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1 message

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Office of the Speaker • Tina Rose Muña Barnes
Committee on Public Accountability, Human Resources & the Guam Buildup

35th Guam Legislature
I Mina'trentai Singko na Liheslaturan Guåhan

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--

Best Regards,

Ira Palero, CPA

Auditor I | ***Office of Public Accountability - Guam***

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EXECUTIVE SUMMARY
Government of Guam Use Tax on Air Cargo
OPA Report No. 20-01, January 2020

Our audit of the Government of Guam's (GovGuam) Use Tax data and processes from October 1, 2016 through December 31, 2018 found significant flaws and deficiencies in its processes, which were due to the inadequate oversight, monitoring, and coordination among its key players—Customs and Quarantine Agency (CQA), Department of Revenue and Taxation (DRT), and Department of Administration (DOA). In Calendar Year (CY) 2018, CQA's Air Cargo Operations received incoming cargoes worth $1.6 billion (B). Without considering all exemptible cargoes, the 4% Use Tax rate, if collected upfront, could provide GovGuam approximately $65.5 million (M) of Use Tax revenues. However, based on existing laws and CQA's professional judgement, GovGuam only collected $136 thousand (K) (or 0.2%) from air cargo in CY 2018.

Manual Recording and Assessment of Incoming Air Cargoes Prone to Errors

In CY 2018, CQA's Air Cargo Operations received and manually processed $1.6 billion (B) worth of incoming cargoes. Our audit sample found errors, such as: (1) incoming cargoes not found in the E-Log records, (2) Master Airway Bill (MAWB) numbers off by one number, (3) assessment of cargoes 10 days after arrival, and (4) air cargo information inputted into the E-Log after its assessment. Without an effective system in place (preferably an electronic system) to collect, track, and record quantities and values of incoming air cargoes, CQA is exposed to risks of unaccounted, unrecorded, and unassessed incoming cargoes.

DRT Backlog in Processing Use Tax Forms Due to Non-Prioritization

As of February 2019, DRT received 16,777 Use Tax Forms from CQA for Use Taxes assessed, but not paid from Fiscal Year (FY) 2017 to FY 2018, of which 13,588 (or 81%) were not processed. The processing backlog was due to the lack of staff needed to process Use Taxes as DRT prioritizes processing and collecting other taxes such as Business Privilege Tax and Tobacco Tax. Consequently, DRT could not determine the Use Tax amount due from taxpayers and thus, cannot effectively pursue collection. If conditions persist, DRT risks its authority and ability to collect unpaid taxes due to the limiting provisions on the statute of limitations.

True Value of Use Taxes Assessed, Collected, and Receivables Unknown

Inability to Interface CQA and DRT's Systems Resulted in Unrecorded Receivables

DOA's AS400 reflected a Use Tax receivable of $435K in FY 2018, a $91K decrease from $526K in FY 2017. The decrease from FY 2017 through FY 2018 may appear that collections have improved, however, Use Tax receivables were not booked by DOA or DRT since FY 2016. In comparison with CQA's Use Tax charge of $1.6M, there is an undetermined amount of Use Taxes owed (receivable) due to DRT's backlog in processing of Use Tax Forms and the lack of interface of Use Tax data in DRT's AS400 System and CQA's Transaction Processing System (TPS). As of this report date, DRT and DOA have not established the true amount of Use Tax Receivable that should be recorded and consolidated in the GovGuam Financial Statements.

Use Tax Assessment Forms Not Pre-Numbered

CQA Use Tax Assessment Forms are not pre-numbered and thus could not be controlled and accounted for. Pre-numbered forms help to ensure that transactions are recorded and accounted for. As a result, the true amount of Use Tax revenues and receivables cannot be determined.

Discrepancies in Use Tax Assessment Data per CQA versus DRT

For FY 2017, CQA reported total Use Tax assessments of $1.8M while DRT's record showed total assessments of $1.4M, or a difference of $417K. The discrepancy could be due to 5,608 unprocessed Use Tax Charge Forms as of February 2019.

Lack of Communication of Use Tax Payments

The CQA Administrative Clerk III accepted Use Tax payments up to 68 days, which is significantly beyond the seven-day grace period after assessment. Payments were accepted without validating against the original copies of the Use Tax Charge Form, issuing an official receipt, and communicating with DRT. Due to the lack of communication with DRT, Use Taxes owed could be overstated as TPS-recorded payments are not interfaced with DRT.

No Record of Use Tax Exemptions and Post-Supervisory Reviews

Although CQA has records of the incoming air cargoes, it has insufficient records to document how much of the daily total incoming cargoes were exempt from Use Tax. For August 2018, CQA's Use Tax Charge records showed 206 MAWBs with Use Tax assessments of $75K for goods valued at $1.9M. Only $2.1M of the $197.9M of incoming goods (or 1%) was assessed Use Taxes, resulting in about $195.8M (or 99%) of cargoes exempt or not assessed for Use Tax. Although these cargoes could be exempt or non-exempt based on guidelines, this could not be determined due to insufficient records.

Manual to No-Tracking of Personal Exemptions

Since Use Tax assessments are dependent upon each CQA officer's professional judgment, personal exemptions could be manually tracked or not at all. CQA's Standard Operating Procedure does not outline a process on how to track or monitor the $1,000 per month or $5,000 per year of personal exemptions granted, nor does it define a threshold that should be considered in assessing Use Taxes. Without an electronic tracking system in place, the excess over exemptible amounts per taxpayer is difficult to determine.

CQA is currently in the process of procuring a Customs Management Information System (CMIS) that has various capabilities, including: receiving all AWBs and manifests electronically, automated assessments of Use Tax, tracking of exemptions, and more. CQA Management needs to aggressively pursue the acquisition of a CMIS (with appropriate funding) to minimize, if not eliminate, manual processes that may waste resources due to inefficient processes and solve all other relevant issues which deprive GovGuam of its true Use Tax revenue.

Lack of Independent Verification of Collections by DOA

For FY 2017, DOA reported total TPS collections of $129K in contrast to CQA's recorded $130K, or a difference of about $1K. Our testing found three reported payments totaling $8K without supporting documents, which further raises concerns on the completeness of remittances to the Treasurer of Guam (TOG). CQA Management should consider further investigating these matters as it increases the risk for potential fraud. We also learned that the total Use Tax collections

received by TOG per Depositor's Form were not verified against the total per TPS. Without an independent verification by DOA, there is a high probability of short or delayed deposits of Use Tax collections.

Conclusion and Recommendations

We commend CQA for its diligence in performing its primary task of inspecting incoming cargoes and assessing Use Taxes daily on the front end. However, GovGuam's Use Tax data and processes need significant improvements, especially in the automation of incoming air cargoes; recording of assessment, exemption, and collection; and the interface of Use Tax data. With the current manual processes, the voluminous and substantial value of incoming domestic and foreign goods could increase the risk of revenue leakage in Use Tax and other taxes resulting from escaped or incorrect assessments. Therefore, GovGuam needs to move towards the automation of these Use Tax processes and establish an efficient accounting infrastructure that could interface Use Tax data and information in CQA and DRT's systems. We recommend the following:

- DRT Management:
  (1) Provide sufficient resources to prioritize processing of Use Tax Forms and reduce backlog.
  (2) Meet with CQA on issues regarding taxpayer's information on Use Tax Assessment Forms.
  (3) Provide updated training to CQA personnel.

- CQA Management:
  (4) Maintain a record of exemptions and supervisory reviews.
  (5) Update SOP to define threshold in assessing cargoes subject to personal exemption.
  (6) Aggressively pursue the acquisition of a CMIS.
  (7) Strengthen internal controls on Use Tax payments, collections, and deposits to prevent potential fraud.
  (8) Separate Use Tax collections from other fees in the Depositor's Form for accountability.

- TOG:
  (9) Verify Use Tax collections against TPS records.

- DRT, DOA, and CQA:
  (10) DRT coordinate with DOA to establish and book the Use Tax Receivable for consolidation in the GovGuam Financial Statements.
  (11) Consult with the Office of Technology on the interface of CQA and DRT's systems.
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Benjamin J.F. Cruz
Public Auditor

Government of Guam
Use Tax on Air Cargo

Performance Audit
October 1, 2016 through December 31, 2018

OPA Report No. 20-01
January 2020

Doc. No. 35GL-20-1433.*

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Benjamin J.F. Cruz
Public Auditor

Glossary of Acronyms

AG	Attorney General
AS400	Financial Management System
BPT	Business Privilege Tax
CMIS	Customs Management Information System
CQA	Customs and Quarantine Agency
DOA	Department of Administration
DRT	Department of Revenue and Taxation
Form UST	Use Tax (Assessment) Forms
GCA	Guam Code Annotated
GovGuam	Government of Guam
GRT	Gross Receipts Tax
HAWB	House Airway Bill
HOT	Hotel Occupancy Tax
MAWB	Master Airway Bill
SOP	Standard Operating Procedures
TOG	Treasurer of Guam
TPS	Transaction Processing System

Introduction

This report presents the results of our audit of the Government of Guam (GovGuam) Use Tax on Air Cargo. The Office of Public Accountability (OPA) initiated this audit as part of its 2019 annual audit plan. The scope was from October 1, 2016 through December 31, 2018.

