

**Government of Guam
Tax Credit Programs**

**Performance Audit
October 2006 through December 2014**

**OPA Report No. 15-06
October 2015**



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EXECUTIVE SUMMARY
Government of Guam Tax Credit Programs
OPA Report No. 15-06, October 2015

The Office of Public Accountability could not verify the completeness, reliability, and accuracy of the Government of Guam's (GovGuam) tax credits because the Department of Administration (DOA) did not provide evidence to support that the tax credits were recorded. This is the third audit of our three-part series on tax credits. Part A reported on the Tiyan Campus Tax Credit Program, which was issued in December 2014. Part B reported on the Layon Landfill Tax Credit Program, and was issued in May 2015.

GovGuam has 14 tax credit programs that authorized a minimum of \$105.8 million (M), of which ten programs were authorized \$91.1M and four programs did not have specified amounts. Of the \$105.8M, \$72.7M have purportedly been claimed as of December 2014.

Of the 14 tax credits programs, one is new, three are active, six are inactive, and four have exhausted their benefits. The audit team identified a \$476 thousand (K) variance in tax credits between data provided by the Guam Economic Development Authority (GEDA) and Department of Revenue and Taxation (DRT) for the Guam Raceway Park, which is down from the \$4.5M initial variance identified. Four programs, the Medically Indigent Program (MIP), Guam Registered Apprenticeship Program (GRAP), Local Commuter Air Services, and the Privately Owned Lands, did not specify the maximum tax credit amounts authorized.

Our previous tax credits audit, OPA Report No. 07-15, identified \$23.6M in authorized tax credits, of which \$6.3M was applied against tax revenues through March 2007. In that audit, we recommended the Governor and Legislature repeal the balances of on-going and unimplemented tax credit programs, but the Legislature and Administration did not take any action on this recommendation over the past seven years. By allowing those tax credit programs to continue and establishing additional programs, approximately \$82.3M in additional tax credits were authorized after September 2006.

\$105.8M Authorized for 14 Tax Credit Programs

Of the 14 tax credit programs, 11 were established for capital projects purposes, such as the Tiyan Campus, Layon Landfill, and the Guam Raceway Park. The remaining three tax credit programs were established for operational or other purposes, such as workforce skills enhancement and payment of past due medical bills for MIP participants.

GEDA administers the most with nine tax credit programs, DRT and DOA administer two programs each, and Department of Labor (DOL) administers one program. We found that GEDA and DRT were unable to provide the procedures and/or promulgated rules to implement the Public School Sports Facilities, GRAP, MIP, and Privately Owned Laws tax credits programs.

\$12.5M Claimed in GRAP Tax Credits

Unlike the other tax credits programs, which were primarily for capital improvements, the DOL-administered GRAP provided benefits to companies, which can claim up to 50% of eligible training costs. It is unknown whether the businesses would have incurred these training costs regardless of the tax credits. Approximately \$12.5M in tax credits were claimed under GRAP. This program was set to expire December 30, 2014, but Public Law 32-181 extended to December 30, 2019.

GovGuam Tax Credits Programs as of December 2014

	Authorized By	Enactment	Tax Credit Program	Status	Amount	Amount Claimed as of 12/2014	Remaining Balance	Administered by
1	PL 32-202	10/13/2014	DPR Tiyan Gymnasium	New	\$2,500,000	-	\$2,500,000	GEDA
2	PL 31-282	12/31/2012	Lada Estates Project	Benefits exhausted	\$2,915,000	\$2,915,000	-	GEDA
3	CV 0084-08	10/31/2012	Layon Landfill	Active	\$28,900,000	\$13,900,000	\$15,000,000	DOA
4	PL 30-37	6/25/2009	Tiyan Campus	Benefits exhausted	\$44,114,090	\$31,486,388	\$12,627,702	GEDA
5	PL 30-3; PL 31-233	3/13/2009	Southern Sports Complex	Inactive	\$200,000	-	\$200,000	GEDA
6	PL 28-142	7/18/2006	Guam Registered Apprenticeship Program	Active	Not Specified	\$12,498,453	Unknown	DOL
7	PL 27-130	12/22/2004	UOG Outdoor Multi-Purpose Sports Complex	Inactive	\$1,000,000	-	\$1,000,000	GEDA
8	PL 27-114	12/2/2004	Public School Gymnasium	Inactive	\$1,000,000	-	\$1,000,000	GEDA
9	PL 27-85	4/30/2004	Soccer Stadium	Benefits exhausted	\$1,000,000	\$1,000,000	-	GEDA
10	PL 26-166	1/5/2003	Paseo Baseball Stadium	Inactive	\$1,500,000	\$887,630	\$612,370	GEDA
11	PL 24-254	8/14/1998	Local Commuter Air Services	Inactive	Not Specified	Unknown	Unknown	DRT
12	P.L. 24-141; PL 27-85	2/22/1998	Guam Raceway Park	Benefits exhausted	\$8,000,000	\$7,824,970	\$175,030	GEDA
13	PL 28-150; PL 29-19	9/30/2006	Medically Indigent Program	Active	Not Specified	\$2,223,057	Unknown	DOA
14	PL 14-69	10/20/1977	Privately Owned Lands	Inactive	Not Specified	Unknown	Unknown	DRT
TOTAL					\$91,129,090	\$72,735,498		

Lack of Regular Review, Monitoring, and Reconciliation of MIP Tax Credit Program

Despite multiple requests for the MIP tax credit data from the DOA Director, Financial Manager, and Deputy Financial Manager, we were not provided any data. Therefore, there is no assurance that this program was regularly reviewed, monitored, reconciled, or recorded in GovGuam's financial records.

Conclusion

While we recognize the Legislature's authority to provide tax credits to achieve program goals, tax credits reduce availability of government cash to fund other programs. The government's spending priorities may be distorted because tax credit programs do not require appropriations or compete with the annual budget's spending priorities and, in effect, receive a higher funding priority than public education, safety, and health. It is not known whether these tax credit programs would have been funded through the regular appropriation process.

GovGuam incurred an operating deficit of \$61.9M during FY 2014, of which the \$9.8M in Layon Landfill tax credits claimed contributed to the deficit. As of September 2014, GovGuam's cumulative deficit is now at \$871.6M. We estimate potential savings of \$2.8M if six inactive tax credit programs are not implemented. We also made three recommendations to DRT, DOA, GEDA, DOL, and the Department of Public Health and Social Services.

Doris Flores Brooks, CPA, CGFM
Public Auditor

Glossary of Acronyms and Abbreviations

Acronym / Abbreviation	Definition
BBMR	Bureau of Budget and Management Research
BPT	Business Privilege Tax
DOA	Department of Administration
DOL	Department of Labor
DPHSS	Department of Public Health and Social Services
DPR	Department of Parks and Recreation
DRT	Department of Revenue and Taxation
FY	Fiscal Year
GDOE	Guam Department of Education
GEDA	Guam Economic Development Authority
GFA	Guam Football Association
GRF	Guam Raceway Federation
GovGuam	Government of Guam
GRAP	Guam Registered Apprenticeship Program
GRT	Gross Receipts Tax
MIP	Medically Indigent Program
OAG	Office of the Attorney General
OPA	Office of Public Accountability
UOG	University of Guam



Introduction

This report presents the results of our audit of GovGuam Tax Credits Program from October 1, 2006 to December 31, 2014 [FY 2007 to 1st Quarter of FY 2015]. The audit objectives were to:

- (1) Identify the universe of tax credits programs;
- (2) Quantify the amount of tax credits authorized per program;
- (3) Determine the amount of tax credits claimed per program as of December 31, 2014;
- (4) Determine whether processes are in place to monitor these tax credits; and
- (5) Conduct a follow-up audit on the tax credit audit, OPA Report No. 07-15.

This audit was initiated as Part C of a three-part audit series on tax credits. Part A reported on the Tiyan Campus Tax Credit Program, and was issued in December 2014. Part B reported on the Layon Landfill Tax Credit Program, and was issued in May 2015.

The objectives, scope, methodology, and prior audit coverage are detailed in Appendices 2 and 3.

Background

Tax credits are cash reductions, which result in cash forgone (not received) by the government. Tax credits grant special tax relief for certain taxpayers. Tax credits do not require or compete for appropriations in the annual budget process, and therefore are less visible and not scrutinized to the degree that appropriated programs are.

Tax credits are intended to entice private companies to contribute resources that GovGuam lacks due to financial cash constraints. The advantage for private companies to participate in tax credit programs is that it reduces certain taxes dollar for dollar. Tax credits are different from tax deductions. A tax deduction reduces the company's taxable income, depending on the tax bracket. For example, if the company is in the 25% bracket, a \$1,000 deduction lowers its taxes by \$250. A \$1,000 tax credit, on the other hand, lowers the tax by the full \$1,000. This provides a tax advantage to the participating company, but the lost revenue is a disadvantage to GovGuam.

Generally, companies deduct any applicable tax credits from taxes due on Form-GRT, which is submitted to the DRT to report their monthly taxes for business privilege,¹ occupancy, liquid fuel, automotive surcharges, tobacco, and alcoholic beverages.

GovGuam established several tax credits programs through enactment of laws over the years. Refer to Appendix 4 for a brief description of the tax credit programs.

