

NOT ADOPTED

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE	)	ORDINANCE NO. 91-435
METRO CODE TO EXEMPT FROM	)	
PAYMENT OF EXCISE TAXES PERSONS	)	Introduced by Rena Cusma,
DELIVERING SOLID WASTE GENERATED	)	Executive Officer
AND DISPOSED OUTSIDE OF DISTRICT	)	
BOUNDARIES, AND DECLARING AN	)	
EMERGENCY	)	

WHEREAS, Since March 8, 1990, the Metropolitan Service District has imposed an excise tax on users of Metro owned, operated, or franchised facilities, for the privilege of use of the facilities; and

WHEREAS, As currently written, Metro Code Chapter 7.01 requires that an excise tax be paid on solid waste generated outside District boundaries that passes through a Metro franchised facility for ultimate disposal at a facility that is not owned or franchised by Metro; and

WHEREAS, It has been determined that, as to such material, Metro is incurring no financial or other burden and the individual delivering such waste is not receiving direct or indirect benefits from Metro; and

WHEREAS, It is appropriate that Metro exempt from payment of excise taxes persons delivering the waste described herein; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Metro Code Section 7.01.050 is amended to read:

"7.01.050 Exemptions:

(a) The following persons, users and operators are exempt from the requirements of this Chapter:

- (1) Persons, users and operators whom the District is prohibited from imposing an excise tax upon under the Constitution or Laws of the United States or the Constitution or Laws of the State of Oregon.
- (2) Persons who are users and operators of the Memorial Coliseum, Portland Civic Stadium or the Portland Center for the Performing Arts.

- (3) Persons whose payments to the District or to an operator constitute a donation, gift or bequest for the receipt of which neither the District nor any operator is under any contractual obligation related thereto.
- (4) Any persons making payment to the District for a business license pursuant to ORS 701.015.
- (5) Any person which is a state, a state agency or a municipal corporation to the extent of any payment made directly to the District for any purpose other than solid waste disposal, use of a Metro ERC Facility, or use of the Metro Washington Park Zoo.
- (6) Users who are sublessees, subtenants, sublicensees, or other persons paying compensation for the use of Metro ERC Facilities including payments by users for concessions or catering services made to the Commission or its agents but not users who purchase admission tickets for events at Metro ERC Facilities that are available to members of the general public.
- (7) An operator of a franchised processing center that accomplishes material recovery and recycling as a primary operation.
- (8) Persons making payments to the District on behalf of the Metro Washington Park Zoo for the following purposes:
  - (A) Contributions, bequests, and grants received from charitable trusts, estates, nonprofit corporations, or individuals regardless of whether the District agrees to utilize the payment for a specific purpose including all payments to the Zoo Parents program;
  - (B) Corporate sponsorships or co-promotional efforts for events that are open to the general public, or for specific capital improvements, educational programs, publications, or research projects conducted at the Zoo;.
  - (C) Payments that entitle a person to admission to a fund-raising event benefiting the Zoo that is not held on the grounds of the Zoo;
  - (D) Payments that entitle a person to admission to a special fund-raising event held at the Zoo where the event is sponsored and conducted by a nonprofit organization approved by the Council

and the primary purpose of which is to support the Zoo and the proceeds of the event are contributed to the Zoo;

- (E) Notwithstanding the provisions of subsection (A) through (D) above, all payments received by the District for admission to the Zoo, or which entitle individuals to receipt of food, beverages, goods, or rides on the Zoo train shall be subject to tax regardless of whether payment is received from an individual or otherwise on behalf of special groups including but not limited to employee and family member picnics, corporate or family parties, or similar events.

(9) A person delivering waste generated outside District boundaries to a Metro franchised facility at which Metro is not operating the gatehouse, if such waste will ultimately be disposed of at a facility that is not owned or franchised by Metro.

(b) Any person, user or operator that is exempt for the payment of an excise tax pursuant to this section shall nonetheless be liable for compliance with this Chapter and the payment of all taxes due pursuant to any activity engaged in by such person which is subject to this Chapter and not specifically exempted from the requirements hereof. Any operator whose entire compensation from others for use of a District facility is exempt from the provisions of this Chapter shall be deemed to be a user and not an operator."

Section 2. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Council of the Metropolitan Service District this \_\_\_\_\_ day  
of \_\_\_\_\_, 1991.

\_\_\_\_\_  
Tanya Collier, Presiding Officer

ATTEST:

\_\_\_\_\_  
Clerk of the Council

1063



**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

To: All Metro Councilors  
From: Councilor Judy Wyers, Chair, Solid Waste Committee  
Date: December 4, 1991  
Re: Proposed Ordinance No. 91-435

As many of you are aware, the Solid Waste Department has proposed Ordinance No. 91-435, which would provide an excise tax exemption for out-of-district solid waste deposited at the Forest Grove Transfer Station. Upon receipt of the proposed ordinance, I requested that Council staff obtain additional information concerning several issues raised by myself and staff. I have delayed any formal committee action, pending receipt of this information. The following is a discussion of issues related to the establishment and collection of the excise tax.

## Excise Tax

The proposed ordinance staff report notes "the excise tax was not intended to be assessed against individuals who are not receiving a direct or indirect benefit from Metro." An examination of the state statute authorizing the tax indicates that the taxing authority is much broader than implied in the staff report. ORS 268.507 specifically provides that Metro may "impose excise taxes on any person using the facilities, equipment, systems, functions, services or improvements owned, operated, franchised, or provided by the district. The intent of this language is carried out in Metro Code Section 7.01.020 which provides identical language in defining those who will be subject to the excise tax. The intent of the tax is to raise revenue. The taxpayer is the person using a district facility or service.

The staff report further contends that "such (out-of-district) waste does not in any manner impact Metro's system design capacity, its debt burden, or any other aspect of Metro operations." It appears to me that individuals and haulers outside of Metro's boundaries do, in fact, receive significant benefits from Metro's administration of the region's solid waste system. For example, the Regional Solid Waste Management Plan (RSWMP) notes that, by gubernatorial executive order, Metro is responsible for solid waste management planning for the area that includes all of Clackamas, Multnomah, and Washington Counties. The RSWMP was developed and adopted as a "functional" plan under ORS 268.390 which grants Metro the authority to develop functional plans. In developing and implementing the plan, Metro is assisting the entire region in addressing issues such as waste reduction and recycling, illegal

dumping and hazardous and special waste disposal.

