

# Memo

**To:** Honorable Mayor and City Council  
**From:** Joe Kohlmann, City Administrator  
**Date:** January 28, 2014  
**Re:** SLMPD – Sales Tax Exemption

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We have received a request from Chief Litsey requesting the City's support of joint powers organizations being granted new sales tax exemption under new MN Statute 297A.70. On January 1, 2014, local governments were given sales tax exemption status. This did not include joint powers organizations such as SLMPD.

Attached are the following:

1. Letter dated January 6, 2014 from Chief Litsey to the MN Department of Revenue requesting exemption for SLMPD.
2. Letter dated January 9, 2014 from Senator David J. Osmeck to the MN Department of Revenue supporting Chief Litsey's request.
3. Minnpost news article dated January 13, 2014 relating to the request.
4. Proposed resolution supporting the request.

**Council Action Requested:**

Adopt Resolution 14-03 supporting SLMPD's request.



**SOUTH LAKE MINNETONKA POLICE DEPARTMENT**  
*Serving Excelsior, Greenwood, Shorewood and Tonka Bay*

**BRYAN LITSEY**  
Chief of Police

24150 Smithtown Road  
Shorewood, Minnesota 55331

Office (952) 474-3261  
Fax (952) 474-4477

January 6, 2014

Commissioner Myron Frans  
Minnesota Department of Revenue  
600 North Robert Street  
St. Paul, Minnesota 55101

Dear Commissioner Frans:

This letter is in reference to the new sales tax exemption for local governments that took effect on January 1, 2014 - (Minnesota Statute 297A.70 - Exemptions for Governments and Nonprofit Groups).

It is disappointing that the Minnesota Department of Revenue (MDOR) continues to maintain that joint powers entities such as the South Lake Minnetonka Police Department (SLMPD) are ineligible for the new sales tax exemption because of their "special district" classification with the State Auditor for purposes of filing financial reports. This seemingly arbitrary decision by the MDOR is apparently based on a literal, not a practical interpretation of the wording in the statute which makes no specific reference to special districts. The statute is clearly intended to include special districts given the fact that virtually every other political subdivision in the state is referenced in the statute and is able to take advantage of this cost saving legislation. This includes cities, counties, townships, school districts, state universities, community colleges, technical colleges, state academies and publicly operated hospitals and nursing homes. It is unfortunate that the MDOR is resistant to extend this same consideration to special districts without technical changes being made to the statute.

The MDOR has also taken a confusing position as it relates to special districts operating as joint powers entities. The "special district" classification used by the State Auditor is a broad category that lumps many different types of governmental entities together. These governmental entities have varying degrees of autonomy when it comes to funding, governance, etc. The SLMPD is a joint and cooperative arrangement between the cities of Excelsior, Greenwood, Shorewood and Tonka Bay for shared police services. The legal authority for this arrangement is Minnesota Statute 471.59 - Joint Exercise of Powers.

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This allows two or more governmental units through the action of their governing bodies to jointly exercise any power common to all parties. Although the SLMPD has some autonomy in terms of operations and governance, it has no independent taxing authority and relies on the aforementioned member cities for the majority of its operating revenues. All four of these member cities include SLMPD contributions in their respective financial reports to the State Auditor's Office. According to MDOR Sales Tax Fact Sheet 176, cooperative agreements such as joint powers qualify for the sales tax exemption if "the cooperative entity's financial information was included in the financial report of the city, county or town to the State Auditor in 2012." Under this scenario the SLMPD would qualify for the new sales tax exemption. However, the fact sheet goes on to say that an entity created by a cooperative agreement does not qualify for this exemption "if the entity reported its financial information to the State Auditor as a "special district" in 2012." Under this scenario the SLMPD does not qualify for the new sales tax exemption. Since both scenarios are applicable in the case of the SLMPD, the League of Minnesota Cities (LMC) sought to clarify which scenario trumps the other and made the argument for the SLMPD to receive the new sales tax exemption. Unfortunately, the MDOR took the counter position even though the ambiguity in the fact sheet warrants a more liberal interpretation of which entities qualify for the exemption.

Another important consideration is the chilling effect the MDOR ruling has on collaborative efforts between local units of government all across the state. One of the core elements of entering into cooperative agreements is to provide savings to taxpayers with presumably better services by pooling resources and eliminating costly duplication in personnel, equipment and infrastructure. Such is the case with the SLMPD, which is an economical way to provide a full array of police services that no one city could realistically support on their own. This SLMPD model has certainly stood the test of time during its forty years of existence and is believed to be the longest enduring joint powers agreement of its kind in the state. Cooperative ventures like the SLMPD should be encouraged and rewarded by the state, not discouraged and penalized through unequal treatment and lack of regard when it comes to recognizing their legitimacy pursuant to Minnesota Statute 471.59. Not extending the new sales tax exemption to joint powers entities like the SLMPD is a prime example of this disparity and is something that can be easily and immediately corrected by the MDOR.

