

**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 6, 2013**



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Palm Beach County

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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 in 2012 for various types of propane sales were remitted to the County in accordance with Palm Beach County Ordinance No. 89-13.

Our review was neither designed nor intended to be a detailed study of every process, procedure, transaction or system in each area. Accordingly, the observations and recommendations included in this report are not all-inclusive.

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 in 2012, AmeriGas underpaid the County \$228,372.62 during this one-year period. Interest owed as of May 31, 2013 totaled \$22,208 based on the allowable one percent monthly rate. Therefore, underpaid taxes and interest due totaled \$250,580.62. 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 the 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. Penalties may also be considered as permitted by County ordinance.

Respectfully submitted,

Roger Trca CIG, CPA, CIA, MBA  
Inspector General & Audit Director  
Clerk & Comptroller Office  
Palm Beach County

**Division of  
Inspector General  
Audit Services Unit**  
301 N. Olive Avenue  
9th Floor  
West Palm Beach, FL 33401

Phone: 561-355-2722  
Fax: 561-355-7050

[www.mypalmbeachclerk.com](http://www.mypalmbeachclerk.com)

cc: The Honorable Sharon R. Bock, Esq. – Clerk & Comptroller, Palm Beach County

# Executive Summary

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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.

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.

Our review of sales transactions from January 1, 2012 to December 31, 2012 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 2012 sales data, AmeriGas underpaid the County \$228,372.62 in taxes during 2012. Interest owed as of May 31, 2013 totaled \$22,208 based on the allowable one percent monthly rate. Therefore, underpaid 2012 taxes and interest due totaled \$250,580.62. It should be noted similar errors and exceptions were identified in our prior audit of AmeriGas for calendar years 2009 through 2011, reported on June 29, 2012. Inadequate efforts were made by AmeriGas to address these deficiencies. County ordinance permits penalties, ranging up to 100% of the unpaid tax, to be assessed for sellers willfully attempting to evade payment of the public service tax. Given the lack of attention placed on correcting the deficiencies since the prior audit, OFMB management may consider assessing allowable penalties.

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# Introduction

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## 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, 2012 through December 31, 2012, AmeriGas underpaid the County \$ 228,372.62 during this one-year period. Interest owed as of May 31, 2013 totaled \$22,208 based on the allowable one percent monthly rate. Therefore, underpaid 2012 taxes and interest due totaled \$250,580.62.

## Objectives, 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 2012. We obtained actual sales data from AmeriGas for January 1, 2012 through December 31, 2012. AmeriGas

provided sales data for AmeriGas sales but excluded sales by Heritage Propane and other purchased entities currently operating as an independent entity. Based on records provided by the Clerk's Revenue Department, AmeriGas remitted public service tax payments totaling \$234,656.21 to the County for this one-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.

Our testing included individual customer accounts with 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 2.0 million customers from nearly 2,100 customer service

locations in 50 states. In January 2012, AmeriGas completed the purchase of Heritage Propane, the third largest retailer of propane.

We previously 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

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## 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 \$75,893.83 for calendar year 2012.

We obtained records from AmeriGas that listed all sales transactions from January 1, 2012 through December 31, 2012 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 the required 10% rate.

Our prior audit of public service gas taxes paid by AmeriGas for 2009 through 2011, reported by our office on June 29, 2012, disclosed errors in the tax rates applied. When we contacted AmeriGas during the prior audit 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 ( $10\% \times 1.18$ ).

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

During the prior audit, 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.”*

During the prior audit, 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.

Conversations with AmeriGas during this current audit indicated that no changes were made since the last audit in the manner in which tax rates were derived or invoiced by AmeriGas.

We recalculated the tax liability by applying the flat 10% rate to each of the transactions in unincorporated Palm Beach County in 2012 for which a tax rate was used by AmeriGas. The total tax liability for calendar year 2012 was \$310,550.04. Taxes paid by AmeriGas during this same period totaled \$234,656.21 per the Clerk’s Revenue Department records. Therefore, the remaining taxes owed totals \$75,893.83.

Refer to Observation #4 for a summary of the unpaid taxes and interest due and related recommendations.

