

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MSC
1-19-93

RULE REVIEW CHECKLIST

File No. 1993
DATE RECEIVED 1-15-93
REVIEW DATE ~~1/24/93~~ 1/25/93
DUE DATE 1/29/93
(DIS)APPROVED 1-27-93
WITHDRAWN _____

Docket No. 05.0009.0739
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 1-19-93
REVISOR (DIS)APPROVED 1-20-93
FILED W/SEC. OF STATE 1-27-93
RETURNED TO AGENCY 1-27-93

✓ Rule as adopted (4 copies)

_____ Notice to Solicit Outside Information/Opinion (if applicable)
_____ Date published in State Register
_____ Comments

_____ ~~Petition for Adoption of a Rule~~

_____ ~~Board's Authorizing Resolution~~
_____ Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
270.06 Statutory Authority
no statement Small Business Statement
✓ Expenditure of public money statement
Oct. 8, 1992 Signature

✓ Statement of Need and Reasonableness (if applicable)
✓ Small Business Statement
N/A Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
October 15, 1992 Dated 30/25 days before adoption
✓ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
October 19, 1992 Date 30/25 days before adoption

✓ 180-day deadline from:
_____ Effective date of law requiring rule (14.12) (both rules) amendments don't apply - check.
✓ end of comment period (§ 14.26) (rules without hearing)
_____ effective date of statutory authority (§ 14.29) (emergency rules)

_____ Resolution Adopting
_____ Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
~~January 13, 1993~~ Date - Director signed Findings

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Barry Dullor Name of SAAG representing agency

_____ Notice of Submission to Attorney General (if applicable)

_____ Affidavit of Mailing Notice to Attorney General (if applicable)

STATE OF MINNESOTA

Office of the Attorney General

TO : JOHN E. STREIFF, ATTORNEY
Appeals, Legal Services and Criminal Investigation Division
10 River Park Place
Mail Station 2220
St. Paul

DATE : January 27, 1993

FROM : MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE : 296-6839

SUBJECT : In the Matter of the Adopted Rule Relating to Sales Tax on Waste Disposal and Collection Services

The above-referenced rule has been approved as to its legality by the Attorney General on January 27, 1993.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

cc: Barry R. Greller
William Brown, Chief Judge
MaryAnn Hruby

MJC:jj.rules.bgl

Department of Revenue

Adopted Permanent Rules Relating to Sales Tax on Waste Disposal and Collection Services

Rules as Adopted

8130.2100 WASTE COLLECTION AND DISPOSAL SERVICES.

Subpart 1. **General information.** Public and private mixed municipal solid waste collection and disposal services are subject to sales or use tax pursuant to Minnesota Statutes, section 297A.01, subdivision 3, clause (j), item (vii), and as described in Minnesota Statutes, section 297A.45.

The total general sales and use tax rate is 6.5 percent. This consists of a six percent rate imposed by Minnesota Statutes, section 297A.02, combined with a .5 percent local option sales tax imposed by Minnesota Statutes, section 297A.021.

Waste collection and disposal services are taxable whether charged directly to customers by private or public haulers or paid for through government imposed service fees or tax assessments.

Pursuant to Minnesota Statutes, section 297A.44, subdivision 1, paragraph (d), the revenues, including interest and penalties, which are derived from the taxes imposed on solid waste collection services are used to fund solid waste reduction and recycling programs.

Subp. 2. **Definitions.** For purposes of this part, the terms as defined in Minnesota Statutes, sections 115A.03 and 297A.01, apply.

A. "Collection" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 5.

B. "Disposal" or "dispose" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 9.

C. "Disposal facility" has the meaning given it in Minnesota Statutes, section 115.03, subdivision 10.

D. "Generator" has the meaning given it in Minnesota

Approved by Revisor

Statutes, section 115A.03, subdivision 12.

E. "Mixed municipal solid waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 21.

F. "Political subdivision" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 24.

G. "Recyclable materials" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25a.

H. "Recycling" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25b.

I. "Resource recovery" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 27.

J. "Resource recovery facility" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 28.

K. "Solid waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 31.

L. "Waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 34.

M. "Waste facility" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 35.

Subp. 3. **Taxpayers.** The person responsible for collecting and remitting the sales tax is the person who bills the customer for the waste collection services.

A. Commercial haulers who provide waste collection services and bill their customers must collect and remit the sales tax.

B. A governmental entity which provides waste collection services, either with its own vehicles or by contract with a commercial hauler, or which operates a landfill facility, and bills citizens directly for the cost of those services, must collect and remit the sales tax. If a governmental entity does not bill directly for these costs, the governmental entity must pay the sales tax. For example, if a governmental entity bills its citizens for the cost of waste collection or landfill services as a general service fee, without stating what services the fee arises from, the entity will be responsible for paying the sales tax.

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by Revisor _____

If a governmental entity contracts with a commercial hauler for waste collection services and the amount paid by the governmental entity is more than the amount charged to citizens for those services, the governmental entity must pay the sales or use tax on the amount of the difference. Also, all direct and indirect expenses related to providing citizens with the waste disposal services must be accounted for in determining the cost of these services.

C. Landfill and transfer station operators are required to collect and remit the sales tax on all charges for the disposal of mixed municipal solid waste at their facilities, provided that commercial haulers who bill customers for waste disposal services and for the sales tax, or who provide these services pursuant to a contract with a governmental entity which collects and remits the sales tax, are not required to pay the sales tax to landfill operators if the hauler provides the landfill operator with a completed Commercial Hauler's Exemption Certificate.

Landfill and transfer station operators are not required to collect and remit the sales tax on charges billed to refuse-derived fuel plant operators for the disposal of waste which was previously subjected to sales tax. Refuse-derived fuel plant operators are required to provide landfill and transfer station operators with a letter from the Department of Revenue as proof of exemption from sales tax for disposal of this waste.

Subp. 4. **Customers required to pay sales tax.** All customers, except the federal government, are required to pay the sales tax on garbage collection services. This includes state and local government agencies, nonprofit organizations such as churches and nursing homes which are otherwise exempt from paying sales tax, and direct pay permit holders.

Haulers may not accept exemption certificates from customers in lieu of payment for the sales tax on garbage collection services. Sales to the federal government and its agencies are exempt from sales tax when the agency is billed

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by Revisor _____

directly and payment is made directly by the federal agency.

Subp. 5. **Determining the amount of sales tax.**

A. Surcharges or fees imposed by a city, town, or county pursuant to Minnesota Statutes, section 115A.919 or 115A.921, which are separately stated on the customer's bill are not subject to the sales tax. These surcharges and fees are charged to operators of mixed municipal solid waste facilities by a city, town, or county.

B. State landfill abatement fees imposed under Minnesota Statutes, sections 115A.923 and 473.843, upon operations of greater Minnesota and metropolitan mixed municipal solid waste landfills are not subject to the sales tax. These are fees used to fund the greater Minnesota and metropolitan area landfill abatement funds.

C. Costs associated with the management and operation of recycling enterprises are exempt from the sales tax according to the guidelines in subitems (1) and (2).

(1) Charges for collecting and managing recyclable materials that have been separated from other refuse by the customer are exempt. When recyclable materials have not been separated from mixed municipal solid waste by the customer, the entire charge for garbage collection services is taxable to the customer. Charges for collection and management include all costs directly related to the service, including administrative expenses, wages, and collection vehicles.

(2) Charges for the collection of waste from a recycling facility which separates recyclable materials from nonrecyclable wastes are not taxable. However, this exemption only applies:

(a) if the volume of the nonrecyclable waste has been reduced by at least 85 percent by the recycling facility;

(b) to waste which is collected and disposed of separately from other solid waste; and

(c) to entities which collect the combined waste primarily for recycling purposes. This limitation

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by Revisor _____

prevents customers of commercial haulers from claiming this exemption if the haulers separate recyclables from other solid waste as an incidental or de minimus part of their operations.

