

**Department of Revenue and Taxation
Non-Profit Organization Limited
Gaming Tax**

**Performance Audit
October 1, 2013 through September 30, 2017**

**OPA Report No. 19-03
March 2019**



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Limited Gaming Tax**

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EXECUTIVE SUMMARY
Non-Profit Organization Limited Gaming Tax
Report No. 19-03, March 2019

The Government of Guam lost the opportunity to collect \$2.6 million (M) in additional Limited Gaming Tax (LGT) from the top five Non-Profit Organizations (NPO) during calendar year (CY) 2014 through CY 2017. Bingo/Lottery (Bingo)¹, primarily conducted by NPOs, is Guam’s second largest gaming activity next to electronic gaming devices. As shown in Table 1, the top five NPOs grossed \$81.3M or an average of \$20.3M in Bingo income per CY. This income is subject to a four percent (4%) LGT. Of the \$81.3M, NPOs paid out \$66.1M to Bingo winners. However, LGT was only applied to gross receipts less payouts for winnings due to the inconsistency in the gross receipts definition in the Guam Code Annotated (GCA) and the Guam Administrative Rules and Regulations (GARR).

Table 1: CY 2014 ~ CY 2017 Top 5 Bingo NPOs’ Gross Income vs. Net Income

DESCRIPTION	CY 2014	CY 2015	CY 2016	CY 2017²	TOTAL	AVERAGE
GROSS INCOME	\$ 15,973,526	\$ 20,297,656	\$ 26,553,947	\$ 18,433,244	\$ 81,258,373	\$ 20,314,593
PAYOUTS/PRIZES	13,728,032	14,334,744	22,273,492	15,807,512	66,143,779	16,535,945
NET INCOME	\$ 2,711,495	\$ 6,024,962	\$ 4,372,412	2,625,732	\$ 15,734,602	\$ 3,933,650
LGT WITH PAYOUTS	638,941	811,906	1,062,158	737,330	3,250,335	812,584
LGT LESS PAYOUTS	108,460	240,998	174,896	105,029	629,384	157,346
LOST OPPORTUNITY	\$ (530,481)	\$ (570,908)	\$ (887,261)	(632,300)	\$ (2,620,951)	\$ (655,238)

Inconsistent Regulations on Gross Receipts Definitions

The LGT gross receipts definition in the GARR is inconsistent with the definition in the GCA. Based on Title 11 GCA §5201(a), the LGT is imposed on the gross receipts from limited gaming activities. However, Title 3 GARR §7102(q) defines “gross receipts” as the total revenue from gaming activities less payments for any winnings paid to generate said revenue. As authorized by Public Law (P.L.) 26-52, DRT filed the gaming control rules and regulations in January 2003. DRT noted this definition to stakeholders as part of their implementation of P.L. 32-60. As such, NPOs reported gross receipts less payouts when they file the Department of Revenue and Taxation (DRT) Temporary Form 3260 in accordance with 3 GARR §7102(q).

In August 2013, OAG filed suit seeking declaratory relief against the DRT Director, Governor of Guam, certain electronic gaming device license holders, and unnamed license holders. It sought a judgment declaring that 1) DRT’s 2003 regulations for licensing electronic gaming devices were void and without force or effect, and 2) P.L. 32-60 did not make those regulations valid and Guam Law continued to prohibit the licensing of electronic gaming devices. As of the date of this report, the matter is still in court. If the court finds the regulations to be invalid, the gross receipts less payments definition will not apply for LGT.

In addition, if the Superior Court finds the licensed amusement devices are illegal, the ruling will significantly affect the Limited Gaming Fund. Gross receipts from electronic gaming devices account

¹ Bingo and Lottery is combined when filing the Limited Gaming Tax on the Form 3260.

² These amounts reflect only two out of the top five NPOs.

for 79% of the Limited Gaming Fund. Until the court renders a ruling, DRT will continue to regulate the gaming devices in accordance with P.L. 32-60.

Form 3260s Not Timely Processed

As of January 2019, DRT provided LGT data as of November 2017. DRT has not keyed in and assessed LGT from December 2017 to December 2018. This was due to the lack of designated staff tasked with inputting and processing Form 3260s. Further, due to the turnover of Business Privilege Tax Branch staff, a logjam transpired and the branch remained in need of this additional staff to also analyze, review, and monitor, tax information. This backlog affects not only the assessment of LGT but also the Guam Memorial Hospital Authority Trust Fund Fee. Thus, Form 3260 data was not readily available for analysis and susceptible to human errors.

NPO Bingo Gross Receipts Underreported on NPO's Financial Statements

NPO gaming gross receipts were underreported as bingo income was inconsistently reported on their submitted financial reports. The financial statements and return filings' bingo income did not reconcile with the Power 7 database gross receipt. For example, NPO B reported \$62 thousand (K) in their CY 2015 financials. However, the Bingo/Lottery CY 2015 gross receipts in the Power 7 database was \$860K, a significant variance of \$798K.

NPOs Reported Gaming Winnings to DRT

Gaming entities are required to issue Form W-2Gs to winners of certain gambling activities no later than January 31st following the preceding tax year or CY. The top five NPOs of the Bingo entities reported \$55.5M in Bingo winnings based on CY 2014 through 2017 Form 1096 filings. Form 1096 summarizes the Forms W-2G provided to recipients. We did not review whether individuals reported the winnings on their individual income tax filings. Similar to IRS, DRT relies on taxpayers' voluntary inclusion to their gross income. DRT's method does not include a systemic matching of income from a taxpayer's W-2G or Form 1099 with the individual income tax return.

Senior Center Operations Bingo Activities' LGT Exemption

P.L. 32-68 established an LGT exemption for all Senior Center Operations (SCO) bingo activities for persons enrolled in the senior program. These activities are conducted during operational hours from 9 a.m. to 4 p.m., Monday to Friday. The responsibility falls on each village mayor for the management of each SCO bingo. The impact of this exemption to the overall LGT revenue is minimal compared to the revenues from the top five grossing NPOs.

