

From: committeeonrules@guamlegislature.org
Sent: Friday, February 24, 2023 11:21 AM
To: 'Clerks'
Cc: 'Rennae Meno'
Subject: Messages & Communications Doc. No. 37GL-23-0215.
Attachments: 022423 COMM Doc. No. 37GL-23-0215.pdf

Håfa Adai Clerk's Office,

Please see attached, **Messages & Communications Doc. No. 37GL-23-0215** for processing:

2/24/23 10:56 a.m.	37GL-23-0215	Office of Public Accountability	OPA Report No. 23-02, Department of Revenue and Taxation Assessments and Collections of Excise Taxes for Alcoholic Beverages and Tobacco Products*
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si Yu'os ma'åse',

Erin Mafnas

Committee on Rules Assistant

COMMITTEE ON RULES

Senator Chris Barnett, Chairperson

I Mina'trentai Siette Na Liheaturan Guåhan

37th Guam Legislature

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Messages and Communications for 37GL-23-0215

2 messages

Speaker Therese M. Terlaje <speaker@guamlegislature.org>

Fri, Feb 24, 2023 at 1

To: committeeonrules@guamlegislature.org, Legislative Secretary Amanda Shelton <officeofsenatorshelton@guamlegislature.org>

Hafa Adai,

Please see attached M&C Doc. No. 37GL-23-0215*

37GL-23-0215	Office of Public Accountability	OPA Report No. 23-02, Department of Revenue and Taxation Assessments and Collections of Excise Taxes for Alcoholic Beverages and Tobacco Products*
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Please Note: Actual timestamp received is 3:35 p.m.*Si Yu'os Ma'ase',***Marie Cruz**

Community Relations Liaison

**Office of Speaker Therese M. Terlaje**

Committee on Health, Land, Justice, and Culture

I Mina'trentai Siette na Liheslaturan Guåhan 37th Guam Legislature

Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910

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----- Forwarded message -----

From: **Office of Public Accountability** <admin@guamopa.com>

Date: Thu, Feb 23, 2023 at 3:35 PM

Subject: Transmittal: OPA Report No. 23-02, Department of Revenue and Taxation Assessments and Collections of Excise Taxes for Alcoholic Beverages and Tobacco Products

To: Office of Public Accountability <admin@guamopa.com>

Cc: Selina Onedera-Salas <sonederasalas@guamopa.com>, Benjamin Cruz <bjcruz@guamopa.com>

*Hafa adai,*Transmitted herewith is the executive summary and full report of OPA Report No. 23-02, Department of Revenue and Taxation Assessments and Collections of Excise Taxes for Alcoholic Beverages and Tobacco Products You may view the report in its entirety at www.opaguam.org.

Office of Public Accountability

Thu, Feb 23, 9:50 PM (12 hours ago)

to me

Yes, please go ahead and post on messages and communications. Thank you.

On Thu, Feb 23, 2023 at 4:42 PM Speaker Therese M. Terlaje <speaker@guamlegislature.org> wrote:




Hafa Adai Public Auditor Cruz,

Please advise if you wish to have the attached processed as messages and communications to be available on the Legislature website.

I look forward to your response.

*Si Yu'os Ma'ase',***Marie Cruz**

Community Relations Liaison

3 attachments **OPA2302ES.pdf**
450K **OPA2302.pdf**
2577K **37GL-23-0215.pdf**
236K**committeeonrules@guamlegislature.org** <committeeonrules@guamlegislature.org>

Fri, Feb 24, 2023 at 11:01

To: "Speaker Therese M. Terlaje" <speaker@guamlegislature.org>

Hafa Adai!

Received and thank you.

*si Yu'os ma'ase',*

Erin Mafnas

Committee on Rules Assistant

COMMITTEE ON RULES

Senator Chris Barnett, Chairperson

*I Mina'trentai Siette Na Liheslaturan Guåhan**37th Guam Legislature*

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From: Speaker Therese M. Terlaje <speaker@guamlegislature.org>
Sent: Friday, February 24, 2023 10:56 AM
To: committeeonrules@guamlegislature.org; Legislative Secretary Amanda Shelton <officeofsenatorshellon@guamlegislature.org>
Subject: Messages and Communications for 37GL-23-0215

Håfa Adai,

Please see attached M&C Doc. No. 37GL-23-0215*

37GL-23-0215	Office of Public Accountability	OPA Report No. 23-02, Department of Revenue and Taxation Assessments and Collections of Excise Taxes for Alcoholic Beverages and Tobacco Products*
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Please Note: Actual timestamp received is 3:35 p.m.

Si Yu'os Ma'åse',

Marie Cruz

Community Relations Liaison

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97K

**Transmittal: OPA Report No. 23-02, Department of Revenue and Taxation
Assessments and Collections of Excise Taxes for Alcoholic Beverages and Tobacco
Products****Actual timestamp received is 3:35 p.m.****Office of Public Accountability** <admin@guamopa.com>

Thu, Feb 23, 2023 at 3:34 PM


To: Office of Public Accountability <admin@guamopa.com>

Cc: Selina Onedera-Salas <sonederasalas@guamopa.com>, Benjamin Cruz <bjcruz@guamopa.com>

Bcc: speaker@guamlegislature.org

Hafa adai,

Transmitted herewith is the executive summary and full report of OPA Report No. 23-02, Department of Revenue and Taxation Assessments and Collections of Excise Taxes for Alcoholic Beverages and Tobacco Products. You may view the report in its entirety at www.opaguam.org.

2 attachments **OPA2302ES.pdf**
450K **OPA2302.pdf**
2577K**DOC NO. 37GL-23-0215
OFFICE OF THE SPEAKER****Therese M. Terlaje****Date: 02/23/2023****Time: 3:35 p.m.****Received:** *MCruz*



37GL-23-0215

Messages and Communications

RECEIVED

Committee on Rules
February 24, 2023

10:56 a.m.

Erin Mafnas

EXECUTIVE SUMMARY

Department of Revenue and Taxation Assessments and Collections of Excise Taxes for Alcoholic Beverages and Tobacco Products OPA Report No. 23-02, February 2023

Our audit of the Department of Revenue and Taxation's (DRT's) assessments and collections of excise taxes imposed upon alcoholic beverages and tobacco products found that the DRT Business Privilege Tax (BPT) Branch is not required by law to verify entries of taxes due for alcoholic beverages unless there is cause for an audit of a BPT return. Taxpayers are only required to reconcile their own records to determine how much is due for tobacco products withdrawn from a warehouse under bond. Due to the current staffing shortage at the BPT Branch, the procedures required for assessing tobacco taxes at warehouses under bond have affected the Branch's management of its other mandated procedures for delivering taxpayer services to over 1,200 businesses.

We also found conflicting presentations and reports of the actual monthly collections of excise taxes for alcoholic beverages and tobacco products. These conflicting reports caused concern among taxpayers and the Lieutenant Governor of Guam, which prompted the initiation of this audit. The conflicting information was due to the timing between when the reports are published and when tax payments are collected.

Lastly, our audit found the following:

1. One business was listed as an active licensed tobacco bonded warehouse wholesaler, despite having two active tax liens with a total BPT liability of \$15,104,183 (from 2015 to present).
2. Irregularities in licensing regulation. DRT's listed Guam-licensed wholesalers did not match the listed named taxpayers who filed BPT returns for alcoholic beverages and tobacco products.
3. Guam Customs and Quarantine Agency (CQA) data of imported and exported goods contains inconsistent data entries and does not always clearly segregate alcoholic beverages from tobacco products.

Varying Presentations and Inconsistent Collections Data Reporting

As shown in the table below, our comparative review of collections data in the monthly Special Revenue Funds Tracking (SRFT) Reports, the Government of Guam (GovGuam) Financial Statements, and a report of collections data submitted by DRT presented variances among the three data reports. According to DRT management, the variances are mainly due to the timing between when the information is published and when tax payments are collected.

As a result of the varying presentations, the Public Auditor requested for the 36th Guam Legislature to include an authorization in the General Appropriations Act of 2023 for a financial audit of the Healthy Futures Fund (HFF) to rectify compliance issues and collecting revenues necessary to meet the mandates of the HFF enabling legislation, as well as to

confirm that the variance in data is truly due to timing. As of the release of this report, our request for the audit was affirmed, and the provision was included in Public Law 36-107 (V:1(g)(8)).