In my opinion, the hardline position taken by the MDOR in this matter is unreasonable, confusing and contrary to what is intended in the law. The SLMPD should not have to wait for a so-called "technical fix" in the statute, which may or may not happen, to receive the financial benefits being afforded the vast majority of governmental entities in the state. I

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Minnesota Department of Revenue  
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respectfully ask the MDOR to reconsider its position and immediately extend the new sales tax exemption to the SLMPD and other like organizations.

Thank you for your attention to this important and time sensitive matter.

Sincerely,



Bryan Litsey  
Chief of Police

Email: [blitsey@southlakepd.com](mailto:blitsey@southlakepd.com)  
Phone: (952) 960-1601

Cc: Governor Mark Dayton, State of Minnesota  
State Senator Rod Skoe, Tax Committee Chair  
State Senator David Osmek, District 33  
State Representative Cindy Pugh, District 33B  
Commissioner Mona Dohman, Minnesota Department of Public Safety  
Executive Director Dave Pecchia, Minnesota Chiefs of Police Association  
Director Gary Carlson, Intergovernmental Relations - League of Minnesota Cities  
SLMPD Governing Board Members and Member Cities  
Attorney Kenneth Potts, SLMPD General Legal Counsel  
CPA Stuart Bonniwell, SLMPD Auditor/Financial Advisor  
Chief Scott Gerber, Excelsior Fire District  
Director Ray McCoy, West Hennepin Public Safety Department  
Chief Jim Coan, Centennial Lakes Police Department

JAN 10 REC'D



**SENATOR DAVID J. OSMEK**  
Senate District 83

19 State Office Building  
100 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155  
Phone: (651) 296-1282  
E-mail: sen.david.osmek@senate.mn

**Senate**

**State of Minnesota**

January 9, 2014

Commissioner Myron Frans  
Minnesota Department of Revenue  
600 North Robert Street  
St. Paul, MN 55101

Dear Commissioner Frans:

This letter is in reference to the new sales tax exemption for local units of government specifically the concerns addressed by the South Lake Minnetonka Police Department (SLMPD) and their ineligibility for the new sales tax exemption due to their "special district" classification with the State Auditor.

SLMPD operates under a cooperative agreement for the purpose of providing comprehensive police services for these local communities with the net benefit of providing savings to taxpayers. SLMPD has no special taxing authority and relies on each member city for its operating revenue. I firmly believe the legislative intent of MN § 297A.70 was to include local units of government acting under a joint powers agreement similar to SLMPD. Therefore, I resolutely request that the Minnesota Department of Revenue reconsider its decision to deny SLMPD's sales tax exemption and consider supporting an exemption until this issue can be resolved.

As noted in your Sales Tax Fact Sheet 176, local governments acting under a joint powers agreement that report with the state auditor as a special district are ineligible to receive the sales tax exemption. I agree that certain types of special districts, specifically those that have the ability to levy taxes or impose special assessments, should be treated differently under this law. However, taking this hard line approach and denying SLMPD the new sales tax exemption, which has no special taxing or assessment authority, simply because they are classified as a special district goes against the legislative intent.

Furthermore, each of the jurisdictions included in the SLMPD are legislatively exempt under the 2013 law. The underlying basis for taxing the SLMPD joint powers agreement makes no sense because each of these jurisdictions independently benefit from the sales tax exemption.



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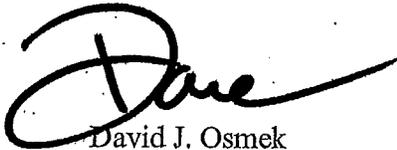
**COMMITTEES:** Environment, Economic Development and Agriculture Budget Division •  
Environment and Energy • Transportation and Public Safety

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Minnesota Department of Revenue  
January 9, 2014  
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As the Department of Revenue and legislature work to correct and clarify this issue, I strongly request that SLMPD be granted the sales tax exemption. Additionally, if a technical correction is needed, I would be happy to work with you on that corrective language to be addressed in the 2014 legislative session.

If you should have any questions, or would like to discuss this issue in more detail please contact me anytime.