Conclusion and Recommendation

NPOs limited gaming gross receipts will continue to require aggressive enforcement since this is primarily a cash business and bingo gross receipts may continue to go underreported. With the manual filing and inputting of the gaming taxes, DRT's backlog will continue to increase without the additional staff needed to properly input, review, and monitor tax information. We recommend DRT to:

- Amend the definition of "gross receipts" in GARR to identify all gaming activities revenue inclusive of payments for winnings;
- Update Form 3260 to include reporting of the NPO's gaming gross income, payouts, and LGT exemption;
- Consider electronic filing options for Form 3260; and
- Dedicate staff resources to ensure complete filing and payment of all LGT due.

Benjamin J.F. Cruz
Public Auditor



Introduction

This report presents the results of our audit of the Non-Profit Organizations (NPO) Limited Gaming Tax (LGT). The audit covers LGT from Bingo/Lottery from October 1, 2013 through September 30, 2017. This is a continuation of a prior audit, OPA Report No. 16-06 to:

- Calculate the impact of Bingo gross receipts less payouts on Government of Guam (GovGuam) LGT revenue; and
- Determine whether non-profit organizations issued Forms W-2G or 1099.

The scope, methodology, and prior audit coverage are detailed in Appendices 1 and 2.

The audit was conducted at the initiation of the former Public Auditor and as a follow-up to the request of a 33rd Guam Legislature Senator, who was concerned about Guam's gaming activities.

In OPA Report No. 16-06, GovGuam LGT and Guam Memorial Hospital Authority (GMHA) Trust Fund Fees, OPA found that the Department of Revenue and Taxation's (DRT) predominantly manual processes did not ensure the accurate collection and allocation of LGT and GMHA Trust Fund Fees to GMHA, Guam Department of Education (GDOE), Department of Parks and Recreation (DPR), and Mayor's Council of Guam (MCOG).

Background

DRT exists to promote quality service to all taxpayers, increase voluntary compliance by helping taxpayers understand and meet their responsibilities by applying the tax law with integrity and fairness to all.

Beginning July 2013, Public law (P.L.) 32-60 imposed a four percent (4%) LGT on gross receipts³ from certain authorized limited gaming activities and an additional 4% GMHA Trust Fund Fee on income for licensed gaming devices. Authorized limited gaming activities include, but not limited to, electronic gaming devices, bingo/lottery, cockfighting, and Liberation Day gaming activities. Licensed gaming devices subject to the GMHA Trust Fund Fee are Liberty, Symbolix, and Match Play electronic gaming devices registered with DRT prior to August 1, 2001. These assessments are separate from income tax and business privilege tax (BPT).

LGT and Limited Gaming Fund

LGT is deposited into the Limited Gaming Fund. According to DRT, the procedures and authority to collect BPTs are the same procedures and authority used to collect LGT.

³ Title 3 GARR §7102(q) "Gross receipts" means the total revenue from any gaming activities less payments for any winnings paid to generate said revenue.

Up to five percent (5%) of the Limited Gaming Fund is allocated for LGT administration. The remaining balance of the fund, up to one-third each, goes to the following three GovGuam line agencies: 1) MCOG, 2) DPR, and 3) GDOE. PL 32-60 authorizes each agency to use the funds to repair and construct capital infrastructure. In August 2015, P.L. 33-62 further authorized that no more than 50% of MCOG’s share, 20% of DPR’s share, and 20% of GDOE’s share may be used for team sponsorships and uniforms.

Bingo or Lottery

Bingo/Lottery⁴, primarily conducted by NPOs, is Guam’s second largest gaming activity next to electronic gaming devices. The revenue from these activities is subject to a four percent (4%) LGT on gross receipts less payouts.

Table 1: Limited Gaming Tax Activities

	LIMITED GAMING ACTIVITY	FY 2014	FY 2015	FY 2016	FY 2017	TOTAL
1	ELECTRONIC GAMING DEVICES	\$ 1,113,950	\$ 1,211,675	\$ 1,653,407	\$ 892,604	\$ 4,871,636
2	BINGO / LOTTERY	281,084	305,800	277,084	278,020	1,141,988
3	CARNIVAL / LIBERATION DAY	22,842	32,477	24,427	-	79,746
4	COCKFIGHTING	17,433	13,844	16,654	8,061	55,992
5	OTHER GAMING ACTIVITIES	9,106	11,700	6,388	7,172	34,366
	OVERALL TOTAL	\$ 1,444,415	\$ 1,575,495	\$ 1,977,961	\$ 1,185,857	\$ 6,183,728

According to Title 9, Chapter 64, §64.70(f) of the Guam Code Annotated (GCA), bingo games mean a specific game of chance, commonly known as bingo, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random.

Only tax-exempt NPOs may conduct bingo or lottery. NPOs can use other devices to play and equipment is no longer limited to cards. Winning is determined by the card conforming to the randomly selected numbers or symbols. Lottery or raffle tickets means a plan whereby prizes are distributed by chance among persons who have paid or promised to pay anything of monetary value for a chance to win a prize.

Senior Center Operations Bingo Activities LGT Exemption

P.L. 32-68 established an LGT exemption for all Senior Center Operations (SCO) bingo activities for persons enrolled in the senior program. These activities are conducted during operational hours from 9 a.m. to 4 p.m., Monday to Friday. Responsibility for the management and operations of each SCO program falls on each village mayor. There are 12 Senior Citizen Centers on Guam in the villages of Agana Heights, Agat, Astumbo, Dededo, Inarajan, Mangilao, Merizo, Santa Rita, Sinajana, Tamuning, Yigo, and Yona/Talofofu.

The Senior Citizen Centers also hold Night Bingo, which are bingo events after 4 p.m. These activities after hours are at the discretion of the mayor and part of that respective village’s non-appropriated funds. Night Bingo revenues are separate from the daytime SCO bingo activities and are imposed the 4% LGT on gross receipts.