Comparisons of Tax Collections Data

Alcohol Tax Collections	SRFT Reports	DRT	Audited	Variance SRFT (-) Audited	Variance DRT (-) Audited
FY 2021	\$3,469,807	\$2,851,810	\$3,519,174	(\$49,367)	(\$667,364)
FY 2020	\$3,922,371	\$3,891,340	\$3,955,987	(\$33,616)	(\$64,647)
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FY 2018	\$28,986,143	\$23,957,990	\$28,562,068	\$424,075	(\$4,604,078)

Wholesaler Remains Licensed for Tobacco in Violation of Tobacco Control Act, with Two Active Tax Debt Liens

Contrary to law, we found one wholesaler, “TP Taxpayer 2,” was listed as an “active” licensed tobacco bonded warehouse wholesaler, despite having two active tax liens, with a total BPT liability of \$15,104,183 (from 2015 to present). Although this taxpayer’s *tobacco bonded warehouse license* remains active, DRT’s records show that the taxpayer’s *alcoholic beverage wholesale license* has been cancelled, but DRT did not provide the cancellation date.

In a separate report provided by CQA, TP Taxpayer 2 continued to import and export tobacco products during the period audited (Fiscal Years (FY) 2018-2021). The Tobacco Control Act of 2006 states that the transportation or importation of tobacco products for delivery or use in Guam without payment of taxes is prohibited (11 GCA § 6602), and CQA is mandated to maintain a database of those in violation and to determine and administer violation charges. Further discussion with CQA and DRT is required for us to determine how and why this taxpayer was allowed to continue to engage in the importation of tobacco products.

We requested information from DRT about the status of audits or investigations that have been conducted on the tax returns filed by this taxpayer, but DRT Management advised that due to ongoing litigation, the information can only be provided upon completion of said litigation. We made a subsequent request for DRT to comment on how and why TP Taxpayer 2 was allowed to continue to renew their *tobacco product wholesaler business license* with outstanding taxes due to GovGuam.

Irregularities in Licensing Regulation

We found the number of Guam-licensed wholesalers for alcoholic beverages did not match the number of taxpayers who filed BPT returns. DRT’s records show that six of the 25

businesses that paid alcoholic beverage taxes were *not* licensed wholesalers for alcoholic beverages.

Import/Export Information Provided by CQA Presents Unclear Data

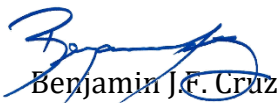
We found that the data of imported and exported goods contained variations of business names, and the information presented is not organized or segregated between alcoholic beverages and tobacco products—thus, the data cannot be used to compare with tax collections data.

Conclusion and Recommendations

If taxpayers are required to pay for all alcoholic beverage and tobacco products immediately at the time taxes are attached and without delay, assessments and collections of all excise taxes could be performed more promptly and accurately and could improve tax administration. As of FY 2021, collections of taxes deposited into the HFF were approximately \$4 million (M) less than revenue projections. A reduction in revenues may result in a reduction in the programs and services funded by the HFF.

To help improve alcohol and tobacco tax collections, we made the following five recommendations:

1. We recommend the repeal of any provision of law that allows the delay of tax payments and that all taxes due for alcoholic beverages and tobacco products be collected immediately upon receipt of shipments at all points of entry.
2. We recommend for DRT management to conduct a full inspection to determine how one taxpayer's tobacco wholesale license continued to be renewed despite having two active tax debt liens, in violation of DRT policy and the Guam Business License Law.
3. We recommend for DRT Management to enforce strict licensee compliance with the Guam Business License Law to ensure that all licensees are, in fact, current with tax debts.
4. We recommend that the legislation for the authorization to conduct an annual financial audit of the HFF shall be continuous, so long as the collections of excise taxes for alcoholic beverages and tobacco products are deposited into the HFF.
5. We recommend that DRT and CQA include all imported alcoholic beverages in the use of Tracer Forms for DRT to verify entries of taxes due, and we further recommend that DRT require taxpayers to submit copies of Bills of Lading (where applicable) and Invoices upon filing tax returns for all alcohol and tobacco taxes.


Benjamin J.F. Cruz
Public Auditor



**DEPARTMENT OF REVENUE AND TAXATION
ASSESSMENTS AND COLLECTIONS OF EXCISE TAXES
FOR ALCOHOLIC BEVERAGES & TOBACCO
PRODUCTS**

PERFORMANCE AUDIT

October 1, 2017 through September 30, 2021

OPA Report No. 23-02

February 2023





**Department of Revenue and Taxation
Assessments and Collections of Excise Taxes
for Alcoholic Beverages and Tobacco Products**

**Performance Audit
October 1, 2017 through September 30, 2021**

**OPA Report No. 23-02
February 2023**

Distribution via Electronic Mail:

Governor of Guam
Lt. Governor of Guam
Speaker, 37th Guam Legislature
Senators, 37th Guam Legislature
Deputy Director, Department of Revenue and Taxation
Director, Department of Administration
Director, Bureau of Budget and Management Research
Director, Guam Customs and Quarantine Agency
Controller, Superior Court of Guam
Guam Media



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EXECUTIVE SUMMARY

Department of Revenue and Taxation Assessments and Collections of Excise Taxes for Alcoholic Beverages and Tobacco Products OPA Report No. 23-02, February 2023

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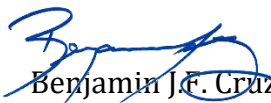
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Benjamin J.F. Cruz
Public Auditor

Introduction

This report presents the results of our audit for which our objective was to determine how the Department of Revenue and Taxation (DRT) conducted assessments and collections of the excise taxes imposed upon alcoholic beverages and tobacco products between October 1, 2017 and September 30, 2021 (Fiscal Years (FY) 2018-2021).

This audit was initiated at the request of the Lieutenant Governor of Guam as well as concerns received by the Office of Public Accountability (OPA) from corporate taxpayers that reports containing inconsistent tax collection data indicated that taxes were not fairly assessed or collected from all respective taxpayers.

We have conducted two prior audits relative to the excise taxes imposed upon tobacco products. The first audit was to determine whether or not tobacco taxes corresponded with the imports of tobacco products during FYs 2013-2016. The second audit was to determine what policies and practices were in place at DRT for granting certification to and monitoring all warehouses under bond for tobacco products (FYs 2018-2019). This is the first audit we have conducted for alcoholic beverage taxes.

Refer to [Appendix 1](#) for the objective, scope, methodology, and [Appendix 2](#) for prior audit coverage.

Background

A wholesale business license must be obtained by every person who engages in the business of selling tangible property for the purpose of resale. Licensed wholesalers, also referred to in this report as *taxpayers*, are required to file monthly Business Privilege Tax (BPT) returns and make payments of the total tax due on or before the 20th of each month when the return is filed for the previous month's activity.

Prior to March 2021, taxpayers could still file tax returns manually using GRT¹ Forms issued by DRT. Beginning with the filing for February 2021, taxpayers were required to file all BPT returns electronically. A separate form is required for taxpayers to file a return for monthly tobacco and alcoholic beverage excise taxes.

Alcoholic Beverage Taxes are excise taxes imposed upon all alcoholic beverages (not manufactured in Guam) sold in Guam by wholesalers or sellers of alcoholic beverages selling with respect to which no tax has been paid. Tobacco Taxes are excise taxes levied upon every business engaged in the manufacturing or production in Guam, importation into Guam, or purchasing of tobacco products in Guam for resale if no tax had been paid.

DRT is charged with the enforcement of tax laws of Guam; the regulation of business licenses on Guam; and the collection of revenue from excise taxes. The Tax Commissioner shall make all assessments of taxes levied and shall be responsible for the enforcement and collection of all taxes imposed.

¹ Source Note: (11 GCA § 3217) The name, Gross Receipts Tax, changed to Business Privilege Tax (PL 29-02:VI:28).

All taxes collected for alcoholic beverages and tobacco products are deposited into the Healthy Futures Fund (HFF)—a special revenue fund for the government of Guam (GovGuam) established to fund health and education programs relating to tobacco, alcohol, and substance abuse prevention, cessation, treatment, and control.

Refer to [Appendix 3](#) for applicable laws.

Results of Audit

Our audit of DRT's assessments and collections of excise taxes imposed upon alcoholic beverages and tobacco products found that the DRT BPT Branch does not verify entries of taxes due for alcoholic beverages unless there is cause for an audit of a BPT tax return. Apart from what is required by tax laws governing the alcoholic beverages tax, the DRT BPT Branch is not involved with inspections of inventory of alcoholic beverages, and upon filing tax returns, taxpayers (licensed wholesalers) are responsible for reporting taxes due. Taxpayers are only required to reconcile their own records to determine how much taxes are due for tobacco products withdrawn from a warehouse under bond.

