



AUDITOR GENERAL
WILLIAM O. MONROE, CPA



COUNTY TRANSPORTATION TRUST FUNDS
Operational Audit

October 1, 2002, through September 30, 2003

COUNTY TRANSPORTATION TRUST FUNDS

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SUMMARY

This report provides the results of our audit of motor fuel tax moneys distributed to selected counties during the period October 1, 2002, through September 30, 2003. Our audit disclosed the following:

Finding No. 1: Nineteen of the 20 counties tested did not maintain, through the use of separate funds, separate general ledger codes, or some other means, accounting records to provide separate accountability for each type of fuel tax received and expended.

Finding No. 2: Ten of the 20 counties tested used fuel taxes for unauthorized purposes, including \$14.3 million for indirect costs. The use of fuel taxes for indirect costs is questionable under current law. Because there are legitimate indirect costs that may be associated with transportation functions specified in the various statutes that specify the authorized uses of fuel taxes, the Legislature should clarify the appropriateness of using fuel taxes for such costs.

Finding No. 3: Simplification and clarification of the Legislature's intent as to the proper use of fuel taxes, and consolidation of these laws, would simplify the recordkeeping requirements and provide greater assurance that fuel taxes are used by counties for authorized purposes.

This audit was coordinated by Alma Wade, CPA, and supervised by Ted J. Sauerbeck, CPA. Please address inquiries regarding this report to James M. Dwyer, CPA, Audit Manager, via E-mail at jimdwyer@aud.state.fl.us or by telephone at **(850) 487-9031**.

This report, as well as other audit reports prepared by the Auditor General, can be obtained on our Web site at <http://www.state.fl.us/audgen>; by telephone at (850) 487-9024; or by mail at G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.

BACKGROUND

The Florida Constitution and various Florida Statutes contain provisions for the levy of taxes on the sale of motor fuels. The moneys derived from these motor fuel taxes are collected by the Florida Department of Revenue (FDOR) and distributed to various State agencies, counties, and municipalities to be used for statutorily mandated purposes. According to data provided by the FDOR and the State Board of Administration, \$814.1 million was distributed to the counties during the period October 1, 2002, through September 30, 2003, as follows:

- Constitutional Fuel Tax of \$187.2 million
- County Fuel Tax of \$83.9 million
- Local Option Fuel Tax of \$370.7 million
- Additional Local Option Fuel Tax of \$103.6 million
- Ninth-Cent Fuel Tax of \$68.7 million

Various Florida Statutes place restrictions as to how fuel taxes, including the constitutional fuel tax, are to be expended. Section 336.022(2), Florida Statutes, requires that the Auditor General periodically audit each county transportation trust fund to assure that constitutional fuel taxes distributed to each county are expended in accordance with law.

FINDINGS AND RECOMMENDATIONS

Finding No. 1: Accountability for Restricted Fuel Tax Revenues

Section 336.022(1), Florida Statutes, requires each county to establish and maintain a transportation trust fund for all transportation-related revenues and expenditures, and to deposit all moneys received by the county for transportation into this fund. Expenditures from the fund must be for transportation expenditures authorized by law. Various Florida Statutes place restrictions on how motor fuel taxes, including the constitutional fuel tax, are to be expended. Some authorized uses may apply for all or some of the fuel taxes; however, some uses authorized for certain fuel taxes may be unauthorized for other fuel taxes. Types of fuel taxes available to counties for transportation expenditures, and the laws imposing restrictions on the use of such taxes, are as follows:

Fuel Tax Type	Authorizing Laws	Laws Imposing Restrictions on Use
Constitutional Fuel Tax	Article XII, Section (9)(c), State Constitution, and Section 206.41(1)(a), Florida Statutes	Article XII, Section (9)(c)5., State Constitution, and Section 206.47(7), Florida Statutes
County Fuel Tax	Section 206.41(1)(b), Florida Statutes	Section 206.60, Florida Statutes
Local Option Fuel Tax	Sections 206.41(1)(e), 206.87(1)(c), and 336.025(1)(a), Florida Statutes	Sections 336.025(1)(a), (1)(c), and (7), Florida Statutes
Additional Local Option Fuel Tax	Sections 206.41(1)(e) and 336.025(1)(b), Florida Statutes	Sections 336.025(1)(b), (1)(c), and (7), Florida Statutes
Ninth-Cent Fuel Tax	Sections 206.41(1)(d) and 206.87(1)(b), Florida Statutes	Sections 336.021(1)(a) and (3), and Section 336.025(7), Florida Statutes

