangements are current.

P.L. 30-143: An Act to Repeal § 30106 (c) of Chapter 30, Title 11 of the Guam Code Annotated, Relative to Exemptions from Hotel Occupancy Tax.

Section 2. § 30106 (c) of Chapter 30, Title 11 of the Guam Code Annotated is hereby *repealed* in its entirety:

“§ 30106. Exclusions and Exemptions.

~~(e) The tax imposed by this Chapter shall not apply to any transaction involving a sale to the government of Guam, the government of the United States, the government of any Foreign~~

~~Sovereignty, or any agency or instrumentality of any of the foregoing governments in regard to any activity or function engaged in."~~

Section 3. Effective Date. This Act *shall* become effective upon enactment.

P.L. 22-144: An Act to Amend §30101 of 11 GCA on the Hotel Occupancy Tax [...]

Section 1. §30101 of 11 GCA is hereby amended to read: "§30101. Imposition. An excise tax is hereby levied and imposed which shall be assessed and collected monthly, against transient occupants of a room or rooms in a hotel, lodging house, or similar facility located in Guam according to the following schedule:

- (a) From September 1, 1993 through March 31, 1995, the rate shall be ten percent (10%) of the rental price charged or paid per occupancy per day;
- (b) From April 1, 1995 and thereafter the rate shall be eleven percent (11%) of the rental price charged or paid per occupancy per day.

If the room or rooms are rented more than once within a twenty-four (24) hour period, each time of occupancy shall be subject to the tax for such accommodations. This tax applies and is collectible when the sale is made, regardless of the time when the price is paid or delivered. It shall be paid by the consumer to the operator or owner of the hotel or rooming house facility."

P.L. 32-068 appropriated \$50,000 from TAF to procure a comprehensive audit of HOT filings, return payments, and collections. The law required the audit to be performed by a Certified Forensic Financial Analyst (CFFA) and the audit scope to be five (5) tax years or more prior to the law enactment.

In October 2013, the Public Auditor and Audit Supervisor met with the Vice Speaker to discuss the legislative intent and the requirements of the law. The Vice Speaker discussed the possibility of OPA conducting a compliance audit in lieu of the forensic audit.

In November 2013, the Public Auditor and Audit Supervisor met with DRT to discuss the possibility of a compliance audit on HOT. Based on the meeting, the DRT Director provided an official response in December 2013. The Director was concerned that a forensic audit implies the occurrence of fraud and inquired whether the audit is on TAF or taxpayers' HOT reporting, filing, and payments. See the response on pages 1 and 2 of Appendix 6.

In January 2014, the Public Auditor and Audit Supervisor met with the Vice Speaker to discuss the feasibility of the OPA conducting a compliance audit of HOT in lieu of the forensic audit described in law. Preliminary research was conducted and found that no CFFA was readily available on island. The Vice Speaker agreed to OPA conducting a compliance audit in lieu of procuring the services of a CFFA to conduct the forensic audit.



Dipårtamenton Kontribusion yan Adu'ána

DEPARTMENT OF

REVENUE AND TAXATION

GOVERNMENT OF GUAM

Gubetnamenton Guáhan

EDDIE BAZA CALVO, Governor, Mega'áshi
RAY TENORIO, Lt. Governor, Tílerse GuáhetradotJOHN P. CAMACHO, Director
Direktor
MARIE M. BENITO, Deputy Director
Segundo Direktor

December 13, 2013

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

From: Director

Re: Forensic Audit of Hotel Occupancy Tax

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
BY: R. Field
DATE: 12/16/13
TIME: 10:17 AM PM

Buenas yan Hafa Adai.