We also found that there are conflicting presentations and reports of the actual monthly collections of excise taxes for alcoholic beverages and tobacco products. According to DRT Management, part of the conflicting information is due to the timing of when reports are published and when tax payments are collected.

Lastly, our audit found the following:

1. One business was listed as an active licensed tobacco bonded warehouse wholesaler, despite having two active tax liens with a total BPT liability of \$15.1M (from 2015 to present).
2. Irregularities in licensing regulation. DRT's listed Guam-licensed wholesalers did not match the listed named taxpayers who filed BPT returns for alcoholic beverages and tobacco products.
3. Guam Customs and Quarantine Agency (CQA) data of imported and exported goods contains inconsistent data entries and does not always clearly segregate alcoholic beverages from tobacco products.

DRT Does Not Verify Entries of Taxes Due for Alcoholic Beverages

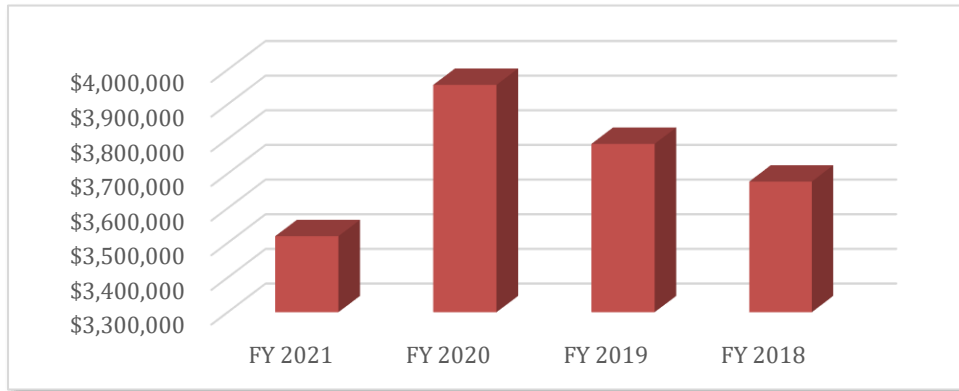
Although DRT is authorized to examine supporting documentation to ascertain the correctness of a return, the BPT Branch does not verify entries of taxes due unless there is cause for an audit. There is no requirement in law or in DRT policy to perform inspections of inventory or invoices for alcoholic beverages beyond what is required for alcoholic beverage control and licensing compliance. The Guam Administrative Rules and Regulations from 1962 for the alcoholic beverage tax have not been updated, and DRT has not established any additional policies or procedures for the assessment, collections, or enforcement of these taxes.



Alcoholic Beverage Tax Collections

According to the GovGuam financial statements, GovGuam collected an annual average of approximately \$3.7M for alcoholic beverage taxes that were deposited into the HFF.

Chart 1: Alcoholic Beverage Tax Revenues*



*Source: GovGuam Financial Statements

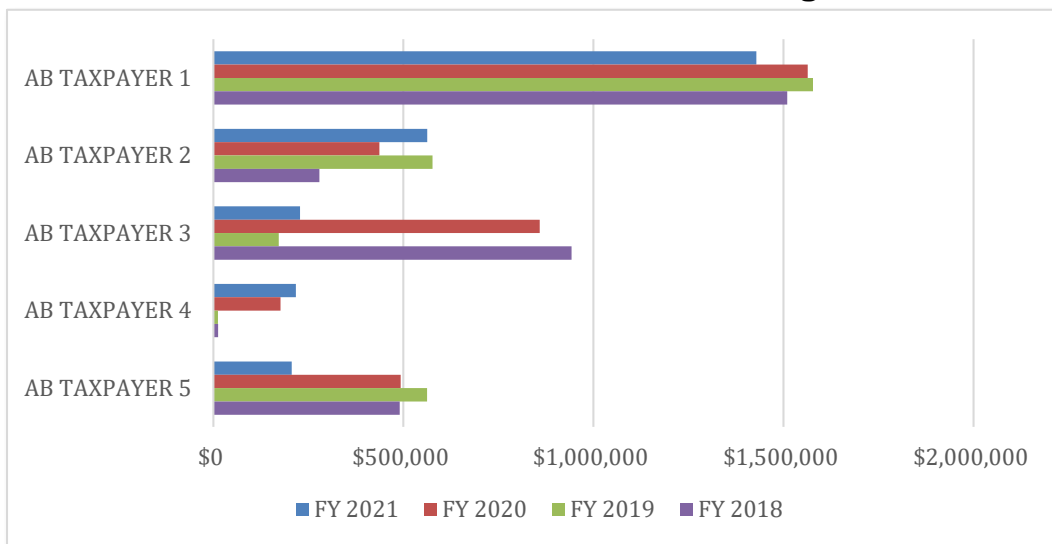
The rates at which the alcoholic beverage taxes were calculated are as follows (11 GCA § 26302):

Table 1: Alcoholic Beverage Tax Rates

Alcoholic Beverage Type	Tax Rate	Per	Measurement Unit
Malted Fermented Beverage	\$0.07	12	fluid ounces (fl oz)
Distilled Beverage	\$18.00	1	gallon
Vinous Beverages	\$4.95	1	wine gallon

Based on the tax collections data provided by DRT, Chart 2 illustrates a comparison among the top five taxpayers who paid excise taxes for alcoholic beverages. AB Taxpayer 1 paid an average of 41% of all taxes collected over the audited period, while AB Taxpayer 5 paid an average of 12% of all taxes collected. Among 25 taxpayers, these top five were consistently the same five businesses.

Chart 2: DRT Collections of Alcoholic Beverage Taxes



Taxpayers may claim credits or tax drawbacks for exemptions allowable by law, including exported goods; sales to another licensed manufacturer, rectifier, importer, or wholesaler; or sales to instrumentalities of the Armed Forces of the United States (11 GCA §§ 26303, 26304 & 26307). Taxpayers claiming drawbacks or credits for exports must use the Export Certificate to which the necessary proof of landing certificate and other information is required to be supplied by the taxpayer.

We were unable to conduct a comparative analysis using the CQA import/export data and the DRT tax collections data, because the dataset in each report was not formatted in a way to make a fair comparison. DRT Management verified that shipments of alcoholic beverages do not require the use of a Tracer Form or Bill of Lading and Invoice, which is required for tobacco products.

If taxpayers are required to pay for all alcoholic beverages and tobacco products immediately at the time taxes are attached and without delay, assessments and collections of all excise taxes could be performed more promptly and accurately and could improve tax administration. As of FY 2021, collections of taxes deposited into the HFF were approximately \$4M less than revenue projections. A reduction in revenues may result in a reduction in the programs and services funded by the HFF.

Tobacco Tax Assessment Procedures Require Additional Staffing Oversight for Physical Inspections



Tobacco Taxes are levied upon completion of the manufacturing process if produced in Guam; upon discharge by a carrier when brought into Guam; or at the time of purchase for resale if the tax has not already been attached.

Wholesalers who do not operate a warehouse under bond (“bonded warehouse”) must make payment prior to CQA’s release of imported tobacco products to the wholesaler.

