

PALM BEACH COUNTY

PUBLIC SERVICE TAX VENDOR AUDITS



SHARON R. BOCK
Clerk & Comptroller
Palm Beach County

Division of Inspector General

Audit Services Unit

June 12, 2014



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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 five select vendors to Palm Beach County.

Our primary objective was to determine if the public service taxes for propane sales were remitted by the vendors 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 the five select vendors did not comply with County Ordinance 89-13. The five vendors did not remit the required public service taxes from propane sales within unincorporated Palm Beach County. Based on supplier delivery records from January 1, 2011 through December 31, 2013, the five vendors did not pay public services taxes totaling \$5,521.14 during this three-year period. Interest owed as of May 31, 2014 totaled \$879.71 based on the allowable one percent monthly rate. Therefore, unpaid taxes and interest due totaled \$6,400.85.

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,

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

Executive Summary

An audit of public service taxes paid by five vendors in Palm Beach County was performed by the Clerk & Comptroller's Division of Inspector General to determine if the vendors 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). The five vendors selected for audit included:

- President Supermarket #8, Inc. – 4645 Gun Club Road, Suite 3, West Palm Beach, FL 33415
- Aman Petroleum Inc (d/b/a Mobile On The Go)–2269 S. Military Trail, West Palm Beach, FL 33415
- The Most High Realty Group, Inc. – 2765 Forest Hill Blvd, West Palm Beach FL 33406
- Dona Petroleum Inc. – 2152 Okeechobee Blvd., West Palm Beach, FL 33409
- Kwik Stop LLC – 2213 South Military Trail, West Palm Beach, FL 33415

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 the transaction activity from January 1, 2011 to December 31, 2013 disclosed that the five vendors did not comply with Palm Beach County Ordinance 89-13. The 10% public service tax was not collected by the vendors at the time of sale nor was the required tax remitted to the County.

As a result, the five vendors did not pay public service taxes totaling \$5,521.14 during the three-year period. Interest owed as of May 31, 2014 totaled \$879.71 based on the allowable one percent monthly rate. Therefore, unpaid public service taxes and interest due totaled \$6,400.85. Refer to the observations for specific amounts owed by each of the five vendors. 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.

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Introduction

Overall Conclusion

The five select vendors have 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 that the five vendors failed to collect the required public service taxes from propane sales within unincorporated Palm Beach County and remit the taxes to the County.

Based on supplier delivery records from January 1, 2011 through December 31, 2013, the five vendors did not pay public services taxes totaling \$5,521.14 during this three-year period. Interest owed as of May 31, 2014 totaled \$879.71 based on the allowable one percent monthly rate. Therefore, unpaid taxes and interest due totaled \$6,400.85.

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 five select vendors.

The objective was to determine if the public service taxes were collected by these five vendors for propane sales and remitted to the County in accordance with the Palm Beach County Ordinance No. 89-13.

In order to meet this objective, we confirmed with the Clerk & Comptroller Revenue Department that the five select vendors had not paid public service taxes from January 1, 2011 through December 31, 2013. All five vendors (President Supermarket #8, Inc., Aman Petroleum Inc., The Most High Realty Group Inc., Dona Petroleum Inc., and Kwik Stop LLC) stated that propane sales activity was not reported separately in their general ledger system. Therefore, we obtained copies of reports that provided details of the deliveries of propane cylinders from their supplier (e.g., AmeriGas and Florida Propane Exchange). For one vendor (President Supermarket #8 Inc.), delivery records for 2011 were not available from the supplier, so 2012 deliveries were assumed to be the same in 2011. We obtained

unit sales prices charged to customers for propane tank exchanges (where customers provided an empty tank) and for propane tank purchases (where customers did not provide an empty tank). The vendors did not have exact prices charged to customers going back to 2011 so the current prices charged were used in the calculation for the entire audit period. We prepared a schedule that documented, for the three-year period, the delivery date, number of units delivered, sales price charged to customers, calculated sales price, and 10% public service tax owed. In addition, as allowed by County ordinance, unpaid taxes were assessed interest at the rate of one percent per month as of May 31, 2014.

We confirmed that the five vendors were located in unincorporated Palm Beach County (not a municipality) by verifying the address to the Property Appraiser's website as well as to the County's Planning, Zoning and Building Department map. 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. The taxes shall be paid monthly on or before the fifteenth day of the following month. Sellers shall apply a flat 10% tax rate unless billing is performed on a monthly cycle.

The five select vendors sold propane cylinders by allowing customers to either exchange empty cylinders or purchase a propane cylinder without an exchange.

County ordinance states that sellers shall keep full and complete records showing all purchases and sales of metered or bottled gas. The records shall show the price charged upon each sale and purchase, the date and period of time covered, and the date of payment to the Clerk & Comptroller.

County ordinance states that sellers failing to pay the taxes when due shall be assessed interest at the rate of one percent 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.

Observations & Recommendations

1. The five select vendors did not comply with the County ordinance and failed to remit public service taxes on propane sales.

The five vendors did not collect or remit the public service gas taxes owed on bottled gas (propane gas) as stipulated by Palm Beach County Ordinance 89-13. This resulted in non-payment of public service taxes and related interest owed to the County totaling \$6,400.85 for calendar years 2011 through 2013.

