



**OFFICE OF THE PUBLIC AUDITOR
EXECUTIVE SUMMARY**

Government of Guam Tax Credit Programs
Report No. 07-15, November 2007

This report represents the results of our performance audit of the government of Guam's various tax credit programs. The objectives of this audit were to determine: (1) the effectiveness of the government of Guam's monitoring of tax credit programs' compliance with applicable laws, rules, and regulations, and (2) the financial impact these tax credit programs have on government of Guam revenues.

As of September 30, 2006, we identified nine public laws that authorized a minimum of \$23.6 million (M) in tax credits to taxpayers who contribute property, materials, labor, services, or cash to the government of Guam for various programs.¹ Four of the tax credit programs do not limit the amount of tax credits, therefore, the maximum impact on the reduction of government revenues is not known.

As of March 2007, the Department of Revenue and Taxation (DRT) offset \$6.3M against various companies' taxes for their participation in three on-going tax credit programs administered by the Guam Economic Development and Commerce Authority (GEDCA): the Guam Raceway Park, the Paseo Stadium, and the Comprehensive Soccer Stadium. \$15.4M will be offset when companies submit claims for the balances and when pending programs are implemented.

	Public Law	Purpose	Amount Authorized in Law	Drawdowns Authorized by GEDCA	Amount Applied by DRT	Balance of Potential Tax Credits
1	28-150	Past Due MIP Billings Offset	\$11,059,643 ²	\$ -	\$ -	\$11,059,643
2	28-142	Guam Registered Apprenticeship Program	Not specified	-	-	Unknown
3	27-130	UOG Multi-Sports Complex	1,000,000	-	-	1,000,000
4	27-114	GPSS Sports Facilities	1,000,000	-	-	1,000,000
5	27-85	Soccer Stadium	1,000,000	566,490	467,151	433,510
6	26-166	Paseo Stadium	1,500,000	1,001,256	887,630	498,744
7	24-254	Local Commuter Air Svcs.	Not specified	-	-	Unknown
8	24-141	Guam Raceway Park	8,000,000	6,631,177	4,950,607	1,368,823
9	14-69	Payment for Privately Owned Lands	Not specified	-	-	Unknown
		Total	\$23,559,643	\$ 8,198,923	\$ 6,305,388	\$15,360,720

GEDCA Not Effectively Monitoring Current Tax Credit Programs

GEDCA authorized tax credits of \$6.6M for the Raceway Park, \$1M for the Paseo Stadium, and \$566,490 for the Soccer Stadium without ensuring that laws, rules, and regulations were followed. This occurred because GEDCA allowed related special-interest groups to make key decisions, while GEDCA merely processed tax credits as a perfunctory duty and did not report on the overall program benefits, costs, and the impact to government revenues. We found:

- Lack of public announcements to invite companies to participate in any of the tax credit programs allowed groups to select favored companies. Public announcements were required by Public Law (P.L.) 25-27 for the Raceway Park; however, the project manager and Guam Racing Federation

¹ Our search for tax credit laws was limited to the searchable Guam Code Annotated at www.guamcourts.org/CompilerofLaws and other applicable laws may not have been identified by the search engine.

² FY 2006 audited government of Guam Basic Financial Statements, MIP Fund liabilities. P.L. 28-150 did not specify a maximum amount. Therefore, the effect on future general fund revenues cannot be determined with certainty.

(GRF) selected 12 companies to receive tax credits. Public announcements were not required for the Soccer Stadium, which allowed the Guam Football Association (GFA) to select only one company.

- GRF did not remit the \$2 Raceway Park admissions fee required by P.L. 24-141 to the government. The amount of lost revenue to the government is not known.
- In March 2007, GFA remitted \$502 for Soccer Stadium admissions for two events. The amount of lost revenue to the government is not known.
- \$231,377 in excess tax credits was authorized by GEDCA and granted to one company that charged a 17% overhead rate for construction of the Raceway Park, although P.L. 25-27 allowed only 5%.
- Lack of detailed inspection reports and independent certification of invoices and expenditures for Raceway Park tax credits as required by P.L. 25-27. However, we were provided with three months of dated photos of the construction in progress.
- Lack of verification and documentation of the dollar for dollar matching requirement paid by GFA amounting to \$595,440 for the Soccer Stadium tax credit program
- A potential breach of standards of conduct for public officers and employees as outlined in 4 G.C.A. §15204 may have occurred when:
 - A former GEDCA Acting Administrator authorized four Soccer Stadium tax credits of \$398,663 for the subsidiary company and was hired by the parent company; and
 - A current GEDCA Acting Administrator authorized tax credits of \$167,827 to the subsidiary company where a close relative is employed by the parent company.

In March 2007, Standard & Poor's acknowledged "income and gross receipts taxes have been relatively stable over the past years. However, the continued implementation of exemptions and credits has prevented those revenues from realizing stronger growth." While we recognize the Legislature's authority to provide tax credits for public goals, tax credits reduce government revenues and can distort the government's spending priorities. Tax credit programs receive a higher funding priority than public education, health, and safety because they do not compete for annual appropriations. It is not clear whether the tax credit programs identified would have been funded through the normal appropriations process. Revenues forgone by tax credit programs—unless offset by increased taxes or decreased spending—increases the overall deficit of the government of Guam.

Conclusion and Recommendations

Guidelines to administer and monitor pending programs and track the effects of tax credits on general fund revenues are required. GEDCA and DRT should assess on-going tax credit programs to determine whether these programs meet public needs and are worth the forgone revenues. Given the government of Guam's FY 2006 deficit of \$524 million, we made various recommendations including the repeal of certain tax credits; for DRT to provide to the Bureau of Budget and Management Research (BBMR) an estimate of revenues forgone via tax credits; and for BBMR to incorporate these tax credits in the annual budget process.

The GEDCA, DRT and BBMR Directors generally concurred with the findings and recommendations of this report. However, GEDCA legal counsel disagreed with the contention that there were possible breaches of standards of conduct by the current and former Acting Administrators. OPA is required by 1 G.C.A. §1909(h) to report possible violations of law that come to our attention to the OAG. See Appendices 7, 8, and 9 for their respective management responses.



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