Licensed wholesalers who operate and store tobacco products in a bonded warehouse are allowed to delay their payments for taxes due until the tax filing period following the withdrawal of tobacco products from the warehouse, without interest. The provision to allow the delay of paying taxes due (11 GCA § 26601(c)) requires additional oversight with the presence of the Tax Commissioner or a representative (i.e. inspectors from the BPT Branch) for the following activities:

- To witness the opening of a shipping container and to conduct inventory for assessment when a shipment arrives and is delivered to the warehouse under bond;

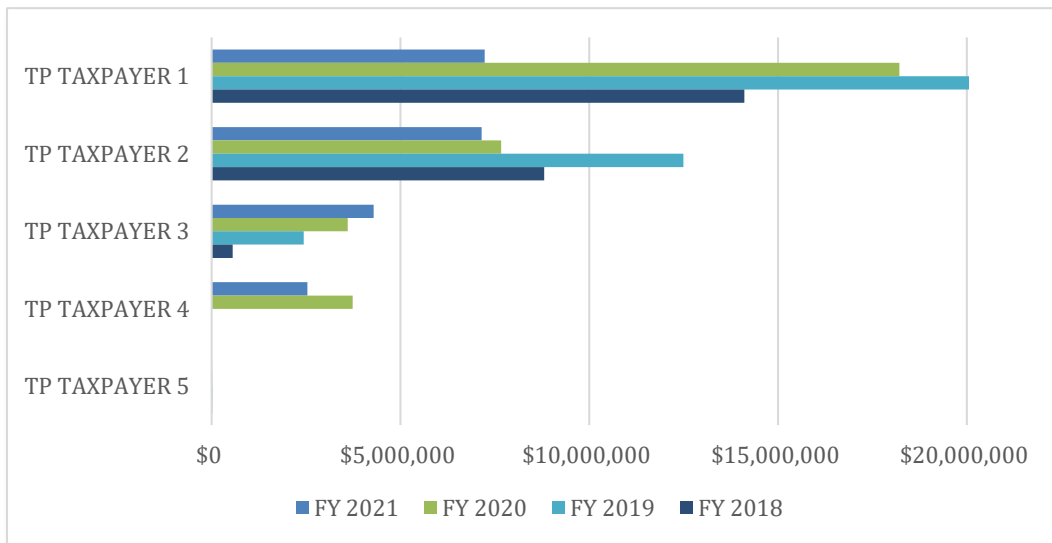
- To witness and verify the withdrawal of tobacco products made for distribution to other licensed entities;
- To supervise the destruction of tobacco products due to spoilage; or
- To conduct monthly inspections of bonded warehouses.

At present, two of the nine BPT Branch employees are assigned to bonded warehouse inspections and monitoring. Inspections of bonded warehouses are conducted during the first week of each month and are currently conducted at four different bonded warehouses (including a bonded warehouse owned by a business with two existing tobacco wholesale liens).

Tobacco Tax Collections

Based on the tax collections data provided by DRT, Chart 3 illustrates a comparison among taxpayers who paid excise taxes for tobacco products. TP Taxpayer 1 paid an average of 45% of all taxes collected over the audited period, while TP Taxpayer 5 paid an average of 0.05% of all taxes collected. Among nine taxpayers, these top five were consistently the same five businesses.

Chart 3: DRT Collections of Tobacco Taxes

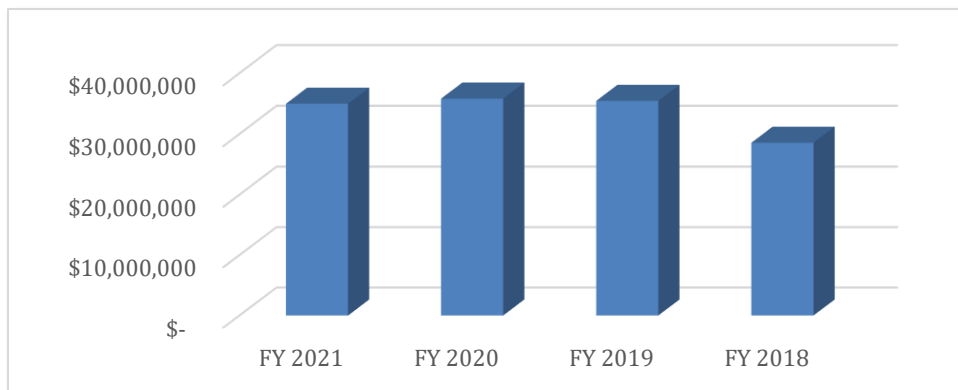


When a taxpayer files a return for tobacco products, the return would indicate how much tobacco has been withdrawn from the bonded warehouse, and the taxable quantity is calculated to determine the total tax due.

Taxpayers are required to apply for credits or adjustments due to spoilage or drawback. Taxpayers may claim adjustments or tax drawbacks for exemptions allowable by law, including exported goods; military sales; departing passengers; and spoilage (11 GCA §§ 26604-26608). All claims for credits for exports must be supported with the necessary proof of landing certificate and other information is required to be supplied by the taxpayer.

According to the GovGuam financial statements, GovGuam collected an average of approximately \$33.7M, annually, for tobacco taxes that were deposited into the HFF.

Chart 4: Tobacco Tax Revenues*



*Source: GovGuam Financial Statements

The rates at which tobacco taxes were calculated are as follows (11 GCA § 26603):

Table 2: Tobacco Tax Rates

Tobacco Product Type	Tax Rate (Prior to 08/24/2018)	Tax Rate (Effective 08/24/2018)	Per	Measurement Unit
Cigarettes	\$15.00	\$20.00	100	cigarettes
Cigars (Mini)	\$0.40	\$0.53	1	cigar
Cigar (Standard)	\$0.44	\$0.58	1	cigar
Cigar (Large)	\$0.50	\$0.66	1	cigar
Cigar (Others)	\$0.44	\$0.58	1	cigar
Other Tobacco Products	\$40.00	\$53.00	1	pound (lb)

According to DRT Management, some taxpayers will file their returns before the filing due date—the 20th of each month—but may delay payment until withdrawals are made from the bonded warehouse. Due to the current staffing shortage, the procedures required for assessing tobacco taxes at bonded warehouses have recently affected the Branch’s management of its other mandated procedures for delivering taxpayer services to over 1,200 businesses.

Varying Presentations and Inconsistent Collections Data Reporting

Every month, the Bureau of Budget and Management Research (BBMR) transmits to the Speaker of the Guam Legislature a *Special Revenue Fund Tracking (SRFT) Report* that is based upon the actual collections in the preceding month of taxes, fees, fines, penalties, and other fund sources. Once received by the Speaker, the SRFT Report is then published for public viewing via the Legislature’s *Messages and Communications* webpages. This report is compiled in collaboration with DRT, DOA, and (certified by) BBMR. As required by law, the report must contain the revenue tracking data for GovGuam’s General Fund and certain special revenue funds, including the HFF. As disclosed on the cover letter of each report

transmittal, the SRFT Report is presented in *draft* form and is subject to change. The BBMR is mandated to transmit the SRFT Report to the Legislature no later than 30 days after each month.

These reports are based on the collections of the previous month and do not account for the entire time when all excise taxes are due to be collected—on or before the 20th of each month—and the time when the report is published. The varying reports of tax collections and revenues deposited into the HFF have caused some taxpayers to conclude that taxes are being assessed and collected inequitably and that there are weaknesses in the enforcement of collections from certain taxpayers.

DRT Management explained that reported data may be incorrect due to timing issues between when taxes are assessed and when payments are made. The interface may sometimes be delayed, thus the need for DOA to pursue a new financial management information system (FMIS).

Our audit also found that DRT is required to report the *Monthly Consolidated Tax Collections* to the Guam Legislature (5 GCA § 4124). Prior to our inquiry, DRT Management explained that they were not aware of this reporting requirement since its enactment into law in 2017.

The table and charts below illustrates our review of each report of collections data by FY.

Table 3: Comparisons of Tax Collections Data

Alcohol Tax Collections	SRFT Reports	DRT	Audited	Variance SRFT (-) Audited	Variance DRT (-) Audited
FY 2021	\$3,469,807	\$2,851,810	\$3,519,174	(\$49,367)	(\$667,364)
FY 2020	\$3,922,371	\$3,891,340	\$3,955,987	(\$33,616)	(\$64,647)
FY 2019	\$3,873,408	\$4,121,382	\$3,785,570	\$87,838	\$335,812
FY 2018	\$3,653,911	\$3,634,780	\$3,676,775	(\$22,864)	(\$41,995)

Tobacco Tax Collections	SRFT Reports	DRT	Audited	Variance SRFT (-) Audited	Variance DRT (-) Audited
FY 2021	\$36,492,690	\$21,224,156	\$34,977,877	\$1,514,813	(\$13,753,721)
FY 2020	\$38,213,266	\$33,245,165	\$35,817,232	\$2,396,034	(\$2,572,067)
FY 2019	\$32,980,951	\$35,818,151	\$35,448,719	(\$2,467,768)	\$369,432
FY 2018	\$28,986,143	\$23,957,990	\$28,562,068	\$424,075	(\$4,604,078)