All five vendors (President Supermarket #8 Inc., Aman Petroleum Inc., The Most High Realty Group Inc., Dona Petroleum Inc., and Kwik Stop LLC) stated that propane sales activity was not reported separately in their general ledger system. Therefore, we obtained supporting documentation of the delivery of propane cylinders from their supplier (e.g., AmeriGas and Florida Propane Exchange), applied the unit sales price charged to customers to recalculate the gross sales, and calculated the taxes owed by applying the flat 10% rate.

The ordinance states that failure to charge and collect the public service tax does not remove the seller's obligation to remit the 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.

In addition, the vendors were not in compliance with recordkeeping requirements with the sales and purchases of bottled gas. County ordinance states:

"Each and every seller of electricity or metered or bottled gas... within the unincorporated area of the county, with respect to sales and purchases, on which the tax is hereby levied, shall keep full and complete records showing all purchases and sales..., which records shall show the price charged upon each sale and purchase, the date and period of time covered thereby, and the date of payment thereof."

The Clerk & Comptroller's Revenue Department is responsible for:

- Receiving, recording, and monitoring propane tax payments for Palm Beach County.
- Sending out notices, which define the County Ordinance requirements and seller's obligations, to sellers identified as not paying the required taxes. The notice also requires the seller to submit a signed affidavit stating that the company did not have sales in unincorporated Palm Beach County if that is the reason for non-payment.
 - Our audit disclosed that at least two sellers (President Supermarket #8 Inc. and Aman Petroleum Inc.) returned signed affidavits stating they did not sell bottled propane in unincorporated Palm Beach County. Therefore, false statements were provided to the County by these two sellers.
- Notifying OFMB of tax underpayments.

OFMB evaluates the underpayments and, if warranted, sends out a Notice of Failure to Comply with Public Service Tax Ordinance Section 17-225 of Article VI Palm Beach County Code. If non-compliance continues, the County Attorney's Office sends out a Notice of Intent to Audit Palm Beach County Public Service Tax Assessments, Collections and Remittances.

County ordinance states that sellers failing to pay the taxes when due shall be assessed interest at the rate of one percent 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.

Overall, the audit determined that for calendar years 2011 through 2013, the five vendors owed public service taxes totaling \$5,521.14 plus interest as of May 31, 2014 of \$879.71, for a combined total of \$6,400.85. The amounts owed by each vendor are provided below.

	2011	2012	2013	Total
President Supermarket #8 Inc.				
Unpaid Taxes	\$392.02	\$392.02	\$296.87	\$1,080.91
Interest	\$130.25	\$83.20	\$32.06	\$245.51
Total Taxes & Interest	\$522.27	\$475.22	\$328.93	\$1,326.42
Aman Petroleum Inc.				
Unpaid Taxes	\$0.00	\$971.80	\$2,230.53	\$3,202.33
Interest	\$0.00	\$176.10	\$217.63	\$393.73
Total Taxes & Interest	\$0.00	\$1,147.90	\$2,448.16	\$3,596.06
The Most High Realty Group Inc.				
Unpaid Taxes	\$0.00	\$107.94	\$61.17	\$169.11
Interest	\$0.00	\$23.89	\$6.69	\$30.58
Total Taxes & Interest	\$0.00	\$131.83	\$67.86	\$199.69
Dona Petroleum Inc.				
Unpaid Taxes	\$282.63	\$214.50	\$265.80	\$762.93
Interest	\$97.00	\$46.87	\$23.62	\$167.49
Total Taxes & Interest	\$379.63	\$261.37	\$289.42	\$930.42
Kwik Stop LLC				
Unpaid Taxes	\$10.00	\$127.94	\$167.92	\$305.86
Interest	\$2.80	\$25.55	\$14.05	\$42.40
Total Taxes & Interest	\$12.80	\$153.49	\$181.97	\$348.26
Summary of All Vendors				
Unpaid Taxes	\$684.65	\$1,814.20	\$3,022.29	\$5,521.14
Interest	\$230.05	\$355.61	\$294.05	\$879.71
Total Taxes & Interest	\$914.70	\$2,169.81	\$3,316.34	\$6,400.85

Recommendations:

The County OFMB should:

- A. Collect the unpaid public service taxes of \$5,521.14 for calendar years 2011 through 2013 and interest due as of May 31, 2014 of \$879.71 for a combined total of \$6,400.85 from the five vendors. Consider assessing penalties against the five vendors, 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 the five vendors to initiate payment of taxes owed on a monthly basis, beginning with transactions incurred since January 1, 2014.
- C. Require the five vendors to keep records as required by County ordinance, including the price charged upon each sale, the date and period of time covered, and the date of payment to the Clerk & Comptroller of the taxes owed.

Management Responses:

- A. OFMB management will send determination letters to all vendors for the amounts due per the audit report.
- B. In addition to stressing in the aforementioned determination letters the importance of monthly tax payments, OFMB will continue to work closely with staff from the Clerk & Comptroller's Finance Revenue Section to monitor and enforce this issue.
- C. Working cooperatively with the Clerk & Comptroller's Finance Revenue Section, OFMB will reiterate to the vendors the requirement to maintain accurate records.