

PALM BEACH COUNTY
AMERIGAS PROPANE
PUBLIC SERVICE TAX COLLECTION AUDIT



SHARON R. BOCK
Clerk & Comptroller
Palm Beach County

Division of Inspector General

Audit Services Unit

June 29, 2012



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Liz Bloeser
Director – Office of Financial Management & Budget
301 North Olive Avenue
West Palm Beach, FL 33401

Dear Ms. Bloeser:

At your request, we conducted an audit of the public service tax payments by AmeriGas Propane, L.P. ("AmeriGas") to Palm Beach County.

Our primary objective was to determine if the public service taxes collected by AmeriGas for various types of propane sales were remitted to the County in accordance with Palm Beach County Ordinance No. 89-13.

The audit disclosed that AmeriGas has not complied with County Ordinance 89-13. Significant and various types of errors were noted in which AmeriGas did not collect or remit to the County required public service taxes from customers in unincorporated areas of Palm Beach County.

Based on actual sales data from January 1, 2009 through December 31, 2011, AmeriGas underpaid the County \$1,038,410 during this three-year period. In addition, AmeriGas has underpaid taxes for the first four months of 2012, estimated at \$115,379, based on the monthly average of underpayments in the prior three years. According to Florida State Statute 166.234, a municipality may issue a proposed assessment of tax levied within three years after the date the tax was due. According to County ordinance, a vendor that fails to collect the tax at the time of the purchase is liable to the County for the amount of that tax. Interest and penalties may also be assessed.

Respectfully submitted,

Roger Trca
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Executive Summary

An audit of AmeriGas Propane, L.P. (hereafter referred to as "AmeriGas") was performed by the Clerk & Comptroller's Division of Inspector General to determine if AmeriGas complied with the public service tax requirements of Palm Beach County Ordinance 89-13. The audit was initiated as a result of a request from the Director of the County's Office of Financial Management & Budget (OFMB). Research determined that AmeriGas is the largest propane retailer in the United States and in January 2012, the company purchased Heritage Propane, the third largest propane retailer.

Palm Beach County Ordinance 89-13 (codified in Chapter 17, Article VI of the Palm Beach Code) authorizes Palm Beach County to levy a public service tax on the purchase of telecommunications service, electricity and metered or bottled gas in unincorporated areas. The ordinance is based upon Florida Statute Chapter 166.231-234.

AmeriGas assigns a tax jurisdiction and corresponding tax rate to each transaction. This is based on the customer's location in either a municipality or unincorporated Palm Beach County using a "shipped to" code. Effective administration of the coding process by AmeriGas is critical to ensure that the correct tax rate is utilized, the correct amount of tax is assessed and the taxes are remitted to the County and other municipalities.

Our review of sales transactions from January 1, 2009 to December 31, 2011 disclosed that AmeriGas used public service gas tax rates that did not comply with rates stipulated by Palm Beach County Ordinance 89-13. Secondly, tax exemptions were provided to commercial accounts and resale accounts in violation of the Florida Statute and County ordinance, which resulted in public service taxes not collected or remitted to the County. Thirdly, many customers were miscoded as located in a municipality, when in fact they were located in unincorporated Palm Beach County.

As a result of these errors, based on actual sales data from January 2009 through December 2011, AmeriGas underpaid the County \$1,038,410 during this three year period. In addition, AmeriGas has underpaid taxes for the first four months of 2012 for which sales have been misreported due to the same infractions

identified in this report, estimated at \$115,379 based on the monthly average of underpayments in the prior three years.

According to Florida State Statute 166.234, a municipality may issue a proposed assessment of tax levied within three years after the date the tax was due. According to County ordinance, a vendor that fails to collect the tax at the time of the purchase is liable to the County for the amount of that tax. Interest and penalties may also be assessed.

The report contains four observations and ten recommendations related to public service taxes owed by AmeriGas to the County. As defined in the County Policy and Procedure Memo (PPM CW-F-035 Public Service Tax Compliance), the Clerk & Comptroller's Revenue Department is responsible for monitoring tax remittances, collecting and recording remitted funds, initiating interest and penalty assessments, and notifying OFMB of tax underpayments. OFMB is responsible for evaluating the underpayments and, if warranted, making a recommendation to the County Attorney Office to proceed with a Hearing Officer review. Interest and penalties are subject to compromise, settlement and collection by the OFMB Collections Unit.