Chart 5a. Alcoholic Beverage Tax Revenues

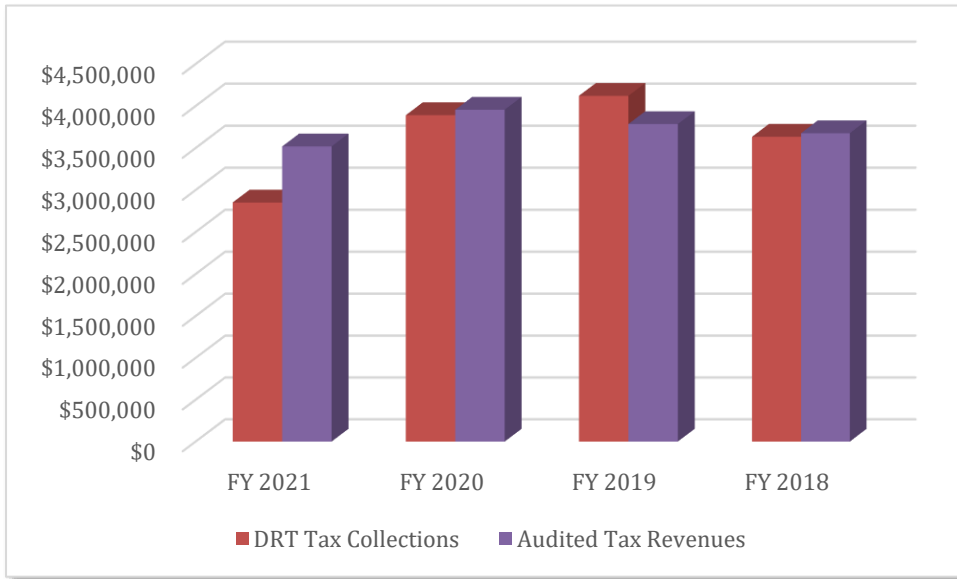
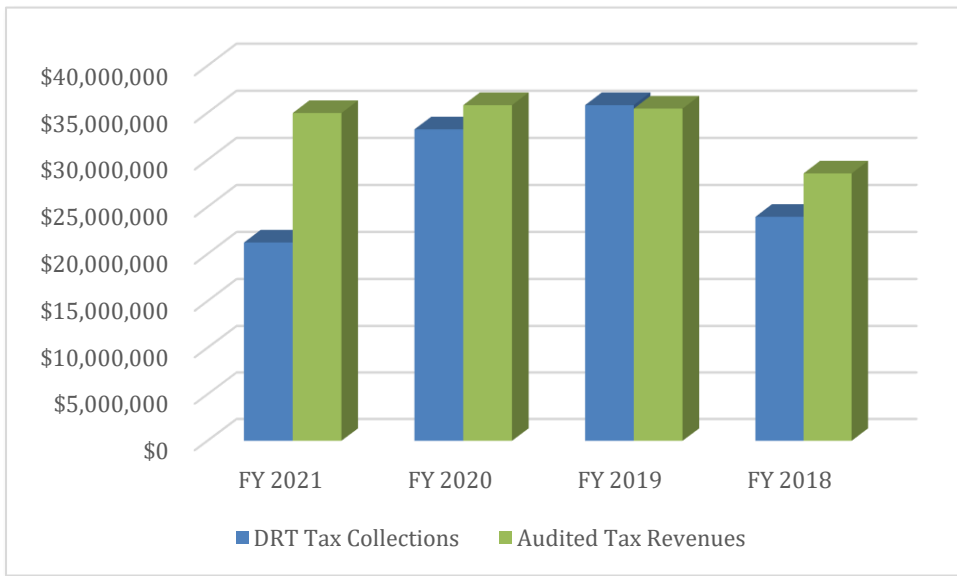


Chart 5b. Tobacco Tax Revenues



As a result of our analysis of the varying presentations and DRT’s acknowledgement that the Monthly Consolidated Tax Collections reporting requirement has not been met, the Public Auditor requested for the 36th Guam Legislature to include an authorization in the General Appropriations Act of 2023 for a financial audit of the HFF. As of the release of this report, our request for the audit was affirmed, and the provision was included in Public Law 36-107 (V:1(g)(8)).

The conflicting data across the four different reports we analyzed (GovGuam financial statements, SRFT Reports, DRT Tax Collections Data, and CQA Import and Export Data)

further demonstrates the need for GovGuam to pursue an FMIS that will alleviate problems with interfacing tax collections, between the Treasurer of Guam and DRT.

Wholesaler Remains Licensed for Tobacco in Violation of Tobacco Control Act, with Two Active Tax Debt Liens

Guam Business License Law and DRT policy dictate that no person may renew a business license without clearance that all taxes due thereon have been paid or arrangements have been made with DRT and that such arrangements are current. Contrary to law, one wholesaler, “TP Taxpayer 2,” was listed as an “active” licensed tobacco bonded warehouse wholesaler, despite having two active tax liens, with a total BPT liability of \$15,104,183 (from 2015 to present).

DRT tax collections data shows payments were collected from TP Taxpayer 2 for alcoholic beverage taxes in FY 2018 and tobacco taxes between FYs 2018 and 2021. DRT Management gave verbal confirmation that the BPT Branch continues to conduct inspection and oversight activities at this taxpayer’s bonded warehouse.

The Tobacco Control Act of 2006 expressly prohibits the transportation or importation into Guam for delivery or use in Guam of tobacco products without payment of taxes (11 GCA § 6602), and CQA is mandated to maintain a database of those in violation and to determine and administer violation charges (11 GCA § 6603(d)). In a separate report provided by CQA, TP Taxpayer 2 continued to import and export tobacco products during the period audited (FYs 2018-2021). Although this taxpayer’s *tobacco bonded warehouse license* remains active, DRT’s records show that their *alcoholic beverage wholesale license* has been cancelled, but DRT did not provide the cancellation date.



We requested information from DRT about the status of audits or investigations that have been conducted on the tax returns filed by this taxpayer, but DRT Management advised that, due to ongoing litigation, the information can only be provided upon completion of said litigation. We made a subsequent request for DRT to comment on how and why TP Taxpayer 2 was allowed to continue to renew their *tobacco product wholesaler business license* with outstanding taxes due to GovGuam.

Irregularities in Licensing Regulation

Taxpayers who are classified as wholesalers engaged in sales of alcoholic beverages or tobacco products must first be licensed by the DRT Regulatory Division. The Regulatory Division has separate processes for wholesalers of alcoholic beverages and tobacco products. Once the applicant meets all the requirements for obtaining a license, the applicant

must continue to be compliant with all policies governing Alcoholic Beverage Control and/or Tobacco Control.

Over the scope of the audit, a total of 37 businesses were licensed as Alcoholic Beverage Class 3 Wholesalers, and 17 businesses were licensed as Tobacco Wholesalers (four were licensed as businesses that did not operate a warehouse under bond).

According to DRT's records, taxes were collected from 25 businesses for alcoholic beverages, but DRT's records also show that six of those businesses were *not* licensed wholesalers for alcoholic beverages.

At some point in 2019, the Regulatory Division required that upon renewal of all licenses, licensees would have to submit to a clearance process to be approved for renewal. Upon receiving the license renewal forms, the taxpayer is required to furnish the renewal form to the Income Tax Branch, the BPT Branch, and the Collections Branch for official review. Representatives from each Branch must stamp the renewal form, indicating that the taxpayer is compliant with tax laws and tax obligations. Once the form is marked from each Branch, the taxpayer may then proceed with license renewal. DRT policy dictates that licensees who do not return to the Regulatory Division with these clearances will not be allowed to renew their licenses until such time when clearances are obtained.

Import/Export Information Provided by CQA Presents Unclear Data



In addition to our review of the reports containing collections data, we requested for CQA to provide us with import and export activity of all alcoholic beverages and tobacco products received at the maritime cargo facility and the air cargo facility. We used this data to try to determine how many licensed wholesalers, i.e. taxpayers, engaged in import and export activity over the scope of the audit.

The information presented to us by CQA contained variations of business names, and the information presented is not organized or segregated between alcoholic beverages and tobacco products—thus, the data could not be used to compare with tax collections data.

In our correspondence with CQA Management, we were advised that they are in the process of researching automation systems that will help with tracking imported and exported goods.

Other Matters

Taxpayers are required to file BPT returns on or before the 20th of each month, following the close of the calendar month in which taxes are accrued (11 GCA § 26110(a)(1)). Taxpayers

used paper forms to file their tax returns manually until electronic filing was required for the tax period of March 2021 (11 GCA § 26110.1).

We conducted a physical inspection of tax returns and other tax records at DRT to determine who filed tax returns and how much was reported by each taxpayer as the total taxes due. We were informed by DRT that there were missing documents that could not be located in time for our physical inspection, and we were unable to complete our analysis as a result of not receiving all the records required for our inspection. We recommend for DRT to look into this matter for compliance with protecting taxpayer privacy.