In addition, persons from outside the district utilize Metro's Recycling Information Center and have participated in Metro's hazardous waste disposal days. Excise tax revenues also fund Metro's central administrative and legislative functions related to the solid waste disposal system.

A second issue is the history of attempts to collect excise taxes on out-of-district wastes delivered to the Forest Grove Transfer Station. The Office of General Counsel has advised Council staff, as well as the parties involved at the transfer station, that Metro Code Chapter 7.01, relating to the excise tax, clearly provides no exemption from the payment of the tax for out-of-district waste. The tax is collected on out-of-district waste delivered to Metro-operated or contracted transfer facilities.

From the historical data provided to Council staff, it appears that several haulers deliver at least some out-of-district waste to the Forest Grove Station. The largest of these haulers has continually refused to pay the excise tax, contending that "Metro's excise tax is only applicable to waste generated within Metro's boundaries, the same as applies to other Metro fees." Council staff has been advised that no other out-of-district haulers have refused to pay the excise tax.

An estimated total of \$6,314 in excise taxes has not been collected by the transfer station operator. The code provides that Metro may take action against the station operator to collect delinquent taxes. To date, Metro has permitted the operator to "write-off" the delinquent taxes as an "uncollected charge." Council staff has been advised that "no deficiency determination has been made on the uncollected excise tax." In addition to its consideration of the proposed ordinance, I believe the Council may wish to recommend collection of these overdue excise taxes.

A third issue involves the question of equity. Excise taxes are collected on out-of-district haulers that "use" Metro transfer facilities. It is contended that because the Forest Grove Transfer Station is franchised and Metro does not "control the gatehouse", it is different than other facilities. State law and existing Metro excise tax code provisions do not distinguish franchised facilities from other types of facilities and actually include such facilities among those to which the tax applies. Concerning the question of "gatehouse control", if this is an issue then why should haulers depositing "in-district" waste at Forest Grove be subject to the excise tax.

#### User Fees

In examining issues related to collection of excise taxes on out-of-district waste, staff has identified another potential inequity related to the collection of Metro User fees. The Council may wish to address this broader equity issue in addition to its

consideration of Ordinance No. 91-435.

The Metro Code defines the Tier One Regional User Fee as "those fees which pay for fixed costs associated with administrative, financial and engineering and waste reduction activities of the Metro waste management system ... This fee is collected on all solid waste originating or disposed within the region." The Tier Two Metro User Fee is the fee that pays for "fixed costs of the Metro System." It is "imposed upon all solid waste delivered to any Metro Disposal System facility which delivery will affect Metro's reserved space capacity at the Columbia Ridge Landfill."

The Office of General Counsel has advised Council staff that the Code is "not clear whether user fees apply to waste generated outside District boundaries that is ultimately disposed of in Yamhill County." Metro user fees are collected from those depositing out-of-district waste at Metro operated or contracted facilities. For example, such fees are collected on the estimated 5,500 tons of out-of-district waste annually deposited at Metro South and the estimated 18,800 tons of waste annually sent to the Marion County Burner Facility for final disposal. In light of this apparant inequity, I believe that this is an issue that should be explored and resolved by the Council.

There are two considerations that, I believe are important in examining this issue. First, both tiers of the user fee are collected on in-district waste deposited at Forest Grove. Yet, there appears to be no difference in the manner in which in-district and out-of-district waste is processed at the transfer facility. In addition, all of the deposited waste is ultimately disposed of at the Riverbend Landfill in Yamhill County, a non-Metro facility. Therefore, it is difficult to separate Metro's costs, services, role and relationship to in-district and out-of-district waste coming through the facility. This is particularly true when the district recently spent considerable time and money on the adoption of the Washington County Chapter of the RSWMP and is continuing to spend considerable resources on the procurement of facilities which will benefit in and out-of-district users in Washington County.

The second issue is the question of out-of-district benefits from Metro's administration of the regional solid waste disposal system. As I noted above in discussing the excise tax, many of Metro's solid waste functions and services clearly benefit those outside the district. The User Fees are used to fund these services.

For your information, approximately 5,350 tons of out-of district waste was deposited at Forest Grove during the 12 months ending in October 1991. If the Metro User Fees had been collected on this material approximately \$69,500 would have been raised.

I am attaching several documents to assist you in evaluating the ordinance and related issues. These include:

Attachment A -- Proposed Ordinance No. 91-435 and the related staff report.

Attachment B -- Memo to Don Carlson from Todd Sadlo relating to the status of Forest Grove Transfer Station as it relates to user fees and excise taxes.

Attachment C -- Memo to John Houser from Don Cox relating to application of Metro user fees on garbage generated from outside Metro boundaries.

Attachment D -- Memo to John Houser from Pam Juett relating to excise taxes and user fees on out-of-district solid waste (Please note correction on pg. 3. No franchisees collect a user fee on out-of-district waste).

Attachment E -- A Table noting the excise taxes paid and not paid on out-of-district waste at the Forest Grove Transfer Station.

Attachment F -- Various correspondence relating to the collection of excise taxes at the Forest Grove Transfer Station.

Attachment G -- Current Metro procedures for the collection of delinquent excise taxes.

I would appreciate the opportunity to discuss these issues with as many of you as possible, prior to scheduling the proposed ordinance for consideration by the Solid Waste Committee. If you have any questions, please contact me or John Houser, the Committee analyst.

cc: Bob Martin

## STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 91-435 FOR THE PURPOSE OF AMENDING THE METRO CODE TO EXEMPT FROM PAYMENT OF EXCISE TAXES PERSONS DELIVERING TO A METRO-FRANCHISED FACILITY SOLID WASTE GENERATED OUTSIDE OF DISTRICT BOUNDARIES AND DISPOSED OF AT NON-METRO FACILITIES, AND DECLARING AN EMERGENCY

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Date: October 30, 1991

Presented by: Bob Martin

PROPOSED ACTION

Ordinance No. 91-422 amends the Metro Code to exempt from payment of excise taxes persons delivering to a Metro-franchised facility solid waste generated outside of District boundaries that will ultimately be disposed of in a facility not regulated by Metro. The proposed Ordinance contains an emergency clause, so that it would be effective upon passage.

