

PALM BEACH COUNTY
HERITAGE PROPANE
PUBLIC SERVICE TAX COLLECTION
INVESTIGATIVE AUDIT



SHARON R. BOCK
Clerk & Comptroller
Palm Beach County

Division of Inspector General
Public Integrity Unit
August 27, 2010



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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 investigative audit of the public service tax payments by Heritage Propane to Palm Beach County.

Our primary objective was to determine if the public service taxes collected by Heritage Propane and its affiliated companies for forklift canister and other types of propane sales were remitted to the County in accordance with Palm Beach County Ordinance No. 89-13.

The investigative audit disclosed that Heritage Propane has not complied with County Ordinance 89-13. Significant and various types of errors were noted in which Heritage did not collect or remit to the County required public service taxes from customers in unincorporated areas of Palm Beach County.

Based on actual sales data from October through December of 2009, Heritage underpaid the County \$56,159 during this three-month period. Extrapolating these actual underpayments to full calendar year 2009, the projected public service taxes owed to the County total \$224,636. Additional taxes owed totaling \$6,317 were identified related to other errors.

Given that Florida Statute allows an assessment of taxes levied within three years after the date the tax was due, a similar tax liability to the County is anticipated for both calendar years 2007 and 2008. In addition, the County has never received public service tax payments from Metro Lift, a wholly owned subsidiary of Heritage. Metro Lift sells propane canisters for use in forklifts to customers in unincorporated Palm Beach County.

**Division of
Inspector General
Public Integrity Unit**
301 N. Olive Avenue
9th Floor
West Palm Beach, FL 33401

Phone: 561-355-2722
Fax: 561-355-7050

www.mypalmbeachclerk.com

The Clerk & Comptroller's office is available to assist the County in collecting the taxes owed by Heritage Propane and its affiliated companies.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Roger Trca". The signature is fluid and cursive, with a large initial "R" and a long, sweeping underline.

Roger Trca
Inspector General & Audit Director
Clerk & Comptroller Office
Palm Beach County

Executive Summary

An investigative audit of Heritage Propane (hereafter referred to as “Heritage”) was performed by the Clerk & Comptroller’s Division of Inspector General to determine if Heritage Propane complied with the public service tax requirements of Palm Beach County Ordinance 89-13. The investigative audit was initiated as a result of a complaint from a propane gas vendor that Heritage, Siegel Gas and Metro Lift Propane (hereafter referred to as “Metro Lift”) were not charging the County public service tax on propane sold in canisters for forklifts. The Director of the County’s Office of Financial Management & Budget (OFMB) requested the Clerk’s Division of Inspector General to investigate the complaint. Research indicated that Siegel Gas and Metro Lift are owned by Heritage. According to LP Gas Magazine, Heritage is the third largest propane retailer in the United States, with over 1.2 million customers.

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.

Heritage assigns tax codes to each customer account based on the customer’s location in either a municipality or unincorporated Palm Beach County. Each tax code has a corresponding tax rate adopted by the municipality represented by the tax code. Effective management of the coding process by Heritage is critical to ensure that the correct tax code is utilized, the correct amount of tax is assessed and remitted to the County and other municipalities, and records of purchaser exemption certifications are maintained to support exempt sales.

The investigative audit found that numerous customer accounts were assigned incorrect tax codes and corresponding tax rates by Heritage. This resulted in underpayment of public service taxes to Palm Beach County. Our review of Heritage sales transactions from October to December of 2009 disclosed that 442 of 789 (56%) customer accounts were miscoded as being in a municipality, when in fact they were located in unincorporated Palm Beach County. In addition, 27 of 35 accounts (77%) were coded as tax exempt, but exemption certification records were not available to verify the exemptions. In testing sales transactions

in which two other tax codes were utilized, Heritage miscoded 19 of 39 (49%) of customer accounts for one tax code (FL554) and 56 of 59 customer accounts for the second tax code (FL99), which resulted in public service taxes not collected or remitted to the County. Other errors were noted whereby Heritage assigned tax codes that should have reflected a different municipality, but such errors did not result in tax underpayment to the County.

As a result of these errors, based on actual sales data from October through December of 2009, Heritage underpaid the County \$56,159 during this three month period. Extrapolating these actual underpayments to full calendar year 2009, the projected public service taxes owed to the County total \$224,636. In addition, Heritage underpaid taxes totaling \$6,317 for the incorrect use of a particular tax code from calendar years 2007 through 2009.

A similar tax liability to the County is anticipated each for 2007 and 2008, though sales information was not provided by the vendor to more accurately quantify the liability. 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 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. Interest and penalties may also be assessed.