D. Resource recovery facilities are not included in the exemption under item C.

Subp. 6. **Administrative requirements.**

A. All persons in subpart 4 who are required to collect and remit the sales tax must obtain a sales tax permit from the commissioner. If the person already holds a valid sales tax permit, it is not necessary to obtain a new one.

B. The permit holder must remit the collected sales tax to the office of the commissioner according to the reporting requirements of part 8130.7300.

C. Sales tax returns must be reported either on a cash method or accrual method basis using the same method of accounting as used for income tax purposes. A change in accounting methods may be required as described in part 8130.1800.

Subp. 7. **Local sales tax.** City or local general sales or use tax does not apply to waste collection services. A retailer is not required to register for the local sales tax unless the retailer makes other taxable sales, such as sales or leases of trash containers.

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY

January 27 19 93

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassidy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JAN 27 1993

Joan Anderson Growe
Secretary of State 10:15 AM

RA

Stat Authority 270.06 (subd 15)

The commissioner of revenue shall:

~~(a)~~ prescribe rules governing the qualification and practice of agents, attorneys or other persons representing taxpayers before the commissioner. .17

not true, they did list

~~Did not~~ list end of comment period

Director signed the findings

Sent a computer generated rule in the mailing not the revisors copy

call

Call - did they send the SONAR to LCAR

Rule 8130.2100 subd 3C
Commercial Haulers Exemption Certificate should be define - what rules & statutes govern it
subd 5 - Determining the amount of sales tax on all exemptions should be titled different

1-22-93 PN

Called John Stauffer - said that Director has authority to sign for commissioner sent a ~~letter~~ SONAR to LCAR knows the SONAR is bad

Going to send copy of Geo
SONAR
feels uncomfortable about SONAR
doesn't know how to write
them

MINNESOTA Department of Revenue

APPEALS, LEGAL SERVICES AND CRIMINAL INVESTIGATION DIVISION

Mail Station 2220
St. Paul, Minnesota 55146-2220
Phone (612) 296-1902, ext. 133
Facsimile (612) 296-8229

January 15, 1993

The Office of the Attorney General
Administrative Rule Review
Public Finance Division
Capitol Office Building
525 Park Street
St. Paul, Minnesota 55103

Re: **Department of Revenue**
In the Matter of the Proposed Adoption of Permanent Rules Relating to Sales Tax on Waste Disposal and Collection Services

Dear Sir or Madam:

Enclosed pursuant to Minnesota Rules 2010.0300 are the following documents necessary for review of a rule adopted without a public hearing:

(1) No notice of solicitation of outside information or opinion was published in the State Register;

(2) A copy of the proposed rule with a certificate of approval as to form by the Revisor of Statutes attached;

(3) The notice of intent to adopt the rule without a public hearing as mailed;

(4) The statement of need and reasonableness;

(5) The affidavit of mailing the notice of intent to adopt the rule without a public hearing;

(6) A copy of the notice of intent to adopt the rule without a public hearing as published in the State Register;

(7) Written public comment received on proposed rule;

(8) Four copies of the rule as adopted;

(9) The findings of fact, conclusions, and order adopting the rule;

(10) The Declaration of Counsel of Barry R. Greller, Special Assistant Attorney General.

A copy of the statement of need and reasonableness was mailed to the Legislative Commission to Review Administrative Rules when it became available to the public as required by Minnesota Statutes § 14.23.

These documents are submitted for your review and approval pursuant to Minnesota Statutes, Chapter 14, and Minnesota Rules 2010.0300. If anything further is required, please feel free to contact me. Should the rule be approved and filed with the Secretary of State, please notify me.

Yours very truly,

John E. Streiff, Attorney
Legal Services Section

JES/ml
Enclosure

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of Permanent Rules for the Sales and Use Taxation of Solid Waste Collection and Disposal Services (Minnesota Rule Part 8130.2100)

STATEMENT OF NEED AND REASONABLENESS

GENERAL STATEMENT

This document has been prepared as a verbatim affirmative presentation of the facts necessary to establish the statutory authority, need for, and reasonableness of the proposed rule. It is submitted pursuant to Minnesota Statutes, section 14.23 (1992) and Minnesota Rules, part 1400.0500 (1991) requiring a Statement of Need and Reasonableness.

This rule is necessary to integrate definitions in Minnesota Statutes, sections 115A.03 (1992) the sales and use tax imposition provisions of Minnesota Statutes, section 297A.01, subd. 3(j)(vii)(1992); and 297A.45 (1992). This rule is reasonable because it results in a simplification of tax administration coupled with a better understanding of its application by taxpayers.

IMPACT ON SMALL BUSINESS

The effect of this rule on small business has been considered. The agency has determined that this rule will not have an effect on small businesses as contemplated by Minnesota Statutes, section 14.115 (1992).

The proposed rule, Solid Waste Collection and Disposal Services, does not impose new filing or payment requirements on small business and thus is not expected to place any additional financial or administrative burden on small businesses. The rule explains compliance requirements for garbage and trash

haulers. Thus the task of these types of small businesses in collecting the sales tax is rendered less burdensome.

AUTHORITY TO ADOPT RULES

Minnesota Statutes, section 270.06, subd. 13 (1992) grants the commissioner of revenue authority to make, publish, and distribute rules for the administration and enforcement of state tax laws.

RULE ANALYSIS

Subpart 1 is a general information statement required to orientate the taxpayer.

Subpart 2 is a definition of terms based on applicable statutes necessary to explain tax base to the taxpayer.

Subpart 2A is the statutory definition of "collection" as defined in Minnesota Statutes, section 115A.03, subd. 5

Subpart 2B is the statutory definition of "disposal" or "dispose" as defined in Minnesota Statutes, section 115A.03, subd. 9.

Subpart 2C is the statutory definition of "disposal facility" as defined in Minnesota Statutes, section 115A.03, subd. 10.

Subpart 2D is the statutory definition of "generator" as defined in Minnesota Statutes, section 115A.03, subd. 12.

Subpart 2E is the statutory definition of "mixed municipal solid waste" as defined in Minnesota Statutes, section 115A.03, subd. 21.

Subpart 2F is the statutory definition of "political subdivision" as defined in Minnesota Statues, section 115A.03, subd. 24.

Subpart 2G is the statutory definition of "recyclable materials" as defined in Minnesota Statutes, section 115.03, subd. 25a.

Subpart 2H is the statutory definition of "recycling" as defined in Minnesota Statutes, section 115A.03, subd. 25b.

Subpart 2I is the statutory definition of "resource recovery" as defined in Minnesota Statutes, section 115A.03, subd. 27.

Subpart 2J is the statutory definition of "resource recovery facility" as defined in Minnesota Statutes, section 115A.03, subd. 28.

Subpart 2K is the statutory definition of "solid waste" as used in Minnesota Statutes, section 115A.03,. subd. 31 and defined in Minnesota Statutes, section 116.06, subd. 10.

Subpart 2L is the statutory definition of "waste" as defined in Minnesota Statutes, section 115A.03, subd. 34.

Subpart 2M is the statutory definition of "waste facility" as defined in Minnesota Statues, section 115A.03, subd. 35.

Subpart 2N is the statutory definition of "solid waste" as defined in Minnesota Statutes, section 116.06, subd. 10.

Subpart 3 is necessary to reflect the different types of taxpayers, because of the various different methods by which the business of waste pick-up is undertaken.

Subpart 4 is required to reflect various types of customers who are not subject to the tax imposed on solid waste collection and disposal services.

Subpart 5 is required to determine the appropriate tax base for service charges billed by haulers of waste collection and disposal services.

