

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING ) Ordinance No. 92-464  
METRO CODE CHAPTER 7.01 TO )  
MODIFY THE REPORTING OF EXCISE ) Introduced by Rena Cusma  
TAX AND THE APPLICATION OF THE ) Executive Officer  
RECEIPTS )

WHEREAS, The Council adopted Ordinance No. 90-333A,  
establishing an Excise Tax for the Metropolitan Service District;  
and

WHEREAS, Metro has gained nearly two years of experience in  
administration of the Ordinance; and

WHEREAS, Metro has identified areas for improvement in the  
reduction of paperwork, administrative and reconciliation costs;  
and

WHEREAS, Metro has recognized the need to clarify its intent  
in regard to the application of the tax; and

WHEREAS, It is desired to make reporting by an operator of a  
Solid Waste Facility consistent with the User Fee reporting  
requirements; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS;

1. Metro Code Section 7.01 is amended to read as follows:

CHAPTER 7.01

EXCISE TAXES

SECTIONS:

7.01.010	Definitions
7.01.020	Tax Imposed
7.01.025	Collection of Tax by District
7.01.030	Collection of Tax by Operator; Rules for Collection
7.01.040	Operator's Duties
7.01.050	Exemptions
7.01.060	Registration of Operator; Form and Contents; Execution; Certification of Authority.
7.01.070	Due Date; Returns and Payments
7.01.080	Penalties and Interest
7.01.090	Deficiency Determination; Fraud, Evasion, Operator Delay
7.01.100	Hearings, Contested Cases

7.01.110	Security for Collection of Tax
7.01.120	Refunds
7.01.130	Administration
7.01.150	Violations

7.01.010 Definitions: Except where the context otherwise requires, the definitions given in this Section govern the construction of this Chapter:

(a) "Accrual basis accounting" means ~~[as this term relates to revenue recognition the operator records the revenue from a user on his/her records when the revenue is earned, whether or not it is paid.]~~ revenues are recorded in the accounting period in which they are earned and become measurable whether received or not.

(b) "Cash basis accounting" means ~~[the operator records the revenue from a user on his/her records]~~ revenues are recorded when cash is received.

(c) "District facility" means any facility, equipment, system, function, service or improvement owned, operated, franchised or provided by the District. District facility includes but is not limited to all services provided for compensation by employees, officers or agents of Metro, the Metro Washington Park Zoo, Metropolitan Exposition-Recreation Facilities including but not limited to the Oregon Convention Center, the Metro South Station, the St. Johns Landfill, the Metro East Station, ~~[the Riedel Oregon Compost Company, Inc. Solid Waste Compost Facility]~~ MSW Compost Facility, any other 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, and any other facility, equipment, system, function, service or improvement owned, operated, franchised or provided by the District.

(d) "Installment payments" means the payment of any amount that is less than the full payment owed either by any user to the District or to an operator or by an operator to the District.

(~~d~~)e) "Metro ERC Facility" means any facility operated or managed by the Metropolitan Exposition-Recreation Commission.

(~~e~~)f) "Operator" means a person ~~other than the District~~ who receives compensation from any source arising out of the use of a District facility. Where the operator performs his/her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this Chapter and shall have the same duties and liabilities as his/her principal. Compliance with the

provisions of this Chapter by either the principal or managing agent shall be considered to be compliance by both.

([f]g) "Person" means any individual, firm, partnership, joint venture, association, governmental body, joint stock company, corporation, estate, trust, syndicate, or any other group or combination acting as a unit.

([g]h) "Payment" means the consideration charged, whether or not received by the District or an operator, for the use of a District facility, valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction.

([h]i) "Tax" means the tax imposed in the amount established in subsection 7.01.020(b), and includes both [either] the tax payable by [the] a user [or] and the aggregate amount of taxes due from an operator during the period for which he/she is required to report [his/her collections] and pay the tax.

([i]j) "User" means any person who pays compensation for the use of a District facility or receives a product or service from a District facility subject to the payment of compensation.

