



## Executive Summary

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

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

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

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

#### Tax Refund Payments Short \$41M

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

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

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

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

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

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

#### **Conclusion**

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

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

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