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SCORE Sales Tax Task Force

Final Report

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

February 1997

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Executive 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.

The task force consists of 14 voting members with expertise in the areas of taxation or waste management and a non-voting chair. This report describes the task force action as required under Minn. Laws 1996, Chapter 471, Section 28.

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 issues regarding the 1990 - 1995 period for the SCORE sales tax and issues regarding the period from 1996 on for both the SCORE tax and the solid waste generator assessment (SWGA).

SCORE -- Overview of Program and Tax

The SCORE sales tax took effect in 1990 to fund the solid waste abatement activities required by the "SCORE" legislation passed 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 Department of Revenue (DOR) estimates that about \$25.5 million in revenues is collected through the SCORE tax annually. About \$19 million in state funds are spent on SCORE programs annually. Counties spend an additional \$28 million on SCORE programs.

Issues Regarding the SCORE Sales Tax

Complex Waste System

In 1989 (pre-SCORE), the solid waste management system was relatively simple. As county programs matured, costs increased and counties used a wide variety of funding mechanisms to pay for their waste systems. Also, challenges to county designation ordinances (that direct the flow of waste to specific facilities) meant counties had to lower tipping fees and find alternate sources of funding in order to continue to get waste to their facilities to pay costs. More counties turned to funding sources that were not directly billed to the

waste generator (such as using property taxes).

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

Application of the sales and use tax on solid waste services is unique because of specific statutory language requiring local government units (LGUs) to pay taxes on costs in excess of the price paid by the user of the services.

What is "Providing MMSW Service"

The DOR's interpretation of statute considers *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 and those it carries out as a direct provider of waste management services.

It is difficult for LGUs to apply this interpretation to their activities because they are involved in a number of activities in their role as government entities (such as regulating, enforcing, planning). 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.

Solid Waste Generator Assessment (SWGA) -- Overview

The solid waste generator assessment was instituted in 1992 and revised and increased in 1994. The SWGA funds the state landfill cleanup program and some MPCA solid waste operations. If a landfill is part of the

program, the state assumes liability and responsibility for cleanup of the facilities.

The fee is \$2 per residential household each year and \$0.60 per uncompacted cubic yard of commercial waste. Municipal solid waste (MSW), construction and demolition waste, commercial industrial waste, and medical and infectious waste are subject to the SWGA. The fee is charged on the capacity of the disposal container that a commercial generator contracts with a hauler to remove.

Issues Regarding the Solid Waste Generator Assessment

Several members of the hauling community testified that the volume-based SWGA results in increased administrative burden for them. They stated that the administrative costs associated with calculating the assessment can be substantial

The Department of Revenue testified that the SWGA presents administrative challenges to them. These complications can make it difficult to audit haulers to determine the amount of SWGA collected and remitted.

Currently, multihousing units and manufactured housing generally are considered commercial generators. Because of the concentration of units, these households usually have commercial collection, using a central dumpster. As a result, they pay a commercial SWGA rate of \$0.60 per cubic yard and this results in their paying a higher fee than other residential households who pay a \$2.00 fee annually.

However, because the commercial rate for service is generally lower per unit than the residential rate and the SCORE tax is a percentage of the sales price, these households enjoy a lower SCORE tax

payment per household than single family households.

underpayment or reimbursement of any overpayment of SCORE taxes by counties until June 1, 1997.

SCORE TAX - 1990 - 1995

In 1995 the Legislature required the Department of Revenue to conduct an evaluation to determine the accuracy of SCORE taxes paid by counties during the 1990 to 1995 period.

The evaluation indicates that all local units of government in the state owe about \$3.2 million in SCORE tax over the 1990 - 1995 period. During this time, the state collected an estimated \$115 million in SCORE tax overall based on DOR estimates of annual revenues. Appropriations from the sales tax for solid waste activities were only about \$86 million over this period.

In addition, the Legislature has placed a moratorium on the collection of any

Department of Revenue Evaluation of SCORE tax owed by all local governments.

January 1, 1990 - June 30, 1995

Type of Tax Owed	Counties	Cities
Sales Tax Portion	\$ 900,000	\$ 200,000
Use Tax Portion	\$1,500,000	\$ 600,000
TOTAL SCORE TAX OWED	\$2,400,000	\$ 800,000

Some task force members asked the DOR to use a task force recommended interpretation of statute in its evaluation. The DOR responded that it would continue the ongoing evaluation without using new interpretations or input from the task force.

At the final task force meeting, the members from the DOR stated that the DOR would oppose any moratorium proposed in the Legislature. Task force members discussed the fact that a moratorium should not provide relief to those that made no effort to pay the tax.

The DOR agreed that the statute is ambiguous and subject to interpretation but stated that any changes should be made legislative and committed to working with the task force to enact its recommendations during the next legislative session.

Other task force discussion on the 1990 - 1995 period

Task force recommendation for the 1990 - 1995 period

The task force members spent considerable time discussing what should be included in the tax base for the SCORE sales tax. There is agreement on some parts of the definition but not all. The task force made no recommendation on this discussion of the past.

The task force voted to recommend to the Legislature that the current moratorium on collection, imposition, assessment or refund of the SCORE tax from January 1, 1990, to December 31, 1995, be made permanent.

The task force members agreed that the term "MMSW management services" would include the continuum 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.

The Future - 1996 and Beyond

The task force began discussions of future changes to the state solid waste fees by discussing each individually, as laid out in the Legislative charge. As the discussions progressed, however, the task force began to debate a more comprehensive approach to simplifying and streamlining the two state solid waste fees.

The task force agreed that a combined fee would be an effective way to simplify and streamline state solid waste fees.

Key Considerations and Recommendations

The task force agreed that the Legislature should consider these recommendations regardless of whether the Legislature chooses to adopt a single, combined state solid waste fee or adopt one of the SCORE-specific revision options.

- Continue state funding and support.
- Appropriate all money collected through SCORE to solid waste programs.
- Make any changes according to criteria for SCORE tax revisions established by the task force.
- Distribute any increased appropriation to counties based on performance.

Combined State Solid Waste Fee

General

- Eliminate the current SCORE tax and SWGA replace them with the combined fee.
- Continue to exempt recycling from any fee or tax.
- Place the new fee on the direct charges to the generator only.
- Raise the same revenue that is currently being raised through the two separate fees -- about \$48 million.
- Ensure that the amount currently collected through the SWGA continues to be placed in a dedicated fund for the closed landfill program and other MPCA solid waste activities now paid for through the SWGA.
- Make sure that the full amount of money collected on solid waste through the SCORE tax or the new combined fee is appropriated for solid waste.
- Have the burden of payment for each category of generator remain about the same (each category of waste generator should pay about the same in fees and taxes as they are paying now).

Residential

- Charge residential generators a fixed fee per household unit.
- Make the residential fee equivalent to what residents are paying now under the two fees --roughly \$14 annually or about \$1.20 per month (the fee amount could be different depending on whether multihousing residents are considered residential or commercial generators).

- Require haulers to bill a pro-rated residential fee when they bill (monthly, quarterly, etc.) to eliminate the confusion that can arise when a household changes haulers.
- Create a per-bag fee for "bag only" systems that would be the equivalent to the annual household fee so those residents without household billing will pay the same residential fee.

Commercial

- Charge commercial MMSW generators a price-based fee (a percentage of the amount billed).
- Set the percentage for the price-based fee at a level that will raise money to fund both SCORE and SWGA -- roughly 13.5 percent.
- Keep the non-MSW portion of the SWGA a volume based fee. Construction and demolition waste, medical and infectious waste, and commercial industrial waste would pay a \$0.60 per cubic yard fee.

Apartments and Manufactured Housing

The task force did not recommend a single option for apartments and manufactured housing. They debated three possible solutions for the Legislature to consider under a combined state fee.

- Treat multihousing and manufactured housing as residential generators.
- Treat apartments as commercial generators.
- Treat apartments as residential generators but at a different rate than single family housing residents.

Fee Specific Recommendations

In the event that the Legislature chooses not to institute a combined solid waste fee, however, the task force identified several options for revisions for each of the two state fees.

Possible Options for Restructuring the SCORE Tax

The task force identified a number of revisions to the tax structure for SCORE and narrowed the possible changes down to five options for recommendation to the Legislature.

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

Possible options for restructuring the SWGA

The task force heard testimony from a number of interested parties who advocated making changes to the SWGA.

The task force recommends that the Legislature adopt a single fee as a solution to the current administrative issues.

The task force also recommends that the Legislature change statute to treat multihousing and manufactured housing generators as residential for the purposes of the SWGA.

Introduction

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.

Parties involved in solid waste programs and in collecting and remitting the SCORE sales tax have been working to resolve the issues regarding the tax for several years. The Legislature realized the complexity of the issue and created the task force to assist in reaching a resolution of the problems stemming from implementation of the SCORE sales tax.

The task force consists of 14 voting members with expertise in the areas of taxation or waste management and a non-voting chair. The membership list is attached as Appendix A. The group began meeting in late June, 1996, and met about every three weeks through February 13, 1997.

Legislative Charge

The Legislative charge for the task force is broken into three parts. The first part

addressed the 1990 through 1995 period for the SCORE tax, the second part addresses the SCORE tax from January 1996 into the future and the third part addresses the solid waste generator assessment.

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 to the state 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.

SCORE -- Overview of Program and Tax

SCORE Program

The SCORE sales tax took effect in 1990 (it was enacted in 1989) to fund the solid waste abatement activities required by the “SCORE” (Governor’s Select Committee on Recycling and the Environment). SCORE legislation established statewide recycling goals; required support for recycling programs, including support to businesses that use recycled material in their manufacturing process; mandated promotion of waste reduction activities and a widespread education campaign about waste reduction, reuse and recycling. It also

established programs and grants for market development for products using recycled materials.

Since the beginning of the SCORE program, statewide recycling rates have increased from nine percent in 1989 (before SCORE) to 45 percent in 1995.

SCORE Tax

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 mixed municipal solid waste (MMSW) management services in the 1995 session.

The Department of Revenue (DOR) estimates that about \$25.5 million in revenues is collected through the SCORE tax annually. The \$25.5 million is an estimate. In 1993, the Legislature required the DOR to track SCORE tax separately from sales tax. While the tracking system has been established, the DOR is not confident in the quality of reporting at this time and continues to use the \$25.5 million estimate of SCORE revenues.

About \$19 million in state funds are spent on SCORE programs annually; \$14 million is paid directly to counties in the form of block grants, and \$2 million in competitive grants and loans. The remainder funds technical assistance, education, and other support for state recycling provided by the OEA and MPCA support and grants to counties for household hazardous waste programs.

Counties spend an additional \$28 million on SCORE programs, over seven times the

amount of matching funds they are required to provide under statute.

Issues Regarding the SCORE Sales Tax

Complex Waste System

In 1989 (pre-SCORE), the solid waste management system was relatively simple. Prior to the passage of the SCORE tax (which specifically included LGUs), counties had been categorically exempt from sales and use tax requirements, so dealing with the tax was a new experience for them.

At the time the tax was instituted most costs were incorporated on a waste hauler's bill. The designers of the tax envisioned a fairly simple application of the sales tax. However, as county 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.

Without the ability to designate facilities for county waste, counties have had to lower tipping fees and find alternate sources of funding in order to continue to get waste to their facilities so they can 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, a unique provision was inserted to account for the different ways that solid waste services could be paid for in different jurisdictions.

In some jurisdictions a resident may pay for all costs of solid waste service through a bill received directly from the hauler or other entity that provides waste services. The resident pays sales tax on the entire amount billed. In other jurisdictions, the bill the customer sees may not cover the entire cost of waste services. In these cases, the political subdivision may pay for a portion of the costs through fees that are not billed directly 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 are financed.

Minn. Stat. §297A.45, subd. 2, states:

If a political subdivision provides a waste management service to its residents at a cost in excess of the total direct charge to the residents for the service, the political subdivision shall pay the taxes based on its cost of providing the service in excess of the direct charges.

In testimony to the task force, the DOR pointed out that no other retailer pays tax on costs in excess of sales price. In all other retail situations, the tax is paid on the price charged to the customer.

What is “Providing MMSW Service”

As the Department of Revenue began to audit several counties regarding their payment of the SCORE sales tax, it became clear that the interpretation of statute used by the DOR to calculate the amount of sales tax owed by government entities differed from the interpretation of local governments and others in the waste community.

Statute requires that the tax be paid on MMSW management services, which is defined as “services relating to the management of MMSW from collection to disposal, including transportation and management at waste facilities.” (Minn. Stat. §297A.01, subd. 21).

The DOR’s interpretation of statute considers *any* cost associated with MMSW to be “providing MMSW service.” Under this interpretation, any cost associated with MMSW is included as a cost of *service* in the calculation of use tax owed on MMSW services. It is difficult for LGUs to apply this interpretations to their activities because they are involved in a number of activities in their role as government entities (such as regulating, enforcing, planning).

The DOR does not make a distinction between those activities that an LGU carries out in its role as a government entity and those it carries out as a direct provider of waste management services.

Most involved in the waste industry, including counties, cities and those in the hauling community, interpret the statute to mean that the SCORE tax should be levied only on actual services related to handling of MMSW. Under this interpretation, activities that LGUs would otherwise carry out in their role as governments should not be subject to sales or use tax.

Solid Waste Generator Assessment (SWGA) -- Overview

Programs Funded by SWGA

The solid waste generator assessment was instituted in 1992 and revised and increased in 1994. The SWGA funds the state landfill cleanup program and some MPCA solid waste operations. Under the closed landfill program, owners and operators of landfills that closed by a certain date and according to specifications became eligible for the state program. If a landfill is part of the program, the state assumes liability and responsibility for cleanup of the facilities. The original owner and operator can no longer be sued as responsible parties in Superfund actions.

Fee Description

The fee is \$2 per residential household each year and \$0.60 per uncompacted cubic yard of commercial waste. In addition to commercial MSW generators, generators of construction and demolition waste, commercial industrial waste, and medical and infectious waste are subject to the commercial SWGA. The commercial sector pays a higher fee because commercial generators and haulers receive the most benefit from the closed landfill cleanup program.

The fee is charged on the capacity of the disposal container that a commercial generator contracts with a hauler to remove.

Issues Regarding the Solid Waste Generator Assessment

The task force was charged with examining ways to simplify or restructure the current SWGA. In addition, the task force was to examine the issues surrounding the treatment of multihousing and manufactured housing households.

Ease of Administration

Haulers

The entity providing waste disposal service - whether a private hauling company or a municipality -- must collect the SWGA from commercial and residential customers. As mentioned above, commercial generators pay the SWGA on the capacity of the disposal container that the generator contracts with a hauler to remove.

Several members of the hauling community testified that the volume-based SWGA results in increased administrative burden for them. They stated that the administrative costs associated with calculating the assessment can be substantial.

Several haulers testified that they do not always bill their customers using volume so it is difficult and time consuming to calculate how much SWGA a customer owes. For example, if a customer with a dumpster leaves additional waste outside of the regular dumpster, the hauler would have to convert the extra waste into a measurable volume of waste to calculate the correct SWGA.

Haulers also stated that the different billing methods used by different haulers results in the fee being applied inconsistently.

Different haulers may calculate amounts owed differently. This results in an uneven application of the SWGA.

Other haulers testified that the current system is difficult to administer and they would welcome a single fee that would be levied by on the amount of waste handled by the hauler annually. The fee could then be passed on to the generators by the hauler in whatever manner the hauler found most simple and efficient.