Counties are responsible for establishing adequate controls that provide reasonable assurance that all transportation-related expenditures are properly authorized by State and local law. Because the restrictions as to the use of the fuel taxes vary for each type, to provide such assurance, counties must maintain separate accountability for fuel tax revenues by establishing either a separate fund to account for each fuel tax revenue type or by using separate general ledger codes or other means to establish separate accountability within a single fund. Separate accountability for each fuel tax revenue type is necessary so that county management can plan and monitor the use of fuel tax revenue in a manner consistent with the restrictions and authorized use requirements associated with each fuel tax revenue type.

Our audit disclosed that of the 20 counties tested (see Exhibit A), only Hillsborough used a separate special revenue fund, separate general ledger codes, or other means to maintain separate accountability for each fuel tax revenue type. One county (Duval) accounted for the fuel tax revenues in the General Fund. In these instances, the counties' records were not sufficient to clearly demonstrate that all fuel tax revenue types were used only for the authorized purposes prescribed for each particular fuel tax revenue type. For example, Polk County used \$75,338 of fuel taxes for a stand-alone sidewalk construction project prior to July 1, 2003. While the authorized uses for the constitutional fuel tax allow, in certain circumstances, expenditures for the construction and installation of sidewalks, the authorized uses for the local option fuel taxes prior to July 1, 2003, did not include the construction of stand-alone sidewalks (see Attorney General Opinion 2000-37, wherein the Attorney General opined that taxes collected pursuant to Section 336.025, Florida Statutes, may not be used for a stand-alone sidewalk construction project). Nor was there legal authority for the county fuel and ninth-cent fuel taxes to be used for sidewalk construction prior to July 1, 2003. Absent records identifying which specific fuel tax revenue types were used for sidewalk project expenditures, we could not conclusively determine whether only those fuel tax revenue types authorized to be used for sidewalk projects were actually used for sidewalk-related expenditures.

The above instances of lack of separate accountability may have been, to some extent, a result of the requirements of Section 336.022(1), Florida Statutes, which specifies the use of a single transportation trust fund, but does not require separate accountability for each fuel tax revenue type. We noted that 11 of the above-noted 19 counties used a single transportation trust fund to account for all fuel tax revenues, consistent with the requirements of Section 336.022(1), Florida Statutes. However, these counties did not provide for separate accountability by fuel tax revenue type. The other 8 counties (Clay, Flagler, Hernando, Lafayette, Orange, Pinellas, Polk, and Suwannee) accounted for fuel tax revenue types through the establishment of multiple special revenue or other funds rather than using the single county transportation trust fund required by Section 336.022(1), Florida Statutes.

Recommendation: The Legislature should consider enacting legislation amending Section 336.022, Florida Statutes, to clarify that separate accountability must be maintained for each fuel tax revenue type. Also, counties should establish separate accountability for each restricted fuel tax revenue type.

Auditee Response and Auditor Clarification:

The County Manager for the Clay County Board of County Commissioners, in his response to this finding, indicated confusion as to what actions Clay County should take. As stated in our recommendation for this finding, all counties should establish separate accountability for each restricted fuel tax revenue type. This should be accomplished through the use of separate general ledger asset, liability, revenue, expenditure, and fund equity account codes for each fuel tax revenue type.

The Chairman of the Lafayette County Board of County Commissioners, in his response to this finding, indicated that separate accountability for fuel tax revenues would create more work and provide little in the way of helpful information. We believe that

separate accountability is necessary to demonstrate proper use of public resources, and that such accountability can be achieved at minimal cost using the funds and accounts established by Department of Financial Services' Uniform Accounting System Manual.

The Chairman of the Pinellas County Board of County Commissioners, in her response to this finding, indicated that Pinellas County maintains separate accountability for Constitutional, County, and Ninth-Cent fuel tax revenue types by the use of individual revenue accounts within the Transportation Trust Fund. However, while this allows the County to track the amount of these fuel taxes received, the County did not use separate expenditure accounts to track expenditures by fuel tax revenue type. As such, the County did not maintain separate accountability for each of these fuel tax revenue types.

