MIAMIBEACH

INTERNAL AUDIT REPORT

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TO: Jimmy L. Morales, City Manager
VIA: Mark D. Coolidge, Interim Internal Auditor MDC
FROM: Jessica Romero, Auditor J.R.

DATE: July 17, 2018
AUDIT: Ferrellgas – Utility Tax Audit
PERIOD: March 1, 2014 – February 28, 2018

This report is the result of a regularly scheduled audit of the Public Service Tax (Utility Tax) collected and remitted to the City by Ferrellgas between March 1, 2014 and February 28, 2018.

INTRODUCTION

Article III entitled "Public Service Tax" (Utility Tax) of the City Code details the terms and conditions concerning the charging, collecting and remitting of utility taxes on all purchases in the corporate limits of the City of electricity, metered gas, bottled gas, and fuel oil. More specifically, section 102-152 states that the seller is to collect and remit ten (10) percent, exclusive of governmental charges and taxes, of the total amount shown on such bill on account of the purchase of electricity, metered gas and bottled gas, and four (4) cents per gallon on fuel oil. Other terms listed include the requirement of remitting any monies owed by the 20th day of each month for revenues incurred during the prior month, submitting a semiannual listing (June 30th and December 31st) of all deliveries for resale within Miami Beach, the charging of interest on any late payments, etc. Lastly, City Code Section 102-155 requires records of taxable sales transactions to be kept by the seller for inspection by the City and allows for enforcement of rules and regulations pertaining to Article III of the City Code.

Ferrellgas is a company that sells propane gas to end use customers. A review of the City's Financial Systems (Eden for all payments remitted prior to April 2016 and Munis for all subsequent payments) showed that Ferrellgas reported and remitted the amounts below to the City for the stated periods:

	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	
	March - Sept	**Oct - Sept**	**Oct - Sept**	**Oct - Sept**	**Oct - Feb**	**Total**
Taxable Sales Reported	$6,246.74	$21,170.81	$11,806.91	$6,051.20	$0.00	$ 45,275.66
Utility Tax Paid as per Eden and Munis	$0.00	$0.00	$561.91	$720.86	$0.00	$1,282.77

OVERALL OPINION

Ferrellgas provided the requested documentation in an expeditious manner and cooperated with all submitted requests; however, the following shortcomings were noted that are in need of corrective action:

- Ferrellgas underpaid the City of Miami Beach by $4,331.86 during the forty-eight month audit period including interest as calculated as of July 17, 2018.
- Ferrellgas's database contains errors that need correction to help prevent future mistakes from occurring.

PURPOSE

The purpose of the audit was to determine Ferrellgas's compliance with the rules and regulations set forth in Article III, entitled "Public Service Tax", of the City Code with a primary focus on whether the utility taxes paid were accurately calculated, fully collected and timely remitted to the City during the audit period.

SCOPE

1. Review Ferrellgas's provided documentation to confirm that tested utility taxes were accurately calculated and fully collected.

2. Confirm that all tested monthly utility tax collections were timely remitted and correctly recorded in the City's Financial System.

FINDINGS, RECOMMENDATIONS AND MANAGEMENT RESPONSE

1. Finding – *Ferrellgas Underpaid the City of Miami Beach by $4,331.86 during the Forty-Eight Month Audit Period Including Interest as Calculated as of July 17, 2018*
   Records were obtained from Ferrellgas that listed all sales transactions from March 1, 2014 through February 28, 2018 that occurred within the jurisdictional boundaries of the City of Miami Beach. City Code Section 102-155(b) requires Ferrellgas to execute and file monthly statements accompanied by the amount of utility tax owed no later than the 20th day of each month to the City's Finance Department for relevant purchases made during the previous month. Furthermore, City Code Section 102-157(b) states "*In addition to any penalties imposed in subsection (a) of this section, any seller who fails to remit or is delinquent in remitting tax due under this article shall pay interest at the rate of ten percent per annum or the rate as specified by F.S. § 687.01, whichever is higher, on the unpaid amount of tax from the date on which the tax first became delinquent until paid.*"

   As a result, Ferrellgas's tax liability was calculated using the provided documentation (customer invoices, sales reports, etc.) and compared to the amounts recorded in the City's Financial System (Eden for all payments remitted prior to April 2016 and Munis for all subsequent payments). An analysis of Ferrellgas's monthly payment dates recorded in the City's Financial Systems with Section 102-155(b)'s designated due dates found the following:

