75th Liberation Day Carnival
Games of Chance

Performance Audit
June 9, 2019 through August 7, 2019

OPA Report No. 20-02
March 2020

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Executive Summary
75th Liberation Day Carnival Games of Chance
OPA Report No. 20-02, March 2020

Our audit of the 75th Liberation Day Carnival Games of Chance found that gaming operations, under the oversight of the Department of Revenue and Taxation (DRT), generally complied with the governing laws, rules, and regulations. However, we identified some deficiencies in DRT's oversight functions and certain operational violations with Public Law (P.L.) 35-10 and tax law. Specifically, we identified: (1) DRT personnel lacked the expertise in game room operations; (2) backup withholding on gambling winnings was not conducted placing heavy reliance on winners to self-report to DRT on their income tax filings; (3) gaming operators permitted the use of cash to be used during games which was a violation of P.L. 35-10; and (4) concerns for the personal safety of DRT employees assigned to provide oversight over gaming activities.

We also identified total collections from the 75th Liberation Day Carnival gaming activities amounted to $414 thousand (K), of which $398K was from the vendor fees, $15K from business privilege and other taxes, and $1K from license fees. The revenues forecasted in P.L. 35-10 for vendor fees was $580K.

Lastly, we also identified Guam lacks a Gaming Control Commission (Commission) for gaming activities. Previous public laws called for the establishment of such a Commission to be empaneled with the main responsibility of administering gaming regulations and developing license fees and tax rates to be assessed to the various forms of allowable gaming. Without an empaneled Commission, gaming activities go unregulated and unchecked.

DRT's Lack of Expertise in Game Room Operations
During the 75th Liberation Day Carnival, DRT assigned two employees each night to be present on the carnival grounds to oversee and regulate gaming activities. DRT assigned employees from their Regulatory Division and Tax Enforcement Division; however, they admitted they lacked the expertise and experience in game room operations. DRT personnel did not receive training prior to their oversight assignment and were not familiar with the rules of the games or identifying questionable or suspicious activity. Due to their lack of expertise, DRT personnel resorted to watching YouTube videos to gain a better understanding of the games they were overseeing.

No Backup Withholding on Gambling Winnings
Gaming entities are required to issue Form W-2G to gambling winners each year. Gambling winners, in turn, are required to report all gambling winnings, including winnings not subject to withholding tax, on their annual Income Tax forms. We learned that gaming operators did not conduct backup withholding on any gaming winnings that were taxable at the time of payouts during the Liberation Day activities. Similar to the Internal Revenue Service, DRT relies on taxpayers to voluntary disclose their gaming winnings. DRT does not have a mechanism in place to systematically match the income from the gaming entities' W-2G or Form 1099 with the individual income tax return.

Violation on the Use of Cash
We identified that DRT issued a Notice of Violation to one of the gaming vendors in June 2019. The incident occurred when DRT personnel changed shifts and the incoming employee observed cash and chips on the card table. The gaming employee allowed play to continue. When the player passed cash across the table to the gaming employee to exchange for chips, this was a direct violation of P.L. 35-10, which prohibited currency other than official chips to be used during the conduct of games. DRT halted the game and issued a Notice of Violation. No monetary fine was imposed as the gaming rules and regulations did not have a penalty.

DRT's Concerns Over Personal Safety
DRT expressed concerns over their personal safety during their oversight of the gaming activities. They noted the intimidating atmosphere and potentially dangerous environment surrounding the location of the Liberation Day Carnival Games of Chance game room. Although there was a daily presence of plain-clothed security personnel and uniformed officers in the area, DRT personnel were still concerned for their personal safety.

Conclusion and Recommendations
DRT generally complied with the oversight of the 75th Liberation Day Carnival Games of Chance, with some deficiencies noted. To address these deficiencies and pending the decision on court cases and litigations regarding the legality of gaming in Guam and if gaming is to continue at the Liberation Day Carnival, we recommend DRT to:

- Request additional funding to address the issue of personnel expertise and technology and properly regulate the gaming industry.
- Provide proper and adequate training to DRT personnel assigned to oversee the game room operations.
- Implement exclusion or ejection of disreputable personalities from the gaming activities.
- Dedicate staff resources to enforce on-site tax withholding on taxable gambling winnings.
- Empanel the Gaming Control Commission in compliance with Section 6 of P.L. 32-60.