Department of Revenue

The Department of Revenue testified that the SWGA presents administrative challenges to them. There are a number of administrative details that can result in uneven application of the fee. For example, determining the appropriate basis for conversion of weight to cubic yards for different kinds of waste can be difficult. These complications can make it challenging to audit haulers to determine the amount of SWGA collected and remitted.

The DOR also noted that the same waste can be charged different SWGA amounts based on how it is handled. For example, if construction and demolition waste is collected by a hauler, the assessment is collected on the capacity of the container but if the same waste were hauled by the generator to the facility, the SWGA would be levied on the actual amount of waste delivered.

Apartments and Manufactured Housing

The task force charge included a requirement that the task force discuss the distinction between "residential" and "non-residential" for purposes of the SWGA. Representatives of the Minnesota

Multihousing Association and the Minnesota Manufactured Housing Association testified their constituents pay considerably more than single family households under the SWGA. These representatives pointed out that while the multihousing and manufactured housing households pay more in the SWGA, they generate less waste than a single family household. A number of those in the waste industry agreed with this statement.

Currently, "residential" includes single family households and multihousing buildings up to four units. Apartments larger than four units generally are considered commercial generators. Because of the number of units in one location, multihousing housing usually has commercial collection, using a central dumpster. As a result, they pay a commercial SWGA rate of \$0.60 per cubic yard. The OEA estimates that multihousing or manufactured housing households pay about \$6 annually in SWGA charges whereas households currently considered "residential" pay the \$2.00 per household fee annually.

However, because the commercial rate *for service* is generally lower per unit than the residential rate and the SCORE tax is a percentage of the sales price, these households enjoy a lower SCORE tax payment per household than single family households. The OEA estimates that residential households pay about \$10 - \$12 annually in SCORE tax while multihousing and manufactured housing pay about \$5.50 in SCORE tax.

One reason to assess the commercial SWGA for these residential properties is because multihousing and manufactured housing usually had a greater risk of action being brought against at contaminated landfills because they are handled as commercial waste. Thus, the apartments and manufactured housing derive more benefits from the programs funded through the SWGA than single family households.

SCORE Tax - 1990 through 1995

(Part I of charge)

Legislative Charge for "Part I"

- 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.

DOR Evaluation of Taxes Owed by Local Governments

As a result of the confusion and disagreement over interpretation of current statute, in 1995 the Legislature required the Department of Revenue to conduct an evaluation to determine the accuracy of SCORE taxes paid by counties during the 1990 to 1995 period.

In addition, a moratorium was placed on the collection of any underpayment or reimbursement of any overpayment of SCORE taxes by counties until June 1, 1996. In the 1996 session, the Legislature extended the moratorium until June 1, 1997, and required the DOR to continue its evaluation and expand it to include cities and townships.

The current DOR evaluation was due to the Legislature on January 15, 1997. The DOR

conducted the evaluation during the time the task force was meeting.

Preliminary results indicate that all local units of government in the state owe about \$3.2 million in SCORE tax over the 1990 - 1995 period. During this time, the state collected an estimated \$115 million in SCORE tax overall based on DOR estimates of annual revenues. Appropriations from the sales tax for solid waste activities were only about \$86 million over this period.

Of the total amount owed by local governments, about \$2.4 million is owed by counties and about \$0.8 million by cities. About \$1.1 million of the tax owed is on the sales tax portion of SCORE -- tax based on direct bills to customers -- and about \$2.1 million is from use tax -- tax on the cost in excess of direct charge. The DOR completed this evaluation using the current, disputed, interpretation of what costs are subject to tax.

Department of Revenue Evaluation of SCORE tax owed by all local governments.

January 1, 1990 - June 30, 1995

Type of Tax Owed	Counties	Cities
Sales Tax Portion	\$ 900,000	\$ 200,000
Use Tax Portion	\$1,500,000	\$ 600,000
TOTAL SCORE TAX OWED	\$2,400,000	\$ 800,000

Task Force Input to the DOR regarding the evaluation

The task force was required to monitor and provide input to the DOR evaluation. At the August 1, 1996, task force meeting, some members suggested that the task force provide clarification to the DOR on what would be considered "taxable costs" -- costs included in the calculation of use tax owed on "providing MMSW service." These members asked the DOR to use the recommended clarification in conducting the current evaluation of the taxes paid by LGUs.

The DOR Assistant Commissioner, Don Trimble, responded in a memorandum to task force members dated September 6, 1996. The memorandum reiterated the purpose and benefit of the DOR's statutory mandate to conduct the evaluation, and the DOR's intent to continue the ongoing evaluation without using new interpretations or basing the evaluation on input from the task force.

In the memorandum, the DOR agreed that the statute is ambiguous and subject to interpretation but stated that any changes should be made legislatively. The DOR committed to working with the task force to enact its recommendations during the next legislative session. The memorandum is attached as an appendix to this report.

Task Force Recommendation for the 1990 - 1995 period

Task force discussions on Part I of the charge focused in two directions: making a recommendation that the current moratorium on collections and reimbursements be made permanent, and revising the definition of MMSW management service to clarify the definition and make sure all parties in the state are using the same basis for calculating the SCORE tax owed by local governments.

Make the current moratorium permanent

The task force voted to recommend to the Legislature that the current moratorium on collection, imposition, assessment or refund of the SCORE tax from January 1, 1990, to December 31, 1995, be made permanent.

Reasons for Recommending Permanent Moratorium

Members stated that the original goal of SCORE was to establish a simple and efficient way to fund solid waste abatement activities in the state and the current situation is an administrative "nightmare."

Cost and effort required to collect a relatively small amount of money

The members questioned whether the cost and level of effort necessary to straighten out the problems resulting from unclear direction and different interpretations would be worth the cost to the taxpayers and the potential damage to waste abatement programs in the state. Members discussed the complexity and cost of establishing who owed what amount of SCORE sales tax from 1990 through 1995.

Several members questioned whether the cost involved in straightening out the confusion of the last several years would be greater than any additional revenue to the state or whether the efforts would end up costing all taxpayers in the state more money. Members noted that the evaluation contains only estimates, if actual collection were to occur, the DOR would have to spend additional money to conduct audits of local governments.

Impact on county and state waste abatement programs

Some task force members pointed out that any additional tax liability may be paid to the state out of the SCORE funds the counties *receive from* the state. This result would, in effect, penalize the waste abatement programs that the state has worked to establish and promote under the SCORE program. The state has been a national leader in recycling and reducing waste. Requiring local governments to pay back taxes based on the DOR interpretation could damage these programs that have made Minnesota a national leader for solid waste programs.

Also, the members discussed the fact that most of the revenue collected through the SCORE tax is passed back to counties in the form of SCORE block grants to fund solid

waste abatement activities for county residents and businesses. Some members questioned whether the state should spend taxpayer money to collect back taxes from county taxpayers when that revenue is then used to support county activities.

Since application of Minn. Stat. §297.45, subd. 2 has become increasingly complicated and because the DOR's interpretation of statute has been subject to dispute, the ability to achieve equity and fairness through collections and repayments of the tax may be impossible, even with retroactive clarification of terms and reassignment of tax liability.

Concerns with Moratorium

At the final task force meeting, the members from the DOR stated that the DOR would oppose any moratorium proposed in the Legislature. This opposition represents a different position than that expressed in an earlier letter from the DOR (September 6, 1996) in which the DOR committed to working with the task force to implement its recommendations at the Legislature (the letter is attached in Appendix E).

The DOR outlined its concerns with a moratorium in a memorandum from Assistant Commissioner Don Trimble (the memorandum is attached in Appendix E). The DOR has two reasons for opposition to the moratorium.

- The DOR is concerned that the moratorium would "send the wrong message" to taxpayers regarding tax relief.
- The DOR believes the moratorium would unfairly penalize taxpayers in the counties that were in compliance under the DOR's interpretation of statute and those taxpayers who had little liability.

Task force members discussed the fact that a moratorium should not provide relief to those that made no effort to pay the tax. There may be some situations where a LGU should have paid the tax but did not and the nonpayment was not because lack of clear guidance from the DOR but because of a “willful” nonpayment. To date, the DOR has not indicated to the task force if this “willful” nonpayment has occurred in any LGUs.

Revised definition of MMSW management service

The task force members spent considerable time discussing what should be included in the tax base for the SCORE sales tax. At the heart of the issue is the definition of MMSW service. The services included in this definition determine the total cost of the service in any jurisdiction. This total cost is then used as the basis for calculation of the “costs in excess of service” to determine what use tax is owed by the LGU. There is agreement on some parts of the definition but not all.

Definition

The task force members agreed that the term “MMSW management services” would include the continuum 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.

The following activities and costs would be included under this alternative:

- Collection of MMSW (at the point of aggregation by a generator for collection by a hauler).
- Transportation costs.
- Management at waste facilities.

- Ancillary activities which may occur prior to actual collection (e.g., employing drivers, acquiring trucks, or applying for and receiving an operating permit).
- Activities and costs incurred by a LGU for the actual handling of MMSW to move it through the MMSW management system.

This alternative would not include LGU activities, such as:

- Contract administration with a waste hauler for waste services.
- LGU actions as a regulator or overseer and not as a market player (such as regulatory enforcement activities, ordinance or rule writing, legislative or intergovernmental organization activity, collecting and reporting data to the state, or overall planning for the solid waste system.)
- Closure, post-closure, and remedial action costs on the closed portion of a landfill, when a LGU is forced to take over ownership of a facility.

There is disagreement among task force members about whether the following items should be included in the definition of “providing MMSW service.” These items are:

- Debt service on facilities;
- Financial assurance payments; and
- Costs incurred by local governments to oversee waste processing when the processing is a service provided by a private company under contract with the counties.

Appendix B describes in greater detail the revised definition of MMSW management service and the outstanding issues.

The Future -- 1996 and Beyond (Part II and Part III of Charge)

Legislative Charge

The second part of the Legislative charge required the task force to examine the SCORE tax and the current tax and fee system and discuss options for the structure of the SCORE tax.

The third part of the charge also required the task force to examine the future but focuses entirely on the Solid Waste Generator Assessment (SWGA).

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 to the state 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.

- 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.

Task Force Approach to the Future

The task force began discussions of future changes to the state solid waste fees by discussing each individually, as laid out in the Legislative charge. As the discussions progressed, however, the task force began to debate a more comprehensive approach to simplifying and streamlining the two state solid waste fees.

The task force agreed that a combined fee would be an effective way to simplify and streamline state solid waste fees. This section concentrates primarily on the task force’s consensus recommendation that the Legislature adopt a single, combined fee to replace the two existing fees.

In the event that the Legislature chooses not to institute a combined solid waste fee, however, the task force identified several options for revisions for each of the two state fees. The second part of this section

describes the options discussed for each of the fees.

Key Considerations and Recommendations

The task force agreed that the Legislature should consider these recommendations regardless of whether the Legislature chooses to adopt a single, combined state solid waste fee or adopt one of the SCORE-specific revision options.

Continue state funding and support

The task force members initiated their discussions about SCORE with a debate over whether the tax should be continued. Members discussed the waste abatement programs supported by SCORE and agreed that the state should continue to provide funding for solid waste abatement through the SCORE program.

Appropriate all money collected through SCORE to solid waste programs

The task force emphasized that all money collected from the tax on solid waste services should be appropriated for solid waste activities. At this time, the DOR estimates that about \$25.5 million is collected from tax on solid waste management services but only \$19 million is appropriated for SCORE activities.

In the law establishing the task force, the Legislature stated its intent that the "total amount of tax proceeds" collected under the SCORE tax statute be used for "programs and functions related to reducing the quantity and toxicity of solid waste, recycling, household waste management and

other similarly related programs." The task force recommendation on this matter reiterates the Legislature's intent for money raised through the SCORE tax.

Appropriating the full amount collected from solid waste for solid waste activities would provide an increase in appropriations of about \$6.5 million annually for solid waste activities.

Criteria for SCORE tax revisions

The task force identified a number of criteria they considered critical for any future SCORE tax. Any SCORE tax revision should:

- Promote integrated solid 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.

Distribute any increased appropriation to counties based on performance

Task force members expressed support for providing additional state support to counties by appropriating the full amount collected from the SCORE for solid waste activities. In addition, the task force supported basing the increased payments to counties on performance.

Representative Wagenius noted that the task force recommendations for restructuring state solid waste fees accomplish the charge of simplifying state solid waste fees but do not provide strong support for the state

hierarchy for waste management. She suggested that the additional money could be distributed to counties based on their performance in an activity that supports the hierarchy, such as household hazardous waste programs.

Representative Wagenius noted that counties currently spend more on solid waste programs than required by law and, in fact, counties spend more than the state for solid waste abatement programs.

The members discussed basing the distribution of funds to counties on performance in household hazardous waste programs. Task force members debated how such performance would be measured. They discussed assessing county household hazardous waste programs according to specific criteria, such as: convenience and accessibility to residents; percentage of population served; the types of material collected and the amount of those materials.

While not agreeing on a specific program, task force members generally agreed that some formula could be established for the additional appropriation to reward performance based on appropriate criteria.

Combined State Solid Waste Fee

Members debated a number of options for a combined state solid waste fee but recommend the following option.

General

- Eliminate the current SCORE tax and SWGA replace them with the combined fee.
- Continue to exempt recycling from any fee or tax.

- Place the new fee on the direct charges to the generator only.
- Raise the same revenue that is currently being raised through the two separate fees -- about \$48 million.
- Ensure that the amount currently collected through the SWGA continues to be placed in a dedicated fund for the closed landfill program and other MPCA solid waste activities now paid for through the SWGA.
- Make sure that the full amount of money collected on solid waste through the SCORE tax or the new combined fee is appropriated for solid waste.
- Have the burden of payment for each category of generator remain about the same (each category of waste generator should pay about the same in fees and taxes as they are paying now).

Residential

- Charge residential generators a fixed fee per household unit.
- Make the residential fee equivalent to what residents are paying now under the two fees --roughly \$14 annually or about \$1.20 per month (the fee amount could be different depending on whether multihousing residents are considered residential or commercial generators).
- Require haulers to bill a pro-rated residential fee when they bill (monthly, quarterly, etc.) to eliminate the confusion that can arise when a household changes haulers.
- Create a per-bag fee for "bag only" systems that would be the equivalent to the annual household fee so those residents without household billing will pay the same residential fee.

Commercial

- Charge commercial MMSW generators a price-based fee (a percentage of the amount billed).
- Set the percentage for the price-based fee at a level that will raise money to fund both SCORE and SWGA -- roughly 13.5 percent.
- Keep the non-MSW portion of the SWGA a volume based fee. Construction and demolition waste, medical and infectious waste, and commercial industrial waste would pay a \$0.60 per cubic yard fee.

Apartments and Manufactured Housing

The task force did not recommend a single option for apartments and manufactured housing. They debated three possible solutions for the Legislature to consider under a combined state fee. They considered continuing to treat the groups as commercial waste generators, treating them as residential generators that pay the same amount as other households, or treating them as residential generators but assessing them a lower fee than other households to reflect the amount they pay now.

The task force debated the amounts multihousing and manufactured housing units pay in the SCORE tax and the SWGA and discussed the benefits that multihousing and manufactured housing derive from each of the programs. They debated whether these groups should pay about the same in fees and taxes as they do now or a lower or higher amount. The task force did not make a specific recommendation for one approach but agreed to present the Legislature with possible options. These options are presented below.