¹ In May 2007, Chapter VI, Section 28 of P.L. 29-02 replaced all references to Gross Receipts Tax (GRT) to "Business Privilege Tax" (BPT). BPT and GRT may be used interchangeably in this report.

Results of Audit

OPA could not verify the completeness, reliability, and accuracy of GovGuam's tax credits programs because the DOA did not provide evidence to support that the tax credits were recorded.

We found:

- GovGuam has 14 tax credit programs that authorized an estimated \$105.8 million (M) in tax credits, of which \$72.7M was purportedly claimed as of December 2014.
- By allowing those tax credit programs recommended to be repealed in our previous audit (OPA Report No. 07-15) to continue and establishing additional programs, a minimum of approximately \$82.3M in additional tax credits were authorized between October 2006 and December 2014.
- Of the 14 tax credits programs, one is new, three are active, six are inactive, and four have exhausted their benefits.
- Four programs, the MIP, GRAP, Local Commuter Air Services, and the Privately Owned Lands, did not specify the maximum tax credit amounts authorized.
- There is no assurance that the MIP tax credit program is regularly reviewed, monitored, or reconciled.
- A \$476 thousand (K) variance between tax credits data provided by the GEDA and DRT for the Guam Raceway Park, down from the \$4.5M variance initially noted.
- A \$97K variance was identified for the DOL-administered GRAP. The program was to expire December 30, 2014, but was extended to December 30, 2019 by Public Law 32-181.
- Tax forms 1099 not issued.
- No action taken on previous audit's recommendations.

\$105.8M Authorized for 14 Tax Credit Programs

Through various public laws passed between 1977 and 2014, a total of 14 tax credit programs which authorized an estimated \$105.8M to be claimed against various taxes, except income tax. GEDA administers the most at nine tax credit programs (\$61.2M), DRT administers two programs (amount unknown), DOA administers two programs (\$28.9M minimum), and DOL administers one program (\$12.5M minimum). Of the 14 programs, two programs, the Tiyan Campus and Layon Landfill tax credit programs, were previously audited in Part A and Part B of this three-part tax credits audit series.

The tax credit programs have authorized amounts ranging from \$200K to as high as \$44.1M, and some programs authorized an unspecified amount of credits. As of December 2014, a total of \$72.7M in tax credits were supposedly claimed, but again due to limited data provided, we could not verify the completeness, reliability, and accuracy of this figure. Please see Table 1 for details.

Table 1: GovGuam Tax Credit Programs as of December 2014

	Authorized By	Enactment	Tax Credit Program	Status	Amount	Amount Claimed as of 12/2014	Remaining Balance	Administered by
1	PL 32-202	10/13/2014	DPR Tiyan Gymnasium	New	\$2,500,000	-	\$2,500,000	GEDA
2	PL 31-282	12/31/2012	Lada Estates Project	Benefits exhausted	\$2,915,000	\$2,915,000	-	GEDA
3	CV 0084-08	10/31/2012	Layon Landfill	Active	\$28,900,000 ²	\$13,900,000	\$15,000,000	DOA
4	PL 30-37	6/25/2009	Tiyan Campus	Benefits exhausted	\$44,114,090 ³	\$31,486,388	\$12,627,702	GEDA
5	PL 30-3; PL 31-233	3/13/2009	Southern Sports Complex	Inactive	\$200,000	-	\$200,000	GEDA
6	PL 28-142	7/18/2006	Guam Registered Apprenticeship Program	Active	Not Specified	\$12,498,453	Unknown	DOL
7	PL 27-130	12/22/2004	UOG Outdoor Multi-Purpose Sports Complex	Inactive	\$1,000,000	-	\$1,000,000	GEDA
8	PL 27-114	12/2/2004	Public School Gymnasium	Inactive	\$1,000,000	-	\$1,000,000	GEDA
9	PL 27-85	4/30/2004	Soccer Stadium	Benefits exhausted	\$1,000,000	\$1,000,000	-	GEDA
10	PL 26-166	1/5/2003	Paseo Baseball Stadium	Inactive	\$1,500,000 ⁴	\$887,630	\$612,370	GEDA
11	PL 24-254	8/14/1998	Local Commuter Air Services	Inactive	Not Specified	Unknown	Unknown	DRT
12	P.L. 24-141; PL 27-85	2/22/1998	Guam Raceway Park	Benefits exhausted	\$8,000,000	\$7,824,970	\$175,030	GEDA
13	PL 28-150; PL 29-19	9/30/2006	Medically Indigent Program	Active	Not Specified ⁵	\$2,223,057	Unknown	DOA
14	PL 14-69	10/20/1977	Privately Owned Lands	Inactive	Not Specified	Unknown	Unknown	DRT
TOTAL					\$91,129,090	\$72,735,498		

Discussions with GEDA confirmed that four of the nine tax credit programs it was required to administer were inactive as the programs were not utilized and no amounts have been claimed. Another four programs Lada Estates, Tiyan Campus, Soccer Stadium, and Guam Raceway Park have fully exhausted their benefits totaling \$56M for GEDA.

The DPR Tiyan Gymnasium tax credit program was enacted in October 2014. This gymnasium is separate from the GDOE Tiyan High School gymnasium currently being built on the school's campus. Per GEDA's Loan and Compliance Assistant Manager³, no tax credits have been claimed for this tax credit program as of August 2015.

Of the 14 tax credit programs, 11 were established for capital projects purposes, such as the Tiyan Campus, Layon Landfill, and the Guam Raceway Park. The remaining three tax credits programs

² Civil Case CV0084-08: Landowners were entitled to just compensation of \$25.1M. The \$28.9M includes the 6% per annum interest calculated from January 24, 2008. As of 12/31/2014, \$28.9M (\$20.6M in principal and \$8.3M in interest) in tax credits were authorized to eight of the nine former landowners for the Layon property. In addition, the Layon Landfill is a subset of the Privately Owned Lands Tax Credit Program.

³ A purchase agreement between GovGuam and Core Tech International set a maximum amount of \$44.1M in tax credits to be claimed in relation to the lease and purchase of the Tiyan Campus. According to GEDA, the benefits of the Tiyan Campus Tax Credit Program has been exhausted. However, as of 12/31/2014, only \$31.5M was claimed for lease payments from FY 2010 to the 1st quarter of FY 2015 and collateral equipment for Tiyan and collateral equipment for Tiyan and GDOE Central Office and other facilities.

⁴ OPA Report No. 06-18 reported that the Department of Parks and Recreation and the Guam Baseball Federation did not comply with the terms and conditions of the Paseo Stadium Lease Agreement and P.L. 27-27, which resulted in the termination of the lease contract effective March 2007.

⁵ OPA Report No. 07-15 reported that potentially \$11M could be authorized and claimed as tax credits, which was the total MIP liabilities in the FY 2006 audited GovGuam Basic Financial Statements. The current MIP liability is \$2.5M per the FY 2014 audited GovGuam Basic Financial Statements.

were established for operational or other purposes, such as workforce skills enhancement and payment of past due medical bills for MIP participants. Refer to Table 2 below.

Table 2: Breakdown of Tax Credit Programs by Purpose

Authorized By	Enactment	Tax Credit Program	Status	Amount	Amount Claimed as of 12/2014	Remaining Balance	Administered By	
Capital Projects Tax Credits								
1	PL 32-202	10/13/2014	DPR Tiyan Gymnasium	New	\$2,500,000	-	\$2,500,000	GEDA
2	PL 31-282	12/31/2012	Lada Estates Project	Benefits exhausted	\$2,915,000	\$2,915,000	-	GEDA
3	CV 0084-08	10/31/2012	Layon Landfill	Active	\$28,900,000	\$13,900,000	\$15,000,000	DOA
4	PL 30-37	6/25/2009	Tiyan Campus	Benefits exhausted	\$44,114,090	\$31,486,388	\$12,627,702	GEDA
5	PL 30-3; PL 31-233	3/13/2009	Southern Sports Complex	Inactive	\$200,000	-	\$200,000	GEDA
6	PL 27-130	12/22/2004	UOG Outdoor Multi-Purpose Sports Complex	Inactive	\$1,000,000	-	\$1,000,000	GEDA
7	PL 27-114	12/2/2004	Public School Gymnasium	Inactive	\$1,000,000	-	\$1,000,000	GEDA
8	PL 27-85	4/30/2004	Soccer Stadium	Benefits exhausted	\$1,000,000	\$1,000,000	-	GEDA
9	PL 26-166	1/5/2003	Paseo Baseball Stadium	Inactive	\$1,500,000	\$887,630	\$612,370	GEDA
10	PL 24-141; PL 27-85	2/22/1998	Guam Raceway Park	Benefits exhausted	\$8,000,000	\$7,824,970	\$175,030	GEDA
11	PL 14-69	10/20/1977	Privately Owned Lands	Inactive	Not Specified	Unknown	Unknown	DRT
Subtotal, Capital Projects Tax Credits					\$91,129,090	\$58,013,988	\$33,115,102	
Operations or Other Purpose Tax Credits								
1	PL 28-142	7/18/2006	Guam Registered Apprenticeship Program	Active	Not Specified	\$12,498,453	Unknown	DOL
2	PL 28-150; PL 29-19	9/30/2006	Medically Indigent Program	Active	Not Specified	\$2,223,057	Unknown	DOA
3	PL 24-254	8/14/1998	Local Commuter Air Services	Inactive	Not Specified	Unknown	Unknown	DRT
Subtotal, Operations or Other Purpose Tax Credits					\$ -	\$14,721,510	\$ -	
TOTAL					\$ 91,129,090	\$72,735,498		

In our previous tax credits audit, OPA Report No. 07-15, we identified \$23.6M in tax credits authorized, of which \$6.3M was applied against tax revenues through March 2007. In that audit, we recommended the Governor and Legislature repeal the balances of on-going and unimplemented tax credit programs, but the Legislature and Administration did not take any action on this recommendation. By allowing those tax credit programs to continue and establishing new programs, approximately \$82.3M in tax credits were authorized after September 2006.