Benjamin J.F. Cruz
Public Auditor

Introduction

This report presents the results of our audit of the 75th Liberation Day Games of Chance. The Office of Public Accountability (OPA) initiated this audit at the request of a Senator in the 35th Guam Legislature who expressed concerns with the 2019 Liberation Day Carnival Games of Chance game room activities.

The objective of this audit was to determine whether the Games of Chance gaming room activities were conducted in accordance with applicable laws, rules, and regulations. The scope of the audit covered the Department of Revenue and Taxation's (DRT) oversight, findings, and report on the Games of Chance game room activities, specifically the "House of Cards" from June 9, 2019 through August 7, 2019.

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

Background

In May 2019, Public Law (P.L.) 35-10 adopted the rules and regulations for the Games of Chance for the 31st Guam Island Fair and 75th Liberation Day Carnival. Under these rules, Games of Chance were allowed during the Liberation Day Carnival would have to be offered in facilities categorized as the "House of Cards." The games within the "House of Cards" comprised Poker, *Pusoy*, Baccarat, Blackjack, and Monte. Because of agency oversight over all limited gaming activities, responsibility to ensure compliance with P.L. 35-10 became directed to DRT, which utilized its limited resources.

Results of Audit

Our audit of the 75th Liberation Day Carnival Games of Chance found that gaming operations, under the oversight of the Department of Revenue and Taxation (DRT), generally complied with the governing laws, rules, and regulations. However, we identified some deficiencies in DRT's oversight functions and certain operational violations with Public Law (P.L.) 35-10 and tax law. Specifically, we identified: (1) DRT personnel lacked the expertise in game room operations; (2) backup withholding on gambling winnings was not conducted placing heavy reliance on winners to self-report to DRT on their income tax filings; (3) gaming operators permitted the use of cash to be used during games which was a violation of P.L. 35-10; and (4) concerns for the personal safety of DRT employees assigned to provide oversight over gaming activities.

We also identified total collections from the 75th Liberation Day Carnival gaming activities amounted to $414 thousand (K), of which $398K was from the vendor fees, $15K from business privilege and other taxes, and $1K from license fees. The revenues forecasted in P.L. 35-10 for vendor fees was $580K.

Lastly, we also identified Guam lacks a Gaming Control Commission (Commission) for gaming activities. Previous public laws called for the establishment of such a Commission to be empaneled with the main responsibility of administering gaming regulations and developing license fees and tax rates to be assessed to the various forms of allowable gaming. Without an empaneled Commission, gaming activities go unregulated and unchecked.

DRT's Lack of Expertise in Game Room Operations

P.L. 35-10 required DRT to assign two (2) Compliance Officers to be present on the grounds at all times during the operation of the Games of Chance. The assigned personnel to oversee the 60-day opening of the game rooms were from DRT's Regulatory Division and Tax Enforcement Division.

During our meeting with DRT officials, in explaining the daily oversight of the game rooms, DRT's Compliance Supervisor expressed concerns about the intimidating atmosphere because of their lack of expertise in game room operations. According to him, their daily monitoring involved patrolling the area, inspecting anything suspicious, enforcing the rules and regulations, including the official chip distribution, and handling emergencies, such as fire & robbery.

DRT personnel were inexperienced in identifying questionable or suspicious activity that could be employed by the participants and experienced table employees. Due to the unfamiliarity of games, assigned personnel watched YouTube to completely grasp nuances and pace. In addition, not having any cameras set up for the first week, hindered the compliance team's effective observation of the cashiers' cage and gaming floor.

No Backup Withholding on Gambling Winnings

Gaming entities are required to issue Form W-2G to certain gambling winners covering reportable gambling winnings no later than January 31st following the preceding tax year or calendar year. A winner must report all gambling winnings, including winnings not subject to withholding tax, on

the annual Income Tax form 1040 as "Other Income." However, as of March 4, 2020, DRT has yet to receive Form W-2G from the gaming concessionaires.

