



Internal Audit Department

Audit Report 2016-1

Authorized Uses of Motor Fuel Taxes

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The files and draft versions of audit reports remain confidential and protected from public records requests during an active audit under *Nicolai v. Baldwin (Aug. 28, 1998 DCA of FL, 5th District)* and Florida Statute 119.0713. Work-papers supporting the observations noted within this report will become public record and can be made available upon request once the final audit report has been issued.

The draft audit report was released to the Department for Management Response on March 1, 2016. The Management Response was prepared by Mark Isackson, Director of Corporate Finance and Management Services, and was received on March 14, 2016.

Summary

The State of Florida Auditor General Report 2014-068 was issued in December 2013 and stated the following relative to internal controls for the appropriate use of motor fuel tax revenue:

“The BCC is responsible for establishing adequate controls to provide reasonable assurance that fuel taxes are spent only for authorized purposes. As noted above, some authorized uses may apply to all or some of the fuel taxes; however, some uses authorized for certain fuel taxes may not be authorized for other fuel taxes. Consequently, the BCC must separately account for fuel taxes with different authorized uses to demonstrate the fuel taxes were spent for authorized purposes.”

The following motor fuel taxes are budgeted in Collier County:

Motor Fuel Tax	Amount of Levy	FY15 Revenue
Constitutional Fuel Tax	Two (2) Cents	\$4,122,525.38
County Motor Fuel Tax	One (1) Cent	\$1,807,290.87
Ninth Cent Motor Fuel Tax	One (1) Cent	\$1,456,775.15
Five Cents Local Option Fuel Tax	Five (5) Cents	\$5,238,930.73
Six Cents Local Option Fuel Tax	Six (6) Cents	\$6,921,218.99
Total	Fifteen (15) Cents	\$19,546,741.12

Collier County currently budgets all of the motor fuel tax revenue in the Roads Capital Fund (313). As currently budgeted, the Auditor General recommendation to separately account for fuel taxes with different authorized uses to demonstrate the fuel taxes were spent for authorized purposes is not being met.

It is noted that the FY16 adopted Roads Capital Fund (313) revenue budget includes a General Fund transfer of \$14,559,800 and an Unincorporated General Fund transfer of \$2,427,300. An argument could be made that the ad valorem transfers are supporting activities that are not authorized uses of all motor fuel taxes. Since the restrictions as to authorized uses vary among the motor fuel taxes, the Auditor General recommends maintaining 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. As currently budgeted, it is difficult to discern that a specific funded program activity was funded by either motor fuel tax revenue or with ad valorem dollars.

The following observations were generated during this review of Collier County uses of motor fuel taxes:

1. There are funded programs in Roads Capital Fund (313) that are not authorized uses of the County (7th Cent) Motor Fuel Tax (one cent per gallon of motor fuel sold within the county).
 - a. Traffic signals are not an authorized use of the County Fuel Tax. This mirrors the specific concern raised by the Auditor General in Okaloosa County audit report 2014-068.
 - b. Traffic signs are not an authorized use of the County Fuel Tax, as per F.S. 206.60(1) (b).
 - c. Public transportation operations and maintenance are not authorized uses of the County Fuel Tax, as per F.S. 206.60(1) (b).
 - d. Sidewalks are not an authorized use of the County Fuel Tax, as per F.S. 206.60(1)(b).
 - e.
2. There are funded programs in Roads Capital Fund (313) that are not authorized uses of the Constitutional Fuel Tax (two cents per gallon of motor fuel sold within the county).
 - a. Public transit operations and maintenance are not authorized uses of the Constitutional Fuel Tax, as per F.S. 334.03.

3. There are funded programs in Roads Capital Fund (313) that are either maintenance-oriented or are not an authorized use of any motor fuel tax.
 - a. The Asset Management Funded Program is focused on optimizing the life cycle of the Growth Management Division's infrastructure assets and, as such, appears to be more maintenance-oriented.
 - b. The Planning Consultant Funded Program included an Everglades Airpark Seaplane Base Feasibility Study that is not an authorized use of motor fuel taxes.
 - c. Grant application expenses are not an authorized use of motor fuel taxes.
 - d. Pedestrian pathways not included as part of road construction/reconstruction is not an authorized use of motor fuel taxes.
4. Landscaping is only a specifically authorized use of the Constitutional Fuel Tax.
5. The Collier County Capital Improvement Element for Transportation does not specify the capital projects that are funded with the Five Cents Local Option Motor Fuel Tax.

Objective

The objective of the audit was to review the uses of motor fuel taxes in Collier County and determine if the current uses were consistent with Florida Statutes. This was initiated at the request of the Clerk's Finance Director as a result of Auditor General audit findings relative to authorized uses of motor fuel taxes in Okaloosa County.

Scope

The review consisted of, but was not limited to the following tasks:

- Review of Florida Statutes relative to authorized uses of motor fuel taxes;
- Review of Florida Auditor General audit reports relative to authorized uses of motor fuel taxes;
- Review of Attorney General Opinions relative to Motor Fuel Taxes;
- Review of applicable Board of County Commissioner (BCC) Ordinances and Resolutions;
- Review of Gas Tax Bond Documents;
- Review of applicable BCC Meeting Minutes, Agenda Items, and Backup Documentation;
- Review of fuel taxes levied in similar Florida Counties;
- Compare how similar Florida Counties administer motor fuel tax revenues.

Background

Collier County receives annual revenues from the following motor fuel taxes: the Constitutional Fuel Tax, the County (7th Cent) Fuel Tax, the Ninth Cent Fuel Tax, the Six Cents Local Option Fuel Tax, and the Five Cents Local Option Fuel Tax. The following information regarding the respective motor fuel taxes and authorized uses was excerpted from Florida Statutes. Adopted local option fuel tax ordinances were obtained through Board Minutes and Records.

Summary of Gas Taxes and Authorized Uses

F.S. 206.41 State taxes imposed on motor fuel.