While we recognize the Legislature’s authority to provide tax credits to achieve program goals, tax credits reduce availability of government cash to fund other programs. The government’s spending priorities may be distorted because tax credit programs do not require appropriations or compete with the annual budget’s spending priorities and, in effect, receive a higher funding priority than public education, safety, and health. It is not known whether these tax credit programs would have been funded through the regular appropriation process.

Lack of Regular Review, Monitoring, and Reconciliation of MIP Tax Credit Program

The FY 2007 Budget Act, P.L. 28-150, effective October 1, 2006, authorized DRT to offset health care providers' GRT by claims for medical services or supplies for MIP that remain unpaid after 90 days by GovGuam. The FY 2008 Budget Act, P.L. 29-19, codified this tax credit in 11 G.C.A. §26216, effective October 1, 2007, in which it required the DOA Director to reduce the amount of a medical provider's MIP payables by the amount of BPT offset it exercises. In addition, the MIP appropriations for a fiscal year shall be automatically reduced by the amount of any tax offsets taken in that year. To avoid double payment, coordination between DOA, DPHSS, and DRT is needed with the appropriate department or agency when a health care service provider claims an offset.

Neither P.L. 28-150 nor P.L. 29-19 specified a maximum amount for the tax credits and allowed unused credits to carry over to subsequent tax periods. We reported in OPA Report No. 07-15, that the FY 2006 audited GovGuam-wide financial statements estimated the MIP Payment Revolving Fund⁶ liabilities at \$11.1M, down from the \$14.9M reported in FY 2005. In the FY 2014 audited GovGuam-wide financial statements, the MIP liability is down to \$2.5M.

The MIP tax credit program was not implemented as of the issuance of OPA Report No. 07-15 in November 2007, because the required rules and regulations had not been finalized at that time.

In our discussion with the DPHSS Director and Chief Human Services Administrator in May 2015, DPHSS would provide DOA the medical providers' billings that were determined to be "clean claims" and ready for payment, but DPHSS was not notified as to whether the invoices were paid in cash or offset with tax credits as authorized in law.

As of December 2014, eight companies claimed MIP tax credits totaling \$2.2M per DRT's records.⁷ See Table 3 above for details.

Table 3: MIP Tax Credits Claimed as of December 2014

Companies	2010	2011	2012	2013	2014	Grand Total
1 Company B		\$ 132,703	\$ 430,871	\$ 381,245	\$ 29,816	\$ 974,635
2 Company F		\$ 152,951	\$ 241,903	\$ 24,628		\$ 419,482
3 Company D	\$ 96,204	\$ 64,838	\$ 39,296	\$ 80,853	\$ 112,549	\$ 393,740
4 Company E		\$ 109,280	\$ 172,626	\$ 16,201		\$ 298,107
5 Company G			\$ 63,386	\$ 808		\$ 64,194
6 Company C		\$ 9,154	\$ 26,825			\$ 35,979
7 Company H			\$ 1,929	\$ 15,319	\$ 14,749	\$ 31,997
8 Company A		\$ 4,923				\$ 4,923
Grand Total	\$ 96,204	\$ 473,849	\$ 976,836	\$ 519,055	\$ 157,114	\$ 2,223,057

Despite multiple requests for the MIP tax credit data from the DOA Director, Financial Manager, and Deputy Financial Manager, we were not provided any data. Therefore, there is no assurance

⁶ Created by P.L. 25-164 in September 2006 to pay for MIP obligations.

⁷ Additional tax credits of \$251K have been claimed since December 2014, for a cumulative total of \$2.5M in tax credits claimed as of September 2015.

that this tax credit program was regularly reviewed, monitored, reconciled, or recorded in the government's financial records.

\$2.8M Savings for Inactive Tax Credit Programs

According to DRT and GEDA officials, the following tax credit programs are deemed inactive because tax credits have not been claimed per their records.

- Local Commuter Air Services
- Privately Owned Lands
- UOG Outdoor Multi-Purpose Sports Complex
- Public School Gymnasium
- Southern Sports Complex
- Paseo Baseball Stadium

Refer to Appendix 4 for a description of these tax credit programs.

As of September 2014, GovGuam incurred an operating deficit of \$61.9M, of which the \$9.8M in Layon Landfill tax credits contributed to that deficit. GovGuam's cumulative deficit is now at \$871.6M.

We estimate potential savings of \$2.8M if six inactive tax credit programs are not implemented. Specifically, the savings are comprised of \$1M for the UOG Outdoor Multi-Purpose Complex, \$1M for the Public School Gymnasium, \$612K for the Paseo Baseball Stadium, and \$200K for the Southern Sports Complex. In effect, the deficit would not increase by \$2.8M should these six inactive tax credits not be implemented.

To ensure the accountability of government resources, we recommend the heads of DRT, DOA, GEDA, DPHSS, and DOL establish and implement agreed upon procedures to reconcile all tax credits program data at least annually.

GEDA and DRT Reconciliation Efforts

In our initial review of the GEDA and DRT- provided tax credits data pertaining to the Guam Raceway Park, Lada Estates, and Soccer Stadium programs, we identified a \$4.5M variance between GEDA and DRT's data. GEDA and DRT have reduced that variance to \$476K as of September 2015.

Guam Raceway Park Tax Credit Program

In February 1998, P.L. 24-141, provided a maximum of \$9M of business privilege tax credits to any business that contributes to the construction and development of the Guam Racing Federation's race track facility.⁸ The tax credits shall be recovered over a three year period (straight-line basis) and if the expenditures are not recovered through tax credits within three years, the balance is carried over to future years until taxes are exhausted. The law also stated that all property used for

⁸ P.L. 27-85 amended the total amount to \$8M.

the racing facility, including access roads shall be exempt from Real Property Taxes throughout the term the property is used.

The organizers of any event held at the Guam Raceway Park that charge a fee will pay GovGuam \$2 per admission. In December 2010, P.L. 30-204 amended the amount and required all organizers, sponsors, or managers of any event held at the Guam Raceway Park to pay an admissions assessment of 10% of the admission price per paid admission to GovGuam. The Guam Racing Federation shall be liable for all admission assessments not paid by any organizer, sponsor, or manager of any event held at the Guam Raceway Park.

We inquired whether the required admission assessments were being paid for each event. The GEDA Compliance Manager stated that certain amounts were being paid to the Treasurer of Guam. However, it appears that such payments were not being monitored as neither DRT nor DOA officials were aware of such payments. Accordingly, we recommend DOA, DRT, and GEDA officials develop the proper protocols to ensure that these assessments are collected and recorded.

Lada Estates Tax Credit Program

In December 2012, P.L. 31-282, Sections 4 through 7 authorizes GovGuam to issue tax credits in lieu of any cash payments for the off-site infrastructure work in accordance with the March 8, 2011 decision and order of the Superior Court of Guam in Civil Case No.0135-04. Maeda Pacific Corporation is authorized to use tax credits against one-fourth of the business privilege tax to GovGuam for any given tax period. However, the total amount of tax credits is not to exceed \$2.9M and any portion that is not used within five years shall expire. The tax credits are freely assignable and transferable to any party, company, partnership or corporation. Maeda Pacific shall provide GovGuam its agreement in writing that the availability of these tax credits through this legislation constitutes an accord and satisfaction of all amounts owed to it by GovGuam pursuant to the Decision and Order.

Soccer Stadium Tax Credit Program

In April 2004, P.L. 27-85 added Article 3 to Chapter 77 of Division 2, Title 12 of the Guam Code Annotated. Just like the terms of P.L. 24-141 for the Guam Raceway Park, if a business contributed to the cost, design, labor and materials for the construction of the Guam Football (Soccer) Association's soccer stadium, it shall be entitled to credit of business privilege taxes. The basis for contribution to the project shall be the actual cost plus the cost of transportation from the point of origin to its destination. Any unused credits not used in the current tax period may be carried over into the subsequent tax periods until credits are exhausted. In addition, the organizer of any event held at the soccer stadium for which a fee is charged for admission, shall pay to GovGuam \$2 or 10% per admission, whichever is less. Title 12 GCA § 77305 provided a maximum of \$1M in Soccer Stadium tax credits.⁹

We inquired whether the required admission assessments were being paid for each event. The GEDA Loan and Compliance Manager stated that certain amounts were being paid to the Treasurer of Guam. However, it appears that such payments were not being monitored as neither DRT nor DOA officials were aware of such payments. Accordingly, we recommend DOA, DRT, and GEDA officials develop the proper protocols to ensure that these assessments are collected and recorded.