We learned that Games of Chance operators did not withhold taxes from taxable gaming winnings at the time of payouts during the operation of the Games of Chance. We could not review whether individuals reported winnings on their income tax returns since filing deadline would still be on April 15, and besides, tax returns are subject to the IRS confidentiality regulations. Similar to IRS, DRT relies on taxpayers' voluntary inclusion in their gross income. DRT's method does not include a systematic matching of income from a taxpayer's W-2G or Form 1099 with the individual income tax return.

Violation on the Use of Cash

Section 5.8.2, of P.L. 35-10 - Prohibition of Currency other than Official Chips states, "no licensee shall permit the use of any currency to be used during the conduct of games other than official chips."

On June 9, 2019, DRT issued a "Notice of Violation" for the House of Cards. The incident report stated that during a change in the DRT personnel shift, relieved personnel observed cash and chips on the card table of a male individual who appeared to be playing, as the gaming employee continued the game. The gaming employee collected and distributed the chips to table participants. Then the male individual passed the cash across the table to the female individual who attempted to place the cash in her purse. DRT personnel halted the prohibited act and all table actions by participants and the gaming employee. He then promptly notified the shift supervisor and vendor floor manager. The incident was relayed to DRT Compliance Supervisor, who arrived at the scene, instructed the floor manager to cease gaming, and issued a Notice of Violation. No monetary fine was imposed as current gaming rules and regulations do not state fines and penalties.

DRT personnel have no way of knowing the possibility of this incident happening again due to the non-familiarity of the games and probable deception by participants or gaming employees. Section 5.2c of the law requires that the licensee shall designate a member who shall be responsible for the conduct of the Games of Chance. The member in charge shall be familiar with all relevant laws, rules, and regulations.

It is required of the floor manager to inform the gaming employees of the rules and regulations. The floor manager informed DRT Compliance Supervisor that the gaming employees are aware of these rules and regulations, however, he did not provide an employee signed document acknowledging their employee's knowledge and awareness.

DRT's Concerns Over Personal Safety

According to DRT, they noted the dangerous environment surrounding the location of the Liberation Day Carnival Games of Chance game room. Although there was a daily presence of plain-clothed security personnel and uniformed officers in the area, assigned DRT personnel were still concerned with their personal safety. This came to a head during DRT's opening day observation of the presence of a variety of disreputable patrons who were known to them.

With help from local law enforcement and oversight from the Commission, we recommend an exclusion or ejection of disreputable persons included in the list, that could be developed, to bar their entry into the game room of the establishments that conduct gaming activities.

Overall Revenue Collections from Gaming Activities

Based on the data provided by the Mayor's Council of Guam (MCOG), of the $414K total collections, $398K was from Games of Chance vendor fees, $15K from business privilege and other taxes, and $1K from licensing fees. No additional revenue on taxes from gambling winnings was realized during the operation of the Games of Chance because the operator did not withhold taxes from taxable gambling winnings. Taxable winnings could not be determined since the operators did not maintain a record of gambling winnings.

P.L. 35-10 outlined the number of allowable vendors for each type of Games of Chance, including the minimum bid price. The MCOG awarded the vendors and maintained their procurement records. After reviewing the receipts from concession vendors, we identified $398K from Games of Chance vendor fees. See Table 1.

Table 1: Games of Chance Vendor Payments

Type	Quantity	Amount
House of Cards	1	$250,880
Big & Small	1	$66,800
Big & Small	1	$60,000
Color Games	2	$15,000
Beto Beto	1	$5,000
Total		$397,680

The proceeds from the Games of Chance were to be used to fund events related to the 31st Guam Island Fair and 75th Liberation Day, including memorial events hosted throughout July and August, the Liberation Day Parade, fireworks display, and other events traditionally associated with the activity. The costs incurred by DRT in fulfilling the compliance mandates per P.L. 35-4 such as staffing, equipment, and overtime were also funded from these revenues. However, at the time of this report, DRT has yet to be reimbursed for a total of $157K.

In an October 2019 DRT report pursuant to P.L. 35-4, 11 licenses were issued for the Games of Chance. Nine of the 11 licenses were for one vendor, while the other two were for separate vendors.

