

EXECUTIVE SUMMARY



TO: Jim Scholl, City Manager
FROM: Mark Finigan, Assistant City Manager
DATE: March 4, 2009
SUBJECT: Local Option Fuel Taxes

ACTION STATEMENT:

This Executive Summary is intended to inform the Key West City Commission of discussions held by the Monroe County Commission on January 28, 2009 which could have an impact on current City of Key West gas tax collections. The County has solicited comments from the City of Key West regarding the County's intent to replace existing Interlocal Agreements and a proposed additional local option gas tax under consideration by the Monroe County Commission.

Issue 1.

Currently, there is a 6 cent levy imposed on every net gallon of motor and diesel fuel sold within the county pursuant to Section 336.025(1) (a), F.S. (2008). The City of Key West shares in such levy.

Currently, the distribution of proceeds from the 6 cent levy described above is in accordance with a standing interlocal agreement between Monroe County and the City of Key West, an agreement which has been governing distribution of the 6 cent Local Option Fuel Tax levy for years. Specifically, Key West receives 36.5 percent (FY 08-09 budget of \$1.2M) of the 6 cents imposed on every net gallon of motor and diesel fuel sold within the county.

The governing interlocal agreement for the 6 cent Local Option Fuel Tax between the City of Key West and Monroe County will expire June 30 of this year. It is not clear, in my opinion, based on correspondence from the County Attorney, if the County desires to continue the existing basis of distribution, seek a new interlocal agreement based on some other methodology for distribution or in the absence of an interlocal agreement fall back on a distribution method controlled by a state formula. However, what is clear is that each distribution scenario has a different financial impact to the amount of Local Option Fuel Tax distributed to the City.

Issue 2.

On March 18, 2009 the Monroe BOCC has scheduled a public hearing to consider the levy of an additional 1 to 5 cents upon every net gallon of motor fuel sold within the

county. Diesel fuel is not subject to this tax. Five (5) cents is the maximum amount that can be levied pursuant to this portion of Local Option Fuel Tax legislation.

What the Monroe BOCC is seeking from the City of Key West Commission is a position on the new levy and though not directly solicited, it is incumbent on the City of Key West to articulate in clear terms our position on the manner in which proceeds will be distributed if the County does impose any additional amount between 1 to 5 cents.

Issue 3.

There is another type of gas tax referred to as the "Surplus Fuel Tax" which is distributed to Monroe County by the State Board of Administration. By law, this constitutional fuel tax received by the County must be expended on public roads in the county road system, which can be exclusive of city or municipal public roads. Up through 2003 the County did not share such proceeds with any of the municipalities in Monroe County. Attorney General Opinion 2003-03 advised that such roads may be a city street system rather than in the county street system. Based on the AGO, Monroe County Attorney Memorandum of Guidance #2005-1 concluded that it is permissible for the "Constitutional Gas Tax" to be apportioned to the municipalities, based on percentage of collection. Municipalities in County of Monroe requested that proportionate shares of the County's receipt of Surplus Fuel Tax, hereinafter designated the "Constitutional Gas Tax," be distributed to them for purposes of maintaining their own roads. In 2005, Monroe County, Islamorada, Village of Island, City of Marathon, City of Layton and the City of Key Colony entered into an Interlocal Agreement defining the percentages of distribution and the appropriate uses of such proceeds.

From what I can conclude the City of Key West requested to participate but for some reason was not part of the resulting Interlocal Agreement. The current issue is the County has indicated its intent to consider discontinuing the funding outlined under the ILA. There would be no immediate impact to the City of Key West; however, I wanted to draw your attention to the issue since it was part of the County Attorney's January 29, 2009 correspondence addressed to all municipalities in the County.

BACKGROUND:

County governments are authorized to levy up to 12 cents of local option fuel taxes in the form of three separate levies. The first is a tax of 1 cent on every net gallon of motor and diesel fuel sold within a county. Known as the Ninth-Cent Fuel Tax, this tax may be authorized by an ordinance adopted by an extraordinary vote of the governing body or voter approval in a countywide referendum. Generally, the proceeds may be used to fund transportation expenditures. Currently, there is no levy by the County for the authorized Ninth-Cent Fuel Tax nor are there any discussions (from what I have been able to determine) ongoing by the County to consider.

The second is a tax of 1 to 6 cents on every net gallon of motor and diesel fuel sold within a county. This tax may be authorized by an ordinance adopted by a majority vote of the governing body or voter approval in a countywide referendum. The proceeds must be used to fund transportation expenditures, pursuant to State guidelines.

The third tax is a 1 to 5 cents levy upon every net gallon of motor fuel sold within a county. Diesel fuel is not subject to this tax. This additional tax shall be levied by an ordinance adopted by a majority plus one vote of the membership of the governing body or voter approval in a countywide referendum. Proceeds received from this additional tax may be used for transportation expenditures needed to meet the requirements of the capital improvements element of an adopted local government comprehensive plan.

Distribution of Proceeds

The local option fuel taxes on motor fuel shall be distributed monthly by the DOR to the county reported by the terminal suppliers, wholesalers, and importers as the destination of the gallons distributed for retail sale or use. The taxes on diesel fuel shall be distributed monthly by the DOR to each county according to the procedure specified in law.

The county's proceeds from the 1 to 6 cents and 1 to 5 cents fuel taxes (if levied) shall be distributed by the DOR according to the distribution factors determined at the local level by interlocal agreement between the county and municipalities within the county's boundaries. If no interlocal agreement is established, then the distribution shall be based on the transportation expenditures of each local government for the immediately preceding 5 fiscal years, as a proportion of the total of such expenditures for the county and all municipalities within the county. These proportions shall be recalculated every 10 years based on the transportation expenditures of the immediately preceding 5 years.

FINANCIAL IMPACT:

As previously stated, any adverse change to the current distribution method/percentage outlined in the Interlocal Agreement which governs the 6 cent local option gas tax could impact the City's ability to provide transit services to the Lower Keys and Key West as well as attempting to address the ongoing exhaustive transportation infrastructure needs of the City. In short, the 36.5 percent of total county wide collections the City currently enjoys cannot be reduced - and depending on the manner of calculation possibly support a higher distribution percentage.

To the extent the County moves forward with a 1 to 5 cent local gas tax levy the distributions to the City would be a "new" funding source and could provide added help to the City's transportation infrastructure capital requirements. Additionally, the methodology of distribution would need to be consistent with that for the 6 cent local option gas tax levy.

Finally, if the County elects not to discontinue funding for local governments under the Constitutional gas tax Interlocal Agreement, the City of Key West should formally request inclusion, at some level, with future distributions.

RECOMMENDATION:

- 6 Cent Local Option Gas Tax - City of Key West reserves the right to participate in any discussions concerning the current or future distribution thereof, and further puts forth the position that any new ILA must include a distribution percentage equal to or greater than the current 36.5 percent of total County collections as defined in Florida Statutes.
- 1 to 5 Cent Local Option Gas Tax – A recommendation to the BOCC by the City Commission regarding the imposition of a 1 to 5 cent local option gas tax. Furthermore, the City of Key West reserves the right to participate in any future discussions concerning the distribution of any additional local option gas tax.
- Constitutional Gas Tax – If the County elects not to discontinue funding for local governments under the Constitutional gas tax Interlocal Agreement, the City of Key West should formally request inclusion, at some level, with future distributions.