First and foremost, I would like to apologize for the delay in providing a response to our 11/5/13 meeting regarding P.L. 32-068, Chapter X, Section 14, Forensic Audit of Hotel Occupancy Tax (HOT). After our meeting with you and your staff and reviewing the law authorizing the above, the following are concerns that need to be addressed before proceeding:

1. Is the intent of the law to audit the accuracy of the HOT in the Tourist Attraction Fund or to audit the taxpayers' HOT reporting, filing and payments? This point needs clarification as it may contradict the Tax Commissioner's Authority to administer and enforce per Title 11, Chapter 30, §30102(d) which states that *Commissioner* shall mean and include the person who is performing the duties of Director of Revenue and Taxation for the government of Guam and who is charged with the administration and enforcement of the provisions of this Act. This law may also open the door to allow for the conduct of specific audits of taxpayers not conducted by the Department via specific legislation.
2. Also, what is the defined role of this Certified Forensic Financial Analyst (CFFA)?
3. If the intent of the forensic audit is for the CFFA to audit the taxpayers, disclosure of return information and the statute of limitations on assessment is an issue as the law states "that the audit period shall be for no less than the last five (5) tax years prior to the enactment of this Act." HOT is also reported on Business Privilege Tax Returns (3pgs) which would also disclose other income items and taxes paid.
4. Is the short or long term solution to appropriate \$50,000 for a Certified Forensic Financial Analyst to audit HOT or is it more feasible to give DRT the funds to hire a permanent Examiner to monitor HOT. This also implies that fraud may already be apparent.



Dipáttamenton Kontribusion yan Adu'ána

DEPARTMENT OF

REVENUE AND TAXATION

GOVERNMENT OF GUAM

Gubetnamenton Guåhan

EDDIE BAZA CALYO, Governor, Maga'láhi
RAY TENORIO, Lt. Governor, Tiferete Gubelnaol

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

5. The law was prompted by taxpayer information being disclosed to the Guam Legislature (which may be a disclosure violation) and needs to be followed with an investigation. Some of the information was false and should have never been publicized as delinquent.
6. DRT emphasizes that no disclosure violations occurred from DRT.
7. DRT has an obligation to safeguard all taxpayer returns and return information.

If you have any questions or concerns, please do not hesitate to contact me at (671) 635-1815.

Sincerely,


JOHN P. CAMACHO

DEPARTMENT OF
REVENUE AND TAXATION
GOVERNMENT OF GUAM

MONTHLY GROSS RECEIPTS, USE, OCCUPANCY, LIQUID FUEL, AUTOMOTIVE SURCHARGES, TOBACCO AND
ALCOHOLIC BEVERAGES TAX RETURN

FORM GRT	
NAME OF LICENSEE	MONTH ENDING <input type="checkbox"/> ORIGINAL RETURN <input type="checkbox"/> AMENDED RETURN
DOING BUSINESS AS	TYPE OF FIRM <input type="checkbox"/> SOLE PROP. <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> CORPORATION
ADDRESS	EIN/SSN ACCOUNT NO. METHOD OF REPORTING <input type="checkbox"/> CASH <input type="checkbox"/> ACCRUAL <input type="checkbox"/> OTHER TELEPHONE NO.

Election under 17 (PCA Section 2011(c)) - (VISIBLE GRT) - If the election is applicable, only the specific parties, dates, amounts, and if applicable, schedules