We compared the number of licenses issued to the Games of Chance vendors against the reported deposits, and we could not locate a deposit for $5K for one Beto Beto vendor. The minimum required bid for a Beto Beto concession was $5K. Per our inquiry, MCOG stated that an offset was done in offering the remaining Beto Beto concession to one gaming vendor in exchange for paying building preparation expenses to obtain an occupancy permit. However, there was no detail of the expense amounts offset from the $5K minimum bid; therefore, we questioned the $5K offset done by MCOG.

Lack of a Gaming Control Commission

Since the passage of P.L. 32-60 in July 2013, the Gaming Control Commission ("the Commission") remained without empaneled members. Section 6 of P.L. 32-60 required the Commission to develop rules and regulations to oversee gaming activities. Leading up to the 75th Liberation Day Carnival, the Mayor's Council of Guam called for the reinstatement of gambling to assist in acquiring revenues to pay for the operational expenses. The Governor, with the consent and approval of the Guam Legislature, appoints members. Title 3 GARR §§ 7110 and 7111 specifies the creation, power, and duties of the Commission. The Commission shall consist of the DRT Director (ex officio) who shall have no vote, and five (5) members, all of whom shall be citizens of the United States and voting residents of Guam for at least five (5) consecutive years.

Without the empaneled Commission, the responsibility fell on DRT's General Licensing & Registration Branch, and Compliance Branch to oversee gaming activities, which is outside their expertise. This has led to rules and regulations not entirely effective in monitoring a mature gaming room operation. Pending the decision of cases and litigations regarding the legality of gambling in Guam and if gaming is to continue at the Liberation Day Carnival, we recommend the empanelment of the Commission. This might ensure a more effective institution of rules and regulations. Additionally, with appropriate procedures in place, proper and adequate training should be provided to DRT personnel overseeing the gaming activities.

Compliance Checklist on General Conduct of Games of Chance

P. L. No. 35-10, Section 5 tasks DRT with ensuring compliance with game room operations by overseeing transactions taking place in a gambling operation. The game room procedures provide a guide for oversight of participants, employees, and licensee. The audit team assessed the operator's or DRT's compliance, when applicable, of each provision enumerated in Section 5, based on the evidence provided by DRT. See Table 2 below.

Table 2: Section 5.0 General Conduct of Games of Chance

5.1 Participant, Employee; Restriction Minimum Age	
No licensee shall permit any person under the age of eighteen (18) years to participate in any games of chance located outside of the House of Cards. In order to enter the House of Cards, licensees shall ensure that all patrons are at least twenty-one (21) years of age or older. Further, no person under the age of twenty-one (21) shall be employed by the House of Cards vendor or present in any manner within the House of Cards.	COMPLIANCE
5.2 Member in Charge of Conduct of Games	
a) The officers of a licensee shall designate a bona fide, active member to be in charge of, and primarily responsible for, the conduct of the Games of Chance on each occasion. *b) The member in charge shall supervise all activities on the occasions for which he or she is in charge, and shall be responsible for making the required report of operations thereof* *c) The member in charge shall be familiar with the provisions of all relevant laws and rules and regulations.* *d) All members designated in charge of conduct of games shall submit a police and court clearance.*	NON-COMPLIANCE
5.3 Operations	

All Games of Chance shall be fully defined and described in bid packets



5.4 Operation; Times

a) *Games of Chance shall operate on Monday to Thursday from 4:00 p.m. – 12:00 a.m., on Friday from 4:00 p.m. – 2:00 a.m., on Saturdays from 12:00 p.m. – 2:00 a.m., and on Sundays from 12:00 p.m. – 12:00 a.m. Saturdays hours shall be in effect for any night prior to, or on an official federal or Guam holiday during the time period authorized.*



b) *Games of Chance shall begin no earlier that the opening day of the Guam Island Fair and Liberation Day Carnival, and shall cease operations no later than sixty (60) calendar days from the date of the opening day*

5.5 Operation; Location

Any Games of Chance shall only operate on the official grounds of the Guam Island Fair and Liberation Day Carnival, as specified by the official proclamation of the Governor of Guam authorizing the Games of Chance at the Guam Island Fair and Liberation Day Carnival.