Sincerely,



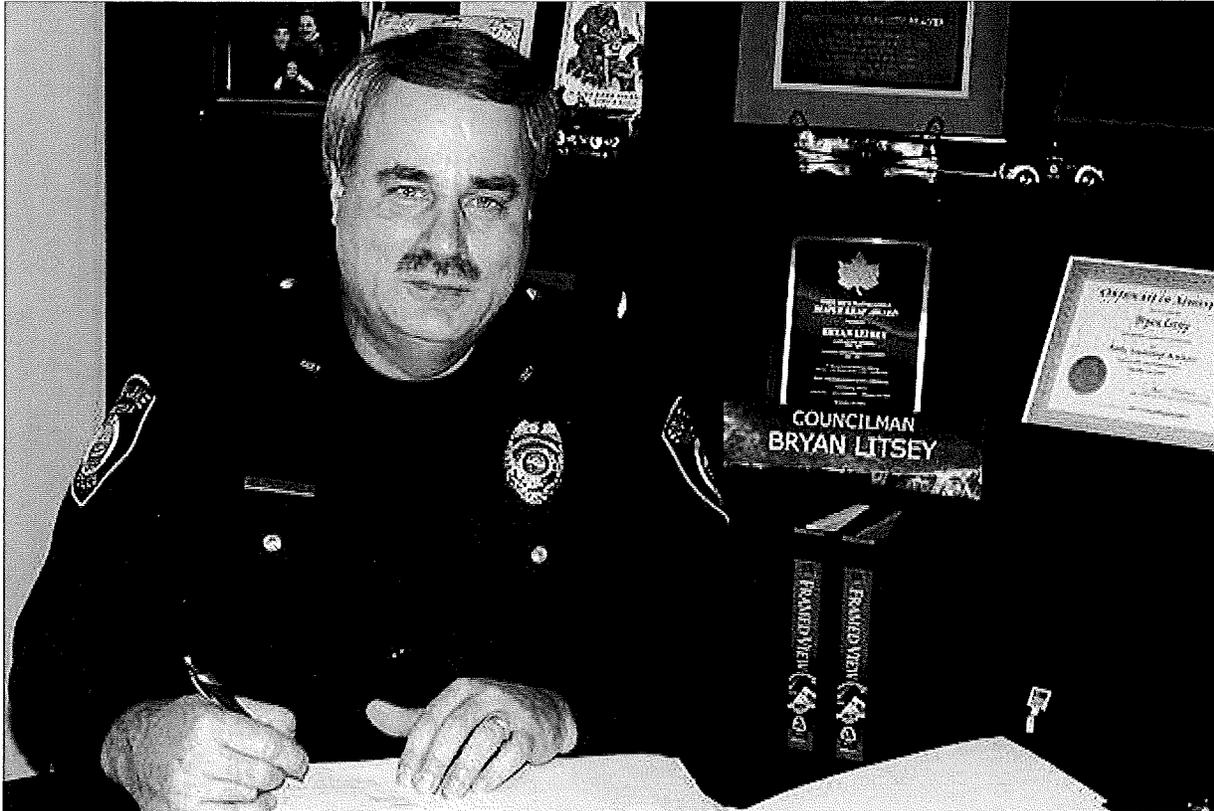
David J. Osmek  
Minnesota State Senator  
Senate District 33

Cc: Governor Mark Dayton, State of Minnesota  
State Sen. Rod Skoe, Tax Committee Chair  
Rep. Cindy Pugh, District 33B  
Bryan Litsey, South Lake Minnetonka Police Chief  
Commissioner Mona Dohman, Minnesota Dept. of Public Safety  
Executive Director Dave Pecchia, MN Chiefs of Police Assn.  
Director Gary Carlson, League of Minnesota Cities  
SLMPD Member Cities

# MINNPOST

## Minnesota cities get a sales-tax break — unless they're too efficient

By Briana Bierschbach | 09:02 am



MinnPost photo by Jana Freiband

South Lake Minnetonka Police Department Chief Bryan Litsey: "You feel like you are being penalized for doing what you are asked during the downturn of the economy."

When the 2013 legislative session came to a close, the Democrats who control Minnesota state government counted sales tax relief for local governments as one of the year's top achievements.

DFL leaders said money saved by exempting local governments from the state's sales tax on purchases could be used to lower property taxes in cities and counties across the state, which have been pinched for years by cuts or stagnant funding. The Department of Revenue estimates the sales tax exemption will save local governments more than \$130 million in the first full year. An estimate from two local government groups puts the savings a bit lower at about \$54 million a year.

But local governments operating in most “joint powers” agreements – a way of consolidating tasks and responsibilities in order to cut back on costs – have found out that they don’t qualify for the exemption under the way the bill was drafted last session.

“The Legislature has spent years telling us to be efficient at the local level and that is one way we did that,” said League of Minnesota Cities lobbyist Gary Carlson, who is working with legislators to try and fix the issue during the 2014 session. “Now we have cities scratching their heads and saying, ‘We are now being penalized because we are doing this together?’”

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## A ‘chilling effect’

The technicality has irked South Lake Minnetonka Police Department Chief Bryan Litsey, whose department has offered shared police services to the communities of Excelsior, Greenwood, Shorewood and Tonka Bay for the last 40 years.

He learned last year that because his department covers four communities instead of one and operates as a “special district,” which reports finances directly to the state auditor, they would not qualify for the sales tax break.