(Ordinance No. 90-333A, Sec. 2)

7.01.020 Tax Imposed:

(a) For the privilege of use of the facilities, equipment, systems, functions, services, or improvements owned, operated, franchised, or provided by the District, each user shall pay a tax in the amount established in subsection 7.01.020(b) but not to exceed six percent (6%) of the payment charged by the operator or the District for such use. The tax constitutes a debt owed by the user to the District which is extinguished only by payment of the tax directly to the District or by the operator to the District. The user shall pay the tax to the District or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. [If payment is paid in installments to] If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(b) The Council may for any annual period commencing July 1 of any year and ending on June 30 of the following year establish a tax rate lower than the rate of tax provided for in subsection 7.01.020(a) by so providing in the annual budget ordinance adopted by the District. If the Council so establishes a lower rate of tax, the Executive Officer shall immediately notify all

operators of the new tax rate. Upon the end of the fiscal year the rate of tax shall revert to the maximum rate established in subsection 7.01.020(a) unless further action to establish a lower rate is adopted by the Council as provided for herein.

(Ordinance No. 90-333A, Sec. 2)

7.01.025 Collection of Tax by District:

(a) The District shall allocate from all payments made directly to the District by any user the amount of the tax provided for in Section 7.01.020.

(b) Unless stated separately on any request for payment or charge imposed or established by the District the excise tax shall be presumed to be included in the amount imposed or established by the District so that the excise tax shall be computed in such amount that the total charged shall equal the amount of compensation owed to the District plus the excise tax at the rate established herein. To the extent necessary to give effect to this provision all rates and charges established by the District and in effect on the effective date of this Chapter shall be deemed decreased by such percentage amount so that after such date the amount of the rate or charge together with the amount of the excise tax provided for in Section 7.01.020 shall be equal to the previously established rate or charge. Thereafter rates and charges shall be subject to amendment as provided by law.

(c) In the case of installment payments paid by the user to the District a proportionate share of the tax shall be deemed paid by the user with each installment.

(Ordinance No. 90-333A, Sec. 2)

7.01.030 Collection of Tax by Operator; Rules for Collection:

(a) Every operator unless specifically exempted under the terms of this Chapter, shall collect a tax from users. ~~[The tax collected or accrued by the operator constitutes a debt owing by the operator to the District.]~~ as provided for in Section 7.01.020.

(b) ~~[In all cases of credit or deferred payments, the payment of tax to the operator may be deferred until the payment is paid, and the operator shall not be liable for the tax until credits are paid or deferred payments are made. Adjustments may be made for uncollectibles.]~~ The operator shall report the tax to the District consistent with the operators basis of accounting, cash or accrual, except in the case of an operator of a solid waste facility. Solid Waste Facility operators shall

report accrued revenue and excise tax calculated based upon loads or tons deposited at the site at the time of receipt of waste.

(c) For the purpose of reporting the tax owed to the District and notwithstanding the provisions of Section 7.01.040, the tax shall be presumed to be included in the amount imposed by the operator so that the excise tax shall be computed in such amount that the total charged shall equal the amount of compensation owed to the operator plus the excise tax owed to the District at the rate established herein.

(d) The District shall provide the operator with a blank return and instructions that shall be used by the operator to report the excise tax owing to the District. The amount of excise tax due shall be paid when the return is filed as provided for in Section 7.01.070.

(e) Adjustments may be made for uncollectibles when they are recognized by the operator as uncollectible, and can be sufficiently documented to show a good faith collection effort.

(f) Installment payments of tax paid by the operator to the District shall be applied to the oldest tax, and interest and penalties that have been merged with the tax as set forth in Section 7.01.080.

([e]g) The Executive Officer shall enforce provisions of this Chapter and shall have the power to adopt rules and regulations not inconsistent with this Chapter as may be necessary to aid in the enforcement. Prior to the adoption of rules and regulations, the Executive Officer shall give public notice of intent to adopt rules and regulations, provide copies of the proposed rules and regulations to interested parties, and conduct a public hearing on the proposed rules and regulations. Public notice shall be given when rules and regulations have been finally adopted. Copies of current rules and regulations shall be made available to the public upon request. It is a violation of this Code to violate rules and regulations duly adopted by the Executive Officer.

(Ordinance No. 90-333A, Sec. 2)

#### 7.01.040 Operator's Duties:

(a) Each operator shall collect the tax imposed by this Chapter at the same time as payment is collected from every user. The amount of tax shall be separately stated upon the operator's records, and any receipt or invoice rendered by the operator.

(b) Each operator shall file a return in accordance with the terms provided for in Section 7.01.070.