The audit objectives were to determine whether:

(1) Incoming air cargoes were properly recorded, accounted for, and assessed by Customs and Quarantine Agency (CQA) and Department of Revenue and Taxation (DRT);
(2) Use Tax exemptions were granted in compliance with applicable laws and regulations; and
(3) Use Tax collections and deposits were properly accounted for, recorded, and deposited in a timely manner.

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

Background

Use Tax is a sales tax on purchases made outside one's state of residence for taxable items that will be used, stored, or consumed in one's state of residence and on which no tax was collected in the state of purchase. The Use Tax applies when a resident of the assessing state purchases an item that is not subject to their home state's sales tax. The assessment, collection, data processing, and record keeping of GovGuam Use Tax is handled by three government agencies: CQA, DRT, and the Department of Administration (DOA).

While DRT is responsible for enforcing tax laws in Guam and collecting tax revenues, it relies heavily on CQA for the assessment and upfront collection of Use Tax. CQA is to assess and collect Use Tax on behalf of DRT pursuant to Title 11 of the Guam Code Annotated (GCA) Chapter 28 §28105. In July 2015, an Inter-Agency Cooperative Agreement amongst DRT, CQA, and DOA was approved by the agency directors to improve the cooperation and coordination by identifying each agency's duties and responsibilities within the collection and adjudication process of the Use Tax program.

Since CQA is a line agency of GovGuam, it relies on DOA for its accounting, financial reporting, records management, and cash management. CQA forwards all Use Tax collections to the Treasurer of Guam (TOG), a division under DOA, and uncollected Use Tax documents (including assessments) to DRT.

Use Tax Law

The Use Tax assessed a four percent (4%) tax rate on every person who imports into Guam, or acquires in Guam from any other person, any property for his use or consumption based on the landed value of such property. Landed value means the greater amount between the insured or fair market value the item has at the time it arrives on Guam. This is based on industry standards used to assess items. The taxable property are as follows:

- Property which comes in at the Guam Commercial Port, or any other seaport in Guam;
- Property which comes in as freight or unaccompanied baggage at the A. B. Won Pat International Airport, or any other airport in Guam;
- Property which comes in as accompanied baggage at the A. B. Won Pat International Airport, or any other airport in Guam; and
- Construction equipment for the performance of a construction contract.

CQA's Role – Air Cargo Operations

At the forefront of the island's ports of entries, CQA assesses Use Tax on incoming cargo at the commercial port and the international airport. The assessment of Use Taxes is normally performed upon entry of cargoes and before clearance. However, pursuant to an April 2011 Attorney General (AG) opinion, Customs Officers may not require air cargoes from importers and freight forwarders to pay the Use Tax before releasing goods to them for delivery. See Appendix 3 for the AG's Opinion on Use Tax.

In 2015, CQA implemented an E-Log System, a database stored in Google sheets that is manually updated with cargo information such as the date, country of origin, master airway bill (MAWB) number, and commodity values of the incoming goods. Import information is logged into the system by Air Cargo personnel as soon as the document review, inspection, and assessment is completed. The assigned personnel is given specific access and restrictions by the Supervisor on duty. According to CQA Customs Officer III, incoming cargoes may not be recorded in the E-Log System if clearances are performed outside normal hours of operations, which is Monday through Friday, 8:00 a.m. to 5:00 p.m.

Chart 1. CY 2018 Top 5 Countries for Incoming Cargoes



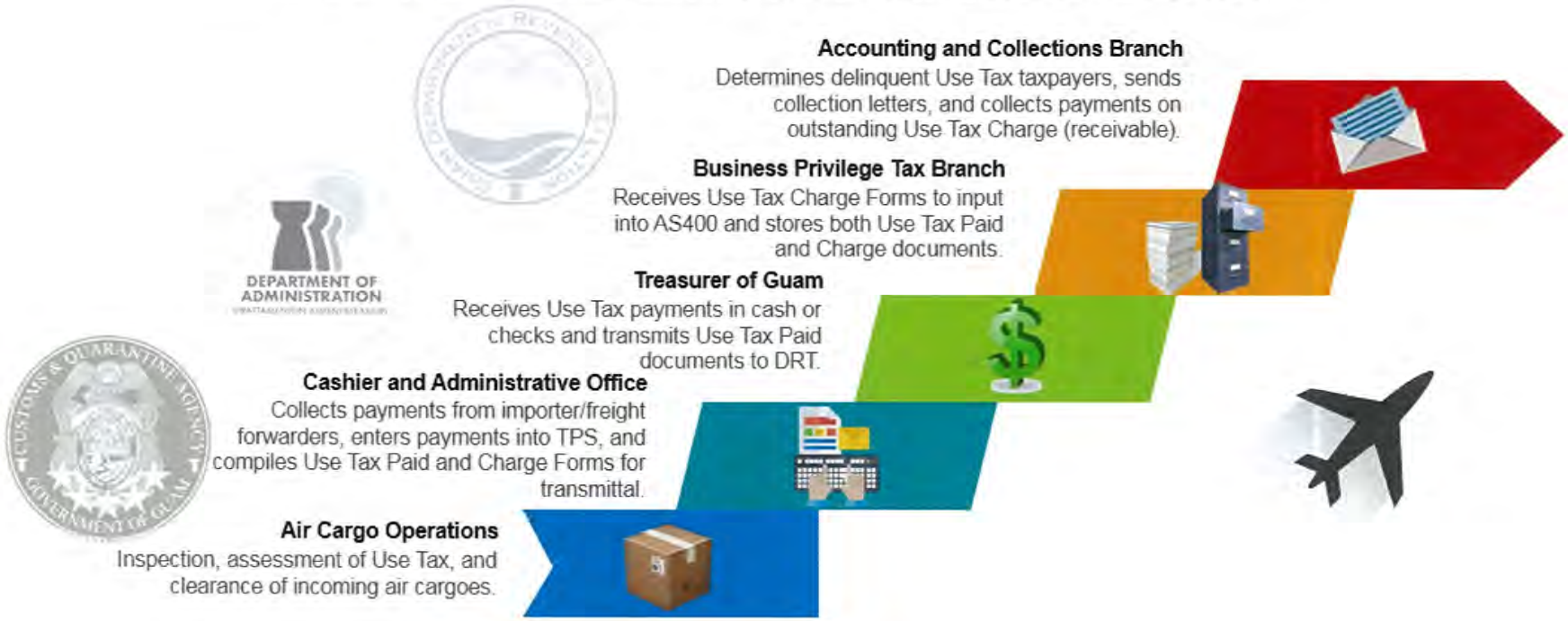
In Calendar Year (CY) 2018, the Air Cargo Operations received incoming cargoes with a $1.6 billion (B) reported value, covered by 27,211 MAWBs[1] containing 273,842 House Airway Bills[2] (HAWBs). These incoming cargoes originated from 123 cities, states, and/or countries. Of the $1.6B, 99% of cargoes were valued over $1 million (M) and originated primarily from: (1) the United States of America ($551.3M), (2) China ($500.4M), and (3) South Korea ($293.2M). See Chart 1 for CY 2018 top 5 countries for incoming cargoes.

[1] A MAWB is issued by the main carrier of goods on receipt of goods from a freight forwarder to deliver as per agreed terms.

[2] A HAWB is issued by a freight forwarder on receipt of goods from shipper agreeing to deliver goods at a destination.

Air cargoes are cleared on its arrival day. However, air cargoes that arrive after business hours, weekends, or holidays are cleared on the next business day. In those instances, clearance services are performed through an off-duty service program paid by the requesting importer. See Chart 2 for a flowchart of the general process from cargo inspection, clearance, Use Tax assessment, collection, and record keeping.

Chart 2. Flowchart of General Process for Use Tax Assessment and Collection



According to Clerk III, an agent/taxpayer has a seven (7) day grace period after assessment to make payment either at CQA's Cashier or Administrative Office. After the seventh day, the Administrative Office forwards the Use Tax Charge (unpaid) Forms to DRT for processing.

Use Tax payments can be made upfront at the Cashier or Administrative Office of the Air Cargo Operations on later dates. After Use Tax payments are inputted into the Transaction Processing System (TPS), the payments and all related documents are transmitted to DOA Treasurer of Guam (TOG). From there, the documents are forwarded to DRT for record keeping.

Results of Audit

Our audit of GovGuam's Use Tax data and processes from October 1, 2016 through December 31, 2018 found significant flaws and deficiencies in its manual processes. This includes the control, assessment, and recording of incoming cargoes; recording of assessments, exemptions, and collection of Use Tax; and data interface.