- (1) The following taxes are imposed on motor fuel under the circumstances described in subsection (6):
 - (a) An excise or license tax of 2 cents per net gallon, which is the tax as levied by s. 16, Art. IX of the State Constitution of 1885, as amended, and continued by s. 9(c), Art. XII of the 1968 State Constitution, as amended, which is therein referred to as the “second gas tax,” and which is hereby designated the “constitutional fuel tax.”
 - (b) An additional tax of 1 cent per net gallon, which is designated as the “county fuel tax” and which shall be used for the purposes described in s. 206.60.
 - (c) An additional tax of 1 cent per net gallon, which is designated as the “municipal fuel tax” and which shall be used for the purposes described in s. 206.605.
 - (d) An additional tax of 1 cent per net gallon may be imposed by each county on motor fuel, which shall be designated as the “ninth-cent fuel tax.” This tax shall be levied and used as provided in s. 336.021.
 - (e) An additional tax of between 1 cent and 11 cents per net gallon may be imposed on motor fuel by each county, which shall be designated as the “local option fuel tax.” This tax shall be levied and used as provided in s. 336.025.
 - (f)1. An additional tax designated as the State Comprehensive Enhanced Transportation System Tax is imposed on each net gallon of motor fuel in each county. This tax shall be levied and used as provided in s. 206.608.

State Imposed Taxes Shared with Local Governments

Constitutional Fuel Tax

The authority for the levy of the Constitutional Fuel Tax is vested in s. 16, Article IX of the State Constitution of 1885, as amended, and continued by s. 9(c), Article XII of the 1968 State Constitution, as amended. Pursuant to this constitutional authorization and statutory implementation, a state tax of 2 cents per gallon on motor fuel is levied. The first call on the tax proceeds is to meet the debt service requirements, if any, on local bond issues backed by the tax proceeds. The remaining balance, called the surplus funds, is also used, as necessary, to meet the debt service requirements on local bond issues backed by the surplus funds. As noted in F.S. 206.41(7), any remaining surplus funds are used for the acquisition, construction, and maintenance of roads.

The term maintenance means periodic and routine maintenance, as defined in s. 334.03, F.S., and may include the construction and installation of traffic signals, sidewalks, bicycle paths, and landscaping. The funds may be used as matching funds for any federal, state, or private grant specifically related to these purposes.

Periodic maintenance is defined as those activities that are large in scope and require a major work effort to restore deteriorated components of the transportation system to a safe and serviceable condition. Such efforts may include, but not be limited to, the repair of large bridge structures, major repairs to bridges and bridge systems, and the mineral sealing of lengthy sections of roadway.

Routine maintenance is defined as minor repairs and associated tasks necessary to maintain a safe and efficient transportation system and includes pavement patching; shoulder repair; cleaning and repair of drainage ditches, traffic signs, and structures; mowing; bridge inspection and maintenance; pavement striping; litter cleanup; and other similar activities.

County Fuel Tax (7th Cent)

Pursuant to Sections 206.41 and 206.60, Florida Statutes, the county fuel tax is levied on motor fuel at the rate of 1 cent per gallon. The tax revenues are to be used solely for the acquisition of rights-of-way; the construction, reconstruction, operation, maintenance, and repair of transportation facilities, roads, bridges, bicycle paths, and pedestrian pathways; or the reduction of bonded indebtedness incurred for road and bridge or other transportation purposes. In the event that the powers and duties related to transportation facilities, roads, bridges, bicycle paths, and pedestrian pathways usually exercised by the county's governing body are performed by some other county board, that board receives the proceeds.

County Local Option Fuel Taxes

Ninth Cent Fuel Tax

County governments are authorized to levy up to 12 cents of local option fuel taxes in the form of three separate levies. The first levy 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.

On January 8, 1980 the Board of County Commissioners approved Resolution No. 80-4 calling for a referendum election regarding the imposition of the Ninth Cent Fuel Tax; this was subsequently superseded by Resolution No. 80-12, which was approved on January 15, 1980. The clarifying resolution noted that proceeds could be used to secure bonds or other forms of indebtedness, provided for a June 1, 1980 effective date, and also provided instructions to voters.

A referendum election was held on March 11, 1980 at which the levy of the Ninth Cent Fuel Tax was approved by vote of the electorate. The Board of County Commissioners subsequently approved Ordinance No. 80-50 on June 3, 1980 imposing this tax for a thirty (30) year term as set forth in the referendum. On June 24, 2003 the Board of County Commissioners approved, by supermajority vote, Ordinance 2003-34, which extended the term of the Ninth Cent Fuel Tax through December 31, 2025.

County and municipal governments may use the moneys received under this paragraph only for transportation expenditures as defined in s. 336.025(7), Florida Statutes. For the purposes of this section, "transportation expenditures" means expenditures by the local government from local or state shared revenue sources, excluding expenditures of bond proceeds, for the following programs:

- (a) Public transportation operations and maintenance.
- (b) Roadway and right-of-way maintenance and equipment and structures used primarily for the storage and maintenance of such equipment.
- (c) Roadway and right-of-way drainage.
- (d) Street lighting installation, operation, maintenance, and repair.
- (e) Traffic signs, traffic engineering, signalization, and pavement markings, installation, operation, maintenance, and repair.
- (f) Bridge maintenance and operation.
- (g) Debt service and current expenditures for transportation capital projects in the foregoing program areas, including construction or reconstruction of roads and sidewalks.

Six Cents Local Option Fuel Tax

The second levy 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.

In special session in 1983, the Florida Legislature provided for the levy of up to four cents of this local option motor fuel tax. On May 31, 1983 the Board of County Commissioners adopted Ordinance No. 83-26, which imposed the levy of a two cent local option motor fuel tax effective September 1, 1983, for a period not to exceed five years. This tax levy was subsequently increased to four cents through the adoption of Ordinance No. 84-46 on July 17, 1984. The Four Cents Local Option Fuel Tax had an effective date of September 1, 1984, for a period not to exceed five years.