In addition, Metro Lift has never paid public service taxes to Palm Beach County for sales of propane canisters for forklifts or any other form of propane. Metro Lift and Heritage have failed to respond to our request for sales information, thereby preventing any calculation of public service taxes owed to the County. County ordinance states that sellers willfully attempting to evade payment of tax shall be liable for a penalty of 100% of the tax. We did not identify any breakout of sales and public service tax information for Siegal Gas, which is owned by Heritage.

The report contains five observations and ten recommendations related to addressing the miscoding of customer accounts and the collection of public service taxes owed by Heritage to the County. As defined in the County Policy and Procedure Memo (PPM CW-F-035 Public Service Tax Compliance), the Clerk & Comptroller's Revenue Department (hereafter referred to as "Revenue Department") is responsible for monitoring tax remittances, collecting and recording remitted funds, initiating interest and penalty assessments, and notifying OFMB of tax underpayments. OFMB is responsible for evaluating the underpayments and, if warranted, making a recommendation to the County

Attorney Office to proceed with a Hearing Officer review. Interest and penalties are subject to compromise, settlement and collection by the OFMB Collections unit. As Metro Lift has failed to provide requested sales records as of this report date, the County Internal Auditor should conduct a compliance audit of Metro Lift and other vendors as prescribed by PPM CW-F-035. Additionally, the County Inspector General may desire to conduct an investigation of any unpaid public service taxes by select vendors.

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Introduction

Overall Conclusion

Heritage Propane (Heritage) has 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 investigative audit disclosed significant and various types of errors in which Heritage did not collect required public service taxes from customers and in some cases remitted tax collections to municipalities instead of the County. Tax codes were incorrectly established and assigned to customer accounts, precluding accurate assessment and collection of public service taxes for propane sales within unincorporated Palm Beach County.

Based on actual sales data from October through December of 2009, Heritage underpaid the County \$56,159 during this three-month period. Extrapolating these actual underpayments to full calendar year 2009, the projected public service taxes owed to the County total \$224,636. Additional taxes owed totaling \$6,317 were identified related to other errors.

Given that Florida Statute allows an assessment of taxes levied within three years after the date the tax was due, a similar tax liability to the County is anticipated for both calendar years 2007 and 2008. Heritage and Metro Lift Propane (Metro Lift) did not provide sales information to enable an accurate quantification of the liability.

In addition, the County has never received public service tax payments from Metro Lift, a wholly owned subsidiary of Heritage. Metro Lift sells propane canisters for use in forklifts to customers in unincorporated Palm Beach County.

Objective, Scope and Methodology

At the request of the Director of OFMB, the Clerk's Division of Inspector General conducted an investigative audit of public service tax payments to Palm Beach County by Heritage. The objectives were to:

- Determine if the public service taxes collected by Heritage and the associated companies for forklift canister and other types of propane sales were remitted to the County in accordance with the Palm Beach County Ordinance No. 89-13; and,
- Determine if exemptions to the public service tax recorded by Heritage and the associated companies were in compliance with the Palm Beach County Ordinance No. 89-13.

In order to meet these objectives, we obtained Clerk & Comptroller Revenue Department records of the public service taxes received from Heritage for 2007 through 2009. The Revenue Department had no record of tax payments received from Metro Lift during this time period. We limited our audit by obtaining actual sales data from Heritage for October through December of 2009. Heritage provided sales data for the three-month period totaling \$1,533,839, which comprised 1,978 customer accounts throughout Palm Beach County. Public service tax payments to the County for these three months totaled \$4,418.44, \$5,800.74 and \$10,073.99, respectively.

In our analysis of sales data provided by Heritage, we sorted the transactions into two categories: those with and those without the public service taxes charged. Testing was performed for both categories to determine that the taxes charged were accurate and submitted to the County and that valid reasons existed when the public service tax was not charged.

Our testing included a total of 922 customer accounts. We focused on customer accounts located in zip codes in which a high percentage of the area resided in unincorporated Palm Beach County. For customer accounts tested, we identified the customer address by utilizing the County zip code map and the Property Appraiser's website, which enabled us to verify if the address was within a municipality or in unincorporated Palm Beach County. We compared this address to Heritage records and assigned tax codes to verify its accuracy.

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. Sales are taxed, based on a monthly billing cycle, at 10% for the first \$4,000 of sales, 2% of the next \$2,000 in sales and 1% for all sales exceeding \$6,000. Sellers billing in any manner other than a monthly cycle shall apply a flat 10% tax rate.

Heritage Operating L.P. distributes propane through a nation-wide retail distribution network serving more than 1.2 million customers from nearly 517 customer service locations in 41 states.