SCHEDULES	BUSINESS ACTIVITY OR KIND OF TAX	(A) GROSS RECEIPT VALUE OR QUANTITY	(B) EXEMPTION OR DEDUCTION	(C) TAXABLE AMOUNT VALUE OR QUANTITY	(D) TAX RATES	(E) TAX DUE
(1) GROSS RECEIPTS TAX	1. WHOLESALING				4%	
	2. RETAILING				4%	
	3. SERVICE				4%	
	4. RENTAL REAL PROP.				4%	
	5. RENTAL OTHERS				4%	
	6. PROFESSION				4%	
	7. COMMISSION				4%	
	8. INSURANCE PREMIUM				4%	
	9. CONTRACTING (LOCAL)				4%	
	10. CONTRACTING (US)				4%	
	11. INTEREST				4%	
	12. AMUSEMENT				4%	
	13. OTHERS				4%	
	14. GRT TOTAL					
(2) USE TAX	15. IMPORTATION				4%	
	16. LOCAL PURCHASES				4%	
	17. INVENTORY USED				4%	
	18. USE TAX TOTAL					
(3) OCCUPANCY	19. HOTEL/MOTEL				see item 9 on reverse side	11%
	20. OTHERS				see item 9 on reverse side	10%
	21. OCCUPANCY TOTAL					
(4) LIQUID FUEL TAX & AUTOMOTIVE SURCHARGES	22. DIESEL FUEL				\$0.10 @ gal.	
	23. SURCHARGE				\$0.04 @ gal.	
	24. GASOLINE				\$0.11 @ gal.	
	25. SURCHARGE				\$0.04 @ gal.	
	26. OTHERS				\$0.11 @ gal.	
	27. SURCHARGE				\$0.04 @ gal.	
	28. COMMERCIAL AVIATION				\$0.04 @ gal.	
29. L. F. T. & A. S. TOTAL						
(5) TOBACCO TAX	30. CIGARETTES				\$5.00 @ 100	
	31. CIGARS (Mini) (Eff. March 24, 2000)				\$0.20 @ Clear	
	32. CIGARS (Standard) (Eff. March 24, 2000)				\$0.22 @ Clear	
	33. CIGARS (Large) (Eff. March 24, 2000)				\$0.25 @ Clear	
	34. CIGARS (Other) (Eff. March 24, 2000)				\$0.22 @ Clear	
	35. CIGARS (Prior to March 24, 2000)				40% of Cost	
	36. OTHERS (Other Tobacco Products)				\$3.50 @ lb.	
37. TOBACCO TAX TOTAL						
(6) ALCOHOLIC BEVERAGES	38. DISTILLED SPIRIT				\$18.00 @ gal.	
	39. VINOUS BEVERAGES				\$4.95 @ gal.	
	40. MALTED FERMENTED				\$0.07 @ 12 oz.	
	41. ALCOHOLIC BEVERAGES TOTAL					

Under the penalties of perjury, I declare that I have examined this return, including accompanying schedule and statements, and to the best of my knowledge and belief it is true, correct and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

SIGNATURE (TAXPAYER OR AUTHORIZED AGENT)

42. TAX DUE - (Column (E), Lines 14, 18, 21, 29, 37 and 41)	
43. PENALTY	
44. INTEREST	
45. CREDIT OR ADJ.	
46. BALANCE TAX DUE	

DATE

SCHEDULE OF EXEMPTIONS AND DEDUCTIONS CLAIMED

(Column (B) of Page (1))

BASIS FOR EXEMPTION	AMOUNT	BASIS FOR EXEMPTION	AMOUNT

SCHEDULE OF DEDUCTIONS CLAIMED FOR CONTRACTORS (Exemptions allowed under Public Law No. 26-149)