On August 6, 1985 the Board of County Commissioners adopted Ordinance No. 85-38, which increased this local option fuel tax to the maximum six cent levy. The effective date of this ordinance was September 1, 1985, for a period of four (4) years to coincide with the remaining term of the four cent levy imposed by Ordinance No. 84-46.

Ordinance No. 89-27 was adopted on May 9, 1989 and imposed the Six Cents Local Option Fuel Tax effective September 1, 1989 for a period of ten (10) years. Ordinance No. 99-40, which was adopted on May 25, 1999 re-imposed the Six Cents Local Option Motor Fuel Tax effective September 1, 1999 for a period of sixteen (16) years with an expiration date of August 31, 2015. Finally, Ordinance No. 2003-35 was adopted on June 24, 2003 and extended the imposition of this tax effective January 1, 2004 through the December 31, 2025 expiration date.

County and municipal governments may use the moneys received under this paragraph only for transportation expenditures as defined in s. 336.025(7). For the purposes of this section, "transportation expenditures" means expenditures by the local government from local or state shared revenue sources, excluding expenditures of bond proceeds, for the following programs:

- (a) Public transportation operations and maintenance.
- (b) Roadway and right-of-way maintenance and equipment and structures used primarily for the storage and maintenance of such equipment.
- (c) Roadway and right-of-way drainage.
- (d) Street lighting installation, operation, maintenance, and repair.
- (e) Traffic signs, traffic engineering, signalization, and pavement markings, installation, operation, maintenance, and repair.
- (f) Bridge maintenance and operation.
- (g) Debt service and current expenditures for transportation capital projects in the foregoing program areas, including construction or reconstruction of roads and sidewalks.

Five Cents Local Option Fuel Tax

The third levy is a tax of 1 to 5 cents on every net gallon of motor fuel sold within a county that may be authorized by an ordinance adopted by a majority plus one vote of the governing body or voter approval in a countywide referendum. The Board of County Commissioners initially imposed this tax through the adoption of Ordinance No. 93-48 on August 3, 1993 by super-majority vote. The effective date of this tax was January 1, 1994 for a period of ten (10) years. The Board subsequently adopted Ordinance No. 2003-36 on June 24, 2003, which provided for the extension of this motor fuel tax through December 31, 2025.

Proceeds from this motor fuel tax are used to fund transportation expenditures needed to meet the requirements of the capital improvements element of an adopted comprehensive plan or for expenditures needed to meet immediate local transportation problems and for other transportation-related expenditures that are critical for building comprehensive roadway networks by local governments. For purposes of this paragraph, expenditures for the construction of new roads, the reconstruction or resurfacing of existing paved roads, or the paving of existing graded roads shall be deemed to increase capacity and such projects shall be included in the capital improvements element of an adopted comprehensive plan. Expenditures for purposes of this paragraph shall not include routine maintenance of roads.

Transportation expenditures means expenditures by the local government from local or state shared revenue sources, excluding expenditures of bond proceeds, for the following programs:

- (a) Public transportation operations and maintenance.
- (b) Roadway and right-of-way maintenance and equipment and structures used primarily for the storage and maintenance of such equipment.
- (c) Roadway and right-of-way drainage.
- (d) Street lighting installation, operation, maintenance, and repair.
- (e) Traffic signs, traffic engineering, signalization, and pavement markings, installation, operation, maintenance, and repair.
- (f) Bridge maintenance and operation.
- (g) Debt service and current expenditures for transportation capital projects in the foregoing program areas, including construction or reconstruction of roads and sidewalks.

Summary Table of Authorized Uses of Fuel Taxes

Authorized Uses	Constitutional Fuel Tax (80%/20%)	County (7 th Cent) Fuel Tax	Ninth Cent Fuel Tax	Local Option 6 Cent Fuel Tax	Local Option 5 Cent Fuel Tax
Landscaping	X				
Bicycle Paths (a)	X	X	X	X	X
Pedestrian Pathways (b)	X	X	X	X	X
Public transportation operations and maintenance			X	X	X
Roadway and right-of-way maintenance and equipment and structures used primarily for the storage and maintenance of such equipment.	X	X	X	X	X
Roadway and right-of-way drainage	X		X	X	X
Street lighting installation, operation, maintenance, and repair.			X	X	X
Traffic signs, traffic engineering, signalization, and pavement markings, installation, operation, maintenance, and repair.	X		X	X	X
Bridge maintenance and operation.	X	X	X	X	X
Acquisition of rights-of-way (c)	X	X	X	X	X
Debt service and current expenditures for transportation capital projects in the foregoing program areas, including construction or reconstruction of roads and sidewalks.			X	X	X
Debt service requirements on local bond issues backed by the surplus funds.	X				
Any remaining surplus funds are used for the acquisition, construction, and maintenance of roads.	X				
Used solely for the acquisition of rights-of-way; the construction, reconstruction, operation, maintenance, and repair of transportation facilities, roads, bridges, bicycle paths, and pedestrian pathways; or the reduction of bonded indebtedness incurred for road and bridge or other transportation purposes.		X			
Transportation expenditures needed to meet the requirements of the capital improvements element of an adopted comprehensive plan or for expenditures needed to meet immediate local transportation problems and for other transportation-related expenditures that are critical for building comprehensive roadway networks by local governments. For purposes of this paragraph, expenditures for the construction of new roads, the reconstruction or resurfacing of existing paved roads, or the paving of existing graded roads shall be deemed to increase capacity and such projects shall be included in the capital improvements element of an adopted comprehensive plan. Expenditures for purposes of this paragraph shall not include routine maintenance of roads.					X

Notes: (a) Bicycle paths are specifically mentioned as authorized uses of both the Constitutional Fuel Tax and the County (7th Cent) Fuel Tax. Attorney General Opinion (AGO) 2002-02 specifically addressed the use of local option fuel taxes for bicycle paths. Like sidewalks, bicycle paths that are constructed separately from roads and streets would appear to be outside of the scope of “transportation expenditures” as defined in section 336.025(7), Florida Statutes.

