



**BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR**

M E M O R A N D U M

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

FROM: Charles Anderson, CPA
Commission Auditor

A handwritten signature in black ink, appearing to read "Charles Anderson", is written over the printed name of the Commission Auditor.

DATE: July 25, 2013

**SUBJECT: Analysis of Excise Gas Tax Paid to Miami-Dade County from FY 2009-10
through FY 2011-12**

We have concluded our Analysis of Excise Gas Tax paid to Miami-Dade County from FY 2009-10 through FY 2011-12, and submit this report which contains general observations, recommendations, and management responses. Management concurred with all of our observations and recommendations.

We thank the staff of the Finance Department Tax Collector's Office for their cooperation and input throughout the analysis.

c: Honorable Carlos Gimenez, Mayor
Edward Marquez, Deputy Mayor/Director, Finance Department
Robert A. Cuevas, Jr. County Attorney
Patra Liu, Interim Inspector General
Cathy Jackson, Director, Audit Management Services

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MIAMI-DADE COUNTY BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR

**ANALYSIS OF EXCISE GAS TAX PAID
TO MIAMI-DADE COUNTY
FROM FY 2009-10 THROUGH FY 2011-12**

Project Number 13-103312

July 25, 2013

Charles Anderson, CPA
Commission Auditor

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Exhibit A - Excise Gas Tax Return Template

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I. INTRODUCTION

The Office of the Commission Auditor (OCA) performed an Analysis of the Excise Gas Tax paid to Miami-Dade County for the sale of metered and/or bottled gas¹ for Fiscal Years (FYs) 2009-10 through 2011-12. This analysis only includes sale of gas generated in the Unincorporated Municipal Service Area (UMSA) of Miami-Dade County.

Excise tax resulting from gas sales in incorporated areas is collected by the appropriate city and/or municipality. Excise tax resulting from gas sales in UMSA is collected by Miami-Dade County. This report identifies current issues affecting excise tax payments. In addition, this report reviews UMSA issued/active gas licenses compared to the number of vendors paying excise tax from stores located in UMSA.

The information contained in this report has been compiled from data submitted to the Tax Collector's Office by metered or bottled gas vendors. The numbers submitted by the vendors have not been audited.

II. BACKGROUND

Florida Statutes, Section 166.231, states that a government entity is authorized to levy by ordinance a Public Service Tax. Miami-Dade County levies a tax on the purchase of manufactured gas, either metered or bottled; the tax is levied only upon purchases within UMSA and should not exceed 10% of the payments received by the seller of the taxable item. Miami-Dade County Code of Ordinances (Municode) Chapter 29, Section 29-38 "Remittance of Tax to County by Seller" and Section 29-39 "Records to be Kept", govern the interaction between seller/vendor and the local government.

The State of Florida, at our request, provided a list of current active licenses (as of December 20, 2012) awarded to vendors located in Miami-Dade County. The report displays 826 active licenses (of varying categories) of which 358² were located in UMSA. A vendor may receive multiple licenses as stated below:

- i. license for each location in which the sales of gas takes place,
- ii. licenses for each line of business (type/class) for the vendor.

Exhibit I shows the distribution of active licenses per type/class in UMSA and countywide, as of December 20, 2012.

¹Miami-Dade County Code of Ordinances, Article IV, Utility Gas: All types and kinds of natural, liquefied petroleum and manufactured gas for lighting, heating, cooking, power or any other purpose delivered to any purchaser thereof within the unincorporated area of Miami-Dade County.

² Determination of the number of licenses issued to vendors in UMSA was prepared by ITD, based on data (report) of all active licenses awarded to Miami-Dade County vendors.

Exhibit I
Active Licenses per Type/Class as of December 20, 2012

Category ³	Type/Class	No. of Active Licenses (UMSA)	No. of Active Licenses (Countywide)
I	0601 (Liquefied Petroleum Gas Dealer)	11	19
II	0604 (Liquefied Petroleum Gas Dispenser)	35	72
III	0404 (Liquefied Petroleum Gas Cylinder Exchange Operator)	312	735
	Total	<u>358</u>	<u>826</u>

The State of Florida reported that as of December 20, 2012, there were 358 active licenses (for distribution, sale, and/or resale of bottled or metered gas) within UMSA. These 358 active licenses were held by 242 vendors. During the last three FYs (2009-10 through 2011-12) only 45 vendors, out of the 242 vendors with active licenses (19%), paid excise gas tax, as demonstrated in Exhibit II below.

