

**PALM BEACH COUNTY**  
**PUBLIC SERVICE TAX COLLECTION AUDIT**



**SHARON R. BOCK**  
Clerk & Comptroller  
Palm Beach County

**Division of Inspector General**

**Audit Services Unit**

**July 17, 2017**



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Palm Beach County

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Sherry Brown  
Director – Office of Financial Management & Budget  
301 North Olive Avenue  
West Palm Beach, FL 33401

Dear Ms. Brown:

At your office's request, we conducted an audit of the public service tax payments at two vendors within Palm Beach County.

Our primary objective was to determine if the public service taxes for propane sales were remitted by the vendors to the County in accordance with Palm Beach County Ordinance No. 89-13.

Our review was neither designed nor intended to be a detailed study of every process, procedure, transaction or system in each area. Accordingly, the observations and recommendations included in this report are not all-inclusive.

The audit disclosed that the vendors did not comply with County Ordinance 89-13. The vendors did not remit the required public service taxes from propane sales within unincorporated Palm Beach County. Based on records available from January 1, 2014 through December 31, 2016, the vendors did not pay public services taxes totaling \$6,748.14 during this three-year period. Interest owed as of April 30, 2017 totaled \$1,320.41 based on the allowable one percent monthly rate. Therefore, unpaid taxes and interest due totaled \$8,068.55. Public service taxes and related interest remain unpaid from a prior audit, as detailed in the report.

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 the 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. Penalties may also be considered as permitted by County ordinance.

Respectfully submitted,

Roger Trca CIG, CPA, CIA, MBA  
Inspector General  
Clerk & Comptroller Office  
Palm Beach County

cc: The Honorable Sharon R. Bock, Esq. – Clerk & Comptroller, Palm Beach County

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# Executive Summary

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The Clerk & Comptroller's Division of Inspector General performed an audit of public service taxes paid by Aman Petroleum Inc. and Lyons Petroleum Inc. in Palm Beach County. The objective was to determine if the vendors complied with the public service tax requirements of Palm Beach County Ordinance 89-13. The audit was initiated as a result of a request from the County's Office of Financial Management & Budget (OFMB). The scope of the audit included two service stations located in West Palm Beach (Aman Petroleum Inc.) and Lake Worth (Lyons Petroleum Inc.). The Florida Department of State, Division of Corporations website (Sunbiz.org) lists the same officer and registered agent for these two corporations.

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.

Our review of the transaction activity from January 1, 2014 to December 31, 2016 disclosed that the vendors did not comply with Palm Beach County Ordinance 89-13. The 10% public service tax was not collected by the vendors at the time of sale nor was the required tax remitted to the County. As a result, the vendors did not pay public service taxes totaling \$6,748.14 during the three-year period. Interest owed as of April 30, 2017 totaled \$1,320.41 based on the allowable one percent monthly rate. Therefore, unpaid public service taxes and interest due totaled \$8,068.55 for 2014 through 2016.

It should be noted a prior audit of five different vendors, including Aman Petroleum Inc., was conducted and a report was issued on June 12, 2014. This report indicated that Aman Petroleum Inc. did not pay public service taxes (\$3,202.33) and interest (\$393.73) for calendar years 2011 through 2013 totaling \$3,596.06. Aman Petroleum Inc. has failed to make any payment on this past-due balance nor has the vendor paid any taxes owed for subsequent sales incurred from 2014 through 2016. We determined that additional interest owed on the unpaid taxes for sales between 2011 and 2013 totaled \$1,120.82 as of April 30, 2017. The revised unpaid taxes and interest totals \$4,716.88 for 2011 through 2013. County ordinance permits penalties, ranging up to 100% of the unpaid tax, to be assessed for sellers willfully attempting to evade payment of the public service tax. Given the lack of attention placed on correcting the deficiencies since the prior audit, OFMB management should consider assessing allowable penalties.

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# Introduction

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## Overall Conclusion

Aman Petroleum Inc. and Lyons Petroleum Inc. have 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 audit disclosed that the vendors failed to collect the required public service taxes from propane sales within unincorporated Palm Beach County and remit the taxes to the County.

Based on supplier (AmeriGas) records from January 1, 2014 through December 31, 2016, the vendors did not pay public services taxes totaling \$6,748.14 during this three-year period. Interest owed as of April 30, 2017 totaled \$1,320.41 based on the allowable one percent monthly rate. Therefore, unpaid taxes and interest due totaled \$8,068.55 for this current audit.

In addition, based on a prior audit report issued June 12, 2014, Aman Petroleum Inc. has not paid public service taxes (\$3,202.33) and interest (\$393.73) for calendar years 2011 through 2013 as well as incremental interest (\$1,120.82) owed as of April 30, 2017 on the unpaid balance, totaling \$4,716.88.