⁴ Bingo and Lottery is combined when filing the Limited Gaming Tax on the Form 3260.

Department of Revenue and Taxation

DRT is a GovGuam line agency mandated to manage the enforcement of the tax laws of Guam and the collection of revenue. They are also responsible for licensing and registration as well as allied and connected enforcement functions.

Gaming entities pay taxes to the Treasurer of Guam (TOG) for deposit into the Limited Gaming Fund and the GMHA Healthcare Trust and Development Fund (GMHA Trust Fund). DRT created the Form 3260 to report both the self-assessed LGT and GMHA Trust Fund Fees collected monthly on certain limited gaming activities. Refer to Appendix 3 for the Form 3260 marked “temporary.” DRT manually processes the Form 3260 filings and refers to public laws and GCA to administer these gaming activities.

LGT Systems

LGT information is handled and processed manually by three different sections:

- TOG upon receipt of tax payments;
- Department of Administration (DOA) Division of Accounts to ensure the recording of revenues collected; and
- DRT BPT Branch for manual data entry of LGT information.

TOG and DOA Systems

As the official GovGuam record keeper, DOA receives, records, and reviews all revenues through TOG in the AS400 system. TOG enters the LGT receipts into their system. DOA recognizes LGT revenues based on receipt date during the current year with accrued revenues recognized based on LGT receipts collected within 90 days after the end of the fiscal period. Further, accrued revenues from last fiscal year are deducted to arrive at the revenues for the fiscal year.

DOA allocates the LGT to MCOG, DPR, and GDOE. The MCOG and DPR allocation, directly transferred into their budget accounts, and are restricted to facility repair and construction, team sponsorships, and uniforms. The GDOE share is a cash transfer from DOA. GDOE assigns the funds for divisions/schools based on priority.

DRT System

The Power 7 system has two different modules for LGT filings processed (Master database) and paid (Cash Receipts). The manual process requires a BPT tax specialist to input all relevant information from the physical Form 3260 into the Power 7 system. Relevant information included the taxpayer’s ID number, tax period, filed date, and selected line items on the physical returns.

Violation and Penalties

Penalties and punishment for violating the LGT provisions include:

- Third (3rd) degree felony for fraudulent filing;
- The greater of 15% or \$1,000 on tax owed for failure to file;
- The greater of \$1,000 or 2% monthly interest to charge on outstanding amounts for failure to pay; and
- Misdemeanor for failure to pay tax or file a return within 30 days of the deadline.

Taxpayers also commit a 3rd degree felony for two or more occurrences of failure to file or failure to pay the gaming taxes within 30 days of the deadline in any twelve-month period.

Reporting of Gambling Winnings

The Internal Revenue Service (IRS) requires business and individuals to report annual winnings from gaming activities such as bingo, lotteries, and raffles. The business must furnish a Form W-2G to the winners to report certain gambling winnings. It must provide the form to the winner no later than January 31st and submitted to the IRS no later than February 28th.⁵

Certain gambling winnings must be reported using Form W-2G. Winnings from sweepstakes, wagering, lotteries, bingo, keno, slot machines, poker tournaments, and poker tournaments meeting certain criteria must be reported. According to the IRS, gambling winnings are reportable if:

- Winnings, not reduced by the wager, are \$1,200 or more from bingo or slot machine;
- Winnings, reduced by the wager, are \$1,500 or more from keno games;
- Winnings, reduced by the wager or buy-in, are more than \$5,000 from a poker tournament;
- Winnings except bingo, slot machines, keno, and poker tournaments reduced, at the option of the payer, by the wager are: \$600 or more, and at least 300 times the amount of the wager; or
- Winnings are subject to federal income tax withholding (regular gambling withholding or backup withholding).

Form 1096 summarizes the Form W-2G provided to recipients and must be filed annually by the gaming entity that conducted the gaming activity no later than the last business day of February.

The failure of a gaming entity or taxpayer to provide correct tax returns with no reasonable cause may be subject to a penalty. The penalty applies if the payee fails to provide the statement by the due date, fails to include all information required to be shown on the statement, or includes incorrect information on the statement. The amount of the penalty is based on when the payee furnishes the correct payee statement. Effective January 2016, the penalty for failure to furnish correct tax returns, such as Form W-2G, increased from \$100 per return to \$250 per return for failure to file. DRT has not assessed these penalties for failure to file.

⁵ If filed electronically, the deadline is March 31st. However, DRT currently does not provide electronic filing for Form W-2G, only for BPT.

Results of Audit

Based on the NPO's financial statements for the calendar years (CY) 2014 through 2017, the top five NPOs generated \$81.3 million (M) in gross revenues from Bingo activities or an average of \$20.3M per CY. These gross receipts are subject to a four percent (4%) LGT per Title 11 GCA §5201(a). However, per Title 3 GARR §7102(q), the LGT applies to gross receipts less payouts for any Bingo winnings. Due to the inconsistency in the definition of "gross receipts" by the two regulations, GovGuam lost the opportunity to collect \$2.6M in additional LGTs from these NPOs. We also found:

- Form 3260s not timely processed;
- NPO bingo gross receipts may be underreported;
- NPOs reported gaming winnings to DRT; and
- Some Senior Center Operations bingo activities are exempt from LGT.

DRT Reported \$1.1M in FY 2014~2017 LGT for Bingo

For fiscal year (FY) 2014 through FY 2017, DRT's data based on Form 3260 reported \$28.5M in Bingo gross receipts less payouts and \$1.1M in LGT from 21 non-profit gaming entities. The top five NPOs with total gross receipts of \$25.5M and LGT of \$1M made up 89%. Refer to Table 2 and 3 below for details.