The Cigarette Stamp Tax Law was passed into law in 2017, with the intent to improve collections of the tobacco tax. Once implemented, the law would require taxpayers to purchase tax stamps in Guam from DRT. Stamps would be affixed to each cigarette package, and payment for the stamps would be reported each month, following the purchase date. The law also charges DRT with the printing, distribution, and sale of tax stamps. The printing of the stamps has been delayed as a result of issues concerning procurement for the printing of the stamps. DRT is currently in the process of working on meeting its obligations to implement this law.

Conclusions and Recommendations

Excise taxes are assessed and collected by DRT and deposited into the HFF, a special revenue fund of GovGuam.

On average, annual deposits to the HFF were projected at approximately \$38.3M in revenues for FYs 2018 through 2021. GovGuam financial statements for the same period reported actual collections have averaged about \$37.5M for the same period. This translates to an average collection rate of approximately \$872K less than projected revenues.

Revenues for the HFF are reported by BBMR to the Guam Legislature in the monthly *SRFT Report*, a report that is statutorily mandated and is published on the Guam Legislature's website. Some taxpayers have observed that these reports reflect conflicting information against their own tax returns, thus prompting the request for our audit of DRT's collections.

Until such time when Rules and Regulations are updated or when taxpayers are required to submit supporting documentation for alcoholic beverages and tobacco products *not* stored in warehouses, the risk for taxpayer noncompliance will continue to exist. The opportunity for taxpayers to either underreport correct taxable quantities or to fail to make full payments leads to inequality and inequitable treatment of respective taxpayers. Furthermore, the lack of internal controls for the appropriate assessments and collections of these taxes leaves consumers at risk of a reduction in the programs and services funded by the HFF.

To help improve alcohol and tobacco tax collections, we made the following five recommendations:

1. We recommend the repeal of any provision of law that allows the delay of tax payments and that all taxes due for alcoholic beverages and tobacco products be collected immediately upon receipt of shipments at all ports of entry.
2. We recommend for DRT management to conduct a full inspection to determine how one taxpayer's tobacco wholesale license continued to be renewed despite having two active tax debt liens, in violation of DRT policy and the Guam Business License Law.
3. We recommend for DRT Management to enforce strict licensee compliance with the Guam Business License Law to ensure that all licensees are, in fact, current with tax debts.
4. We recommend that the legislation for the authorization to conduct an annual financial audit of the HFF shall be continuous, so long as the collections of excise taxes for alcoholic beverages and tobacco products are deposited into the HFF.
5. We recommend that DRT and CQA include all imported alcoholic beverages in the use of Tracer Forms for DRT to verify entries of taxes due, and we further recommend that DRT require taxpayers to submit copies of Bills of Lading (where applicable) and Invoices upon filing tax returns for all alcohol and tobacco taxes.

Management Response and OPA Reply

A draft report was transmitted to the DRT Deputy Director on December 14, 2022. An exit conference was held on December 19, 2022 to discuss the audit findings and recommendations. An updated draft report was re-transmitted to the DRT Deputy Director on January 30, 2023.

On February 14, 2023, DRT Management submitted an official response where they generally concurred with our findings and recommendations.

In their response, DRT Management explained that the conflicting presentations and reports of actual monthly collections of excise taxes are partly due to the timing between collections of tax payments and the publication of reports, as well as with the point in time when the data is actually extracted.

DRT explained that the tax lien for TP Taxpayer 2 is under an installment agreement, allowing the taxpayer to renew their business license and to continue operations and generate income needed in order to pay down the total amount of taxes owed. DRT initially provided only the active liens and did not state there was an installment agreement between DRT and the taxpayer.

DRT Management has initiated communication with CQA to consider using Tracer Forms to track all alcoholic beverages and all tobacco products as recommended.

See [Appendix 4](#) for DRT's official management response.

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

We appreciate the cooperation and assistance given to us from the staff and management of DRT and CQA during this audit.

OFFICE OF PUBLIC ACCOUNTABILITY


Benjamin J.F. Cruz
Public Auditor

Appendix 1:
Objective, Scope, and Methodology

Our audit objective was to determine how DRT conducts assessments, collections, and enforcement of excise taxes imposed upon alcoholic beverages and tobacco products and to verify that all taxpayers are indeed paying taxes as mandated. The scope of our audit was between October 1, 2017 through September 30, 2021 (Fiscal Years 2018-2021).

Scope Limitations

- Our physical inspection of tax return documents at DRT was not completed due to missing records on file or records that were not provided to our team in time.
- Current Standard Operating Procedures (SOP) were documented and provided to us but only specific to licensing & renewal and the BPT Branch's workflow for tobacco products. No other documented SOPs were available for immediate review or discussion.
- Legible electronic files of the monthly Special Revenue Funds Tracking Reports certified by BBMR were never provided by BBMR.
- CQA Import and Export Data contains overlapping information between alcoholic beverages and tobacco products and contains data entries with either typographical errors or descriptions that require further follow-up.

Methodology

- Reviewed applicable laws, rules and regulations, and requested for policies and procedures not available at DRT's website.
- Researched and reviewed prior audits and official publications relative to alcoholic beverage taxes and tobacco taxes.
- Engaged with DRT management and personnel to obtain an understanding of the administration of alcoholic beverage taxes and tobacco taxes.
- Reviewed all publicly available mandated reports: Special Revenue Funds Tracking Report; DRT Citizen Centric Reports; and Bureau of Statistics and Plans Guam Import and Export Reports.
- Corresponded with CQA Management to obtain information about activities involving imports and exports of alcoholic beverages and tobacco products.
- Conducted walkthroughs and virtual interviews with DRT Management and personnel to obtain an understanding of procedures for licensing and compliance, taxpayer services, and tax enforcement.

We conducted this performance audit in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States of America. 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 limitations noted above, 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

OPA Report No. 18-04 | Department of Revenue and Taxation Tobacco Tax, Issued May 2018 – Our audit of the DRT’s administration of Tobacco Taxes concluded with concerns of potential underreporting from taxpayers and that taxable quantities were largely reliant on the wholesaler’s voluntary compliance and self-reporting in BPT returns. Our findings included inconsistencies in the Guam CQA’s reported information for shipments of tobacco products and DRT’s tobacco tax records. There was no policy or procedure in place to require reconciliation between DRT and CQA for proper oversight of tobacco taxes.

OPA Report No. 19-07 | Department of Revenue and Taxation Bonded Warehouses for Tobacco Products, Issued November 2019 – Our audit discussed the lack of rules and regulations or policies and procedures for monitoring warehouses under bond for tobacco products. The lack of enforcement of oversight proved insufficient to provide reasonable assurance that all tobacco taxes were properly assessed and accounted for. Our audit included the recommendation for the repeal of all provisions of law relative to warehouses under bond.

Independent Financial Audits

GovGuam Financial Statements (FY 2018 – 2021) – Financial statements over the four-year period showed the most drastic change in tobacco tax revenues between FY 2018 at \$28.6M and 2019 at \$35.4M as a direct result of the increase in tobacco tax rates, effective August 24, 2018. The highest decrease for each excise tax was in FY 2021, with alcoholic beverage taxes decreasing by about \$436K, and tobacco taxes decreasing by about \$839K. These taxes are reported as tax revenues deposited into the Healthy Futures Fund for each fiscal year.

11 GCA Chapter 1 Department of Revenue and Taxation, Administration**§ 1103. Purpose of Department.**

The Department shall be responsible for the administration of this Chapter and the performance of the responsibilities and duties assigned by law. It shall be charged with the enforcement of the tax laws of Guam and the collection of revenue. It shall also be the government agency generally responsible for licensing and registration as well as allied and connected enforcement functions.

§ 1104. Functions.

(c) Business License Law. The Department shall be responsible for the administration and enforcement of the Business License Law set out in Division 3 (beginning with Chapter 70) of this Title.

(e) Alcoholic Beverage Control. The Department shall be responsible for all functions formerly assigned the Department of Finance under the Alcoholic Beverage Control Act, Chapter 3 of this Title.

11 GCA Chapter 26 Article 3 Alcoholic Beverage Tax**§ 26302. Excise Tax on Alcoholic Beverages.**

An excise tax is imposed upon all alcoholic beverages (except alcoholic beverages manufactured in Guam) sold in Guam by manufacturer, manufacturer's agents, rectifiers or wholesalers or sellers of alcoholic beverages selling alcoholic beverages with respect to which no tax has been paid within areas of which the Federal government exercises jurisdiction at the following rates:

(a) Malted Fermented Beverage. A tax in the amount of Seven Cents (\$0.07) per each twelve (12) fluid ounces or fraction thereof on all malted fermented beverages to be applied to the measure of the container in which it is offered for sale.