(Ordinance No. 90-333A, Sec. 2)

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.

(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.

(Ordinance No. 90-333A; amended by Ordinance No. 90-355, Sec. 2)

7.01.060 Registration of Operator; Form and Contents; Execution; Certification of Authority:

(a) Every person engaging or about to engage in business as an operator in the District shall register with the Executive

Officer on a form provided by the Executive Officer. Operators starting business must register within fifteen (15) calendar days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax regardless of registration. Registration shall set forth the name under which an operator transacts or intends to transact business, the location of his/her place of business and such other information to facilitate the collection of the tax as the Executive Officer may require. The registration shall be signed by the operator.

(b) The Executive Officer shall, within ten (10) days after registration, issue without charge a certificate of authority to each registrant to collect the tax from users, together with a duplicate thereof for each additional place of business of each registrant. Certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the Executive Officer upon the cessation of business at the location named or upon the business sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed thereon so as to be seen and come to notice readily of all users.

(c) Said certificate shall, among other things, state the following:

- (1) The name of the operator;
- (2) The address of the facility;
- (3) The date upon which the certificate was issued;
- (4) "This Excise Tax Registration Certificate signifies that the person named has fulfilled the requirements of the Excise Tax Chapter of the Code of the Metropolitan Service District for the purpose of collecting and remitting the excise tax. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a facility without strictly complying with all local applicable laws. This certificate does not constitute a permit or a franchise."

(Ordinance No. 90-333A, Sec. 2)

7.01.070 Due Date; Returns and Payments:

(a) [~~The tax imposed by this Chapter shall be paid by the user to the operator at the time that payment is made.~~] The tax shall be collected from the operator by the District as provided for in Section 7.01.030. All amounts of such taxes [collected]



reported by any operator are due and payable to the District on the 15th day of each month for the preceding month; and are delinquent on the last day of the month in which they are due. If the last day of the month falls on a holiday or weekend, amounts are delinquent on the first business day that follows. The initial return under this Chapter may be for less than a full month preceding the due date; thereafter returns shall be made for the applicable monthly period.

(b) On or before the 15th day of the month following each month of [collection] operation of a District facility, a return for the preceding month's tax [collections] shall be filed with the Executive Officer. The return shall be filed in such form as the Executive Officer may prescribe by every operator liable for payment of tax.

(c) Returns shall show the amount of tax [collected or otherwise] due for the related period. The Executive Officer may require returns to show the total receipts upon which tax was collected or otherwise due, gross receipts of the operator for such period and an explanation in detail of any discrepancy between such amounts, and the amount of receipts exempt, if any.

(d) The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the Executive Officer, either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

(e) For good cause, the Executive Officer may extend for not to exceed one (1) month the time for making any return or payment of tax. No further extension shall be granted, except by the Executive Officer. Any operator to whom an extension is granted shall pay interest at the rate of 1.25 percent (1.25%) per month on the amount of tax due without proration for a portion of a month. If a return is not filed, and the tax and interest due is not paid by the end of the extension granted, then the interest shall be added to the tax due for computation of penalties described elsewhere in this Chapter.

(f) The Executive Officer, if deemed necessary in order to ensure payment or facilitate collection by the District of the amount of taxes in any individual case, may require returns and payment of the amount of taxes more frequently than monthly periods. (Ordinance No. 90-333A, Sec. 2)

#### 7.01.080 Penalties and Interest:

(a) Original delinquency. Any operator who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this Chapter prior to

delinquency shall pay a penalty of ten percent (10%) of the amount of the tax due in addition to the amount of the tax.

(b) Continued delinquency. Any operator who has not been granted an extension of time for remittance of tax due, and who failed to pay any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax due plus the amount of the ten percent (10%) penalty first imposed.

(c) Fraud. If the Executive Officer determines that the nonpayment of any remittance due under this Chapter is due to fraud or intent to evade the provisions thereof, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in paragraphs (a) and (b) of this Section.

(d) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this Chapter shall pay interest at the rate of 1.25 percent (1.25%) per month or fraction thereof without proration for portions of a month, on the amount of the tax due from the date on which the remittance first became delinquent until paid. Interest shall be compounded monthly.