5.6.1 Compliance Officers; Access to Games of Chance

The Department of Revenue and Taxation shall have two (2) Compliance Officers present on the grounds at all times of operation. Compliance Officers shall have unfettered access to all areas of operations of the Games of Chance.



5.6.2 Cash Control Sheets and Reporting Forms

Each Individual Game of Chance Booth shall utilize the Cash Control Report Sheets in the form depicted in Attachment "A" and "B" to these Rules that are fully incorporated herein by this referend as if fully set forth here. The Department of Revenue and Taxation shall verify "start cash" before opening and "end cash" daily.



5.8.2 Prohibition of Currency other than Official Chips

No licensee shall permit the use of any currency to be used during the conduct of games other than official chips. Official chips shall be purchase within the House of Cards for use during game play. Official chips may only be purchased and redeemed at a centralized location within the House of Cards.



Conclusion and Recommendation

The gaming room operations, under the oversight of the Department of Revenue and Taxation, generally complied with the governing laws, rules, and regulations. However, we identified some deficiencies in DRT's oversight functions and its personnel's security and certain operational violations with Public Law 35-10 and tax law.

Pending the decision on court cases and litigations regarding the legality of gaming in Guam and if gaming is to continue at the Liberation Day Carnival, we recommend DRT to:

1. Empanel the Gaming Control Commission in compliance with Section 6 of P.L. 32-60.
2. Request additional funding to address the issue of personnel expertise and technology and properly regulate the gaming industry.
3. Provide proper and adequate training to DRT personnel assigned to oversee the game room operations.
4. Implement exclusion or ejection of disreputable personalities from the gaming activities.
5. Dedicate staff resources to enforce on-site tax withholding on taxable gambling winnings.

In March 2020, a draft report of the 75th Liberation Day Games of Chance was transmitted to DRT for their official response. Department of Revenue and Taxation (DRT) provided a management response in March 2020 and responded to the findings. DRT management concurred with some of our findings.

See Appendix 3 for DRT's management response.

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

We appreciate the cooperation shown by DRT and the Mayor's Council of Guam during this audit.

OFFICE OF PUBLIC ACCOUNTABILITY



BENJAMIN J.F. CRUZ
Public Auditor

Classification of Monetary Amounts

	Finding Description	Questioned Costs	Potential Savings	Unrealized Revenue	Other Financial Impact
1	DRT's Lack of Expertise in Game Room Operations	$ -	$ -	$ -	$ -
2	No Backup Withholding in Gambling Winnings	$ -	$ -	$ -	$ -
3	Violation on the Use of Cash	$ -	$ -	$ -	$ -
4	DRT's Concerns Over Personal Safety	$ -	$ -	$ -	$ -
5	Overall Revenue Collections from Gaming Activities	$ -	$ -	$ 5,000	$ -
6	Lack of a Gaming Control Commission	$ -	$ -	$ -	$ -
7	Compliance Checklist on General Conduct of Games of Chance	$ -	$ -	$ -	$ -
	Totals	$ -	$ -	$ 5,000	$ -

Appendix 1:

Objective, Scope, and Methodology

The objective of this audit was to determine whether the Games of Chance gaming room activities were conducted in accordance with applicable laws, rules, and regulations. The scope of the audit covered DRT oversight, findings, and report on the Games of Chance game room activities, specifically the "House of Cards" from June 9, 2019 through August 7, 2019.

The methodology included the review of pertinent laws, rules and regulations, policies and procedures, and other relevant documents pertaining to DRT's oversight, and the 2019 Liberation Day Carnival Games of Chance. The work was carried out primarily at our office and DRT Director's Office in Barrigada, Guam. Specifically, OPA,

1. Researched hotline tips and similar audit reports with the same topic.
2. Conducted interviews and walkthroughs with DRT officials and staff (Deputy Director, Deputy Tax Commissioner, Administrator of the Taxpayer Services Division, and the Compliance Supervisor of the Compliance (Alcohol Beverage Control) and obtained an understanding of the oversight process.
3. Obtained and reviewed pertinent documents to include a 2019 Guam Island Fair and Liberation Day Carnival Games of Chance Report prepared by DRT.
4. Obtained DRT internal draft report on Guam Island Fair and Liberation Day Carnival – Games of Chance vendors and analyzed relevant data.
5. Obtained and analyzed 2019 Liberation Day Carnival – Games of Chance vendor payment data.