(b) Distilled Beverages. A tax in the amount of Eighteen Dollars (\$18.00) per gallon on all distilled beverages to be applied to the measure of the container in which it is offered for sale; provided further that any fraction of One Cent (\$0.01) shall be taken as a whole cent.

(c) Vinous Beverages. A tax at the rate of Four Dollars and Ninety-Five Cents (\$4.95) per wine gallon on all vinous beverages to be applied to the measure of the container in which it is offered for sale; provided, however, that the tax levied by this Section shall be prorated in units of measure less than one (1) gallon; and provided further, that any fraction of One Cent (\$0.01) shall be taken as a whole cent.

(e) Proceeds of Excise Tax on Alcoholic Beverages. All proceeds from taxes collected under this Section shall be deposited in the "Healthy Futures Fund" created pursuant to 11 GCA § 26603(d).

11 GCA Chapter 3 Alcoholic Beverage Control Article 7 Prohibitions on Importations**§ 3702. Prohibitions.**

The transportation or importation into Guam for delivery or use in Guam of alcoholic

Applicable Laws (continued)

beverages without payment of the tax provided by Chapter 26, Article 3, of this Code, or contrary to the provisions of § 3701, is hereby prohibited.

11 GCA Chapter 70 Business License Law**§ 70132. Clearance Necessary that Taxes Due Are Paid to Obtain Business License.**

No person may obtain or renew a business license without clearance from the Director of Revenue & Taxation that all income tax returns, business privilege tax returns and withholding tax returns which are due from that person have been filed (or an extension has been approved or granted thereon by the Director of Revenue & Taxation, which extension has not expired), and that all taxes due thereon have been paid or arrangements have been made with the Director for payment thereon and such arrangements are current.

11 GCA Chapter 26 Article 3 Alcoholic Beverage Tax**§ 26302. Excise Tax on Alcoholic Beverages.**

An excise tax is imposed upon all alcoholic beverages (except alcoholic beverages manufactured in Guam) sold in Guam by manufacturer, manufacturer's agents, rectifiers or wholesalers or sellers of alcoholic beverages selling alcoholic beverages with respect to which no tax has been paid within areas of which the Federal government exercises jurisdiction at the following rates:

(a) Malted Fermented Beverage. A tax in the amount of Seven Cents (\$0.07) per each twelve (12) fluid ounces or fraction thereof on all malted fermented beverages to be applied to the measure of the container in which it is offered for sale.

(b) Distilled Beverages. A tax in the amount of Eighteen Dollars (\$18.00) per gallon on all distilled beverages to be applied to the measure of the container in which it is offered for sale; provided further that any fraction of One Cent (\$0.01) shall be taken as a whole cent.

(c) Vinous Beverages. A tax at the rate of Four Dollars and Ninety-Five Cents (\$4.95) per wine gallon on all vinous beverages to be applied to the measure of the container in which it is offered for sale; provided, however, that the tax levied by this Section shall be prorated in units of measure less than one (1) gallon; and provided further, that any fraction of One Cent (\$0.01) shall be taken as a whole cent.

(d) [Repealed.]

(e) Proceeds of Excise Tax on Alcoholic Beverages. All proceeds from taxes collected under this Section shall be deposited in the "Healthy Futures Fund" created pursuant to 11 GCA § 26603(d).

11 GCA Chapter 26 Article 6 Tobacco Tax**§ 26602. Levy.**

There is hereby levied, and shall be assessed and collected, upon every business engaged in the manufacture or production in Guam, or importation into Guam, of any tobacco products, in addition to all other applicable taxes, an excise tax to be measured by the application of the following rates against the tobacco products so manufactured, produced

Applicable Laws (continued)

or brought into Guam as herein provided. Such excise tax shall also be levied upon, assessed and collected from every business purchasing tobacco products in Guam for resale if no tax had been paid upon said tobacco products as herein provided.

§ 26603. Rates.

The following rates shall apply in computing, assessing, and collecting the tobacco tax:

(a) Cigarettes. A tax at the rate of Twenty Dollars (\$20.00) per one hundred (100) cigarettes to be prorated in accordance with the number of cigarettes contained in the individual package taxed.

(b) Cigars. The tax rates for cigars shall be based on the following sizes:

(1) Mini Cigars: Fifty-three Cents (\$0.53) Per Cigar. Mini Cigars are defined as cigars with a ring size of forty (40) or less, or a length of less than four and one-half inches (4.5"), regardless of ring size as specified by the manufacturer's label.

(2) Standard Cigars: Fifty-eight Cents (\$0.58) Per Cigar. Standard Cigars are defined as cigars with a ring size of more than forty (40), but less than sixty-four (64) as specified by the manufacturer's label.

(3) Large Cigars: Sixty-six Cents (\$0.66) Per Cigar. Large Cigars are defined as cigars with a ring size of more than sixty-four (64), or a length of more than eight inches (8"), regardless of the ring size as specified by the manufacturer's label.

(4) Where no ring size or length is specified by the manufacturer's label, the tax shall be Fifty-eight Cents (\$0.58) per cigar. For purposes of this Section, ring size shall be defined as the usually accepted measure used by cigar manufacturers for determining the diameter of cigar at its widest point. A ring size of one (1) is equal to one sixty-fourth (1/64) of an inch.

(c) Other Tobacco Products. A tax at the rate of Fifty-three Dollars (\$53.00) per pound for all other tobacco products to be prorated in accordance with the size of the package to be taxed.

(d) Creation of the Healthy Futures Fund. There is hereby created the Healthy Futures Fund (Fund) which shall be maintained separate and apart from other funds of the government of Guam and shall be kept in a separate bank account and shall not be subject to any transfer authority of I Maga'låhen Guåhan.

(5) All other proceeds from taxes collected under this Section shall be deposited into the Fund and shall not be commingled with the General Fund.

11 GCA Chapter 6 Tobacco Control Act of 2006**§ 6602. Prohibitions.**

The transportation or importation into Guam for delivery or use in Guam of tobacco

Applicable Laws (continued)

products without payment of the tax provided by Chapter 26, Article 6, of this Code, or contrary to the provisions of Article 6, is hereby prohibited.

§ 6603(d). Penalty.

(d) The Customs and Quarantine Agency shall maintain a database of all individuals who are in violation of this Section to determine and administer subsequent violation charges.

11 GCA Chapter 26 Article 1 Business Privilege Tax Law, General Provisions**§ 26110. Returns.**

All taxpayers against whom a tax is levied by the provisions of this Chapter shall file returns in the manner, and at the time herein provided, and shall make payments of the tax in accordance therewith. Such returns shall be made to the Tax Commissioner.

(a) Monthly Returns for Alcoholic Beverage Tax, Liquid Fuel Tax, Automotive Surcharges and Tobacco Tax.

(1) Each taxpayer against whom a tax is levied by the provisions of Articles 3, 4, 5, and 6 of this Chapter shall make and file monthly returns of taxes with the Tax Commissioner on or before the twentieth (20th) day following the close of the calendar month in which the taxes shall accrue, and in the form and in accordance with the rules and regulations by the Tax Commissioner.

(2) Except as may be specifically hereinafter provided, payment covering the full amount of tax liability as evidenced by the monthly return shall accompany such monthly return.

Public Law 27-5:V:2, Creation of Healthy Futures Fund. There is hereby created in the Department of Administration a fund, separate and apart from other funds of the government of Guam, known as the ‘Healthy Futures Fund.’ This Fund shall not be commingled with the General Fund and shall be kept in a separate bank account. All proceeds from taxes collected under this Section shall be deposited in the Healthy Futures Fund and shall be expended for health and education programs relating to tobacco and alcohol prevention, cessation, treatment, control and to improving overall health and well-being and to improving overall health and well-being at the Department of Health and Social Services, the Department of Mental Health and Substance Abuse, the Department of Education, the Guam Memorial Hospital, the Department of Youth Affairs and other agencies deemed appropriate by *i Liheslaturan Guåhan*. Preference will be given to programs directed towards youth, low-income or at-risk persons and families, drug and substance prevention, cessation, and treatment, preventative health care, and chronic disease management. All expenditures of the Healthy Futures Fund shall be made by legislative appropriation. The Department of Administration shall report on a quarterly basis to the Speaker of *i Liheslaturan Guåhan* the revenues collected and expended from this Fund.