(b) Pedestrian pathways are only specifically mentioned as an authorized use of the County (7th Cent) Fuel Tax. Based on the AGO relative to bicycle paths summarized above, it is assumed that pedestrian pathways that are adjacent to roads and built during road construction or reconstruction would be authorized uses of the other gas taxes.

(c) Acquisition of rights-of-way is only specifically mentioned as an authorized use of the County (7th Cent) Fuel Tax. However, Attorney General Opinion (AGO) 79-43 stated that “it is apparent that the acquisition of right-of-way is an essential component of highway construction.”

Comparative Gas Taxes Levied in Similar Sized Florida Counties

The following table references the gas taxes implemented in similar sized Florida counties. These five Counties were recommended in the FY16 Budget Policy to be used budget comparison purposes. Each of the respective counties has the same gas taxes as levied in Collier County.

County	Constitutional Fuel Tax	County (7th Cent) Fuel Tax	Ninth Cent Fuel Tax	Local Option 6 Cents Fuel Tax	Local Option 5 Cents Fuel Tax
Collier	X	X	X	X	X
Charlotte	X	X	X	X	X
Lee	X	X	X	X	X
Manatee	X	X	X	X	X
Martin	X	X	X	X	X
Sarasota	X	X	X	X	X

Source: 2014 Local Government Financial Handbook, p. 284.

Uses of Gas Taxes in Similar Sized Florida Counties

Charlotte County budgets the 5 Cent Local Option Fuel Tax in a Roads Capital Fund, along with 80% of the 9th Cent Fuel Tax. The 6 Cent Local Option Fuel Tax, the County (7th Cent) Fuel Tax, the Constitutional Fuel Tax, and 20% of the 9th Cent Fuel Tax are budgeted for roadway maintenance operations. There is no issue regarding use of the County (7th Cent) Fuel Tax for traffic signals in Charlotte County, as all signal maintenance is funded in a separate Municipal Service Taxing Unit.

Lee County budgets revenues from the County (7th Cent) Fuel Tax and the Constitutional Gas Tax in the Transportation Trust Maintenance Fund (special revenue). Revenues from the 9th Cent Fuel Tax and the 5 and 6 Cent Local Option Gas Taxes are budgeted in the Transportation Capital Fund. One-half cent of the 6 Cent Local Option Gas Tax is earmarked to support Lee Tran operations and a portion of the 5 Cent Local Option Gas Tax is earmarked for debt service.

Manatee County budgets all of the gas tax revenues initially in the Transportation Trust Fund (101). The Constitutional Gas Tax and the County (7th Cent) Fuel Tax revenues are kept in the Transportation Trust Fund (101) for operating expenses. Revenues from the 9th Cent Fuel Tax are transferred to municipalities and to a separate special revenue fund for roadway resurfacing (166). The 5 Cents Local Option Fuel Tax is transferred to: municipalities, another separate special revenue fund (178) for roadway resurfacing, and to Transit Fund (435). The 6 Cents Local Option Fuel Tax is transferred to: municipalities, to debt service fund(s), two separate special revenue funds for roadway maintenance projects (167) and (199), and to Transit Fund (435). Through this series of interfund transfers, Manatee County can trace the ultimate use of each of its gas taxes

Martin County allocates revenues from the 5 Cent Local Option Fuel Tax for debt service and residual funds are placed in a separate capital fund. The remaining fuel taxes (6 Cent Local Option Fuel Tax, the County (7th Cent) Fuel Tax, the 9th Cent Fuel Tax, and the Constitutional Fuel Tax are all allocated to roadway maintenance

Sarasota County budgets all of its gas tax revenue into a single governmental (special revenue) fund and makes an interfund transfer to a debt service fund for outstanding road construction bonds, less a small portion transferred to the General Fund for allocated building rent.

Auditor General Audit Finding Relative to the Appropriate Use of Motor Fuel Taxes in Okaloosa County

Auditor General Report 2014-068 stated the following relative to controls for the appropriate use of motor fuel tax revenue.

“The BCC is responsible for establishing adequate controls to provide reasonable assurance that fuel taxes are spent only for authorized purposes. As noted above, some authorized uses may apply to all or some of the fuel taxes; however, some uses authorized for certain fuel taxes may not be authorized for other fuel taxes. Consequently, the BCC must separately account for fuel taxes with different authorized uses to demonstrate the fuel taxes were spent for authorized purposes.”

Specific mention was made that the Okaloosa County Transportation Trust Fund included expenditures for the maintenance and repair of traffic signals, which are not authorized uses of the County (7th Cent) Fuel Tax. The Auditor General recommended that “The BCC should establish separate accountability for each type of fuel tax to demonstrate fuel taxes were spent for authorized purposes.” In follow-up report No. 2016-012 issued in August 2015, the Auditor General noted that no solution had been implemented to correct the initial audit findings.

Current Situation – Collier County

The respective motor fuel taxes levied in Collier County (County Fuel Tax, Constitutional Fuel Tax, the 9th Cent Fuel Tax, the 6 Cent Local Option Fuel Tax, and the 5 Cent Local Option Fuel Tax) are pledged to support debt service on gas tax revenue bonds.

The Gas Tax Revenue Bonds, Series 2012 refunded the 2003 Road Improvement Revenue Refunding Bonds. The Gas Tax Revenue Bonds, Series 2014 partially refunded the 2005 Gas Tax Revenue Bonds. Both the Series 2003 and Series 2005 Bonds provided funding for acquisition, construction, and reconstruction of roads and bridges and other transportation improvements.