Exhibit II
Active Licenses vs. Paying Vendors (UMSA)

No. of Vendors with Active License(s)	Fiscal Year(s)	No. of Paying Vendors
-	2009-10	46
-	2010-11	44
-	2011-12	46
242*		<i>Average</i> 45 (19%)

* Note: The number of vendors with active licenses was provided by the State of Florida. Total number of active vendors is as of a specific date (see Exhibit I). The State could not provide data of active vendors per fiscal year. These 242 vendors held 358 licenses as of December 20, 2012 (a vendor may receive multiple licenses).

³ Each category includes several type of licenses, e.g. Category III includes licenses to operate a cylinder exchange unit (where filled propane cylinders are stored while awaiting sale, or being offered in exchange for empty cylinders). Only activities related to operation of cylinder exchange units, and sale of gas to vendors and/or the ultimate consumer are the subject of a public service tax. See below a description of the activities subject to the above mentioned tax:

- Category I - Type/Class 0601: license for any person, firm or corporation involved in the following activities: sales of liquid propane gas; cylinder exchange;
- Category II - Type Class 0604: license to operate a liquefied petroleum gas dispensing unit for serving liquid product to the ultimate consumer;
- Category III - Type/Class 0404: licenses to operate a cylinder exchange unit (where filled propane cylinders are stored while awaiting sale, or being offered in exchange for empty cylinders).

Exhibit III below demonstrates revenues from the excise gas tax, including the five (5) highest gas taxpayers in UMSA, which encompasses approximately 70% of all total revenue.

**Exhibit III
Revenues from Highest Excise Gas Taxpayers (UMSA)**

Vendors	FY 2009-10	FY 2010-11	FY 2011-12	Total
City Gas of Florida	\$922,651	\$937,093	\$908,236	\$2,767,980
Heritage Operating L.P. (TECO Heritage Propane)	159,332	190,363	164,072	513,767
Inergy Propane	111,810	118,214	89,300	319,324
Radiant Gas	93,594	102,090	96,217	291,901
Amerigas Propane	108,230	98,947	250,570	457,747
Total(s)	\$1,395,617	\$1,446,707	\$1,508,395	\$4,350,719
Share of Total Excise Gas Tax	70%	71%	73%	71%
Other Vendors	\$601,430	\$581,613	\$561,599	\$1,744,642
Total Excise Gas Tax	<u>\$1,997,047</u>	<u>\$2,028,320</u>	<u>\$2,069,994</u>	<u>\$6,095,361</u>

III. GENERAL OBSERVATIONS

We reviewed the following: a list of active licenses for sale of gas propane in Miami-Dade County; payment reports provided by the Miami-Dade Finance Department Tax Collector’s Office; and vendor information including type of license and location of sales. Based on our review of the above information, we observed the following:

1. Currently manufacturers, distributors, wholesalers or sellers delivering metered gas and bottled gas to vendors/resellers do not report to the Finance Department semi-annually, the name and addresses of such vendors/resellers, and the quantities received by each. Municode Chapter 29, Section 29-40 requires the following:

Every manufacturer, distributor, wholesaler or seller who shall deliver electricity, metered gas, bottled gas, coal fuel oil, telephone service or water service, to any seller or other person having a place of business in the unincorporated area of Miami-Dade County, or license to do business therein, to be sold or resold to ultimate purchasers, shall report to the Finance Department semiannually, as of June 30th and December 31st, the names and addresses of such sellers or other persons, and the quantities received by each of them during the preceding six (6) months, such

reports to be filed not later than one month after the close of each semi-annual period.

2. As of December 20, 2012, a total of 242 vendors held active licenses. Out of the 242 vendors with active licenses, there were approximately 196 vendors which did not submit excise fees/payments in FY 2011-12. Only an average of 45 vendors submitted excise gas tax payments from FY 2009-10 through FY 2011-12 (see Exhibit II).
3. Monthly reports from a significant majority of resellers/vendors, holding several active licenses, do not disclose the number of licenses/units for which the entity pays revenue, thus making it difficult to determine the completeness and accuracy of payments. This applies to vendors holding several licenses to distribute gas in different locations in UMSA.
4. During the period of FY 2009-10 through FY 2011-12, of the total number of paying vendors, several (a cumulative total of 57) missed or submitted late their excise gas tax payments to the County. There were a total of 161 occurrences where excise tax payments from these vendors were either late or missed. Municode Chapter 29, Section 29-38, states:
 - a) *Every seller is hereby required to execute and file no later than the twentieth day of each month...*
 - b) *Interest is assessed at the rate of 1 percent per month of the delinquent tax from the date the tax was originally due until paid...*
 - c) *Penalties. Failure to file a return shall be subject to a penalty of no less than fifteen dollars (\$15.00). Upon a finding that the failure [to remit] any tax or file a return was due to willful neglect or willful negligence a penalty of 5 percent per month of the delinquent tax, not to exceed a total penalty of 25 percent shall be imposed. Furthermore, in the event a finding is made that the taxpayer submitted a fraudulent return or willfully intended to evade payment of the tax, a specific penalty of 100 percent of the tax. Any penalty imposed shall be in addition to interest due pursuant to subsection (b).*