Finding No. 2: Unauthorized Use of Fuel Taxes

As noted previously, authorized uses of fuel taxes, including the constitutional fuel tax, are limited to specific types of transportation-related expenditures. The Attorney General has opined in numerous opinions, most recently in Opinion No. 2002-02, that “where a statute enumerates things upon which it operates, it is ordinarily construed as excluding from its operation all things not expressly mentioned. Thus a listing of expenditures allowed for local option gas tax revenues precludes use of such revenues for any other purpose.” Accordingly, fuel taxes may not be used for any purpose not expressly authorized by the laws prescribing the uses of fuel taxes. As discussed in Finding No. 1, because of the lack of separate accountability for the different fuel tax revenue types, we were unable in many instances to determine, with certainty, whether these various fuel tax revenue types were expended for authorized purposes. However, as discussed below, we determined that some fuel taxes were used for purposes not expressly authorized for any fuel tax revenue types.

Our audit disclosed that 10 counties (Broward, Hernando, Hillsborough, Lafayette, Pinellas, Polk, St. Lucie, Sarasota, Suwannee, and Volusia) used a total of \$14,325,713 of fuel tax revenues for indirect costs. These costs of general governance were allocated to benefiting departments through a cost allocation procedure in 9 counties and a three percent administrative fee in 1 county (Suwannee). Other counties may have also used fuel tax revenues for indirect costs. However, we could not conclusively determine whether this was the case because of the commingling of unrestricted resources with fuel tax revenues by some counties and the lack of separate accountability for fuel tax revenues as discussed in Finding No. 1.

None of the fuel taxes are expressly authorized to be used for indirect costs. Accordingly, the use of fuel taxes for indirect costs is questionable. Because there are legitimate indirect costs that may be associated with the transportation functions specified in the various statutes that specify the authorized uses of the fuel tax moneys, we believe that the Legislature should clarify the appropriateness of using fuel taxes for such costs (see further discussion in Finding No. 3).

Our audit also disclosed the following instances in which fuel tax revenues appear to have been used for unauthorized purposes:

- Polk County expended a total of \$93,612 for the payment of attorney fees and settlements of tort claims against the County's Transportation Department. We are unaware of any authority to use fuel taxes for these purposes.
- Lafayette County expended \$3,000 for the payment of surveying the parking lot of the County's new library building. In addition, \$2,500 was spent for equipment, and maintenance of equipment, for mowing and maintenance of cemeteries. We are unaware of any authority to use fuel taxes for these purposes.

Recommendation: Counties should ensure that fuel tax revenues are used only for transportation-related expenditures specifically authorized by law. Also, the Legislature should clarify whether fuel taxes should be used for indirect costs. If the Legislature determines that the use of fuel taxes for such costs should be allowable, it should amend the appropriate sections of law accordingly.

Finding No. 3: Structure and Diversity of Laws Governing the Use of Fuel Taxes

As discussed in Finding No. 1, motor fuel taxes may be used for various purposes depending on the source of such taxes as prescribed in Florida Statutes. Restrictions as to the authorized uses of such taxes may be very broad or very narrow. For example, local option fuel taxes, and the ninth-cent fuel tax, may be used for “transportation expenditures,” which, as defined by Section 336.025(7), Florida Statutes, means expenditures for the following programs:

- Public transportation operations and maintenance.
- Roadway and right-of-way maintenance and equipment and structures used primarily for the storage and maintenance of such equipment.
- Roadway and right-of-way- drainage.
- Street lighting.
- Traffic signs, traffic engineering, signalization, and pavement markings.
- Bridge maintenance and operation.
- Debt service and current expenditures for transportation capital projects in the foregoing areas, including construction or reconstruction of roads and sidewalks.

Our audit disclosed that most of the counties we tested interpreted the “public transportation operations and maintenance” language in this section to permit the use of fuel tax moneys for general operating expenses of the transportation departments of the counties. For example, travel costs for transportation department employees, computer software, communication service, and equipment and vehicles were paid from fuel tax revenues. The “public transportation operations and maintenance” language as used in Section 336.025(7), Florida Statutes, could be interpreted to authorize the above-noted types of activities. However, it is also possible that this language could be interpreted to authorize a much narrower range of activities than described above. For example, the Attorney General, in Attorney General Opinion 2000-37, opined that taxes collected pursuant to Section 336.025, Florida Statutes, could not be used for tree trimming projects when the trees are not on or adjacent to roads or streets.