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Introduction

Overall Conclusion

AmeriGas Propane (AmeriGas) has not complied with Palm Beach County Ordinance 89-13, which levies a public service tax on sales of metered and bottled gas in unincorporated areas of the County. The audit disclosed significant and various types of errors in which AmeriGas did not collect required public service taxes from customers and remit the taxes to the County. Tax rates were used that did not comply with the County ordinance and tax codes were incorrectly established and assigned to customer accounts and transactions, precluding accurate assessment and collection of public service taxes for propane sales within unincorporated Palm Beach County.

Based on actual sales data from January 1, 2009 through December 31, 2011, AmeriGas underpaid the County \$ 1,038,410 during this three-year period. Additional taxes are owed for the first four months for 2012, estimated at \$115,379, for which detailed sales transactions were not obtained. Interest and penalties may also be considered for assessment and collection.

Objective, Scope and Methodology

At the request of the Director of OFMB, the Clerk's Division of Inspector General conducted an audit of public service tax payments to Palm Beach County by AmeriGas. The objectives were to:

- Determine if the public service taxes calculated and collected by AmeriGas for forklift canister and other types of propane sales were remitted to the County in accordance with the Palm Beach County Ordinance No. 89-13; and,

- Determine if exemptions to the public service tax recorded by AmeriGas were in compliance with the Palm Beach County Ordinance No. 89-13.

In order to meet these objectives, we obtained Clerk & Comptroller Revenue Department records of the public service taxes received from AmeriGas for 2009 through 2011. We obtained actual sales data from AmeriGas for January 1, 2009 through December 31, 2011. AmeriGas provided sales data for the three-year period for transactions occurring throughout Palm Beach County. Based on records provided by the Clerk's Revenue Department, AmeriGas remitted public service tax payments totaling \$250,568.56 to the County for this three-year period.

In our analysis of sales data provided by AmeriGas, we identified and separated the sales in unincorporated Palm Beach County and the sales in municipalities. We sorted these transactions into two categories: those with and those without the public service taxes charged. Testing was performed for both categories to determine that the taxes charged were accurate and submitted to the County and that valid reasons existed when the public service tax was not charged.

Most of our testing of individual customer accounts focused on transactions occurring in zip codes in which a high percentage of the area resided in unincorporated Palm Beach County. For transactions tested, we identified the delivery and customer address by utilizing the County zip code map and the Property Appraiser's website, which enabled us to verify if the address was within a municipality or in unincorporated Palm Beach County. We compared this address to AmeriGas transaction records to verify its accuracy.

We identified the specific exemptions to the public service tax as permitted by Palm Beach County Ordinance No. 89-13. In addition, we performed other procedures that were deemed necessary under the circumstances.

Background

Palm Beach County Ordinance 89-13 (codified in Chapter 17, Article VI of the Palm Beach Code) authorizes Palm Beach County to levy a tax on the purchase of telecommunications service, electricity and metered or bottled gas in unincorporated areas. Sellers of metered or bottled gas (propane and natural gas) must collect and remit the tax to the Clerk & Comptroller Revenue Department. Sales are taxed, based on a monthly billing cycle, at 10% for the first \$4,000 of sales, 2% of the next \$2,000 in sales and 1% for all sales exceeding \$6,000. Sellers billing in any manner other than a monthly cycle shall apply a flat 10% tax rate.

AmeriGas Propane, L.P. distributes propane through a nation-wide retail distribution network serving more than 1.3 million customers from nearly 1,200 customer service locations in 50 states. In January 2012, AmeriGas completed the purchase of Heritage Propane, the third largest retailer of propane.

We obtained a legal interpretation to clarify which vendors were subject to the public service tax. The interpretation confirmed the following:

- The purchaser's location controls the determination of whether the county or municipality is entitled to the tax on a particular transaction. The purchaser's location is the place at which possession, utilization of, control over or title to the gas becomes vested in the purchaser.
- Both wholesale and retail transactions are subject to the tax, with limited exceptions.

Observations & Recommendations

1. AmeriGas is not consistently using the correct tax rate, resulting in an underpayment of taxes to the County.

The public service gas tax rates used by AmeriGas did not comply with rates stipulated by Palm Beach County Ordinance 89-13. This has resulted in a net underpayment of public service taxes owed to the County totaling \$425,978.92 for calendar years 2009 through 2011.

