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Update on SCORE Sales Tax Task Force Activities

Prepared on behalf of the SCORE Sales Tax Task Force by the
Minnesota Office of Environmental Assistance

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SUMMARY

In the 1996 session, the Minnesota Legislature established the SCORE sales tax task force to examine the issues surrounding the SCORE sales tax on solid waste management services and the solid waste generator assessment. The task force was created to advise the Legislature on how to address issues that have arisen in regard to these taxes, provide a forum to help make decisions about how to address the issues and assist the Department of Revenue (DOR) in the ongoing evaluation of the SCORE taxes paid by political subdivisions of the state.

REPORT

The task force discussions to date have focused both on specific changes that could be made in the SCORE tax and the SWGA to alleviate some of the problems with these state solid waste fees and on more general, sweeping changes to solid waste fees in the state. At this time, the task force is discussing options that would combine the two state solid waste fees into one comprehensive fee that would replace both the SCORE tax and the SWGA.

This report is the second of three reports required under Minn. Laws 1996, Chapter 471, Section 28. It will serve as an update on discussions to date and will not present detailed recommendations or information. The fact that the task force is discussing combining the two state fees means that a separate report on recommendations only for SCORE would not reflect the current work of the task force. The final report of the task force, which will be submitted to the Legislature on February 15 will present all of the recommendations or actions of the task force, as well as relevant background information required under the charge.

BACKGROUND

The SCORE sales tax was instituted in 1990 to fund the solid waste abatement activities required by the "SCORE" legislation passed by the Legislature in 1989. To fund the SCORE initiatives, the general sales and use tax was expanded to include waste collection and disposal services, effective January 1, 1990. The definition of what was subject to the sales tax was changed to MMSW management services in the 1995 session. The increasingly complex waste system, provisions unique to the SCORE legislation, and differing interpretations of current statute have made applying the sales tax to solid waste activities challenging.

DISCUSSIONS AND ACTIONS OF THE TASK FORCE

Changes to SCORE tax. The task force identified criteria that were critical for any future SCORE option. Any SCORE tax revision should:

- Promote integrated waste management.
- Raise predictable and sufficient revenue.
- Be easy to understand.
- Be simple to administer.
- Have the waste generator pay the tax rather than someone else.
- Allow generators to pay comparable tax for comparable service.

The task force identified a number of revisions to the tax structure for SCORE. The SCORE revisions that have been discussed and remain in consideration are as follows:

1. Tax only direct MMSW charges.
2. Define and tax MMSW management services -- broad definition of MMSW service.
3. Define and tax MMSW management services -- narrower definition of MMSW service.
4. Solid Waste Generator Assessment supplement.
5. Fee based on annual quantity of waste handled by those providing and billing for MMSW service.

The task force has not made any recommendations on specific SCORE changes at this time. Instead, the task force is examining the possibility of addressing the changes in the SCORE tax through a combined state fee that would collect the amount currently collected through the SCORE tax and the SWGA.

Combining State Solid Waste Fees. In addition to directing the task force to address specific issues associated with SCORE sales tax and the SWGA, the Legislature charged the task force with identifying and examining ways to simplify or streamline the fees. Accordingly, task force members have considered replacing the SCORE tax and the SWGA with a new single state fee. Any recommendations will be delivered in the report due to the Legislature on February 15, 1997. The proposals for a combined state fee are described below:

Volume- or Capacity- Based Fee. Under these proposals, residential generators would pay a diced fee and commercial generators would pay a fee based on the volume of waste disposed.

Price-Based Fee. Under these proposals, residential and commercial waste generators would pay a fee based on a percentage of their waste disposal bill.

"Hybrid" Fee. Task force members are currently examining a "hybrid" of the volume- and price-based fees. The proposed combined fee would do the following:

- Establish a fixed fee for residential MMSW generators.
- Consider multi-family residences as residential generators (not commercial as they are now) and charge them either the same fixed fee as single family households or a slightly higher rate than single family dwellings
- Levy a price-based fee on commercial generators (a percentage of the bill charged to the customer).
- Continue to collect a volume-based assessment from non-MMSW generators currently subject to the SWGA (construction and demolition, industrial, and medical and infectious waste).