Table 2: FY 2014 ~ 2017 Bingo Gross Receipts Reported to DRT

NON-PROFIT ORGANIZATIONS	FY 2014	FY 2015	FY 2016	FY 2017	TOTAL
NPO A	\$ 2,614,746	\$ 2,826,861	\$ 2,461,395	\$ -	\$ 7,903,001
NPO B	1,515,798	1,183,897	1,296,172	1,847,658	5,843,526
NPO C	1,376,646	1,436,672	1,212,384	1,273,232	5,298,934
NPO D	1,454	582,290	925,622	2,023,139	3,532,505
NPO E	824,281	948,759	319,858	844,426	2,937,324
TOP 5 NPOs SUBTOTAL	\$ 6,332,925	\$ 6,978,478	\$ 6,215,431	\$ 5,988,455	\$25,515,289
OTHER 16 BINGO ORGANIZATIONS	694,185	666,522	711,682	962,043	3,034,433
OVERALL GROSS RECEIPTS TOTAL	\$ 7,027,110	\$ 7,645,001	\$ 6,927,113	\$ 6,950,498	\$28,549,722

Table 3: FY 2014 ~ 2017 Bingo LGT Due to DRT

NON-PROFIT ORGANIZATIONS	FY 2014	FY 2015	FY 2016	FY 2017	TOTAL
NPO A	\$ 104,590	\$ 113,074	\$ 98,456	\$ -	\$ 316,120
NPO B	60,632	47,356	51,847	73,906	233,741
NPO C	55,066	57,467	48,495	50,929	211,957
NPO D	58	23,292	37,025	80,926	141,300
NPO E	32,971	37,950	12,794	33,777	117,493
TOP 5 NPOs SUBTOTAL	\$ 253,317	\$ 279,139	\$ 248,617	\$ 239,538	\$ 1,020,611
OTHER 16 BINGO ORGANIZATIONS	27,767	26,661	28,467	38,482	121,377
OVERALL LGT TOTAL	\$ 281,084	\$ 305,800	\$ 277,084	\$ 278,020	\$ 1,141,988

Lost Opportunity for \$2.6M of LGT Revenues from NPOs

Since DRT does not maintain record of NPOs' gross income, we requested the financial statements from the top five NPOs. For CY 2014 through 2017, the top five NPOs grossed \$81.3M or an average of \$20.3M in Bingo income per CY. This income is subject to a four percent (4%) LGT. However, the LGT was calculated based on gross receipts less payouts for winnings due to the inconsistency in the definition of gross receipts by the GCA and the GARR. The top five NPOs paid out \$66.1M to Bingo winners over the past four years. As a result, GovGuam lost the opportunity to collect \$2.6M in additional LGT. As shown in Table 4, of the \$81.3M, NPOs paid out \$66.1M to Bingo winners.

Table 4: Top 5 Bingo NPOs' Gross Income vs. Net Income

DESCRIPTION	CY 2014	CY 2015	CY 2016	CY 2017	TOTAL	AVERAGE
GROSS INCOME [A]	\$ 15,973,526	\$ 20,297,656	\$ 26,553,947	\$ 18,433,244	\$ 81,258,373	\$ 20,314,593
PAYOUTS/PRIZES	13,728,032	14,334,744	22,273,492	15,807,512	66,143,779	16,535,945
NET INCOME [B]	\$ 2,711,495	\$ 6,024,962	\$ 4,372,412	\$ 2,625,732	\$ 15,734,602	\$ 3,933,650
LGT GROSS OF PAYOUTS [A x 4%]	638,941	811,906	1,062,158	737,330	3,250,335	812,584
LGT NET OF PAYOUTS [B x 4%]	108,460	240,998	174,896	105,029	629,384	157,346
LOST OPPORTUNITY	\$ (530,481)	\$ (570,908)	\$ (887,261)	\$ (632,300)	\$ (2,620,951)	\$ (655,238)

Inconsistent Regulations on Gross Receipts Definitions

The LGT gross receipts definition per the GARR is inconsistent with the definition per the GCA. Based on Title 11 GCA §5201(a), the LGT is imposed on the gross receipts from limited gaming activities. In contrast, Title 3 GARR §7102(q) defines “gross receipts” as the total revenue from gaming activities less payments for any winnings paid to generate said revenue.

As authorized by P.L. 26-52, DRT is the rule-making authority for the formulation of gaming control rules and regulations, including the definition of gaming terms. DRT filed the gaming control rules and regulations in January 2003. DRT noted this definition to stakeholders as part of their implementation of P.L. 32-60. As a result, NPOs reported gross receipts less payouts in accordance with 3 GARR §7102(q), when they file the DRT Temporary Form 3260. Refer to Appendix 4 for the DRT LGT Information Sheet.

Top NPO Gross Income Versus Net Income

NPOs report gross receipts (gross income) less payouts (net income) when they file the DRT temporary Form 3260 in accordance with GARR. However, DRT does not compile data on gross income and payouts as these are not required on Form 3260.

As an example, NPO C reported \$6.3M in gross income from July 2014 through June 2015 in its financial statements. Per the GARR “gross receipts” definition, NPO C will report \$1.3M instead of \$6.3M on their Form 3260. If the term “gross receipts” will be amended to include payouts, DRT may collect \$251K instead of \$51K in LGT. This would be an additional \$200K in LGT. Due to the inconsistency in the “gross receipts” definition, GovGuam lost the opportunity to collect more LGT revenues.

Validity of Gaming Device Regulations

There has been a decade-long dispute between the Office of the Attorney General of Guam (OAG) and DRT over the validity of gaming device regulations. Based on the February 2019 OAG statement, DRT licensed approximately 1,200 gaming devices in violation of Guam's amusement devices licensing laws in 2008. The OAG sued DRT to revoke the licenses, which DRT did after a court order. Then, a certain licensee filed a new lawsuit against DRT in an effort to force them to reissue its gambling machine licenses. The parties agreed to dismiss the two cases in 2012. The OAG believed this meant the gambling devices would remain unlicensed. However, DRT issued gaming machine licenses. In response, the OAG filed its current case arguing that DRT should be prohibited from issuing gaming machine licenses.