BACKGROUND

Metro Code Chapter 7.01 provides for the imposition of excise taxes "for the privilege of use of the facilities, equipment, systems, functions, services, or improvements owned, operated, franchised, or provided by the District\* \* \*" (7.01.020) A limited number of individuals are delivering waste generated outside District boundaries to the facility owned by AC Trucking in Forest Grove, Oregon. The Forest Grove facility is franchised by Metro, but Metro does not operate a gatehouse at the facility, and all waste delivered to the facility is ultimately disposed of at the Riverbend Landfill in Yamhill County, Oregon.

The excise tax was not intended to be assessed against individuals who are not receiving a direct or indirect benefit from Metro. In this instance, Metro's only connection with the waste is that it passes through a Metro-franchised facility on its way to a non-Metro facility. Such waste does not in any manner impact Metro's system design capacity, its debt burden, or any other aspect of Metro operations. It is therefore proposed that a specific and narrow exemption be established for a person delivering such material.

The proposed Ordinance would add a new subsection (9) to Metro Code Section 7.01.050, which currently details the persons, users, and operators that are exempt from payment of excise taxes. The amendment specifies that the exemption is limited to a person delivering waste generated outside District boundaries to a Metro-franchised facility at which Metro is not operating the gatehouse, if such waste will ultimately be disposed of at a facility that is not owned or franchised by Metro. The above underlined phrase is intended to make clear that the exemption will end if Metro's involvement with the Forest Grove facility increases to the point that Metro is operating the gatehouse. If that event occurs, it is likely to be



accompanied by Metro's involvement in financing of the facility, and disposal of a portion of the waste delivered to the facility at Metro-designated facilities.

#### FINANCIAL IMPACT

Based on solid waste tonnage and rate estimates, approximately \$14,000 in excise taxes will be levied on waste generated and disposed of outside District boundaries for the period July 1, 1990, through November 1991. An additional \$10,000 in revenue is projected for the period December 1991 to January 1993 when the Metro West Transfer Station is scheduled to begin operation. Adoption of this Ordinance would reduce excise tax revenue by about \$10,000, which is .25 percent of total excise taxes.

#### RECOMMENDATION

The Executive Officer recommends Council approval of Ordinance No. 91-435.

1050



**METRO**


2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

ATTACHMENT B

Date: November 8, 1991

To: Don Carlson, Council Administrator

From: Todd Sadlo, Senior Assistant Counsel 

Regarding: STATUS OF FOREST GROVE TRANSFER STATION AS IT RELATES TO USER FEES AND EXCISE TAXES

You have asked for an explanation of how Metro Code provisions relating to solid waste user fees and excise taxes apply to the Forest Grove Transfer Station. In this memo I discuss the applicable Code provisions and conclude that it is not clear whether user fees apply to waste generated outside District boundaries that is ultimately disposed of in Yamhill County. Excise taxes are due on all waste disposed of at the Forest Grove facility.

The Forest Grove facility operates under a Metro franchise. Metro Code Section 5.01.150(a) states:

**"\* \* \*User Fees\* \* \*shall apply to processing facilities, transfer stations, resource recovery facilities or disposal sites which are owned, operated, or franchised by the District or which are liable for payment of User Fees pursuant to a special agreement with the District. User Fees shall not apply to wastes received at franchised processing centers that accomplish materials recovery and recycling as a primary operation."**

Under the franchise chapter of the Metro Code and under its franchise agreement, the Forest Grove facility is a "transfer station." (5.01.010(u), Franchise #4, p.1) The Forest Grove facility is not a "disposal site," which is defined in the franchise chapter as "the land and facilities used for the disposal of solid wastes whether or not open to the public, but does not include transfer stations or processing facilities."

However, Chapter 5.03 of the Code appears to refer to all of Metro's franchises as "disposal sites." The heading of the chapter is "Disposal Site Franchise Fees" and the purpose in Section 5.03.010 is to establish "solid waste disposal franchise fees." The fee is in fact collected from all franchise holders. Using the definitions in the franchise chapter, it would be reasonable to assume that Metro currently has no "disposal" franchises.

Don Carlson  
Page 2  
November 8, 1991

Under Chapter 5.05, "Solid Waste Flow Control," the Forest Grove facility becomes a "designated facility," and part of Metro's "system" for management and disposal of solid waste. In terms of flow control, "disposal site":

"means the land and facilities determined from time to time by Metro as constituting part of the system, whether owned by Metro or another person and whether or not open to the public, used for the disposal of solid wastes, but does not include transfer stations or processing facilities."

Chapter 5.02, "Disposal Charges and User Fees," does little to clarify this issue. It includes a confusing definition of "Metro Disposal System," which appears to include the Forest Grove facility:

"Metro South Station, Metro Central Station, Metro/Riedel Compost Facility, St. Johns Landfill, Columbia Ridge Landfill and such other facilities, or contracts for service with Metro which transfer or cause solid waste to be disposed at the Columbia Ridge Landfill or other disposal facility."  
5.02.015(h)

The use of the term "disposed" in this section appears to refer to ultimate disposal. Section 5.02.015(o) defines "Regional User Fee (Tier One)" to mean:

"those fees which pay for fixed costs associated with administrative, financial and engineering services and waste reduction activities of the Metro Waste Management System. Contingency fees on all costs and general transfers to solid waste funds and other departments for direct services are included in this fee. This fee is collected on all solid waste originating or disposed within the region."