⁹ P.L. 31-233 amended the total amount to \$1.2M, of which \$200K shall be used for the Southern Sports Complex.

DRT and GEDA Data Reconciliation

Based on the data received from GEDA, three tax credit programs (Guam Raceway Park, Lada Estates, and Soccer Stadium) have exhausted their benefits. Contributors for the Guam Raceway Park claimed a total of \$7.8M, Lada Estates of \$2.9M, and the Soccer Stadium of \$1M for a total of \$11.7M.

DRT also provided a database, but the amount of tax credits claimed differed from those reported by GEDA. DRT's initial data reflected the following tax credits claimed: \$3.9M for the Guam Raceway Park, \$2.9M for the Lada Estates, and \$1M for the Soccer Stadium, for a total of \$7.8M. Therefore, the variance between DRT and GEDA's data was initially \$4.5M.

The audit team informed DRT of the variance in June 2015. DRT and GEDA then set to reconcile their data. As of September 2015, the variance between DRT and GEDA has been reduced to \$476K, and they are still working to reconcile the remainder. See Table 4 below.

Table 4: Tax Credits Claimed (per DRT) Against 17 Tax Types

Tax Credit Programs	Per Drt	Per GEDA	Variance
Soccer Stadium	\$ 1,000,000	\$ 1,000,000	\$ -
Guam Raceway Park	\$ 7,349,419	\$ 7,824,970	\$ (475,551)
Lada Estates	\$ 2,915,000	\$ 2,915,000	\$ -
Totals	\$ 11,264,419	\$ 11,739,970	\$ (475,551)

\$12.5M Claimed in GRAP Tax Credits

P.L. 28-142 authorized the use of tax credits for the Guam Registered Apprenticeship Program (GRAP) beginning in FY 2007. However, the DOL Administrative Services Officer indicated that tax credits were not claimed until FY 2009, two years later. DOL provided FY 2009 to FY 2014 annual reports previously submitted to the Legislature in compliance with P.L. 28-142, and several electronic spreadsheets. DOL authorized a total of \$12.5M in tax credits to 19 companies. It is unknown whether the companies would have incurred these training costs regardless of the tax credits.

Unlike the other tax credits that were primarily for capital improvement, the GRAP was established to reduce the shortage of highly skilled workers and allowed businesses that employ apprentices to claim tax credits for 50% of eligible training costs incurred provided that:

- Apprenticeships are for occupations on the skilled occupations list approved by the Governor and Legislature annually.
- Apprentices complete the program according to U.S. Department of Labor Bureau of Apprenticeship and Training standards and work at least 120 hours a month. Pre-apprentices do not qualify.
- The business does not hold a GEDA Qualifying Certificate.
- Apprenticeship training costs paid by other government of Guam or federal funds shall not be eligible for tax credits.

Our initial review of the data indicated that DOL underreported \$97K between FY 2009 and FY 2014 because of errors in the formulas that DOL used. The discrepancies were brought to DOL's attention. See Table 5 for more details.

Table 5: FY 2009 to FY 2014 GRAP Tax Credits Authorized

Companies	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	Grand Total
1 Company E	\$ 1,717,862	\$ 1,081,137	\$ 1,413,319	\$ 737,850	\$ 957,207	\$ 299,520	\$ 6,206,896
2 Company F	\$ 1,116,897	\$ 256,829	\$ 305,604	\$ 160,391			\$ 1,839,722
3 Company C	\$ 233,115	\$ 243,609	\$ 506,244	\$ 165,463	\$ 290,760	\$ 66,939	\$ 1,506,129
4 Company B	\$ 184,457	\$ 182,358	\$ 324,329	\$ 141,951		\$ 117,290	\$ 950,386
5 Company D			\$ 265,619	\$ 158,606	\$ 101,370	\$ 18,755	\$ 544,350
6 Company L		\$ 61,452	\$ 67,541	\$ 52,129	\$ 135,604	\$ 134,934	\$ 451,661
7 Company H			\$ 76,556	\$ 45,918	\$ 16,040	\$ 65,793	\$ 204,307
8 Company R					\$ 150,582		\$ 150,582
9 Company O				\$ 31,742	\$ 73,372	\$ 38,398	\$ 143,513
10 Company K					\$ 82,074		\$ 82,074
11 Company I			\$ 32,266	\$ 33,155			\$ 65,421
12 Company A	\$ 29,485	\$ 13,110	\$ 5,068	\$ 17,201			\$ 64,864
13 Company P				\$ 57,577	\$ 7,038		\$ 64,615
14 Company J			\$ 31,614	\$ 13,212			\$ 44,826
15 Company M		\$ 26,105	\$ 8,362				\$ 34,467
16 Company Q				\$ 27,137			\$ 27,137
17 Company N				\$ 3,040	\$ 7,719		\$ 10,758
18 Company S						\$ 6,865	\$ 6,865
19 Compay G		\$ 2,560					\$ 2,560
DOL Total	\$3,281,816	\$1,867,161	\$3,036,522	\$1,645,374	\$1,821,766	\$748,494	\$12,401,133
OPA Total	\$3,281,816	\$1,867,161	\$3,036,522	\$1,680,990	\$1,874,254	\$757,709	\$12,498,452
Variance	\$ -	\$ -	\$ -	\$ (35,616)	\$ (52,488)	\$ (9,215)	\$ (97,319)

The 19 companies with authorized GRAP tax credits represented 12 industry areas, with telecommunications, ship repair, construction, military support, and security comprising the top five industries. See Table 6 below.

Table 6: GRAP Tax Credits by Industry

Industry	# of Companies	FY 2009 to FY 2014 Grand Total
1 Telecommunications	1	\$ 6,206,896
2 Ship Repair	2	\$ 1,862,123
3 Construction	4	\$ 1,587,096
4 Military Support	1	\$ 1,558,617
5 Security	1	\$ 544,350
6 Hotel	1	\$ 204,307
7 Vehicle Maintenance	1	\$ 152,728
8 Refrigeration & Airconditioning	3	\$ 116,076
9 Affordable Housing	2	\$ 110,247
10 Car Dealership	1	\$ 80,640
11 General Trucking	1	\$ 64,615
12 Temporary Staffing	1	\$ 10,758
Grand Total	19	\$ 12,498,452

We inquired with DOL on what measurements, if any, were used to determine whether the program's purpose was met and whether the GRAP enhanced employment on Guam. DOL responded in October 2015, that measurements include: (1) Higher number of highly skilled workers, (2) Higher number of trades and occupations filled, and (3) Tax contributions from the higher skilled workforce. DOL management also commented that they agree that GRAP enhanced employment on Guam.

P.L. 28-142 did not define what constitutes eligible training costs, but DOL's rules to administer the GRAP specified eligible training costs as follows: direct wages of apprentice, direct fringe benefits of apprentice, apprentice instructor costs, training costs (books and tuition), and personal protective equipment. Although the rules were transmitted to the Legislature in July 2007 pursuant to the Administrative Adjudication Law required by 22 GCA §44107(a), it was not included as part of the Guam Administrative Rules and Regulations found on the Compiler of Laws' website.

Also unlike other tax credits programs, P.L. 28-142 specified a sunset provision for the tax credits until December 30, 2014, with the option for the Legislature to extend to 2018. Public Law 32-181 extended the GRAP to December 30, 2019.

Procedures, Rules, and Regulations Not Developed for Four Programs

During our review of public laws authorizing the various tax credit programs, we noted several requirements where the administering entities were to develop and/or promulgate procedures, rules, and regulations on the implementation of the programs. Specifically:

- P.L. 14-69 required the DRT Director to formulate rules and regulations, through the Administrative Adjudication Act (AAA)¹⁰, to implement the tax credits for privately owned lands.
- P.L. 27-27 required GEDA to submit to the Legislature the rules and regulations governing the implementation of the Paseo Stadium tax credit program within 30 days of the Law's enactment.
- P.L. 27-85 required GEDA to submit to the Legislature the rules and regulations governing the implementation of the Soccer Stadium tax credits within 30 days of the law's enactment.
- P.L. 27-114 required GEDA to promulgate rules and regulations, pursuant to the AAA, to implement the public school sports facilities tax credits within 60 days of the law's enactment.
- P.L. 24-141 required GEDA and DRT to formulate the rules and regulations, pursuant to the AAA, construction, monitoring, and for the Guam Raceway Park and tax credits.
- P.L. 27-130 required GEDA to formulate rules and regulations governing the issuance of tax credits for the UOG Multi-Purpose Sports Complex.

¹⁰ The Administrative Adjudication Act is used interchangeably with the Administrative Adjudication Law and is more commonly referred to as the AAA.

- P.L. 28-142 required the DRT Tax Commissioner, in cooperation with the DOL Director, to develop procedures to implement the GRAP tax credits within 90 days of the law's enactment.
- P.L. 28-150, Chapter V, Section 29 and P.L. 29-19, Chapter VI, Section 23 required the DRT Director to enact rules and regulations, pursuant to the AAA, to implement the MIP tax credits.
- P.L. 32-202 required GEDA to implement and monitor the DPR Tiyan Gymnasium tax credit program pursuant to rules and regulations already adopted by GEDA for previous tax credit programs.