In August 2013, the OAG filed suit for declaratory relief against the DRT Director, Governor of Guam, certain electronic gaming device license holders, and unnamed license holders. The complaint sought a judgment declaring that 1) DRT's 2003 regulations for licensing electronic gaming devices were void and without force or effect, and 2) P.L. 32-60 did not make those regulations valid and Guam Law continued to prohibit the licensing of electronic gaming devices.

According to the OAG's February 2019 statement, the Supreme Court's issuance of the opinion will trigger the Superior Court to rule on two pending motions filed in 2016. The OAG's motion deals with the merits of gaming regulations. The OAG has argued that the gaming regulations are invalid because DRT submitted them to the Legislature without complying with the Administrative Adjudication Law and they exceed DRT's authority.

As of the date of this report, the matter is still in court. If the court finds the regulations to be invalid, the gross receipts less payouts definition per GARR will not apply for LGT. In addition, if the Superior Court finds that the licensed amusement devices are illegal, the ruling will significantly affect the Limited Gaming Fund and GMHA Trust Fund. Gross receipts from electronic gaming devices account for 79% of the Gaming Fund and 100% of the GMHA Trust Fund.

DRT will continue to regulate the gaming devices in accordance with P.L. 32-60 until the court renders a ruling. Pending Supreme Court opinion, we recommend DRT to amend the definition of "gross receipts" in the GARR to identify all gaming activities revenue inclusive of payments for winnings. In addition, we recommend DRT to amend the Form 3260 to include a section for NPOs to report their overall gross receipts and payouts.

Form 3260s Not Timely Processed

As of January 2019, DRT provided LGT Power 7 data as of November 2017. DRT has not keyed in limited gaming data and assessed LGT from December 2017 to December 2018. This backlog also affects the GMHA Trust Fund Fee. Due to the turnover of BPT Branch staff, a logjam transpired. There is no designated staff tasked with inputting and processing Form 3260s. The BPT branch remained in need this additional staff to also analyze, review, and monitor this tax information. As a result, Form 3260 updated data is not readily available for review and analysis. Timely relevant information provides guidance to decision makers and DRT management on revenue assessment and collection efficiency and potential system improvements.

According to DRT, the Form 3260s are batched with other manually filed taxes, such as the Gross Receipts Tax for input into the Power 7 database. A business tax service specialist manually inputs all relevant information from Form 3260 into the Power 7 database. Lacking proper oversight and review of the filed Form 3260s, NPOs may continue to file and pay incorrect tax amounts.

There continues to be a high probability of revenue loss as DRT is not timely inputting and reviewing the information provided by the gaming entities for a predominantly “cash industry.” Untimely inputs and non-monitoring and reviewing of Form 3260s filed could further the gaming gross receipts underreporting.

DRT should consider electronic filing options for Form 3260, including zero gaming gross receipts, to obtain readily available data for review, and ensure accountability of each NPO’s bingo activities. This was a similar recommendation made in our prior LGT audit relative to exploring electronic filing options. DRT will discuss this option with their vendor. While discussions are ongoing, we recommend dedicating staff resources to ensure complete filing and accurate payments of LGT dues.

NPO Bingo Gross Receipts Underreported on Financial Statements

NPO gaming gross receipts were underreported as bingo income is inconsistently reported on their submitted financial reports. We reviewed the top five bingo NPOs’ financial statements and return filings provided by the NPOs and DRT, respectively. We found that the NPOs do not consistently file their financial statements with DRT. In addition, the financial statements and return filings’ bingo income did not reconcile with the Power 7 database gross receipts. For example, NPO B reported \$62 thousand (K) in their CY 2015 financials. However, the Bingo/Lottery CY 2015 gross receipts in the Power 7 database was \$860K, a significant variance of \$798K. Refer to Table 5 below for details.

Table 5: NPO B Financial Statement and DRT Power 7 Database Comparison

CALENDAR YEAR	NPO B	DRT	VARIANCE
CY 2014	\$ 35,307	\$ 1,605,174	\$ (1,569,867)
CY 2015	62,050	859,625	(797,575)
CY 2016	91,957	1,905,944	(1,813,987)
TOTAL	\$ 189,314	\$ 4,370,743	\$ (4,181,429)

NPOs Reported Gaming Winnings to DRT

Gaming entities are required to issue Form W-2G to certain gambling winners no later than January 31st following the preceding tax year or CY. A winner must report all gambling winnings on the annual Form 1040 as “Other Income,” including winnings not subject to withholding. Four of the top five NPOs provided informal procedures to document bingo winner’s personal information and to properly fill out the W-2Gs.

The top five NPOs of the Bingo entities reported \$55.5M in Bingo winnings based on CY 2014 through 2017 Form 1096 filings. Form 1096 summarizes the Forms W-2G provided to recipients.

We did not review whether individuals reported the winnings on their individual income tax filings. Similar to IRS, DRT relies on taxpayers' voluntary inclusion to their gross income. DRT's methods do not include a systemic matching of income from a taxpayer's W-2G or Form 1099 with the individual income tax return.

Other Matters

Senior Center Operations Bingo Activities' LGT Exemption

P.L. 32-68 established an LGT exemption for all Senior Center Operations (SCO) bingo activities for persons enrolled in the senior program. These activities are conducted during daytime operational hours from 9 a.m. to 4 p.m., Monday to Friday. Responsibility for the management of each SCO bingo falls on each village mayor.

The impact of this exemption to the overall LGT revenue is minimal compared to the revenues from the top five grossing NPOs. Although minimal, we suggest DRT include an exemption section on the Form 3260 to account for this LGT exemption. This is similar to the collection and accounting of the Gross Receipts Tax exemptions data.

