Memorandum

MIAMI-DADE COUNTY

(Second Reading 7-7-11)

Agenda Item No. 7(J)

Date: May 3, 2011

To: Honorable Joe A. Martinez, Chairman
and Members, Board of County Commissioners

From: Alina T. Hudak
County Manager

Subject: Amendment to Section 29-38 of the Code of Ordinances for Miami-Dade County, Florida

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Recommendation
It is recommended that the Board of County Commissioners approve the attached Resolution amending Section 29-38 of the Code of Ordinances for Miami-Dade County, Florida (hereinafter "County Code") to provide for the payment of interest and/or penalties as applicable and authorized by §§166.234(7), Florida Statutes (FS).

Scope
This action is countywide in scope.

Fiscal Impact/Funding Source
Approval of this resolution and amendment of the County Code will provide for the payment of interest in addition to public services taxes due and payable to the County after an audit and thus potentially have a positive fiscal impact where no interest was previously collected.

Public service taxes are an excise tax levied and imposed by the County upon every purchase in the unincorporated area of electricity, metered gas, bottled gas, coal, fuel oil and water service, included in or reflected by any bill rendered by the seller to the purchaser.

Track Record/Monitor
The Ordinance has not been subject to amendment since 1984 while the applicable Statute has providing for the payment of interest in addition to penalties if applicable. Service providers are subject to audit by the Department of Audit and Management Services and collection of any applicable tax, interest and/or penalties is done by the Finance Department.

Background
Section 29-38, County Code governs the collection of public services taxes as authorized by §166.234, Florida Statutes. The ordinance currently includes a provision for the imposition of a penalty but does not conform with more recent changes to state law that call for interest for the period the County was without use of the funds. Interest would be payable to the County in all cases without a finding fault.

The proposed amendment would track the provisions of §§166.234(7) that provides for interest at the maximum rate of 1 percent per month of the delinquent tax from the date that it was due until paid, and further provide for penalties in the event a finding of willful neglect or willful negligence and more severe penalties in the event that either a fraudulent return is filed or there is an intent to evade the payment of the tax.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: July 7, 2011

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 7(J)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

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7-7-11

ORDINANCE NO. _____

ORDINANCE AMENDING THE COUNTY'S PROVISIONS REGARDING PENALTIES AND INTEREST ON PUBLIC SERVICE TAXES THAT ARE DELINQUENT TO CONFORM TO STATE LAW; AMENDING SECTION 29-38 OF THE CODE OF MIAMI-DADE COUNTY; CLARIFYING THE DIFFERENCE BETWEEN INTEREST AND PENALTIES; PROVIDING FOR INTEREST AND PENALTIES AS PROVIDED IN STATE LAW; MAKING THE PROVISIONS REGARDING INTEREST RETROACTIVE; PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, the penalty and interest provisions of Miami-Dade County's current public service tax ordinance, contained in section 29-28 of the Code of Miami-Dade County, should be amended to conform to the requirements of the governing state statute, § 166.234 (7) of Florida Statutes; and

WHEREAS, the changes regarding penalties should not be made retroactive because penalties are punitive in nature and designed to discourage disfavored conduct; and

WHEREAS, the changes regarding interest should be made retroactive because the payment of interest is not punitive, but is merely remedial in nature, designed to reimburse the people and government of Miami-Dade County for the lost of the use of tax dollars that a company collected from Miami-Dade County taxpayers but failed to pay to Miami-Dade County within the time provided by law,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, THAT:

Section 1. That the above recitals of legislative intent and findings are fully incorporated herein as part of this ordinance.

Section 2. Section 29-38 of the Code of Miami-Dade County ("the Code") is hereby amended to read as follows:[1]

Sec. 29-38. Remittance of tax to County by seller.

>>(a)<< Every seller is hereby required to execute and file not later than the twentieth day of each month at the office of the Finance Department a certified statement on a form prescribed by such Department, setting forth the amount of such excise tax to which the County became entitled under the provisions hereof on account of bills paid by purchasers during the preceding fiscal month, and contemporaneously with the filing of such statements, shall pay the amount of such excise tax to the Finance Department. [[~~Failure to timely remit the tax shall obligate the seller to pay to the County a penalty of one (1) percent thereof per month or fraction thereof during the period of delinquency; provided, however, that the Board of County Commissioners may, by resolution, waive all or part of said penalty.~~]] All collected tax >>,interest<< and penalties shall be deposited to the credit of the general fund of the County to be expended for governmental purposes solely within the unincorporated area or for Countywide projects or purposes that will benefit the residents of the unincorporated area.

>>(b) Interest is assessed at the rate of 1 percent per month of the delinquent tax from the date that the tax was originally due until paid. In the event of an administrative or judicial determination that additional taxes are due, interest shall run from the date that the taxes were originally due, not from the date of the administrative or judicial determination.

(c) Penalties. Failure to file a return shall be subject to a penalty of no less than $15. Upon a finding that the failure any tax or file a return was due to willful neglect or willful negligence a penalty of 5% per month of the delinquent tax, not to exceed a

[1] Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

total penalty of 25% shall be imposed. Furthermore, in the event a finding is made that the taxpayer submitted a fraudulent return or willfully intended to evade payment 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).<<

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board. Because the provision of this ordinance concerning interest is remedial in nature, it shall operate retroactively. Accordingly, any taxes that are still unpaid and delinquent at the time of the effective date of this ordinance will be subject to the interest provisions of this ordinance with interest accruing from the original date of delinquency until payment.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:
Thomas W. Logue