No other Metro fees appear to be applicable to waste delivered to the Forest Grove facility. Section 5.02.045 states that:

"The following user fees are established and shall be collected and paid to Metro by the operators of solid waste disposal facilities, whether within or without the boundaries of Metro, for the disposal of solid waste generated, originating, collected or disposed within Metro boundaries in accordance with Metro Code Section 5.01.045;"

As set forth above, the meaning of "disposal" and "disposed" in the Metro Code is ambiguous. Under the franchise chapter, the Forest Grove facility is clearly not a "disposal site," but the term "disposal" is used more broadly elsewhere in the Code, to refer to any

Don Carlson  
Page 3  
November 8, 1991

disposition of waste, not necessarily the final disposition. Under the User Fee Chapter, the term could be subject to either interpretation. Since there is ambiguity, legislative history, if any is available, would be relevant. In the absence of legislative history, it is a toss up that should be settled through a Code amendment distinguishing "ultimate disposal" from disposal by the generator or person who hauled from the generator.

Under the Metro Code chapter on "Excise Taxes," the Forest Grove Transfer Station is a "District facility." The excise tax is imposed "for the privilege of use of the facilities, equipment, systems, function, services, or improvements owned, operated, franchised, or provided by the District\* \* \*" Without a specific exemption, all waste delivered to the Forest Grove facility would be subject to the excise tax.

Section 7.01.030 places the burden for collection of the tax on "every operator," which means that Ambrose Calcagno, Jr. is responsible for collecting the tax from all who deliver waste to his facility. Under Section 7.01.080, penalties and interest for nonpayment or late payment are assessed against the facility operator.

dr  
1061

Lcc: John Houser



**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

ATTACHMENT C

DATE: November 13, 1991

TO: John Houser, Council Analyst

THROUGH: Jennifer Sims, <sup>J</sup>Director of Finance and Info Systems

FROM: Don Cox, Manager of Accounting

RE: REPLY TO INQUIRY REGARDING APPLICATION OF METRO USER FEES  
AND EXCISE TAX ON GARBAGE GENERATED FROM OUTSIDE METRO  
BOUNDARIES

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My staff has researched your inquiry and arrived at the following information:

- 1) Metro does NOT collect a user fee at Forest Grove (or any other franchise site) for commercial and self-haulers depositing garbage generated from outside of Metro's boundaries.
- 2) Metro DOES collect user fees at its own facilities for commercial and self-haulers depositing garbage generated from outside of the district. No distinction in rates is made regarding the origin of the waste.

C:\Dave\Correspd\Don\_FY92\Hauser.Mem



**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

ATTACHMENT D

DATE: November 27, 1991  
TO: John Houser, Council Analyst  
FROM: *pg* Pam Juett, Finance & Management Information  
RE: Excise Taxes and User Fees on Out-of-District Solid Waste

In response to the questions in your memo, I have prepared the following. If you need any additional information, or clarification, please let me know.

1. Can you provide an estimate of the amount of excise taxes owed since the inception of the tax on out-of-district waste deposited at the Forest Grove Transfer Station?

Excise taxes owed since inception of the tax on out-of-district waste are approximately \$15,902.07.

How much of this amount has been paid?

Approximately \$9,587.71 has been paid.

Approximately how much out-of-district waste has been deposited at the station during this period?

Approximate gross revenue on out-of-district waste at Forest Grove Transfer Station is \$339,742.70.

#### Detail

Approximately \$6,314.36 in excise taxes have not been paid. Most of this is by Swatco, but a small portion is from other uncollectible expenses. This amount includes several months when Forest Grove did not charge excise tax on out-of-district waste because of the confusion surrounding the new tax structure.

A summary of the Forest Grove out-of-district waste is attached, derived from Forest Grove Excise Tax forms. These figures are unaudited figures, and should not be taken as final. The first three months of the tax reports do not contain a breakdown of in-district/out-of-district waste, so gross revenues are the average of the other nine months figures.

2. Can you provide copies of any correspondence between Metro and the station operator and out-of-district haulers concerning the collection of excise taxes?

FOEXCISE.XLS

Forest Grove/Outside Metro Waste Summary									
	Gross Revenue from Outside Metro	Enhancement & DEQ fee reduction	Adjusted **	Excise Owed	Excise Paid	Uncollectable charge/Excise not paid			
Excise Report Month 1990-91									
July	19664.45 *Estimate			936.40	340.54	595.86			
August	19664.45 *Estimate			936.40 not charged	936.40	936.40			
September	19664.45 *Estimate			936.40 not charged	936.40	936.40			
October	18948.50	445.31	18503.19	881.10	881.10	0.00			
November	19510.01	435.17	19074.84	908.33	612.61	295.72			
December	16289.77	365.88	15923.89	758.28	437.11	321.17			
January	19771.08	426.13	19344.95	921.19	669.81	251.38			
February	17620.87	379.62	17241.25	821.01	531.22	289.79			
March	19499.66	414.45	19085.21	908.82	646.63	262.19			
April	22000.10	465.87	21534.23	1025.44	722.88	302.56			
May	21972.78	462.32	21510.46	1024.31	726.33	297.98			
June	21367.29	443.84	20923.45	996.35	672.98	323.37			
1991-92									
July	25657.15	508.39	25148.76	1197.56	885.24	312.32			
August	26043.92	487.00	25556.92	1217.00	832.48	384.52			
September	25250.55	467.95	24782.59	1180.12	765.44	414.68			
October	26817.67	497.21	26320.46	1253.36	863.34	390.02			
Totals	339742.70			15902.07	9587.71	6314.36			
*Estimate. No distinction made between Metro/non Metro waste.									
Figures derived from average of 9 months that data is available.									
**Adjusted for DEQ & Enhancement fees on tons, not on vehicles or yards.									

10/08/90 (MEX)

FOREST GROVE TRANSFER STATION  
1525 B STREET  
FOREST GROVE, OR 97116

METRO  
2000 S W FIRST AVENUE  
PORTLAND, OR 97201-5398

ATTENTION: ROBERT S. RICKS  
SENIOR MANAGEMENT ANALYST

REGARDING VARYING CHARGEABLE 5% EXCISE TAX ON TONNAGE RECEIVED, WE  
ARE IN A QUANDARY.