GEDA provided the promulgated rules and regulations for the Soccer Stadium, Guam Raceway Park, and the UOG Multi-Purpose Sports Complex tax credit programs. However, it was unable to provide a copy of the promulgated rules and regulations for the Public School Sports Facilities tax credit program.

As previously noted, DOL provided the rules to administer the GRAP tax credit program, which was transmitted to the Legislature in July 2007, but has not been posted on the Compiler of Laws website.

DRT was unable to provide evidence of any written procedures developed and/or promulgated for MIP and Privately Owned Lands tax credit programs.

The responsible agencies should strive to fully comply with the respective tax credit programs' laws.

No Action Taken on Previous Audit Recommendations

In November 2007, OPA issued its performance audit on GovGuam's tax credit programs (OPA Report No. 07-15). The audit identified nine tax credit programs with a minimum of \$23.6M in authorized tax credits to taxpayers contributing to property, materials, labor, services or cash to GovGuam for various programs. Four of these programs do not limit amounts of tax credits given.

This previous audit had several recommendations:

1. GEDA to coordinate with DRT to assess of all tax credit programs to include overall benefits and costs;
2. GEDA to determine the amount of admission fees collected by the GRF for the Raceway Park to remit to GovGuam and continue to ensure that all admission fees are remitted by GRF and the GFA;
3. GEDA to revoke the \$231K in excess Raceway Park tax credits applied above the allowed 5% overhead, until sufficient documentation is provided;
4. GEDA to pursue and obtain documentation from the GFA to verify the \$566K in Soccer Stadium tax credits to ensure the GFA met the matching requirements;
5. DRT to determine whether companies that participated in the tax credit programs availed of both tax credits and deductions;
6. DRT to determine the appropriate tax filings for GRF and determine its tax liability if applicable;

7. DRT to provide the Legislature and BBMR with quarterly and annual reports of revenues foregone via tax credits in FY 2007, estimate tax credits for FY 2008 and FY 2009 and future years to facilitate the annual budget process.
8. Bureau of Budget and Management Director to incorporate the estimated tax credit reductions provided by DRT in the annual budget process.
9. The Office of the Attorney General (OAG) to determine whether legal action is necessary to cause the required admissions fees to be remitted by the Guam Racing Federation;
10. OAG to determine whether a breach of standards of conduct for public officers and employees occurred when the former GEDA Acting Administrator authorized tax credits prior to leaving the government and was then hired by the parent company of the subsidiary company that received the tax credit;
11. OAG to determine whether a breach of standards of conduct for public officers and employees occurred when the then GEDA Acting Administrator authorized tax credits to a subsidiary company whose parent company employs a close relative;
12. The Governor and the Guam Legislature to repeal the following tax credit programs:
 - a. Completed
 - 1) Raceway Park (balance \$1,368,823)
 - 2) Paseo Stadium (balance \$498,744)
 - 3) Soccer Stadium (balance \$433,510)
 - b. Unimplemented or Dormant
 - 1) MIP Billings (\$11,059,643)
 - 2) UOG Multi-Sports Complex (\$1,000,000)
 - 3) Public School Sports Facilities (\$1,000,000)
 - 4) Guam's Local Commuter Air Services (Inactive)
 - 5) Tax Credit for Privately Owned Lands (Inactive)
13. The Governor and the Guam Legislature to reduce the length of time for the Guam Registered Apprenticeship Program tax credits and set a threshold on the amount of tax credits authorized.

However, we determined that none of the parties listed above took any action on the recommendations made in OPA Report No. 07-15. In addition, it has been determined that some of the recommendations are no longer applicable in the cases where the authorized tax credit amounts have been exhausted.

Tax Forms 1099 Not Issued

In OPA Report No. 15-02, the audit team learned GovGuam has not issued tax form 1099's, or other appropriate tax form, to the tax credits recipients related to the Layon Landfill, Tiyan Campus, or other GovGuam tax credit programs. Similar to other cash payments, GovGuam must record tax credits in lieu of cash payments and ensure that the recipients report these transactions in their respective tax returns. DOA acknowledged that it was unable to issue the 1099's because it needed DRT's assistance to obtain necessary details, such as the taxpayer identification numbers, taxpayer names, and tax credit amounts. We reiterate our recommendation for DOA and DRT coordinate and determine the appropriate agency to be vested with the responsibility to issue the forms 1099, or other appropriate tax form, to the tax credits recipients for past tax credits received and on a going forward basis.

Conclusion & Recommendations

Despite the passage of Public Law 33-52 in June 2015 that allowed the Public Auditor access to tax returns and other related information and despite the audit team giving the Department of Administration (DOA) advanced notice of the audit since March 2014, DOA was unable to provide reliable and complete data. As a result, OPA could not verify the completeness, reliability, and accuracy of GovGuam's tax credits programs due to the limited data provided.

Based on the limited data provided, we concluded GovGuam has 14 tax credit programs that authorized an estimated \$105.8M in tax credits. Our previous tax credits audit, OPA Report No. 07-15, identified \$23.6M in authorized tax credits, of which \$6.3M was applied against tax revenues through March 2007. In that audit, we recommended the Governor and Legislature to repeal the balances of on-going and unimplemented tax credit programs, but the Legislature and Administration did not take any action on this recommendation over the past seven years. By allowing those tax credit programs to continue and establishing additional programs, a minimum of approximately \$82.3M in additional tax credits were authorized after September 2006.

While we recognize the Legislature's authority to provide tax credits to achieve public goals and programs, it should be pointed out that tax credits reduce government cash available to fund other programs. The government's spending priorities could be distorted because tax credit programs do not require appropriations or compete with the annual budget's spending priorities and, in effect, receive a higher funding priority than public education, safety, and health. It is not known whether these tax credit programs would have been funded through the regular appropriation process.

As of September 2014, GovGuam incurred an operating deficit of \$61.9M, of which the \$9.8M in Layon Landfill tax credits contributed to the deficit. GovGuam's cumulative deficit is now at \$871.6M.

We estimate a potential savings of \$2.8M (\$1M for the UOG Outdoor Multi-Purpose Sports Complex, \$1M for the Public School Gymnasium, \$612K for the Paseo Baseball Stadium, \$200K for the Southern Sports Complex, and unknown amounts for the Local Commuter Air Services and Privately Owned Lands) if the six inactive tax credit programs are not implemented. In effect, not implementing these programs would not increase the deficit by \$2.8M.

We recommend the following:

- 1) The heads of DRT, DOA, GEDA, DPHSS, and DOL establish and implement agreed upon procedures to reconcile all tax credits program data at least annually.
- 2) DOA and DRT heads to coordinate and determine the appropriate agency to be vested with the responsibility to issue Tax Forms 1099, or other appropriate tax form, to the tax credits recipients for past tax credits received and on a going forward basis.
- 3) DOA, DRT, and GEDA heads to develop the proper protocols to ensure that the required admission assessments for the Guam Raceway Park and Soccer Stadium are collected and recorded.

Management Response and OPA Reply

We transmitted a draft report to DRT, DOA, GEDA, DOL and DPHSS in September 2015 for their official response. We met with officials from the five entities to discuss the audit results in September 2015. We also provided draft reports and met separately with the Legislative Vice Speaker and Oversight Chairperson in September 2015.

We received official responses from GEDA on September 23, 2015, and from DOL and DRT on October 5, 2015. Refer to Appendix 5, 6, and 7 for the management responses.

GEDA recognized that account reconciliation is an underappreciated yet critical control to help ensure financial integrity for the GovGuam's tax credit programs. GEDA also recognizes the importance of working together with sister agencies DRT and DOA.

DOL acknowledged errors found in their worksheet which resulted in the underreporting to the Legislature and since then developed a new workbook to assist in tracking tax credits.

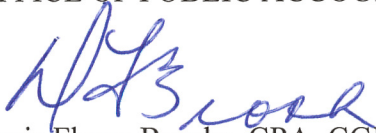
DRT expressed the commitment of the reconciliation efforts with the other sister agencies and will continue to resolve any issues concerning the 1099's which may be applicable to DOA.

We did not receive an official response from DOA and DPHSS as of report issuance.

Subsequent to receiving the management responses, we alerted DOA, DRT, and GEDA management of an additional recommendation to develop the proper protocols to ensure that the required admission assessments for the Guam Raceway Park and Soccer Stadium are collected and recorded. As of report issuance, we did not receive feedback as to whether they concur or disagree with the recommendation.

We appreciate the assistance shown during the course of this audit by the management and staff of GEDA, DOL, DRT, DOA, and DPHSS.

OFFICE OF PUBLIC ACCOUNTABILITY



Doris Flores Brooks, CPA, CGFM
Public Auditor

Appendix 1:
Classification of Monetary Amounts

Finding No.	Finding Description	Questioned Cost¹¹	Potential Savings
1	\$105.8M Authorized in 14 Tax Credit Programs	\$ -	\$ -
2	Lack of Regular Review, Monitoring, and Reconciliation of MIP Tax Credits Program	\$ -	\$ -
3	\$2.8M Savings for Inactive Tax Credit Programs	\$ -	\$ 2,812,370
4	GEDA and DRT Reconciliation Efforts	\$ 475,551	\$ -
5	\$12.5M Claimed in GRAP Tax Credits	\$ -	\$ -
6	No Action taken on Previous Audit Recommendations	\$ -	\$ -
7	Tax Forms 1099 Not Issued	\$ -	\$ -
	Totals	\$ 475,551	\$ 2,812,370

¹¹ 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.