We obtained records from AmeriGas that listed all sales transactions from January 1, 2009 through December 31, 2011 for all of Palm Beach County, including the municipalities. The sales reports identified each transaction amount and the corresponding sales location, including unincorporated Palm Beach County, which presumably was the basis for the payments made to the county. We separated the sales transactions recorded in unincorporated Palm Beach County for which various tax rates were applied by AmeriGas, which were substantially below 10%.

When we contacted AmeriGas to obtain an explanation of how the tax rate was derived, we received the following response.

"AmeriGas uses Sabrix (Thomson Reuters OneSource) as a tax engine for its new ERP system, SAP. We made this decision since Sabrix was one of the most robust tax engines for custom tax rates. Unfortunately, it was still unable to compute the MPST (municipal; public service tax) for each customer using the tax calculation that lowers the tax base due to the change in cost of propane since 1973.

AmeriGas made the decision to develop two tax rates based on residential or commercial sales by District. Following are the steps used to develop the fee per gallon.

Cost of propane (ex. 2.00/gallon) - .18 (1973 propane cost per gallon) = nontaxable base per gallon (ex. 1.82). Therefore, if the AmeriGas District is selling residential propane at an average price of \$4 per gallon, the taxable base would be 1.18 (4.00-1.82=2.18). So the tax per gallon would be \$.218 (10% x 2.18). An additional rate is determined for commercial sales since it is a common industry practice to make sales at lower prices to be competitive and due to the large volume of sales. An example of that calculation

would be if commercial propane is sold at an average of \$3 per gallon, the taxable base would be 1.18 (3.00 – 1.82 = 1.18). So the tax per gallon would be .118 (10% x 1.18).

Cost of propane is monitored and rates are updated as changes are required.”

We determined that this tax calculation was incorrect and did not comply with Ordinance 89-13. We referred this tax calculation methodology to County Attorney’s Office, who confirmed it was not an appropriate interpretation of Ordinance 89-13 and it was not applied properly.

Ordinance 89-13 includes the following clause that states:

“The tax shall not be applied against any fuel adjustment charge, and such charge shall be separately stated on each bill. The term “fuel adjustment charge” means all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973.”

We determined that the bills issued by AmeriGas did not utilize the term “fuel adjustment charge”; this special charge was not separately stated on each bill as required by the ordinance. Therefore, AmeriGas was required to utilize the 10% tax rate.

We recalculated the tax liability by applying the flat 10% rate to each of the transactions in unincorporated Palm Beach County over the three-year period for which a tax rate was used by AmeriGas. The total tax liability for calendar years 2009 through 2011 was \$676,547.48. Taxes paid by AmeriGas during this same period totaled \$250,568.56 per the Clerk’s Revenue Department records. Therefore, the remaining taxes owed totals \$425,978.92. Refer to Observation #4 for a summary of the unpaid taxes.

Recommendation:

The County OFMB should:

- A. Collect the unpaid public service taxes of \$425,978.92 and consider any interest and penalties that may be applicable.
- B. Require AmeriGas to recalculate and remit their sales tax liability associated with the inappropriate application of the tax rate for the months of January 2012 to present.

- C. Require AmeriGas to utilize the correct tax rate calculation for all future transactions.
- D. Consider the required actions to eliminate the alternate method of calculating tax liability utilizing a "fuel adjustment charge" in the current ordinance and Florida statute.

According to the Florida League of Cities, Inc. Florida Municipal Officials' Manual (chapter 7):

"This limitation was imposed to prevent municipalities from experiencing a windfall in revenues due to the rapid increase in the price of oil as a result of the 1973 Arab Oil Embargo; some local official pointed out that this restriction may have been necessary at the time, but should now be removed."

Management Responses:

- A.- C. OFMB concurs with the recommendations, has sent a determination letter to AmeriGas and will follow up to insure that 2012 and future taxes are calculated correctly.
- D. OFMB agrees in concept, however, the political will needed to amend the Statutes is presently focused on the recession and its effect on taxes, property values and the economy.

2. Tax exemptions are improperly applied, resulting in tax underpayments.

AmeriGas has improperly applied tax exempt status to customers and related sales transactions. This has resulted in underpayment of public service taxes owed to the County totaling \$401,985.80 for calendar years 2009 through 2011.