Heritage Propane is a master limited partnership and is publicly traded on the New York Stock Exchange as Energy Transfer Partners under the ticker symbol "ETP."

Energy Transfer Partners acquired Titan Energy GP LLC in June 2006 and all payments made to the County on behalf of Heritage are identified as Titan Propane sales.

During the review, a legal interpretation was requested to clarify which vendors were subject to the public service tax. The interpretation confirmed the following:

- The purchaser's location controls the determination of whether the county or municipality is entitled to the tax on a particular transaction. The purchaser's location is the place at which possession, utilization of, control over or title to the gas becomes vested in the purchaser.
- Both wholesale and retail transactions are subject to the tax, with limited exceptions.

Observations & Recommendations

1. Propane sales are not reported by Metro Lift and related taxes are not paid to the County.

Heritage Propane (Heritage) acquired Metro Lift Propane (Metro Lift) in 2004. Metro Lift Propane continues to operate as a business under this name. According to its website, Metro Lift is located in Miami, specializes in propane sales of forklift cylinders, and services a large region of south Florida, including Palm Beach County. A telephone call to the Metro Lift office disclosed that propane services are provided to customers in Palm Beach County. County records show no public service tax payments have been received from Metro Lift for propane sales in unincorporated Palm Beach County as required by Ordinance 89-13.

During the investigative audit of Heritage, we notified Metro Lift of our intent to inspect their records and requested the sales information of unincorporated Palm Beach County. The Metro Lift district manager in Miami stated that our request would be forwarded to the Heritage corporate office in Montana. We made a second request for the sales records to the Montana corporate office and restated our intent. After multiple attempts, neither Metro Lift nor Heritage has provided the sales information. Consequently, we are not able to calculate the public service taxes owed by Metro Lift to the County.

County ordinance states that sellers failing to pay the taxes when due shall be assessed interest at the rate of 1% per month. Further, sellers willfully attempting to evade payment of the public service tax shall be liable for a penalty of 100% of the tax.

Recommendation:

The County OFMB should:

- A. Pursue additional efforts to obtain Metro Lift propane sales records for the previous three years or direct the County Internal Auditor to conduct a compliance audit to determine the public service taxes owed to the County.

Consideration should also be given to interest and penalties owed as prescribed by ordinance based on their failure to pay.

Management Response:

- A. OFMB will send a letter to Metro Lift outlining the requirements under Palm Beach County’s public service tax ordinance and request compliance. Further, we will recommend the County’s Internal Auditor include an audit of Metro Lift in their FY 2011 Audit Plan.

2. Customer account tax codes at Heritage are not accurate, resulting in underpayment of taxes to the County.

The tax codes used by Heritage to identify the corresponding public service tax owed for each sales transaction are largely inaccurate. This has resulted in underpayment of public service taxes owed to the County, estimated at \$174,416 for 2009.

Heritage assigns tax codes to each customer account based on the customer’s location in either a municipality or unincorporated Palm Beach County. Each tax code has a corresponding tax rate that is charged to the customer. Effective management of the coding process by Heritage is critical so that the correct code is utilized and the correct amount of tax is assessed and remitted to the County and other municipalities.

Heritage has assigned the following tax codes for Palm Beach County:

<u>Tax Code</u>	<u>Municipality</u>	<u>Tax Rate</u>
FL99	Florida State Tax	6.00%
FL554	Palm Beach County	6.50%
FL484	Palm Beach County Commercial	16.50%
FL427	Palm Beach County Residential	10.00%

In our analysis of sales activity from October through December of 2009, we sorted the transactions into two categories: those with and those without the public service tax charged.

For transactions in which a public service tax was charged, we identified 1,597 total accounts with sales transactions during the three-month period. Heritage records indicated that 367 of these accounts were located in unincorporated Palm Beach County, which we excluded from our review. Of the remaining 1,230 accounts, we researched 789 accounts (49% of the total 1,597) to determine if the tax code assigned was accurate. We identified the location of the customer account address by utilizing the County zip code map and the Property Appraisers website, which enabled us to verify if the address was within a municipality or in unincorporated Palm Beach County. We compared this address to Heritage records and assigned tax codes to verify its accuracy.

Our testing disclosed 689 (87%) of the 789 accounts researched were incorrectly classified by Heritage, as summarized below:

Accounts not correctly coded as unincorporated County -----	442	(56%)
Accounts coded to the wrong municipality -----	247	(31%)
Total accounts coded incorrectly-----	689	(87%)

The 442 accounts not correctly coded as unincorporated Palm Beach County were coded as municipalities. Based on the sales transactions from October through December of 2009, \$43,604 in public service taxes were not paid to the County because of improper coding.