That could have saved them costs on everything from maintenance and operation of their police and fire stations to uniform purchases, Litsey said.

“This push has been from the state to promote cooperative ventures to pool resources and not duplicate efforts in the process,” Litsey said. “We’ve been a good example of that for 40 years, and it’s a testament to what can be accomplished by cities pooling their resources while also providing quality services at a reduced cost that no one city could provide on their own. You feel like you are being penalized for doing what you are asked during the downturn of the economy.”

Litsey said internal politics hasn’t always made it easy to operate as a joint force and local governments should be given incentives for working together and cutting costs. “This has a chilling effect on people who want to do that,” he said. “

The joint powers technicality also hits LOGIS, a government entity formed in 1972 to provide software and IT services to local governments across the state at a lower cost. LOGIS executive director Mike Garris said the sales tax exemption would have helped their members – local governments – save big on bulk purchases on anything from computers to printers.

But because LOGIS is a joint powers arrangement, cities have been scrambling to purchase their own IT systems and computers in order to get the exemption. With several million dollars worth of equipment ordered each year in bulk purchases, the sales tax could save local governments hundreds of thousands of dollars through LOGIS, Garris said.

“It’s a real mess,” Garris said. “This is not to support things like golf courses, it’s IT systems. This is something cities need.”

## **Lawmakers will consider a fix**

For his part, Revenue Commissioner Myron Frans said the sales tax exemption has been a major success across the state. It’s been more than 20 years since local governments enjoyed a break from the state’s 6.875 percent sales tax, after it was reinstated during a 1992 budget crisis.

“It’s going to save cities and counties and townships a lot of money. We were very successful in a major, major change in an inefficient tax policy,” Frans said. “Overall, from our perspective, this is a major achievement.”

Frans said lawmakers simply reverted back to the law that was in place before the 1992 change. He said that law was written to give cities and counties the exemption. It also included some joint powers arrangements if they filed their financial paperwork through a single local-government entity. Joint powers that operate in special districts and report directly to the state auditor – like the South Lake Minnetonka Police Department – were not included in the original law.

Senate Taxes Chairman Rod Skoe, DFL-Clearbrook, said he will give local governments dealing with this issue a hearing in the Legislature next year, but he won’t commit to making changes until after he sees the February budget forecast. The November budget forecast projected a \$1 billion budget surplus in 2014, with about \$825 million to spare after the school shift is repaid. The Department of Revenue estimates it will cost about \$25 million to give all joint powers agreements the sales tax break.

“We are trying to encourage cities and counties to work together in the joint powers agreement because we think there are efficiencies there, and we don’t want to penalize that,” Skoe said. “But there’s a cost to that and we have to make sure there’s resources to pay those costs. We are not going to do anything that puts our strong balanced budget at risk.”

For her part, House Taxes Chairwoman Ann Lenczewski, DFL-Bloomington, says she’s open to fixing in the change. “From my perspective, I always intended that everyone would qualify,” she said.

**RESOLUTION 14-03**  
**A RESOLUTION IN SUPPORT OF JOINT POWERS ORGANIZATIONS**  
**BEING GRANTED NEW SALES TAX EXEMPTION UNDER**  
**MINNESOTA STATUTE 297A.70**

**WHEREAS**, for more than forty years the South Lake Minnetonka Police Department (SLMPD) has been providing police services for the cities of Excelsior, Greenwood, Shorewood and Tonka Bay pursuant to a joint powers agreement authorized by Minnesota Statute 471,59; and

**WHEREAS**, this partnership arrangement is an economical way to provide a full array of police services that no one city could realistically support on their own; and

**WHEREAS**, the State of Minnesota should support such partnerships by including, not excluding joint powers organizations from the new sales tax exemption for local governments that took effect on January 1, 2014 pursuant to Minnesota Statute 297A.70; and

**WHEREAS**, by all indications Minnesota Statute 297A.70 was intended to include, not exclude joint powers organizations and other types of special districts in the state from realizing the cost saving benefits derived under this statute.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Tonka Bay hereby supports the Coordinating Committee for the SLMPD's endeavor to appeal to the Minnesota Department of Revenue to recognize joint powers organizations as being eligible for the new sales tax exemption under Minnesota Statute 297A.70. Further, the City Council also supports their endeavor to appeal to the Minnesota Legislature to amend the aforementioned statute during the 2014 regular session to specifically mention joint powers organizations and special districts under the definition of local governments.

PASSED at a regular meeting of the Tonka Bay City Council this 28th day of January, 2014.

Motion introduced by \_\_\_\_\_ and seconded by \_\_\_\_\_.

Roll Call Vote: Ayes –  
                  Nays –  
                  Absent –

\_\_\_\_\_  
Gerry De La Vega, Mayor

ATTEST:

\_\_\_\_\_  
Joseph Kohlmann, Clerk/Administrator