Gaming Control Commission Lacks Quorum

Six years after passage of P.L. 32-60, the Gaming Control Commission (the Commission) remains without empaneled members. Section 6 of P.L. 32-60 required the Commission to develop rules and regulations to oversee gaming activities. The Governor, with the consent and approval of the Guam Legislature, appoints the members. Title 3 GARR §§ 7110 and 7111 specifies the creation, powers, and duties of the Commission. The Commission shall consist of the DRT Director (ex officio) who shall have no vote, and five (5) members, all of whom shall be citizens of the United States and voting residents of Guam for at least five (5) consecutive years. Without the empaneled Commission, the DRT Business Licensing and Registration Branch and Compliance Branch continue to oversee the limited gaming activities.

Bingo Proceeds May be Subject to Unrelated Business Income Tax

The U.S. Internal Revenue Code constitutes the Guam Territorial Income Tax Law. As such, gross receipts from bingo activities conducted by NPOs may be subject to Unrelated Business Income Tax (UBIT).

An exempt organization is not taxed on income from an activity that is substantially related to its exempt purposes even if that activity is a trade or business. However, if an exempt organization regularly carries on a trade or business that is not substantially related to its exempt purpose, except that the trade or business provides funds to carry out that purpose, income from such unrelated trade or business may be subject to tax. As a general rule, gaming is considered unrelated to exempt purposes.

The following three conditions must be met before any activity may be classified as an unrelated trade or business:

- Activity must be considered a trade or business. Gaming is generally considered a "trade or business" if it generates revenue;
- Activity must be regularly carried on; and

- Activity must not be substantially related to the organization's exempt purpose. (The fact that the activity generates income for the organization to spend on its charitable programs does not make the activity related to the organization's exempt purpose).

Even if a gaming activity meets the three conditions above, there are some other UBIT exceptions that may apply. These include:

- Certain bingo games;
- Activities conducted with substantially all volunteer labor;
- Qualified public entertainment activities; and
- Games of chance conducted in North Dakota.

Conclusion and Recommendations

Our audit revealed an opportunity lost in the collection of additional LGT of \$2.6M from NPOs based on the NPOs financial statements from CY 2014 through 2017. This resulted from the inconsistent definition of “gross receipts” per the GCA and the GARR. We also found:

- Form 3260s were not timely processed. As of January 2019, Form 3260s from Dec. 2017 to 2018 were not yet processed.
- NPO bingo gross receipts were underreported on NPO’s financial statements compared with the corresponding Form 3260s.
- NPOs reported gaming winnings to DRT; and
- Senior Center Operations bingo activities are exempt from LGT.

Bingo is a limited gaming activity. According to the IRS, a common misconception is that gaming is a “charitable” activity. There is nothing inherently charitable about gaming. It is a recreational activity and a business. Although a charity may use the proceeds from gaming to pay expenses associated with its charitable programs, gaming itself does not further exempt purposes. The sole purpose of a 501(c)(3) organization cannot be to conduct gaming.

If the court finds the regulations to be invalid, the gross receipts less payouts definition per GARR will not apply for LGT. In addition, if the Superior Court finds that the licensed amusement devices are illegal, the ruling will significantly affect the Limited Gaming Fund and GMHA Trust Fund. Gross receipts from electronic gaming devices account for 79% of the Gaming Fund and 100% of the GMHA Healthcare Trust Fund. Until the court renders a ruling, DRT will continue to regulate the gaming devices in accordance with P.L. 32-60.

NPOs bingo gross receipts will continue to require enforcement since this is primarily a cash business, self-reported, and bingo gross receipts could be underreported. With the manual filing and inputting of the gaming taxes, DRT’s backlog will continue to increase without the additional staff needed to properly input, review, and monitor these taxes. We recommend DRT to:

- Amend the definition of “gross receipts” in GARR to identify all gaming activities revenue inclusive of payments for winnings;
- Update Form 3260 to include reporting of the NPO’s gaming gross income, payouts, and LGT exemption;
- Consider electronic filing options for Form 3260; and
- Dedicate staff resources to ensure complete filing and payment of all LGT due to Guam.

Classification of Monetary Amounts

	Finding Description	Questioned Costs	Potential Savings	Unrealized Revenue	Other Financial Impact
1	Lost Opportunity of LGT Revenues from NPOs	\$ -	\$ -	\$ -	\$ 2,620,951
2	Form 3260s Not Timely Processed	\$ -	\$ -	\$ -	\$ -
3	NPO Bingo Gross Receipts Underreported on Financial Statements				
	NPO B	\$-	\$ -	\$ -	\$ -
4	NPOs Reported Gaming Winnings to DRT	\$ -	\$ -	\$ -	\$ -
	Totals	\$-	\$ -	\$ -	\$ 2,620,951

Management Response and OPA Reply

In February 2019, a draft report was transmitted to DRT for their official response. In the same month, we discussed the findings and recommendations with DRT officials where the Director generally concurred with our findings and recommendations.

See Appendix 5 for DRT's management response.

The legislation creating OPA requires agencies to prepare a corrective action plan to implement audit recommendations, to document the progress in implementing the recommendations, and to endeavor to have implementation completed no later than the beginning of the next fiscal year. Accordingly, we will contact the Legislature to provide target dates and title of the official(s) responsible for implementing the recommendations.

We appreciate the cooperation shown by the Department of Revenue and Tax and the Bingo Non-Profit Organizations during the course of this audit.

OFFICE OF PUBLIC ACCOUNTABILITY



Benjamin J.F. Cruz
Public Auditor

Appendix 1:**Objective, Scope, and Methodology**

Our audit objectives were:

- To calculate the impact of Bingo gross receipts less payouts on GovGuam LGT revenue; and
- To determine whether NPOs issued Forms W-2G or 1099.