In CY 2018, CQA's Air Cargo Operations received incoming cargoes worth $1.6B. Without considering all exemptible cargoes, the Use Tax rate of 4% if collected upfront, could provide GovGuam approximately $65.5M of Use Tax revenues. However, based on existing laws and CQA's professional judgment, GovGuam only collected $136 thousand (K) (or 0.2%) from air cargo in CY 2018. The deficiencies noted were due to the inadequate oversight, monitoring, and coordination of its key players—CQA, DRT, and DOA. Specifically, we found:

- Manual recording and assessment of incoming air cargo prone to error;
- DRT backlog in processing Use Tax Forms due to non-prioritization;
- True value of Use Taxes assessed, collected, and receivables is unknown;
- No record of Use Tax exemptions and post-supervisory reviews;
- Manual to no tracking of personal exemptions;
- Lack of independent verification of collections by TOG; and
- Use Tax manual files susceptible to various risks.

Manual Recording and Assessment of Incoming Air Cargo Prone to Errors

In CY 2018, CQA's Air Cargo Operations manually processed $1.6B worth of incoming cargoes. With the voluminous and substantial value of incoming domestic and foreign goods, there is a high risk of revenue leakage in Use Tax and other applicable taxes resulting from escaped or incorrect assessments.

CQA could not provide our initial request for fiscal year (FY) 2017 E-Log data for incoming cargoes as electronic and physical FY 2017 data files could not be located. In October 2019, CQA Customs Officer III confirmed the file was located. While FY 2017 data was subsequently available, we did not inspect the file as alternative audit procedures excluded FY 2017 in the audit scope and coverage for testing. CQA must exercise extra care in preserving and ensuring completeness of its records for an efficient and effective review when needed.

We performed a comparison of the E-Log data versus Use Tax Paid records for August 2018 and sampled incoming goods valued at $128K. We found:

- Three incoming cargoes valued at $42K (33% of our sample) were not found in the E-Log records;
- Two incoming cargoes' MAWB numbers recorded in the E-Log were off by one number;
- One assessment was done 10 days after arrival; and
- One instance where air cargo information was inputted into the E-Log after its assessment.

In addition, we also found an instance where a MAWB's value was reported in the E-Log incorrectly, with a difference of $7M. These findings resulted from the manual processes and reflect the process' nature of errors and inconsistencies.

We commend CQA for their due diligence in performing its primary task of inspecting daily incoming cargoes and assessing Use Taxes on the front end. However, there is a high risk of human error with its manual processes in handling voluminous manifests and accompanying shipping documents.

Without an effective system in place (preferably an electronic system) to collect, track, and record quantities and values of incoming air cargoes, CQA is exposed to risks of unaccounted, unrecorded, and unassessed incoming cargoes resulting potential revenue leakage. Additionally, incoming air cargo information could be incomplete, erroneous, and unreliable. Therefore, CQA should consider moving towards the automation of its processes to help minimize or even eliminate any flaws and deficiencies.

DRT Backlog in Processing Use Tax Forms Due to Non-Prioritization

As of February 2019, DRT received 16,777 Use Tax Forms from CQA for Use Taxes assessed, but not paid from FY 2017 to FY 2018. Of the 16,777 Use Tax Forms, 13,588 (81%) Use Tax Forms were not processed. There were 7,995 unprocessed forms for FY 2018 and 5,593 for FY 2017. DRT should address the 15 Use Tax Forms they were unable to process as these may entail substantial Use Tax amounts. See Table 1 for the breakdown.

Table 1. Breakdown of Total DRT Use Tax Forms

	FY 2017		FY 2018		TOTAL	
	Count	%	Count	%	Count	%
Processed	3,173	36%	1	0%	3,174	19%
Unprocessed	5,593	63%	7,995	100%	13,588	81%
Unable to Process	15	0%	0	0%	15	0%
Total	**8,781**	**100%**	**7,996**	**100%**	**16,777**	**100%**

The audit scope was limited to FY 2017 to address Objective 3 since FY2018 unpaid Use Tax and corresponding revenue data was incomplete.

The Business Privilege Tax (BPT) Branch encompasses various taxes including BPT, Hotel Occupancy Tax (HOT), Tobacco Tax, and Use Tax. As of February 2019, DRT only completed processing Use Tax Forms for FY 2015 and 2016 due to the lack of manpower. Only one of the six BPT staff members was tasked to input and process Use Tax Forms into DRT's Power 7 (AS400) System. According to the Acting BPT Supervisor, DRT prioritizes processing and collecting other taxes, such as BPT and Tobacco Tax, as these generate significant amounts of GovGuam's revenues.

Per GCA §26102(e), the amount of any tax shall be assessed within three years after the return is filed. After the assessment, §26205 states that DRT is allowed up to 10 years to collect unpaid taxes due on BPT/Gross Receipts Tax (GRT) returns, which includes Use Tax.

Due to the backlog on processed Use Tax Forms, DRT could not determine the Use Tax amount due from taxpayers and thus, cannot effectively pursue collection. Additionally, DRT risks its authority and ability to collect unpaid taxes due to the statute of limitations. We recommend that DRT Management provide sufficient resources to process Use Tax Forms in order to achieve more

timely and accurate Use Tax data and prevent potential revenue losses from overdue accounts that could be written off.

True Value of Use Taxes Assessed, Collected, and Receivables Unknown

Inability to Interface CQA and DRT's Systems Resulted in Unrecorded Receivables

DOA's AS400 reflected a Use Tax receivable of $435K in FY 2018, a $91K decrease from $526K in FY 2017. The decrease from FY 2017 through FY 2018 may appear that collections have improved. However, Use Tax receivables were not booked by DOA nor DRT since FY 2016. In comparison with CQA's Use Tax Charge record of $1.6M, there is an undetermined amount of use taxes owed (receivable) that is not recorded in DOA's books and consolidated in the GovGuam Financial Statements.

DRT is tasked to identify outstanding and delinquent Use Tax debts and record the Use Tax receivables based on the Inter-Agency Cooperative Agreement amongst CQA, DRT, and DOA. However, according to DRT, the Use Tax receivable amount may not be accurate and reliable as of a given time due to the backlog in processing Use Tax forms. In addition, DRT's AS400 data and DOA's TPS data do not interface. As a result, the Use Tax receivable amount for FY 2018 and FY 2019 needs to be reconciled, established, booked, and consolidated with the GovGuam financial statements. Therefore, we recommend DRT coordinate with DOA to establish and book the Use Tax receivable for consolidation in the GovGuam Financial Statements.



Although DRT maintains a record of receivables, the true value of Use Tax receivables will not be accurate unless the three agencies address the issues that hinder the creation and maintenance of a system that interfaces with CQA's TPS and DRT's AS400 systems to provide relevant, timely, and accurate information.

With the Office of Technology, we recommend that DRT, DOA, and CQA collaborate to address the existing accounting infrastructure issue to interface the CQA and DRT systems. Interfacing the Use Tax paid data (with CQA and DOA) and Use Tax owed data (with DRT) will help facilitate collection, minimize complaints, and ensure accurate reporting of revenues and receivables in the GovGuam financial statements.

Use Tax Assessment Forms Not Pre-Numbered

The Form UST – Use Tax Form (Use Tax Assessment Forms) issued by CQA to importers or its agents for assessed incoming cargoes are not pre-numbered. It is the taxpayer's basis for the upfront payment to either the CQA Cashier, CQA Administrative Office, or TOG. Pre-numbered forms help to ensure transactions are recorded and accounted for. As a result, the true amount of Use Tax revenues and receivables cannot be determined. Therefore, we recommend that a controlled numbering sequence be incorporated on the Use Tax Assessed Forms to help DRT, DOA, and CQA in the accountability of the forms issued and aid in reconciling efforts.

Discrepancies in Use Tax Assessment Data per CQA versus DRT

For FY 2017, CQA reported total Use Tax assessments of $1.8M while DRT's record showed total assessments of $1.4M, or a difference of $417K. As of February 2019, DRT has 5,608 unprocessed Use Tax Charge Forms. See Table 2 below.

Table 2. CQA vs. DRT Use Tax Assessments for FY 2017

	Charge	CQA Paid	Assessed	DRT Assessed	Discrepancy in Assessments
FY 2017	$ 1,642,395	$130,356	$1,772,751	$ 1,355,613	$ 417,138

Lack of Communication of Use Tax Payments

When Use Taxes are not paid immediately upon clearance, the CQA Administrative Office Clerk III compiles all Use Tax Charge Forms. After the seven-day payment grace period, the Clerk III transmits Use Tax assessment documents to DRT for recording and collection.

In our testing of 30 FY 2017 Use Tax Paid Forms, we found that the Clerk III accepted Use Tax payments from taxpayers/agents up to 68 days after assessment without validating Use Tax Forms against the original copies as these were in DRT's custody. In addition, the Clerk III does not maintain copies of the forms, nor does CQA issue an official receipt to document any payments received. Payments received for past-assessed Use Taxes are forwarded directly to DOA without communicating to DRT. Therefore, unless payments are proactively communicated, DRT's record of Use Taxes owed could be overstated as TPS-recorded payments are not interfaced with DRT.

