



Joseph M. Centorino, Inspector General

TO: Honorable Mayor and Members of the City Commission
FROM: Joseph Centorino, Inspector General

DATE: December 15, 2022
PROJECT: AmeriGas Propane, L.P. – Public Service Tax Audit
OIG No. 22-17
PERIOD: April 1, 2017 – August 31, 2021

The City of Miami Beach Office of the Inspector General (OIG) performed this audit of the Public Service Tax (also known as Utility Tax) charged, collected, reported, and remitted by AmeriGas Propane, L.P. (AmeriGas) to the City Finance Department during the April 1, 2017 through August 31, 2021 audit period. Additional testing was performed to determine the gas seller's compliance with other selected provisions in the City Code and Florida Statutes.

INTRODUCTION

Article III entitled "Public Service Tax" of the City Code details the terms and conditions related to the charging, collecting, and remitting of Public Service Tax on all purchases of electricity, metered gas, bottled gas, and fuel oil within the corporate limits of the City of Miami Beach. Section 102-152 requires the seller to collect and remit ten percent, exclusive of governmental charges and taxes, of the total amount shown on such bill on the purchase of electricity, metered gas, and bottled gas and four cents per gallon on fuel oil. The tax is due on all Miami Beach purchases, except those performed by an agency or instrumentality of the United States Government, the state, the county, or a municipality (Section 102-151).

Gas sellers are to file a statement with the City Finance Department setting forth the amount of Public Service Tax due and remit all corresponding monies owed by the 20th day of each month for revenues incurred during the prior month (Section 102-155(b)). The Finance Department is to charge interest at the applicable rate on any payments received after the designated due date (Section 102-157(b)). Meanwhile, gas sellers are also required to submit a semiannual listing each June 30th and December 31st to the City Finance Department of all deliveries for resale within Miami Beach (Section 102-156).

In addition, Chapter 166, Section 231 of the Florida Statutes addresses the charging of Public Service Tax by municipalities. Among other provisions, it includes the following:

- Subsection (1)(b) - Taxes shall not be applied against any fuel adjustment charge, and such charge shall be separately stated on each bill. The 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.
- Subsections (3) through (10) deal primarily with exemptions from the Public Service Tax

provisions. Examples of listed exemptions include the purchase of natural gas, manufactured gas, or fuel oil by a public or private utility, either for resale or the use of fuel in the generation of electricity, the purchase of fuel oil or kerosene for use as an aircraft engine fuel, the purchase of metered or bottled gas for agricultural reasons, etc.

OVERALL OPINION

According to the websites <https://www.amerigas.com/commercial-propane> and twitter.com/amerigas, AmeriGas is the nation's largest propane provider, serving over two million customers in all 50 states from over 2,500 distribution locations. Examination of the records provided by AmeriGas determined that the following identified deficiencies need corrective action:

1. AmeriGas did not remit \$102,471.76 in Public Service Tax due to the City during the audit period, including interest.
2. AmeriGas did not submit the required semi-annual Reports of Deliveries for Resale to the City Finance Department during the audit period pursuant to City Code Section 102-156.

SCOPE, OBJECTIVES, AND METHODOLOGY

The scope of the audit was to evaluate whether AmeriGas complied with selected sections of the City Code and Florida Statutes, and whether all Public Service Tax monies due to the City were timely, completely, and accurately paid. The audit period was April 1, 2017 through August 31, 2021, and selected transactions before and after this period were also examined. In general, the audit focused on the following objectives:

- To determine whether the gas seller accurately charged and collected the Public Services Tax due from its Miami Beach customers pursuant to the City Code.
- To determine whether the gas seller timely, completely, and accurately reported and remitted all Public Service Tax monies due to the City Finance Department.
- To determine whether the Finance Department accurately billed interest to the gas seller on all tested remittances received after the designated due dates.
- To determine whether sampled transactions were accurately recorded in the City's Financial System.