The FY2016 Collier County budget has all gas tax revenues budgeted in Roads Capital Fund (313). Using a single transportation trust fund to account for all fuel tax revenues is consistent with Section 336.022(1), Florida Statutes. This is also required in Section 4.05 of both the Series 2012 and Series 2014 Gas Tax Revenue Bond documents which state the following:

“Section 4.05. DISPOSITION OF GAS TAX REVENUES. (A) The Issuer shall promptly deposit upon receipt from the State the Gas Taxes and any additional gas taxes pledged hereunder pursuant to Supplemental Resolution into the Restricted Revenue Account.”

Surplus gas tax revenue available after debt service is covered may be used for the authorized purposes for each respective gas tax as outlined in Florida Statutes. The FY2016 Recommended Budget Policy regarding the proposed use of gas taxes was as follows:

Continue the Board’s policy allowing gas taxes to pay for debt service on the Gas Tax Revenue Bonds, support Collier Area Transit operations and fund the Marco Island Agreement and that transfer dollars from the General Fund continue to support/supplement maintenance on the roadway network.

The budget policy narrative further explained that gas tax revenue from all sources has averaged approximately \$18.5 million per year. After considering the annual \$13.1 million debt service payment, the \$2 million annual Collier Area Transit subsidy, and the \$1 million annual payment to Marco Island pursuant to an inter-local agreement, only a modest amount of gas tax dollars remains available for maintenance and system improvements.

Review of FY15 Actual Expenses by Funded Program

FY15 actual expenses by funded program in the Roads Capital Fund (313) were reviewed for compliance with authorized uses of all of the gas tax revenues levied in Collier County. The following funded programs were either problematic or potentially problematic and subject to additional review.

Funded Program	Funded Program Number	FY15 Actuals
Traffic Signals	(60172)	\$1,309,210.53
Sign Retroreflectivity	(60183)	\$87,414.91
Transfer CAT (425)	(99313)	\$374,317.49
Transfer CAT (426)	(99313)	\$1,425,700.00
Transit Enhancement Plan	(35016)	\$20,970.00
Countywide Bikeways	(69081)	\$107,364.43
Countywide Pathways	(60118)	\$63,721.12
Asset Management	(60017)	\$221,855.83
Traffic Impact Statement (TIS) Review	(60085)	\$7,628.70
Traffic Study	(60163)	\$122,197.15
Planning Consultant	(60109)	\$147,542.20
Palm River Park - Pathway	(60184)	\$295,267.61
Total		\$4,183,189.97

Observations

1) There are funded programs in Roads Capital Fund (313) that are not authorized uses of the County (7th Cent) Motor Fuel Tax.

The analysis of FY15 actual expenses in Roads Capital Fund (313) revealed four funded programs that are not authorized uses of the County (7th Cent) Motor Fuel Tax.

- Traffic signals are not an authorized use of the County (7th Cent) Fuel Tax. This is the specific concern raised by the Auditor General in the Okaloosa County audit report.
- Traffic signs are not an authorized use of the County (7th Cent) Fuel Tax.
- Public transportation operations and maintenance are not authorized uses of the County (7th Cent) Fuel Tax.
- Sidewalks are not specifically listed as an authorized use of the County (7th Cent) Fuel Tax.

The traffic signals, traffic signs, and public transportation operations and maintenance funded programs are not authorized uses of the County Fuel Tax. The County Bikeways funded program (69081) and the County Pathways funded program (60118) were evaluated further to determine whether they qualified as an authorized use. The underlying work orders in these funded programs were associated with sidewalk construction, which is not an authorized use of the County Fuel Tax. Statutory language has evolved over time and sidewalk construction is an authorized use of all of the remaining (Constitutional, Ninth Cent, Six Cents Local Option, and Five Cents Local Option) motor fuel taxes.

An option to address the four non-authorized uses noted above is to use the County (7th Cent) Fuel Tax revenues in the Roads Capital Fund (313) to directly fund, via interfund transfer, debt service expenses in the Gas Tax Debt Service Fund (212). As noted previously, the tax revenues are to be used solely for the acquisition of rights-of-way; the construction, reconstruction, operation, maintenance, and repair of transportation facilities, roads, bridges, bicycle paths, and pedestrian pathways; or the reduction of bonded indebtedness incurred for road and bridge or other transportation purposes.

Payment of outstanding debt is a specifically authorized use of this tax revenue. Furthermore, a review of the capital projects lists funded through either the Series 2003 or Series 2005 gas tax bonds identifies an identical set of 43 projects that are specifically o This option provides the separate accounting of fuel taxes with different authorized uses, as the County (7th Cent) Fuel Tax would be used only for debt service, thereby eliminating any concerns that traffic signals, traffic signs, sidewalks, and public transit operations were funded with this revenue source. This also has minimal impact on County government operations as no new funds would be created, and there is an existing interfund transfer between Roads Capital Fund (313) and Gas Tax Debt Service Fund (212). Establishing a separate interfund transfer of the County (7th Cent) Fuel Tax revenue from Roads Capital Fund (313) to Gas Tax Debt Service Fund (212) would require the use of a unique general ledger account.

A consequence of this recommendation is a potential cash flow issue as gas tax revenues are only remitted by the State on a monthly basis. The existing funding of the Gas Tax Debt Service Fund (212) is solely from an interfund transfer from Roads Capital Fund (313). As Roads Fund (313) receives its principal revenues from gas taxes and interfund transfers from the General Fund and the Unincorporated Area General Fund, the timing of the transfers can be adjusted to meet the required debt service payment dates of December 1 and June 1.

If the County (7th Cent) Fuel Tax is used to fund debt service, the last 4 months of gas tax revenue would not have yet been remitted to the County prior to June 1 payment date. Assuming \$150,000 in monthly revenue (FY 15 actual revenue = \$1,807,290.87), the debt service fund would need approximately \$600,000 to make the June 1 debt service payment. This would require a one-time infusion of cash from Roads CIP (313) to fund this cash flow reserve on a recurring basis.