According to DRT Management, some Use Tax Forms lack taxpayer/importer's unique identification information (i.e., importer/taxpayer's full name, Social Security Numbers, Employee Identification Numbers, etc.) which is needed to facilitate a more rapid collection process. To ensure collection of owed taxes, these taxpayer/business owners are flagged in DRT's system and are not allowed to renew their business licenses until all taxes owed are paid.

DRT received complaints from business owners/taxpayers who were assessed and billed for Use Taxes that were already paid. To reiterate, these instances could have occurred due to:

- DRT's untimely processing of Use Tax Charge Forms;
- The inability to interface the CQA and DRT systems;
- CQA's lack of proactive communications on payments received; and
- Insufficient taxpayer's information on the Use Tax Charge Form.

Without a centralized electronic system in place that is accessible to DRT and CQA, these agencies continue to spend more time and energy to manually reconcile Use Tax data. Therefore, to resolve this issue and make collection efficient, we recommend DRT meet with CQA and emphasize the need for complete, consistent, and accurate taxpayer's information in Use Tax Assessment Forms. Importers, freight forwarders, and taxpayers must also be educated in the proper filling up of required import documents.

No Record of Use Tax Exemptions and Post-Supervisory Reviews

Although CQA has records of the incoming air cargoes, it has insufficient record to document how much of the daily total incoming cargoes were exempt from Use Tax. We learned that items listed

in the cargo manifests without a "UT" mark are exempt from Use Tax. CQA only maintains separate records of the daily summary of Use Taxes owed and paid. These records were not consolidated to reflect the total Use Tax assessed daily. Further, there are no summaries of these exempt and assessed cargoes for the day. Without these daily summaries, CQA and GovGuam could not determine the daily amount of Use Tax assessed and exempt to evaluate the effectiveness of its manual assessment processes.

For August 2018, CQA's Use Tax Charge records showed 206 MAWBs with Use Tax assessments of $75K for goods valued at $1.9M. Total payments received and recorded amounted to $10K for total goods valued at $262K. In comparison to the August 2018 E-Log data, only $2.1M of the $197.9M for incoming goods (or 1%) was assessed Use Taxes. Therefore, about $195.8M (or 99%) of incoming cargoes were exempt or not assessed. Although these cargoes could be exempt or non-exempt based on guidelines, this could not be determined due to insufficient records.

In our examination of the August and September 2018 manifests, we questioned goods valued at $42K that were exempt from Use Taxes. There was no indication in the manifests as to the reason why these items were exempt. CQA Customs Officer III noted that $23K (or 55%) were goods in transit, $13K (or 31%) were for retail, $4K (or 10%) were charged with Tobacco Tax, and $2K (or 5%) were employee purchases. The employee purchases were identified in the manifests' descriptions as "uniforms." However, uniforms purchased by a business are assessed a Use Tax based on the 2015 Use Tax Guide provided by DRT.

In performing its assessment function and determining exemptions, CQA officers use their professional judgment based on the June 2015 Use Tax Guide provided by DRT. The Guide outlines a list of property and taxpayer examples subject to Use Tax assessment or exemption. In addition, the officers also use their 2015 Use Tax training, DRT's Use Tax exemption letter, and the importer/agent's verbal declaration. Moreover, there has been no additional trainings provided to CQA officers since 2015.

CQA Supervisors conduct random quality assurance or post-review of cargoes exempt on a daily basis or when necessary. However, results of the supervisor's post-review were not documented. With no documentation, it is difficult to determine if a review process took place, how often it was conducted, and the corresponding results. Supervisors should perform random reviews of exempt cargoes to evaluate and ensure that exemptions granted by officers are appropriate and must document those results.



Therefore, we recommend CQA management maintain a record of exemptions and supervisory reviews. Moreover, we recommend DRT provide updated training to CQA personnel on Use Tax assessments, exemptions, and the importance of proper documentation.

Manual to No-Tracking of Personal Exemptions

According to 11 GCA §28106(e) Exemptions, Use Tax shall not apply to personal non-business use or keeping for personal non-business use of any property of $1K value or less, acquired outside Guam during any one month period, for a maximum of $5K per any given calendar year, by a bona fide resident of Guam at the time of the acquisition.

Since Use Tax assessments are dependent upon each CQA officer's professional judgment, personal exemptions could be manually tracked or not at all. According to CQA Customs Officer III, Use Taxes are normally assessed on all goods purchased by a business that is not for resale or line items valued above $1K because they are easily identifiable. However, he does not assess Use Taxes on items that are less than $100 over the exemptible amount.

CQA's Standard Operating Procedure (SOP) does not define a threshold that should be considered in assessing or not assessing Use Taxes. It also does not outline a process on how to track or monitor the $1,000 per month or $5,000 per year of personal exemptions granted. The same taxpayer could essentially import goods that may be listed in different airway bills or shipped at different times during the month or under different names to circumvent maximum allowable personal exemptions. To reiterate, without an electronic tracking system in place, the excess over exempt amounts per taxpayer is difficult to determine. Manual tracking would be cumbersome and ineffective. Therefore, for better policy guidance, we recommend CQA define a threshold in its SOP in assessing cargoes subject to personal exemption.

According to Customs Officer III, CQA received funding to procure a Customs Management Information System (CMIS) in 2017 from the Department of Interior. However, the CMIS was not procured due to the expiration of funding and resignation of the staff in charge. CQA is currently in the process of procuring an electronic system with various capabilities to include tracking of exemptions; Use Tax automated assessments; receipt of all Airway Bills and manifests electronically; and automatically flags imports that require specific licenses, permits, or inspections.

As of June 2019, Bill 166-35 was introduced, which would allow GovGuam to collect Use Taxes on online purchases to enhance revenues. However, even with the possible agreement between CQA and the U.S. Postal Service, its implementation could be uncertain due to the difficulty of tracking personal exemptions.

We recommend that CQA management aggressively pursue the acquisition of a CMIS (with appropriate funding) to minimize, if not eliminate, manual processes that may waste resources due to inefficient processes and solve all other relevant issues which deprive GovGuam of its true Use Tax revenue.

Lack of Independent Verification of Collections by DOA

At the end of each workday, the CQA Administrative Clerk and Cashier input Use Tax payments received into the TPS, create separate Depositor Forms (for TOG), and store the money overnight in safes. The money is transmitted to TOG by a third party the following business day. TOG verifies any amount of money received against the Depositor Form totals without verifying which Use Tax assessments it corresponds to in the TPS. Therefore, there is no independent verification if the deposited collections tallied with the TPS Use Tax total for the day.

For FY 2017, DOA reported total TPS collections of $129K although $130K was collected based on CQA's Air Cargo Operations, record, or a difference of $1K. See Table 3 below.

Table 3. Use Tax Collected by DOA for FY 2017

	CQA Paid	DOA Collections	Discrepancy in Collections
FY 2017	$ 130,356	$ 129,084	$ 1,272

In our testing of 30 Use Tax Paid Forms, we found three payments of $8K received by the CQA Administrative Office that could not be verified. CQA Management was unable to provide the Use Tax forms to verify and support these payments received by the CQA Clerk III. The audit team looked through the existing files provided and found there were no Use Taxes reported that were collected on one of the three payment dates. The inability to verify these payments raises further concerns regarding the completeness of payments transmitted to TOG. CQA Management should consider further review into these matters as it increases the risk for potential fraud.

In addition, we found that deposits to TOG included amounts CQA received in other fees such as Custom Inspection Fees. Without an independent verification by DOA of the Use Tax amounts received versus TPS records, there is a high probability of short or delayed deposits of Use Tax collections.

To strengthen internal controls within CQA, key management officials should consider the need to separate control activities related to receipt of payments, custody of monetary collections, and the recording and accounting operations. Primarily, segregation of duties must be integrated in the control activities of Use Tax processes to help prevent fraud, waste, and abuse of government resources. We recommend CQA Management strengthen internal controls on Use Tax payments, collections, and deposits to prevent potential fraud.

Further, there must be a mechanism adopted in CQA's process to include TOG's independent verification of payments received. Therefore, we recommend that CQA separate Use Tax collections on a separate Depositor Form from other fees and TOG perform independent verification of the collections or deposits received from CQA against the TPS records to determine the completeness of payments.

Other Matters

Use Tax Manual Files Susceptible to Various Risks

One of DRT's responsibilities is the maintenance and safekeeping of all accounting records on Use Tax assessments and collections. According to Acting BPT Supervisor, a digital copy of Use Tax Forms are not kept on file after they are manually inputted into AS400. Instead, all Use Tax documents are kept and stored in boxes at DRT's BPT Branch. The manual assessment of Use Taxes resulted in the voluminous amount of paperwork that DRT must retain for a period of eight years.



Paper-based records are exposed to physical threats, such as fire, floods, and other natural disasters. Once destroyed, the data would be unrecoverable and could lead to the inability to produce evidence for potential fraud. Therefore, DRT should consider maintaining and preserving electronic backup copies of Use Tax information for future needs.