This audit was conducted in accordance with the Standard Operating Procedures of the City of Miami Beach Office of the Inspector General and internal audit best practices. Those require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. The evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit methodology included the following:

- Reviewed applicable provisions of the City Code of Ordinances and Florida Statutes.
- Interviewed and made staff inquiries to understand the internal controls, assess control risk, and plan audit procedures.
- Performed substantive testing consistent with the audit objectives, including, but not limited to, examination of appropriate transactions and records.
- Drew conclusions based on the results of testing, made corresponding recommendations, and obtained auditee responses and corrective action plans; and

- Performed other audit procedures as deemed necessary.

FINDINGS, RECOMMENDATIONS, AND AUDITEE RESPONSES

1. **Finding: AmeriGas Did Not Remit \$102,471.76 In Public Service Tax Due To The City During The Audit Period, Including Interest.**

Florida Propane Exchange Corporation was initially audited by the City's Office of Internal Audit, prior to being subsumed into the OIG on November 1, 2019. Among other deficiencies, the July 20, 2017 audit report determined that the gas seller had underreported Public Service Tax to the City of \$83,157.83, including interest, during the March 1, 2014 through February 28, 2017 audit period. The total assessment was paid in full.

The OIG attempted to conduct a follow-up audit of Florida Propane Exchange Corporation to determine whether it was compliant with the City Code and Florida Statutes. During the planning phase of the scheduled audit, the assigned OIG Auditor determined that AmeriGas purchased Florida Propane Exchange Corporation in June 2017.

UGI Corporation, the parent company of AmeriGas, contained the following corporate structure as of May 2022, according to the website, <https://www.ugi.com/about-us/ugi-corp/>.



A report generated from the Munis system, the City's enterprise resource planning system, determined that AmeriGas made the following Public Service Tax payments to the City during the April 1, 2017 through August 31, 2021 audit period:

Fiscal Year	Payment Received Date	Amount Paid to City
2016/17	7/26/2017	\$136.80
	8/28/2017	\$146.20
	9/20/2017	\$184.10
	2016/17 Total	\$467.10
2017/18	11/2/2017	\$81.50
	11/27/2017	\$646.40
	2/22/2018	\$7,362.49
	2017/18 Total	\$8,090.39
Total (2016/17 + 2017/18)		\$8,557.49

An AmeriGas Tax Manager, its representative during the audit process, was requested to provide supporting documentation related to these six months filings. In response, a July 25, 2022 email was received, stating: *I can see that these filings were in regards to an acquisition we had of a company called Florida Propane Exchange. The acquisition occurred in June 2017 and we had all the customers added to our system on Feb 1st 2018 (part of the sales files in the audit after Feb 1st). It seems that in the meantime of transition the customers to our system the controller of Florida Propane Exchange was sending us summary reports which is what we paid in the email you sent below.*

Obviously, this system that Florida Propane exchange used to generate the summary files they sent us no longer exists as the company itself does not exist. There is no way I can get detailed sales files for these transactions since the system no longer exists.

The Tax Manager cooperated with the OIG Auditor, provided the requested documentation, and participated in several Microsoft TEAMS meetings to explain its billing process and answer related questions. In prior emails, he explained that the company's software did not charge the Public Service Tax on Miami Beach transactions, which was subsequently verified by the OIG upon reviewing the furnished invoices and records.

The Tax Manager claimed AmeriGas owed less Public Service Tax to the City due to the fuel adjustment charge provision addressed in Florida Statute 166.231(1)(b). However, it is required to be separately listed on each bill, which it was not, so the exemption was not recognized by the OIG Auditor, in accord with prior consultation by the OIG with the City Attorney's Office regarding this issue.

The Tax Manager also asserted that AmeriGas sales to resellers would be exempt from the Public Service Tax, as the seller to the end user would instead be liable for the tax. Florida Statute 166.231(4)(a) states: *The purchase of natural gas, manufactured gas, or fuel oil by a public or private utility, either for resale or for use as fuel in the generation of electricity, or the purchase of fuel oil or kerosene for use as an aircraft engine fuel or propellant or for use in internal combustion engines is exempt from taxation hereunder.* As the purchaser was not proven to be a public or private utility, the exemption was not recognized by the OIG auditor, in accord with prior consultation by the OIG with the City Attorney's Office regarding this issue.