For the other 247 accounts, we determined that the customers were located in municipalities, though Heritage had assigned incorrect municipality tax codes. This may have resulted in errors in collection and remittance of public service taxes among municipalities though it is no impact on taxes owed to the County.

Actual sales activity for the balance of 2009 was not obtained from Heritage. Applying the fourth quarter taxes to full calendar year 2009, public services taxes owed by Heritage to the County for the miscoded accounts are estimated at \$174,416. This does not include any consideration for interest and penalties that may also be due for 2009 taxes as well as related amounts due for 2007 and 2008.

Recommendations:

The County OFMB should:

- A. Require Heritage to correct their customer address records and corresponding tax codes, including the errors noted in this review as well as any other errors identified by Heritage.
- B. Collect unpaid public service taxes related to inaccurate tax codes assigned by Heritage, estimated at \$174,416 for 2009, and consider any interest and penalties that may be applicable. Consider collection of taxes owed from Heritage sales activity in 2007 and 2008 in accordance with the County ordinance.

Management Responses:

- A. OFMB will make a formal request of Heritage to correct their tax code and address records.
- B. OFMB will take the steps outlined in the ordinance to collect unpaid taxes, including applicable interest and penalties.

3. Tax exempt sales at Heritage are improperly classified or not supported, resulting in tax underpayments.

Heritage has exempted certain sales activity from the public service tax. The investigative audit disclosed that certain sales transactions were improperly classified as tax exempt or not supported by appropriate exemption certification documentation, resulting in an underpayment of taxes owed to the County estimated at \$41,576 for 2009.

During October through December of 2009, Heritage records listed 35 customer accounts as exempt from the public service tax. The review revealed sales transactions were inappropriately coded or not supported as tax exempt for 27 of the 35 accounts, resulting in public service taxes totaling \$10,394 not collected by Heritage or submitted to the Revenue Department. The vendor refused to provide us with the customer names and supporting documentation to verify the tax exempt status.

For example, Heritage incorrectly considered sales to retailers for resale and agricultural sales as tax exempt. Sales of this type are not considered tax exempt by the County ordinance. Also, the accounts did not reflect their correct location as unincorporated Palm Beach County.

Palm Beach County Ordinance 89-13 (codified in Chapter 17, Article VI of the Palm Beach Code) defines exemptions as follows (Sec. 17-228):

(a) The following purchasers are declared to be exempt from the tax imposed hereby: the purchase of any taxable item by the United States government, the state, all counties, school districts, municipalities of the state, or any other public body as defined in Florida Statutes, § 1.01, Florida Statutes; the purchase of any taxable item by any recognized church within the state for use exclusively for church purposes; and the purchase of gas (natural, liquefied petroleum gas or manufactured) by a public or private utility, either for resale or for use as fuel in the generation of electricity.

(c) A purchaser who claims an exemption under this section shall certify to the seller that he or she qualifies for the exemption, which certification may encompass all purchases after a specified date or other multiple purchases. A seller accepting the certification required by this subsection is relieved of the obligation to collect and remit tax; however, a governmental body that is exempt from the tax shall not be required to furnish such certification and a seller is not required to collect tax from such an exempt governmental body.

Actual sales activity for the balance of 2009 was not obtained from Heritage. Applying the fourth quarter taxes to full calendar year 2009, public services taxes owed by Heritage to the County for the sales transactions miscoded as tax exempt are estimated at \$41,576. This does not include any consideration for interest and penalties that may also be due for 2009 taxes as well as taxes due for 2007 and 2008.

Recommendations:

The County OFMB should:

- A. Require Heritage to correct their customer address records and corresponding tax codes, including the errors noted in this review as well as any other errors identified by Heritage.
- B. Require Heritage to provide proof of exempt status for any customers for which the public service tax was not collected and remitted to the County.

- C. Collect unpaid public service taxes related to inaccurate tax codes assigned by Heritage for tax exempt sales, estimated at \$41,576 for 2009, and consider any interest and penalties that may be applicable. Consider collection of taxes owed from Heritage sales activity in 2007 and 2008 in accordance with the County ordinance.

Management Responses:

- A. OFMB will make a formal request of Heritage to correct their tax code and address records.
- B. OFMB will remind Heritage of the requirement to obtain adequate proof of tax exempt status from applicable customers.
- C. OFMB will take the steps outlined in the ordinance to collect unpaid taxes, including applicable interest and penalties.