Recommendation: Budget 100% of the County (7th Cent) Fuel Tax revenues in Roads Capital Fund (313) and transfer 100% of actual revenues received to Gas Tax Debt Service Fund (212), as this will provide the separate accountability for the specific use of this motor fuel tax revenue. This option provides the separate accounting of fuel taxes with

different authorized uses, as the County (7th Cent) Fuel Tax would be used only for debt service, thereby eliminating any concerns that traffic signals, traffic signs, sidewalks, and public transit operations were funded with this revenue source. An alternate option would be to move the traffic signals, traffic signs, pathways and public transit funded programs out of Roads Capital Fund (313).

County Management Response:

The County Gas Tax, also known as the 7th cent gas tax, generates about \$1.8-\$1.9 million a year. This tax compared to the other five fuel taxes has the most restrictive use. OMB is suggesting that all of this tax be used for the Gas Tax Debt Service payment in Fund (212). Therefore, starting in FY 2017, the 7th cent gas tax will be budgeted and deposited into the Gas Tax Debt Service Fund (212).

2) The public transportation operations and maintenance funded programs in Roads Capital Fund (313) are not authorized uses of the Constitutional Fuel Tax.

Public transportation operations and maintenance are not authorized uses of Constitutional Fuel Tax revenue. Only the 9th Cent Motor Fuel Tax, the Six Cents Local Option Motor Fuel Tax, and the Five Cents Local Option Motor Fuel Tax are authorized for public transportation expenses.

However, there are interfund transfers budgeted annually from Roads Capital Fund (313) to support Collier Area Transit (CAT) Grant Match Fund (425) and CAT Operating Fund (426). In addition, expenditures in the Transit Enhancement Funded Program (35016) were related to bus shelter design. As such, including these costs in Roads Capital Fund (313) while using the Constitutional Fuel Tax as a funding source is problematic, as this does not meet the Auditor General's requirement to "separately account for fuel taxes with different authorized uses to demonstrate the fuel taxes were spent for authorized purposes".

As public transit is not specifically mentioned as an authorized use of the Constitutional Fuel Tax, this cost should not be budgeted in Roads Capital Fund (313).

Recommendation: Continue the current practice of budgeting proceeds of the Constitutional Fuel Tax in Roads Capital Fund (313), but shift the support of CAT operations (non-authorized use) to the Road and Bridge Fund (101).

FY16 adopted General Fund support of roads is as follows: Road and Bridge Fund (101) - \$15,858,400 and Roads Capital Fund (313) - \$14,559,800. FY16 adopted CAT operational support from Roads Capital Fund (313) is as follows: CAT Grant Match Fund (425) - \$250,000 and CAT Enhancement Fund (426) - \$1,383,400 or a combined total of \$1,633,400.

If the \$1,633,400 in FY16 budgeted CAT system support was shifted to the Road and Bridge Fund (101), the interfund transfer from the General Fund to Roads Capital Fund (313) would decrease by \$1,633,400. Correspondingly, the General Fund transfer to Road and Bridge Fund (101) would increase by \$1,633,400 to support the CAT system. The net impact to the General Fund is zero.

County Management Response:

At one time, the Transit Division (CAT and Transportation for the Disadvantaged - TD) was under Transportation/Growth Management. For FY 2013, the Transit Division was moved to Public Services. Collier Area Transit (CAT) operations have historically been subsidized with gas taxes. Since 2006, CAT received a transfer from Fund 313. Per s. 336.025(7) Florida Statute, only certain gas taxes may be used to support public transportation operations and maintenance. These include the 9th cent gas tax, the 5 cent and 6-cent local option gas taxes. The 7th cent and the Constitutional gas taxes cannot be used. Until the statutes governing uses of fuel taxes are amended, the CAT subsidy will be budgeted as a direct transfer from the General Fund. For FY 2017, OMB will set up the transfer from the General Fund.

3) There are funded programs in Roads Capital Fund (313) that are either maintenance oriented or not an authorized use of any motor fuel taxes.

The Asset Management funded program is geared toward maintaining accurate asset inventory, data and work orders, which helps in managing the proper budgeting, planning, and management of the County’s transportation infrastructure. This appears maintenance-oriented and, as such, may be better suited to funding in the Road and Bridge Fund (101).

Planning-related funded programs (Traffic Impact Statement (TIS) Review, Traffic Study and Planning Consultant) do not appear to be specifically addressed in authorized uses, but these planning functions are integral to road construction, which is an authorized use of all motor fuel taxes. A further review of the specific expenditures in these funded programs was undertaken to determine whether they were within the authorized uses of the motor fuel taxes.

Traffic Impact Study (TIS) Review; Funded Program 60085

Actual expenses in Traffic Impact Study Review were distributed between the following projects:

- Transportation Traffic Impact Study Assistance; Purchase Order #4500150803;
- Phase II Developer Sponsored Roadways Handbook; Purchase Order #4500151214.

The following tasks were included in the scope of work for Transportation Traffic Impact Study Assistance:

- TIS reviews for concurrency analysis, consistency with the Collier County Growth Management Plan, and Development related operational analyses.
- Traffic and Operational Plan Reviews and Site Plan Review.

Actual FY2015 expenses were focused on the review and comments related to the Central Avenue Traffic Data Presentation, which is an authorized use of motor fuel taxes.

The Phase II Developer Sponsored Roadways Handbook project outlines the process (requirements and Specifications) that a developer must follow in building a road that meets county standards. This is related to roadway design, which is an authorized use of motor fuel taxes.

Traffic Study; Funded Program 60163

The tasks outlined in the scope of work in the Traffic Study funded program are generic (Transportation Planning and Engineering Studies). A review of the underlying services performed as detailed in the invoices was necessary to determine whether the services were within the authorized uses for motor fuel taxes.