The OIG Auditor calculated the Public Service Tax due through examination of the financial information provided by AmeriGas. In sum, the it was determined that a total of \$102,471.76 in Public Service Tax, including interest, is due to the City, as shown in the following table:

	Gross Sales	Utility Tax Due	Interest Due	Total Due
FY 2016/17 *	\$23,167.83	\$2,316.78	\$1,114.40	\$3,431.18
FY 2017/18	\$163,787.65	\$16,378.77	\$6,650.75	\$23,029.52
FY 2018/19	\$222,398.57	\$22,239.86	\$7,047.43	\$29,287.29
FY 2019/20	\$213,544.12	\$21,354.41	\$4,602.69	\$25,957.10
FY 2020/21 **	\$185,815.79	\$18,581.58	\$2,185.09	\$20,766.67
	\$808,713.96	\$80,871.40	\$21,600.36	\$102,471.76

* from April 1, 2017 through Sept 30, 2017

** from October 1, 2020 through August 31, 2021

Upon request of the OIG, the City Finance Department created invoice number 36908 billing AmeriGas \$102,471.76 on May 12, 2022. Interest was calculated at a 10% rate per annum pursuant to City Code Section 102-157(b).

As AmeriGas was made aware of its underreporting during the audit, it began remitting monthly Public Service Tax to the City Finance Department with its November 2021 payment received on December 16, 2021 (see the table below). These payments were outside the designated audit period and were not audited for accuracy or completeness. In addition, the OIG noted that no Public Service Tax monies were remitted to the City Finance Department for the months of September and October 2021, which are similarly outside the audit period, and remain unpaid to date.

Fiscal Year	Payment Received Date	Amount Paid to City
2021/22	12/16/2021	\$498.63
	1/25/2022	\$1,110.60
	3/2/2022	\$1,633.02
	3/23/2022	\$1,208.19
	4/20/2022	\$993.06
	5/20/2022	\$801.98
	6/22/2022	\$492.34
	2021/22 Total	\$6,737.82

Recommendation(s):

AmeriGas should timely remit the \$102,471.76 in Public Service Tax due to the City Finance Department or additional disciplinary actions specified in the City Code may be enforced. In addition, AmeriGas should review its Miami Beach taxable gas sales and promptly file Public Service Tax returns for September and October 2021. Once completed, any amounts due, plus any late charges, should be promptly remitted to the City Finance Department.

2. Finding: AmeriGas Did Not Submit The Required Semi-Annual Reports Of Deliveries For Resale To The City Finance Department During The Audit Period Pursuant To City Code Section 102-156.

City Code Section 102-156 states: *Every manufacturer, distributor, wholesaler or seller who shall deliver electricity, metered gas, bottled gas or fuel oil service to any seller or other person having a place of business in the corporation limits of the city, or licensed to do business therein, to be sold or resold to ultimate purchasers, shall report to the city finance department semiannually, as of June 30 and December 31, the names and addresses of such sellers or other persons, and the quantities received by each of them during the preceding six months, such reports to be filed not later than one month after the close of each semiannual period.* AmeriGas did not file any required semiannual reports with the City Finance Department during the audit period.

Recommendation(s):

AmeriGas should comply with City Code Section 102-156 and timely file prospective semiannual reports to the City Finance Department.

AUDITEE RESPONSES RECEIVED/UPDATE

The draft audit report was disbursed to all auditees via email on September 22, 2022 allotting each thirty working days to submit a written explanation or rebuttal of the findings before the report is finalized. After several meetings and emails, Amerigas representatives responded in a November 14, 2022 email that it was in agreement with the contents of this audit report. It subsequently remitted \$102,471.76 in Public Service Tax to the City in satisfaction of invoice number 36908. All auditee responses received prior to December 6, 2022 were included in this final audit report.

Respectfully submitted,


Joseph Centorino, Inspector General

12/15/2022
Date


Mark D. Coolidge, Chief Auditor

12-15-2022
Date


Norman Blaiotta, Deputy Chief Auditor

12/15/2022
Date

cc: Alina T. Hudak, City Manager
Kathie Brooks, Chief Financial Officer
Tim Spiotta, Tax Manager, AmeriGas Propane, L.P.

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