Subpart 6 is required to advise the retailer of the appropriate administrative procedures to follow in registering, collecting, and remitting the sales tax.

Subpart 7 is required to advise the retailer that a city local sales or use tax does not apply to waste collection services.

JES:caw:8fw:attorneys:snr:solidwaste-08/26/92

In the Matter of the Adoption of
the Rule of the State of Minnesota
Relating to Sales Tax on Waste
Disposal and Collection Services.

DECLARATION OF COUNSEL

I, Barry R. Greller, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule and the supporting rulemaking record and that based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0739.

In examining the rule, I noted the following:

1. The copy of the rule as mailed to persons on the rulemaking mailing list was a Department of Revenue computer printed copy of the proposed rule rather than a copy of the proposed rule as approved by the Revisor of Statutes. However, the text of the copy as mailed is identical to the text of the proposed rule as approved by the Revisor;

2. References in the Statement of Need and Reasonableness to Minn. Stat. (1992) predate the publication of the 1992 edition of Minnesota Statutes. However, the clear intent of these reference is to refer to the version of the statutes in effect at the time the Statement was prepared.

It does not appear that either of these matters deprived any person of an opportunity to participate meaningfully in the rulemaking process.

Dated: January 14, 1992

Barry R. Greller

BARRY R. GRELLER
Special Assistant
Attorney General

dq4

Department of Revenue

Proposed Permanent Rules Relating to Sales Tax on Waste Disposal and Collection Services

Rules as Proposed (all new material)

8130.2100 WASTE COLLECTION AND DISPOSAL SERVICES.

Subpart 1. **General information.** Public and private mixed municipal solid waste collection and disposal services are subject to sales or use tax pursuant to Minnesota Statutes, section 297A.01, subdivision 3, clause (j), item (vii), and as described in Minnesota Statutes, section 297A.45.

The total general sales and use tax rate is 6.5 percent. This consists of a six percent rate imposed by Minnesota Statutes, section 297A.02, combined with a .5 percent local option sales tax imposed by Minnesota Statutes, section 297A.021.

Waste collection and disposal services are taxable whether charged directly to customers by private or public haulers or paid for through government imposed service fees or tax assessments.

Pursuant to Minnesota Statutes, section 297A.44, subdivision 1, paragraph (d), the revenues, including interest and penalties, which are derived from the taxes imposed on solid waste collection services are used to fund solid waste reduction and recycling programs.

Subp. 2. **Definitions.** For purposes of this part, the terms as defined in Minnesota Statutes, sections 115A.03 and 297A.01, apply.

A. "Collection" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 5.

B. "Disposal" or "dispose" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 9.

C. "Disposal facility" has the meaning given it in Minnesota Statutes, section 115.03, subdivision 10.

D. "Generator" has the meaning given it in Minnesota

Approved by Revisor

Statutes, section 115A.03, subdivision 12.

E. "Mixed municipal solid waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 21.

F. "Political subdivision" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 24.

G. "Recyclable materials" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25a.

H. "Recycling" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25b.

I. "Resource recovery" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 27.

J. "Resource recovery facility" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 28.

K. "Solid waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 31.

L. "Waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 34.

M. "Waste facility" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 35.

Subp. 3. **Taxpayers.** The person responsible for collecting and remitting the sales tax is the person who bills the customer for the waste collection services.

A. Commercial haulers who provide waste collection services and bill their customers must collect and remit the sales tax.

B. A governmental entity which provides waste collection services, either with its own vehicles or by contract with a commercial hauler, or which operates a landfill facility, and bills citizens directly for the cost of those services, must collect and remit the sales tax. If a governmental entity does not bill directly for these costs, the governmental entity must pay the sales tax. For example, if a governmental entity bills its citizens for the cost of waste collection or landfill services as a general service fee, without stating what services the fee arises from, the entity will be responsible for paying the sales tax.

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by Revisor _____

If a governmental entity contracts with a commercial hauler for waste collection services and the amount paid by the governmental entity is more than the amount charged to citizens for those services, the governmental entity must pay the sales or use tax on the amount of the difference. Also, all direct and indirect expenses related to providing citizens with the waste disposal services must be accounted for in determining the cost of these services.

C. Landfill and transfer station operators are required to collect and remit the sales tax on all charges for the disposal of mixed municipal solid waste at their facilities, provided that commercial haulers who bill customers for waste disposal services and for the sales tax, or who provide these services pursuant to a contract with a governmental entity which collects and remits the sales tax, are not required to pay the sales tax to landfill operators if the hauler provides the landfill operator with a completed Commercial Hauler's Exemption Certificate.

Subp. 4. **Customers required to pay sales tax.** All customers, except the federal government, are required to pay the sales tax on garbage collection services. This includes state and local government agencies, nonprofit organizations such as churches and nursing homes which are otherwise exempt from paying sales tax, and direct pay permit holders.

Haulers may not accept exemption certificates from customers in lieu of payment for the sales tax on garbage collection services. Sales to the federal government and its agencies are exempt from sales tax when the agency is billed directly and payment is made directly by the federal agency.

Subp. 5. **Determining the amount of sales tax.**

A. Surcharges or fees imposed by a city, town, or county pursuant to Minnesota Statutes, section 115A.919 or 115A.921, which are separately stated on the customer's bill are not subject to the sales tax. These surcharges and fees are charged to operators of mixed municipal solid waste facilities by a city, town, or county.

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by Revisor _____

B. State landfill abatement fees imposed under Minnesota Statutes, sections 115A.923 and 473.843, upon operations of greater Minnesota and metropolitan mixed municipal solid waste landfills are not subject to the sales tax. These are fees used to fund the greater Minnesota and metropolitan area landfill abatement funds.

C. Costs associated with the management and operation of recycling enterprises are exempt from the sales tax according to the guidelines in subitems (1) and (2).

(1) Charges for collecting and managing recyclable materials that have been separated from other refuse by the customer are exempt. When recyclable materials have not been separated from mixed municipal solid waste by the customer, the entire charge for garbage collection services is taxable to the customer. Charges for collection and management include all costs directly related to the service, including administrative expenses, wages, and collection vehicles.

(2) Charges for the collection of waste from a recycling facility which separates recyclable materials from nonrecyclable wastes are not taxable. However, this exemption only applies:

(a) if the volume of the nonrecyclable waste has been reduced by at least 85 percent by the recycling facility;

(b) to waste which is collected and disposed of separately from other solid waste; and

(c) to entities which collect the combined waste primarily for recycling purposes. This limitation prevents customers of commercial haulers from claiming this exemption if the haulers separate recyclables from other solid waste as an incidental or de minimus part of their operations.

D. Resource recovery facilities are not included in the exemption under item C.

Subp. 6. **Administrative requirements.**

A. All persons in subpart 4 who are required to collect and remit the sales tax must obtain a sales tax permit

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by Revisor _____

from the commissioner. If the person already holds a valid sales tax permit, it is not necessary to obtain a new one.

B. The permit holder must remit the collected sales tax to the office of the commissioner according to the reporting requirements of part 8130.7300.

C. Sales tax returns must be reported either on a cash method or accrual method basis using the same method of accounting as used for income tax purposes. A change in accounting methods may be required as described in part 8130.1800.

Subp. 7. **Local sales tax.** City or local general sales or use tax does not apply to waste collection services. A retailer is not required to register for the local sales tax unless the retailer makes other taxable sales, such as sales or leases of trash containers.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Sales Tax on Waste Disposal and Collection Services

AGENCY: Department of Revenue

MINNESOTA RULES: Chapter 8130

The attached rules are approved for publication in the State Register

Janet M. Rahm
Assistant Deputy Revisor

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of the Rule of the State of Minnesota Relating to Sales Tax on Waste Disposal and Collection Services.	FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner of Revenue's intent to adopt the above-entitled rule was published in the State Register on October 19, 1992 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on October 15, 1992. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. (5) The agency received one request for a public hearing on the rule. Therefore, the Commissioner did not receive requests for a public hearing from 25 or more persons.