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 No. 03-04: Liberation Day Committee Investigative Audit of the Funds and Activities 2001 and 2002 (Issued May 2003)

Our audit found discrepancies between the funds contributed by the Liberation Day Committee to People Helping People and the contributions reported by the organization to the Department of Revenue and Taxation (DRT) to the tune of $424,950 for 2000 and 2001. There were also discrepancies between the amounts reported by the 2001 Liberation Committee to DRT with receipts underreported by $484,000 and disbursements underreported by $172,000. DRT did not have any record of the organization of the Manenggon Memorial Foundation, which received a $10,000 check from the Committee but was cashed by the person who claimed to be the president of the Foundation. The Committee did not follow its own procedures in the awarding of concession contracts and there were questionable raffle ticket activities by sponsoring organizations. Controls over cash transactions were inadequate.

OPA Report No. 10-09: Liberation Day Committee Funds and Activities (Issued December 2010)

The Guam Island Fair Committee, better known as the Liberation Day Committee (LDC), was not held accountable for the funds raised during the annual Liberation Day festivities. Since committee membership is subject to change annually, each LDC is distinct from its predecessor. Without oversight and continuity, the LDCs were lax about accountability and transparency. We found no evidence that proper financial reports were prepared and submitted to any oversight body. Thus, our review was hampered by incomplete and missing financial records. The lack of oversight has allowed for poor record-keeping, negligence regarding tax-exempt filing requirements, and failure to comply with orders to establish a special textbook fund.

OPA Report No, 19-03: Department of Revenue and Taxation Non-Profit Organization Limited Gaming Tax (Issued March 2019)

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

Dipåttamenton Kontribusion yan Adu'ånå
DEPARTMENT OF
REVENUE AND TAXATION
GOVERNMENT OF GUAM Gubetnamenton Guåhan

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March 19, 2020

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 Audit report – 2019 Liberation Day Games of Chance

Buenas Yan Saluda, Public Auditor Cruz:

Provided herein is the Department of Revenue and Taxation's (DRT) response to the audit findings of the 75th Liberation Day Games of Chance. Deficiencies as stated in your audit report were as follows;

1) **Lack of personnel, expertise, and technology,**
2) **Gaming Commission not empaneled,**
3) **Personal safety of Department of Revenue and Taxation (DRT) personnel, and**
4) **A compliance violation with Public Law (P.L.) 35-10.**

Other audit findings that you identified were the collections that amounted to only $414 thousand and the lack of withholding taxes from gambling winnings.

1. Lack of personnel, expertise, and technology.

In Section 2.4 of P.L. 35-10, the projected revenue was forecasted to yield $580 thousand. DRT's challenge to meet the mandates of P.L. 35-4 and P.L. 35-10 is primarily attributed to an inadequate funding to attain the personnel, knowledge, and resources to properly regulate the gaming industry. Through its enactment, DRT again, was simply forced to utilize their resources, grasp some understanding of a casino operation, and keep all stakeholders accountable. All this while realizing two obvious points, 1) other Governments (State and Federal) employ and resource a separate division/agency strictly for gambling, and 2) for an industry that will last longer than 2 months. Tasked to monitor the 2019 Liberation Day Games of Chance was DRTs Compliance branch. Our staff is to be commended for upholding the requirements of both public laws 35-10 and 35-4. As mentioned in the audit report, DRT maintained a presence at all times with 2 personnel, and

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occasionally increased that number to 3. Our efforts to provide accountability for the Gaming industry must identify a reliable and consistent revenue source. This revenue will rectify the issues of personnel, expertise, and technology.

2. Gaming commission not empaneled.
For many years, DRT has operated without a Gaming Commission Board. The notion to empanel a board to oversee the specialized field of Gaming lacks credibility. DRT maintains that, absent a Gaming commission and funding, our underlying efforts to regulate a seasonal industry is sufficiently addressed with the attention of the pending court cases and litigations pursued by the Office of the Attorney General of Guam regarding the overall legality of Gaming in Guam.