1. ATTACHED LETTER FROM SWATCO DATED 8/25/90: CONFIRMING THIS  
INFORMATION WITH PHIL NORTH BY PHONE, WE DID CHARGE 5% ON TONS  
RECEIVED FROM OUTSIDE THE METRO-AREA.
2. ATTACHED METRO LETTER AND MEMO FROM DANIEL B. COOPER DATED  
9/5/90: DEFINES ALL SOLID WASTE RECEIVED AT A METRO OPERATED  
OR FRANCHISED FACILITY TRANSFER STATION IS APPLICABLE TO 5% TAX.
3. METRO USER FEE AND EXCISE TAX REPORT FORM LINE #1 THRU #9: STATES  
METRO DISTRICT WASTE ONLY! (EXCLUDE ANY NON-METRO WASTE)

JULY WE CHARGED TRANSFER USERS BASED ON #3 AND OUR UNDERSTANDING -  
CHARGED ALL 5% EXCISE TAX.

AUGUST WE CHARGED 5% EXCISE TAX ON ONLY METRO TONS AND WROTE OFF  
EXCISE TAX ON PRESUMED OVERCHARGE FOR JULY.

SEPTEMBER WE CHARGED 5% AGAIN ON ONLY INSIDE METRO.

OCTOBER WE ARE CHARGING 5% ON ALL TONS ACCORDING TO #2 MEMO - HOWEVER -  
THIS CONTRADICTS #3 METRO USER FEE REPORT.

IS THERE A CHANCE THAT THE METRO REPORT #3 CAN BE REVISED TO AGREE  
WITH #2 INSTRUCTIONS ON COLLECTION METHOD ON TONS RECEIVED?

IF WE COULD PLEASE HAVE THIS BEFORE OUR NEXT REPORT IS DO?

REGARDS,

  
AMBROSE CALCAGNO, JR.

ACJR/lrc  
FILE



*File*

**SWATCO**  
Sanitary Service, Inc.  
P.O. Box 196  
Banks, Oregon 97106

297-2983

*2312600*  
*2613*

August 25, 1990

A. C. Trucking  
P.O. Box 8  
Forest Grove, OR 97116

Dear Ambrose;

Enclosed find our check # 5053 in the amount of \$ 6628.04 for July, 1990 disposal fee's.

This check does not include fees for .05% METRO excise tax. As you know, or may not know, ( I will give you benefit of doubt ) METRO'S excise tax is only applicable to waste generated within METRO'S boundaries, the same as applies to other METRO Fee's. Since SWATCO operates totally outside of METRO, the .05% excise tax is an inappropriate charge.

I have however, included the .50¢ per ton DEQ Fees which by notation on our billing was inadvertantly not charged, and by my calculations should be the same amount as the Forest Grove enhancement fee which is also calculated at .50¢ per ton.

Should you have any questions with respect to our position on this matter, do not hesitate to contact me at 231-2613 or Bob Martin, METRO'S Solid Waste Director at 221-0611.

Very Truly Yours

*John Trout*  
John Trout

SWATCO Sanitary Service, Inc.



**METRO**

2000 SW First Avenue  
Portland, OR 97201-5398  
(503) 221-1646  
Fax 241-7417

RECEIVED

SEP 7 1990

THOMPSON, ADAMS DeBAST & RAY

September 5, 1990

Mr. Rod Adams  
Thompson Adams DeBast et al.  
Hall Street Station  
4500 S.W. Hall Boulevard  
Beaverton, OR 97005

Dear Rod:

Re: Metro Excise Tax

This letter is to confirm our conversation in which we discussed the fact that the Metro excise tax (Metro Code Chapter 7.01) is imposed on all users of any District facility including solid waste facilities and franchised solid waste transfer stations such as the Forest Grove Transfer Station.

The language of the Ordinance imposing the excise tax is all encompassing and obligates any operator of a District facility to collect the tax from any user of the facility unless a specific exemption provided for in the Code is applicable. There is no exemption for solid waste haulers who collect solid waste entirely outside of the District's boundaries and bring it inside the District to use a facility franchised by the District.

Please feel free to contact me if you have any further questions in this regard.

Yours very truly,

Daniel B. Cooper,  
General Counsel

gl  
1211

cc: Bob Martin  
Neil Saling



**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

RECEIVED

Date: June 19, 1990

To: Neil Saling, Acting Director, Finance & Administration

From: Daniel B. Cooper, General Counsel /e/

Regarding: EXCISE TAX

You have asked this Office to advise you regarding what revenues received by solid waste disposal franchisees and similar facilities are subject to the requirements of Metro Code Chapter 7.01 providing for the imposition, collection and payment of excise taxes.

Section 7.01.020 of the Metro Code imposes the tax on persons who are operators of District facilities. An operator of a District facility is defined by Section 7.01.010(e) as being "a person who receives compensation from any source arising out of the use of a District facility." District Facilities are defined by Section 7.01.010(c) as including any solid waste transfer, processing, disposal or recycling center owned, operated or financed by or for the District, all solid waste facilities subject to the issuance of a franchise pursuant to Metro Code Chapter 5.01, or any other facility, function, service...provided by the District.

Certain privately owned and operated solid waste transfer or disposal facilities such as the Forest Grove Transfer Station are operated pursuant to a franchise issued under Metro Code Chapter 5.01. Other facilities located outside of the District such as the Lakeside Reclamation Limited Purpose Landfill, and the Hillsboro Landfill are authorized to receive solid waste generated within the District pursuant to agreements which obligate those landfill operators to collect and pay certain fees imposed by Metro including the excise tax. The amount of tax imposed is either 6 percent of the payment charged by the operator for use of the District Facility as established by Section 7.01.020(a) or such lower percentage amount as may be specifically provided by the Council in the annual budget ordinance pursuant to the provisions of Section 7.01.020(b). The Metro Council has developed its budget which it anticipates adopting on June 28, 1990, on assumptions that the excise tax

rate will be 5 percent. The Council is expected to adopt the 5 percent rate on June 28, 1990. If it does not do so the rate will be 6 percent.

Is the User Fee established by Section 5.02.045 of the Metro Code and which is required to be paid by all franchised solid waste disposal facilities pursuant to Section 5.01.150 a portion of the base on which the excise tax must be computed or is it to be excluded for excise tax purposes?

Metro Code Section 5.01.150(b) provides:

"User Fees shall be in addition to any other fee, tax or charged imposed upon a processing facility, transfer station, resource recovery facility or disposal site."

For this reason I conclude that the User Fee established by Section 5.02.040 (which will be \$7 effective July 1, 1990) is excluded from the base of compensation or payments to solid waste disposal franchise operators and is not subject to the excise tax. This exclusion applies to all facilities obligated to collect and pay to Metro the User Fee including franchise operators and the two limited purpose landfills noted above (Lakeside and Hillsboro).

In addition, the Forest Grove Transfer Station pursuant to the terms of its franchise is obligated to collect and pay to Metro a 50¢ per ton surcharge for the Forest Grove Enhancement Fund. This fee is similarly excluded from the base which is subject to excise tax. The amount of the fee is not compensation to the operator, but is rather a pass-through charge imposed by the Metropolitan Service District on top of the rate collected by the franchised operator. In addition, the State of Oregon, acting by and through the Department of Environmental Quality, requires all disposal sites to collect and pay to the State a 50¢ per ton charge on all solid waste disposed of in the state. This tax is also not compensation to the operator of the solid waste disposal facility and is therefore not part of the base upon which the excise tax must be computed.

The Metro Council has the power to amend the Excise Tax Code to specifically include the User Fee and the Forest Grove excise tax in the Lease, however, the preset provisions of the Metro Code act to exclude such items from the tax at this time.

Memorandum  
June 19, 1990  
Page 3

Please let me know if you have any further questions in this regard.

DBC/gl  
1193

cc: Rena Cusma  
Bob Martin  
Don Carlson

bc: Rod Adams, Attorney, Beaverton ✓  
Bill Scheiderich, Beaverton City Attorney's Office



**METRO**

2000 SW First Avenue  
Portland, OR 97201-5398  
(503) 221-1646  
Fax 241-7417

**FILE**

October 24, 1990

Mr. Ambrose Calcagno, Jr.  
Forest Grove Transfer Station  
P. O. Box 8  
Forest Grove, OR 97116

Dear Mr. Calcagno:

A question was raised concerning the applicability of the Excise Tax to waste crossing Metro boundaries. The enclosed letter from Metro's General Counsel, Daniel B. Cooper, to Rod Adams makes it clear that waste handled at any District facility is subject to the tax, independent of the source of the waste. Facilities that are not within the District report only waste generated within the District.

The wording on the back of the User Fee and Excise Tax Report giving instructions for lines 1 through 9 has been updated to help reduce this confusion. New forms are enclosed.

Sincerely,

Robert S. Ricks  
Senior Management Analyst

SRS  
90136

Enclosures

Executive Officer  
Rena Cusma  
Metro Council  
Tanya Collier  
Presiding Officer  
District 9  
Gary Hansen  
Deputy Presiding  
Officer  
District 12  
David Saucy  
District 1  
Lawrence Bauer  
District 2  
Jim Gardner  
District 3  
Richard Devlin  
District 4  
Tom DeJardin  
District 5  
George Van Bergen  
District 6  
Ruth McFarland  
District 7  
Judy Wyers  
District 8  
Roger Buchanan  
District 10  
David Knowles  
District 11

Micho



# METRO

2000 SW First Avenue  
Portland, OR 97201-5398  
(503) 221-1616  
Fax 241-7417

January 14, 1991

Rodney C. Adams  
Thompson, Adams et al  
4500 S. W. Hall Boulevard  
Beaverton, OR 97005

Dear Rod:

Re: Forest Grove Transfer Station/Metro Excise Tax

In the spirit of cooperation, and not in the role of communicating Metro's official position on the current situation regarding the Forest Grove Transfer Station's inability to collect the Metro excise tax from certain haulers whose wasteload originates outside the District boundaries, I thought I would share with you and your client my thinking about this matter.

My understanding is that two haulers who utilize the transfer station have refused to pay that portion of the billings they receive from the transfer station which is attributable to the Metro excise tax.

The operator of the transfer station is attempting to persuade the haulers to make the payment voluntarily. The haulers are refusing to do so, and people are now looking to my Office to resolve the question of who needs to file a lawsuit against who first.

In general, Metro Code Chapter 7.01 imposes upon the "operator," in this case the transfer station franchisee, the obligation to collect the excise tax at the same time as payment is collected from every user of his facilities. Failure to collect the tax leaves the operator vulnerable to an assessment of the tax amount by the Metro Executive Officer and the imposition of penalties and interest and ultimately legal action by Metro to collect the delinquent amount. It is my belief that if this matter remains outstanding, Metro will ultimately need to follow the procedures outlined in the Metro Code to collect the delinquent amount from the franchisee.

However, if pursuant to Section 7.01.030(b) the operator determines that what he has received from the hauler is not full payment of the compensation owed for using the system

- Executive Officer  
Rena Cusma
- Metro Council
- Tanya Collier  
Presiding Officer  
District 9
- Gary Hansen  
Deputy Presiding  
Officer  
District 12
- David Saucy  
District 1
- Lawrence Bauer  
District 2
- Jim Gardner  
District 3
- Richard Devlin  
District 4
- Tom DeJardin  
District 5
- George Van Bergen  
District 6
- Ruth McFarland  
District 7
- Judy Wyers  
District 8
- Roger Buchanan  
District 10
- David Knowles  
District 11

Rodney C. Adams  
Page 2  
January 14, 1991

and a flat out refusal to pay the amount apportioned to the tax, but is rather a partial payment of the total amount owed including taxes, and remits to Metro the portion of the excise tax attributable to the payment that has been received, then no delinquency on the part of the operator would exist. The transfer station operator would then be in compliance with the provision of the Metro Code and not be subject to legal action by Metro to enforce the requirement for the payment of penalties and interest payments on the amount due.

However, of course, this would leave the transfer station operator short in his own cash account by the amount paid to Metro as the excise tax attributable to the payment actually received from the delinquent hauler.

Perhaps you would like to discuss this matter with your client, and you and I can have a further discussion, if you desire, before those employees of the Executive Officer who are assigned the duty of collecting excise taxes begin to take more vigorous action to collect this amount.

Yours very truly,

Daniel B. Cooper,  
General Counsel

gl  
1307

cc: Jennifer Sims  
Bob Ricks



ATTACHMENT G

**EXCISE TAX PROCEDURES**

November 29, 1990

- d. Reviewed by: refer to Section C - Review of User Fee and Excise Tax Reports.
- e. Make a copy of the check to attached to the back of the report. Give the original "User Fee and Excise Tax Report" to the Administrative Assistant for review.
- f. Send a copy of the report to Solid Waste for their records and verification of columns (a) tons, yards, vehicles, and (d) rate. If tonnage reports are attached to the User Fee and Excise Tax Report, send them to Solid Waste.
- g. Solid Waste Department staff will perform a desk audit and analysis of tonnage information and report significant concerns or variances to the Accounting section for a potential audit.

C. REVIEW OF USER FEE AND EXCISE TAX REPORTS

Review of the "User Fee and Excise Tax Report" requires systematically verifying the information on the reports. The amount required to be paid should be determined on the basis of the facts contained in the report, and upon the basis of any information possessed or that may come into possession of the evaluator. (Including the excise tax rate provided for in the Annual Budget Ordinance.)

1. The Administrative Assistant will review the User Fee and Excise Tax Report to determine that the instructions on the back of the form have been correctly followed, that the calculations are mathematically correct, and that the report is filed on a timely basis.
  - a. If the report is correctly and timely filed, the Administrative Assistant will initial the report in the lower lefthand corner and file it in the site file.
  - b. If it is determined that there is an overpayment a notice of overpayment (E-161) letter should be sent to the operator. An overpayment may be applied against any underpayment for a subsequent period or periods, against penalties and interest on the underpayments, or as a credit against future monthly reports. (Credits can be reported on Line 14 - Other Allowable Deductions.)
  - c. A claim for a refund must be submitted in writing stating the specific reason for the claim and filed within three (3) years from the date of payment to Metro.

2. User Fee and Excise Tax Reports, and payments must be received from all registered non-Metro sites postmarked on or before the last day of the month in which they are due to avoid delinquent charges.

REGISTERED non-Metro sites and project numbers as of July 1, 1990:

Hillsboro Landfill - 13107  
Riverbend Landfill - 13103  
Forest Grove - 13103  
East County Landfill - 13105  
Lakeside Reclamation - 13106  
Hillsboro Transfer - 13102  
Marion County - 13108

- a. A Notice of Delinquency (E-158) letter should be mailed to any operator who has not been granted an extension of time to file, and fails to remit any tax imposed by Ordinance No. 90-333A, prior to becoming delinquent. Letters should be sent within ten (10) days after the first day of the next month following the due date.
- b. Associate Management Analyst, in the Finance Section, should be notified prior to mailing notice of delinquency letters so he can be prepared for questions or calls. The Administrative Assistant will work with the Associate Management Analyst on further collection efforts. (Refer to Ordinance No. 90-333A.)

D. EXTENSION OF TIME TO FILE

An extension of time to file monthly "User Fee and Excise Tax Reports" may be granted by the Executive Officer for good cause. Extensions must be approved in advance and are good for one month only. Interest of 1/25 percent (1.25 percent) will be charged for the one-month period or fraction thereof, however, the penalty charge will be waived for the month of extension.

E. DEFICIENCY DETERMINATION

If it is determined that the User Fee and Excise Tax Report is incorrect and additional user fees and/or taxes are owing, the amount shall be due and payable immediately upon service of notice.

1. The Administrative Assistant will fill out and mail a Notice of Deficiency Determination (E-160) letter to the site. Notice is complete at the time of deposit in the U.S. mail.
2. Overpayments, if any, may be used to offset deficiencies.

3. Notice of Deficiency Determination notice may be mailed up to three (3) years after the last day of the month in which the report is due.
4. In the case of fraud, refusal to collect and evasion, refer to Ordinance No. 90-333A.

F. PENALTIES AND INTEREST

The Metro Code does not address the question of interest and penalties on User Fees. The following procedures relate to excise tax only.

1. An operator who has not been granted an extension of time for remittance of tax due; and who fails to remit the monthly User Fee and Excise Tax Report and payment before they become delinquent will be assessed a penalty of 10 percent for the first month and interest of 1.25 percent per month on the delinquent excise tax. The assessment will be the same whether the delinquency is one (1) day or twenty-nine (29) days.
2. However, if the monthly payment is thirty (30) or more days late, an additional penalty of 15 percent and interest will be assessed. Penalties and interest assessed during the initial delinquency period are added to the tax owed; this combined amount is used to calculate the second penalty and interest assessment. As long as the delinquency continues, previously assessed penalties and interest are added to the balance owed and used to calculate the subsequent amounts assessed. (Refer to example.)

## STAFF REPORT

### IN CONSIDERATION OF ORDINANCE NO. 91-435 FOR THE PURPOSE OF AMENDING THE METRO CODE TO EXEMPT FROM PAYMENT OF EXCISE TAXES PERSONS DELIVERING TO A METRO-FRANCHISED FACILITY SOLID WASTE GENERATED OUTSIDE OF DISTRICT BOUNDARIES AND DISPOSED OF AT NON-METRO FACILITIES, AND DECLARING AN EMERGENCY

Date: October 30, 1991

Presented by: Bob Martin

#### PROPOSED ACTION

Ordinance No. 91-422 amends the Metro Code to exempt from payment of excise taxes persons delivering to a Metro-franchised facility solid waste generated outside of District boundaries that will ultimately be disposed of in a facility not regulated by Metro. The proposed Ordinance contains an emergency clause, so that it would be effective upon passage.

#### BACKGROUND

Metro Code Chapter 7.01 provides for the imposition of excise taxes "for the privilege of use of the facilities, equipment, systems, functions, services, or improvements owned, operated, franchised, or provided by the District\* \* \*" (7.01.020) A limited number of individuals are delivering waste generated outside District boundaries to the facility owned by AC Trucking in Forest Grove, Oregon. The Forest Grove facility is franchised by Metro, but Metro does not operate a gatehouse at the facility, and all waste delivered to the facility is ultimately disposed of at the Riverbend Landfill in Yamhill County, Oregon.

The excise tax was not intended to be assessed against individuals who are not receiving a direct or indirect benefit from Metro. In this instance, Metro's only connection with the waste is that it passes through a Metro-franchised facility on its way to a non-Metro facility. Such waste does not in any manner impact Metro's system design capacity, its debt burden, or any other aspect of Metro operations. It is therefore proposed that a specific and narrow exemption be established for a person delivering such material.

The proposed Ordinance would add a new subsection (9) to Metro Code Section 7.01.050, which currently details the persons, users, and operators that are exempt from payment of excise taxes. The amendment specifies that the exemption is limited to a person delivering waste generated outside District boundaries to a Metro-franchised facility at which Metro is not operating the gatehouse, if such waste will ultimately be disposed of at a facility that is not owned or franchised by Metro. The above underlined phrase is intended to make clear that the exemption will end if Metro's involvement with the Forest Grove facility increases to the point that Metro is operating the gatehouse. If that event occurs, it is likely to be

accompanied by Metro's involvement in financing of the facility, and disposal of a portion of the waste delivered to the facility at Metro-designated facilities.

### FINANCIAL IMPACT

Based on solid waste tonnage and rate estimates, approximately \$14,000 in excise taxes will be levied on waste generated and disposed of outside District boundaries for the period July 1, 1990, through November 1991. An additional \$10,000 in revenue is projected for the period December 1991 to January 1993 when the Metro West Transfer Station is scheduled to begin operation. Adoption of this Ordinance would reduce excise tax revenue by about \$10,000, which is .25 percent of total excise taxes.

### RECOMMENDATION

The Executive Officer recommends Council approval of Ordinance No. 91-435.

1050

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE	)	ORDINANCE NO. 92-435
METRO CODE TO EXEMPT FROM	)	
PAYMENT OF EXCISE TAXES PERSONS	)	Introduced by Rena Cusma,
DELIVERING SOLID WASTE GENERATED	)	Executive Officer
AND DISPOSED OUTSIDE OF DISTRICT	)	
BOUNDARIES, AND DECLARING AN	)	
EMERGENCY	)	

WHEREAS, Since March 8, 1990, the Metropolitan Service District has imposed an excise tax on users of Metro owned, operated, or franchised facilities, for the privilege of use of the facilities; and

WHEREAS, As currently written, Metro Code Chapter 7.01 requires that an excise tax be paid on solid waste generated outside District boundaries that passes through a Metro franchised facility for ultimate disposal at a facility that is not owned or franchised by Metro; and

WHEREAS, It has been determined that, as to such material, Metro is incurring no financial or other burden and the individual delivering such waste is not receiving direct or indirect benefits from Metro; and

WHEREAS, It is appropriate that Metro exempt from payment of excise taxes persons delivering the waste described herein; now, therefore,

**THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:**

Section 1. Metro Code Section 7.01.050 is amended to read:

"7.01.050 Exemptions:

(a) The following persons, users and operators are exempt from the requirements of this Chapter:

- (1) Persons, users and operators whom the District is prohibited from imposing an excise tax upon under the Constitution or Laws of the United States or the Constitution or Laws of the State of Oregon.
- (2) Persons who are users and operators of the Memorial Coliseum, Portland Civic Stadium or the Portland Center for the Performing Arts.

- (3) Persons whose payments to the District or to an operator constitute a donation, gift or bequest for the receipt of which neither the District nor any operator is under any contractual obligation related thereto.
- (4) Any persons making payment to the District for a business license pursuant to ORS 701.015.
- (5) Any person which is a state, a state agency or a municipal corporation to the extent of any payment made directly to the District for any purpose other than solid waste disposal, use of a Metro ERC Facility, or use of the Metro Washington Park Zoo.
- (6) Users who are sublessees, subtenants, sublicensees, or other persons paying compensation for the use of Metro ERC Facilities including payments by users for concessions or catering services made to the Commission or its agents but not users who purchase admission tickets for events at Metro ERC Facilities that are available to members of the general public.
- (7) An operator of a franchised processing center that accomplishes material recovery and recycling as a primary operation.
- (8) Persons making payments to the District on behalf of the Metro Washington Park Zoo for the following purposes:

  - (A) Contributions, bequests, and grants received from charitable trusts, estates, nonprofit corporations, or individuals regardless of whether the District agrees to utilize the payment for a specific purpose including all payments to the Zoo Parents program;
  - (B) Corporate sponsorships or co-promotional efforts for events that are open to the general public, or for specific capital improvements, educational programs, publications, or research projects conducted at the Zoo;.
  - (C) Payments that entitle a person to admission to a fund-raising event benefiting the Zoo that is not held on the grounds of the Zoo;
  - (D) Payments that entitle a person to admission to a special fund-raising event held at the Zoo where the event is sponsored and conducted by a nonprofit organization approved by the Council



and the primary purpose of which is to support the Zoo and the proceeds of the event are contributed to the Zoo;

- (E) Notwithstanding the provisions of subsection (A) through (D) above, all payments received by the District for admission to the Zoo, or which entitle individuals to receipt of food, beverages, goods, or rides on the Zoo train shall be subject to tax regardless of whether payment is received from an individual or otherwise on behalf of special groups including but not limited to employee and family member picnics, corporate or family parties, or similar events.

(9) A person delivering waste generated outside District boundaries to a Metro franchised facility at which Metro is not operating the gatehouse, if such waste will ultimately be disposed of at a facility that is not owned or franchised by Metro.

(b) Any person, user or operator that is exempt for the payment of an excise tax pursuant to this section shall nonetheless be liable for compliance with this Chapter and the payment of all taxes due pursuant to any activity engaged in by such person which is subject to this Chapter and not specifically exempted from the requirements hereof. Any operator whose entire compensation from others for use of a District facility is exempt from the provisions of this Chapter shall be deemed to be a user and not an operator."

Section 2. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Council of the Metropolitan Service District this \_\_\_\_\_ day  
of \_\_\_\_\_, 1992.

\_\_\_\_\_  
Tanya Collier, Presiding Officer

ATTEST:

\_\_\_\_\_  
Clerk of the Council

1063