Only one written comment on the rule, which was submitted by the same person who requested a public hearing, was received by the agency. (7) No requests for notice of submission to the Attorney General were received by the agency.

Based on the comments and evidence in the record before the agency, I find the following:

1. The agency received written comments submitted on behalf of one person, a public utility which is the operator of two refuse-derived fuel plants. A refuse-derived fuel plant produces fuel from waste generated by third parties which is collected and hauled to the plant.

2. Prior to giving notice of intent to adopt the proposed rule, the agency had determined that landfill charges to dispose of waste consisting of the by-product and

unprocessed waste of refuse-derived fuel plants were not subject to sales tax. This determination was based on the fact that the plant was analogous to a transfer station for the unprocessed waste it received and because a sales tax with respect to the collection and disposal of the waste had already been collected from the waste generators by the haulers who delivered the waste to the plant. Following this determination, refuse-derived fuel plant operators which contacted the agency were provided with a letter specifying that landfill operators were not required to collect the sales tax on the by-product produced by their facilities and on unprocessed waste delivered to their facilities. Due to the extremely small number of refuse-derived fuel plants, no special exemption certificates were developed for this purpose. See Minn. Rule pt. 8130.9912.

3. The operator of the facility submitting the written comment was the recipient of such a letter, a copy of which accompanied the written comment. The comment notes that the general language of subpart 3c of the proposed rule does not address the non-taxable nature of waste disposal services with respect to refuse-derived fuel plants. Rather, the rule states the general requirement that landfill and transfer station operators are required to collect the sales tax on all charges for the disposal of mixed municipal solid waste, subject to an exception which is not applicable to refuse-derived fuel plant operators.

(6) 4. Based upon the written comment, it is necessary and reasonable that subpart 3c of the proposed rule be modified by adding the following language at the end of the subpart:

> Landfill and transfer station operators are not required to collect and remit the sales tax on charges billed to refuse-derived fuel plant operators for the disposal of waste which was previously subjected to sales tax. Refuse-derived fuel plant operators are required to provide landfill and

transfer station operators with a letter from the Department of Revenue as proof of exemption from sales tax for disposal of this waste.

5. Modification of the proposed rule will clarify the rule and will not constitute a substantial change in the rule as adopted, pursuant to Minn. Rule pt. 2010.1000, clause D, as the additional language: a) only affects persons who could reasonably have been expected to comment on the proposed rule, as is demonstrated by the written comment received by the agency; b) does not introduce new subject matter to the existing subject matter of the taxability of waste collection and disposal; and c) does not make a major substantive change and instead clarifies the existing tax treatment of the affected transactions. Rather, the proposed addition sets forth clarifying language, by clearly specifying those transactions which are not covered by the general language of the proposed rule. In addition, the number of persons affected by the proposed addition are very few in number and the affected persons cannot be adversely affected by clarification that certain of their transactions are not subject to the sales tax.

6. The above-captioned rule is needed and reasonable. (8)

(9) NOW, THEREFORE, IT IS ORDERED that the rule identified as part 8130.2100 and as modified herein is adopted this 13th day of January, 1993, pursuant to authority vested in me by Minnesota Statutes, section 270.06(13).

MORRIS J. ANDERSON
COMMISSIONER OF REVENUE
STATE OF MINNESOTA

By _____
MICHAEL E. BOEKHAUS, Director
Appeals, Legal Services and
Criminal Investigations Division

brg.dq5

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
APPEALS AND LEGAL SERVICES DIVISION

IN THE MATTER OF THE PROPOSED ADOPTION OF PERMANENT RULES RELATING TO SALES AND USE TAX ON WASTE DISPOSAL AND COLLECTION SERVICES

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA }
}ss.
COUNTY OF RAMSEY }

Margaret A. Connolly, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state Department of Revenue rulemaking mailing list is accurate, complete, and current as of this 15th day of October, 1992.

That on the 15th day of October, 1992, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt A Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Margaret A. Connolly
MARGARET A. CONNOLLY
SECRETARY, SENIOR TYPIST 4

Subscribed and sworn to
before me this
15th day of October, 1992

Wayne L. Sather
WAYNE L. SATHER

WAYNE L. SATHER
NOTARY PUBLIC--MINNESOTA
DAKOTA COUNTY
My Commission Expires MAY 30, 1997

DEPARTMENT OF REVENUE

Proposed Permanent Rule Relating to Sales and Use Tax on Waste Disposal and Collection Services

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN THAT the Minnesota Department of Revenue intends to adopt the above entitled rule without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes*, section 14.22 to 14.28 (1990). The statutory authority to adopt the proposed rule is *Minnesota Statutes*, section 270.06 (1990).

All persons have 30 days, through November 18, 1992, in which to submit comment in support of or in opposition to the proposed rule or any subpart of the proposed rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change

proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20 (1990).

Comments or written requests for a public hearing must be submitted to:

John E. Streiff, Attorney
Appeals, Legal Services, and
Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902, Extension 133

The proposed rule may be modified if the modifications are supported by data and views submitted to the Department of Revenue and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from John E. Streiff.

The proposed rule will not result in the expenditure of public money by local public bodies or have a direct and substantial adverse impact on agricultural land or small businesses.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to:

John E. Streiff, Attorney
Appeals, Legal Services,
and Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902, Extension 133

Dated: October 8, 1992

/S/
Dorothy A. McClung
Commissioner of Revenue
State of Minnesota

Rules as Proposed (all new material)

8130.2100 WASTE COLLECTION AND DISPOSAL SERVICES.

Subpart 1. **General information.** Public and private mixed municipal solid waste collection and disposal services are subject to sales or use tax pursuant to Minnesota Statutes, section 297A.01, subdivision 3, clause (j), item (vii), and as described in Minnesota Statutes, section 297A.45.

The total general sales and use tax rate is 6.5 percent. This consists of a six percent rate imposed by Minnesota Statutes, section 297A.02, combined with a .5 percent local option sales tax imposed by Minnesota Statutes, section 297A.021.

Waste collection and disposal services are taxable whether charged directly to customers by private or public haulers or paid for through government imposed service fees or tax assessments.

Pursuant to Minnesota Statutes, section 297A.44, subdivision 1, paragraph (d), the revenues, including interest and penalties, which are derived from the taxes imposed on solid waste collection services are used to fund solid waste reduction and recycling programs.

Subp. 2. **Definitions.** For purposes of this part, the terms are defined in Minnesota Statutes, sections 115A.03 and 297A.01, apply.

A. "Collection" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 5.

B. "Disposal" or "dispose" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 9.

C. "Disposal facility" has the meaning given it in Minnesota Statutes, section 115.03, subdivision 10.

D. "Generator" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 12.

E. "Mixed municipal solid waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 21.

F. "Political subdivision" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 24.

G. "Recyclable materials" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25a.

H. "Recycling" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25b.

I. "Resource recovery" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 27.

J. "Resource recovery facility" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 28.

K. "Solid waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 31.

L. "Waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 34.

M. "Waste facility" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 35.

Subp. 3. **Taxpayers.** The person responsible for collecting and remitting the sales tax is the person who bills the customer for the waste collection services.

A. Commercial haulers who provide waste collection services and bill their customers must collect and remit the sales tax.