Conclusion and Recommendations

We commend CQA for its diligence in performing its primary task of inspecting and clearing incoming cargoes and assessing Use Taxes daily on the front end. However, GovGuam's Use Tax data and processes need significant improvements in its manual processes. This includes the control, assessment, and recording of incoming air cargoes; recording of assessments, exemptions, and collections; and data interface. With the current manual processes, the voluminous and substantial value of incoming domestic and foreign goods could increase the risk of revenue leakage in Use Tax and other taxes resulting from escaped or incorrect assessments.

In CY 2018, CQA's Air Cargo Operations received incoming air cargoes worth $1.6B, of which only $136K in Use Taxes were collected. If all incoming air cargoes are assessed and collected upfront, GovGuam could generate $65.5M in Use Tax revenue.

DRT's AS400 and DOA's TPS systems do not interface due to the existing accounting infrastructure and contribute to the unknown true amount of Use Taxes owed. Additionally, it is difficult to determine Use Taxes paid, charged, and outstanding due to the lack of communication amongst CQA, DRT, and DOA, as well as the inability to account for the Use Tax Assessment forms as they are not pre-numbered and controlled. Consequently, no Use Tax receivable has been booked and consolidated in the government-wide financial statements since FY 2016.

DRT's backlog in processing Use Tax Forms contributed to its inefficiency in the collection of Use Tax. If this condition persists, DRT could risk its authority and ability to collect unpaid taxes due to the limiting provisions on the statute of limitations.

Use tax exemptions are dependent upon the professional judgment of the inspecting CQA Customs Officer and to any guidelines and training received. CQA does not maintain a record of exempt goods, supervisory reviews, and the results of those reviews. As of June 2019, Bill 166-35 was introduced, which would allow GovGuam to collect Use Taxes on online purchases to enhance revenues. However, even with the possible agreement between CQA and the U.S. Postal Service, its implementation could be uncertain due to the difficulty of tracking personal exemptions.

The lack of segregation of duties at CQA and independent verification of Use Tax collections by DOA contribute to risks of short or delayed deposits. Additionally, paper-based records, if destroyed, would be unrecoverable when providing evidence to prove potential fraud.

Overall, CQA, DRT, and DOA should collaborate to address the pressing issues in the Use Tax data and processes. Maintaining a reliable Use Tax database could provide GovGuam the opportunity to make use of the economic value of the data for its decision-making as well as maximize its revenue generation efforts.

Therefore, we recommend that:

- DRT Management:
  (1) Provide sufficient resources to prioritize processing of Use Tax forms and reduce backlog.

(2) Meet with CQA on issues regarding taxpayer's information on Use Tax Assessment Forms.
(3) Provide updated Use Tax training to CQA personnel.

- CQA Management:
  (4) Maintain a record of exemptions and supervisory reviews.
  (5) Update SOP to define threshold in assessing cargoes subject to personal exemption for better policy guidance.
  (6) Aggressively pursue the acquisition of a CMIS.
  (7) Strengthen internal controls on Use Tax payments, collections, and deposits to prevent potential fraud.
  (8) Separate Use Tax collections from other fees in the Depositor's Form.

- TOG:
  (9) Verify Use Tax collections against TPS.

- DRT, DOA, and CQA:
  (10) DRT coordinate with DOA to establish and book the Use Tax receivable for consolidation in the GovGuam Financial Statements.
  (11) Consult with the Office of Technology on the interface of the CQA and DRT systems.
  (12) Incorporate a control numbering sequence on the Use Tax Assessed Forms.

Classification of Monetary Amounts

	Finding Description	Questioned Costs	Potential Savings	Unrealized Revenues	Other Financial Impact[3]
1	Manual Recording and Assessment of Incoming Air Cargo Prone to Error	$ -	$ -	$ -	$ -
2	DRT Backlog in Processing Use Tax Forms Due to Non-Prioritization	$ -	$ -	$ -	$ -
3	True Value of Use Taxes Assessed, Collected, and Receivable is Unknown				
	Inability to Interface between CQA and DRT's Resulted in Unrecorded Receivables	$ -	$ -	$ 1,642,395	$ -
	Use Tax Assessment Forms Not Pre-Numbered	$ -	$ -	$ -	$ -
	Discrepancies in Use Tax Assessment Data per CQA versus DRT	$ -	$ -	$ -	$ -
	Lack of Communication of Use Tax Payments	$ -	$ -	$ -	$ -
4	No Record of Use Tax Exemptions and Post-Supervisory Reviews	$ 2,330	$ -	$ -	$ -
5	Manual to No-Tracking of Personal Exemptions	$ -	$ -	$ -	$ -
6	Lapses in Deposit and Lack of Independent Verification of Collections	$ 8,297	$ -	$ -	$ -
7	Use Tax Manual Files Susceptible to Various Risks	$ -	$ -	$ -	$ -
	Total	**$ 10,627**	**$ -**	**$ 1,642,395**	**$ -**

[3] Other financial impact are amounts identified in the audit that do not fit the other categories.

Management Response and OPA Reply

In December 2019, we transmitted a draft report and met with CQA, DRT, and DOA officials to discuss our findings and recommendations. During the exit meeting, all three agencies generally concurred with all of the findings.

See Appendix 4, 5, and 6 for CQA, DRT, and DOA's management responses, respectively.

The legislation creating the Office of Public Accountability requires agencies to prepare a corrective action plan to implement audit recommendations, to document the progress of implementing the recommendation, and to endeavor to complete implementation of the recommendations no later than the beginning of the next fiscal year. We will contact CQA, DRT, and DOA to provide the target date and title of the official(s) responsible for implementing the recommendations.

We appreciate the cooperation given to us by the staff and management of CQA, DRT, and DOA during this audit.

OFFICE OF PUBLIC ACCOUNTABILITY



Benjamin J.F. Cruz
Public Auditor

Appendix 1:

Objective, Scope, and Methodology

The objectives for the audit were to determine whether:

(1) Incoming air cargoes were properly recorded, accounted for, and assessed by CQA and DRT;
(2) Use Tax exemptions were granted in compliance with applicable laws and regulations; and
(3) Use Tax collections and deposits were properly accounted for, recorded, and deposited in a timely manner.

The scope of our audit was from October 1, 2016 through December 2018. Our review included Use Tax Paid and Charge Forms, including the accompanying manifests, airway bills, and invoices. We also conducted our analyses using Use Tax data provided by DRT through AS400, and CQA and DOA through the TPS.

Methodology

The methodology included the review of pertinent laws, rules and regulations, policies and procedures, and other relevant documents pertaining to CQA, DRT, and DOA's management and processes of the Use Tax Program. The work was carried out primarily at our office and CQA's Air Cargo Operations in Tiyan, Guam.

We also:

(1) Researched hotline tips and similar audit reports with the same topic.
(2) Conducted interviews and walkthroughs with CQA, DRT, and DOA officials (Customs Officer III, Administrative Clerk, Acting BPT Director, Taxpayer Services Administrator, Treasurer of Guam, and Assistant Treasurer of Guam), to gain an understanding of the Use Tax processes for incoming air cargo through CQA's Air Cargo Operations.
(3) Obtained Use Tax data including: Use Tax Receivable from DRT, Use Tax Revenue from DOA, and Use Tax Assessed (Paid and Charged) from CQA.
(4) Obtained E-Log data to determine total incoming air cargo for CY 2018.
(5) Identified pertinent law and rules and regulations as audit criteria.
(6) Selected and tested:
    a. A combination of 24 samples (Use Taxes assessed) and another six (via the E-Log) to satisfy Objective 1.
    b. Two samples of manifests selected to satisfy Objective 2 on exemptions.
    c. 30 samples (15 Use Taxes paid and accepted by the Cashier and 15 received by the Administrative Office) were randomly selected throughout FY 2017.
(7) Inquired or interviewed CQA, DRT, and DOA staff on matters requiring clarification on our testing results.

Our audit was conducted in accordance with the standards for performance audits contained in *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. 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 15-01: Government of Guam (GovGuam) Use Tax Exemptions and Collections
(Issued in March 2015)

The OPA concluded CQA's record management process, use tax exemption processes, and its system of internal controls (checks and balances) for managing and recording use tax collections need improvement. Specifically:

- Valuable sources of economic data needs to be assessed and better maintained;
- Better record keeping is needed to ensure completeness of incoming cargo documentation;
- Oversight and guidance are needed to ensure use tax exemptions are made in accordance with the law; and
- Controls need to be established to ensure use tax collections deposits are properly accounted for, recorded, and deposited in a timely manner.