Estimated amount charged under combined fees

The OEA has developed rough estimates of the fees to charge waste generators in order to continue to raise the \$48 million currently raised under the SCORE tax and the SWGA. These estimates are based on a number of assumptions about the current waste management system (the assumptions are attached as an appendix to the report).

The OEA has provided these estimates only as a rough guide for the Legislature; any official estimates will have to be done by the DOR when there is bill language for a proposal.

In addition, changes in any of the assumptions used could result in different estimates of fee amounts or a different amount of revenue collected by the state. Because the state may never be able to predict with certainty some costs of solid waste management, it is likely that the Legislature will not know exactly how much would be raised until the program is operating.

The amount that generators would have to pay under a combined fee would vary slightly depending on how apartments and manufactured housing are treated for purposes of the fee. The task force was hesitant to recommend a fee that would charge residential generators more than they are paying now or that would charge a percentage fee that is more than 14 percent.

Treat multihousing and manufactured housing as residential generators

Under this option, all residential households would be treated the same for purposes of the fee. Multihousing and manufactured housing would be included in the residential

portion of the fee rather than the commercial portion, as they are now.

If apartments and manufactured housing are treated as residential generators, all households would pay slightly less than \$14 annually. This would represent an increase to multihousing and manufactured housing a slight decrease for households currently treated as residential.

Commercial generators would pay about 13.6 percent of their bill for the combined fee.

Treat apartments as commercial generators

Currently, apartments and manufactured housing are treated as commercial generators because of how their waste is collected. If they were to continue to be treated as commercial generators under the combined fee, the current residential generators would continue to pay slightly more than \$14 annually or about what they are paying now.

Commercial generators, including multihousing and manufactured housing units would pay about 13.5 percent. Multihousing and manufactured housing would continue to pay about what they pay now, but they currently pay a rate higher than other households that are treated as residential generators.

Treat apartments as residential generators but at a different rate than single family housing residents

Under this option, multihousing and manufactured housing would be treated as residential generators but would pay a lower rate than other households. Keeping the residential rate the same for all residents, as in the first option, actually represents an

increase in costs to the multihousing and manufactured housing units over what they are paying now. Under this option, multihousing and manufactured housing would pay slightly less than \$10 per year, current residential households would pay about \$14.40 annually, and commercial generators would pay about 13.6 percent of their bill.

Reasons for Combining State Solid Waste Fees

The task force identified the following reasons for adopting a combined state solid waste fee.

A combined fee solves the following issues associated with the current state fees:

- Simplifies and streamlines state fees.
- Allows MSW generators to pay just one type of state fee.
- Solves the current problems and confusion associated with the requirement that local governments must calculate the SCORE tax they owe on the costs of MMSW service in excess of charges.
- Simplifies administration and auditing for the Department of Revenue.
- Provides easier fee calculation and collection for haulers than the current SWGA.

In addition, a combined fee would have the following advantages:

- Addresses the different needs of different waste generators (residential, commercial, construction and demolition, etc).
- Does not extend the SCORE tax obligation to non-MSW commercial waste generators.
- Provides an incentive for commercial generators to reduce the waste they

generate and recycle more waste because of the 13.5 percent tax rate.

- Is indexed to inflation.

Concerns About a Combined Fee

Task force members identified concerns with the combined fee.

- Compliance could suffer as the fee increased. While there should be no increase in the total amount paid by generators (on average), a combined fee means that generators will see a single, high fee as opposed to several smaller fees. A letter from the MPCA and Department of Revenue to the task force dated February 11, 1997, recommends that the annual charge be spread over the hauler's billing cycle to reduce the "sticker shock" of the combined fee.
- Large quantity generators may pay less per unit for service than small quantity generators because of economies of scale. Any price-based fee would mean large generators that pay less per unit for collection would then pay less tax per unit than smaller generators.
- Current administrative difficulties for non-MSW waste that exist under the SWGA would remain for non-MSW waste subject to the combined fee because they would continue to pay a volume-based fee. Issues such as the appropriate conversion factor to use when calculating the volume-based tax owed by non-MSW generators when payment for disposal was made by weight would remain under the hybrid.
- A combined fee may cause greater cost shifting from MSW to recycling on billing statements to avoid the tax (a problem that occurs under the

current tax structure). This could be an increased problem for commercial MSW accounts, but will be eliminated for residential accounts because there will be a flat household fee.

Other Possible Combined Fee Options

While the task force agreed to recommend a combined fee option, there was considerable debate over the structure of the fee. The task force spent considerable time debating the following.

Volume-based Fee for Commercial Generators

The task force discussed whether the commercial sector pay a volume-based fee rather than a price-based fee under the combined state fee.

A combined fee that charges commercial generators a volume-based fee would solve many of the same problems that exist under the current fees as a price-based fee would (simplifies state fees, solves the current confusion with SCORE, etc.). It also offers the following advantages.

- Provides the greatest support to the state waste management hierarchy: reduction, recycling and processing.
- Encourages source reduction and recycling because the fee is directly tied to the *amount* of waste generated for commercial generators.
- Provides an education tool and an incentive to get generators to pay attention to what is happening to their waste and encourages generators to choose processing through the rebate.
- Ensures that all commercial generators pay same per unit amount in tax. Large generators of waste that may be able to

negotiate a lower price per unit would still pay a tax based on the amount of waste they generate.

The task force considered the disadvantages to a volume-based commercial fee.

- The business community -- commercial generators -- pays more than residential generators.
- The administrative difficulties the hauling community experiences under the SWGA would continue.
- The auditing and administrative difficulties for the Department of Revenue that currently occur under the SWGA would continue under the volume-based fee.
- The fee is not indexed to inflation.

Fee Specific Recommendations

In the event that the Legislature chooses not to institute a combined solid waste fee, however, the task force identified several options for revisions for each of the two state fees. This second part of this section describes the options discussed for each of the fees.

Possible Options for Restructuring the SCORE Tax

The task force identified a number of revisions to the tax structure for SCORE and narrowed the possible changes down to five options for recommendation to the Legislature. In the event that the Legislature chooses not to institute a combined solid waste fee, it may choose to adopt one of the revisions listed below.

The options below represent changes that task force members believe would address the problems with the current administration of the SCORE tax.

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.

It is likely that the state will lose some revenue currently deposited in the general fund under this option but, based on current information, it is not possible to predict with certainty what this amount would be. The OEA estimates that this option could result in a loss to the general fund of less than \$1 million to slightly less than \$3 million annually.

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. This definition is the same as that

established for the "past" period of the SCORE tax.

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

This alternative is a variation on the second alternative above but 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.

Solid Waste Generator Assessment supplement

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

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.

Solid Waste Generator Assessment (SWGA)

Possible options for restructuring the SWGA

The task force heard testimony from a number of interested parties who advocated making changes to the SWGA.

The task force recommends that the Legislature adopt a single fee as a solution to the current administrative issues.

The task force did address the issues of residential and non-residential generators separately and its recommendation is detailed below.

In addition, the task force representatives from the Minnesota Pollution Control Agency (MPCA) and the DOR made some suggestions for restructuring the SWGA. The task force took no action on these recommendations but they are presented in the "other considerations" section of this report.

Treat multihousing and manufactured housing generators as residential for the purposes of the SWGA

The task force debated how to treat multihousing and manufactured housing residents, as required under the charge. Currently, these residents are treated as commercial generators because their waste is hauled as commercial waste. As a result, they pay a higher rate for the SWGA assessment than single family housing residents.

However, these residents currently pay less in SCORE sales tax because the cost per unit for commercial collection is less than it is

for single family housing. Also, a number of people involved in the waste industry state that apartments generate less waste than single family households, further reducing the amount of SCORE tax.

Task force members debated the fact that as commercial generators, the residents of multihousing units enjoy protection from lawsuits as responsible parties in Superfund action at old landfills.

Representatives of the hauling industry indicated that haulers often do not have information on the number of units in an apartment complex they are servicing. As a result, requiring haulers to collect a residential fee from every unit would create an additional administrative burden for haulers.

Despite this argument, the task force agreed that the multihousing and manufactured housing residents should be treated as residential for the SWGA.

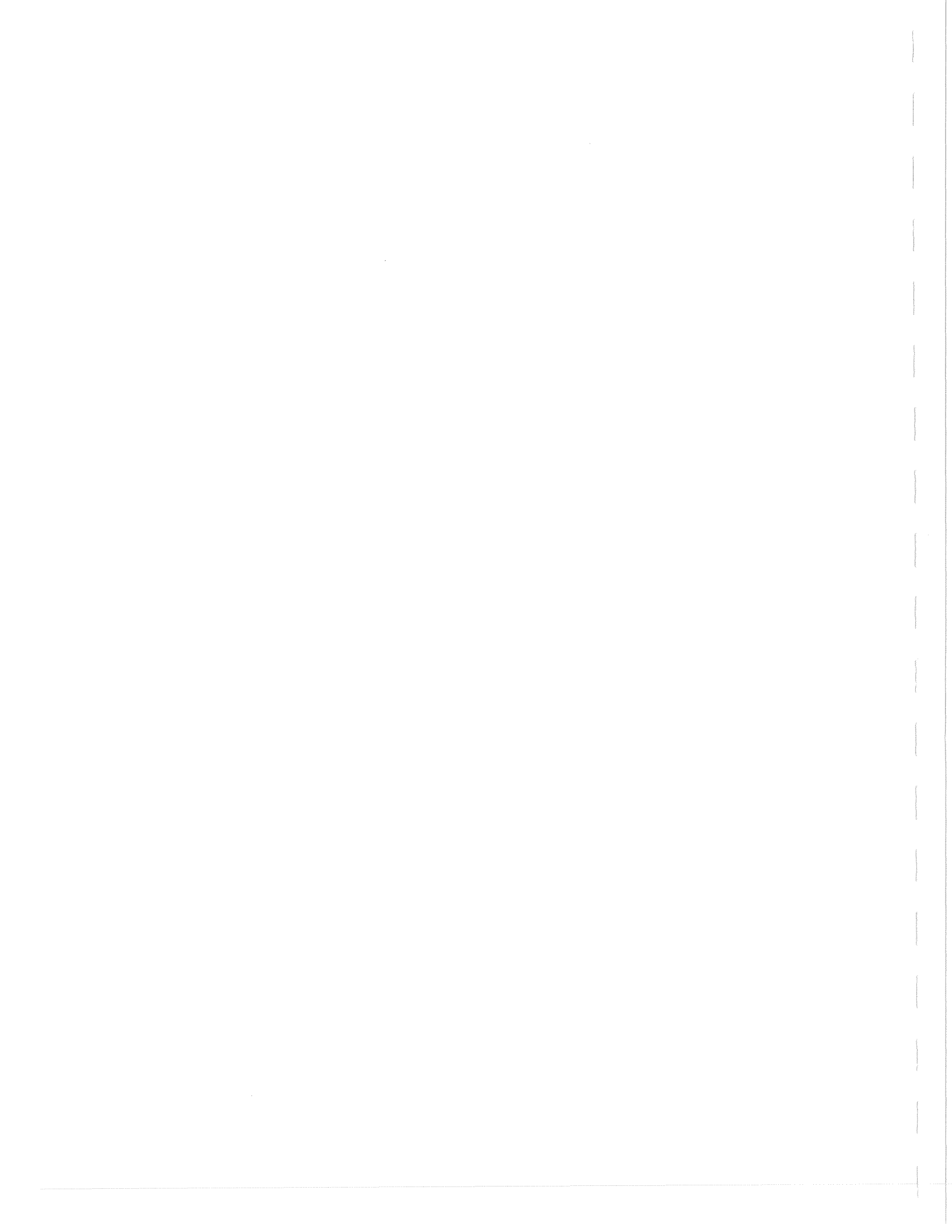
Other Considerations for the task force

Task force representatives from the MPCA and the DOR sent a letter to the task force dated February 11, 1997, raising several issues for the task force to consider. The task force took no action on the issues raised by the MPCA and DOR but agreed that the issues should be included in the final task force report and delivered to the Legislature. The issues are as follows:

- The annual residential combined fee should be spread over the hauler's billing cycle to avoid "sticker shock" that may result from assessing the fee in one bill. While residential generators should see no net change in the amount of state fees and taxes they pay, combining the fees will result in a

large fee that may result in questions and complaints from generators.

- In addition to billing a prorated fee amount, the state should provide significant education to generators regarding the change in fees.
- The MPCA and DOR suggested that the task force consider requiring that the combined tax be paid as it accrues rather than as it is collected.
- The MPCA and DOR suggest that self-haulers of construction and demolition waste pay volume-based fees based on the capacity of the dump bed of the truck rather than on actual weight as it is now (the weight is then converted to cubic yards to calculate the SWGA owed).

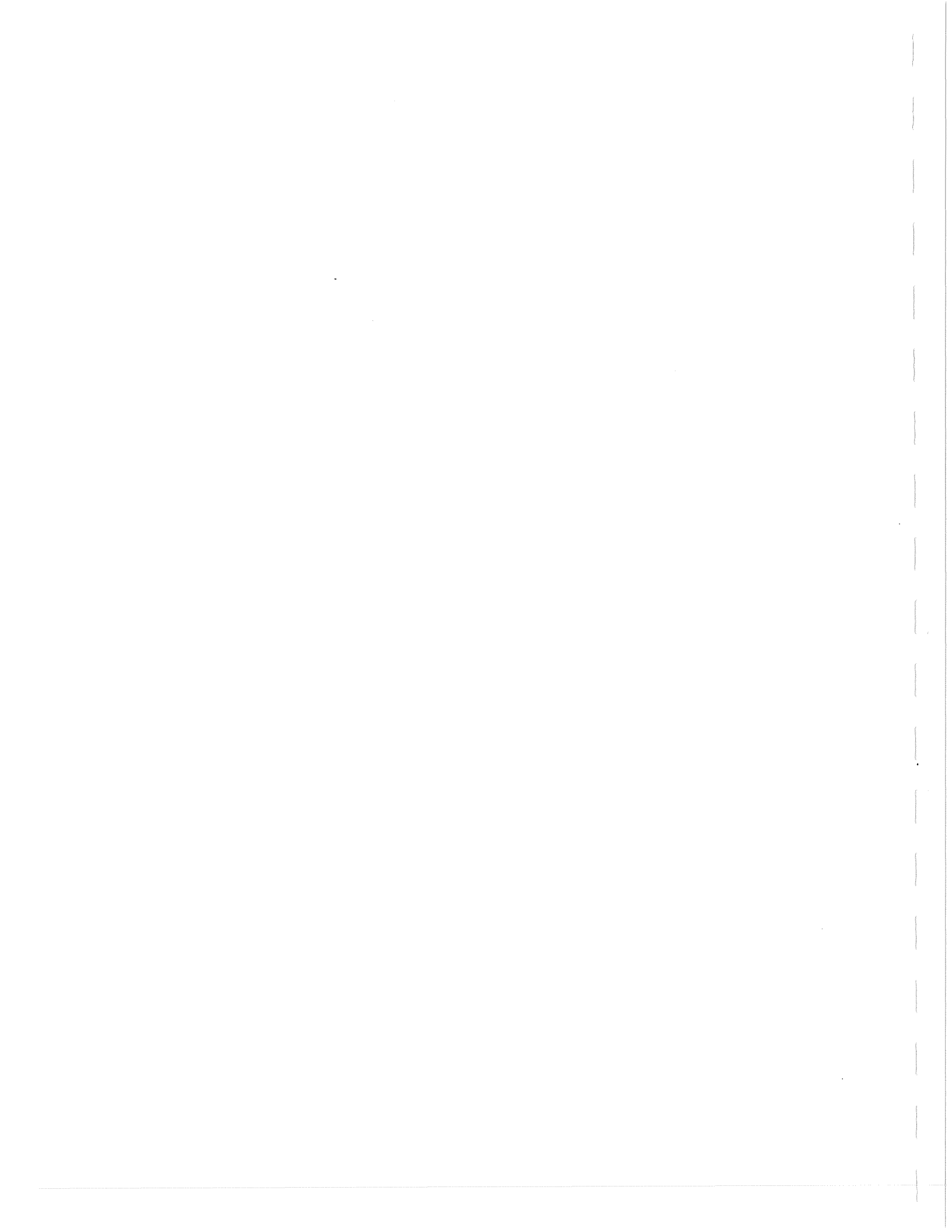


Appendix A

SCORE Tax Task Force Members

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Appendix B

WHAT DOES IT MEAN TO “PROVIDE MIXED MUNICIPAL SOLID WASTE MANAGEMENT SERVICE?”