B. A governmental entity which provides waste collection services, either with its own vehicles or by contract with a commercial hauler, or which operates a landfill facility, and bills citizens directly for the cost of those services, must collect and remit the sales tax. If a governmental entity does not bill directly for these costs, the governmental entity must pay the sales tax. For example, if a

governmental entity bills its citizens for the cost of waste collection or landfill services as a general service fee, without stating what services the fee arises from, the entity will be responsible for paying the sales tax.

If a governmental entity contracts with a commercial hauler for waste collection services and the amount paid by the governmental entity is more than the amount charged to citizens for those services, the governmental entity must pay the sales or use tax on the amount of the difference. Also, all direct and indirect expenses related to providing citizens with the waste disposal services must be accounted for in determining the cost of these services.

C. Landfill and transfer station operators are required to collect and remit the sales tax on all charges for the disposal of mixed municipal solid waste at their facilities, provided that commercial haulers who bill customers for waste disposal services and for the sales tax, or who provide these services pursuant to a contract with a governmental entity which collects and remits the sales tax, are not required to pay the sales tax to landfill operators if the hauler provides the landfill operator with a completed Commercial Hauler's Exemption Certificate.

Subp. 4. **Customers required to pay sales tax.** All customers, except the federal government, are required to pay the sales tax on garbage collection services. This includes state and local government agencies, nonprofit organizations such as churches and nursing homes which are otherwise exempt from paying sales tax, and direct pay permit holders.

Haulers may not accept exemption certificates from customers in lieu of payment for the sales tax on garbage collection services. Sales to the federal government and its agencies are exempt from sales tax when the agency is billed directly and payment is made directly by the federal agency.

Subp. 5. **Determining the amount of sales tax.**

A. Surcharges or fees imposed by a city, town, or county pursuant to Minnesota Statutes, section 115A.919 or 115A.921, which are separately stated on the customer's bill are not subject to the sales tax. These surcharges and fees are charged to operators of mixed municipal solid waste facilities by a city, town, or county.

B. State landfill abatement fees imposed under Minnesota Statutes, sections 115A.923 and 473.843, upon operations of greater Minnesota and metropolitan mixed municipal solid waste landfills are not subject to the sales tax. These are fees used to fund the greater Minnesota and metropolitan area landfill abatement funds.

C. Costs associated with the management and operation of recycling enterprises are exempt from the sales tax according to the guidelines in subitems (1) and (2).

(1) Charges for collecting and managing recyclable materials that have been separated from other refuse by the customer are exempt. When recyclable materials have not been separated from mixed municipal solid waste by the customer, the entire charge for garbage collection services is taxable to the customer. Charges for collection and management include all costs directly related to the service, including administrative expenses, wages, and collection vehicles.

(2) Charges for the collection of waste from a recycling facility which separates recyclable materials from nonrecyclable wastes are not taxable. However, this exemption only applies:

(a) if the volume of the nonrecyclable waste has been reduced by at least 85 percent of the recycling facility;

(b) to waste which is collected and disposed of separately from other solid waste; and

(c) to entities which collect the combined waste primarily for recycling purposes. This limitation prevents customers of commercial haulers

from claiming this exemption if the haulers separate recyclables from other solid waste as an incidental or de minimus part of their operations.

D. Resource recovery facilities are not included in the exemption under item C.

Subp. 6. **Administrative requirements.**

A. All persons in subpart 4 who are required to collect and remit the sales tax must obtain a sales tax permit from the commissioner. If the person already holds a valid sales tax permit, it is not necessary to obtain a new one.

B. The permit holder must remit the collected sales tax to the office of the commissioner according to the reporting requirements of part 8130.7300.

C. Sales tax returns must be reported either on a cash method or accrual method basis using the same method of accounting as used for income tax purposes. A change in accounting methods may be required as described in part 8130.1800.

Subp. 7. **Local sales tax.** City or local general sales or use tax does not apply to waste collection services. A retailer is not required to register for the local sales tax unless the retailer makes other taxable sales, such as sales or leases of trash containers.

STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of Permanent Rules for the Sales and Use Taxation of Solid Waste Collection and Disposal Services (Minnesota Rule Part 8130.2100)

STATEMENT OF NEED AND REASONABLENESS

GENERAL STATEMENT

This document has been prepared as a verbatim affirmative presentation of the facts necessary to establish the statutory authority, need for, and reasonableness of the proposed rule. It is submitted pursuant to Minnesota Statutes, section 14.23 (1992) and Minnesota Rules, part 1400.0500 (1991) requiring a Statement of Need and Reasonableness.

This rule is necessary to integrate definitions in Minnesota Statutes, sections 115A.03 (1992) the sales and use tax imposition provisions of Minnesota Statutes, section 297A.01, subd. 3(j)(vii)(1992); and 297A.45 (1992). This rule is reasonable because it results in a simplification of tax administration coupled with a better understanding of its application by taxpayers.

IMPACT ON SMALL BUSINESS

The effect of this rule on small business has been considered. The agency has determined that this rule will not have an effect on small businesses as contemplated by Minnesota Statutes, section 14.115 (1992).

The proposed rule, Solid Waste Collection and Disposal Services, does not impose new filing or payment requirements on small business and thus is not expected to place any additional financial or administrative burden on small businesses. The rule explains compliance requirements for garbage and trash

haulers. Thus the task of these types of small businesses in collecting the sales tax is rendered less burdensome.

AUTHORITY TO ADOPT RULES

Minnesota Statutes, section 270.06, subd. 13 (1992) grants the commissioner of revenue authority to make, publish, and distribute rules for the administration and enforcement of state tax laws.

RULE ANALYSIS

Subpart 1 is a general information statement required to orientate the taxpayer.

Subpart 2 is a definition of terms based on applicable statutes necessary to explain tax base to the taxpayer.

Subpart 2A is the statutory definition of "collection" as defined in Minnesota Statutes, section 115A.03, subd. 5

Subpart 2B is the statutory definition of "disposal" or "dispose" as defined in Minnesota Statutes, section 115A.03, subd. 9.

Subpart 2C is the statutory definition of "disposal facility" as defined in Minnesota Statutes, section 115A.03, subd. 10.

Subpart 2D is the statutory definition of "generator" as defined in Minnesota Statutes, section 115A.03, subd. 12.

Subpart 2E is the statutory definition of "mixed municipal solid waste" as defined in Minnesota Statutes, section 115A.03, subd. 21.

Subpart 2F is the statutory definition of "political subdivision" as defined in Minnesota Statues, section 115A.03, subd. 24.

Subpart 2G is the statutory definition of "recyclable materials" as defined in Minnesota Statutes, section 115.03, subd. 25a.

Subpart 2H is the statutory definition of "recycling" as defined in Minnesota Statutes, section 115A.03, subd. 25b.

Subpart 2I is the statutory definition of "resource recovery" as defined in Minnesota Statutes, section 115A.03, subd. 27.

Subpart 2J is the statutory definition of "resource recovery facility" as defined in Minnesota Statutes, section 115A.03, subd. 28.

Subpart 2K is the statutory definition of "solid waste" as used in Minnesota Statutes, section 115A.03,. subd. 31 and defined in Minnesota Statutes, section 116.06, subd. 10.

Subpart 2L is the statutory definition of "waste" as defined in Minnesota Statutes, section 115A.03, subd. 34.

Subpart 2M is the statutory definition of "waste facility" as defined in Minnesota Statues, section 115A.03, subd. 35.

Subpart 2N is the statutory definition of "solid waste" as defined in Minnesota Statutes, section 116.06, subd. 10.

Subpart 3 is necessary to reflect the different types of taxpayers, because of the various different methods by which the business of waste pick-up is undertaken.

Subpart 4 is required to reflect various types of customers who are not subject to the tax imposed on solid waste collection and disposal services.

Subpart 5 is required to determine the appropriate tax base for service charges billed by haulers of waste collection and disposal services.

Subpart 6 is required to advise the retailer of the appropriate administrative procedures to follow in registering, collecting, and remitting the sales tax.

Subpart 7 is required to advise the retailer that a city local sales or use tax does not apply to waste collection services.

JES:caw:8fw:attorneys:snr:solidwaste-08/26/92

I. routine cleaning, checking, and other maintenance of hearing aids without request or referral from the recipient, the recipient's family, guardian, or attending physician; and

J. hearing aids prescribed or hearing services ordered by a physician if the hearing aids or the hearing services are provided by a person or entity that commits a felony listed in *United States Code*, title 42, section 1320a-7b, subject to the exceptions listed in *Code of Federal Regulations*, title 42, part 1001, section 952.

9505.0365 PROSTHETIC AND ORTHOTIC DEVICES.

Subpart 1. **Definitions.** The ~~following~~ terms used in this part have the meanings given them.

A. "Ambulatory aid" means a prosthetic or orthotic device that assists a person to move from place to place.

B. ~~"Audiologist" means a person who has a current certificate of clinical competence from the American Speech, Language, and Hearing Association.~~

~~C. "Hearing aid" means a prosthetic or orthotic device that aids or improves a person's auditory function.~~

~~D. "Hearing aid dispenser" means a person or entity who specializes in the sale and repair of hearing aids and has signed a performance agreement with the department.~~

~~E.~~ "Prosthetic or orthotic device" means an artificial device as defined by Medicare to replace a missing or nonfunctional body part, to prevent or correct a physical deformity or malfunction, or to support a deformed or weak body part.

~~F.~~ C. "Physiatrist" means a physician who specializes in physical medicine or physical therapy and who is board certified by the American Board of Physical Medicine and Rehabilitation.

[For text of subps 2 and 3, see M.R.]

Subp. 4. [See repealer.]

[For text of subp 5, see M.R.]

Subp. 6. **Excluded prosthetic and orthotic devices.** The prosthetic and orthotic devices in items A to ~~K~~ J are not eligible for medical assistance payment:

[For text of items A to H, see M.R.]

I. a device that is supplied to the recipient by the physician who prescribed the device or by the consultant to the physician in subpart 3 ~~or~~ 4; and

J. a device that is supplied to the recipient by a provider who is an affiliate of the physician who prescribes the device for the recipient or of the consultant to the physician as in subpart 3 ~~or~~ 4. For purposes of this item, "affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the referring physician~~; and~~

~~K. replacement batteries provided on a schedule under contract~~.

REPEALER. *Minnesota Rules*, part 9505.0365, subpart 4, is repealed.

Department of Revenue

Proposed Permanent Rules Relating to Sales Tax on Waste Disposal and Collection Services

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN THAT the Minnesota Department of Revenue intends to adopt the above entitled rule without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes*, section 14.22 to 14.29 (1990). The statutory authority to adopt the proposed rule is *Minnesota Statutes*, section 270.06 (1990).

All persons have 30 days, through November 18, 1992, in which to submit comment in support of or in opposition to the proposed rule or any subpart of the proposed rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any changes proposed.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20 (1990).

Comments or written requests for a public hearing must be submitted to:

John E. Streiff, Attorney
Appeals, Legal Services, and
Criminal Investigation Division
10 River Park Place
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902, Extension 133

The proposed rule may be modified if the modifications are supported by data and views submitted to the Department of Revenue and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from John E. Streiff.

The proposed rule will not result in the expenditure of public money by local public bodies or have a direct and substantial adverse impact on agricultural land or small businesses.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to:

John E. Streiff, Attorney
Appeals, Legal Services,
and Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902, Extension 133

Dated: 8 October 1992

s/Dorothy A. McClung
Commissioner of Revenue
State of Minnesota

Rules as Proposed (all new material)

8130.2100 WASTE COLLECTION AND DISPOSAL SERVICES.

Subpart 1. **General information.** Public and private mixed municipal solid waste collection and disposal services are subject to sales or use tax pursuant to *Minnesota Statutes*, section 297A.01, subdivision 3, clause (j), item (vii), and as described in *Minnesota Statutes*, section 297A.45.

The total general sales and use tax rate is 6.5 percent. This consists of a six percent rate imposed by *Minnesota Statutes*, section 297A.02, combined with a .5 percent local option sales tax imposed by *Minnesota Statutes*, section 297A.021.

Waste collection and disposal services are taxable whether charged directly to customers by private or public haulers or paid for through government imposed service fees or tax assessments.

Pursuant to *Minnesota Statutes*, section 297A.44, subdivision 1, paragraph (d), the revenues, including interest and penalties, which are derived from the taxes imposed on solid waste collection services are used to fund solid waste reduction and recycling programs.

Subp. 2. **Definitions.** For purposes of this part, the terms as defined in *Minnesota Statutes*, sections 115A.03 and 297A.01, apply.

A. "Collection" has the meaning given it in *Minnesota Statutes*, section 115A.03, subdivision 5.

B. "Disposal" or "dispose" has the meaning given it in *Minnesota Statutes*, section 115A.03, subdivision 9.

C. "Disposal facility" has the meaning given it in *Minnesota Statutes*, section 115.03, subdivision 10.

D. "Generator" has the meaning given it in *Minnesota Statutes*, section 115A.03, subdivision 12.

E. "Mixed municipal solid waste" has the meaning given it in *Minnesota Statutes*, section 115A.03, subdivision 21.

F. "Political subdivision" has the meaning given it in *Minnesota Statutes*, section 115A.03, subdivision 24.

G. "Recyclable materials" has the meaning given it in *Minnesota Statutes*, section 115A.03, subdivision 25a.

H. "Recycling" has the meaning given it in *Minnesota Statutes*, section 115A.03, subdivision 25b.

I. "Resource recovery" has the meaning given it in *Minnesota Statutes*, section 115A.03, subdivision 27.

J. "Resource recovery facility" has the meaning given it in *Minnesota Statutes*, section 115A.03, subdivision 28.

K. "Solid waste" has the meaning given it in *Minnesota Statutes*, section 115A.03, subdivision 31.

L. "Waste" has the meaning given it in *Minnesota Statutes*, section 115A.03, subdivision 34.

M. "Waste facility" has the meaning given it in *Minnesota Statutes*, section 115A.03, subdivision 35.

Subp. 3. **Taxpayers.** The person responsible for collecting and remitting the sales tax is the person who bills the customer for the waste collection services.

A. Commercial haulers who provide waste collection services and bill their customers must collect and remit the sales tax.

B. A governmental entity which provides waste collection services, either with its own vehicles or by contract with a commercial hauler, or which operates a landfill facility, and bills citizens directly for the cost of those services, must collect and remit the sales tax. If a governmental entity does not bill directly for these costs, the governmental entity must pay the sales tax. For example, if a governmental entity bills its citizens for the cost of waste collection or landfill services as a general service fee, without stating what services the fee arises from, the entity will be responsible for paying the sales tax.

If a governmental entity contracts with a commercial hauler for waste collection services and the amount paid by the governmental entity is more than the amount charged to citizens for those services, the governmental entity must pay the sales or use tax on the amount of the difference. Also, all direct and indirect expenses related to providing citizens with the waste disposal services must be accounted for in determining the cost of these services.

C. Landfill and transfer station operators are required to collect and remit the sales tax on all charges for the disposal of mixed municipal solid waste at their facilities, provided that commercial haulers who bill customers for waste disposal services and for the sales tax, or who provide these services pursuant to a contract with a governmental entity which collects and remits the sales tax, are not required to pay the sales tax to landfill operators if the hauler provides the landfill operator with a completed Commercial Hauler's Exemption Certificate.

Subp. 4. **Customers required to pay sales tax.** All customers, except the federal government, are required to pay the sales tax on garbage collection services. This includes state and local government agencies, nonprofit organizations such as churches and nursing homes which are otherwise exempt from paying sales tax, and direct pay permit holders.

Haulers may not accept exemption certificates from customers in lieu of payment for the sales tax on garbage collection services. Sales to the federal government and its agencies are exempt from sales tax when the agency is billed directly and payment is made directly by the federal agency.

Subp. 5. **Determining the amount of sales tax.**

A. Surcharges or fees imposed by a city, town, or county pursuant to *Minnesota Statutes*, section 115A.919 or 115A.921, which are separately stated on the customer's bill are not subject to the sales tax. These surcharges and fees are charged to operators of mixed municipal solid waste facilities by a city, town, or county.

B. State landfill abatement fees imposed under *Minnesota Statutes*, sections 115A.923 and 473.843, upon operations of greater Minnesota and metropolitan mixed municipal solid waste landfills are not subject to the sales tax. These are fees used to fund the greater Minnesota and metropolitan area landfill abatement funds.

C. Costs associated with the management and operation of recycling enterprises are exempt from the sales tax according to the guidelines in subitems (1) and (2).

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

(1) Charges for collecting and managing recyclable materials that have been separated from other refuse by the customer are exempt. When recyclable materials have not been separated from mixed municipal solid waste by the customer, the entire charge for garbage collection services is taxable to the customer. Charges for collection and management include all costs directly related to the service, including administrative expenses, wages, and collection vehicles.

(2) Charges for the collection of waste from a recycling facility which separates recyclable materials from nonrecyclable wastes are not taxable. However, this exemption only applies:

(a) if the volume of the nonrecyclable waste has been reduced by at least 85 percent by the recycling facility;

(b) to waste which is collected and disposed of separately from other solid waste; and

(c) to entities which collect the combined waste primarily for recycling purposes. This limitation prevents customers of commercial haulers from claiming this exemption if the haulers separate recyclables from other solid waste as an incidental or de minimus part of their operations.

D. Resource recovery facilities are not included in the exemption under item C.

Subp. 6. **Administrative requirements.**

A. All persons in subpart 4 who are required to collect and remit the sales tax must obtain a sales tax permit from the commissioner. If the person already holds a valid sales tax permit, it is not necessary to obtain a new one.

B. The permit holder must remit the collected sales tax to the office of the commissioner according to the reporting requirements of part 8130.7300.

C. Sales tax returns must be reported either on a cash method or accrual method basis using the same method of accounting as used for income tax purposes. A change in accounting methods may be required as described in part 8130.1800.

Subp. 7. **Local sales tax.** City or local general sales or use tax does not apply to waste collection services. A retailer is not required to register for the local sales tax unless the retailer makes other taxable sales, such as sales or leases of trash containers.

Adopted Rules

The adoption of a rule becomes effective after the requirements of Minn. Stat. §14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. §14.33 and upon the approval of the Revisor of Statutes as specified in §14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under §14.18.

Technical Colleges Board

Adopted Permanent Rules Relating to Certain Technical College Teacher Licenses

The rules proposed and published at *State Register*, Volume 17, Number 1, pages 5-6, July 6, 1992 (17 SR 5), are adopted as proposed.

APPEALS, LEGAL SERVICES AND CRIMINAL INVESTIGATION DIVISION

Mail Station 2220
St. Paul, Minnesota 55146-2220
Phone (612) 296-1902, ext. 133
Facsimile (612) 296-8229

November 25, 1992

Mr. Robert A. Galante
Senior Sales Tax Analyst
Northern States Power Company
414 Nicollet Mall
Minneapolis, Minnesota 55401-1927

Re: **Proposed rule 8130.2100**
Waste Collection and Disposal Services

Dear Mr. Galante:

I wish to acknowledge your two letters and two fax transmissions, all dated November 17, 1992.

We would propose an amendment to the rule as you have suggested.

There will not be a formal hearing. Only one request for hearing was filed.

You will be kept advised. Thank you for your interest.

Very truly yours,

John E. Streiff, Attorney
Legal Services Section

JES/ml

An equal opportunity employer





Northern States Power Company

414 Nicollet Mall
Minneapolis, Minnesota 55401-1927
Telephone (612) 330-5500

November 17, 1992

John E. Streiff, Attorney
Appeals, Legal Services,
and Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220

SUBJECT: Proposed Rule 8130.2100 Waste Collection and Disposal Services.

Dear Mr. Streiff:

Northern States Power Company (NSP) submits the following comments on the subject proposed rule:

Subp. 3-C. of the proposed rule states "Landfill and transfer station operators are required to collect and remit the sales tax on all charges for the disposal of mixed municipal solid waste at their facilities, provided that commercial haulers who bill customers for waste disposal services and for the sales tax, or who provide these services pursuant to a contract with a governmental entity which collects and remits the sales tax, are not required to pay the sales tax to landfill operators if the hauler provides the landfill operator with a completed Commercial Hauler's Exemption Certificate."

NSP previously received a determination from the Minnesota Department of Revenue that the disposal services for by-product waste and unprocessed waste disposed of at landfills from its Newport and Elk River refuse derived fuel plants are not subject to the Minnesota sales tax (see the attached correspondence). The proposed rule does not acknowledge that these disposal costs are non-taxable and to the contrary, Subp. 3-C of the rule states that landfill operators are required to collect and remit the sales tax on all charges for the disposal of mixed municipal solid waste at their facilities, except for waste received from commercial haulers who provide the landfill operator with a completed "Commercial Hauler's Exemption Certificate".

Since NSP is, generally, not considered a commercial hauler and the Department in its determination notice advised that no special exemption certificates are being issued to refuse derived fuel plant operators, landfill operators are directed, according to the proposed rule, to collect the tax on these non-taxable disposal services.

Since the purpose of the rule is to give clear and concise direction for the proper administration of the sales tax as it applies to Waste Collection and Disposal Services, we believe that the rule should unmistakably clarify to all the parties involved in these transactions that waste disposal costs for waste received from refuse derived fuel plant operators <u>are not subject to the tax</u>. To accomplish this important and needed understanding, we propose that an additional paragraph be added to Subp. 3-C of the rule to read as follows:

> Landfill and transfer station operators **<u>are not</u>** required to collect and remit the sales tax on charges billed to refuse derived fuel (RDF) plant operators for the disposal of waste which was previously subjected to the sales tax. RDF plant operators are required to provide landfill and transfer station operators with a letter from the Minnesota Department of Revenue as proof of exemption for this waste.

NSP does request a public hearing on this proposed rule for the reasons and proposed changes stated above.

If you require additional information regarding our comments, please contact me at (612) 330-6266.

Sincerely,

Robert A. Galante

Robert A. Galante
Sr. Sales Tax Analyst

Encl.

Northern States Power Company

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Minneapolis, Minnesota 55401-1927
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Appeals, Legal Services,
and Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220

SUBJECT: Non-taxability of Waste Disposal Services related to our Newport and Elk River Resource Recovery Facilities.

Dear Mr. Streiff:

Confirming our telephone conversation of November 12, 1992, Northern States Power Company (NSP) operates two resource recovery facilities (RRF) - the Elk River RRF and the Newport RRF, which process mixed municipal solid waste into refuse derived fuel (RDF). In 1989 when the state imposed the sales tax on waste disposal and collection services, NSP requested a determination from the Minnesota Department of Revenue (the Department) as to the taxability of the by-product waste and unprocessed waste from these facilities that is disposed of at various landfills. The Department determined that these waste disposal costs were not taxable because the RDF plants were like transfer stations in accepting and disposing of mixed municipal solid waste and the sales tax had previously been collected on the waste from the waste generators. Attached are copies of the Department's letters dated January 26, 1990, advising of the non-taxability of these waste disposal services.