OPA Report 14-02: Government of Guam Use Tax
(Issued in April 2014)

The GovGuam use tax process is problematic and in need of significant improvements. As a result, there is a high probability of lost revenues for GovGuam and susceptibility to fraud, waste, and abuse due to non-assessment and improper exemptions of use tax. These conditions occurred because there is no GovGuam agency who is fully responsible for reviewing, monitoring, reconciling, or collecting Use Tax. Specifically:

- Total amount of use tax assessments and collections is unknown;
- No GovGuam agency is collecting outstanding receivables, which according to DOA's records have accumulated to $4.9M in FY 2013. These receivables are not recorded in DRT's system; and
- There is no documentation to support that use tax exemptions are granted in accordance with law.

AG's Opinion on Use Tax

Leonardo M. Rapadas
Attorney General

Phillip J. Tydingco
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

RECEIVED
MAY 02 2011
CUSTOMS & QUARANTINE AGENCY
GOVERNMENT OF GUAM

April 28, 2011

INFORMATION AND GUIDANCE Ref: CQA 10-1284

TO: Director of Customs and Quarantine

FROM: Assistant Attorney General

SUBJECT: *Payment of Use Tax*

On December 29, 2010, this Office received a request for guidance regarding payment of the Use Tax. You have indicated that 11 GCA §28105(e) provides the following:

> (e) The Guam Customs and Quarantine Agency shall collect the use tax mandated by this chapter on behalf of the Department of Revenue and Taxation on:
>
> (1) taxable property which comes in at the Guam Commercial Port, or any other seaport in Guam, with any tax for which an exemption is not claimed, to be collected prior to release;
> (2) taxable property which comes in as freight or unaccompanied baggage at the A.B. Won Pat International Airport, or any other airport in Guam; and
> (3) taxable property which comes in as accompanied baggage at the A.B. Won Pat International Airport, or any other airport in Guam.

You further indicated that the Department of Revenue and Taxation (DRT), together with representatives from CQA, the Department of Administration, the Legislature, the freight forwarding community, the import/export community, ocean carriers and the airlines, met as a Public Private Task Force to determine the processes and procedures which these taxes will be collected at the ports of entry. It was determined that CQA is required to collect the Use Tax on shipments arriving at the seaport prior to release, but no such payment is require prior to release on goods coming in at the airport.

You indicated that it was agreed upon by all those in attendance that CQA will collect the use tax prior to release of cargo at the seaport. With respect to the arrival of cargo at the airport, it was agreed that CQA will assess the tax, release the cargo to the freight forwarder for delivery to the consignee together with the tax assessment and will regain the government's copies of the tax assessment for seven days whereby the importer can make payment. If no payment is received within that seven day period, CQA will

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forward the tax assessment documents to DRT for collection. You indicated that this was agreed upon by all.

You have further indicated that on October 1, 2010, CQA was appropriated funds to utilize new warehouse space at the Guam Integrated Air Cargo Facility. This space affords CQA the ability to hold/safeguard taxable cargo arriving at air cargo, and to collect payments due upon them prior to release. You further indicated that for these reasons, together with 5 GCA §73119, CQA intends to implement a "pay before release" use tax collection program for air cargo goods similar to that in being performed at the commercial port. Under this program, CQA will assess the Use Tax on taxable commodities, take custody of and safeguard them in our warehouse pending payment, and when payment is received, release the goods to the taxpayer.

You informed the freight forwarders of your proposed collection plan and received a letter from DHL expressing concerns with respect to this proposal. DHL has stated that they understand that CQA will refuse customs clearance for all DHL shipments unless DHL assures that the Use Tax on all taxable shipments has been collected and paid to Guam in advance of clearance. They also note that these collection obligations are being imposed on other express delivery companies, but are not being imposed on the U.S. Postal Service.

In opposing this process, DHL argues that it would unlawfully compel them to become tax collectors for Guam, and that the procedures that will be implemented are in violation of the Federal Aviation Administration Authorization Act ("FAAAAA") 49 USCA §14501, and the Airline Deregulation Act ("ADA"), 49 USCA §41713, and as such, are preempted by these Acts.

Discussion

11 GCA §28105 provides in part:

> **§ 28105. Persons Taxable; Computation of Tax; Payable When.**
> Every person who imports into Guam, or acquires in Guam from any other person not taxable under 11 GCA, Chapter 26, in respect to the transaction by which the former acquired the same, any property for his use or consumption, shall be subject to a tax in respect to such use or consumption at the rate in this Chapter provided, measured by the value of such property, which tax shall be payable:
> (a) In the case of property imported in foreign commerce, at the time such property loses its character as an import and its immunity as such from taxation by the government of Guam;
> (b) In the case of property imported in interstate commerce, at the time such property comes to rest in Guam and ceases to have its character as an article in interstate commerce; and
> (c) In the case of property acquired otherwise than through importation into Guam by the taxpayer in foreign or interstate commerce, at the time of such acquisition;
> (d) In the event that the tax may not legally be levied in respect to the property concerned at the time and under the circumstances provided in Paragraphs (a), (b) or (c) of this Section, the tax shall be levied and become payable at the commencement by the taxpayer of any use or consumption of the property which is taxable by the government of Guam.

(Emphasis added).

AG's Opinion on Use Tax

11 GCA §28108.1 outlines the time for payment:

§ 28108.1. Payment of Use Tax.
All taxpayers against whom a tax is levied by the provisions of this Chapter shall pay Use Taxes immediately upon the property's importation or use. The Use Taxes shall be paid at authorized banks, financial institutions or at designated offices of the government of Guam.

(Emphasis added).

11 GCA §28109 outlines the reporting requirement by importers, such as DHL, and provides:

> **§ 28109. Reports by Importers and Others.**
> For the purpose of enabling the Commissioner to determine whether or not the provisions of this Chapter are being complied with and to prevent evasion of the tax hereby imposed, every person who imports any property into Guam or who acquired property in Guam from any other person not taxable under 11 GCA, Chapter 26, in respect to the transaction by which the former acquired the same (whether or not he then is, or can then legally be, taxed in respect to such property or the use or consumption thereof under this Chapter) shall make a report to the Commissioner, setting forth, in such reasonable detail as the Commissioner by regulation may prescribe, the description, quantity, character and value thereof, and such information as may be reasonably necessary to determine the taxability or non-taxability of the person making such report in respect to the property covered thereby.

Thus, the importer, i.e., DHL, should provided to DRT a copy of the packaging slip, so DRT can determine whether the goods should be taxes. DHL would not be the taxpayer, however; the taxpayer would be the consignee, or the person who ultimately receives the goods.

11 GCA §28110 contains provisions for collection of the tax by the seller, however, companies such as DHL and UPS are not sellers, but rather are delivery agents. Thus, 11 GCA §28110 would not be applicable to DHL.

49 USCA §41713(b)(4)(A) provides:

> **§ 41713. Preemption of authority over prices, routes, and service**
>
> ...
> **(4) Transportation by air carrier or carrier affiliated with a direct air carrier.--**
>
> **(A) General rule.**--Except as provided in subparagraph (B), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier or carrier affiliated with a direct air carrier through common controlling ownership when such carrier is transporting property by aircraft or by motor vehicle (whether or not such property has had or will have a prior or subsequent air movement).

49 USCA §40116(a) provides that the term "State" includes a territory or possession of the United States.

The preemption provision of 49 USCA §41713 was discussed in *United Parcel Service, Inc. v. Flores,* 318 F.3d 323 (1st Cir. 2003), which has facts similar to those at issue. In UPS, Puerto Rico enacted a statute which prohibited interstate carriers from making deliveries without either prior proof of recipient/addressee's payment of a territorial excise tax, or the carrier's prepayment of the amount of tax on the addressee's behalf.

Later, the Puerto Rico Legislature amended the law which would allow air carriers to transport packages to consignees without restrictions, and require consignees to pay the excise tax within two business days. Under the Act, the air carriers would then provide the Secretary "the minimum information agreed as necessary in order for the Secretary to proceed to collect the excise taxes, without unreasonably interfering in the ordinary course of business in interstate commerce." *United Parcel Service* at 328.

Two days after enactment, the Legislature repealed the Act and reinstated the conditional ban on delivery as well as the prepayment alternative, and thereafter UPS sued claiming that the Puerto Rico legislation was preempted by 49 USCA §41713. The Court, in reviewing 49 USCA d41713 had to determine whether the laws at issue were "related to a price, route, or service" of UPS. It determined that the phrase "related to" has a broad meaning and found that "a sufficient nexus exists if the law expressly references the air carrier's prices, routes, or services, or has a 'forbidden significant effect' upon the same. *UPS* at 335 (citations omitted). The Court made the following findings:

> The challenged scheme both refers to and has a forbidden significant effect on UPS's prices, routes or services. Section 9066-the linchpin of the scheme- *forbids delivery* unless and until a recipient produces a certificate from the Secretary. *336 Compliance with this provision significantly affects the timeliness and effectiveness of UPS's service, which includes the delivery of packages on an express or time-guaranteed basis. Likewise, the prepayment mechanism imposes extensive requirements that must be met before a carrier may make a lawful delivery. These requirements create a substantial burden on UPS, in the form of additional labor, costs, and delays. The undisputed record, as chronicled by the district court below, shows that this burden directly and significantly affects UPS's routes and services, which depend upon an orderly flow of packages.