Our audit of the GovGuam Tax Credits Programs is Part C of our three-part audit series on tax credits and includes a follow-up audit on the Tax Credits Programs Performance Audit (OPA Report No. 07-15), which was issued in November 2007. Part A was on the Tiyan Campus Tax Credit Program (OPA Report No. 14-07) and was issued in December 2014. Part B was on the Layon Landfill Tax Credit Program (OPA Report 15-02) and was issued in May 2015.

Our audit objectives for this engagement were to:

- (1) Identify universe the tax credits programs;
- (2) Quantify the amount of tax credits authorized per program;
- (3) Determine the amount of tax credits claimed per program as of December 31, 2014
- (4) Determine whether processes are in place to monitor these tax credits; and
- (5) Conduct a follow-up audit on the previously issued tax credit audit, OPA Report No. 07-15.

The scope of this engagement was from October 1, 2006 to December 31, 2014 (FY 2007 to 1st quarter of FY 2015) and other periods deemed necessary.

Audit Scope Limitation

Generally Accepted Government Auditing Standards (GAGAS) require auditors to obtain sufficient and appropriate evidence to provide a reasonable basis for their findings and conclusions (GAGAS paragraph 6.56). 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 (GAGAS paragraphs 6.71 to 6.72).

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 (1 GCA §1917).

Recognizing that DRT and DOA may need additional time to gather information pertaining to OPA's third and final audit on tax credits, we requested data to be provided for all tax credit programs from OPA Report No. 07-15 since March 2014.

In January 2015, the Vice Speaker of the 33rd Legislature introduced Bill 31-33 to address the recommendation made in OPA Report No. 15-02. The OPA submitted testimony in support of this bill's passage in March 2015. Public Law 33-52, as Bill 31-33, passed in June 2015 and lapsed into law, which gave the Public Auditor access to tax returns and other information required to be filed or furnished by the taxpayer. Any information provided to the Public Auditor or any person employed by the Public Auditor under this section shall be considered privileged. The legislation also states that disclosure of privileged communication or information in violation of Section 1909.1 shall be a felony of the third degree (1 GCA § 1909.1(d)).

In May 2015, the audit team set a deadline of June 2015 for DRT and DOA to provide tax credit data for Part C of the three-part tax credit audit series. After several e-mails and phone call attempts to follow-up on requested data between May and June 2015, DRT submitted databases for several tax credit programs. However, a \$4.5M variance was found between GEDA and DRT figures, which has not been fully resolved as of report issuance date. In addition, DOA has yet to provide the requested tax credit information.

Also in May 2015, we requested tax credit data from GEDA and DPHSS. Officials from DPHSS indicated that the Medically Indigent Program (MIP) tax credits data should be obtained from DOA as they did not have information requested. GEDA provided tax credit information shortly after an entrance meeting in May 2015. In July 2015, we requested Guam Apprenticeship tax credits data from DOL which was provided in August 2015.

Despite giving DOA advanced notice that OPA will be conducting a three-part audit series on tax credits when we initiated the first audit (Tiyon Tax Credits Audit) in March 2014, DOA has not been able to provide requested data. Therefore, the audit team could not perform tests to verify the completeness, reliability, and accuracy of tax credits programs data.

Audit Methodology

Our audit methodology included a review of laws, policies, and other information pertinent to the GovGuam Tax Credits Programs. We also performed the following:

1. Interviewed and conducted walkthroughs with key officials from DRT, DOA, GEDA, DPHSS and e-mails and phone calls to DOL;
2. Obtained and analyzed tax credits programs database provided by DRT, GEDA, and DOL;
3. Reviewed the Government-Wide FY 2009 to FY 2014 audited Basic Financial Statements and other financial audits as deemed necessary; and
4. Performed other reviews and procedures as deemed necessary to address the audit objectives.

We conducted this performance audit in accordance with generally accepted government auditing standards issued by the United States Comptroller General. Those standards require that we plan 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, we believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

OPA Report No. 15-02, Layon Landfill Tax Credit Program

OPA was denied full access to Layon Landfill Tax Credits data, despite 11 GCA § 15101(b)'s provision that a taxpayer receiving tax credits as compensation for government-condemned land waive its confidentiality. Based on the limited data we were provided, we found that GovGuam authorized \$28.9M in tax credits to eight of the nine former landowners of the Layon Landfill property as of December 31, 2014, of which \$13.9M has been claimed against BPT, such as cigarettes, retail, and insurance premium taxes.

Of the \$28.9M in authorized tax credits, \$20.6M is for principal and \$8.3M is the interest calculated at 6% from the date of take of January 24, 2008. One landowner has not claimed any of the tax credits he/she is entitled to.

OPA Report No. 14-07, Tiyan Campus Tax Credits Program

The Tiyan Campus [Tiyan High School and Guam Department of Education's (GDOE) Central Office and other facilities] will cost a total of \$260.3M. There is a maximum of \$44.1M in tax credits that may be claimed in relation to the lease and purchase of the Tiyan Campus.

Tax credits that have been claimed or will be claimed are:

- \$21.5M for lease payments from FY 2010 to FY 2013;
- \$7.5M for collateral equipment for Tiyan High School and the GDOE Central Office and other facilities; and
- \$15.1M for 2014 and 2015 base rent and additional rent.

OPA Report No. 14-01, Public Debt

As GovGuam's public indebtedness is limited, GovGuam obtained other financing sources not subject to the debt ceiling, such as COPs, notes payables, and other loans not backed by the full faith of general government taxes and revenues. Certain other obligations which are not issued upon the pledge of governmental taxes and revenues are not generally subject to the Organic Act debt-limitation provision. Therefore, tax credits do not affect the debt ceiling imposed by the Organic Act.

OPA Report No. 13-03, Real Property Tax

OPA conducted a performance audit of DRT's real property taxes and found that real property taxes had \$15.7M in unrealized, lost and forgone tax revenues due to the lack of interface between Department of Public Works (DPW) and Department of Land Management (DLM). In addition, \$858k in question costs were identified during OPA's testing and review. OPA made several recommendations:

- DRT Director to work with the Guam Legislature and Governor of Guam to amend 11 GCA § 24306 to authorize DRT to utilize current values for real property assessments, place a moratorium on senior citizen and home expansions, and amend 11 GCA § 24110 by raising eligibility for senior citizens from age 55 to 65 to receive a reduction in real property taxes.

- DRT Director to issue request for proposal for appraisal and revaluation services, establish a communication protocol with DPW and DLM, and place controls on DRT's database to limit input on accessibility and ensure secondary review of management.

OPA Report No. 07-15, Tax Credit Programs

OPA conducted a performance audit that examined Guam's various tax credit programs. The audit identified nine public laws that authorized a minimum of \$23.6M in tax credits to taxpayers contributing to property, materials, labor, services or cash to the government of Guam for various programs. Four of these programs do not limit amounts of tax credits given. GEDA authorized tax credits of \$6.6M for the Guam Raceway Park.

Several recommendations were given specific agencies such as (1) GEDA to coordinate with DRT to conduct assessment of all tax programs to include overall benefits and costs, (2) GEDA to revoke \$231,377 in excess Raceway Park tax credits applied above the allowed 5% overhead, (3) DRT to provide to the Legislature and Bureau of Budget Management and Research (BBMR) quarterly and annual reports of revenues forgone via tax credits in FY 2007 and estimate tax credits for FY 2008 and FY 2009 for the purposes of facilitating the annual budget, (4) Director of BBMR to incorporate estimated tax credits in the annual budget, (5) Office of the Attorney General (OAG) to determine the legal action necessary to cause the admissions fees to be remitted by the Guam Racing Federation and (6) the Governor and Legislature to repeal several programs including the Raceway Park (balance \$1,368,823) and Tax Credits for Privately Owned Landowners (balance unknown).

However, the Legislature and Administration have not taken any action on the recommendations.

OPA Report No. 06-18, Paseo Stadium Lease Agreement

OPA conducted a compliance audit of the Paseo Stadium Lease Agreement between the Department of Parks and Recreation (DPR) and the Guam Baseball Federation (GBF). The audit found that DPR and GBF did not comply with terms and conditions of the Stadium Lease Agreement and P.L. 27-27. We found that:

- Over \$1M in Paseo Stadium rehabilitation projects were not procured in accordance with Guam Procurement Law.
- Only one company was selected to benefit from the tax credits for stadium projects.
- GEDA did not scrutinize the tax credit program and relied on GBF's assertions that contributions were received and projects were completed.
- GBF did not pay the required 4% of accrued gross revenues to DPR for 2004 and 2005.
- DPR did not independently safeguard the MSOF (a government account), against loss and misuse.

The OPA recommended:

- DPR Director to work with the Office of the Attorney General to determine viable options to enforce or terminate the Paseo lease agreement. The Paseo Lease Agreement has since been terminated by Public Law 27-27.
- DPR Employees Association to pay the MSOF of \$542;
- The Legislature ensure that there is defined monitoring mechanisms incorporated into all future tax credit programs;
- GEDA Administrator to incorporate procedures into the current rules and regulations to ensure that expenditures for tax credits are procured according to Guam Procurement Law.
- GEDA Administrator to temporarily revoke \$64,690 of the Beneficiary tax credits until evidence of proper authorization and supporting receipts are provided by GBF.