## Objectives, Scope and Methodology

At the request of OFMB, the Clerk's Division of Inspector General conducted an audit of public service tax payments to Palm Beach County by Aman Petroleum Inc. and Lyons Petroleum. The scope of the audit included two service stations: one owned by Aman Petroleum Inc. located at 2269 South Military Trail in West Palm Beach, and one owned by Lyons Petroleum Inc. located at 8957 Lake Worth Road in Lake Worth. The Florida Department of State, Division of Corporations website (Sunbiz.org) lists the same officer and registered agent for these two corporations.

The objective was to determine if the public service taxes were collected by the vendors for propane sales and remitted to the County in accordance with the Palm Beach County Ordinance No. 89-13.

In order to meet this objective, we confirmed with the Clerk & Comptroller Revenue Department that Aman Petroleum Inc. and Lyons Petroleum Inc. had not paid public service taxes from January 1, 2014 through December 31, 2016. We obtained copies of reports that provided propane tank delivery and billing records from their supplier (AmeriGas); the vendors stated that delivery receipt and sales records were not readily available so reliance was placed on the supplier's records. We obtained the vendors' unit sales prices charged to customers for propane tank exchanges (where customers provided an empty tank) and for propane tank purchases (where customers did not provide an empty tank). We prepared a schedule that documented, for the three-year period, the billing date, number of units delivered and billed, unit sales prices charged by the vendors to customers, calculated sales price, and 10% public service tax owed. In addition, as allowed by County ordinance, unpaid taxes were assessed interest at the rate of one percent per month as of April 30, 2017.

We confirmed that the vendors were located in unincorporated Palm Beach County (not a municipality) by verifying their address to the Property Appraiser's website as well as to the County's Planning, Zoning and Building Department map. 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. The taxes shall be paid monthly on or before the fifteenth day of the following month. Sellers shall apply a flat 10% tax rate unless billing is performed on a monthly cycle.

Aman Petroleum Inc. and Lyons Petroleum Inc. sold propane cylinders by allowing customers to either exchange empty cylinders or purchase a propane cylinder without an exchange.

County ordinance states that sellers shall keep full and complete records showing all purchases and sales of metered or bottled gas. The records shall show the price charged upon each sale and purchase, the date and period of time covered, and the date of payment to the Clerk & Comptroller.

County ordinance states that sellers failing to pay the taxes when due shall be assessed interest at the rate of one percent per month. Further, sellers willfully attempting to evade payment of the public service tax may be liable for penalties ranging up to 100% of the unpaid taxes.

# Observations & Recommendations

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## 1. The two vendors did not comply with the County ordinance and failed to remit public service taxes on propane sales.

Aman Petroleum Inc. and Lyons Petroleum Inc. did not collect or remit the public service gas taxes owed on bottled gas (propane gas) as stipulated by Palm Beach County Ordinance 89-13. This resulted in non-payment of public service taxes and related interest owed to the County totaling \$8,068.55 for calendar years 2014 through 2016.

The ordinance states that failure to charge and collect the public service tax does not remove the seller's obligation to remit the tax. Specifically, the ordinance provides that:

- (a) *It shall be the duty of every seller of electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured) within the unincorporated area of the county to collect from the purchaser thereof for the use of the county the taxes hereby levied at the time of collecting the selling price charged for each and every transaction...*
- (b) *It shall be unlawful for any seller to collect the price of any purchase of electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured) sold within the unincorporated area of the county without at the same time collecting such tax hereby levied in respect to such purchase or purchases unless such seller shall elect to assume and pay such tax without collecting the same from the purchaser...*
- (c) *Any seller failing to collect such tax at the time of collecting the price of any purchase and sale, as aforesaid, where the seller has not elected to assume and pay such tax shall be liable to the county for the amount of such tax in like manner as if the same had actually been paid to the seller, and the county shall bring and cause to be brought all such suits and actions and take such proceedings as may be necessary for the recovery of such tax.*

In addition, the vendors did not maintain complete records for the sales and purchases of bottled gas and taxes paid. County ordinance states:

*"Each and every seller of electricity or metered or bottled gas... within the unincorporated area of the county, with respect to sales and purchases, on which the*

*tax is hereby levied, shall keep full and complete records showing all purchases and sales...., which records shall show the price charged upon each sale and purchase, the date and period of time covered thereby, and the date of payment thereof."*

The Clerk & Comptroller's Revenue Department is responsible for:

- Receiving, recording, and monitoring propane tax payments for Palm Beach County.
- Notifying OFMB of missing tax payments.
- Sending out notices, which define County Ordinance 89-13 requirements and seller's obligations, to sellers identified as not paying the required taxes. The notice also requires the seller to submit a signed affidavit stating that the company did not have sales in unincorporated Palm Beach County if that is the reason for non-payment.
  - Our prior audit disclosed that Aman Petroleum Inc. returned a signed affidavit dated September 20, 2012 stating "*The Company does not have sales in the unincorporated area of Palm Beach County*". We confirmed the vendor was located in unincorporated Palm Beach County by verifying their address to the Property Appraiser's website. Therefore, a false statement was provided by the vendor's president to the County.