There are other aspects of the fee that the task force will collect information on and discuss. These factors have not been discussed in detail for this proposal at this time.

Update on SCORE Tax Task Force Activities

INTRODUCTION

In 1996, the Minnesota Legislature established a tax task force to examine the issues surrounding the SCORE sales tax on solid waste management services and the solid waste generator assessment (SWGA). The task force was created to advise the Legislature on how to address issues that have arisen in regard to these taxes and provide a forum to help make decisions about how to address the issues.

The Legislative charge for the task force is broken into three parts and the task force is required to submit a report to the Legislature on each part of the charge. This paper provides an update on task force activities regarding the second part of the charge. The task force submitted a report on the first part of the charge on November 27, 1997; that report provided a detailed description of the SCORE tax and the issues surrounding its implementation. It presented the task force discussions about recommendations for how to address the issues for the 1990 to 1995 period. The final report to the Legislature will be submitted in February 1997.

LEGISLATIVE CHARGE

Minn. Laws 1996, Chapter 471 states that, "the task force shall make recommendations to the Sales Tax Advisory Council and to the chairs of the House and Senate Environment and Natural Resources Committees of the Legislature" on the following:

Part I: By November 30, 1996

- Monitor the ongoing evaluation being conducted by the Minnesota Department of Revenue (DOR) to determine the SCORE taxes paid by all affected political subdivisions on solid waste management services.
- Provide input to the Commissioner of Revenue if questions of interpretation arise during the evaluation.
- Discuss the tax base principles and possible options to use for the SCORE tax during the tax period from January 1, 1990, to December 31, 1995.

Part II: By January 15, 1997

- Discuss the base to which the SCORE tax applies beginning January 1, 1996.
- Examine the impact on total revenues from various funding sources including tipping fees, service charges, assessments, or subsidizing through the property tax system.
- Identify ways to simplify or restructure the current tax system for ease of collection and administration.
- Discuss methods to ensure that the taxes due to the state are paid either by the haulers or the political subdivisions; recommend a procedure for keeping open communication between the various entities on any future issues relating to this tax.

Part III: By February 15, 1997. The third part focuses entirely on the Solid Waste Generator Assessment (SWGA).

- Discuss the distinction between “residential” and “nonresidential” for purposes of the SWGA.
- Examine ways to simplify or restructure the current assessment system for ease of collection and administration.

The task force consists of 14 voting members with expertise in the areas of taxation or waste management.

REPORT

The task force discussions to date have focused both on specific changes that could be made in the SCORE tax and the SWGA to alleviate some of the problems with these state solid waste fees and on more general, sweeping changes to solid waste fees in the state. At this time, the task force is discussing options that would combine the two state solid waste fees into one comprehensive fee that would replace both the SCORE tax and the SWGA.

This report will serve as an update on discussions to date and will not present detailed recommendations or information. The fact that the task force is discussing combining the two state fees means that a separate report on recommendations only for SCORE would not reflect the current work of the task force. The final report of the task force, which will be submitted to the Legislature on February 15, will present all of the recommendations or actions of the task force, as well as relevant background information required under the charge.

SCORE PROGRAM AND TAX

The SCORE sales tax took effect in 1990 to fund the solid waste abatement activities required by the “SCORE” legislation passed by the Legislature in 1989. The SCORE legislation established recycling goals for the state and required support for recycling programs, including support to businesses that use recycled material in their manufacturing process, promotion of waste reduction activities, and a widespread education campaign about waste reduction, reuse and recycling. SCORE also established programs for market development for products using recycled materials. To fund the SCORE initiatives, the general sales and use tax was expanded to include waste collection and disposal services, effective January 1, 1990. As a result of confusion over interpretation of statute, the definition of what was subject to the sales tax was changed to MMSW management services in 1995.