Tax Credit for Privately Owned Lands

In October 1977, P.L. 14-69 authorized DRT to administer the Tax Credit in Lieu of Cash Payment tax credit program. Landowners can receive a tax credit that can offset any form of taxes, except income taxes, when the government of Guam acquires the landowner's property and cannot make cash payments for it.

Guam Raceway Park

In February 1998, P.L. 24-141 authorized any business that contributes to the construction and development of the Guam Racing Federation's race track facility to credit of business privilege taxes. The cap on GRT credits for the design and construction of the Raceway Park is \$8M.

All property used for the racing facility, including access roads shall be exempt from Real Property Taxes throughout the term the property is used. Under Section 3, all tax credits derived shall be recovered over a three year period (straight-line basis). If the amount of expenditures is not recovered through tax credits within three years, the balance is carried over to future years until taxes are exhausted.

In addition, organizers of any event held at the Raceway Park that charges a fee will pay the Government of Guam, 10% of admissions fees charged.

Guam's Local Commuter Air Services

In August 1998, P.L. 24-254 authorized DRT to administer the Commuter Air Services Development tax credit program. The program was created to offer either business privilege or income tax credits (not to exceed 10% of total tax obligations) for companies that make monetary donations to GEDA for the promotion and enhancement of Guam's local commuter air service industry.

Paseo Baseball Stadium

In January 2003, P.L. 26-166 added § 77112.1 (d) to Article 1, Chapter 77, Division 2 of Title 21 of the GCA which authorized the Department of Parks and Recreation to lease the Paseo Stadium to the Guam Baseball Federation for a period to be mutually agreed by both parties, but not to exceed fifty years.

P.L. 26-166 Section 4 authorized \$500K for tax credits for the development, upgrading, and repair and maintenance of the Paseo Stadium and ancillary facilities.

Soccer Stadium

In April 2004, P.L. 27-85 added Chapter 77 of Division 2, Title 12 of the GCA. Similar to P.L. 24-141, if a business contributed to the cost, design, labor and materials for the construction of the Guam Football (Soccer) Association's soccer stadium, it shall be entitled to credit of business privilege taxes. The basis for contribution to the project shall be the actual cost plus the cost of transportation from the point of origin to its destination. Any unused credits not used in the current tax period may be carried over into the subsequent tax periods until credits are exhausted.

In addition, the organizer of any event held at the soccer stadium for which a fee is charged for admission, shall pay to the government of Guam, an admissions of \$2 or 10% per admission, whichever is less.

Title 12 GCA § 77305 states that the cap to GRT credits for the design and construction of the Soccer Stadium is \$1.2M.

Public School Gymnasium

In December 2004, P.L. 27-114 allowed contributors to the construction, development, upgrading, repair, and maintenance of any public school sports facilities to be eligible for up to \$1M in tax credits by adding a new Article 4 to Chapter 77 of Division 2 of Title 12 of the GCA. GEDA shall submit a report to the Legislature detailing the impact on the GRT, its monitoring efforts, and any other information related to the program which will be transmitted on an annual basis until \$1M is exhausted.

UOG Outdoor Multi-Purpose Sports Complex

In December 2004, P.L. 27-130 added a new Article 5 to Chapter 77, Division 2 of Title 12 of the GCA. Under P.L. 27-130, section 77402 states that any sole proprietorships, corporations, partnerships, and limited liability companies making contributions towards the development, construction, financing, maintenance and improvement of an outdoor multi-purpose sports complex at the University of Guam shall be entitled to tax credits against the contributor pursuant to Chapter 22 (Annual Excise and Admission Taxes), Article 3 of Chapter 26 (Alcoholic Beverage Tax), and Chapter 28 (Use Tax) of Division 2 of Title 11 GCA. All taxes referred to in this Article shall mean tax credits applied against excise tax liabilities.

Tax credits authorized for all contributors shall not exceed \$1M in which the University of Guam (UOG) or its designee shall be responsible of approving the contributions made towards this outdoor multi-purpose sports complex at the University of Guam.

In addition, tax credits authorized by this act are as follows:

- Tax credits that cannot be applied during a single tax year may be applied to excise tax liability in subsequent years.

- A single contributor shall only be entitled to claim tax credits up to \$25,000 per month, not to exceed \$300,000 per year or tax credits shall not be applied to more than 50% of the contributor's monthly excise tax liability.
- To be eligible for the tax credits authorized by this Article, contributors must be licensed to do business on Guam.

Guam Registered Apprenticeship Program

In July 2006, P.L. 28-142 describes the Guam Registered Apprenticeship Program (GRAP), which is designed to teach an apprentice how to perform all duties in a recognized skilled craft or trade at the journeyman level.

The GRAP is administered by the Director of Labor. The purpose of this program is to reduce the shortage of highly skilled workers and authorize tax credits for certain long term apprenticeship training expenses and ensure the apprentices continue to pay income taxes and participate in the economy.

Any business that employs apprentices duly enrolled and registered under the terms of the Program is entitled to a tax credit against its gross receipt tax liability equal to 50% of the eligible training costs paid or incurred by the business provided that:

- No business or program participant holding a Qualifying Certificate (QC) shall claim tax credits pursuant to this section.
- Apprentice must work a minimum of 120 hours per month at trade.
- Any training costs paid by the government of Guam or federal funding shall not be eligible Program costs and shall not be applied as a tax credit.
- A program participant may carry forward the tax credit when the credit exceeds the total amount of its gross receipts tax liability within the applicable tax period. Tax credits may be carried forward until exhausted.

A sunset provision for the tax credits to be repealed until December 30, 2014, with the option to extend to 2018. Public Law 32-181 extended the GRAP to December 30, 2019.

Title 22 GCA § 44114. Reporting Requirements. The Director shall make a full written report to I Liheslatura and post the report on the Department's website within 30 days after the close of each fiscal year. Said report shall describe accurately the names of all program participants; the total amount of tax credits claimed by each program participant in the preceding fiscal year; a list of apprentices for every program participant with his corresponding occupational trade; the amount of tax credits claimed by every program participant for each apprentice during the preceding fiscal year; DOL's occupational list, including the total number of apprentices trained for each Program trade; and such statistical and other information in such form and detail as I Liheslatura may prescribe. *If* the Director fails to make said report or to post it on the

website within thirty (30) days after the report is due, all tax credits shall immediately be discontinued until the Director submits and posts the report."

Medically Indigent Program

In September 2007, P.L. 29-19 codified the MIP tax credit in 11 GCA § 26216, which stated:

- 1) If the MIP fails to pay a claim for services and products for more than 90 days after receiving an invoice, the health care provider, unless a qualifying certificate is present, shall be entitled to an offset equal to the value of unpaid for MIP services it provides against the Business Privilege Taxes (BPT) it owes for any given month.
- 2) Any unused offset authorized against BPT owed for any given month may be carried over into the subsequent months until said offset is exhausted.
- 3) The government shall not pay health care providers for services if an offset against total BPT has been exercised.
- 4) Any health care service provider that claims an offset against BPT pursuant hereto must participate and continuously provide services to MIP recipients to qualify for said offsets for any given month.

In addition, to avoid double payment, coordination of the Department of Revenue and Taxation and Department of Administration is needed with the appropriate department or agency when a health care service provider claims an offset.

Southern Sports Complex

In March 2009, P.L. 30-3 included a new subsection (b) to Section 2 of P.L. 24-33. Through the Department of Land Management in coordination with the Agat Municipal Council and the Guam Football (Soccer) Association, regulation-size soccer fields and related facilities as the 'Southern Sports Complex,' Lot. No. 477 in the Municipality of Agat is to be established.

Organizers of any event held at the soccer stadium and facilities for which a fee is charged for admission shall pay to the government of Guam, \$2 or 100% per admission, whichever is less.

As stated in § 77305, the total amount of credits against Gross Receipts Taxes for the design and construction of the soccer stadium and facilities authorized herein shall not exceed \$1M.

Tiyan Campus

In June 2009, P.L. 30-37 authorized GovGuam to issue tax credits in lieu of cash payments to a lessor who is willing to provide property and a facility conducive for a school environment for the interim JFK campus and collateral equipment, which shall be transferred to JFK upon completion of its permanent campus.

The authorized tax credits shall be freely assignable and transferrable to any party, company, partnership or corporation. The assignment and/or transfer may be a gift or may be for legal

consideration. Any assignment and/or transfer shall be in writing, notarized, and an original thereof shall be filed with the GEDA, with a copy to the DRT.

In addition, the Lessor may utilize tax credits for the lease payments against Business Privilege Taxes as contained within Chapter 26, Title 11 of the GCA.

Layon Landfill

On October 31, 2012, the Superior Court found in Civil Case no. CV0084-08 that the former landowners were entitled just compensation in the amount of \$25.1M, less the \$3.4M that GovGuam already deposited with the Court. As a result, the former landowners were entitled to the remaining balance of \$27.1M plus 6% interest per annum calculated from January 24, 2008.

Title 11 Guam Code Annotated Section 38101 stipulates that when GovGuam cannot make cash payments for the acquisition of privately-owned lands due to the unavailability of funds or for other reasons, the owner of such real property acquired by the government may elect to receive tax credits in lieu of cash on any taxes, except income taxes.