Exhibit IV below reflects details of missed and/or late payments:

**Exhibit IV
Summary of Vendors – Missed or Late Payments in UMSA***

Period	Total No. of Paying Vendors	No. of Vendors with Missed or Late Payments	Frequency of Missed or Late Payments
FY 2009-10	46	16	37
FY 2010-11	44	28	66
FY 2011-12	46	13	58
Total	-	57	161

*Based on reports from Tax Collector's Office.

IV. RECOMMENDATIONS

Taking into account that the Tax Collector's Office is only responsible for the intake/collection of current and delinquent taxes for all taxing authorities and processing of payments submitted by the vendors, we recommend that they perform the following:

1. Communicate with all the wholesalers, distributors and sellers of metered and bottled gas located in UMSA and inform them of the requirements of the Municode Chapter 29, Section 29-40 delineating the guidelines to conduct such business within UMSA. Additionally, the department should enforce compliance with reporting as required by the Municode Chapter 29, Section 29-40.
2. Create a comprehensive list/report of active vendors in UMSA in collaboration with the Florida Department of Agriculture and Consumer Services, which issues licenses to businesses to operate, distribute, and resell gas in any of its categories/class.
3. Modify the current "Excise Tax Return" template (Exhibit A) from the Tax Collector's Office, that is currently provided to vendors, and require vendors to disclose the name and address for each license held, in order to reconcile the completeness of payments received from vendors holding more than one license within UMSA.
4. Address penalties for missed or late payments as stipulated in Municode Chapter 29, Section 29-38(c). Currently, the Finance Department only collects payments without challenging either the propriety or the completeness of these payments.

V. CONCLUSION

Based on the average number of payments received by Miami-Dade County for FY 2009-10 through FY 2011-12 and the number of active licenses held by vendors not currently submitting any excise gas tax payments, an enforcement of current ordinances as described above may result in additional revenues to the County. In the future, Miami-Dade County should consider adding an enforcement function to the Finance Department.

Management Response

The content of the draft report is correct.

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**MIAMI-DADE COUNTY
FINANCE DEPARTMENT
TAX COLLECTION DIVISION**

Collection Period _____

Return and payment due by _____

I HEREBY CERTIFY THAT I have the authority to execute and file return, that I have examined and am familiar with its contents and the records from which they were secured and that this is true and complete, to the best of my knowledge and belief.

PREPARER'S SIGNATURE _____ DATE _____

PRINT NAME _____ TELEPHONE _____

OFFICER'S SIGNATURE

PRINT NAME

**The company provides or supplies:
(Enter percentage)**

- _____ % WATER
- _____ % ELECTRICITY
- _____ % FUEL OIL
- _____ % OTHER

**Send this form in the enclosed envelope
Along with your check payable to:**

DADE COUNTY TAX COLLECTOR
140 West Flagler St., Room 1208
Miami, FL 33130 Phone (305) 375-5228

EXCISE TAX RETURN

1	UNINCORPORATED DADE RECEIPTS (TOTAL SALES FOR COLLECTION PERIOD)	
2	EXEMPTED RECEIPTS (PER FLORIDA STATUTES)	
3	TAXABLE RECEIPTS (SUBTRACT LINE 2 FROM LINE 1 AND ENTER)	
4	TAX BILLED (ENTER AMOUNT OF TAX PER INSTRUCTIONS)	
5	TAX COLLECTED (ENTER AMOUNT OF TAX COLLECTED THIS PERIOD)	
6	LESS: COLLECTION ALLOWANCE (1% OF LINE 5, ONLY TELECOMMUNICATIONS)	0.00
7	NET TAX (SUBTRACT LINE 6 FROM LINE 5 AND ENTER)	
8	PLUS: PENALTY (1% OF LINE 5, TIMES NUMBER OF DELINQUENT MONTHS)	
9	TOTAL FOR THIS PERIOD (ADD LINES 7 AND 8 AND ENTER)	

In accordance with the provision of the Dade County Code, Sec 29-36 through 29-42 as amended, the seller filing this return entered the amount of tax stated on this form upon invoices rendered to customers made in the unincorporated area of Miami-Dade County during the month covered by this return, and remits herewith the amount of such tax as shown hereon.

NAME/ADDRESS CHANGE

NAME:	
ADDRESS:	
CITY:	
STATE:	ZIP: