

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF SUPPORTING THE	)	RESOLUTION NO. 85-586
PRESERVATION OF FEDERAL TAX	)	
LEGISLATION WHICH ENCOURAGES	)	Introduced by
RESOURCE RECOVERY DEVELOPMENT AND	)	Councilor Kirkpatrick and
URGES THE U.S. CONGRESS TO MAIN-	)	Executive Officer Gustafson
TAIN APPROPRIATE TAX PROVISIONS	)	
AS PUBLIC POLICY	)	

WHEREAS, Solid waste disposal has been a traditional responsibility of local governments in their role as guardians of the public health; and

WHEREAS, The Metropolitan Service District (Metro) is designated as the solid waste management planning agency for the tri-county Portland, Oregon, metropolitan region, an area which encompasses almost one million people; and

WHEREAS, Metro has historically demonstrated a commitment to a strong public/private partnership when providing needed solid waste disposal facilities; and

WHEREAS, Metro is in the process of updating the Solid Waste Management Plan for the tri-county metropolitan area and recognizes that this plan will include a strong commitment to waste reduction, including the potential for development of resource recovery projects; now, therefore,

BE IT RESOLVED,

1. That the Council of the Metropolitan Service District recognizes the proposed tax reforms of the U.S. Treasury Department will create a tremendous financial burden for localities charged with the responsibility for solid waste management. These include the reduction of depreciation benefits, elimination of the

Investment Tax Credit and rescission of the tax-exempt status of Industrial Development Bonds when used to finance resource recovery.

2. That the Metro Council recognizes that tax reforms which inadvertently discourage resource recovery appear to be inconsistent with federal environmental policy, the current movement to encourage privatization of government services when feasible, and federal efforts to reduce the nation's dependency on foreign oil.

3. That the Metro Council perceives resource recovery to be a legitimate governmental function and public purpose, because it serves the general public, and supports the retention of the public/private cooperation that now exists in the development of resource recovery facilities as recognized in current statutes and codes.

4. That modern, environmentally sound solid waste facilities serve all segments of the American public and are, therefore, compatible and consistent with a federal tax policy which encourages the development of resource recovery projects throughout the United States.

5. That the Metro Council urges the U.S. Congress to preserve the existing tax benefits for resource recovery projects as noted in this Resolution and supports this federal tax policy which contributes to the development of resource recovery projects as a key element in the environmentally sound management of the nation's solid waste.

6. That copies of this Resolution shall be forwarded to the offices of U.S. Senators and U.S. Representatives from the state

of Oregon for the purpose of seeking their support for this important public policy matter.

ADOPTED by the Council of the Metropolitan Service District  
this 25th day of July, 1985.

  
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Ernie Bonner, Presiding Officer

MJ/srs  
3992C/236-2  
07/24/85

CONSIDERATION OF RESOLUTION NO. 85-586, FOR THE  
PURPOSE OF SUPPORTING THE PRESERVATION OF FEDERAL  
TAX LEGISLATION WHICH ENCOURAGES RESOURCE RECOVERY  
DEVELOPMENT AND URGES THE U.S. CONGRESS TO MAINTAIN  
APPROPRIATE TAX PROVISIONS AS PUBLIC POLICY

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Date: July 24, 1985

Presented by: Dan Durig

FACTUAL BACKGROUND AND ANALYSIS

The purpose of this Resolution is to put forward the Metro Council's support for preservation of tax legislation that encourages development of resource recovery. Questions have been raised concerning ways in which the U.S. Treasury tax reform proposal would impact localities implementing resource recovery scenarios. This resolution is intended to show Metro's interest in the continued availability of tax-exempt financing and other finance instruments that encourage resource recovery.

The President's tax reform proposal seeks to eliminate tax benefits centering around investment tax credits, accelerated depreciation, and industrial development bonds. The absence of these tax benefits, depending upon the arrangements, facility, and many other factors, could result in a doubling of tip fee. The loss of these benefits will seriously jeopardize public/private collaboration on these projects, so important are the economic incentives to the private sector partner.

Communities which finance projects after January 1, 1986, should the tax reform proposal become law, will be faced with difficult choices:

- higher disposal costs associated with taxable borrowings;
- increased project risk accompanied by the potential loss of private participation, if tax-exempt financing is available only for public ownership;
- increased costs from payments to private industry due to the limits on operating contract length coupled with municipal desire for performance based guarantees, or
- a combination of these effects.

The attachments to this report (from the National Resource Recovery Association, an affiliate of the U.S. Conference of Mayors)

further elaborate the significance in retaining appropriate taxation relative to alternative means of solid waste disposal.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 85-586.

DD/srs  
3992C/236-2  
07/24/85

## RESOURCE RECOVERY AS PUBLIC PURPOSE

In the Deficit Reduction Act of 1984 (DEFRA), Congress enacted special rules that must be followed in order for solid waste disposal contracts between a public entity and a private service provider to qualify as a "service contract," not a lease. Designation as a "service contract" allows the private service provider to use tax benefits such as ITC and ACRS, which otherwise would be unavailable if the contract with the public entity were designated a "lease."

The special rules which define a "service contract" for solid waste disposal facilities apply, however, only to those facilities that serve the general public.

"The term 'qualified solid waste disposal facility' means any facility if such facility provides solid waste disposal services for residents of part or all of 1 or more governmental units and substantially all of the solid waste processed at such facility is collected from the general public." I.R.C. 7701(e).

Through this provision Congress has clearly defined a solid waste disposal "service contract" and acknowledged that these service contracts, and the ensuing availability of tax benefits, can only apply to solid waste facilities that provide a legitimate governmental function and service the general public. The availability of tax benefits for solid waste disposal facilities, therefore, are limited to the extent that they are applied to a "public purpose."

As Congress considers certain provisions within Treasury's tax reform package that call for the elimination of tax-exempt financing and other tax benefits, it should keep in mind that the application of tax benefits to certain solid waste facilities fulfill a public purpose and that definitions exist within current tax law that define such public purpose, particularly in the case of solid waste disposal.

## The Impact of Tax Proposals on Resource Recovery (Solid Waste Disposal)

Resource recovery facilities represent the major alternative means of solid waste disposal for American cities facing landfill crises. As these landfills reach capacity, many U.S. cities must consider a "technological" solution to solid waste disposal. In the past, landfills represented a simple approach, with few short term "technical" risks. Resource recovery facilities, on the other hand, involve complex technology, highly sophisticated technical design and management, and long term performance commitments. For these reasons, many cities have chosen to rely on private sector expertise to develop, operate and own these facilities, thereby providing cities with a long term solution to solid waste disposal while placing "technical and financial" risk within the private sector.

Components within the Department of Treasury's tax proposal would jeopardize this traditional public/private cooperation that now exists in the development of resource recovery facilities. For example, elimination of private purpose IDBs could increase the tipping or disposal fee by as much as 35-50%; elimination of the Investment Tax Credit an additional 20%, and the elimination of ACRS yet another 30-40%. Taking other changes in Treasury's plan into account, a community developing a resource recovery facility could see a 70-100% increase in their disposal fee--a fact that would stop most project development dead in its tracks nationwide. Public ownership may not even be an option; under existing law, if 25% of the energy produced is sold to a non-exempt entity, bond financing is automatically classified as private purpose IDB.

While tax reform is important to the country, it is also important to preserve public/private cooperation where it makes most sense. As Congress considers tax legislation, the following should be kept in mind:

- Resource recovery is a principal means of solid waste disposal that serves the general public. Whether publicly or privately owned, these facilities serve a legitimate public purpose and should be eligible for tax-exempt financing;
- As the U.S. moves to a "high-technology" approach to solid waste disposal, cities need to rely on the private sector's technical expertise and risk sharing. The Treasury's proposal would jeopardize traditional private sector participation in resource recovery;
- Resource recovery takes an environmental problem, solid waste disposal, and turns it into a national asset--energy from a domestic source;
- Care should be taken that this traditional public/private cooperation in the field of resource recovery is not jeopardized in discussions of tax legislation.

EXAMPLE A  
(TULSA, OK)

	<u>Tipping Charge per ton</u>	<u>Total Annual Cost</u>	<u>Percent Increase</u>
Base Tipping Fee:	\$18.00	\$3,944,000	--
ITC and ACRS Elimination:	10.64	2,469,500	59%
IDB Elimination:	<u>7.81</u>	<u>1,812,000</u>	<u>43%</u>
TOTAL:	\$36.45	\$8,225,500	102%

PROJECT DESCRIPTION

- 1) Current tax law
- 2) 750 tons per day
- 3) \$74.4 million total financed costs
- 4) 21% equity
- 5) \$58.5 million tax revenue bonds
- 6) 10.17% debt (blended rate)
- 7) 30 month construction period
- 8) O&M \$15 per ton in first year
- 9) 480 kwh per ton
- 10) Energy revenues - 6¢ to 6.5¢ per kwh in first year
- 11) Tipping fee approximately \$18/ton in first year



EXAMPLE B

"TYPICAL" PROJECT CURRENTLY UNDER DEVELOPMENT

<u>TREASURY PROPOSAL</u>	<u>IMPACT ON TIPPING FEE</u>
1) TERMINATION OF ITC	\$4.00 OR 20% INCREASE
2) CHANGE FROM ACRS DEPRECIATION TO RCRS DEPRECIATION	\$8.00 OR 40% INCREASE
3) LOSS OF TAX-EXEMPT DEBT	\$8.00 OR 40% INCREASE

PROJECT ASSUMPTIONS

- 1) Current tax law
- 2) 30% equity
- 3) \$100 million construction costs
- 4) 2 yr. construction period
- 5) 10% debt (tax-exempt bonds)
- 6) 380,000 tons per year
- 7) 475 kwh per ton
- 8) O&M \$25 per ton in first year
- 9) Energy Revenues = 5¢ per kwh in first year
- 10) 5% inflation
- 11) Base tip fee: \$20

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~~Ayes: Councilors Gardner, Hansen, Kirkpatrick, Kafoury,  
Kelley, Oleson, Van Bergen, Waker and Bonner~~

~~Absent: Councilors Cooper, DeJardin and Myers~~

The motion carried and the Resolution was adopted.

8.3 Resolution No. 85-586, for the Purpose of Supporting the  
Preservation of Federal Tax Legislation Which Encourages  
Resource Recovery Development and Urges the United States  
Congress to Maintain Appropriate Tax Provisions as Public  
Policy

Councilor Kirkpatrick explained she had recently visited Washington, D.C. and had investigated proposed tax reforms. She had prepared the Resolution in an effort to preserve this current tax incentive in the event Metro should accept resource recovery as an option to solid waste disposal. If the Resolution were adopted this evening, it could be presented to Oregon's Congressional Delegation while they were at home on recess, she said.

Motion: Councilor Kirkpatrick moved adoption of the Resolution and Councilor Van Bergen seconded the motion.

Vote: A vote on the motion resulted in:

Ayes: Councilors Gardner, Hansen, Kirkpatrick, Kafoury, Kelley, Oleson, Van Bergen, Waker and Bonner

Absent: Councilors Cooper, DeJardin and Myers

The motion carried and the Resolution was adopted.

9. OTHER BUSINESS

9.1 Consideration of Criteria and Guidelines for Naming Zoo Exhibits and Public Spaces in Honor of Individuals

~~Kay Rich reviewed the criteria and guidelines as outlined in the staff report. Presiding Officer Bonner explained that if there were no objections, these criteria and guidelines would be used as a basis for a Resolution that would be considered by the Council on August 22.~~

~~Councilor Kirkpatrick agreed with the criteria and guidelines but requested they not be limited to the Zoo and the word "Metro" replace the word "Zoo." She also requested Don Carlson present the Resolution and staff report on August 22. The Council agreed with this request.~~