- Four (4) of the forty-eight (48) tested months' utility tax payments, or 8.33%, were received late or after the due date ranging from one (1) to thirty-eight (38) days with an average of twelve (12) days. Although the calculated interest amount of $1.13 due on these late payments using a 10% per annum interest rate is immaterial, the City's Finance Department did not invoice Ferrellgas any interest during the audit period.
- Sixteen (16) of forty-eight (48) tested months' utility tax payments, or 33.33%, has not been submitted as of July 17, 2018, resulting in an underpayment of taxes to the City of $4,220.52 which includes $1,037.17 of interest as of July 17, 2018.
- Sixteen (16) of forty-eight (48) tested months' utility tax payments, or 33.33%, were found to have been partially paid as of July 17, 2018, resulting in a total net underpayment of taxes to the City of Miami Beach of $110.21 which includes $48.76 of interest as of July 17, 2018.
- Ferrellgas is not consistently using the correct tax rate, resulting in an understatement of taxes to the City of Miami Beach. We noticed that various tax rates applied by Ferrellgas, were substantially below 10%. When we contacted Ferrellgas to obtain an explanation of how the tax rate was derived, we received the following response: ***"Due to the wording of the State Statute, the Public Service Tax is only to be charged on a portion of the selling price. Our system cannot handle that, so we calculate an "Effective Tax Rate" each year and charge that rate on the full selling price".*** Ferrellgas made the decision to develop an "Effective Tax Rate".

  Ferrellgas established the following process to calculate the amount of public service tax to charge its customers and to remit to the City:

  - *Ferrellgas's Tax Department personnel obtain fiscal year (August thru July) data for their business in Florida from their point-of-sale system to determine the average selling price and average margin for the previous twelve months. Per the Florida Statute, this data is used in conjunction with their cost of product in 1973, of 16.07 cpg, and the average selling price in 1973 of 61.07 cpg to calculate an effective rate for each "full" tax rate.*
  - *The effective tax rate is then charged on the full selling price that is charged each taxable customer.*
  - *The total public service tax amount that is charged to customers during the month is reported on Line 4 (Tax Rate) of the monthly report. That amount is then divided by the full tax rate (i.e. 10%) to determine Taxable Sales (Line 3) and Gross Sales (Line 1).*

  In meetings with the City Attorney's Office, it was determined that this tax calculation was incorrect and did not comply with Florida Statute Section 166.231 (1)(b) which states: ***"The tax imposed by paragraph (a) 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".*** Since the invoices issued by Ferrellgas did not utilize the term "fuel adjustment charge" as all charged taxes were commingled under one-line item; this charge was not separately stated on each bill as required by the Statute above. Therefore, Ferrellgas was required to utilize the 10% tax rate and not their calculated effective tax rate.

Recommendation(s):
The Finance Department should promptly create a City Bill invoicing Ferrellgas a total of $4,331.86 which has been recently invoiced. In addition, Ferrellgas should recalculate and remit their utility tax liability associated with the inappropriate application of the tax rate for the months of March 2018 to present, which was outside the audit period. Going forward, Ferrellgas should remit their utility tax payments accurately and timely or be subject to interest charges in accordance with the City Code.

Lastly, the City should consider revising City Code Section 102-157 to reflect interest and/or penalty measures used in some other Florida municipal and county governments to better incentivize companies to pay their utility taxes timely:

- Interest shall be assessed, for failure to pay any tax when due or to file any required return, at a rate of 1 percent per month of the delinquent tax from the date the tax was due until paid.

- Penalties shall be assessed at a rate of five percent per month of the delinquent tax, not to exceed a total penalty of twenty-five percent. In no event shall the penalty for failure to file a return be less than fifteen dollars ($15.00).

- Sellers filing fraudulent returns or willfully attempting to evade payment of the tax shall be liable for a specific penalty of one hundred (100) percent of the tax.

2. Finding – *Ferrellgas's Database Contains Errors that Need Correction to help Prevent Future Mistakes from Occurring*
City Code Section 102-155(a) required that every seller establish and maintain appropriate accounts and records of all purchases of electricity, metered gas, bottled gas, and fuel oil within the corporate limits of the City. Records were obtained from Ferrellgas that listed all sales transactions from March 1, 2014 through February 28, 2018 within the jurisdictional boundaries of the City of Miami Beach. These records were subsequently examined whereby the following errors were noted:

- Ferrellgas mistakenly excluded Freeman Decorating-Miami Beach Convention Center from being located within the City limits resulting in a utility tax underpayment which was included in finding #1. When Ferrellgas was contacted concerning this omission, the following response was received: *"It appears we did not have them flagged as being within the City Limits of your jurisdiction".*
- Miami Dade County-Fire Rescue Dept. 21-10 located at 10500 Collins Avenue FL 33154 is not within the jurisdictional boundaries of the City of Miami Beach. This account is considered governmental and would be exempt from utility taxes so there is no financial impact.
- When reviewing a Ferrellgas report generated by local zip codes, it was found that Matheson Tri Gas Miami Cylinder located at 7320 NW 58th Street, Miami FL 33109 was incorrectly reported as being in Miami Beach. Since no utility taxes were remitted to the City based on this account, there is no financial impact.

Recommendation(s):
To help prevent future mistakes, Ferrellgas should better ensure that all vendors within the jurisdiction boundaries of the City of Miami Beach are correctly identified when the account is created. Otherwise, it will most likely result in one municipality's utility taxes being over reported and another's being under reported by the same amount.

EXIT CONFERENCE

Audit findings were emailed to Ferrellgas on July 17, 2018 and they are disputing the amount owed.

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cc: John Woodruff, Chief Financial Officer
Bob Kaveler, Director Indirect Tax, Ferrellgas