The authorized uses of some fuel taxes, while narrow in scope at the time such taxes were initially enacted by the Legislature, have been considerably broadened over the years. For example, Chapter 93-71, Laws of Florida, expanded the authorized use of the constitutional fuel taxes to include road maintenance, including the construction and installation of traffic signals, sidewalks, bicycle paths, and landscaping necessary for the safe and efficient operation of roads. Chapter 95-257, Laws of Florida, further expanded the authorized use of the constitutional fuel taxes by removing the requirement that such construction and installation to be necessary for the safe and efficient operation of roads. Also, the authorized use of local option fuel taxes has been expanded numerous times by acts of the Legislature, including Chapter 2003-86, Laws of Florida, which expanded the use of the local option fuel taxes to include not only projects included in a county’s adopted comprehensive plan, but

also expenditures needed to meet immediate local transportation problems and other transportation-related expenditures critical for building comprehensive roadway networks.

The diverse, and somewhat cumbersome, manner in which the statutes currently prescribe the manner in which fuel taxes can be used, which is a byproduct of the numerous acts enacted to broaden the authorized uses of fuel taxes, makes it difficult for counties to clearly determine appropriate uses of fuel taxes. This may have contributed to the unauthorized uses of fuel taxes discussed in Finding No. 2.

Simplification and clarification of the Legislature's intent as to the proper use of fuel taxes, and consolidation of these laws, could provide greater assurance that fuel taxes are used by counties for authorized purposes. Such simplification should include a single definition of allowable transportation expenditures that would apply to all fuel tax types.

Recommendation: The Legislature should consider enacting legislation to simplify, clarify, and consolidate laws authorizing uses of fuel taxes, including a single definition of allowable transportation expenditures applicable to all fuel taxes.

Auditee Response and Auditor Clarification:

The CFO and Director of the Broward County Finance and Administrative Services Department, in his response to this finding, stated that to "consolidate all the statutes utilizing the most restrictive requirements, for example, could result in drastic changes to the way counties bid for improvement projects or otherwise conduct their transportation business and do harm to the quality of roads in the counties." We are recommending that the Legislature consider enacting legislation that would provide for a single definition of allowable transportation expenditures for all fuel tax revenue types. However, we are not advocating that the Legislature do so by using the most restrictive use currently provided by law, and we believe the Legislature, in determining a single definition, will consider the impact on county transportation needs in establishing an appropriate definition.

SCOPE AND OBJECTIVES

The scope of this audit included all motor fuel tax moneys distributed to the 67 counties during the period October 1, 2002, through September 30, 2003 (the 2002-2003 county fiscal year), and a determination, on a test basis, as to whether these restricted revenues were properly expended by the counties for statutorily authorized purposes. Fuel tax distributions to State agencies and municipalities were not included within the scope of this audit.

Our objectives were to: (1) determine the extent to which management controls promoted and encouraged the achievement of management's control objectives in the categories of compliance with controlling laws, administrative rules, and other guidelines; the economic and efficient administration of the functions of receiving and disbursing the fuel taxes; the reliability of financial records and reports; and the safeguarding of assets; (2) evaluate management's performance in administering assigned responsibilities in accordance with applicable laws, administrative rules, and other guidelines; and (3) make recommendations to improve accountability for fuel taxes.

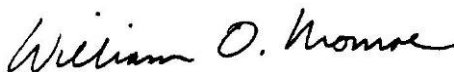
METHODOLOGY

The methodology used to develop the findings in this report included the examination of pertinent records of the counties in connection with the application of procedures required by applicable standards contained in *Government Auditing Standards* issued by the Comptroller General of the United States.

To accomplish our audit objectives, it was not feasible to examine the operations of each of the 67 counties. We, therefore, selected 20 counties for examination. The 20 counties selected, which were chosen based on factors such as population size and amount of fuel tax moneys received, are shown on Exhibit A.

AUTHORITY

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.