Applicable Laws (continued)

2 GCA § 13109(a)(1). Executive Branch Accounting, Financial, and Economic Services.

(1) No later than twenty (20) days after the end of each month of a fiscal year, the Director of the Bureau of Budget and Management Research shall report the revenue tracking for the General Fund, the Tourist Attraction Fund, the Solid Waste Operations Fund (Tipping Fees), the Territorial Educational Facilities Fund, the Guam Highway Fund, the Healthy Futures Fund, and the Customs, Agriculture and Quarantine Inspections Service Fund for the balance of the fiscal year, based upon the actual collections of the preceding month, and prepare a comparative statement of “actual” and “projected” revenues. Such information shall be compiled in a report, in collaboration with the Director of Revenue and Taxation and the Director of Administration, certified by the Director of the Bureau of Budget and Management Research, and submitted to the Speaker of *i Liheslaturan Guåhan*, in Microsoft Excel file and written report, no later than twenty (20) days after the end of each month of the fiscal year.

5 GCA § 4124. Monthly Consolidated Tax Collections Report.

(a) The Director of the Department of Revenue and Taxation shall prepare a monthly Consolidated Tax Collections Report (CTCR), excluding any identifying information regarding any taxpayer, which shall report the aggregate monthly activity of the Collection Branch of the Department of Revenue and Taxation for the individual income tax, the withholding tax, the corporate income tax, and the business privilege tax, which shall include, broken down by tax units and balance, the beginning inventory, referrals received during the month, assessed accruals, total inventory, offsets, payments made to the Treasurer of Guam, payment transfers, inactivation, abatements, total adjustments, and the ending inventory.

(b) The Director of the Department of Revenue and Taxation shall certify said reports, which shall be transmitted to *i Maga'låhen Guåhan* and the Speaker of *i Liheslaturan Guåhan* no later than twenty (20) days after the end of each month.

1 GCA § 1923. Periodic Audit or Review of Each Government of Guam Agency's Standard Operating Procedures.

The Office of Public Accountability shall at any time cause each government of Guam agency's Standard Operating Procedures (SOPs) to be reviewed for adequacy, effectiveness, and efficiency as part of each agency's audit scope. For purposes of this Section, SOPs are written formal instructions intended to document operational functions and how to perform routine activities.

(a) SOPs shall include how the agency performs certain actions necessary in carrying out government policies within the agency's scope of jurisdiction, and specific actions authorized in the agency's enabling act.

(b) Such SOPs shall be posted on each agency's website for public view.

(c) Agencies may omit from their respective websites field operations or sensitive information that if disclosed may cause physical harm to government personnel or citizens, may interfere with law enforcement operations or investigations, or may weaken information systems security.



Dipàttamenton Kontribusion yan Adu'ána

DEPARTMENT OF

REVENUE AND TAXATION

GOVERNMENT OF GUAM

Gubetnamenton Guåhan

LOURDES A. LEON GUERRERO, Governor *Maga'håga*
JOSHUA F. TENORIO, Lt. Governor *Sigundo Maga'låhi*

DAFNE MANSAPIT-SHIMIZU, Director
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Sigundo Direktor

February 14, 2023

Benjamin J.F. Cruz
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Office of Public Accountability
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238 Archbishop Flores Street
Hagatna, Guam 96910

Subject: Management Response to the Performance Audit on the Department of Revenue and Taxation's Assessments and Collections of Excise Taxes on Alcoholic Beverages and Tobacco Products

Hafa Adai, Mr. Cruz.

The Department of Revenue and Taxation (DRT) restates the findings of the audit report and posts our respective management responses below:

- 1. Executive Summary Finding (Paragraph 1) mentions that the current staffing shortage at the Business Privilege Tax (BPT) Branch and procedures required for assessing tobacco taxes at bonded warehouses have affected its management of other mandated procedures for delivering taxpayer services to over 1,200 businesses.**

The implementation of 11 GCA §26110.1, which became effective February 2021 and which mandates the online filing of BPT returns, has enabled the DRT staff to directly focus on addressing and processing the backlog of manual BPT returns. Staffing shortages have been historically challenging for our agency, and the current inventory process at bonded warehouses usually results in our already-limited number of staff being out of the office for extended amounts of time.

- 2. Executive Summary Finding (Paragraph 2) notes there are conflicting presentations and reports of the actual monthly collections of excise taxes for alcoholic beverages and tobacco products.**

As mentioned in the audit, DRT has maintained that conflicting information found in presentations and reports is partly due to the timing of the collection of tax payments and the publication of reports. Also, another important variable to consider is the point in time that the data is actually extracted.

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Response to OPA Performance Audit on DRT's Assessments and Collections of Excise Taxes for Alcoholic Beverages and Tobacco Products – February 14, 2023
Page 2

- 3. Additional Finding (#1) mentions a business listed as an active licensed tobacco-bonded warehouse wholesaler with two active liens and a total Business Privilege Tax (BPT) liability of just over \$15M (from 2015 to present).**

When a taxpayer (TP) is unable to remit the full amount of taxes owed because of unforeseen circumstances or hardships, they can request to enter into an installment agreement (IA). As long as payments specified in the IA are made and that the TP is current with their tax filings, they are considered to be compliant and thus are permitted to renew their business license. Granting this allows the TP to continue operations and generate the income needed in order to pay down the total amount of taxes owed.

This particular TP is under an IA and has been and continues to be compliant.

- 4. Additional Finding (#2) refers to irregularities in licensing regulation and that DRT's listed Guam-licensed wholesalers did not match the listed named taxpayers who filed BPT returns for alcoholic beverages and tobacco products.**

(DRT is researching the information related to this finding and will provide an update as soon as possible.)

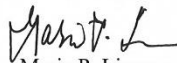
- 5. Additional Finding (#3) notes that the Guam Customs and Quarantine Agency (CQA) date of imported and exported goods contains inconsistent date entries and does not always clearly segregate alcoholic beverages from tobacco products.**

We met with CQA staff in September 2022 to identify and further discuss issues that have led to inconsistent data entries and the non-segregation of alcoholic beverages from tobacco products. Your recommendation to use Tracer Forms is noted and will be considered as we move to develop new policies with CQA. We are hopeful that CQA's recent announcement to procure an automated system will greatly improve the tracking of imported and exported goods.

In closing, we take note of your recommendations for improvement so that as we work to protect the Government of Guam's interests, we also ensure it is in a manner that treats all taxpayers equitably. We also would like to thank your office, specifically Vince Duenas and Selina Onedera-Salas, for their professionalism.

Please do not hesitate to reach out to me at (671) 635-1816 or at marie.lizama@revtax.guam.gov should you have additional questions or require clarification.

Sensaramente,



Marie P. Lizama
Deputy Director

Form EO-2021-1818 v08.24.2021

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Appendix 5:
Status of Audit Recommendations

1	Guam Legislature	We recommend the repeal of any provision of law that allows the delay of tax payments and that all taxes due for alcoholic beverages and tobacco products be collected immediately upon receipt of shipments at all ports of entry.	Open	N/A
2	DRT Management	We recommend for DRT management to conduct a full inspection to determine how one taxpayer's tobacco wholesale license continued to be renewed despite having two active tax debt liens, in violation of DRT policy and the Guam Business License Law.	Open	Please provide target date and title of designee responsible for implementing the recommendation.
3	DRT Management	We recommend for DRT Management to enforce strict licensee compliance with the Guam Business License Law to ensure that all licensees are, in fact, current with tax debts.	Open	Please provide target date and title of designee responsible for implementing the recommendation.
4	Guam Legislature	We recommend that the legislation for the authorization to conduct an annual financial audit of the HFF shall be continuous, so long as the collections of excise taxes for alcoholic beverages and tobacco products are deposited into the HFF.	Closed	N/A
5	DRT Management & CQA Management	We recommend that DRT use Tracer Forms and require taxpayers to submit copies of Bills of Lading (where applicable) and Invoices upon filing tax returns for all alcoholic beverages and tobacco products.	Open	Please provide target date and title of designee responsible for implementing the recommendation.

Department of Revenue and Taxation Assessments and Collections of Excise Taxes for Alcoholic Beverages and Tobacco Products Report No. 23-02, February 2023

ACKNOWLEDGEMENTS

Key contributions to this report were made by:

Selina Onedera-Salas, Accountability Auditor

Vincent Duenas, Supervising Accountability Auditor

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.

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

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