NAME OF CONTRACTOR	CONTRACTOR LICENSE #	AMOUNT	NAME OF CONTRACTOR	CONTRACTOR LICENSE #	AMOUNT

IMPORTANT INFORMATION AND INSTRUCTIONS

- WHO MUST FILE AND WHEN.** (a) Monthly Returns for Alcoholic Beverage Tax, Liquid Fuel Tax, Automotive Surcharges and Tobacco Tax. Each taxpayer against whom a tax is levied by the provisions of Articles 3, 4, 5 and 6 of Chapter 26, Title 11, Guam Code Annotated shall make and file monthly returns of taxes with the Tax Commissioner on or before the Twentieth (20th) day following the close of the calendar month in which the taxes shall accrue, and in the form and in accordance with the rules and regulations prescribed by the Tax Commissioner. Except as may be specifically hereinafter provided, payment covering the full amount of tax liability as evidenced by the monthly return shall accompany such monthly return. (b) Monthly Returns for Gross Receipts Tax. Each taxpayer against whom a tax is levied under the provisions of Article 2 of Chapter 26, Title 11, Guam Code Annotated, whether such taxpayer owes taxes or not, shall make and file monthly returns of taxes with the Tax Commissioner. Gross Receipts Taxpayers shall file monthly Gross Receipts Tax returns summarizing the tax due. The monthly return shall be filed, and any tax then due shall be paid no later than the twentieth (20th) day of the following month at authorized banks, financial institutions or at designated offices of the government of Guam. (c) Use Tax Returns. Each taxpayer against whom a tax is levied by the provisions of Chapter 28, Title 11, Guam Code Annotated shall make and file monthly tax returns with the Tax Commissioner, 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 twentieth (20th) day of the following month. (d) Monthly Excise Tax on Occupancy of Hotels and Similar Lodging House Facilities. The tax levied by §30101 of Chapter 30, Title 11, Guam Code Annotated shall be paid to the Commissioner with the monthly return which shall be filed on or before the twentieth (20th) day of the month following the month during which such taxable incidents occurred.
- EXEMPTIONS OR DEDUCTIONS.** Any exemption or deduction claimed under column (B) page (1) of the return must be shown on the above schedule and must be sufficiently supported by documentation.
- ELECTION UNDER 11 GCA § 26201(c) (Visible GRT).** To make an election under 11 GCA § 26201 (c), check or mark the box provided on the front of this form. The election shall take effect at the beginning of the quarter, but not before December 5, 2003. Once you have made this election, it shall remain in effect until you formally terminate it.
- BUSINESS ACTIVITIES NOT LISTED ON FORM GRT.** "Other" should be used in reporting amounts received or amounts required to be reported in this form and not listed.
- FAILURE TO PAY PENALTY.** Section 26111, Chapter 26, Title 11, Guam Code Annotated, provides for a penalty of five percent (5%) of the tax due for each 30-day period, or fraction thereof, not to exceed twenty-five percent (25%) in the aggregate. The minimum penalty, however, shall be the lesser of the amount of tax due, or twenty-five dollars (\$25.00).
- FAILURE TO SUPPLY IDENTIFICATION NUMBER.** Any person required to file a Form GRT return shall be subject to a fifty dollar (\$50.00) penalty for each failure to include his taxpayer identification number on such return. Section 26111, Chapter 26, Title 11, Guam Code Annotated.
- INTEREST.** Interest shall be added as determined by the Tax Commissioner at the current rate to any unpaid tax and penalty.
- SUPPLEMENTARY SHEETS.** Use supplementary sheets (standard letter size) where necessary.
- OCCUPANCY TAX.** Transient occupants of a room or rooms in a hotel, lodging house, or similar facility located in Guam are subject to the following excise tax: (a) from September 1, 1993 through March 31, 1995, the rate shall be ten percent (10%) of the rental price charged or paid per occupancy per day; (b) from April 1, 1995 and thereafter the rate shall be eleven percent (11%) of the rental price charged or paid per occupancy per day. If the room or rooms are rented more than once within a twenty-four (24) hour period, each time of occupancy shall be subject to the tax for such accommodations. 11 GCA §30101.
- ADDITIONAL INFORMATION.** For additional information, call the Business Privilege Tax Branch at 475-1834/1836, or write to the Department of Revenue and Taxation, SPTB, P.O. Box 23607, G.M.F., 96921.

MAKE CHECKS PAYABLE TO: TREASURER OF GUAM.

Appendix 8 Form GRT-1 (November 2008)

DEPARTMENT OF REVENUE AND TAXATION Page 1 of 2
GOVERNMENT OF GUAM
FORM GRT-1 MONTHLY GROSS RECEIPTS, USE, AND OCCUPANCY TAX RETURN GRT1P1



NAME OF LICENSEE		MONTH / YEAR ENDING	FOR OFFICIAL USE
EIN/SSN		GRT ACCOUNT NUMBER	<input type="checkbox"/> ORIGINAL RETURN <input type="checkbox"/> AMENDED RETURN
ADDRESS		TELEPHONE NO.	