ISSUES REGARDING THE SCORE SALES TAX

Complex Waste System. In 1989 (pre-SCORE), the solid waste management system was relatively simple. At the time the tax was instituted, most costs were incorporated on a waste hauler’s bill so the designers of the tax envisioned a fairly simple application of the sales tax. However, state law directed the development of an integrated waste management system that would incorporate waste reduction, recycling and processing to ensure the protection of the

environment. While the integrated system did a better job of protecting the environment, it generally cost more than simple landfilling of waste. As waste programs matured, costs increased and counties used a wide variety of funding mechanisms to pay for their waste systems.

In addition, challenges to county designation ordinances (that direct the flow of waste to specific facilities) meant that counties could not ensure a set amount of waste would be delivered to their facilities. Counties have had to lower tipping fees and find alternate sources of funding in order to continue to get waste to facilities so they could pay costs. As a result, more counties turned to funding sources that were not directly billed to the waste generator (such as using property taxes). These developments have further complicated application of the SCORE tax.

Payment of Cost in Excess of Price Charged for Solid Waste Management Services.

When the SCORE legislation extended the sales tax to solid waste collection and disposal services (later changed to solid waste management services), a provision was inserted to account for the different ways that solid waste services could be paid for in different jurisdictions.

Political subdivisions are required to pay tax on the total costs in excess of the amount charged for solid waste services. This provision is unique; in all other retailing situations, the tax is paid on the price charged to the customer. In some cases, the political subdivision may pay for a portion of the solid waste costs through fees that are not billed directly to the customer for service (examples of such fees are property taxes or county solid waste service fees). The original legislation included a provision to ensure that taxes are paid on the full cost of service, regardless of how the services were billed.

Definition of "Providing MMSW Service." Because political subdivisions are required to pay tax on costs of service in excess of the amount charged, the definition of what activities were considered costs of service was critical to determining how much tax was owed by political subdivisions. The interpretation of statute used by the Department of Revenue to calculate the amount of sales tax owed by government entities differed and continues to differ from the interpretation of most in the waste community.

The DOR's interpretation of statute considers all local government units (LGU) incurring any cost associated with MMSW to be "providing MMSW service." The DOR does not make a distinction between those activities that an LGU carries out in its role as a government entity (regulating, enforcing, planning) and those it carries out as a direct provider of waste management services. Most involved in the waste industry interpret the statute to mean that the SCORE tax should be levied only on actual services related to handling of MMSW and would not include activities that LGUs would otherwise carry out in their role as government.

DISCUSSIONS AND ACTIONS OF THE TASK FORCE

Changes to SCORE tax

The task force spent considerable time discussing possible revisions to the SCORE sales tax that would address the issues that have arisen since the application of the sales tax to solid waste services. The task force identified criteria that were critical for any future SCORE option. Any SCORE tax revision should:

- Promote integrated waste management.
- Raise predictable and sufficient revenue.
- Be easy to understand.
- Be simple to administer.
- Have the waste generator pay the tax rather than someone else.
- Allow generators to pay comparable tax for comparable service.

The task force identified a number of revisions to the tax structure for SCORE and narrowed the possible changes down to five options. The task force has not made any recommendations on specific SCORE changes at this time. Instead, the task force is examining the possibility of addressing the changes in the SCORE tax through a combined state fee that would collect the amount currently collected through the SCORE tax and the SWGA. The SCORE revisions that have been discussed and remain in consideration are as follows:

1. Tax only direct MMSW charges.

Under this alternative, the SCORE tax would continue in its current form but would be collected only on the amount charged to the generator. The tax would be collected from the generator by the billing party for MSW services (for example, a hauler or a city that provides garbage collection service to its residents). The SCORE tax would then operate like any other application of the sales tax and would no longer have the unique provision that requires local units of government to calculate and pay on the costs in excess of charges.