4. Improper use of tax code FL554 at Heritage has resulted in tax underpayments.

Heritage established a tax code FL554 that is intended to be used for sales to customers located in municipalities for which a public service tax is not charged. Inappropriate use of this tax code has resulted in underpayment of public service taxes to the County totaling \$6,317 for 2007 through 2009.

The investigative audit disclosed that Heritage used tax code FL554 (6.5% rate) for 39 customer accounts with sales activity from October through December 2009. Using the customer address and Property Appraisers' website, we determined that 32 of 39 (82%) customer accounts had incorrect tax codes assigned. Specifically,

- 19 accounts should have been assigned a tax code for unincorporated Palm Beach County (rather than a municipality) subject to the public service tax.

- 13 accounts were assigned the wrong tax code, and should have been identified in a different municipality subject to that entity's public service tax. These errors did not impact the County.

We requested and Heritage provided three years (2007-2009) of actual sales data for the 19 accounts which should have been identified as unincorporated Palm Beach County and charged the public service tax. Using this data, we determined taxes totaling \$6,317 were not collected, submitted or reported to the Revenue Department. This does not include any consideration for public service taxes due on sales transactions that may have occurred for other accounts that were assigned tax code FL554 during 2007, 2008 and the first three quarters of 2009.

Recommendations:

The County OFMB should:

- A. Require Heritage to correct their customer address records and corresponding tax codes, including the errors noted in this review as well as any other errors identified by Heritage.
- B. Collect unpaid public service taxes totaling \$6,317 related to the inaccurate use of tax code FL554 by Heritage, and consider any interest and penalties that may be applicable under the County ordinance. Consider collection of taxes owed from Heritage sales recorded in other accounts that used tax code FL554 in 2007, 2008 and the first three quarters in 2009, in accordance with the County ordinance.

Management Responses:

- A. OFMB will make a formal request of Heritage to correct their tax code and address records.
- B. OFMB will take the steps outlined in the ordinance to collect unpaid taxes, including applicable interest and penalties.

5. Improper use of tax code FL99 at Heritage has resulted in tax underpayments.

The inappropriate use of tax code FL99 has resulted in Heritage failing to collect and remit public service taxes to the County estimated at \$8,644 in 2009.

Heritage established a tax code FL99 that is not aligned with unincorporated Palm Beach County or any municipality. The tax code is labeled as Florida State Tax, with an assigned rate of 6%. The tax code does not include the unincorporated County public service tax of 10% or any municipal public service tax which may exist in municipal ordinances.

The investigative audit disclosed that tax code FL99 was used on 262 sales transactions involving 59 customer accounts from October through December of 2009. Specifically, we identified that:

- 141 sales transactions involving 45 customers should have been recorded in tax code FL427 (Palm Beach County Residential), with public service taxes collected and remitted to the Revenue Department totaling \$1,705.
- 77 sales transactions involving 11 customers should have been recorded in tax code FL484 (Palm Beach County Commercial), with public service taxes collected and remitted to the Revenue Department totaling \$456.
- 44 sales transactions involving three customers should have been recorded in tax codes for various municipalities, with the municipal public service taxes collected and remitted to the respective municipalities. These errors had no impact on taxes owed to the County.

In total, all 262 sales were incorrectly assigned tax code FL99. Of these, 218 sales transactions involving 56 customers should have been recorded with a tax code representing unincorporated Palm Beach County. This has resulted in unpaid public service taxes totaling \$2,161 for the three-month period.

Actual sales activity for the remainder of 2009 was not obtained from Heritage. Applying the fourth quarter taxes to full year 2009, public services taxes owed by Heritage to the County for the miscoded sales transactions are estimated at \$8,644 for 2009. This does not include any consideration for interest and penalties that may also be due on the \$8,644 owed or public service taxes due on

sales transactions that may have occurred for other accounts that were assigned tax code FL99 during 2007, 2008 and the first three quarters of 2009.

Recommendations:

The County OFMB should:

- A. Require Heritage to correct their customer address records and corresponding tax codes, including the errors noted in this review as well as any other errors identified by Heritage.
- B. Collect unpaid public service taxes related to inaccurate use of tax code FL99 assigned by Heritage, estimated at \$8,644 for 2009, and consider any interest and penalties that may be applicable. Consider collection of taxes owed from Heritage sales activity recorded using FL99 in 2007 and 2008 in accordance with the County ordinance. Consider collection of taxes owed from Heritage sales recorded in other accounts that used tax code FL99 in 2007, 2008 and the first three quarters in 2009, in accordance with the County ordinance.

Management Responses:

- A. OFMB will make a formal request of Heritage to correct their tax code and address records.
- B. OFMB will take the steps outlined in the ordinance to collect unpaid taxes, including applicable interest and penalties.