Since the Department is in the process of issuing proposed rules on Waste Collection and Disposal Services (Rule No. 8130.2100) and because these rules don't address the non-taxable nature of waste disposal services of RDF plants, we are submitting, by separate letter, comments to the rules which suggest that these non-taxable services for RDF plants be included within the rules.

Additionally, at this time, we are requesting that the Department provide us with a current written confirmation that the waste disposal services for the two RDF facilities operated by NSP or its subsidiary are not taxable. However, we also request that if the Department decides not to address the non-taxability of waste disposal services for RDF plants in the rules, that the confirmation letter be dated as the effective date of the rules. We believe that one letter covering both facilities, rather than separate letters for each facility, will suffice.

Sincerely,

Robert A. Galante

Robert A. Galante
Sr. Sales Tax Analyst
(612) 330-6266

Encl.

AUTOMATIC COVER SHEET

DATE: NOV-17-92 TUE 11:53

TO:

FAX #: 92968229

FROM: GENERAL ACCT

FAX #: 612 330 6542

10 PAGES WERE SENT

(INCLUDING THIS COVER PAGE)

Rec 1/30/90

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

Mail Station 4453
St. Paul, MN 55146-4453

January 26,1990

Robert Galante, Sr. Sales Tax Analyst
Northern States Power Company
414 Nicollet Mall
Minneapolis, MN 55401

Re: Elk River Resource Recovery Facility

Dear Mr. Galante:

The Department of Revenue originally took the position that landfill charges to dispose of the by-product and unprocessed waste from refuse derived fuel plants were subject to sales tax. Upon further consideration, the Department has determined that landfill charges to dispose of this waste are not taxable. This decision is based on the fact that a refuse derived fuel plant is much like a transfer station in accepting and disposing of mixed municipal solid waste and sales tax is being collected from the waste generators by the hauler.

The exemption from sales tax for your refuse derived fuel plant extends to charges for disposing of both the by-product from your facility and to unprocessed waste that was accepted at your facility. (The exemption does not include disposing of waste that you generate as a result of your own business operations.) No special exemption certificates are being furnished to refuse derived fuel plants. However, a copy of this letter may be provided to the landfill operators as proof of exemption from sales tax on tipping fees as described.

Refuse derived fuel plants are required to collect and remit sales tax on charges to self-haulers, including commercial and industrial customers and individual customers, for disposing of mixed municipal solid waste. Separate charges for disposing of items such as construction and demolition waste, recyclable materials, and major appliances that are not included in the definition of mixed municipal solid waste are not taxable, provided these items are separated by the customer.

Commercial haulers who provide you with a properly completed Commercial Hauler's Exemption Certificate, Form ST-10, are exempt from paying sales tax on the tipping fees you charge, since the haulers are billing their customers sales tax on the collection and disposal services.

If additional information is needed, please contact this office in writing or by calling (612) 296-8181, or toll free 1-800-657-3777.

Sincerely,

Judy Niecum

Judy Niecum, Revenue Examiner
Taxpayer Information Division
Technical Support Group

CC: Pine Bend Sanitary Landfill
2495 East 117th Street
Inver Grove Heights, MN 55075

AN EQUAL OPPORTUNITY EMPLOYER

Rec. 1/30/90
Ltr

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

Mail Station 4453
St. Paul, MN 55146-4453

January 26,1990

Robert Galante, Sr. Sales Tax Analyst
Northern States Power Company
414 Nicollet Mall
Minneapolis, MN 55401

Re: Newport Resource Recovery Facility

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Sincerely,

Judy Niccum

Judy Niccum, Revenue Examiner
Taxpayer Information Division
Technical Support Group

CC: Anoka Sanitary Landfill, Elk River Sanitary Landfill
Pine Bend Sanitary Landfill, Woodlake Sanitary Landfill
Yonak Sanitary Landfill

AN EQUAL OPPORTUNITY EMPLOYER

Rec. 1/30/90
RBZ

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

Mail Station 4453
St. Paul, MN 55146-4453

January 26,1990

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Northern States Power Company
414 Nicollet Mall
Minneapolis, MN 55401

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Sincerely,

Judy Niecum

Judy Niecum, Revenue Examiner
Taxpayer Information Division
Technical Support Group

CC: Pine Bend Sanitary Landfill
2495 East 117th Street
Inver Grove Heights, MN 55075

AN EQUAL OPPORTUNITY EMPLOYER

Rec. 1/30/90

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

Mail Station 4453
St. Paul, MN 55146-4453

January 26,1990

Robert Galante, Sr. Sales Tax Analyst
Northern States Power Company
414 Nicollet Mall
Minneapolis, MN 55401

Re: Newport Resource Recovery Facility

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Sincerely,

Judy Niccum

Judy Niccum, Revenue Examiner
Taxpayer Information Division
Technical Support Group

CC: Anoka Sanitary Landfill, Elk River Sanitary Landfill
Pine Bend Sanitary Landfill, Woodlake Sanitary Landfill
Yonak Sanitary Landfill

AN EQUAL OPPORTUNITY EMPLOYER

FAX TRANSMITTAL MEMO
NORTHERN STATES POWER COMPANY
INCOME TAX
FOURTH FLOOR
414 NICOLLET MALL
MINNEAPOLIS, MN 55401
FAX #(612) 330-6542

DATE: 11/17/92

TO: JOHN STREIFF

COMPANY NAME: MN. DEPT. of REVENUE - APPEALS, LEGAL SERVICES

FAX#: 296-8229

FROM: Bob GALANTE

PHONE: (612) 330-6266

8 PAGE (S) WILL FOLLOW THIS PAGE

MESSAGE: ATTACHED ARE COPIES of TWO LETTERS [redacted] CONCERNING WASTE COLLECTION & DISPOSAL SERVICES - PROPOSED RULE 8130.2100. THE ORIGINALS WERE MAILED, VIA CERTIFIED MAIL, THIS A.M.

DEPARTMENT OF REVENUE

Proposed Permanent Rule Relating to Sales and Use Tax on Waste Disposal and Collection Services

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) **NOTICE IS HEREBY GIVEN THAT** the Minnesota Department of Revenue intends to adopt the above entitled rule without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes*, section 14.22 to 14.28 (1990). The statutory authority to adopt the proposed rule is *Minnesota Statutes*, section 270.06 (1990).

(2) All persons have 30 days, through November 18, 1992, in which to submit comment in support of or in opposition to the proposed rule or any subpart of the proposed rule. Comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. (4) If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. (6) Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change

proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20 (1990).

Comments or written requests for a public hearing must be submitted to:

John E. Streiff, Attorney
Appeals, Legal Services, and
Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902, Extension 133

The proposed rule may be modified if the modifications are supported by data and views submitted to the Department of Revenue and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from John E. Streiff.

The proposed rule will not result in the expenditure of public money by local public bodies or have a direct and substantial adverse impact on agricultural land or small businesses.

(9) If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to:

John E. Streiff, Attorney
Appeals, Legal Services,
and Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902, Extension 133

Dated: October 8, 1992

Dorothy A. McClung
Commissioner of Revenue
State of Minnesota

Office of the Revisor of Statutes

Administrative Rules

Janet M. Rahm
Assistant Deputy Revisor
296-0952 Fax: 296-0569



700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

December 7, 1992

John E. Streiff, Attorney
Department of Revenue
Legal Services Section
10 River Park Plaza - 8th Flr.
St. Paul, MN 55146-2220

RE: File No. 2104

Dear Mr. Streiff:

Enclosed are four copies of your rule with the modifications you requested.

Please submit the rules to the Attorney General or the Office of Administrative Hearings, as appropriate.

If you have any questions or need further modifications, please call me.

Very truly yours,

Janet M. Rahm