

**Government of Guam
Income Tax Refund Efficient Payment
Trust Fund**

**Performance Audit
October 2010 through September 2011**

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



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Executive Summary

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

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

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

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

Tax Refund Payments Short \$41M

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

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

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

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

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

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

Conclusion

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

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

Doris Flores Brooks, CPA, CGFM
Public Auditor



Introduction

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

The audit scope and methodology are detailed in Appendix 1.

Background

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

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

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

The Trust Fund Act also mandated the following:

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

¹ P.L. 26-74.

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

Results of Audit

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

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

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

Tax Refund Payments Short \$41M

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

Table 1: FY 2011 Income Tax Collections

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

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

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

Table 2: Estimated vs. Actual Tax Refund Payments

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

Tax Refund Process Complicated by Non-Compliance

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

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

Illustration 1: Flowchart of Actual Trust Fund Activity

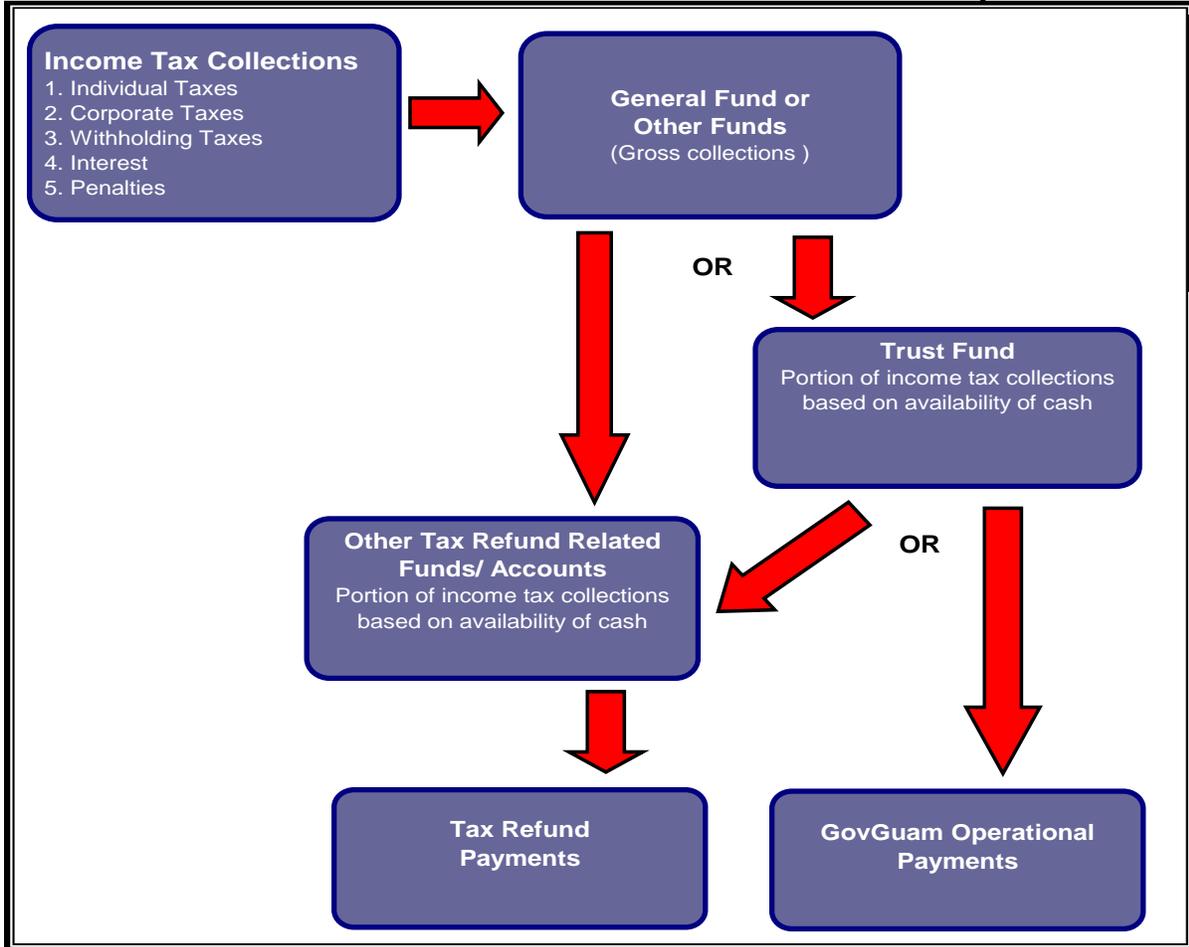
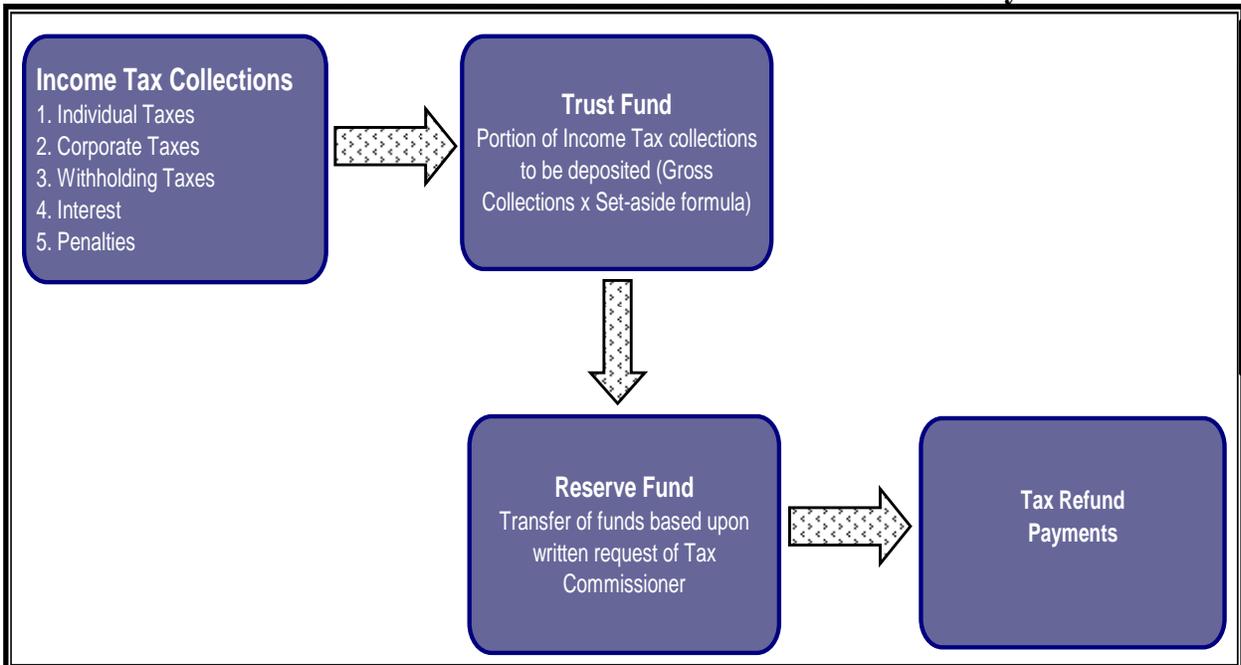