United Parcel Service at 335-336.

Like UPS, DHL also delivers packages on an express or time-guaranteed basis. The proposed system of prohibiting delivery until the addressee pays the tax, or having DHL collect the tax would have a "forbidden significant effect" on DHL's prices, routes or services, and would impose a substantial burden on DHL in the same manner it would have done in the UPS case. Thus, the proposed scheme has been preempted with respect to air carriers such as DHL, and UPS.

Customs should permit delivery by DHL and obtain a copy of the commercial invoice at the time Customs clears the package in order to determine whether a tax should be assessed. If a tax is assessed, in accordance with 11 GCA §28108, the taxpayer is then required to file a monthly tax return with DRT no later than the twentieth day of the following month, summarizing the tax due. The tax shall be paid no later than the 20th day of the following month. The Legislative Committee Report on this section reveals that the payment is due the same day as the tax return is due.

With respect to enforcement, once the tax remains unpaid after the due date, 11 GCA §28111 provides that DRT has all the rights and powers conferred upon him by 11 GCA Chapter 26. This Chapter addresses the Business Privilege Tax and thus the enforcement and collection tools available under that Chapter are available for enforcement and collection of the Use Tax. 11 GCA §26102(b)(13) provides for

AG's Opinion on Use Tax

notice and demand for payment of the tax liability if it is not paid by the due date. 11 GCA §26103 provides for the filing of a tax lien with the Department of Land Management.

If the tax is not paid, DRT may issue a warrant for the collection of the Use Tax in accordance with 11 GCA §26104(b) which provides:

> (b) Distress. The Tax Commissioner may issue a warrant for the collection of any tax levied under this Chapter, plus penalties and interest accrued in accordance with law, directed to the Marshal of the Superior Court; such warrant shall have the same force and effect as a writ of execution issued by a court and it shall be levied and sale made pursuant to it in the same manner as a writ of execution. The Marshal shall receive, upon completion of his services pursuant to such warrant, and the Tax Commissioner is authorized to so pay to the said Marshal, the same fees, commissions and expenses in connection with such services as are provided by law for similar services pursuant to a writ of execution.

Customs also has certain powers granted by 5 GCA §73132 if it has been notified that DRT has filed a lien against the taxpayer. Specifically, Customs is permitted to refuse delivery of merchandise if it is aware that there is a tax lien against the taxpayer. 5 GCA §73132 provides:

> **§ 73132. Notice of Lien.**
> Whenever the Collector of Customs shall be notified in writing of the existence of a lien for freight, charges, or contribution in general average upon any imported merchandise entered for warehousing or taken possession of by him, he shall refuse to make delivery thereof until proof shall be produced that the said lien has been satisfied or discharged. The rights of the government of Guam shall not be prejudiced or affected by the filing of such lien, nor shall the government of Guam be liable for losses or damages consequent upon such refusal to permit delivery. If merchandise, regarding which such notice of lien has been filed shall be forfeited or abandoned and sold, the freight, charges or contribution in general average due thereon shall be paid from the proceeds of such case in the same manner as other lawful charges and expenses are paid therefrom.

It should be noted, however that with respect to companies such as DHL, and UPS, 49 GCA §41713 preempts 5 GCA §73132. In other words, with respect to delivery by DHL or UPS, if Customs is aware of a lien filed against the taxpayer, and DHL or UPS is bringing in more goods for delivery to the taxpayer, Customs may *not* refuse delivery under §73132. In this case, DRT would have to obtain payment in accordance with 11 GCA §26104(b). Use of 11 GCA §73132 is permitted if the goods are being released to a person other than a delivery carrier such as DHL or UPS.

Conclusion

Customs may not require carriers such as DHL or UPS to pay the Use Tax before releasing goods to them for delivery. Customs may not refuse clearance of goods brought in by air if the goods are being released to DHL or UPS for delivery. Customs may require payment of the tax by the taxpayer at the time of importation, in accordance with 11 GCA §28108.1 if the taxpayer is the person that is clearing the goods at the airport.

Devorah L. Covington
DEVORAH L. COVINGTON
Assistant Attorney General

CQA Management Response

CUSTOMS & QUARANTINE AGENCY, GUAM
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ORIGINAL

Director's Office

Director of Customs – Ike Q. Peredo
Chief of Customs – Vincent S.N. Perez

Doc. Ref. No.: CQA-DIR-384-19

Honorable Benjamin J.F. Cruz
Public Auditor
Office of Public Accountability
Ste 401 DNA Building
238 Archbishop Flores St.
Hagatna, Guam 96910

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
BY: Thyrza
DATE: 12/26/19
TIME: 4:57 ☐AM ☑PM

Subject Official Response Letter
RE: Government of Guam Use Tax Audit Findings

Hafa Adai and Happy Holidays Public Auditor,

Customs and Quarantine Agency (CQA), has reviewed the findings and recommendations of the Use Tax Audit report, performed by your office on goods arriving as air freight/cargo at the Guam International Airport Authority, Air Cargo facility, for fiscal year 2017 and calendar year 2018.

CQA does not dispute the findings contained in the audit and appreciates the recommendations it will use to improve upon our existing process at our air cargo section as it relates to our roles and responsibilities in the enforcement of the use tax mandate. These findings and recommendations identifies areas to improve existing CQA processes for accountability, transparency and overall governance of the use tax law.

Based on your recommendation, CQA has outlined steps to internal changes; cooperative commitments with Department of Revenue & Taxation (DRT), Department of Administration (DOA), & Office of Technology (OTECH); and Management Information Technology pursuits as follows:

Recommendations and Solutions

1. Maintain a record of exemptions and supervisory reviews.

   a. In addition to current policies these specific actions will be incorporated, all clearing officers will indicate on CQA's airway bill of lading if the import is exempted or has been assessed use tax.
   b. For single consignments the annotation "R" Retail; "G" Government; "P" Personal Exemption; and for goods assessed use tax stamped "UT Assessed" or "UT Paid" will be affixed.

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Executive Office: 770 East Sunset Boulevard, Suite 250, Guam Integrated Air Cargo Facility, Tiyan, Guam 96913
(671) 475-6202 | (671) 475-6227 Fax | www.cqa.guam.gov

CQA Management Response

c. For multiple or consolidated shipments cleared by a forwarding agent, the officers will annotate on each shipment listed on the house manifest, the same annotations for single consignments. Additionally, the number of use tax assessed and exemptions granted, will also be annotated on CQA's master airway bill of lading.

d. All information on CQA's airway bill of lading will be recorded into our existing e-log system for tracking and data collection purposes.

e. Until the acquisition of a CMIS, these new requirements will improve our tracking abilities and quality assurance review conducted by supervisors and managers.

CQA anticipates incorporation of this new requirements to be implemented by the end of January 2020 or sooner. Responsible party will be Colonel Francis Fejarang, Assistant Chief Inspection and Control Division, CQA.

2. Update SOP to include a threshold in assessing cargoes subject to personal exemption for better policy guidance.

As mentioned in the report, CQA officers utilize their professional judgement in determining a threshold for personal exemptions. To improve in this area CQA will engage with DRT to develop both a uniform threshold for personal exemptions and explore other best practices for policy guidance.

CQA anticipates completion of this collaboration and guidance to be implemented by March 2020. Responsible party will be Officer Johnric Mendiola, Research and Development Section, CQA

3. Aggressively pursue the acquisition of a CMIS to minimize, if not to eliminate manual processes and solve all relevant issues.

CQA agrees with the recommendation and is aggressively pursuing an automated management system. CQA is currently working closely with the Bureau of Statistics and Plans to submit a grant application to fund the acquisition of hardware, software, and technical services for a border management information system. Aside from this venture, CQA has contacted the United Nations Conference on Trade and Development, for the possibilities of conducting a feasibility for the use of the Automated System for Customs Data, centric to customs administration as another possible solution for our information management needs. CQA is prepared to move forward with either or both options and understands that in addition to the actual physical implementation of the system, that training, amendments to existing statutes and creation of rules & regulations will be needed to run concurrently in order to see this into fruition.

CQA projects that the CMIS will require a longer timeline between, twelve (12) months to thirty-six (36) months. Responsible party will be Officer Johnric Mendiola, Research and Development Section, CQA.

CQA Management Response

4. Separate Use Tax collections from other fees on the Depositor's Form.

A directive will be issued to CQA administration personnel to prepare separate depositor's forms for CQA fees and Use Tax that are transmitted to DOA.

This directive will begin by the start of next January 2, 2020. Responsible party will be Officer Johnric Mendiola, Research and Development Section, CQA.

5. Consult the Office of Technology and collaborate to address the incapability of the existing accounting infrastructure to interface the CQA and DRT systems.

CQA will work with OTECH, DRT, and with DOA to improve the accounting interfacing infrastructure. As a shared user to the individual systems operated by DRT and DOA, CQA is willing to make agreed upon changes to interface with these systems.