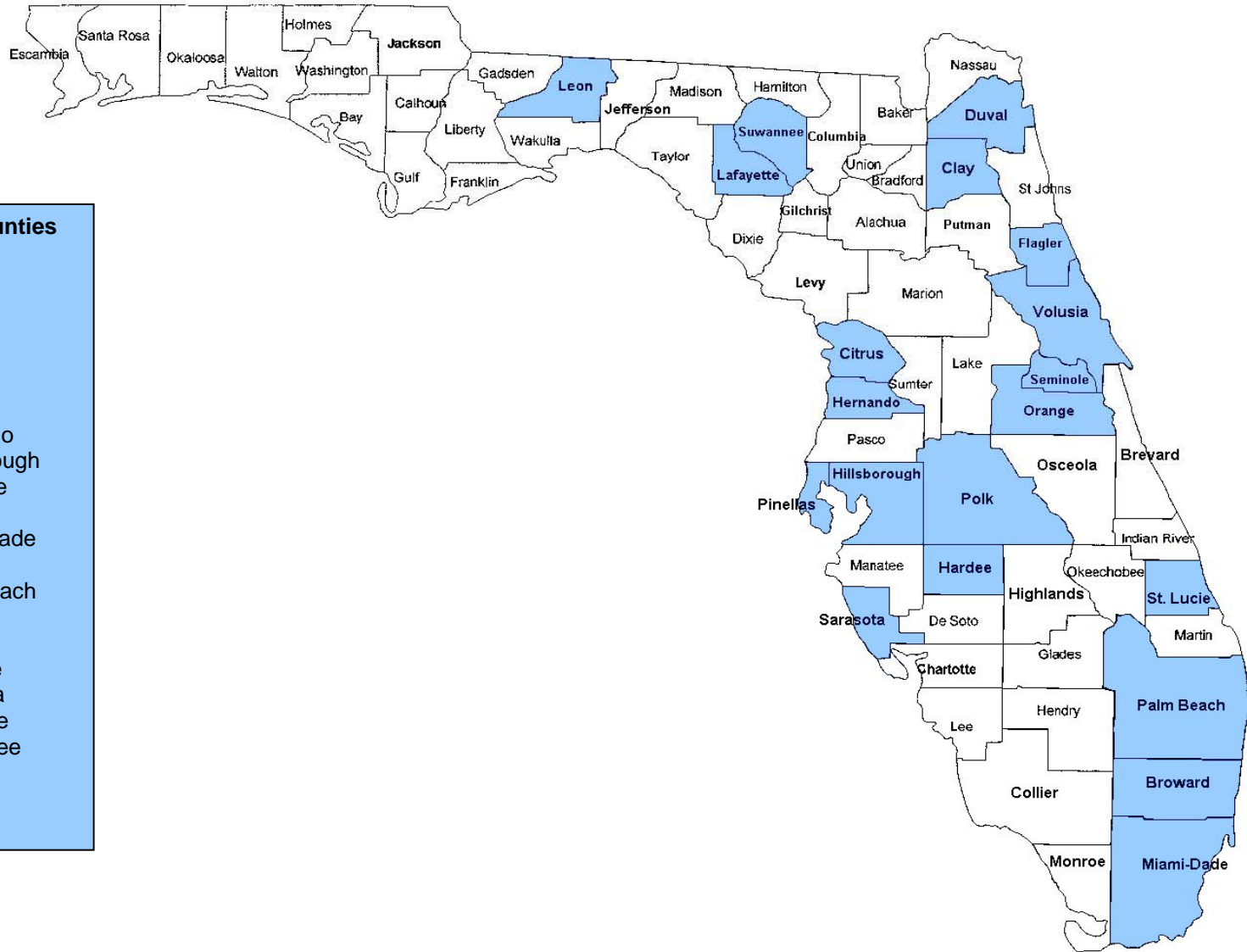


William O. Monroe, CPA
Auditor General

AUDITEE RESPONSES

Responses to our preliminary and tentative findings received from the 20 counties selected for examination are included in this report as Exhibit B.

EXHIBIT – A
COUNTIES SELECTED FOR AUDIT



- Sample Counties**
1. Broward
 2. Citrus
 3. Clay
 4. Duval
 5. Flagler
 6. Hardee
 7. Hernando
 8. Hillsborough
 9. Lafayette
 10. Leon
 11. Miami-Dade
 12. Orange
 13. Palm Beach
 14. Pinellas
 15. Polk
 16. St. Lucie
 17. Sarasota
 18. Seminole
 19. Suwannee
 20. Volusia

Exhibit – B Responses from Auditees

Broward, Citrus, Clay, Duval, and Flagler Counties

Hardee, Hernando, Hillsborough, Lafayette, Leon, Miami-Dade, Orange, and Palm Beach Counties

Pinellas, Polk, Seminole, St. Lucie, Suwannee, and Volusia Counties