Methodology

Our audit methodology included the review of pertinent laws, rules and regulations, policies and procedures, and other relevant documents pertaining to non-profit organizations and LGT. Specifically, we performed the following:

- (1) Conducted interviews and walkthroughs with DRT officials and staff and obtained an understanding of the process and internal controls for NPOs and LGT.
- (2) Identified and reviewed prior OPA audit reports, GovGuam financial audits, and other audit reports to identify and document issues in prior audits related to LGT and bingo.
- (3) Identified, reviewed, and documented the OPA hotline database for any concerns pertaining to DRT, LGT, and bingo.
- (4) Obtained and analyzed LGT data received from FY 2014 through 2017 for trends.
- (5) Obtained and reviewed pertinent documents to include Forms 3260, gaming licenses, bingo permits, legal opinions, Forms 1096, financial statements and audit reports, and various correspondences from DRT and the non-profit organizations.
- (6) Performed comparative analyses to determine any variances between DRT's Power 7 transactions to the NPOs' financial statements and GovGuam's financial audits.

We conducted this audit in accordance with the standards for performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America. These standards require that we plan our audit objectives and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix 2:

Prior Audit Coverage

GovGuam Limited Gaming Tax and Guam Memorial Hospital Authority Trust Fund Fees, OPA Report No. 16-06, August 2016

OPA Report No. 16-06 found that DRT's predominantly manual processes do not ensure that LGT and GMHA Trust Fund Fees were accurately collected and allocated to GMHA, GDOE, DPR, and MCOG. DOA reported that \$7.6M was collected for LGT and GMHA Trust Fund Fees. Although, DRT reported \$4.7M, a difference of \$2.9M.

We also found:

- Gambling winnings were not consistently reported by individuals as required by utilizing Form W-2G, monthly (Form 3260) and annual (Form 1096);
- DRT enforcement efforts need improvement as there is a high probability of lost revenue for GovGuam;
- Identification of the other limited gaming activities universe is unknown to DRT due to lack of formalized procedures to monitor activities; and
- Inconsistent and unreconciled financial information were reported.

OPA made several recommendations to address the gaming taxes as follows:

DRT Director

- Reconcile with the DOA AS400 on a monthly basis.
- Aggressively monitor gaming entities to issue Forms W-2G to gambling winners;
- Explore electronic filing options for Form 3260 for monthly filings, even for zero gaming gross receipts, to ensure accountability of each entity's gaming activity and readily available data;
- Review variances in GMHA Trust Fund Fees reporting in relation to LGT as part of their monitoring process; and
- Properly classify limited gaming activity licenses to compile listing of potential filers; and

GMHA Director

- Submit quarterly reports in compliance with P.L. 32-60 to ensure funds are used for their intended purpose.

Of the five recommendations to DRT, two were implemented and three were partially implemented as of October 2017. DRT has not performed monthly reconciliations with DOA, but planned to reconcile at year's end. The review of GMHA Trust Fund Fees variances will be addressed with the year's end reconciliation. Also, DRT will review the classification of limited gaming activity licenses to confirm any potential misclassification. No response was received for our recommendation to GMHA to submit quarterly reports in compliance with P.L. 32-60 to ensure funds were used for their intended purpose.

Appendix 3: Form 3260

DEPARTMENT OF REVENUE AND TAXATION
GOVERNMENT OF GUAM
FORM 3260 MONTHLY RETURN

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

PART I. LIMITED GAMING TAX FUND

LIMITED GAMING ACTIVITY	(A) GROSS RECEIPT QUANTITY	(B) TAX RATE	(C) TOTAL TAX
1. BINGO / LOTTERY	_____	X 4%	= _____
2. COCKFIGHTING	_____	X 4%	= _____
3. CARNIVAL / LIBERATION DAY	_____	X 4%	= _____
4. ELECTRONIC GAMING DEVICES	_____	X 4%	= _____
5. OTHER GAMING ACTIVITIES	_____	X 4%	= _____
6. TOTAL TAXES DUE (Add lines 1 through 5 in Column C)			_____
7. PENALTY			_____
8. INTEREST			_____
9. CREDIT OR ADJUSTMENT (Attach Statement)			_____
10. BALANCE DUE (Add lines 6 through 9 in Column C)			_____

PART II. GMHA TRUST FUND FEE

ELECTRONIC GAMING DEVICES	(A) GROSS RECEIPT QUANTITY	(B) FEE ASSESSMENT RATE	(C) TOTAL FEE
11. LIBERTY, SYMBOLIX, MATCH PLAY	_____	X 4%	= _____
12. CREDIT OR ADJUSTMENT (Attach Statement)			_____
13. BALANCE DUE (Add lines 11 and 12 in Column C)			_____

PART III. SUMMARY

14. TOTAL DUE (add lines 10 and 13) _____

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

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

Appendix 4: DRT Limited Gaming Tax Information Sheet

LIMITED GAMING TAX:

A. Gross Receipts from Limited Gaming x 4%

Gross Receipts defined:	Gross receipts less payouts (5 GAR, Section 7102(q))
Filing/Payment Date:	Form 3260, due the 20th of each month
Taxpayer:	Limited Gaming Licensees as defined under 3 GAR, Chapter 7
Violations:	- 3rd degree felony for false/fraudulent return - Misdemeanor for failure to pay and/or failure to file tax w/in 30 days - 3rd degree felony for 2 or more misdemeanor violations w/in 12 month period - 3rd degree felony for false / fraudulent advice or representation
Penalties:	FTF = 15% of tax due or \$1000 whichever is greater for each return FTP = 2% per month or \$1000 whichever is greater for each payment due
Interest Rate:	As established by the Tax Commissioner which is an adjusted rate of interest equal to the adjusted prime rate.