Traffic Study; Funded Program 60163	Vendor	PO Number	PO Amount	FY15 Actual Expenditures
Transportation Planning and Engineering Studies	AIM Engineering	4500152307	\$45,000.00	\$29,045.00
Transportation Planning and Engineering Studies	CH2MHill	4500150805	\$89,820.00	\$72,884.40
Transportation Planning and Engineering Studies	Stantec	4500150746	\$50,000.00	\$1,268.00
Transportation Planning and Engineering Studies	Stantec	4500158836	\$50,000.00	\$10,694.25
Transportation Planning and Engineering Studies	AIM Engineering	4500158824	\$50,000.00	\$8,305.50
Total			\$394,748.00	\$122,197.15

The purchase order issued to AIM Engineering (P.O. #4500152307) included costs of design review for Hacienda Blvd. and Logan Blvd., which are authorized uses of motor fuel taxes.

The purchase order issued to CH2MHill (P.O. #4500150805) included costs of Massey Street drainage improvements and Woodcrest Drive plan reviews, which are authorized uses of motor fuel taxes.

Invoices associated with the purchase orders issued to Stantec Consulting Services, Inc. (P.O. #4500150746 and P.O. #4500158836) included costs of data analysis related to the Annual Update and Inventory Report (AUIR) required as part of the Transportation Element of the Growth Management Plan. Purchase order #4500150746 was issued in May 2014 and the residual balance was carried forward into FY2015. Purchase order #4500158836 was issued in May 2015. These expenses are authorized uses of motor fuel taxes.

Invoices associated with the purchase order issued to AIM Engineering (P.O. #4500158824) were related to the Rural Lands West Stewardship Receiving Area and review of a draft Transportation methodology report. The purpose of the program is to encourage smart growth patterns in rural areas of the county per the GMP. The work order is focused on transportation engineering in this area of the County and is an authorized use of motor fuel taxes.

Planning Consultant; Funded Program 60109

The bulk of planning consultant expenses (funded program 60109) is an integral function of the road construction program. The following table identifies the FY15 actual expenses associated with individual purchase orders issued for specific tasks in the Planning Consultant funded program.

Tasks (Planning Consultant, Funded Program - 60109)	Vendor	PO Number; (Ref. #)	PO Amount	FY15 Actual Expenditure
Intersection Proportionate Share Calculation and Analysis of Projected Link Deficiencies within 5 Years	CH2MHill	4500150698	\$26,808.60	\$26,808.60
Developer Responsibility Evaluations (FY14-15)	CH2MHill	4500150802	\$59,944.00	\$37,603.60
Potential Turn Lane Improvements	Trebilcock Consulting Solutions, PA	4500154605	\$8,322.00	\$8,322.00
Pedestrian Bridge Crossing Feasibility Study (Freedom Park to Gordon River Greenway)	CH2MHill	4500157944	\$25,000.00	\$25,000.00
Developer Responsibility Evaluations (FY15-16)	CH2MHill	4500158576	\$81,800.00	\$0.00
Tiger Grant Application (Vanderbilt Drive and Collier III Phase 2)	CH2MHill	4500158671	\$49,808.00	\$49,808.00
Transportation Planning Assistance	CH2MHill	4500158976	\$92,360.00	\$0.00
Traffic Impact Analysis related to the Proposed Expansion of the South U.S. 41 Transportation Concurrency Exception Area (TCEA)	Stantec	4500160165	\$20,112.00	\$0.00
Everglades Airpark Seaplane Base - Feasibility Study	Hole, Montes Inc.	4500160832	\$24,485.00	\$0.00
Total			\$388,639.60	\$147,542.20

The Pedestrian Bridge Crossing Feasibility study does not appear to be an authorized use of motor fuel taxes as it was not included as part of a roadway construction or reconstruction.

The Tiger Grant applications do not appear to be an authorized use of motor fuel taxes. While the grant applications are road-related, they are funding requests rather than roadway design and construction.

Another exception noted was the Everglades Airpark Seaplane Base Feasibility Study. The Everglades Airpark Seaplane Base Feasibility Study does not appear to be an appropriate expenditure of motor fuel taxes, and may be better suited for funding in a Collier County Airport Authority Fund, instead of the Roads Capital Fund.

Recommendations:

- Airport related expenses should be funded from the Airport Authority Operating fund or capital fund, rather than the Roads Capital Fund (313).
- Asset Management should be funded in Road and Bridge Fund (101) or the General Fund.
- Only costs that are specifically authorized for all motor fuel taxes should be included in Roads Capital Fund (313).

County Management Response:

The Clerk's Internal Audit Department has been reviewing the use of gas tax proceeds within Fund (313) for compliance with existing legislation. Since all the gas taxes are deposited into Fund 313, this fund should only pay for authorized gas tax related expenses consistent with State Law. Although it is often difficult to determine based upon current legislative language what is authorized and what is not!

Starting in FY 2017, the only gas tax that will be deposited into Fund (313) will be the Constitutional gas tax, 9th cent, and both local option gas taxes - the 5-cent and 6-cent gas tax. According to the Florida Statutes, the 9th cent and both local option gas taxes have the same authorized uses, however, the Constitutional gas taxes has similar authorized uses with a few exceptions. Projects in Fund (313) should comply with the authorized use of all the gas taxes deposited into Fund (313). For those projects that do not comply, Fund (310) or Fund (101) will be the budgetary option and applicable items/work orders/ contracts will be relocated as necessary.

Growth Management receives General Fund money. Growth Management staff allocates available dollars into various funds. Beginning in FY 2017, project, project funding, and the related funds where a particular project or initiative resides will be scrutinized with the objective of avoiding the following questionable gas tax ineligible expenses which were discussed between OMB and representatives from the Clerk's Finance and Internal Audit.

- *It appears that the Asset Management software initiative may fall outside of how gas taxes may be spent. In the FY 16 adopted budget, this project received \$550,000. Currently this project has an amended budget of \$1.1 million. As such, OMB will relocate the Asset Management project (60037) to Fund (310) or into a newly created cost center in Fund 101 and fund it directly with a transfer from the General Fund*
- *Everglade Airpark Seaplane Base Feasibility Study; if there is a balance remaining on the purchase order; the residual will be relocated to Airport Fund (495/496).*
- *Pedestrian Bridge Crossing Feasibility study (Freedom Park to Gordon River Greenway). The study was not part of a roadway construction or reconstruction.*
- *Hired a consultant to help with a grant application for Vanderbilt Drive and Collier III, Phase2. While the grant applications are road-related; it's a funding request rather than roadway design and construction.*

4) Landscaping is a specifically authorized use of the Constitutional Fuel Tax.