Palm Beach County Ordinance 89-13 (codified in Chapter 17, Article VI of the Palm Beach Code) defines exemptions as follows (Sec. 17-228):

- (a) The following purchasers are declared to be exempt from the tax imposed hereby: the purchase of any taxable item by the United States Government, the state, all counties, school districts, municipalities of the state or any other public body as defined in Florida Statutes, 1.01, Florida

Statutes; the purchase of any taxable item by any recognized church within the state for use exclusively for church purposes; and the purchase of gas (natural, liquefied petroleum gas or manufactured) by a public or private utility, either for resale or for use as fuel in the generation of electricity.

Our review of AmeriGas sales reports for the three-year period disclosed that tax exempt status had been improperly applied to various categories of transactions not provided for in the ordinance.

For example, AmeriGas reported sales related to resale and agriculture as tax exempt from the public service tax. AmeriGas is not a public or private utility and is not entitled to exempt purchases for resale.

Testing identified sales transactions totaling \$4,019,858 to 85 different customers over the three-year period that were improperly classified as tax exempt. Examples of these customers included Home Depot, Wal-Mart, Publix, Circle K, CVS and U-Haul, representing businesses that resold propane. Calculating the taxes owed using the flat 10% rate for calendar years 2009 through 2011, the tax underpayment totaled \$401,985.80.

The ordinance states that failure to charge and collect the sales tax does not remove the seller's obligation to remit the sales tax. Specifically, the ordinance provides that:

- (a) It shall be the duty of every seller of electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured) within the unincorporated area of the county to collect from the purchaser thereof for the use of the county the taxes hereby levied at the time of collecting the selling price charged for each and every transaction...
- (b) It shall be unlawful for any seller to collect the price of any purchase of electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured) sold within the unincorporated area of the county without at the same time collecting such tax hereby levied in respect to such purchase or purchases unless such seller shall elect to assume and pay such tax without collecting the same from the purchaser...
- (c) Any seller failing to collect such tax at the time of collecting the price of any purchase and sale, as aforesaid, where the seller has not elected to

assume and pay such tax shall be liable to the county for the amount of such tax in like manner as if the same had actually been paid to the seller, and the county shall bring and cause to be brought all such suits and actions and take such proceedings as may be necessary for the recovery of such tax.

Recommendations:

The County OFMB should:

- A. Require AmeriGas to correct their customer accounts and corresponding tax exempt classifications.
- B. Collect unpaid public service taxes of \$401,985.80 and consider any interest and penalties that may be applicable.
- C. Require AmeriGas to recalculate and remit the tax liability associated with inappropriate application of exemptions for the months of January 2012 to present.

Management Responses:

- A.– C. OFMB concurs with the recommendations, has sent a determination letter to AmeriGas and will follow up to insure that 2012 and future taxes are calculated correctly including the update of their customer tax exempt classifications.

3. Customer addresses are incorrectly coded, resulting in tax underpayments.

AmeriGas has erroneously recorded customers as being located within a municipality when actually located in unincorporated Palm Beach County. This has resulted in underpayment of public service taxes owed to the County totaling \$210,445.35 for calendar years 2009 through 2011.

Our testing focused on sales transactions occurring in zip codes in which a high percentage of the area resided in unincorporated Palm Beach County. For

transactions tested, we identified the delivery and customer address by utilizing the County zip code map and the Property Appraiser's website, which enabled us to verify if the address was within a municipality or in unincorporated Palm Beach County. We compared this address to AmeriGas transaction records to verify its accuracy.

Testing identified customers that were incorrectly assigned an address within a municipality. We identified the sales for these customers from the AmeriGas reports for the three-year period and applied the flat 10% tax rate to derive the tax underpayment owed the County totaling \$210,445.35.

Recommendations:

The County OFMB should:

- A. Require AmeriGas to correct their customer account addresses and corresponding locations classifications.
- B. Collect unpaid public service taxes of \$210,445.35 and consider any interest and penalties that may be applicable.
- C. Require AmeriGas to recalculate and remit their sales tax liability associated with inappropriate application of location for the months of January 2012 to present.

Management Responses:

- A.- C. OFMB concurs with the recommendations, has sent a determination letter to AmeriGas and will follow up to insure that 2012 and future taxes are calculated correctly including the update of their customer account addresses and location classifications.

4. Incremental taxes are owed to the County after considering underpayments and actual taxes paid.

Based on the tax underpayments previously discussed and accounting for the actual tax payments made by AmeriGas for calendar years 2009 through 2011, the remaining tax liability owed to the County totals \$1,038,410.07, as summarized below.