CQA will contact these agencies to begin discussions on the interfacing. Since CQA will be a user of these shared systems, we are unable to provide a timeline at this time for completion. Responsible party will be Officer Johnric Mendiola, Research and Development Section, CQA.

CQA staff is already working on testing and implementing these solutions, collaboration with DRT for additional training for tenured officer on use tax has been initiated.

Once again we appreciate your office efforts and recommendations, should you have any questions your auditors may contact Officer Johnric Mendiola, at 475-6219.

Sincerely,

Ike Q. Peredo
Director CQA

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DRT Management Response

Dipåttamenton Kontribusion yan Adu'ånå
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
Direktot
MICHELE B. SANTOS, Deputy Director
Sigundo Direktot

December 26, 2019

Benjamin J.F. Cruz
Public Auditor
Office of Public Accountability
Suite 401 DNA building
238 Archbishop Flores Street
Hagåtña, Guam 96910

Re: DRT Response to Government of Guam Use Tax OPA Report No. 19-XX, December 2019

Buenas Yan Saluda, Public Auditor Cruz:

Provided herein is the Department of Revenue and Taxation's (DRT) response to the audit findings of the Government of Guam Use Tax program. As stated on the audit report, the objectives were to determine whether;

1) Incoming air cargoes were properly recorded, accounted for, and assessed by Customs and Quarantine Agency (CQA) and Department of Revenue and Taxation (DRT);
2) Use Tax exemptions were granted in compliance with applicable laws and regulation; and
3) Use Tax collection and deposits were properly accounted for, recorded, and deposited in a timely manner.

Recommendations from the Office of Public Accountability (OPA) to DRT Management are;

1) Provide sufficient resources to process Use Tax Forms in order to achieve more timely and accurate Use Tax data and prevent potential revenue losses from overdue accounts that could be written off.
   - **Although our current staff count for the Business Privilege Tax branch increased to seven (7), DRT recently announced positions for three 3 additional Tax Specialist. DRT expects a substantial effort to address the backlog of processing all tax forms. As mentioned in the audit report, DRT's Business Privilege Tax Branch processes a multitude of tax forms including GRT, Hotel Occupancy Tax, Alcohol and Tobacco Tax, and Liquid Fuel Tax. We are actively working to increase the resources allocated and are committed to preventing any potential revenue losses to the Government.**

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DRT Management Response

- **DRT would like to emphasize that DOA and CQA are critical to the DRT-DOA-CQA interagency agreement and that the collection of Use Tax upon importation is crucial to the success of the Use Tax collection system.**

2) Arrange a meeting with CQA and emphasize the need for complete, consistent, and accurate taxpayer's information in Use Tax Assessment Forms.
   - **DRT conducted training on October 23rd 2019, for 23 CQA Officer Recruits. The training received was coordinated with Mr. Johnric Mendiola and the topics included Use Tax, Importation of Gaming devices, Alcohol and Tobacco bonding requirements, and the Tracer process.**
3) Provide updated training to CQA personnel on Use Tax assessments, exemptions, and the importance of proper documentation.
   - **As previously stated, DRT recently conducted training of the Use Tax program, including the applicable exemptions and the use of documentation.**
   - **Moving forward, DRT will again coordinate with CQA to hold another session to train and/or update Managerial-level staff who would then be able to train/update staff on a regular basis.**

Despite the many challenges regarding the limited staff, DRT continues to make strides with CQA and DOA as partners. Our commitment is unwavering to strengthen our processes and overall administration and enforcement of the Use Tax program.

If you have any questions, please email me at Dafne.Shimizu@revtax.guam.gov or contact me at (671)635-1815.

Senseramente,

Dafne Mansapit-Shimizu
Director

29

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DOA Management Response

EDWARD M. BIRN
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EDITH C. PANGELINAN
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LOURDES A. LEON GUERRERO
Governor (Maga'hâga)
JOSHUA F. TENORIO
Lt. Governor (Sigundo Maga'lâhi)

December 19, 2019

Thyza 12/20/19 2:50

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

Subject: Draft Report – Government of Guam Use Tax

Buenas yan Hafa Adai Mr. Cruz,

I refer to the draft audit report entitled "Government of Guam Use Tax", sent to me on December 11, 2019 and discussed with you and other addressees on December 18, 2019.

Generally, Department of Administration (DOA) agrees with the conclusions and recommendation of the audit. DOA would like to comment in detail on the following matters.

In compiling the financial statements for the Government of Guam, DOA finds difficulty in establishing tax receivable numbers for inclusion in such statement for all types of tax assessed by the Government of Guam. DOA supports the recommendations of the Public Auditor for establishing a tax receivable number, which is required for the Government's financial statements to comply with Generally Accepted Accounting Principles (GAAP) in respect of Use Tax.

With respect to recommendations (8) and (9) of the audit reports (DOA recommendations), I would comment as follows:

- We concur with the recommendation of the audit discussion that Use Tax invoices carry a control number. That process will insure that the entire population of invoiced taxes have been captured and the ability to record that number in the TPS system will enable Treasurer of Guam to verify Use Tax collections (paid at the time of customs inspection or subsequently) with the TPS records.

- We concur that concurrence of separate accounting systems will be an important step in insuring that all applicable taxes have been assessed and collected. Each of the using departments , DOA, DRT and CQA utilize the data in the system in different ways and a full merge of the systems may result in a cumbersome and complex set of software

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DOA Management Response

protocols. However, DOA strongly supports a system in which there are daily reconciliations of taxes assessed, taxes collected and outstanding receivables. These reconciliations should be supported by formal daily agreement between the responsible departments of these numbers and regular and timely investigation and reconciliation of reported differences. This process supports the necessary three way interchange of information required to maximize revenue generation and allow revenue generation data to be analyzed and reported in GovGuam's required reporting cycle.

DOA is committed to improving the Use Tax collection process and thanks OPA, DRT and CQA for all their efforts in compiling this audit report.

Senseramente,

EDWARD M. BIRN
Director
Department of Administration

cc: Dafne Shimizu, Director, Department of Revenue & Taxation
Ignacio "Ike" Peredo, Director, Guam Customs & Quarantine Agency
Gaudencio (Goody) Rosario, Deputy Financial Manager, Division of Accounts, DOA
Rosita (Rose) Fejeran, Treasurer of Guam, Division of Accounts, DOA

Status of Audit Recommendations

No.	Addressee	Audit Recommendation	Status	Action Required
1	DRT Director	Provide sufficient resources to prioritize processing of Use Tax forms and reduce backlog.	OPEN	Please provide target date and title of official(s) responsible for implementing the recommendation.
2	DRT Director	Meet with CQA on issues regarding taxpayer's information on Use Tax Assessment Forms.	OPEN	Please provide target date and title of official(s) responsible for implementing the recommendation.
3	DRT Director	Provide updated Use Tax training to CQA personnel.	OPEN	Please provide target date and title of official(s) responsible for implementing the recommendation.
4	CQA Director	Maintain a record of exemptions and supervisory reviews.	OPEN	Please provide target date and title of official(s) responsible for implementing the recommendation.
5	CQA Director	Update SOP to define threshold in assessing cargoes subject to personal exemption for better policy guidance.	OPEN	Please provide target date and title of official(s) responsible for implementing the recommendation.
6	CQA Director	Aggressively pursue the acquisition of a CMIS.	OPEN	Please provide target date and title of official(s) responsible for implementing the recommendation.

Status of Audit Recommendations

No.	Addressee	Audit Recommendation	Status	Action Required
7	CQA Director	Strengthen internal controls on Use Tax payments, collections, and deposits to prevent potential fraud.	OPEN	Please provide target date and title of official(s) responsible for implementing the recommendation.
8	CQA Director	Separate Use Tax collections from other fees on the Depositor's Form.	OPEN	Please provide target date and title of official(s) responsible for implementing the recommendation.
9	DOA-TOG	Verify Use Tax collections against TPS.	OPEN	Please provide target date and title of official(s) responsible for implementing the recommendation.
10	DRT and DOA Directors	DRT coordinate with DOA to establish and book the Use Tax receivable for consolidation in the GovGuam Financial Statements.	OPEN	Please provide target date and title of official(s) responsible for implementing the recommendation.
11	CQA, DRT, and DOA Directors	Consult with the Office of Technology on the interface the CQA and DRT systems.	OPEN	Please provide target date and title of official(s) responsible for implementing the recommendation.
12	CQA, DRT, and DOA Directors	Incorporate a control numbering sequence on the Use Tax Assessed Forms.	OPEN	Please provide target date and title of official(s) responsible for implementing the recommendation.

Government of Guam
Use Tax on Air Cargo
Report No. 20-01, January 2020

ACKNOWLEDGEMENTS

Key contributions to this report were made by:

Ira Palero, CPA, Auditor-in-Charge
Thyrza Bagana, CGFM, Audit Supervisor
Benjamin J.F. Cruz, Public Auditor

MISSION STATEMENT

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