Illustration 2: Flowchart of Mandated Trust Fund Activity



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

Table 3: FY 2011 Trust Fund Activity

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

Table 4: FY 2011 Trust Fund Transaction Details

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

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

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

Income Tax Refund Liability

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

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

Table 5: FY 2011 Trust Fund Transaction Details

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

Notes:

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

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

Other Matters

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

Conclusion

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

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

Management Response & OPA Reply

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

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

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

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

OFFICE OF PUBLIC ACCOUNTABILITY



Doris Flores Brooks, CPA, CGFM
Public Auditor

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

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

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

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

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

Prior Audit Coverage

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

Appendix 2:
AS 400 Tax Refunds

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

BREAKDOWN OF TAX REFUNDS PROCESSED:

CHECKS PROCESSED:

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

OFFSETS/ GARNISHMENTS:

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

Total Tax Refunds Processed		\$8,059,903	\$7,719,376	\$3,453,239	\$2,032,190	\$2,739,248	\$2,160,935	\$4,859,843
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Appendix 2:
AS 400 Tax Refunds

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

BREAKDOWN OF TAX REFUNDS PROCESSED:

CHECKS PROCESSED:

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

OFFSETS/ GARNISHMENTS:

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

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

AS 400 Income Tax Revenues

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

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

Appendix 4:

BBMR Consolidated Revenue/Expenditure Report

Government Of Guam Consolidated Revenue / Expenditure Report ^{1/} General Fund				FY2011 ADOPTED Revenues vs. PROJECTED Revenues to Year End Pursuant to 20CA, Ch. 13, §13109(a)(1) [due no later than 30 days after month-end]; 5GCA, Ch. 4, §4109(c)(3) [due no later than 20 days after month-end]; and P.L. 30-196, Ch. XIII, §5 [due no later than 30 days after month-end]			
YTD ADOPTED Revenues Allocated vs. YTD ACTUAL Collections Twelve Months Ending September 30, 2011. Pursuant to 5GCA Ch. 4 §4109(c)(3) [due 20 days after month-end]							
	FY2011 Adopted Revenues for the Cumulative Period ^{2/}	FY2011 Actual Revenues for the Cumulative Period	Favorable (Unfavorable)	FY2011 Adopted Revenues (Full Year Projection) ^{3/}	FY2011 Revenue Tracking	Favorable (Unfavorable)	
Income taxes:							
Individual	\$ 107,455,121	\$ 67,004,738	\$ (40,450,383)	\$ 107,455,121	\$ 67,004,738	\$ (40,450,383)	
Corporation	95,238,868	106,609,988	11,371,120	95,238,868	106,609,988	11,371,120	
Withholding	188,714,052	184,225,337	(4,488,715)	188,714,052	190,165,310	1,451,258	
Withholding - COLA	0	125,020	125,020	0	0	0	
Interest & penalties	0	5,814,953	5,814,953	0	0	0	
Income Taxes	391,408,041	363,780,035	(27,628,006)	391,408,041	363,780,036	(27,628,005)	
Business privilege taxes:							
Gross Receipts Taxes	202,375,945	198,218,876	(4,157,069)	202,375,945	198,218,876	(4,157,069)	
Other Taxes:	0			0			
Admissions tax	31,273	31,273	0	31,273	31,273	0	
Use tax	3,362,792	2,984,054	(378,738)	3,362,792	3,015,327	(347,465)	
Business Privilege Taxes	205,738,737	201,234,203	(4,504,534)	205,738,737	201,234,203	(4,504,534)	
Licenses, Fees & Permits	6,987,481	4,559,373	(2,428,108)	6,987,481	4,559,373	(2,428,108)	
Use of Money & Property	3,529,513	451,587	(3,077,926)	3,529,513	451,586	(3,077,927)	
Federal Sources:							
Section 30 ^{4/}	46,331,054	46,357,373	26,319	46,331,054	46,357,373	26,319	
Immigration fees	1,416,991	1,967,660	550,669	1,416,991	1,967,660	550,669	
Recovery from Individuals	0	0	0	0	0	0	
Child Support AFDC Local Share	230,358	229,292	(1,066)	230,358	229,292	(1,066)	
Federal Sources	47,978,403	48,554,325	575,922	47,978,403	48,554,327	575,924	
Department Charges:							
Agriculture	4,307	3,831	(456)	4,307	3,831	(456)	
Police & corrections	535	65	(470)	535	65	(470)	
Public works	245,285	17,955	(227,330)	245,285	17,955	(227,330)	
Public health	286,443	141,542	(144,901)	286,443	141,542	(144,901)	
Commerce	395,087	348,086	(47,001)	395,087	348,086	(47,001)	
Other charges	1,328,294	1,077,084	(251,210)	1,328,294	1,077,084	(251,210)	
Department Charges	2,259,952	1,588,583	(671,369)	2,259,952	1,588,581	(671,371)	
TOTAL GENERAL FUND REVENUES	\$ 657,902,127	\$ 620,168,106	\$ (37,734,021)	\$ 657,902,127	\$ 620,168,106	\$ (37,734,021)	
Variance:			-5.74%			-5.74%	

1/ Revenues are based on a modified accrual basis. During the year revenues are recognized on a cash basis, but at year end an accrual is made in accordance with GASB 33.

2/ Section 30 is prorated for 12 months.

3/ Based on Adopted Revenues allocated per P.L. 30-196, Chapter I, Section 6(b) 2.

4/ Based on Adopted Revenues per P.L. 30-196, Chapter I, Section 2.

Note 1. Data contained herein is subject to change, as additional reconciliations are performed and obtained that substantiates the correct presentation of the underlying revenue transactions.



Eddie Baza Calvo
Governor
Ray S. Tenorio
Lieutenant Governor

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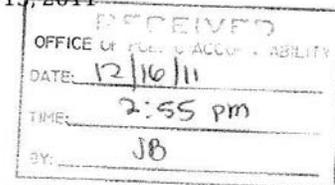


Benita A. Manglona
Director
George A. Santos
Deputy Director

MEMORANDUM

December 15, 2011

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



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

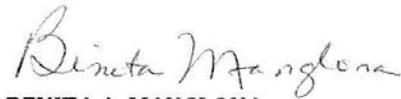
In January, when the new administration took office, the Government of Guam was challenged with not only a cash management problem, but a budgetary shortfall for departments and agencies. The deficit increased by \$71 million to \$336 million as of September 30, 2010. There were negative cash balances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

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

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

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

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



BENITA A. MANGLONA