B. LIMITED GAMING FUND SOURCES - See 11GCA §5204 License Fees /Taxes/Penalties:

Licenses for Activity: (3GAR §7115)	Nonprofits - BINGO; Electronic gaming device owners; Operators; Retail gaming; Support; Key employee; "Grandfather" (previously licensed cockpits); and Temporary
Licenses for Gaming Devices: (11 GCA, Sec. 22202) not including Liberty, Symbolix, Match Play	Pinball, pachinko, (\$100/machine); Multiple coin pinball (\$500/machine); Video horse (\$1250/machine) Any other video symbolic amusement machine \$500 p/machine
Taxes:	4% Limited Gaming Tax

C. LIMITED GAMING ACTIVITIES: (11GCA §5205)

1. Bingo / Lottery by tax-exempt nonprofit organizations (GAR, Sec. 7102b & g for definition)
2. Cockfighting at licensed cockpit, all wagers present
3. Carnival or Liberation Day gaming activities per 9 GCA, Sec. 64.62
4. Other limited gaming activities - gaming activities at Fairs, Fiesta, etc... allowed by statute.
to include: Electronic gaming devices as authorized by statute (3 GAR Sec 7114, 7102n)
coin operated games - e.g. pinball, prize snatch, pachinko, Liberty, Symbolix, Match Play,

Definition of electronic gaming devices subject to the Limited Gaming Tax: (3 GAR 7102(n) and 7114(a)(5))

GMHA TRUST FUND FEE:

A. Gross Receipts of Gaming Device x 4% Assessment Fee

Gross Receipts defined:	Gross less payouts (5 GAR, Section 7102(q))
Limited Gaming Licensee:	Owners of Liberty, Symbolix, Match Play gaming devices (3 GAR, Sec. 7114(a)(5))
Filing/Payment Date:	Form 3260, due the 20th of each month
Violations:/Penalties/Int	None

B. Sources of funding for GMHA Trust Fund Fee:

Funded by:	GMHA Trust Fund Fee, Licensing / Gaming Device Fees, Business Privilege Taxes, and Income Taxes from owners of Liberty, Symbolix, and Match Play gaming devices.
From:	Owners of Liberty, Symbolix, Match Play machines in 3 GAR, Sec 7114(a)(5)
Types of Gaming Devices	Any electronic gaming devices previously registered with the Department prior to 8/1/01.

NOTE: The Guam Code Annotated (GCA) and the Guam Administrative Rules & Regs. (GARR) can be found at the Guam Compiler of Laws website: <http://www.justice.gov.gu/CompilerofLaws>

Appendix 5: Management Response



Dipattamenton Kontribusion yan Adu'ana

DEPARTMENT OF

REVENUE AND TAXATION

GOVERNMENT OF GUAM

Gubetnamenton Guahan

LOURDES A. LEON GUERRERO, Governor Maga'haga
JOSHUA F. TENORIO, Lt. Governor Sigundo Maga'tahi

DAFNE MANSAPIT-SHIMIZU, Acting Director
Aktol Direktot
MICHELE B. SANTOS, Deputy Director
Sigundo Direktot

March 5, 2019

Benjamin J.F. Cruz
Public Auditor
Office of Public Accountability
Suite 401, DNA Building
238 Archbishop Flores Street
Hagatna, GU 96910

Re: Non-Profit Organization Limited Gaming Tax

Buenas yan Saluda,

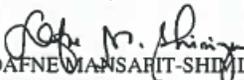
The Department of Revenue & Taxation (DRT) hereby submits their official response to your audit findings of the Non-Profit Organizations Limited Gaming Tax program.

Listed below are the findings with DRT's *Management responses* as follows;

1. Amend the definition of "gross receipts" in GARR to identify all gaming activities revenue inclusive of payments for winnings;
 - o *DRT accepts this finding. DRT recognizes the inconsistent tax treatment between the GCA and the GARR regarding "gross receipts". DRT acknowledges the ongoing court case seeking declaratory relief to invalidate rules and regulations, and awaits the outcome to proceed accordingly.*
2. Update Form 3260 to include reporting of the NPO's gaming gross revenue, payouts, and LGT exemption;
 - o *DRT accepts this finding with the anticipated actions to follow;*
 - *Removal of the watermark "Draft". Action taken*
 - *Modification of Form 3260 to include gross revenue, payouts, and exemptions.*
3. Consider electronic filing options for Form 3260; and
 - o *DRT accepts this finding and will be working with O-Tech on this matter.*
4. Dedicate staff resources to ensure complete filing and payment of all LGT due to Guam.
 - o *DRT accepts this finding.*

If you have any questions, please contact me at 635-1815 or email at Dafne.Shimizu@revtax.guam.gov.

Senseramente,


27 DAFNE MANSAPIT-SHIMIZU
Acting Director

Post Office Box 23607, Barrigada, Guam 96921 • Tel. / Telefon: (671) 635-1017 • Fax / Faks: (671) 633-2643

Appendix 6:**Status of Audit Recommendations**

No.	Addressee	Audit Recommendation	Status	Action Required
1	DRT	We recommend DRT to: <ul style="list-style-type: none">• Amend the definition of “gross receipts” in GARR to identify all gaming activities revenue inclusive of payments for winnings;• Update Form 3260 to include reporting of the NPO’s gaming gross income, payouts, and LGT exemption;• Consider electronic filing options for Form 3260; and• Dedicate staff resources to ensure complete filing and payment of all LGT due.	OPEN	Please provide target date for implementing the recommendation.



Department of Revenue and Taxation
Non-Profit Organization Limited Gaming Tax
Report No. 19-03, March 2019

ACKNOWLEDGEMENTS

Key contributions to this report were made by:

Frederick Jones, Audit Staff
Clariza Roque, CICA, Auditor-in-Charge
Yukari Hechanova, CPA, CIA, CGFM, CGAP, CGMA, Audit Supervisor
Benjamin J.F. Cruz, Public Auditor

MISSION STATEMENT

To ensure public trust and good governance in the Government of Guam, we conduct audits and administer procurement appeals with objectivity, professionalism, and accountability.

VISION

The Government of Guam is the model for good governance with OPA leading by example as a model robust audit office.

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Objectivity: To have an independent and impartial mind.

Professionalism: To adhere to ethical and professional standards.

Accountability: To be responsible and transparent in our actions.

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- Call our HOTLINE at 47AUDIT (472-8348)
- Visit our website at www.opaguam.org
- Call our office at 475-0390
- Fax our office at 472-7951
- Or visit us at Suite 401, DNA Building in Hagåtña;

All information will be held in strict confidence.