Lada Estates Project

In December 2012, P.L. 31-282, Sections 4 through 7 authorizes GovGuam to issue tax credits in lieu of any cash payments for the off-site infrastructure work in accordance with the March 2011 Decision and Order of the Superior Court of Guam in Civil Case no. 0135-04. Maeda Pacific Corporation is authorized to use tax credits against one-fourth of the business privilege tax to GovGuam for any given tax period.

However, the total amount of tax credits is not to exceed \$2,915,000 and any portion that is not used within 5 years shall expire. The tax credits are freely assignable and transferable to any party, company, partnership or corporation. Maeda Pacific shall provide GovGuam its agreement in writing that the availability of these tax credits through this legislation constitutes an accord and satisfaction of all amounts owed to it by GovGuam pursuant to the Decision and Order.

DPR Tiyan Gymnasium

In October 2014, P.L. 32-202, added Article 6 to Chapter 77, Division 2, Title 12 to the Guam Code Annotated authorizing for Tax Credits for the Tiyan Gymnasium.

Under Section 77601 (a) Any business that contributes the actual cost of design, labor and materials that are for the rehabilitation and improvement for the DPR Tiyan Gymnasium and facilities, shall be entitled to credit of business privilege taxes that are not already pledged for any purpose by Guam law. Any unused credits not used in the current tax period may be carried over into subsequent tax periods until such credits are exhausted.

Section 77604 indicates a \$2.5M cap on business privilege tax credits for the rehabilitation and improvement of the Tiyan Gymnasium and facilities over a 10 year period. No more than \$250K dollars in tax credits shall be authorized for each year of the program.

After the 10 year period, if there are still unused tax credits, the Guam Legislature in its discretion may extend the eligible period until exhausted.

Appendix 5:
GEDA's Management Response



GEDA
Guam Economic Development Authority
Aturidãd Inadilãnton Ikunumihan Guahan

Edward J.B. Calvo
Governor of Guam
I Mags' Lahen Guahan

Raymond S. Tenorio
Lt. Governor of Guam
I Segundo Na Mags' Lahen Guahan

John A. Rios
Administrator
Administradot

September 23, 2015

Doris Flores Brooks
Public Auditor
Office of Public Accountability
Suite 401 Pacific News Building
238 Archbishop Flores St., Hagatna, Guam 96910

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
BY: JFB
DATE: 09-28-15
TIME: 11:30 AM PM

RE: OPA's draft Audit Report - Tax Credit Programs Part C

Hafa Adai Ms. Brooks,

GEDA recognizes that account reconciliation is an underappreciated yet critical control to help ensure the financial integrity of the government of Guam's numerous tax credit programs.

While each corresponding agency has it's own tax credit processing cycle we believe that working together with our sister agencies DRT and DOA to begin mapping each of these out; even visually, will enable us to see where there maybe duplication, inefficiencies, etc. and most importantly to create a linkage among these processes into one simple system.

Similar to our previous collaboration in improving the certifying process for the Qualifying Certificate program the eventual outcome would result in an overall Tax Credit reconciliation policy that can be adhered to agency wide. It should also incorporate a review of the overall process routinely to identify improvements that can help drive quality and timeliness.

Should you have any questions please do not hesitate to contact Claire Cruz, Loans and Compliance Manager at ccruz@investguam.com or at 647-4332.

Senseramento

JOHN A. RIOS
Administrator

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DEPARTMENT OF LABOR

DIPĀTTMENTON HUMOTNĀT • Maria S. Connelley, Director • Sam Mabini, Ph.D., Deputy Director

EDDIE BAZA CALVO Governor

RAY TENORIO Lieutenant Governor

October 5, 2015

Doris Flores Brooks Public Auditor, CPA, CGFM 238 Archbishop Flores Street Hagatna, Guam 96910

RECEIVED OFFICE OF PUBLIC ACCOUNTABILITY BY: AG DATE: 10/5/15 TIME: 8:26 AM PM

Re: Draft OPA's Review of the GRAP Tax Credits

Dear Mrs. Brooks:

Buenas yan Hafa Adai! Thank you for allowing the Department to meet with you to discuss the preliminary findings to the OPA's review of the Guam Registered Apprenticeship Program (GRAP) Tax Credits. In addition to the interim response, the department is providing additional recommendations as discussed at the September 25, 2015 meeting for your review. A few comments as listed below:

Recommendation 1: On page 2 and 11 of the draft report 'It is unknown whether the businesses would have incurred these training costs regardless of the tax credits and whether the program benefits were measured'. This may represent the uncertainty that training related expenditures have been incurred. The Guam Registered Apprenticeship Program requires all Employers to submit their supporting documents on the apprentices' training and majority of the tax credit is for salaries of the apprentices' and the journeymen who are providing the on-the-job training.

Recommendation 2: On page 12, 1st paragraph "the GRAP was established to reduce the shortage of highly skilled workers on Guam", this should read "the GRAP was established to reduce the reliance of foreign workers on Guam"

Recommendation 3: On page 12, 2nd paragraph, the word "underpayment" should reflect "under-reported".

In addition to the above recommendations, the department has attached the following in support of how the Department measures the Guam Registered Apprenticeship Tax Credit Program.

The Department is looking forward to working with your office to ensure compliance with the Guam Registered Apprenticeship Program Tax Credit law. Should you require additional information, please feel free to contact our office at (671) 475-7043.

Very Respectfully,

Maria S. Connelley Director

Mailing Address: P.O. Box 9970 • Tamuning, Guam 96931 Physical Address: 414 West Soledad Avenue • Suite 400, GCIC Building • Hagåtña, Guam 96910 Telephone: (671) 475-7000/1 • Facsimile: (671) 475-6811 Website: dol.guam.gov • hireguam.com



What measurements, if any, are used to indicate whether the purpose of the program was met?

The Guam Registered Apprenticeship Program (GRAP) was designed to reduce the shortage of highly skilled workers, encourage employers to hire and train apprentices in highly skill trades and occupations, and authorize tax credits for certain long term apprenticeship training expenses. The GRAP provided the incentive and impetus for employers to support the formal development of their employees. In 2006, public leaders recognized the shortage of skilled workers and high attrition resulting from relocation and retirement. In addition, it was important to develop "an adequate source of skilled workers in order to attract investors to the island...The best possible method for developing employee skills is a formalized apprenticeship system of training that has proven to be cost effective, goal oriented, and designed to meet the specific need of the employer."

Most apprenticeship programs range from one to six years, combining on the paid job training. An apprentice is paired with a journeyman in the apprentice's occupation eight hours a day, combined with related training instruction from apprenticeship training centers, technical schools, community colleges, and/or institutions employing distance and computer-based learning approaches.

An important purpose of the Guam Registered Apprenticeship Program is to "ensure that apprentices continue to pay income taxes and participate in the economy." Apprentices start working from day one with incremental wage increases as they become more proficient on the job. As a result, their ability to work and receive income contributes to the economy via income taxes, as well as continued spending within the community. Upon graduation from the Registered Apprentice Program, graduate apprentices are paid at a higher income level as journeymen in their respective occupations. Thus, graduates fall in higher income tax brackets. This means an increase in their independence and quality of life (ex: better rentals or home ownership).

Measurements: (1) Higher number of highly skilled workers, (2) Higher number of trades and occupations filled, and (3) Tax contributions from higher skilled workforce.

Do you feel that GRAP enhance employment on Guam?

Definitely. Upon graduation from the Registered Apprentice Program, graduate apprentices continue their employment and are paid at a higher income level as journeymen in their respective occupations. Employers are provided the opportunity to have better skilled employees, which may contribute to improved retention and upward mobility.

Appendix 7:
DRT's Management Response



Dipáttamenton Kontribusion yan Adu'ána

DEPARTMENT OF
REVENUE AND TAXATION
GOVERNMENT OF GUAM Gubetnamenton Guáhan

EDDIE BAZA CALVO, Governor
Maga'láhl
RAY TENORIO, Lt. Governor
Tiñente Gubetnadot

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

October 5, 2015

Doris Flores Brooks, CPA, CGFM
Public Auditor
Office of Public Accountability
Suite 401, DNA Building
238 Archbishop Flores Street
Hagatna, GU 96910

In Re: Updated Draft Audit Report – Tax Credits Program Part C

Dear Ms. Brooks:

The Department of Revenue & Taxation (DRT) hereby submits its official response on the aforementioned.

After reviewing the audit report on Part C of the Tax Credit Programs, DRT concurs with the OPA's audit findings. Furthermore, DRT remains committed to the reconciliation efforts with other sister-agencies on all tax credit programs and will continue to resolve any issues concerning the issuance of 1099's, which may be applicable, with the Department of Administration.


JOHN P. CAMACHO
Director

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BY: AG
DATE: 10/5/15
TIME: 3:47 AM PM



**Government of Guam Tax Credit Programs
Report No. 15-06, October 2015**

ACKNOWLEDGEMENTS

Key contributions to this report were made by:

Ashley Gaerlan, Audit Staff
Rodalyn Gerardo, CIA, CGFM, CPA, CGAP, CGMA, Audit Supervisor
Doris Flores Brooks, CPA, CGFM, Public Auditor

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