## 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 \$129,147.19 for calendar year 2012.

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 2012 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 \$1,291,471.91 to 100 different customers in 2012 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 2012, the tax underpayment totaled \$129,147.19.

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.*

Refer to Observation #4 for a summary of the unpaid taxes and interest due and related recommendations.

### **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 \$23,331.60 in 2012.

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 one-year period and applied the flat 10% tax rate to derive the tax underpayment owed the County totaling \$23,331.60.

Refer to Observation #4 for a summary of the unpaid taxes and interest due and related recommendations.

#### **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 year 2012, the remaining tax liability owed to the County totals \$228,372.62 plus interest due of \$22,208 as of May 31, 2013, as summarized below.

Incorrect Tax Rates Applied (Observation #1)	\$ 310,550.04
Improper Tax Exemptions (Observation #2)	129,147.19
Customers Coded in Municipalities (Observation #3)	<u>23,331.60</u>
Total Tax Liability for 2012	\$ 463,028.83
Less Credit for Taxes Previously Paid for 2012	<u>-\$234,656.21</u>
Total Outstanding 2012 Tax Liability	\$ 228,372.62
Plus Interest Due as of May 31, 2013	<u>22,208.00</u>
Total Tax Liability and Interest Due	<u>\$ 250,580.62</u>

Taxes received from AmeriGas for calendar year 2012 per the Clerk's Revenue Department records totaled \$234,656.21, as summarized in the following table.

2012 Sales	Taxes Paid Per AmeriGas Reports	Taxes Received Per Clerk's Revenue Dept	Difference
Jan	\$17,148.03	\$17,326.38	\$178.35
Feb	11,207.06	11,207.06	0.00
Mar	25,230.91	25,230.91	0.00
Apr	13,464.67	13,464.67	0.00
May	12,700.47	11,577.95	(1,122.52)
June	10,753.70	21,507.40	10,753.70
July	11,822.12	11,489.30	(332.82)
Aug	18,189.22	18,189.22	0.00
Sept	18,871.69	18,563.60	(308.09)
Oct	20,774.69	22,515.39	1,740.70
Nov	30,153.06	30,153.06	0.00
Dec	33,431.27	33,431.27	0.00
<b>Totals</b>	<b>\$223,746.89</b>	<b>\$234,656.21</b>	<b>\$10,909.32</b>

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 one-year period under review. Variances in the sales are noted above. According to AmeriGas Tax management, the overage in payment for June represents a duplication of the amount reported as sales. Other minor variances were noted, totaling a net difference of \$10,909.32.

In addition, due to their failure to correct their records and processes since our prior audit, AmeriGas continues to underpay taxes for 2013 due to the same infractions identified in our prior report.

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 may be liable for penalties ranging up to 100% of the unpaid taxes.

**Recommendations:**

The County OFMB should:

- A. Collect the unpaid 2012 public service taxes of \$228,372.62 and interest due of \$22,208 as of May 31, 2013 for a total of \$250,580.62. Consider assessing penalties

against AmeriGas, which are allowed by County ordinance (ranging up to 100%) for any sellers willfully attempting to evade payment of the public service tax.

- B. Require AmeriGas to utilize the correct tax rate calculation for all future transactions.
- C. Require AmeriGas to correct their customer accounts and corresponding tax exempt classifications.
- D. Require AmeriGas to correct their customer account addresses and corresponding locations classifications.
- E. Require AmeriGas to recalculate and remit their public service tax liability associated with the inappropriate application of customer tax rates, exemptions, account addresses and corresponding location classifications for the months of January 2013 to present.

**Management Responses:**

- A. Management will send a determination letter to AmeriGas for the total amount due of \$250,580.62.
- B. Management will stress to AmeriGas the importance of complying will all terms set forth in the Ordinance, including utilization of the correct tax rate.
- C. Management will remind AmeriGas of the importance of complying will all terms set forth in the Ordinance, including utilization of the correct customer accounts and corresponding tax-exempt classifications.
- D. Management will reiterate to AmeriGas the requirement to utilize correct account addresses and corresponding location classifications as required under the Ordinance.
- E. AmeriGas is required, by law, to properly calculate and remit their public service tax liability. Management will remind them of this responsibility and request a recalculation as recommended.