(e) Penalties and Interest merged with tax. Every penalty imposed and such interest as accrues under the provisions of this Section shall be merged with and become a part of the tax herein required to be paid. If delinquency continues, requiring additional penalty and interest calculations, previously assessed penalty and interest are added to the tax due. This amount becomes the new base for calculating new penalty and interest amounts.

(f) Petition for waiver. Any operator who fails to remit the tax herein levied within the time herein stated shall pay the penalties herein stated, provided, however, the operator may petition the Executive Officer for waiver and refund of the penalty or any portion thereof and the Executive Officer may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

(Ordinance No. 90-333A, Sec. 2)

7.01.090 Deficiency Determination; Fraud, Evasion, Operator Delay.

(a) Deficiency determinations. If the Executive Officer determines that the results are incorrect, it may compute and determine the amount required to be paid on the basis of the facts contained in the return or returns, or upon the basis of any information within its possession or that may come into its

possession. One or more deficiency determinations may be made of the amount due for one, or more than one, period, and the amount so determined shall be due and payable immediately upon service of notice as herein provided after which the amount determined is delinquent. Penalties or deficiencies shall be applied as set forth in Section 7.01.080.

- (1) In making a determination the Executive Officer may offset overpayments, if any, which may have been previously made for a period or periods against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in Section 7.01.080.
- (2) The Executive Officer shall give to the operator a written notice of its determination. The notice may be served personally or by mail. If by mail, the notice shall be addressed to the operator at his/her address as it appears on the records of the Executive Officer. In case of service by mail or any notice required by this Chapter, the service is complete at the time of deposit in the United States Post Office.
- (3) Except in the case of fraud or intent to evade this Chapter or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three (3) years after the last day of the month following the close of the period for which the amount is proposed to be determined or within three (3) years after the return is filed, whichever period expires the later.
- (4) Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the Executive Officer has given notice thereof, provided, however, the operator may petition for redemption and refund if the petition is filed before the determination becomes final as herein provided.

(b) Fraud, refusal to collect, evasion. If any operator shall fail or refuse to collect said tax or to make within the time provided in this Chapter any report and remittance of said tax or any portion thereof required by this Chapter, or makes a fraudulent return or otherwise willfully attempts to evade this Chapter, the Executive Officer shall proceed in such manner as deemed best to obtain facts and information on which to base an estimate of the tax due. As soon as the Executive Officer has

determined the tax due that is imposed by this Chapter from any operator who has failed or refused to collect the same and to report and remit said tax, it shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this Chapter. In case such determination is made, the Executive Officer shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three (3) years after discovery by the Executive Officer of any fraud, intent to evade or failure or refusal to collect said tax, or failure to file return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the Executive Officer has given notice thereof, provided, however, the operator may petition for redemption and refund if the petition is filed before the determination becomes final as herein provided.

(c) Operator delay. If the Executive Officer believes that the collection of any tax or any amount of tax required to be collected and paid to the District will be jeopardized by delay, or if any determination will be jeopardized by delay, the Executive Officer shall thereupon make a determination of the tax or amount of tax required to be collected, noting the fact upon the determination. The amount so determined as herein provided shall be immediately due and payable, and the operator shall immediately pay such determination to the Executive Officer after service of notice thereof; provided, however, the operator may petition, after payment has been made, for redemption and refund of such determination, if the petition is filed within ten (10) days from the date of service of notice by the Executive Officer.

(Ordinance No. 90-333A, Sec. 2)

7.01.100 Hearings, Contested Cases:

(a) Any person against whom a determination is made under Section 7.01.090 or any person directly interested may request a hearing on the matter in contest and request redemption and refund within the time required in Section 7.01.090. The determination becomes final at the expiration of the allowable time and no hearing may be requested thereafter. Hearings shall be conducted as provided for in Chapter 2.05 except that the deadline for requesting a hearing shall be as provided for herein.

(b) No request for a hearing and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions hereof.

(Ordinance No. 90-333A, Sec. 2)

7.01.110 Security for Collection of Tax: The Executive Officer, whenever deemed necessary to ensure compliance with this Chapter, may require any operator subject thereto to deposit with it such security in the form of cash, bond, or other security as the Executive Officer may determine. The amount of the security shall be fixed by the Executive Officer but shall not be greater than twice the operator's estimated average liability for the period for which he/she files returns, determined in such manner as the Executive Officer deems proper. The amount of the security may be increased or decreased by the Executive Officer subject to the limitation herein provided.

(Ordinance No. 90-333A, Sec. 2)

7.01.120 Refunds:

(a) Refunds by District to operator. Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously collected or received by the Executive Officer under this Chapter, it may be refunded, provided a verified claim in writing therefore, stating the specific reason upon which the claim is founded, is filed with the Executive Officer within three (3) years from the date of payment. The claim shall be made on forms provided by the Executive Officer. If the claim is approved by the Executive Officer, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the operator from whom it was collected or by whom paid and the balance may be refunded to such operator, his/her administrators, executors, or assignees.

(b) Refunds by District to users. Whenever the tax required by this Chapter has been collected by the District or by an operator, and deposited by the operator with the Executive Officer, and it is later determined that the tax was erroneously collected or received by the Executive Officer, it may be refunded by the Executive Officer to the user, provided a verified claim in writing therefore, stating the specific reason on which the claim is founded, is filed with the Executive Officer within three (3) years from the date of payment.

(Ordinance No. 90-333A, Sec. 2)

7.01.130 Administration:

(a) Records required from operator, et cetera; form. Every operator shall keep records of all sales and transactions. All records shall be retained by the operator for a period of three (3) years and six (6) months after they come into being.

(b) Examination of records; investigations. The Executive Officer, or any person authorized in writing by the Executive Officer, may examine during normal business hours the books,

papers and accounting records relating to any operator, after notification to the operator liable for the collection and payment of the tax, and may investigate the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.

(c) At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three (3) years after any determination becomes final, the Executive Officer may cause the General Counsel to bring an action in the courts of this state, or any other state, or of the United States in the name of the District to collect the amount delinquent together with penalties and interest.

(d) Confidential financial information. Except as otherwise required by law, it shall be unlawful for the Executive Officer, or any officer, employee, or agent, to divulge, release, or make known in any manner any financial information submitted or disclosed to the Executive Officer under the terms of this Chapter. Nothing in this subsection shall be construed to prohibit:

- (1) The disclosure to, or the examination of, financial records by District officials, employees or agents for the purpose of administering or enforcing the terms of this Chapter, or collecting taxes imposed under the terms of this Chapter; or
- (2) The disclosure to the taxpayer or his/her authorized representative of financial information, including amounts of excise taxes, penalties, or interest, after filing of a written request by the taxpayer or his/her authorized representative and approval of the request by the Executive Officer; or
- (3) The disclosure of the names and addresses of any persons to whom Excise Tax Registration Certificates have been issued; or
- (4) The disclosure of general statistics in a form which would prevent the identification of financial information regarding any particular taxpayer's return or application; or
- (5) The disclosure of financial information to the Office of General Counsel, to the extent the Executive Officer deems disclosure or access necessary for the performance of the duties of advising or representing the Executive Officer.

(Ordinance No. 90-333A, Sec. 2)

7.01.150 Violations. It is unlawful for any operator or other person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the Executive Officer or to render a false or fraudulent return. No person required to make, render, sign, or verify any report shall make any false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this Chapter. The Executive Officer may impose a civil penalty of up to \$500 for each violation of this Chapter. A violation includes, but is not limited to:

(a) Failure to file any required Tax payment and report, including any penalties and interest, within sixty (60) days of the due date;

(b) Filing a false or fraudulent report;

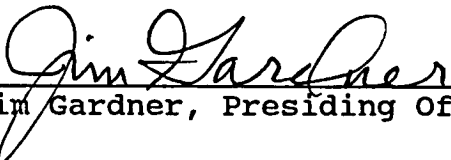
(c) Failure to register a facility with the Executive Officer as described in Section 7.01.060;

(d) Failure to maintain a separate account for the excise tax collected.

(Ordinance No. 90-333A, Sec. 2).

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 25th day of June, 1992

  
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Jim Gardner, Presiding Officer

ATTEST:

  
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Clerk of the Council

FINANCE COMMITTEE REPORT

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**ORDINANCE NO. 92-464 AMENDING METRO CODE CHAPTER 7.01 MODIFYING THE REPORTING OF EXCISE TAX AND THE APPLICATION OF RECEIPTS**

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Date: June 23, 1992

Presented By: Councilor Hansen

**COMMITTEE RECOMMENDATION:** At it's June 18, 1992 meeting the Committee voted unanimously to recommend Council adoption of Ordinance No. 92-464. All members were present and voting.

**COMMITTEE DISCUSSION/ISSUES:** Bob Ricks, Senior Management Analyst, presented the Staff Report. He pointed out that the purpose of the ordinance was to reduce administrative and reconciliation costs in the administration of the Excise Tax. He said the District has had two years experience with this tax and the proposed changes will make it easier on the Metro Staff and operators of solid waste facilities in complying with the provisions of the Code. He explained the five procedural matters which are proposed to be changed as well as the changes in definitions.

Council Staff asked a series of questions related to the impact of the proposed ordinance (See Attachment 1 to this Report). Mr. Ricks answered that there will be little if any financial impact to the District as a result of the ordinance and that no person or class of persons will receive any financial benefit as a result of the ordinance (See Attachment 2 for Mr. Ricks written response).



## STAFF REPORT

### CONSIDERATION OF ORDINANCE NO.92-464 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.01 TO MODIFY THE REPORTING OF EXCISE TAX AND THE APPLICATION OF THE RECEIPTS.

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Date: June 2, 1992

Presented by: Bob Ricks

#### FACTUAL BACKGROUND AND ANALYSIS

Metro excise taxes were established by Ordinance No. 90-333A on March 8, 1990. Taxes are imposed on revenue derived from product or service from a District facility or use of District facilities on or after July 1, 1990. We now have nearly two years of experience in administering this tax. Changes are proposed to clarify the intent in regard to the application of the tax, and to reduce administrative and reconciliation costs. Five procedures are explicitly stated, and several clarifications are made in definitions, wording and references to tie sections together.

1. There is a problem in keeping the reporting of solid waste tonnage, user fees due, and excise tax due in synchronization at solid waste facilities. This makes reconciliation of the reports difficult and time consuming. Section 7.01.030(b) eliminates multiple reporting methods and requires that an operator of a solid waste facility report accrued revenue and excise tax based upon loads or tons deposited at the site at the time of receipt of waste.
2. The operator of a solid waste facility has collected less than all charges due from a user of the facility. The operator of the facility proposed that the uncollected charges all be considered excise tax, and that the collected charges all be operator's charges. Section 7.01.030(c) makes it clear that the tax shall be presumed to be included in the amount imposed by the operator.
3. To reduce the cost of reconciliation, Section 7.01.030(d) requires that the reporting form provided by Metro be used to report the excise tax owed to the District and that the payment be made when the return is filed.
4. Any uncollectibles at solid waste facilities reduce the excise tax and user fees due to Metro. Section 7.01.030(e) specifies that the adjustment for uncollectibles can be made only when the operator recognized the uncollectible and documents a good faith collection effort.

5. The existing ordinance provides for penalties when the excise tax is not paid when due. The order of priority of application of payments to taxes due and overdue effects the amount of penalty. Section 7.01.030(f) specifies that payments received will be applied to the oldest merged tax, interest and penalty due.
6. There are several clarifications of definitions
  - a. "Accrual basis accounting" 7.01.010(a)
  - b. "Cash basis accounting" 7.01.010(b)
  - c. "District facility" 7.01.010(c)
  - d. "Installment payments" 7.01.010(d)
  - e. "Operator" 7.01.010(f)
  - f. "Payment" 7.01.010(h)
  - g. "Tax" 7.01.010(i)
7. There are some clarifications of wording or references to tie sections together. 7.01.030(a), 7.01.040(a), 7.01.040(b), 7.01.070(a), 7.01.070(b)

#### EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 91-473, modifying the excise tax code.



**METRO**

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

# Memorandum

DATE: June 29, 1992

TO: Rena Cusma, Executive Officer

FROM: Paulette Allen, Clerk of the Council *PA*

RE: TRANSMITTAL OF ORDINANCE NOS. 92-449B, 92-463A, 92-456, AND  
92-464

Attached for your consideration are true copies of the ordinances referenced above adopted by the Council on June 25, 1992.

If you wish to veto any of the ordinances referenced above, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Thursday, July 2, 1992. The veto message, if submitted, will become part of the permanent record. If no veto message is received by the time and date stated above, these ordinances will be considered finally adopted.

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I, *Unette Sharley*, received this memo and true copies of Ordinance Nos. 92-449B, 92-463A, 92-456 and 92-464 from the Clerk of the Council on *6-29-92*.