



County of Erie

MARK C. POLONCARZ
COMPTROLLER

June 15, 2006

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Re: Proposed "Capping" of Sales Taxes from Sale of Automotive Fuels

Dear Honorable Members:

As you are aware, on May 21, 2006, Governor George E. Pataki signed into law Chapter 35 of the Laws of 2006. Part A of Chapter 35 amends New York State's Tax Law to cap the amount of New York State sales and compensating use tax ("Sales Tax") imposed on motor fuel and diesel motor fuel (together, "Automotive Fuels") effective June 1, 2006. The legislation also authorizes counties to cap the amount of their local Sales Tax imposed on Automotive Fuels and other related fuels such as No. 2 fuel oil, kero-jet fuel, liquefied petroleum gas and compressed natural gas (together, "Fuel Oils").

As a result of the legislation, there has been much discussion by members of your Honorable Body, as well as the submission of at least two (2) resolutions by certain members, calling for Erie County to cap the amount of sales tax it receives on the sale of Automotive Fuels. One such resolution calls for the capping of Erie County's sales tax at \$2.00 per gallon of Automotive Fuels and Fuel Oils sold.

In order to assist the Legislature in its deliberations, my office has examined the issue and the fiscal impact such Sales Tax cap would have on Erie County. The following are the results of such examination.

In December of 2005, New York State Energy Research and Development Authority ("NYSERDA") issued a report entitled "Patterns and Trends New York State Energy Profiles: 1990 - 2004" (the "Report"). This Report examined, among many other issues, the annual consumption of gasoline and other fuel oils per county. According to NYSERDA's Report, approximately 367,985,000 gallons of Automotive Fuels were consumed in Erie County in 2004,¹ and Erie County's share of Fuel Oils was

¹ See New York State Energy Research and Development Authority, Patterns and Trends New York State Energy Profiles: 1990 - 2004, Appendix D, December 2005.

approximately 400,000 gallons,² resulting in approximately 368,385,000 gallons of Automotive Fuels and Fuel Oils sold in Erie County in 2004.

Using this number as an approximate basis for 2006 and onward,³ my office contacted the New York State Department of Taxation and Finance ("NYSDTF") to determine the estimated amount of Sales Tax received on the sale of one (1) gallon of Automotive Fuels and Fuel Oils in Erie County. According to information obtained from NYSDTF, if the retail cost to a consumer for a gallon of gasoline was \$3.00 per gallon, Erie County would generate approximately \$0.129 cents of tax on the sale of one (1) gallon of gasoline under the current taxation system (no cap). If Erie County should cap its Sales Tax for a gallon of gasoline at \$2.00 per gallon, Erie County would generate approximately \$0.083 cents of tax on the sale of that same one (1) gallon of gasoline. Thus, Erie County would lose approximately \$0.046 cents per gallon of tax received on the sale of a gallon of Automotive Fuels and Fuel Oils sold in Erie County if the county's share of the Sales Tax was capped at \$2.00 per gallon.

Based on this information, and the sale of approximately 368,385,000 gallons of Automotive Fuels and Fuel Oils in total in Erie County, and assuming that a gallon of gas costs \$3.00 per gallon for a year, a factor that is certainly not static, Erie County will generate approximately \$47,521,665 in Sales Tax under the current system of no cap, and would generate approximately \$30,575,955 in Sales Tax if a cap at \$2.00 per gallon was imposed. This would result in an approximate net annualized revenue loss of \$16,945,710 in total.

As a result of the above computation, and based on the current Sales Tax sharing formula employed in Erie County, Erie County would lose annually approximately \$10,021,746 in revenue, while the cities, towns, and villages would lose annually approximately \$6,923,964 in budgeted revenue.

Based on initial reports, Erie County appears to be headed for a balanced budget for 2006. However, any significant reduction in anticipated revenues could alter that picture. Furthermore, as you are quite aware, under the Four Year Financial Plan Erie County is facing a budget shortfall of at least \$50 million dollars for 2007, and any additional decrease in anticipated revenues would seriously impact your ability to pass a balanced budget for 2007 without inclusion of a new, large revenue enhancement in a different line of revenues, i.e. a property tax.

² See New York State Energy Research and Development Authority, Patterns and Trends New York State Energy Profiles: 1990 – 2004, Appendix E, December 2005.

³ According to NYSERDA's Report, the consumption of gasoline and other automotive fuels in Erie County has decreased recently. In 1999: 403,948,000 gallons of fuels were consumed. In 2000: 371,092,000 gallons were consumed. In 2001: 384,624,000 gallons were consumed. In 2002: 378,554,000 gallons were consumed. In 2003: 385,492,000 were consumed. Finally, in 2004: 367,985,000 gallons were consumed. Thus, it is uncertain what the final impact on Erie County in 2006 and onward would be until exact sales records are released.

It should be noted that while a few small New York counties have passed such a cap, other counties facing similar financial issues as Erie County have outright rejected passage of a cap, including Nassau, Monroe and Broome counties.

Therefore, based on the potential serious negative ramifications the institution of a cap on the Sales Tax generated from the sale of Automotive Fuels and Fuel Oils in Erie County would have on our current and out-year budgets, I have to advise your Honorable Body against imposing such a cap. While I understand the rationale behind capping the amount of Sales Tax Erie County generates as a result of the sale of a gallon of gasoline, the end result of such action could be ending the 2006 fiscal year with a deficit (thereby possibly resulting in the imposition of a "hard" control board), and additional shortfalls of at least \$10 million dollars for all future years.

As always, this office welcomes the opportunity to discuss this matter with you.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Mark C. Poloncarz", with a large, sweeping flourish extending to the right.

Mark C. Poloncarz, Esq.
Erie County Comptroller

MCP/sa

cc: Hon. Joel A. Giambra, County Executive
Kenneth Vetter, Dir. of Budget, Mgt. and Finance
Erie County Fiscal Stability Authority