The following represents one option for the SCORE Tax Task Force to consider if it wishes to develop a recommendation for clarification of the definition of “providing mixed municipal solid waste (MMSW) management service” to determine what solid waste activities could be subject to the SCORE sales tax. It was developed with input from the SCORE tax task force staff team.

Begin with the definition in 297A.01, subd. 21: MMSW management services "means services relating to the management of mixed municipal solid waste from collection to disposal, including transportation, and management at waste facilities."

MMSW MANAGEMENT SERVICES:

Describes a continuum of tasks carried out by a market player in the waste-handling business.

MMSW management activities are those activities necessary to make MMSW move along from the generator's MMSW trash container and see it through until safe disposition, while complying with applicable laws and regulations.

Therefore MMSW management is a sequence of events stretching from the activities required to collect MMSW and continuing until a facility's obligations for the deposited waste are met. This definition includes ancillary activities that are necessary to handle MMSW but may occur before any MMSW is actually picked up, such as employing drivers, acquiring trucks, or applying for and receiving an operating permit.

Includes activities taken by a local government unit (LGU) in order to “move the waste along” through the MMSW system.

MMSW management includes those activities where the LGU is actually carrying some of the costs for “moving the waste along.”

By incurring costs associated with moving the MMSW along through the system, the county is participating in the actual handling of MMSW and any of these costs would be considered a cost of providing service. These could be activities where the LGU is actually handling the MMSW (by operating a disposal facility, for example) or where the LGU is taking on some of the costs of moving MMSW along for the contractor who is providing the MMSW service.

Examples of these activities would be: providing billing services that the contractor would have to hire staff to do otherwise, allocating LGU staff to jobs that contribute to the actual handling of waste (such as routing trucks), or providing a tip fee at a county-owned facility to a contract hauler that is lower than the cost of operating the facility.

MMSW management does not include the LGU activities to simply administer a contract with a waste hauler for waste services (examples include arranging for waste hauling for residents or for picking up trash at city parks). Other contract management issues arise in several counties where counties manage contracts for privately operated facilities. These contract costs will be discussed in the outstanding issues section.

Does not include activities in which a government is acting as a regulator or overseer and not as a market player.

MMSW management does not include those activities in which a LGU is acting in its role as a government agency rather than as a player moving waste along through the system. Examples of these activities would include regulatory enforcement activities, ordinance or rule writing, legislative or intergovernmental organization activity, collecting and reporting data to the state, or overall planning for the solid waste system by local governments (as opposed to site-specific planning for facility operations).

OUTSTANDING ISSUES

The task force and the staff identified the following issues as needing further discussion about how they would be handled in any recommendation for statutory change.

As stated above, MMSW management activities are those activities necessary to make waste move along from the generator's MMSW trash container and see it through to safe disposition, while complying with applicable laws and regulations. Management of MMSW includes the operating costs during the life cycle of a MMSW management facility.

Financial Assurance

Financial assurance is currently considered part of the operating cost of a facility by the Department of Revenue and may or may not be included in the total cost of providing service DEPENDING on how the LGU collects the money it deposits into its financial assurance fund. Financial assurance is considered a key part of the waste management system, yet the inconsistent way it is funded and thus treated for tax purposes can create inequity.

LGUs can use a number of sources of payment for financial assurance -- some of these sources are subject to sales tax if costs exceed revenues in the counties and others are not. Under the current statute, payments made to a financial assurance fund from tax-exempt fees are not included in the cost of providing the service. Those revenue streams that are tax exempt are:

- the Greater Minnesota Landfill Cleanup Fee (§115A.923)
- the state-authorized county or city fee (§115A.919 for counties; §115A.921 for cities)
- the Metropolitan Landfill Abatement Fee (§473.843)

Under current interpretation of statute, payments made into a financial assurance fund that relate to a facility that stopped accepting waste before April 9, 1994 to participate in the state's closed landfill cleanup program also are not subject to sales tax.

Payments made to financial assurance funds from any other revenue source, such as property tax revenues or revenues from a local service fee, would be included in the total costs of service and could be subject to tax. So, while the activities funded are identical, the way in which an LGU funds could mean one county could be required to pay sales tax on an activity that another would not have to pay on.

Costs that exceed financial assurance.

Any costs of closure or post-closure care at a facility that are paid from a financial assurance fund are not considered part of the cost of providing service and would not be subject to tax. In some instances, the costs of closure or post-closure care may exceed the amount in the financial assurance fund. This difference would be considered a cost of providing service and could be subject to tax. There is concern that the State will not be able to determine the amount spent in excess of financial assurance funds in the future.

Debt Service

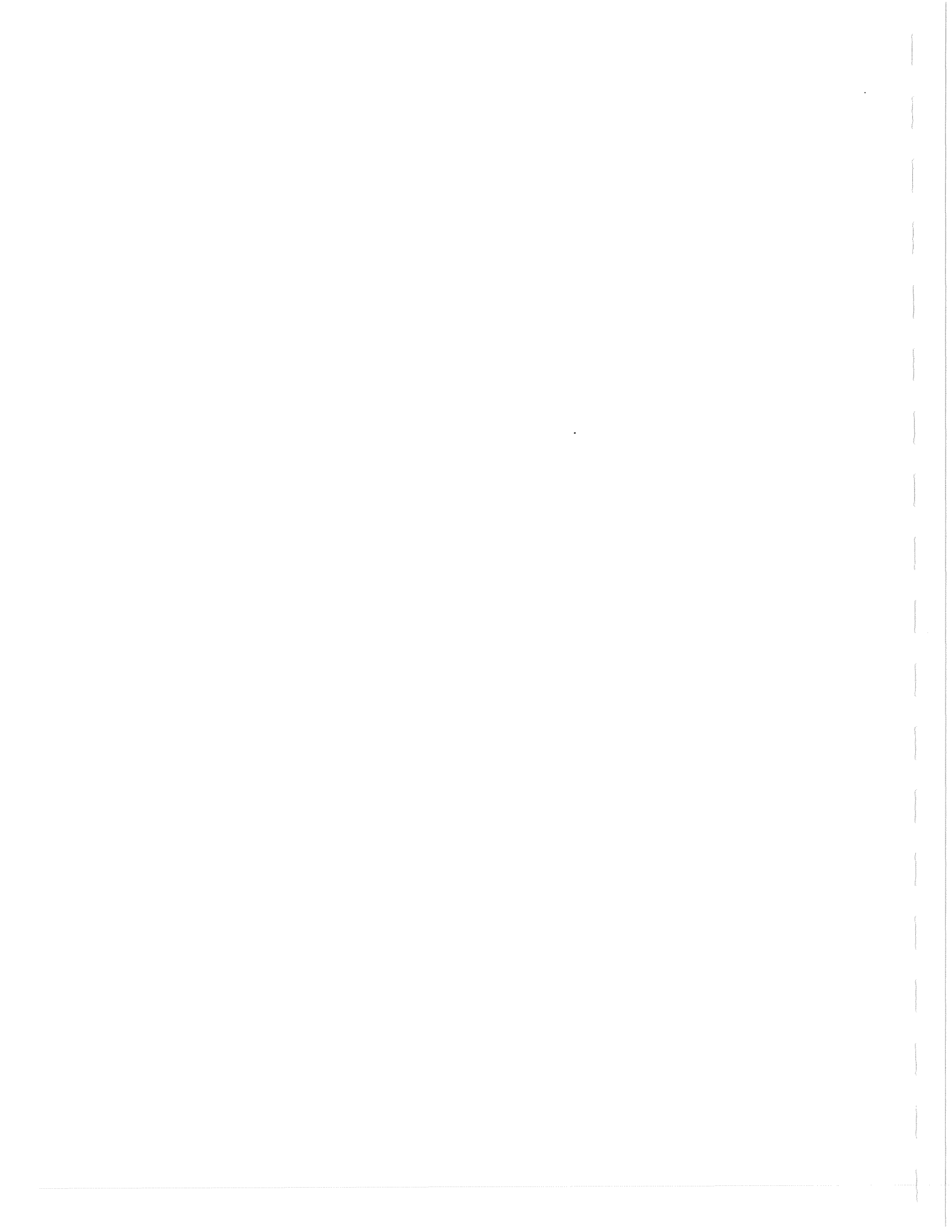
Payment of debt service on bonds that were used to construct an MMSW facility is currently considered a cost of providing service at a facility. In the case of a private facility operator, the operator would presumably recapture these costs through charges to the customer and this charge to the customer would be subject to sales tax. LGUs would have to include these costs in the calculation of what is spent to “provide MMSW service.” There are several issues involving the inclusion of debt service in the total operating costs:

- Including debt service in total costs places environmentally preferred facilities at a disadvantage. Those facilities that are higher on the preferred waste management hierarchy in the Waste Management Act generally have higher debt service than those lower on the hierarchy. Thus, state statute regarding SCORE sales tax runs counter to other state statutes that establish a preferred waste management hierarchy.
- Facilities in Minnesota used a variety of funding mechanisms to pay for construction. As a result, it is possible for one facility to have the cost of debt service included in total costs, while another facility that used state bonding (via a capital assistance grant from the State) to construct a similar facility would not have to carry these costs as part of providing service.
- Taxing debt service could represent a “double taxation” if taxes also were paid on the purchase of materials and services for which the debt was incurred as the facility was constructed.

Contract Management Costs when processing waste is a service provided by a private company under contract with the counties.

In the Metropolitan Area, there are service agreements under which the private owner/operator of a facility agrees that in return for a fee for service, it will process waste in accordance with certain performance standards relating to weight reduction, throughput or tonnage processed and so on. The facilities are owned, operated and managed by private companies and the fee for service is billed and collected by the operator through the tipping fee. Any excess amount due (because of a shortfall in the amount of waste promised to the facility by the county) is paid by the county (Hennepin county is an exception: the county bills and collects all fees for the private facility). The counties have the obligation to determine whether the facility owner/operator is meeting its obligation for process waste and whether charges are appropriate. County staff time is required to review invoices and data relating to performance standards. Hennepin county staff prepare billing statements, collect fees from haulers and pay the private owner/operator directly. The issue is whether these costs incurred in the oversight of the processing waste contracts are subject to sales tax as costs associated with providing the service.

Appendix C



MN LAWS, 1996, Chapter 471, Article 2 (HF 2102, Rest)

Sec. 28. SOLID WASTE MANAGEMENT TAXES.

Subdivision 1. Moratorium extended. The commissioner of revenue shall not initiate or continue any action to collect any underpayment from political subdivisions, or to reimburse any overpayment to any political subdivisions of taxes on solid waste management services under Minnesota Statutes, section 297A.45, until June 1, 1997. The statute of limitations for assessing, collecting, or refunding taxes subject to the provisions of this subdivision and Laws 1995, chapter 264, article 2, section 40, is tolled from the date of enactment of this law, if enacted, until June 1, 1997.

Subd. 2. Continue evaluation; report. (a) The commissioner of revenue shall continue the evaluation to determine the taxes paid by all affected political subdivisions on solid waste management services as required by Minnesota Statutes, section 297A.45. This is a continuation of the evaluation provided for under Laws 1995, chapter 264, article 2, section 40, except that the evaluation under this subdivision includes all political subdivisions subject to the tax under Minnesota Statutes, section 297A.45. The political subdivisions shall cooperate fully and shall supply the commissioner of revenue with whatever information the commissioner of revenue deems necessary for compliance under the law.

(b) By May 1, 1996, the commissioner of revenue shall notify all counties of the opportunity to correct the information provided under Laws 1995, chapter 264, article 2, section 40. A county must submit their corrections in writing to the department of revenue by July 1, 1996.

(c) The commissioner of revenue shall report by January 15, 1997, the results of the evaluation under this subdivision to the chairs of the house committee on taxes and the senate committee on taxes and tax laws. The final results of the evaluation are classified as public data.

Subd. 3. Task force; scope. (a) The director of the office of environmental assistance shall establish and staff a task force to study implementation of the sales and use taxes on solid waste management services under Minnesota Statutes, section 297A.45, and the solid waste generator assessment under Minnesota Statutes, section 116.07, subdivision 10. The task force shall make recommendations to the sales tax advisory council and to the chairs of the house environment and natural resources committee, and the senate environment and natural resources committee of the legislature:

- (1) by November 30, 1996, for the goals itemized in paragraph (c), clauses (1)(i) and (ii);
- (2) by January 15, 1997, for the goals itemized in paragraph (c), clauses (1)(iii) to (vii); and
- (3) by February 15, 1997, for the goal itemized in paragraph (c), clause (2).

(b) The task force shall consist of 14 voting members with expertise in the areas of taxation or waste management, as provided in this subdivision:

(1) four legislators, or their designees, including two members of the senate, one from the minority party and one from the majority party, appointed by the subcommittee on committees of the committee on rules and administration and two members of the house of representatives, one from the minority party and one from the majority party, appointed by the speaker;

(2) two representatives from the department of revenue, appointed by the commissioner of revenue;

(3) one representative from the office of environmental assistance, appointed by the director of the office;

(4) one representative from the pollution control agency, appointed by the commissioner of the agency;

(5) three persons representing political subdivisions, at least one of which must represent county government, appointed by the director of the office of environmental assistance; and

(6) three persons representing the private waste collection industry, appointed by the director of the office of environmental assistance, at least one of which is knowledgeable on how taxing and pricing of waste collection services interact.

(c) The goals of the task force are:

(1) relating to solid waste management taxes:

(i) to monitor the evaluation conducted under subdivision 2 and to provide input to the commissioner of revenue if questions of interpretations arise during the evaluation;

(ii) to discuss the tax base principles and possible options to use for the tax period from January 1, 1990, to December 31, 1995;

(iii) to discuss the base to which the tax applies beginning January 1, 1996, taking into consideration the impact on political subdivisions and private haulers, resulting from recent court decisions regarding government control over the flow of waste and the effect of these decisions on waste management fee structures;

(iv) to examine the impact on total revenues from various funding sources including tipping fees, service charges, assessments, or subsidizing through the property tax system;

(v) to identify ways to simplify or restructure the current tax system for ease of collection and administration;

(vi) to discuss methods to ensure that the taxes due to the state are paid either by the haulers or the political subdivisions; and

(vii) to recommend a procedure for keeping open communication between the various entities on any future issues relating to this tax; and

(2) relating to the solid waste generator assessment:

(i) to discuss the distinction between "residential" and "nonresidential" for purposes of the solid waste generator assessment under Minnesota Statutes, section 116.07, subdivision 10; and

(ii) to examine ways to simplify or restructure the current assessment system for ease of collection and administration.