Incorrect Tax Rates Applied (Observation #1)	\$ 676,547.48
Improper Tax Exemptions (Observation #2)	401,985.80
Customers Coded in Municipalities (Observation #3)	<u>210,445.35</u>
Total Tax Liability for 2009 – 2011	\$1,288,978.63
Less Credit for Taxes Previously Paid	<u>-250,568.56</u>
Total Outstanding Tax Liability	<u>\$1,038,410.07</u>

Taxes received from AmeriGas for the three-year period per the Clerk's Revenue Department records totaled \$250,568.56, as summarized in the following table.

Sales Date	Taxes Paid Per AmeriGas Reports	Taxes Received Per Clerk's Revenue Dept	Difference	Date Received
Jan 09	\$6,470.36	\$6,446.26	-\$24.10	2/26/2009
Feb	8,107.63	8,216.14	108.51	3/19/2009
Mar	9,496.27	9,234.93	-261.34	4/22/2009
Apr	8,220.90	8,418.52	197.62	5/20/2009
May	6,196.37	6,313.26	116.89	6/17/2009
June	7,885.88	7,696.30	-189.58	7/24/2009
July	5,690.97	5,618.42	-72.55	8/21/2009
Aug	4,851.03	5,199.12	348.09	9/18/2009
Sept	5,422.69	5,873.70	451.01	10/15/2009
Oct	5,837.56	5,605.49	-232.07	11/18/2009
Nov	8,573.75	8,448.47	-125.28	12/17/2009
Dec	9,165.32	10,926.99	1,761.67	1/22/2010
Jan 10	151,723.20	12,446.36	-139,276.84	2/23/2010
Feb	291.51	0.00	-291.51	N/A
Mar	3,091.18	3,752.35	661.17	4/1/2010
Apr	3,154.05	129.18	-3,024.87	5/3/2010
May	5,728.06	4,179.69	-1,548.37	5/3/2010
June	2,144.90	4,982.01	2,837.11	6/24/2010
July	3,065.97	2,144.90	-921.07	8/3/2010
Aug	2,138.72	2,144.90	6.18	8/25/2010
Sept	2,912.52	2,005.36	-907.16	9/30/2010
Oct	3,540.21	2,005.36	-1,534.85	11/4/2010
Nov	2,514.27	2,912.52	398.25	12/7/2010
Dec	4,505.72	2,912.52	-1,593.20	1/5/2011
		4,279.11	4,279.11	1/20/2011
Jan 11	8,682.78	4,256.16	-4,426.62	2/24/2011
Feb	2,947.25	2,952.99	5.74	3/17/2011
Mar	4,672.36	4,678.21	5.85	4/20/2011
Apr	11,111.60	5,565.60	-5,546.00	5/23/2011
May	3,041.09	2,992.12	-48.97	6/27/2011
June	3,190.55	3,190.55	0.00	7/26/2011
July	11,012.36	11,096.93	84.57	8/22/2011
Aug	13,405.70	13,581.66	175.96	9/20/2011
Sept	16,260.89	16,499.52	238.63	10/26/2011
Oct	34,855.94	17,740.74	-17,115.20	11/21/2011
Nov	15,523.47	15,793.57	270.10	12/22/2011
Dec	20,062.93	20,328.65	265.72	1/20/2012
Totals	\$415,495.96	\$250,568.56	-\$164,927.40	

Attempts were made to reconcile the taxes shown as paid per the AmeriGas sales transaction reports, provided to us during the audit, to the actual taxes received by the Clerk's Revenue Department for the three-year period under review. This attempt largely failed because differences were noted nearly every month, summing to a net difference of \$164,927.40. We also noted that between July and August of 2010, the same amount of taxes was paid in two consecutive months in three instances (\$2,144.90 in July and August; \$2,005.36 in September and October; \$2,912.52 in November and December), suggesting errors existed in the AmeriGas recordkeeping and tax reporting process.

In addition, AmeriGas has underpaid taxes for the first four months of 2012 for which sales have been misreported due to the same infractions identified in this report, estimated at \$115,379 based on the monthly average of underpayments in the prior three years.

County ordinance states that sellers failing to pay the taxes when due shall be assessed interest at the rate of 1% per month. Further, sellers willfully attempting to evade payment of the public service tax shall be liable for a penalty of 100% of the tax.