BUSINESS ACTIVITY CATEGORY	(A) GROSS RECEIPT VALUE	(B) EXEMPTION OR DEDUCTION (Attach Schedule GRT-E)	(C) TAXABLE AMOUNT
PART 1: GROSS RECEIPTS TAX @ 4% (0.04)			
1 WHOLESALE			
2 RETAIL			
3 SERVICE			
4 RENTAL FEES PROPERTY			
5 RENTAL OTHERS			
6 PROFESSION			
7 COMMODITY			
8 INSURANCE PREMIUM			
9 CONTRACTING GENERAL			
10 CONTRACTING ELECTRICAL			
11 INTEREST			
12 AGREEMENT			
13 OTHERS			

14. SUM OF GRT TAXABLE AMOUNT - Enter the result here and on line 1 of Tax Due Worksheet on reverse.

PART 2: USE TAX @ 4% (0.04)			
15 IMPORTATION			
16 LOCAL PURCHASE			
17 INVENTORY USED			

18. SUM OF USE TAX TAXABLE AMOUNT - Enter the result here and on line 2 of Tax Due Worksheet on reverse.

PART 3: OCCUPANCY TAX			
19 HOTEL/MOTEL			
20 OTHERS			

Under the penalties of perjury, I declare that I have examined this return, including accompanying schedule and statements, and to the best of my knowledge and belief it is true, correct and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

SIGNATURE (TAXPAYER OR AUTHORIZED AGENT)	PRINT NAME	DATE
--	------------	------

DEPARTMENT OF REVENUE AND TAXATION Page 2 of 2
 GOVERNMENT OF GUAM
 FORM GRT-1 MONTHLY GROSS RECEIPTS, USE, AND OCCUPANCY TAX RETURN



GRT1P2

NAME OF LICENSEE	MONTH / YEAR ENDING	EIN/SSN	GRT ACCOUNT NUMBER

PART 4: TOTALS

42. TAX DUE: Enter total from Tax Due Worksheet below.
 If you did not have any activity for the period enter '0' here

43. PENALTY

44. INTEREST

45. CREDIT OR ADJUSTMENT

46. BALANCE TAX DUE:

TAX DUE WORKSHEET

	TAXABLE AMOUNT	X	TAX RATE	=	TOTAL TAX
--	----------------	---	----------	---	-----------

1. Enter the amount from Part 1, line 14	\$	X	0.04	=	\$
2. Enter the amount from Part 2, line 18	\$	X	0.04	=	\$
3. Enter the amount from Part 3, line 19	\$	X	0.11	=	\$
4. Enter the amount from Part 3, line 20	\$	X	0.10	=	\$
TOTAL - Add lines 1 - 4. Enter the result here and on line 42 above.				=	\$

FOR OFFICIAL USE



Dipáttamenton Kontribusion yan Adu'ána

DEPARTMENT OF

REVENUE AND TAXATION

GOVERNMENT OF GUAM

Gubethamenton Guáhan

EDDIE B. CALVO, Governor / *Mega'Utri*
RAYMOND S. TENORIO, Lt. Governor / *Tiánte Gubelmadot*

JOHN P. CAMACHO, Director
Diréktor

MARIE M. BENITO Deputy Director
Sagundo Diréktor

November 19, 2014

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

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
BY: JB
DATE: 11/21/14
TIME: 10:00 AM PM

From: Director

Re: Response to HOT Draft Audit Report Dated 10/28/14

This is in response to the draft Compliance Audit of the Hotel Occupancy Tax (HOT). As a result, we are responding to the issues identified as follows:

1. Accuracy of \$3 million in uncollected HOT receivables could not be verified.

DRT Response—During the exit conference, it was pointed out that we were doing our due diligence in protecting confidential taxpayer information and furthering public confidence in our ability to protect such information. It appeared that the harsh tone of the first sentence of the report would resonate through the entire report, as opposed to Department of Revenue and Taxation (DRT) being cooperative and at the same time protecting taxpayer information. Although we redacted Names, Employer Identification Numbers and Business Privilege Tax account numbers, we made no mistake in producing redacted returns of all hotels and corresponding reports that demonstrated actual filings of amounts reported and amounts that were shown as due to the government.