2. Define and tax MMSW management services -- broad definition of MMSW service.

Under this alternative, the SCORE tax would continue to be collected in the current manner but would apply to a more precisely defined set of MMSW management services. "MMSW Management Services would include the full range of tasks carried out by any market player in the waste-handling business, from collection of MMSW at the point of aggregation by a generator for collection by a hauler, through disposal.

3. Define and tax MMSW management services -- narrower definition of MMSW service.

This alternative is a variation on Alternative 2, and would exclude the following activities or costs: financial assurance costs; payment of debt service on bonds that were used to construct MMSW management facilities; and county contract management costs for waste processing services provided by a private company.

4. Solid Waste Generator Assessment supplement.

This alternative would revise the Solid Waste Generator Assessment (SWGA) to include an additional amount that would cover the cost of SCORE programs. This alternative is now part of the discussion of combining the two state solid waste fees into one fee.

5. Fee based on annual quantity of waste handled by those providing and billing for MMSW service.

This alternative would require all parties hauling waste in Minnesota (including private haulers, municipalities hauling for their residents, etc.) to remit a fee based on the amount of waste they handle in a year. The haulers would pay the fee and could choose any method to pass that cost along to the waste generator.

Combining State Solid Waste Fees

In addition to directing the task force to address specific issues associated with SCORE sales tax and the SWGA, the Legislature charged the task force with identifying and examining ways to simplify or streamline the fees. Accordingly, task force members have considered replacing the SCORE tax and the SWGA with a new single state fee. Recycling activities would continue to be exempt from any state fees. The proposals for a combined state fee are described below:

Volume- or Capacity- Based Fee

The task force is considering several different volume-based fee proposals. The SCORE tax would be eliminated and a fee structure similar to that of the current SWGA (based on volume of waste disposed) would be used to raise money for SCORE and the SWGA.

- Households would pay a fixed fee.
- Multi-family residents (apartments and manufactured housing) would pay a fixed fee per household unit (either the same fee as single family households or a slightly higher rate than single family dwellings).
- Commercial generators would pay a set amount per cubic yard. This fee could be charged on MMSW generators only or on generators of more types of waste in addition to MMSW (as the SWGA currently is structured).
- Under one proposal, a rebate would be provided for commercial generators that could demonstrate that they processed their waste.

The task force has not developed details about how the funds would be collected and administered by the state at this time. One proposal offers the following structure for the money collected under the combined fee.

- A portion of the money collected under the new fee would be deposited in a dedicated account for the Landfill Cleanup programs and would have an open and standing appropriation.
- The balance of revenues from the fee would be placed in another dedicated account to be used for SCORE programs, including county block grants and state agency SCORE activities.

Price-Based Fee

There are several variations for a price-based combined fee. A price-based fee may incorporate any or all of the following features:

- All MMSW generators, residential and commercial would pay a percentage of their bill.
- Multi-family residents could be considered residential waste generators or commercial generators. The percentage of the bill charged would vary depending on whether these generators were considered residential or commercial.
- The direct bill to the generator would be subject to the fee.
- The fee could be levied on MMSW generators only or on generators of additional types of waste.

“Hybrid” Fee

At the January 9, 1997 meeting, task force members expressed interest in pursuing the following option for a combined fee. The task force will examine additional information on this option at the next meeting and discuss whether it will recommend this specific option to the Legislature. Any recommendations will be delivered in the report due to the Legislature on February 15, 1997.

The proposed combined fee would do the following:

- Establish a fixed fee for residential MMSW generators.
- Consider Multi-family residences as residential generators (not commercial as they are now) and charge them either the same fixed fee as single family households or a slightly higher rate than single family dwellings
- Levy a price-based fee on commercial generators (a percentage of the bill charged to the customer).
- Continue to collect a volume-based assessment from non-MMSW generators currently subject to the SWGA (construction and demolition, industrial, and medical and infectious waste).

There are other aspects of the fee that the task force will collect information on and discuss. These factors have not been discussed in detail for this proposal at this time.

- A rebate for generators who process their waste.
- How the funds would be collected, deposited, tracked and appropriated by the state.