Subd. 4. Use of tax proceeds. It is the legislature's intent that the total amount of tax proceeds collected under Minnesota Statutes, section 297A.45, less the department of revenue's costs of administering the program including the cost of conducting the evaluation under subdivision 2, be used for administration of programs and functions related to reducing the quantity and toxicity of solid waste, recycling, household hazardous waste management, and other similarly related programs. Appropriations may be made in block grants or competitive grants to political subdivisions. Money may also be used by the office of environmental assistance and the pollution control agency in helping to administer and enforce the programs and functions identified in this subdivision. Appropriations may also be made to the state attorney general's office for providing legal assistance to political subdivisions relating to solid waste management.

Subd. 5. Department of revenue guidelines. The commissioner of revenue shall prepare a single set of guidelines for complying with Minnesota Statutes, section 297A.45, including all existing rules, and shall send a copy of these guidelines on or before May 1, 1996, to all known political subdivisions subject to the tax under Minnesota Statutes, section 297A.45. Notwithstanding taxes collected prior to January 1, 1996, political subdivisions and persons responsible for collecting the tax under Minnesota Statutes, section 297A.45, must follow these guidelines for all taxes collected on solid waste management services beginning January 1, 1996. The commissioner shall send a copy of the guidelines to the chairs of the house committee on taxes and the senate committee on taxes and tax laws by April 22, 1996, for their review and comment.

Subd. 6. Separate reporting; additional penalty. (a) In order to determine the total amount of sales and use taxes collected under Minnesota Statutes, section 297A.45, the department of revenue shall reexamine the present method of having this tax reported on the sales tax return. The department must also consider other options including requiring the sales and use tax amounts to be reported on a separate form.

(b) In addition to the penalties and interest that apply to taxes under Minnesota Statutes, section 297A.45, a penalty equal to the specified penalty of the taxpayer's tax liability is imposed on any person or political subdivision who fails to separately report the amount of the taxes due under Minnesota Statutes, section 297A.45. The specified penalties are:

First violation	ten percent
Second and subsequent violations	20 percent

The additional penalties apply only to that portion of the sales and use tax which should have been reported on the separate line for taxes under Minnesota Statutes, section 297A.45, and that was included on other lines of the sales tax return.

Subd. 7. Appropriation. The amount necessary to conduct the evaluation under subdivision 2, but not to exceed \$250,000, is appropriated for fiscal years 1996 and 1997, to the commissioner of revenue from money deposited in the general fund from the solid waste collection and disposal tax under Minnesota Statutes, section 297A.45.

Subd. 8. Effective date. Subdivisions 1 to 3, 6, paragraph (a), and 7, are effective the day following final enactment. Subdivisions 4 and 5 are effective for taxes collected January 1, 1996, and thereafter. Subdivision 6, paragraph (b), is effective for returns filed after September 1, 1996.

MINN. STAT. 297A.01

DEFINITIONS.

Subd. 3. A "sale" and a "purchase" includes, but is not limited to, each of the following transactions:

(i) The furnishing for a consideration of services listed in this paragraph:

(vii) mixed municipal solid waste management services as described in section 297A.45;

Subd. 21. Mixed municipal solid waste management services. "Mixed municipal solid waste management services" or "waste management services" means services relating to the management of mixed municipal solid waste from collection to disposal, including transportation and management at waste facilities. The definitions in section 115A.03 apply to this subdivision.

HIST: 1Sp1989 c 1 art 12 s 2; art 19 s 3; 1990 c 480 art 4 s 3,4; 1990 c 604 art 6 s 1,2; 1991 c 291 art 8 s 7-10; 1991 c 309 s 14; 1993 c 137 s 10; 1993 c 375 art 1 s 4; 1993 c 375 art 9 s 22-25; 1995 c 264 art 2 s 22,23

MINN. STAT. 297A.45

MIXED MUNICIPAL SOLID WASTE MANAGEMENT SERVICES.

Subdivision 1. Definitions. The definitions in sections 115A.03 and 297A.01 apply to this section.

Subd. 2. Application. The tax imposed by section 297A.02 applies to all public and private mixed municipal solid waste management services.

Notwithstanding section 297A.25, subdivision 11, a political subdivision that purchases waste management services on behalf of its citizens shall pay the taxes.

If a political subdivision provides a waste management service to its residents at a cost in excess of the total direct charge to the residents for the service, the political subdivision shall pay the taxes based on its cost of providing the service in excess of the direct charges.

A person who transports mixed municipal solid waste generated by that person or by another person without compensation shall pay the taxes at the waste facility based on the disposal charge or tipping fee.

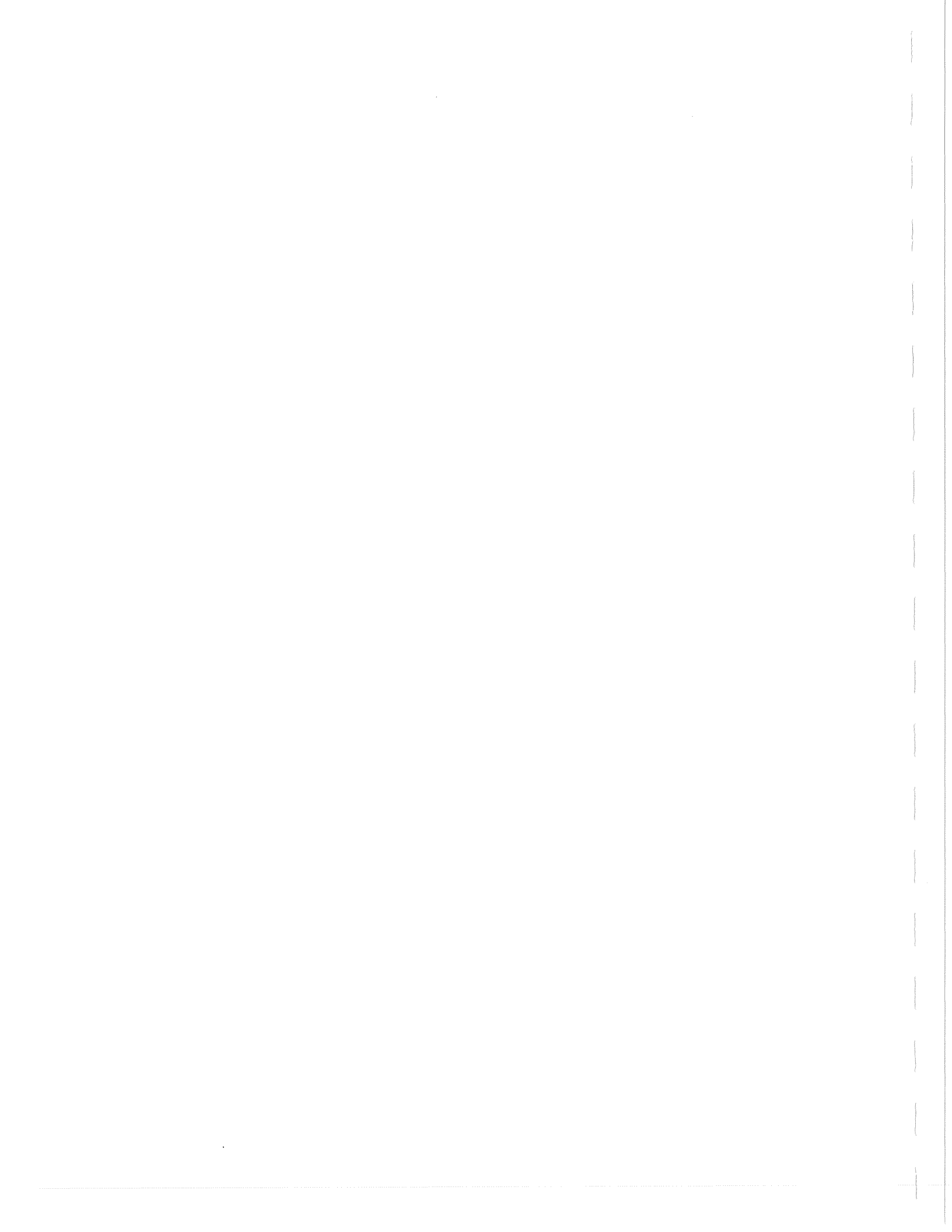
A person who segregates mixed municipal waste from recyclable materials as described in subdivision 3, paragraph (a), clause (2), shall pay the taxes by purchasing specific collection bags or stickers. The collection service and taxes must be included in the price of the bag or sticker.

Subd. 3. Exemptions. (a) The cost of a service or the portion of a service to collect and manage recyclable materials is exempt from the tax imposed in section 297A.02 if:

(1) the recyclable materials are separated from mixed municipal solid waste by the waste generator; or

(2) the recyclable materials are separated from mixed municipal solid waste by the generator, collected and delivered to a waste facility that recycles at least 85 percent of its waste, and are collected with mixed municipal solid waste that is segregated in leakproof bags, provided that the mixed municipal solid waste does not exceed five percent of the total weight of the materials delivered to the facility and is ultimately delivered to a facility designated under sections 115A.80 to 115A.893.

(b) The amount of a surcharge or fee imposed under section 115A.919, 115A.921, 115A.923, or 473.843 is exempt from the tax imposed in section 297A.02.



Appendix D

Mixed Municipal Solid Waste Management Services

General Information

This fact sheet is divided into two sections. The first section contains general information that applies to all providers of mixed municipal solid waste (MMSW) management services. The second section provides additional information to local governments.

Various revenues and costs related to MMSW management services are discussed in this fact sheet.

Contact the Department of Revenue with questions or to discuss situations not addressed in this fact sheet.

What's taxable?

Charges for mixed municipal solid waste management services are subject to the 6.5 percent Minnesota sales or use tax. These services are not subject to city sales taxes. However, Cook County has a one percent sales tax that also applies.

“Mixed municipal solid waste management services” or “waste management services,” as defined in M.S. 297A.01, Subd. 21, means services relating to the management of mixed municipal solid waste from collection to disposal, including transportation and management at waste facilities.

“Mixed municipal solid waste” is defined in M.S. 115A.03, Subd. 21, as garbage, refuse, and other solid waste from residential, commercial, industrial and community activities that the generator of the waste aggregates for collection.

MMSW management services are taxable whether charged directly to waste generators (customers) by private or public haulers or paid for through government imposed service fees or tax assessments. Revenues from this tax are intended to be used to fund solid waste reduction and recycling programs.

What's not taxable?

Charges for managing certain types of waste are not taxable. This includes charges for managing separate waste streams, waste other than MMSW, recyclables, source-separated compostables, and waste from qualifying recycling facilities. In addition, certain statutory surcharges and fees are not taxable. To be exempt, charges for nontaxable items **must** be itemized separately on the customer's billing. If they are

not, the entire charge to the customer is taxable. Each of the nontaxable items is discussed below:

Separate waste streams

MMSW does not include the following items when they are collected, processed, and disposed of separately from other MMSW:

- ash
- auto hulks
- construction debris
- lead acid batteries
- mining waste
- motor vehicle fluids and filters
- sludges
- street sweepings
- tires
- tree and agricultural wastes
- other waste collected, processed and disposed of separately from MMSW

Waste other than MMSW

Charges for managing wastes other than MMSW, such as demolition waste, household hazardous waste, infectious medical waste, major appliances and yard waste, are not taxable.

Recyclables

Charges for collecting and managing recyclable materials that are separated from MMSW by the customer are exempt. “Recyclable materials” means materials that are separated from mixed municipal solid waste for the purpose of recycling, including paper, glass, plastics, metals, automobile oil, and batteries. Refuse-derived fuel or other material that is destroyed by incineration is not a recyclable material. If the customer does not separate recyclable materials from MMSW, charges associated with recyclables are taxable.

Also, effective retroactively to August 1, 1995, charges for collecting and managing recyclable materials that are commingled with MMSW are exempt if:

- the recyclables are separated by the waste generator;
- the MMSW is segregated in leakproof bags;

- the recyclable materials are delivered to a recycling facility that recycles at least 85 percent of its waste; and
- the MMSW does not exceed five percent of the total weight of the materials delivered to the facility.

For recyclable materials commingled with MMSW, the collection service and taxes for the MMSW portion must be included in the price of specific collection bags or stickers purchased by the waste generator.

Source-separated compostables

Effective July 1, 1996, compostable waste management services are exempt if the materials are:

- food wastes, fish and animal waste, plant materials, diapers, sanitary products, or paper that is not recyclable;
- separated by the generator to prepare it for use as compost;
- collected separately from other MMSW; and
- delivered to a facility approved by the Minnesota Pollution Control Agency (MPCA) for composting.

Statutory surcharges or fees

Surcharges or fees imposed under sections 115A.919, 115A.921, 115A.923, or 473.843 are exempt. (These are surcharges or fees charged to operators of MMSW facilities by a county, city or town, and the Metropolitan Landfill Abatement Fee and the Greater Minnesota Landfill Cleanup Fees.)

This exemption does not include surcharges or service fees assessed by local governments to offset reductions in the tipping fee.

Recycling facilities

Waste from a recycling facility that separates or processes recyclable materials is exempt from sales tax, if the volume of the waste has been reduced by at least 85 percent. To qualify, the waste exempted must be managed separately from other solid waste.

“Recycling facility” means a facility at which materials are prepared for reuse in their original form or for use in manufacturing processes that do not cause the destruction of the materials in a manner that precludes further use. An example of a qualified recycling facility is a facility that produces insulation from used glass.

Who is required to pay sales tax?

Almost all customers, including state and local government agencies, nonprofit organizations such as churches and nursing homes who are otherwise exempt from paying sales tax, and Direct Pay Permit

holders must pay sales tax on MMSW management services. Only the Federal Government and its agencies and Indian Tribal Governments, are exempt from sales tax when they are billed directly and pay directly for the service.

Who collects the sales tax?

Commercial haulers who bill their customers for waste collection must collect and remit the sales tax to the State of Minnesota.

Local governments that provide MMSW management services with their own vehicles (or subcontract for the services through a hauler) and bill their residents must collect and remit the sales tax. Local governments that purchase these services on behalf of its residents, but do not bill them specifically for the waste collection services, must pay sales tax on the purchase. For more information on local governments, please see page three.

Landfill and transfer station operators, and operators of other disposal facilities, are required to collect and remit sales tax on charges for disposing of MMSW. This applies to all customers, including self-haulers, commercial and industrial customers. However, customers who provide a properly completed Commercial Hauler’s Exemption Certificate, Form ST-10, are exempt from paying sales tax on tipping fees, since their customers were already billed sales tax on the MMSW management services. A copy of the attached ST-10 may be reproduced as needed.

Also, operators of disposal facilities should not charge sales tax to customers who dispose of MMSW in collection bags that include the cost of providing MMSW management services, since sales tax should have been charged on the sale of the collection bag to the customer.

Other MMSW management sales

Some haulers provide waste containers to their customers as part of their service. If the hauler does not separately charge for the container, the hauler must pay tax on the hauler’s purchase of these containers. If the hauler is not charged sales tax on its purchase of the containers, the hauler is responsible for paying use tax on the purchase. The cost of the containers should be reported on Line 105, Waste collection services, of the sales and use tax return.

If the hauler separately states a charge for the use of the container on the customer’s bill, they must charge sales tax. This amount should also be reported on Line 105, Waste collection services, of the sales and use tax return. In this situation, the hauler may purchase the containers exempt from sales tax by giving the vendor a Resale Exemption Certificate, Form ST-5.

Sales of collection bags, stickers, or punch cards, that include the cost of providing MMSW management services, are taxable. Bags and stickers indicate that the solid waste service has been pre-paid. Punch cards are usually used by self-haulers when they dispose of waste at a waste facility. These sales should be reported on Line 105, Waste collection services, of the sales and use tax return.

How is sales tax reported?

Generally, sales of taxable items and services are reported on Line 100, General rate sales, of the sales and use tax return. However, the tax collected on MMSW management services must be reported on Line 105, Waste collection services. A penalty may be imposed on taxpayers who do not report the tax on MMSW management services on the proper line of their return. The penalty is 10 percent for the first violation and 20 percent for any additional violations of the tax amount reported on the incorrect line. This penalty is effective for returns filed after September 1, 1996.

It is important to report sales and use tax related to MMSW management services on the proper line because these revenues are intended to be used to fund solid waste reduction and recycling programs.

Contact our office if you need Line 105, Waste collection services, added to your sales and use tax return.

Billing options

Below are examples of billings showing how the sales tax applies. If all charges are lumped together, the entire amount is taxable. The nontaxable portion is exempt only if these charges are stated separately on the billing.

Lump sum bill:

Garbage collection/disposal fee	\$35.00
Minnesota sales tax (6.5%)	<u>2.28</u>
Total amount due	<u>\$37.28</u>

Itemized bill:

Garbage collection/disposal fee	\$29.00
Minnesota sales tax (6.5%)	1.89
Surcharges and abatement fees	2.00
Recycling services	<u>4.00</u>
Total amount due	<u>\$36.89</u>

-or-

Garbage collection/disposal fee	\$29.00
Minnesota sales tax (6.5%)	1.89
Non-taxable fees and services	<u>6.00</u>
Total amount due	<u>\$36.89</u>

Local Governments

In addition to the previous information, the following also applies to local governments that provide solid waste management services.

The law states, "If a political subdivision provides a waste management service to its residents at a cost in excess of the total direct charge to the residents for the service, the political subdivision shall pay the taxes based on its cost of providing the service in excess of the direct charges." In other words, a local government owes use tax on its direct and indirect costs for providing MMSW management services only if, and to the extent that, the taxable charges to its residents for these services do not cover the costs.

Local governments that incur a cost associated with MMSW are considered to be providing MMSW management services. Examples of local governments providing MMSW management services include, but are not limited to, the following:

- directly providing waste management services with their own vehicles or waste facilities;
- contracting with a private hauler to provide MMSW management services to residents;

- overseeing or managing contracts of private waste haulers who provide the service for residents;
- making financial assurance payments, as discussed on page four.

To determine if a local government owes use tax on its costs for providing MMSW management services, compare the total taxable revenues to the total cost for providing the service. If the cost of providing the service is higher than the amount billed to residents for the services, the difference is subject to use tax.

Taxable revenues include all revenues (service fees, surcharges, etc.) on which sales tax was collected, either by the local government or a private hauler or waste facility acting on behalf of the local government. Taxable revenues also include MMSW service fees charged on property tax statements only if the charge is identified as being for MMSW management service and sales tax is collected on the charge.

The following examples may be helpful in determining what taxable revenues a local government should

compare to MMSW related costs to determine if the local government owes use tax:

Example 1: A local government contracts with a private hauler to provide various waste management services to its residents. The local government lump-sum bills the residents for the services. If these services were itemized, some would have been taxable, and some would have been exempt. However, the local government correctly collects and remits sales tax on the entire lump sum amounts billed to the residents (please refer to the "Billing options" box). The amount of taxable revenues for comparison here is the total lump sum amounts.

Example 2: A local government contracts with a private hauler to provide MMSW management services to its residents. The hauler bills the local government for these services. In turn, the local government bills the residents. Half of the service charge to the residents is billed separately on the residents' quarterly water bills and the other half is included as part of their property taxes, but is not stated separately on the property tax statements. The local government collects and remits sales tax only on the MMSW management service charge on the quarterly water bills.

In this situation, compare the taxable amount charged for MMSW management services on the water bills to the total cost of providing the service. The difference must be reported on Line 105, Waste collection services, of the sales and use tax return.

Determining the total cost of providing the service

A local government must include all direct and indirect costs related to MMSW management services in determining the total cost of providing the service. If any cost contains amounts related to MMSW and unrelated to MMSW, only the portion related to MMSW should be included in the total cost of providing the service. For example, wages for employees who also perform other activities need to be prorated so only that portion of their wages related to MMSW is included.

Examples of costs that may relate to MMSW management services include, but are not limited to, the following:

Auto expenses.

Building acquisition and construction/site improvements.

Building and road maintenance. Costs related to construction and maintenance of site roads leading directly to an MMSW facility are included. Costs related to construction and maintenance of county

roads, state highways and other roads are not included.

Financial assurance. In order to obtain a permit for operation, the state requires all owners or operators of a MMSW facility to prove they are capable of providing reasonable and necessary response during the operating life of the facility and for a minimum of 20 years after closure. In the case of a local government that owns or operates a facility, the local government is required to set aside funds in a trust fund to cover a portion of the potential contingency action costs at the facility.

Some local governments make payments into the funds from tax-exempt fees (such as the Greater Minnesota Landfill Cleanup Fee), some use property tax revenues and others use a portion of the solid waste service fee.

All payments made into a financial assurance fund using tax-exempt fees are not included in the total cost of providing the service. In addition, any payment made into a financial assurance fund that relates to an MMSW facility that stopped accepting solid waste before April 9, 1994, is not included. However, other than payments made using tax-exempt fees, payments made into a financial assurance fund that relate to an MMSW facility that accepted waste on or after April 9, 1994, are included in the total cost of providing the service (such facility is not a qualified facility under the state's new closed landfill cleanup program).

All payments made from a financial assurance fund to cover closure, post-closure and other costs are not included in the total cost of providing the service.

Closure, post-closure and contingency action costs. Some local governments make payments to cover closure and post-closure care, as well as other costs. Such payments, which are not made to a financial assurance fund, relate to MMSW facilities that are not part of the state's new closed landfill cleanup program. These payments must be included in the total cost of providing the service.

Contract management costs. Local governments often enter into contracts with haulers to have the hauler provide MMSW management services on behalf of their residents. Payments made by local governments to haulers on these contracts are included in the total cost of providing the service.

Costs associated with processing MMSW. Costs associated with combustion at a mass burn facility, conversion into refuse derived fuel (RDF) at an RDF facility, or processing MMSW into compost are included.

Debt service. If a local government issues bonds to pay for the construction and capital cost of an MMSW facility, the initial outlay of bond funds to pay this expense is not included. Rather, the debt service (principal, interest and bond issuance costs) is considered a cost in the periods the debt service payments are made. This cost should be included in the total cost for providing the service, regardless of whether a local government paid sales tax on materials and equipment purchased with the bond funds.

Equipment costs, rentals, and service agreements. The cost for equipment is incurred at the time of purchase and the sales or use tax is due at that time. (Although the initial purchase of certain equipment and machinery used in the collection and disposal of MMSW at a waste facility may be exempt from the sales tax, the cost of such machinery must still be included in determining the total cost.)

General and administrative costs.

Landfill establishment. These expenses are included in the total cost of providing the service, whether they are paid out-of-pocket or through debt service. If paid through debt service, expenses are included in the total cost of MMSW management services when payments (both principal and interest) are made.

Other repairs and maintenance at MMSW facilities.

Planning costs. These can include costs incurred in preparing master plans, gathering waste management data, preparing reports required by law to be submitted to the state, etc. Only the portion of planning costs that are directly or indirectly related to MMSW should be included in the total cost of providing the service. Planning costs that would be incurred regardless of whether a local government provided MMSW management services are not included. However, costs incurred because a local government is providing MMSW management services are included. For example, planning costs associated with new landfill construction are included in the total costs, while planning costs related to the construction of a yard waste composting facility or a recycling facility are not included.

Property taxes, payments in lieu of taxes, and other fees and payments to host communities.

Regulatory, licensing and enforcement costs. Some local governments are required by law to ensure that waste facilities and haulers operate in conformance with local government ordinances and state law. These local governments license and inspect landfills, processing facilities, transfer stations and haulers to ensure that operations are conducted in a manner that

protects public health, safety and the environment. Such costs include staff and attorney time in developing ordinances, processing license applications, monitoring operations to determine conformance with law, and bringing actions to bring violators into compliance.

Regulatory, licensing and enforcement costs that would be incurred regardless of whether a local government provided MMSW management services are not included in the cost of providing the service. Some examples of costs that must be included are costs to license haulers and to inspect their trucks, and costs associated with preparing waste reports for the MPCA.

Salaries, wages, other employment costs.

Transportation related costs. Although most local governments provide MMSW management services entirely within Minnesota, some dispose of MMSW at facilities located outside Minnesota. Transportation of MMSW to out-of-state disposal facilities and disposal charges at those facilities are part of the county's taxable cost. All costs for transporting MMSW between waste facilities in Minnesota are also part of the cost for providing the service.

Utilities at MMSW facilities.

Costs excluded

Costs that should not be included in determining the total cost of providing MMSW management services include the following:

Costs of managing solid waste other than MMSW, including incinerator ash, household hazardous waste, recycling, composting yard waste, etc., are not included in the cost of providing the service.

Combustion of RDF is not included in the cost of providing the service; however, conversion of MMSW into RDF is included.

A 1993 law change, effective retroactively for purchases made after May 31, 1992, exempted machinery and equipment, except motor vehicles, used directly for MMSW management services at a solid waste disposal facility. M.S. 297A.25, Subd. 11, provides an exemption from sales tax on initial purchases of equipment by local governments, since the equipment cost is included in the total cost for providing MMSW management services.

Effective July 1, 1995, the following costs were exempted from the sales tax on MMSW management service:

- Costs of providing educational materials and other information to residents.

- Costs of managing solid waste other than MMSW, including household hazardous waste.
- Costs of court litigation and associated damages.

Examples

Local governments who provide MMSW collection services with their own vehicles, or subcontract for the services through a hauler, and bill its residents must collect and remit the sales tax.

In addition, local governments that purchase these services on behalf of its residents, but do not bill them specifically for the waste collection services, must pay sales tax on the purchase.

The following are examples of local government billing situations and how the sales or use tax applies:

Example 1: A local government contracts with a hauler to provide MMSW collection services. The hauler bills the local government for these services. The local government includes these charges in the general levy on the residents' property tax statement. In this situation, the local government, because they are purchasing the services, must pay sales tax to the hauler on the charges for providing the MMSW collection services.

Example 2: A local government hires a hauler to provide MMSW collection services. Half of the cost for providing that service is billed as waste collection services on the residents' quarterly water bills and the other half is included as a part of their property taxes, but is not stated separately on the property tax statements.

In this situation, the local government must charge sales tax on the charge for MMSW management services on the residents' quarterly water bill, and must also pay use tax on the other half of the cost of providing that service. The total must be reported on Line 105, Waste collection services, of the sales and use tax return.

Example 3: A local government owns its own landfill. Self-haulers are permitted to dispose of their MMSW at the landfill for a reduced tipping fee that does not cover the local government's costs of operating the landfill. However, the difference is included in property taxes the self-haulers pay.

The local government must charge and collect sales tax on the tipping fee paid by the self-hauler. In addition, the local government must pay use tax on the difference between the tipping fee and all direct and indirect costs of operating the landfill. Both the sales and use tax must be reported on Line 105, Waste collection services, of the sales and use tax return.

Example 4: A local government contracts with a private hauler to provide MMSW management service to its residents. The private hauler bills the residents for the service. In addition, the local government incurs various MMSW related costs such as contract management costs in connection with the private hauler contract. The local government is not reimbursed by the private hauler for these costs.

In this example, the residents pay sales tax to the private hauler on the charge for the service. In addition, the local government owes use tax based on the total amount of their MMSW related costs. This use tax must be reported on Line 105, Waste collection services, of the sales and use tax return.

Example 5: Same situation as *Example 4* except the local government's MMSW related costs are included in the fees charged to the residents by the hauler.

In this example, the residents pay sales tax to the private hauler as in *Example 4*. However, no use tax is owed on the local government's MMSW related costs, since they are a part of the total taxable amount billed to the residents.

References:

M.S. 297A.45	M.S. 115A.921
M.S. 297A.01, Subd. 21	M.S. 115A.923
M.S. 297A.25, Subd. 11	M.S. 473.843
MS. 115A.03	Rule 8130.2100
M.S. 115A.919	

Minnesota Department of Revenue is on the Internet!

If you can access the Internet, many of your tax forms and sales tax fact sheets are available electronically!

Internet address:

<http://www.state.mn.us/ebranch/mdor>

This information can be viewed and printed in PDF formats. Acrobat Reader is included FREE. Internet links to federal forms are also available.

This fact sheet is a tax information bulletin intended to help you become more familiar with Minnesota tax laws and your rights and responsibilities under the tax laws. Nothing contained in this fact sheet supersedes, alters, or otherwise changes any provisions of the Minnesota tax law, administrative rules, court decisions, or revenue notices.

Waste Hauler's Exemption Certificate

ST-10

Purchaser: Complete this certificate and give it to the seller. Seller: Keep this certificate as a part of your records. Incomplete certificates cannot be accepted in good faith.

Name of authorized purchaser _____

Minnesota tax ID number (if no number, state reason) _____

Name of purchaser's business _____

Check one:

Business address _____ City _____ State _____ Zip code _____

Single purchase certificate

Name of disposal site _____

Blanket certificate*

*If blanket certificate is checked, this certificate continues in force until cancelled by the purchaser

Address _____ City _____ State _____ Zip code _____

To qualify for exemption, you must be in the business of providing waste management services for compensation.

Sales tax exemption—Check one:

- I collect and remit sales tax to the state of Minnesota on charges to my customers for waste management services.
- I provide waste management services to a city or municipality that collects sales tax from its citizens on charges for these services.

Solid waste assessment—Check all that apply:

- I collect and remit solid waste assessments to the state of Minnesota.
- I provide waste management services to a city or municipality that collects solid waste assessments from its citizens.
- This waste was generated outside Minnesota and not subject to solid waste assessments.

I declare that the information on this certificate is correct and complete to the best of my knowledge and belief. (PENALTY—If you try to evade paying sales tax by using an exemption certificate for merchandise that will be used for purposes other than those being claimed, you may be fined \$100 under Minnesota law for each transaction for which the certificate is used.)

Signature of authorized purchaser _____ Title _____ Date _____ Daytime phone _____

If you have any questions, call the MN Department of Revenue at (612) 296-6181 or 1-800-657-3777.

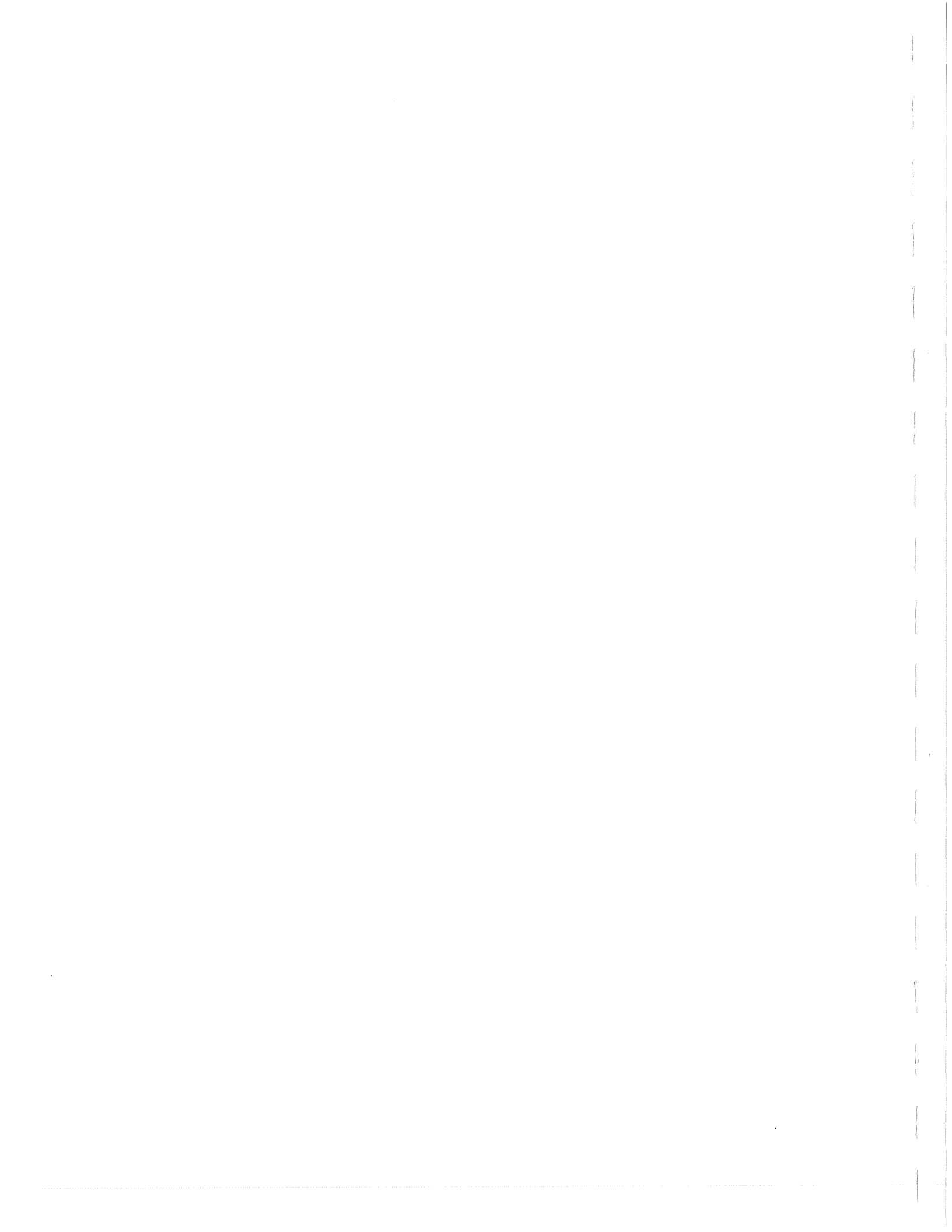
Hearing, speech or visually impaired: TDD users, contact the department through the Minnesota Relay Service at (612) 297-5353 or 1-800-627-3529; ask for (612) 296-6181. We will provide this information in an alternative format upon request.

Print or type

Reason for exemption

Sign here

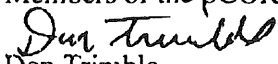
Appendix E



**Assistant Commissioner
Sales, Special & MinnesotaCare Taxes**

Mail Station 7100 St. Paul, MN 55146-7100
Phone (612) 297-2165 Fax (612) 297-5309

February 11, 1997

To: Members of the SCORE Tax Task Force
From: 
Don Trimble
Assistant Commissioner
Subject: SCORE Tax Amnesty

The SCORE Tax Task Force has considered recommending tax amnesty for all political subdivisions that have potential sales and use tax liabilities with respect to mixed municipal solid waste (MMSW) management services. The Department of Revenue is strongly opposed to the amnesty for two reasons.

First, to support an amnesty would send the wrong message to all taxpayers that relief may be granted in other tax areas simply because there is disagreement over what is taxable.

Second, a fairness issue is involved. An amnesty penalizes not only those taxpayers who were (and are) in compliance with the law (or who even might be in refund situations), but also those whose liabilities are substantially less than others.

The department also has some concerns about what the amnesty would cover. A total tax amnesty would involve two parts - sales tax and use tax. The sales tax part is forgiveness of liability resulting from not remitting enough sales tax to cover the "sales price" for (MMSW) management services. This is similar to a retailer not remitting enough sales tax to cover sales of taxable products. The use tax part is forgiveness of liability that would result if a local government had MMSW management service costs in excess of MMSW management service revenues and failed to remit tax on the excess, as required by M.S. 297A.45, Subd. 2.

Our February 1997 report, "Evaluation of Sales Taxes Paid by Local Governments on Solid Waste Management Services" indicates a potential liability of \$3.2 million for all counties, cities and townships. Of the \$3.2 million, \$1.1 million is sales tax due on untaxed revenues, and \$2.1 million is use tax on the excess of costs over revenues.

We understand that a potential conflict exists between sound tax policy and sound environmental policy, and we are committed to working with all parties to resolve the complexities of the SCORE tax law.

Assistant Commissioner
Sales, Special & Minnesota Care Taxes

Mail Station 7100
Phone (612) 297-2165

St. Paul, MN 55146-6510
Fax (612) 297-5309

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To	Joe (October)	From	Don Trimble	2
Co.	OEA	Co.	Revenue	
Dept.		Phone #	297-2165	
Fax #	215-0346	Fax #	297-5309	

September 6, 1996

To: SCORE Tax Task Force Members:
From: *Don Trimble*
Don Trimble
Assistant Commissioner

At its last meeting, on August 21, 1996, the SCORE Tax Task Force requested that the Department of Revenue (DOR) discuss with the Task Force the relationship between the DOR's continuing evaluation of the SCORE tax and the Task Force's statutory charge to monitor that evaluation and to provide clarification on questions of interpretation. This letter is intended to address the Task Force's request.

I recently met with Edward Garvey, Director of the Minnesota Office of Environmental Assistance (OEA), to discuss how to best contribute to the Task Force's progress. We agreed that the most important part of the Task Force's charge is to determine the appropriate future financing structure of the SCORE program. The DOR is committed to working with the Task Force to achieve this important goal and resolve the issues associated with the SCORE tax.

I hope the following comments, on which both Mr. Garvey and I agree, are helpful as you continue in your important work.

- The DOR understands that tax law, like most other laws, is subject to differences in interpretation. We try to take into consideration how our interpretations affect similarly situated taxpayers. There is no doubt the statute in question is ambiguous and subject to much interpretation. The best vehicle for any clarifications or changes is legislation during the 1997 Session. It is important that all the differences, issues and legislative intent be identified by the Task Force so appropriate proposals can be made to the Legislature. The DOR is committed to work with the Task Force to enact its recommendations during the next session.
- The DOR has been charged by the legislature to carry out the current evaluation and survey. This survey will serve a beneficial and broad purpose. The main benefits of the survey are for good baseline information, issue identification and the ability to understand the impact of various approaches.

It is not intended for use as a compliance tool. If the moratorium were to expire without amnesty for potential tax liabilities, any collections or reimbursements would be based on actual audits and not on the information in this survey. Further, any actions would be based on any clarifications or changes that the Legislature may make during the next session.

- We feel it is best to continue the ongoing survey. Since most local governments have already completed and returned the survey, the DOR would not be able to complete its report to the Legislature in a timely manner if the survey had to be conducted again with new interpretations. The completed survey, with the DOR's current interpretation, will be one necessary component for the Legislature as it considers this issue. While the survey and evaluation are being conducted under the current interpretation of the statute, the resulting information will be helpful in developing a secure future for SCORE program funding.
- As the Task Force considers questions surrounding the 1990 through 1995 tax periods, the DOR will ensure that the best available data is used to examine the impacts of possible Task Force recommendations. If the Task Force recommends clarifying or changing the current interpretation, or considers recommending amnesty for any tax liabilities associated with the sales and use tax on solid waste services during that time period, the DOR will work to identify the fiscal and other tax policy impacts of such recommendations.

The Legislature requires, and is relying on, input from both the DOR and the Task Force. Together, the survey results and the Task Force recommendations will provide the Legislature with the complete picture needed to understand and resolve the problems we identify.



Minnesota Pollution Control Agency

February 11, 1997

TO: SCORE SALES TAX TASK FORCE

1. **Collection of Residential Fee.** The \$2.00/year solid waste generator assessment (SWGA) for single family residences generates taxpayer comments and complaints. Each year Minnesota Pollution Control Agency (MPCA) and Department of Revenue (DOR) staff receive many questions and complaints about the assessment. Although the sales tax on waste collection services is higher in a year than the SWGA, it generates relatively few calls, perhaps because citizens view the sales tax as a routine charge. Previous news articles regarding the SWGA generated considerable taxpayer and news media comment. Therefore, if the flat fee for residential customers becomes law, we recommend that the annual charge be spread over the hauler's billing cycle to reduce the impact or "sticker shock," if you will, of the increased flat fee. It will also be incumbent upon the agencies involved, particularly DOR, to educate the public regarding the change.

To guard against potential shortfalls, the task force may also wish to recommend that the tax be paid as it accrues rather than when it is collected. A hauler could claim a deduction from its taxable service fees or number of households subject to the tax or fee for delinquent accounts when they qualify as bad debts under the Internal Revenue Code. Partial payments from customers would be apportioned between the tax and other charges on the bill. Those provisions currently apply to the SCORE tax. The cigarette tax and alcoholic beverage tax chapters also provide bad debt relief although payment of the tax in the first instance is not contingent on the taxpayer's method of accounting or actual receipts. The approach we recommend would simplify tax administration, strengthen collections and at the same time assure that haulers will not become liable for tax due from those who do not pay their bill.

To: SCORE Sales Tax Task Force

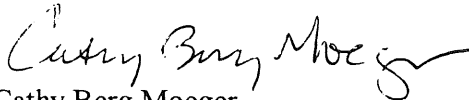
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February 11, 1997

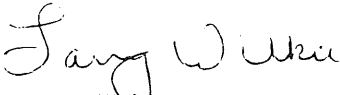
2. **Construction and Demolition Waste, Application of Generator Assessment.** The hybrid proposal would retain the current volume based method to assess construction and demolition, industrial and medical waste. Commercial haulers must charge the assessment to their customers based on the periodic collection capacity of each container. We recommend that self-haulers of construction and demolition waste pay according to the same standard. For example, a dump truck of waste taken to a landfill or transfer station would be assessed according to the volume of the dump bed and not by weight just as a hauler assesses its customers on container capacity. To do so, Minn. Stat. § 116.07 (d)(1) must be amended to eliminate the conversion factors authorized for waste managed by measurements other than cubic yards. This change would treat all construction and demolition waste generators equally.

3. **Updated SWGA Revenue Projections.** DOR collection data for the first six months of 1996 (F.Y. 97) are now available. During our discussions of the appropriate tax rate for commercial generators, we have assumed that current annual collections will be approximately \$20 million for the SWGA and \$12 million for SCORE, or \$13.5 million if multiple unit housing is considered commercial. The most recent figures that MPCA is preparing for the Department of Finance's revenue forecast indicate that collections will be between \$21.2 and \$22.1 million for the SWGA in F.Y. 97. We feel that \$21.6 million is a conservative revenue estimate. Originally, we had estimated \$23.2 in SWGA revenues.

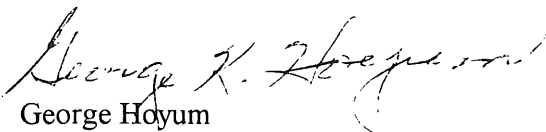
Sincerely,



Cathy Berg Moeger
Section Manager, Program Development Section
Ground Water and Solid Waste Division
Minnesota Pollution Control Agency



Larry Wilkie
Director, Sales and Use Tax Division
Department of Revenue



George Hoyum
Director, Special Taxes Division
Department of Revenue



MINNESOTA MANUFACTURED HOUSING ASSOCIATION

555 PARK STREET, SUITE 400 • SAINT PAUL, MINNESOTA 55103 • (612) 222-6769

February 15, 1997

Mr. Art Dunn
Acting Director
Minnesota Office Of Environmental Assistance
520 Lafayette Road, North
St. Paul, MN 55155-4100

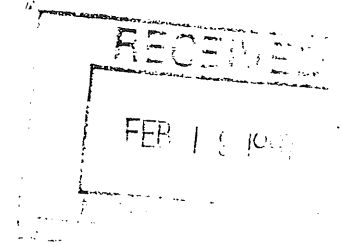
Dear Mr. Dunn:

I am writing on behalf of the members of the Minnesota Manufactured Housing Association regarding the final meeting of the SCORE Tax Task Force on February 13, and to comment on the draft report. We had hoped that the Task Force would make a policy recommendation on the SWGA fee disparity between homeowners residing in manufactured home communities and single family homeowners.

One of the goals of the Task Force was to simplify the SWGA in terms of collection and administration. Clearly, the easiest means of collection is to take the number of home sites in a manufactured home community and to multiply that number by some fixed amount. The current system, as has been pointed out by both the haulers and the City of Minneapolis, is difficult to administer. This point seems to have been forgotten in the draft version of the report.

Additionally, there is no incentive under the current system for manufactured home communities to increase the number of dumpster locations as it would increase our SWGA fees without incurring additional solid waste output. Adding dumpster locations can be both a convenience and safety factor for manufactured home communities.

The report does not adequately address the whole fairness issue of the SWGA. On page twelve of the report, we believe it should be clearly stated, that manufactured home community residents pay at least five-fold more in SWGA fees than the single family homeowners living across the street. Our rates are approximately \$10.50 per home as compared to the single family home rate of \$2.00.



While I realize that some members of the Task Force believe that manufactured home communities should pay more, because of a perceived additional benefit of reduced liability under the land fill clean up program, this was not the position taken by most of the members. Page twelve of the report seems to overstate the support of this notion. Manufactured home residents generate residential trash and should enjoy the same residential rate under the SWGA.

Also, Commissioner McCarron repeatedly mentioned during the meetings, that manufactured home and apartment residents, on average, generate less solid waste than single family home owners. This should be included in the report as well.

The original discussions of the Task Force seemed to be moving in the direction of dealing with this inequity in the SWGA. However, in order for manufactured home community residents to pay the same rate that single family homeowners currently do, someone has to make up the difference under a revenue neutral proposal. This disparity was never intentional legislative policy. Rather, the Department of Revenue issued an interpretation primarily based on the fact that manufactured home communities utilize a central collection system and were therefore classified as commercial. The Department of Revenue has never claimed that there is any difference between the solid waste being generated.

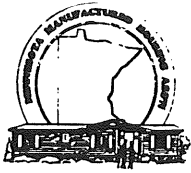
It appeared that many members of the Task Force were willing to recommend that the legislature resolve this inequity. I hope the final report will reflect this.

Thank you for the opportunity to provide comments on the Task Force's final report.

Sincerely,

Mark J. Brunner
Executive Vice President

cc: Robert Meier OEA
Tricia Conroy OEA
Thomas Osdoba SCORE Tax Task Force



MINNESOTA MANUFACTURED HOUSING ASSOCIATION

555 PARK STREET, SUITE 400 • SAINT PAUL, MINNESOTA 55103 • (612) 222-6769

January 29, 1997

Honorable Gene Merriam
SCORE Sales Tax Task Force
Minnesota Office Of Environmental Assistance
520 Lafayette Road, North
St. Paul, MN 55155-4100

Dear Senator Merriam:

On behalf of the members of the Minnesota Manufactured Housing Association, I am writing to reiterate our desire to have home owners residing in manufactured home communities treated like single family residences, under the solid waste generator assessment fee.