A HOT task force was created as a result of the Vice-Speaker alleging that large hotels are not paying HOT. In the initial report, 10 (ten) hotels were identified as having balances due. These reports were generated at a time when DRT was having problems with its Point-of-Sale system not interfacing with the subsidiary account ledgers. We realized that a System-Generated Report (SGR) was not reliable in that point of time, and contacted these same hotels to verify filing and payment of HOT based on amounts shown on the SGR. All subsequent reports were updated when requested by the OPA. As for the Statute of Limitations (SOL) exceeding 10 (ten) years, these situations can arise when the taxpayer and the DRT Director consent to extend the period of limitations to assess or collect. The SOL can also be suspended when the case is in Bankruptcy proceedings as exhibited in the OPA report.

2. Inconsistent and non-comparable data pertaining to the number of hotels reported.

DRT Response – the number of hotels reporting HOT will not be consistent with your list. One taxpayer may own as many as 3 hotels and report all HOT data under one GRT account number. Each hotel does not have its own GRT account number.

3. \$2.2 million HOT exemptions claimed by eight taxpayers within CY2008 and CY2012 could not be verified.

DRT Response - Copies of redacted tax returns were not requested during the audit. Furthermore, the OPA report stated “Again, due to restricted access to HOT data, the audit team could not determine

whether the exemptions claimed by these taxpayers were in accordance with law". DRT requires voluntary compliance with Guam's BPT laws. Unless DRT conducts examinations on every Hotel claiming these exemptions, DRT couldn't verify if the exemptions claimed by these hotels were in accordance with law. All periods identified in the report for years prior to CY 2011 wouldn't be able to be examined as the SOL would have expired for all timely filed returns.

4. Between CY 2008 and CY 2013 taxes due for 10 taxpayers were inaccurately assessed at the obsolete HOT tax rate of 10%.


DRT Response – We agree. Steps were taken to correct the finding as soon as it was pointed out.

The draft report made it apparent that OPA Staff were unable to verify the above mentioned issues based on the information provided. The report repeatedly referred to DRT's refusal to provide taxpayer information requested as a basis for the OPA's inability to complete the audit. Although, the oath was administered to OPA employees prior to the onset of the audit, the main purpose was to ensure the confidentiality rules are known while OPA employees conducted a walk through interview of our office.

In addition, you stated in the exit conference that you are considering taking the issue to the Legislature and possibly the courts. We reminded you that it is the law that prevents us from providing the information. Pursuant to §26120 of Chapter 26, Title 11, GCA, "Tax returns and other information required to be filed or furnished by the taxpayer or any other persons, shall not be open for public inspection or divulged except when testifying in any judicial or administrative proceeding in which the government of Guam or an of its officials in an official capacity are a party, and in which the committee of the Legislature, duly created, authorized by resolution of the Legislature, may require that it be furnished any data contained in any tax return for use by such committee in executive session only." Based on this law, the Department cannot provide un-redacted taxpayer information.

If you have any questions or concerns, please do not hesitate to contact me at (671) 635-1815.

Sincerely,


JOHN P. CAMACHO



Department of Revenue and Taxation
Hotel Occupancy Tax
Report No. 14-04, December 2014

ACKNOWLEDGEMENTS

Key contributions to this report were made by:

Michele Brillante, Auditor
Rodalyne Gerardo, CIA, CGFM, CPA, CGAP, CGMA, Audit Supervisor
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MISSION STATEMENT

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

VISION

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

CORE VALUES

Objectivity: To have an independent and impartial mind.
Professionalism: To adhere to ethical and professional standards.
Accountability: To be responsible and transparent in our actions.

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- Visit our website at www.guamopa.org
- Call our office at 475-0390
- Fax our office at 472-7951
- Or visit us at Suite 401, DNA Building in Hagåtña

All information will be held in strict confidence.