3. Personal safety of Department of Revenue and Taxation (DRT) personnel.
DRT recognizes those conflicts exist with the involvement, direct and indirect, of law enforcement officers from the Guam Police Department (GPD). They began with awarding the contract to a spouse of a retired GPD officer, contractual hiring of GPD officers for security, and allowing of GPD officers to be patrons for gaming. A few DRT officials have expressed their concerns as a result of your audit. Although § 7152, Title 3 of the GARR expressly prohibits the aforementioned involvement, DRT recommends deferring this matter to the Office of the Attorney General.

4. A compliance violation with Public Law (P.L.) 35-10.
A violation of section 5.8.2 of P.L. 35-10 occurred and DRT took appropriate action. This incident prompted our Compliance Supervisor to cease gaming on the specific table where the incident occurred. Noted in the audit report, the violation resulted without any monetary fine. Also mentioned in the report, current rules and regulations do not provide penalties for this violation. Again, the net result is that DRT took appropriate action. The audit provokes the idea that an empaneled Gaming commission could examine penalty provisions in this industry. Although DRT agrees that an empaneled commission maintains responsibility for promulgating rules and regulations, the circumstances the Gaming industry faces is not encouraging with the pending litigation and short operational period.

Other audit findings that you identified were the collections that amounted to only $414 thousand and the lack of withholding taxes from gambling winnings.
The audit report states that $414K was collected, of which $398K came from licenses and fees for the Games of Chance. The amount of $580K was forecasted in P.L. 35-10 and is based on an allowable number of vendors seeking licenses to operate. DRT's summary of vendor payments indicates the overstatement of P.L. 35-10 forecast as shown below.

P.L. 35-10	Forecasted	Actuals	Variance
House of cards	500,000	250,000	250,000
Beto Beto	10,000	5,000	5,000
Color Game	30,000	15,000	15,000

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Big and Small	40,000	40,000	0
Totals	580,000	310,000	270,000

In addition, DRT concurs with the audit report that reimbursements to offset the cost associated with the Games of Chance operation has yet to be received.

In relation to the withholding of income taxes, DRT would like to provide a friendly reminder of the income tax laws. Gambling winnings that are reported on tax form W-2G have threshold amounts for the various types of gambling events. Listed below is an excerpt of the instructions for mandating the withholding of income taxes at the source.

Reportable Gambling Winnings

Report gambling winnings on Form W-2G if:

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

DRT points out item #4's requirement which states that a winning of $600 or more **AND** at least 300 times the amount of the wager triggers the mandatory reporting and withholding of income taxes. An example would be that a $2 wager and subsequent win that resulted in 300 times the amount for a total winning of $600 will be reportable and will require withholding of income taxes. DRT is not aware of these circumstances to exist in the gaming establishment. Lastly, the onus of this responsibility falls on the operator and never with DRT.

Despite the many challenges regarding the limited resources, DRT stays diligent to provide accountability of all endeavors. DRT is appreciative of the audit findings and will continue to review the processes for improvements.

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

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Appendix 4:

Status of Recommendations

No.	Addressee	Audit Recommendation	Status	Action Required
1	DRT	We recommend DRT to: • Empanel the Gaming Control Commission in compliance with Section 6 of P.L. 32-60. • Request additional funding to address the issue of personnel expertise and technology and properly regulate the gaming industry. • Provide proper and adequate training to DRT personnel assigned to oversee the game room operations. • Implement exclusion or ejection of disreputable personalities from the gaming activities. • Dedicate staff resources to enforce on-site tax withholding on taxable gambling winnings.	OPEN	Please provide a target date for implementing the recommendation.

75th Liberation Day Carnival Games of Chance
Report No. 20-02, March 2020

ACKNOWLEDGEMENTS

Key contributions to this report were made by:
Frederick Jones, Auditor-in-Charge
Vincent Duenas, Audit Supervisor
Benjamin J.F. Cruz, Public Auditor

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

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

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