At the January 24, SCORE Sales Tax Task Force meeting, Mr. Jack Horner, of the MN Multi Housing Association, testified that under the various options now being considered, apartment buildings would pay less by staying under a commercial classification.

We want to clarify our position, which is different than Mr. Horner's organization. Because our residences are owner occupied, we have long argued that manufactured home communities should be treated like single family homes. We believe that whatever SWGA rate is applied to single family homes, should also be applied to home owners residing in manufactured home communities.

From a fairness perspective, the legislature has already established a precedent for the equal treatment of home owners. Residents of manufactured home communities currently pay a personal property tax rate of one percent on their homes. This is the same property tax rate enjoyed by owners of single family homesteads.

We continue to be opposed to the language proposed by Representative Wagenius that has a cost differential for manufactured home owners residing in manufactured home communities.

It is our hope that manufactured home communities would be specifically mentioned and classified at the residential rate in the SCORE Tax Task Force's final report.

Thank you.

Sincerely,

Mark J. Brunner
Executive Vice President

JOHN G. HORNER
ATTORNEY AT LAW

1702 Midwest Plaza Building
801 Nicollet Mall
Minneapolis, Minnesota 55402
Facsimile 612-334-3184
Telephone 612-335-3511

January 21, 1997

Chairman Gene Merriam
and Members of the
Score Task Force

Dear Chairman Merriam and Members:

At the meeting of the Task Force on January 9, 1997, there was discussion of a proposal that would convert the Score Tax to a flat fee that would be the same for residential property of every type. The Task Force had previously expressed strong support for converting the Solid Waste Generator Assessment into a flat fee that would be the same for all residential households. The two fees would then be combined into a single fee that would be the same for all residential households. The proposal that appeared to find the most favor with the members at the January 9th meeting combined a Score Tax flat fee of \$12 and a Solid Waste Generator Assessment of \$4 into a combined fee of \$16 per year on every residential household.

As you know, we are very grateful for the Task Force's establishing the equitable principle that all households should be treated the same for the Solid Waste Generator Assessment, regardless of the type of household or configuration of the building or property in which it is located. Current law which applies the non-residential rate to certain residential properties results in a much higher Solid Waste Generator Assessment for those properties than is applicable to the rest of the residential properties, and this was seen to be unfair.

Unfortunately, converting the Score Tax into a flat fee that is applicable to all households works a great unfairness on apartment households. Apartment households generate far less solid waste than do single family households, primarily because the average number of people who occupy an apartment is less than half the average number of people occupying a single family home. (The same argument applies to the Solid Waste Generator Assessment, but we are willing to accept a rate that is the same as other residences because it is such a great improvement over current law.) According to 1990 U.S. Census Data, in Minnesota the average number of people per owner occupied housing unit is 2.78. Arriving at the equivalent figure for apartments involves a bit of interpolation, but appears to be about 1.3 persons per average apartment unit.

Chairman Gene Merriam
and Members
January 21, 1997
Page 2

We are very concerned that the gain in the Solid Waste Generator Assessment be not undone by the great disadvantage to apartments if the Score Tax flat rate were the same for apartments and single family homes. If that were to happen, we would lose everything we had gained under the Solid Waste Generator Assessment proposal, and in fact, end up substantially worse off than under current law.

Attached is a sheet showing the results of a survey of 12 apartment buildings and complexes prepared by Mr. Floyd Hiar. The average monthly cost for trash hauling per apartment household is \$4.40 for the 3,267 apartment households in the survey. This produces an average annual sales tax of \$3.43 per apartment household, far less than the \$12 per year flat Score Tax that has been proposed. The \$12 per year flat Score Tax appears to be approximately correct for single family detached households. However, as the attached data shows, it is far too high for apartment households.

The largest cause of the difference in sales tax between owner occupied households and apartment households is the larger number of people living in the owner occupied household on average. In addition, some part of the difference could be accounted for by a lower per unit cost of collection of waste from apartment buildings compared to single family homes. However, this consideration is offset by the fact that owner occupied households tend to benefit a bit more than apartment households from Score Tax expenditures.

If a flat rate per household is to replace the Score Tax, the flat rate for apartments should be substantially less than the rate for detached homes. Perhaps, the fairest way is simply to leave the score tax as a 6 1/2 percent sales tax applied to the actual billing. This appears to be the simplest and administratively easiest way to impose the tax.

Thank you very much for your consideration.

Sincerely yours,

For the Minnesota Multi Housing
Association

John G. Horner
John G. Horner

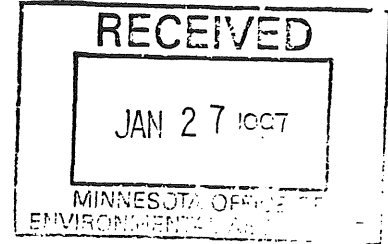
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2626 COURTLAND STREET / DULUTH, MINNESOTA 55806-1894 / PHONE 218/722-3336
FAX 218/727-7471

January 22, 1997

Office of Environmental Assistance
Mr. Tom Osdoba
520 Lafayette Road
St. Paul, MN 55155



RE: Combined SWGA and SCORE TAX

Dear Mr. Osdoba,

The Western Lake Superior Sanitary District (WLSSD) is a wastewater and solid waste district encompassing the cities of Duluth, Cloquet, Hermantown, Proctor and various smaller communities. The WLSSD receives SCORE funding in order to operate their recycling, household hazardous waste, yardwaste site and waste education programs. The WLSSD believes that it is pertinent to comment on the SCORE Tax Task Force's proposals on a combined Solid Waste Generator Assessment (SWGA) and SCORE Tax.

WLSSD officials have discussed the proposals on the combination of the SWGA and SCORE. No adverse effects were identified. However, it was determined as pertinent that the amount of funds needed for SCORE and SWGA be fully documented prior to any systems being combined. The WLSSD supports the administrative time savings with a joined system.

If a combined system were instituted, an enhanced SWGA to collect funds would be preferable (Alternative 2), in that, it continues to collect the needed funding on a volume basis. It allows those who create more waste to pay accordingly. Alternative 2 states that the homeowner derives more from SCORE funds, and this holds true in the WLSSD area. If this system is instituted, the portion of the fee that would be collected for SCORE should be applied equally among households and commercial businesses.

Charging the combined fee across all waste streams (medical, demolition/construction, industrial) is an issue worth examining. Presently, SCORE funding in the WLSSD is used for education on several of these topics. It may be pertinent to examine how much SCORE funding presently goes towards these programs.



RECYCLED PAPER

Finally, the proposal from Representative Jean Wagenius discussed collecting extra funding for business rebates. This concept needs much research. It could be used as a tool to work with businesses to operate their systems and manufacture products that help society adhere to the waste hierarchy, for example, less packaging used to get a product to its endpoint.

If you have any comments or questions, please contact Heidi Ringhofer, Supervisor of Recycling and Household Hazardous Waste Operations for WLSSD at (218)722-3336, extension 206.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heidi Ringhofer". The signature is written in black ink and is positioned above the printed name and title.

Heidi Ringhofer
Supervisor, Recycling/HHW

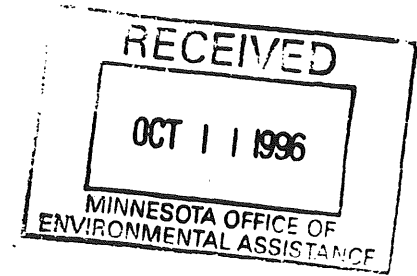
HR/ra



LAND USE MANAGEMENT DEPARTMENT

GOODHUE COUNTY COURTHOUSE
P.O. BOX 408
RED WING, MINNESOTA 55066
(612)385-3104

October 2, 1996



The Honorable Gene Merriam
State Senate
Room 122
State Capitol Building
St. Paul, Minnesota 55155

RE: SCORE TAX ISSUES

Dear Senator Merriam:

The **Goodhue County Solid Waste Advisory Committee** is following the progress of the Score Tax Task Force. We have assigned Mr. Roger Swanson of the Goodhue County Land Use Management Department to attend meetings and report back to our committee.

The **SCORE** block grants and competitive grants have assisted Goodhue County in implementing waste management programs that have addressed a wide variety of issues in an economical fashion. We anticipate that SCORE funds will continue to permit Goodhue County to plan and manage programs like waste reduction, waste reuse, recycling, household hazardous waste, education, and market development for current and future opportunities.

As we have reviewed minutes from your meetings and discussed some of the issues relative to the SCORE tax, we would offer the following comments for your considerations as the review of the SCORE tax issues move forward:

1. SCORE should remain as a tax on **collection and disposal**, whether the revenues were collected at point of sale, property tax or service fee. This was the intent of the 1989 legislation and remains to be a fair system. It is clear that a collection truck or a dozer for a landfill is part of the cost of collection and disposal. These are items that are easily audited whether a public or private entity has made the purchase. A very objective approach. However, meeting regionally to look at future waste issues, which may include a number of waste types from hazardous to contaminated soil, cannot be included into these cost factors. A very subjective approach.

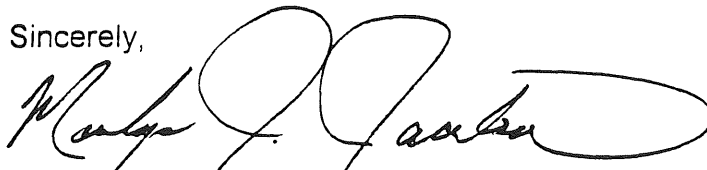


SCORE TAX TASK FORCE
PAGE 2

2. Funds collected under the SCORE tax should not be diverted to the State's general fund, but used in waste management programs at the State level and as continued support of local programs. If sufficient funds are available to operate the programs the legislature feels appropriate, then the tax amount should be reduced from 6.5 percent. It is not a sales tax and need not match the sales tax amount.
3. The idea of a permanent moratorium on taxes due for year 1991-1995 should be considered carefully before moved forward. This would be unfair to the local government units and private businesses that did pay the SCORE tax. We believe that taxes should be calculated and paid on **collection and disposal** as instructed by the 1989 legislature. This would generate revenue in a fair and responsible manner and would eliminate the confusion created by what "Services Relating to Management" means and how it relates to operations. However, a program should allow for payment of delinquent taxes in a way that will not hamper the resources of governments or private businesses owing the taxes.

We appreciate your consideration of our concerns on this difficult and complex matter. Mr. Swanson may be reached at (612) 385-3111, if you have any questions.

Sincerely,



Marlys Jacobson, Chair
Goodhue County Solid Waste Advisory Committee

cc: SCORE Tax Task Force Members
SCORE Staff Contacts

Ann H. Rest
State Representative

District 46A
Hennepin County



Minnesota House of Representatives

Irv Anderson, Speaker

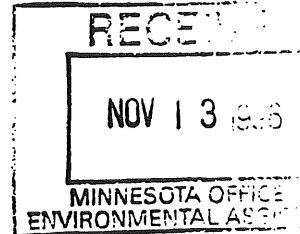
CHAIR: COMMITTEE ON TAXES

COMMITTEES: PROPERTY TAX AND TAX INCREMENT FINANCING DIVISION; SALES AND INCOME TAX DIVISION;
RULES AND LEGISLATIVE ADMINISTRATION; WAYS AND MEANS

COMMISSIONS: LEGISLATIVE AUDIT COMMISSION; LEGISLATIVE COMMISSION ON EMPLOYEE RELATIONS;
LEGISLATIVE COMMISSION ON PLANNING AND FISCAL POLICY

November 7, 1996

Mr. Edward Garvey
Office of Environmental Assistance
520 Lafayette Road
St. Paul, MN. 55155



Dear Mr. Garvey,

As you know, the 1996 Legislature enacted chapter 471, section 28, creating a SCORE Tax Task Force to study implementation of the sales and use taxes on solid waste management services. At the SCORE Task Force's September 12 meeting, a motion was made by Anoka County Commissioner Paul McCarron, a task force member, relating to the moratorium on SCORE taxes extended in that 1996 law. The motion, which passed on a voice vote, provides that the task force will recommend that the 1997 Legislature make permanent the moratorium on: a) state refunds to political subdivisions that may have overpaid the SCORE tax, and b) collection of back taxes on political subdivisions that may have underpaid the SCORE tax. The time frame affected by the moratorium would be taxes paid from January 1, 1990 through December 31, 1995.

The task force's decision was premature for the following reasons:

First, a careful examination of past SCORE tax compliance is essential to acquire a better understanding of the State's SCORE tax/solid waste management system so that positive changes during the 1997 Legislative session can be developed. One of the primary purposes for creating the task force was to provide a forum -- apart from the regular legislative session -- when there is adequate time and resources to address complex issues. The task force should take the necessary time and effort to thoroughly examine all of the issues surrounding the SCORE tax that were identified as task force goals in the 1996-law.

Second, the 1996 legislature directed the Commissioner of Revenue to continue an evaluation of local governments to determine the taxes paid by all affected political subdivisions on solid waste management services. The Legislature appropriated \$250,000 to the Department of

Revenue to conduct this evaluation. Although the Department has stated that the evaluation will proceed as scheduled, I am skeptical of the quality of the responses forthcoming from some of the political subdivisions given the task force's recent decision regarding tax liability for past years. Those political subdivisions who have not yet submitted their evaluation no longer have as great an incentive to do so, and a thorough examination of past tax compliance issues may not be possible.

Third, a permanent moratorium is problematic both in terms of its legality and the precedent that it establishes. I understand that the Office of Environmental Assistance has asked the Attorney General's Office for an opinion on the moratorium's legality. The members of the task force have not yet been advised of the attorney general's conclusion. This opinion must be considered prior to a final decision on a permanent moratorium. Furthermore, with the exception of a tax amnesty program that was granted in 1986 for certain nonprofit organizations that conducted lawful gambling (in which the amnesty provided that the organization was responsible for paying 50 percent of their tax liability, plus interest), I am unaware of any total tax forgiveness that has been granted by the Legislature. Adopting a permanent moratorium establishes a precedent that warrants more careful consideration.

In conclusion, I regret that the SCORE Tax Task Force has evidently already decided to recommend a permanent moratorium to the Legislature. The decision should have been delayed until more information is gathered and analyzed. In the meantime, the task force could continue to work on other goals cited in the 1996 legislation.

Sincerely,



Rep. Ann H. Rest

Chair, House Tax Committee

cc. Commissioner Jim Girard, Department of Revenue
Senator Gene Merriam, Chair of SCORE Tax Task Force

Appendix F

Combined Solid Waste Fee Estimates

The estimates for the combined solid waste fees amounts are based on the assumptions listed below. A change in the assumptions can have a dramatic impact on the estimated fee amount.

Total Amount Collected Under Current Fees: \$48 million

Total Solid Waste Billing: \$392 million
(basis for calculating SCORE tax paid):

Average Cost for Residential Collection: \$13 to \$15 per month

For Apartments and Mobile Homes

Monthly Cost for Collection: \$7 per unit
Annual Amount Generated per Unit: 10 loose cubic yards per year
Estimated Number of Units: 379,000

Total Solid Waste Generator Assessment (SWGA)

Commercial: \$20 million
Residential: \$2 million