OFMB evaluates the underpayments and, if warranted, issues a Notice of Failure to Comply with Public Service Tax Ordinance Section 17-225 of Article VI Palm Beach County Code. If non-compliance continues, the County Attorney's Office may issue a Notice of Intent to Audit Palm Beach County Public Service Tax Assessments, Collections and Remittances.

County ordinance states that sellers failing to pay the taxes when due shall be assessed interest at the rate of one percent per month. Further, sellers willfully attempting to evade payment of the public service tax may be liable for penalties ranging up to 100% of the unpaid taxes.

The following tables summarizes the public service taxes (\$6,748.14) and interest (\$1,320.41) owed as of April 30, 2017 totaling \$8,068.55 for the current audit of calendar years 2014 through 2016.

	2014	2015	2016	Total
<b>Aman Petroleum Inc.</b>				
Unpaid Taxes	\$1,348.24	\$2,208.30	\$1,775.27	\$5,331.81
Interest	\$418.52	\$452.05	\$153.98	\$1,024.55
Total Taxes & Interest	\$1,766.76	\$2,660.35	\$1,929.25	\$6,356.36
<b>Lyon's Petroleum Inc.</b>				
Unpaid Taxes	\$432.29	\$544.75	\$439.29	\$1,416.33
Interest	\$147.10	\$111.06	\$37.70	\$295.86
Total Taxes & Interest	\$579.39	\$655.81	\$476.99	\$1,712.19
<b>Summary</b>				
Unpaid Taxes	\$1,780.53	\$2,753.05	\$2,214.56	\$6,748.14
Interest	\$565.62	\$563.11	\$191.68	\$1,320.41
Total Taxes & Interest	\$2,346.15	\$3,316.16	\$2,406.24	\$8,068.55

It should be noted that we conducted a prior audit in 2014 of five different vendors, which included the same Aman Petroleum Inc. service station located at 2269 South Military Trail in West Palm Beach. The report, issued on June 12, 2014, disclosed that Aman Petroleum Inc. did not pay public service taxes (\$3,202.33) and interest (\$393.73) totaling \$3,596.06 for calendar years 2011 through 2013. Aman Petroleum Inc. has failed to make any payment on this past-due balance nor has the vendor paid any taxes owed for subsequent sales incurred from 2014 through 2016. We determined that additional interest owed on the unpaid taxes for sales between 2011 and 2013, at one percent per month, totaled \$1,120.82 as of April 30, 2017. The revised unpaid taxes and interest totals \$4,716.88, as summarized below. County ordinance permits penalties, ranging up to 100% of the unpaid tax, to be assessed for sellers willfully attempting to evade payment of the public service tax. Given the lack of attention placed on correcting the deficiencies since the prior audit, OFMB management should consider assessing allowable penalties.

	2011	2012	2013	Total
<b>Aman Petroleum Inc. Prior Audit</b>				
Unpaid Taxes**	\$0.00	\$971.80	\$2,230.53	\$3,202.33
Interest as of May 31, 2014	\$0.00	\$176.10	\$217.63	\$393.73
Incremental Interest @ April 30, 2017		\$340.13	\$780.69	\$1,120.82
Total Taxes & Interest	\$0.00	\$1,488.03	\$3,228.85	\$4,716.88

\*\* No sales recorded in 2011

## **Recommendations:**

The County OFMB should:

- A. Collect the unpaid public service taxes for calendar years 2014 through 2016 and interest due as of April 30, 2017 from Aman Petroleum Inc. (\$6,356.36) and Lyons Petroleum Inc. (\$1,712.19) for a combined total of \$8,068.55. Consider assessing a penalty against the vendor, which is allowed by County ordinance (ranging up to 100%) for any sellers willfully attempting to evade payment of the public service tax.
- B. Collect the unpaid public service taxes of \$3,202.33 and interest due of \$393.73 for calendar years 2011 through 2013 that was previously assessed to Aman Petroleum Inc. but not collected as well as the incremental interest due of \$1,120.82 as of April 30, 2017 for a total of \$4,716.88. Consider assessing a penalty against the vendor, which is allowed by County ordinance (ranging up to 100%) for any sellers willfully attempting to evade payment of the public service tax.
- C. Require Aman Petroleum Inc. and Lyons Petroleum Inc. to initiate payment of taxes owed on a monthly basis, beginning with transactions incurred since January 1, 2017.
- D. Require the vendors to keep records as required by County ordinance, including the price charged upon each sale, the date and period of time covered, and the date of payment to the Clerk & Comptroller of the taxes owed.

## **Management Responses:**

- A. OFMB Collections will send determination letters to the vendor for the amounts due per the audit report.
- B. OFMB Collections is continuing to work with the County Attorney's office to evaluate pursuing litigation and assessing a penalty to recover the amounts past due on the prior audit done in 2014.
- C. Aman Petroleum Inc. and Lyons Petroleum Inc. began remitting their monthly public service taxes beginning with April, 2017. We will request they remit their back taxes for the months of January through March of 2017, plus interest.
- D. OFMB will inform the vendor that they need to maintain and keep the required records per Palm Beach County ordinance. OFMB will also provide them with a copy of the ordinance and reference the specific section.