Landscaping is a specifically authorized use of the Constitutional Fuel Tax; none of the other motor fuel taxes delineate landscaping in the itemized list of authorized uses. The Palm River Park funded program (60184) was reviewed to evaluate the underlying expenses contained therein. There were two specific purchase orders issued in this fund program:

- purchase order 4500154473 was issued for \$305,000 to Bonness, Inc. for sidewalks and landscape improvements, and
- purchase order 4500156949 was issued for \$6,947.50 to Hannula Landscaping and Irrigation, Inc. for an irrigation system.

In Attorney General Opinion 2002-02, the following was stated: “Where a statute enumerates the things upon which it operates, it is ordinarily construed as excluding from its operation all things not expressly mentioned.” As noted above, landscaping is only a specifically authorized use of the Constitutional Fuel Tax (2 cents). Therefore, landscaping expenses should not be funded in Roads Capital Fund (313).

Recommendation: Landscaping expenses should not be funded with motor fuel taxes in Roads Capital Fund (313).

County Management Response:

Palm River Park project paid for landscaping improvements. Only the Constitutional Gas Tax can pay for landscaping, not the other gas taxes. Again, when one gas tax can pay for something and the others cannot, we need to avoid the expense in Fund (313). In the future, landscape projects should be paid from another funding source.

5) The Collier Country Capital Improvement Element for Transportation does not specify the capital projects that are funded with the Five Cents Local Option Motor Fuel Tax.

All of the funded programs in Roads Capital Fund (313) are included in the adopted capital improvement element, which is an additional requirement of the 5 Cent Local Option Fuel Tax. However, the Attorney General has also issued an opinion (AGO 97-25) relative to the requirement that expenditures be specifically identified in the capital improvement element of the County’s adopted comprehensive plan. Specifically, the Attorney General’s opinion stated the following:

“The capital improvements element of the county’s comprehensive plan must identify the needed public transportation facility, the estimated facility’s costs, including operations and maintenance costs, and specify that funding shall come from the local option fuel tax in order for such tax revenues to be used for that purpose.”

This AGO requires that projects included in the CIE need to specify that funding shall come from the local option fuel tax in order for such tax revenues to be used for that purpose. The current Transportation CIE adopted on November 10, 2015 simply includes a list of specific project expenses and the underlying revenue sources funding the projects. There is no specificity as to which projects are funded with the Five Cents Local Option Fuel Tax.

Recommendation: The Transportation CIE presentation documents should be revised to specify the funding sources used for specific projects, in particular the Five Cents Local Option Fuel Tax, in compliance with the Auditor General opinion.

County Management Response:

Within the various legislative language governing the 5 cent Local Option gas tax, there is a “planning” requirement. OMB intends to show the 5 cent local option gas tax revenue on the planning/financial sheet within the AUIR and to indicate to which projects the 5 cent local option gas is going to be applied to (use an

asterisk *). The projects noted may exceed the 5-cent local option revenue stream.

General Management Response Comments (not specific to an individual audit observation).

This Internal Audit Report was initiated by the Clerk of Court's Finance Director out of an abundance of caution and solely out of concerns with a State Auditor General's findings regarding authorized uses of motor fuel taxes in Okaloosa County. A note of thanks is extended to the Clerk's Office for the time and effort expended on this project, although it was not part of the planned schedule of internal audit investigations presented to the County Manager.

Road and Bridge Gas Tax Fund (313) have several revenue sources, including; all the gas taxes, transfers from the General Fund (001) and Unincorporated General Fund (111), contributions, certain developer payments, insurance refunds, interest, and other misc. revenues.

Various Florida Statutes place restrictions as to how gas taxes are to be expended. Therefore, the projects appropriated within Fund (313) should, in general, be compliant with the various Florida Statutes governing use of fuel taxes. If a project is funded solely by another revenue source, other than gas taxes, the projects should be moved to another fund as well as the funding source. OMB is proposing the following changes in how budget is appropriated within Fund (313). These changes below were discussed with representatives from Clerk Finance and Internal Audit.

Until and unless the statutes governing uses of fuel taxes are amended eliminating onerous and frankly absurd categorical rules governing use of fuel taxes, the following budgetary changes identified under the respective Management Responses will be necessary taking effect beginning in FY 2017. It is highly recommended that this issue be included as part of Collier County's legislative priorities for the next legislative session.

Depositing each gas tax into separate funds is not an option for the following reasons;

- Cash flow will become an issue. The majority of the gas taxes are used to support the \$13.1 million debt service on the gas tax revenue bonds. The balance is used in road projects.
 - Gas taxes deposits are about \$19.5 million. Gas taxes are pledged to support the \$13.1 million debt service on gas tax revenue bonds. The debt service payments are January (interest only) and July (interest and principal). By July1, there will be only eight gas tax deposits available for the July debt service payment, barely enough to make the debt service payment.
 - The balance of the gas taxes can be used on road projects, however, since the first eight months of gas tax deposits have been designated for debt, all road projects expenses will need to be planned and paid for in the last four months of the fiscal year.
- Complexity of the Road and Bridge program. We currently have six road impact fee funds, two Transportation Grant Funds, Road Capital (and Gas Tax) Fund (313), Road and Bridge Operations and Maintenance Fund (101), a pocket of money in Fund (111) for landscape and Landscape Capital Fund (112). To propose three to six new Funds to segregate the gas taxes will over complicate an already complex funding scenario.

Internal Audit Comments:

Internal Audit acknowledges the cooperation and professionalism exhibited by the Budget Office staff in reviewing this audit report and taking proactive measures in addressing the concerns noted therein.