

Technical corrections were made to this notice on December 2, 2002 by Revenue Notice # 02-20. Please see Revenue Notice # 02-20 for the corrected language.

Minnesota revenue notice number 00-06

Sales and Use Tax & Solid Waste Management Tax - Charges for Purchasing and Using Waste Compactors and Waste Collection Containers

Due to 1999 law changes, Revenue Notice # 98-16 is hereby revoked and replaced with this notice which describes the sales and use tax exemption for certain waste compactors and waste collection containers.

A. Definitions

- "Waste management services" is defined in *Minnesota Statutes*, section 297H.01, subdivision 12. It means waste collection, transportation, processing, and disposal.
- "Waste management service provider" is defined in *Minnesota Statutes*, section 297H.01, subdivision 11. It means the person who directly bills the generator or self-hauler for waste management services, and includes, but is not limited to, waste-haulers, waste management facilities, utility services, and political subdivisions, to the extent they directly bill for waste management services.
- "Mixed municipal solid waste" is defined in *Minnesota Statutes*, sections 297H.01, subdivision 5, and 115A.03, subdivision 21. It means garbage, refuse, and other solid waste from residential, commercial, industrial, and community activities that the generator of the waste aggregates for collection. The following are examples of items that are not included in the definition of mixed municipal solid waste as long as they are collected, processed, and disposed of as separate waste streams from mixed municipal solid waste: auto hulks, street sweepings, ash, construction debris, mining waste, sludges, tree and agricultural wastes, tires, lead acid batteries, motor and vehicle fluids and filters.
- "Non-mixed-municipal solid waste" is defined in *Minnesota Statutes*, sections 297H.01, subdivision 6; 115A.03, subdivisions 7 and 13a; and 116.76, subdivisions 12 and 14. It means construction debris, and infectious, pathological, and industrial waste.
- "Recycling" is defined in *Minnesota Statutes*, section 115A.03, subdivision 25b. It means the process of collecting and preparing recyclable materials and reusing the materials in their original form or using them in manufacturing processes that do not cause the destruction of recyclable materials in a manner that precludes further use.

B. Imposition of the Solid Waste Management Tax and the Sales and Use Tax

Pursuant to *Minnesota Statutes*, Chapter 297H, a solid waste management tax is imposed on charges for mixed municipal solid waste and non-mixed-municipal solid waste services. These charges are not subject to sales and use tax. Charges for recycling services are exempt from the solid waste management tax and are not subject to sales and use tax.

C. Sales and Use Tax Exemptions for Certain Compactors or Waste Collection Containers

Pursuant to *Minnesota Statutes*, section 297A.25, subdivision 83, sales and purchases of compactors and waste collection containers made after June 30, 1999, are exempt from sales and use tax if purchased by a waste management service provider and are used in providing waste management services that are subject to the solid waste management tax. A waste management service provider that does not remit solid waste management tax on customer charges or lease or rental payments for compactors and waste collection containers under Chapter 297H is ineligible for this exemption.

If bags are used as waste collection containers and the other requirements set out above are met, they may be purchased exempt from sales and use tax. Sales of stickers or indicia used to identify the waste collection containers do not qualify for this exemption and are subject to sales and use tax.

This exemption does not extend to motor vehicles, although compactors or waste collection containers

that are subsequently attached to a motor vehicle may qualify for this exemption. Purchases of repair and replacement parts for compactors and waste collection containers do not qualify for this exemption.

- **Mixed Municipal Solid Waste.** The total charge for mixed municipal solid waste services, including any charges for compactors or waste collection containers, is subject to the solid waste management tax. These charges are not subject to sales and use tax. Compactors and waste collection containers to be used for mixed municipal solid waste services may be purchased by waste management service providers exempt from sales and use tax.
- **Non-Mixed-Municipal Solid Waste.** Since the solid waste management tax also applies to the non-mixed-municipal solid waste services, the sales and use tax exemption applies to the purchase of the compactors and waste collection containers used to provide these services. The charges for the non-mixed-municipal solid waste services are not subject to sales and use tax. Separately stated charges for compactors or containers used for non-mixed-municipal solid waste are not subject to the solid waste management tax or sales and use tax.
- **Recycling.** Since a separately stated charge for recycling is exempt from the solid waste management tax, a separately stated charge for the compactor or container used for recycling is also exempt from the solid waste management tax. The charge to the generator for the use of the compactor or waste collection container is also not subject to sales and use tax. However, the provider of the recycling service must pay sales and use tax on their purchase of compactors or waste collection containers used for recycling.
- **Multiple Purposes.** Purchases of compactors and waste collection containers which are primarily used for mixed municipal solid waste collection and/or non-mixed-municipal solid waste collection are exempt from sales or use tax. Compactors or waste collection containers primarily used for recycling do not qualify for the sales and use tax exemption. Primarily used means the compactor or waste collection container is used 50 percent or more of the time for a specific purpose.

D. Special Situations

Situation # 1: Separate Legal Entity. If a generator receives a bill from a separate legal entity, other than the waste management service provider, for the rental or lease of a compactor or waste collection container for any use, the compactor or waste collection container charges are subject to the sales and use tax as the rental of tangible personal property. The container provider may purchase the compactors or waste collection containers exempt from sales and use tax for the purpose of resale.

Situation # 2: Sales of Compactors or Waste Collection Containers. If a waste management services provider sells a compactor or waste collection container to a waste generator for any use by the generator, and bills the generator a separately-stated charge for the compactor or waste collection container, the provider may purchase the compactor or waste collection container from their supplier exempt for the purpose of resale. While the charge to the generator is not subject to the solid waste management tax, the provider must charge sales tax on the sale of the compactor or waste collection container to the generator.

Situation # 3: Conditional Sales of Compactors or Waste Collection Containers. If a contract designated as a lease of a compactor or waste collection container exists between the waste management services provider (lessor) and waste generator (lessee), and (1) the contract binds the lessee for a fixed term, and (2) the lessee is to obtain title at the end of the term of the agreement, or (3) has the option at that time to purchase the compactor or waste collection container for a nominal amount, the contract is regarded as a sale and not as a lease. Nominal amount means 1 percent or less of the value of the full contract amount for the compactor or waste collection container at the time the contract is signed.

Consequently, the lessor may purchase the compactor or waste collection container from their supplier exempt for the purpose of resale and the charge will not be subject to the solid waste management tax, provided the lessor charges sales tax on the entire contract amount for the compactor or waste collection container at the time the contract is signed.

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