

# HOUSE BILL REPORT

## EHB 1037

---

---

### As Passed House:

March 18, 2003

**Title:** An act relating to exempting retail sales of food and beverages from the litter tax that are consumed indoors on the seller's premises.

**Brief Description:** Exempting retail sales of food and beverages from the litter tax that are consumed indoors on the seller's premises.

**Sponsors:** By Representatives Gombosky, Cairnes, Linville, Wood, Mielke, Sullivan and Nixon.

### Brief History:

#### Committee Activity:

Finance: 1/16/03, 1/28/03 [DP].

#### Floor Activity:

Passed House: 3/18/03, 94-1.

### Brief Summary of Engrossed Bill

- Provides a litter tax exemption for retail sales of food and beverages that are consumed indoors on the seller's premises.

---

## HOUSE COMMITTEE ON FINANCE

**Majority Report:** Do pass. Signed by 8 members: Representatives Gombosky, Chair; McIntire, Vice Chair; Cairnes, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Ahern, Conway, Morris and Roach.

**Staff:** Bob Longman (786-7139).

### Background:

A litter tax is imposed on manufacturing, wholesaling, and retailing businesses. The tax is equal to 0.015 percent of the value of products manufactured, or the gross proceeds of products sold, for the following 13 categories of products: food for human or pet consumption; groceries; cigarettes and tobacco products; soft drinks and carbonated waters; beer and malt beverages; wine; newspapers and magazines; household paper and

paper products; glass containers; metal containers; plastic or fiber containers; cleaning agents and toiletries; and sundry products of drugstores other than drugs. Revenue from the tax is used for waste reduction, litter control, and recycling programs under the Department of Ecology.

The litter tax was enacted as part of the Model Litter Control and Recycling Act of 1971. That same year, the Department of Revenue (DOR) issued an Excise Tax Advisory (ETA) that said the litter tax does not apply to sales of food and beverages by retailers for consumption indoors on the seller's premises.

The ETA only exempts sales by retailers. A wholesaler of food, beverages, and restaurant supplies challenged the ETA. The wholesaler argued that its products should be exempt from litter tax when the products are sold to a retailer for use on the retailer's premises. The DOR denied the wholesaler's request for refund of litter tax on these products. The wholesaler appealed to the Board of Tax Appeals (BTA). On June 18, 2002, the BTA ruled that the ETA was entirely invalid. The board found that there was no statutory basis for any on-premises exemption from litter tax, and held that the DOR exceeded its authority in issuing the ETA. As a result, not only are wholesalers required to pay litter tax on products for consumption on the premises of retailers, but retailers lost their litter tax exemption for on-premises consumption as well.

---

**Summary of Engrossed Bill:**

Retail sales of food and beverages that are consumed indoors on the seller's premises are exempt from litter tax.

---

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** This bill restores an exemption that was lost as the result of a Board of Tax Appeals decision that invalidated a long-standing Department of Revenue policy. The Department of Revenue has never collected this tax. This exemption is justified because meals consumed on premise do not contribute to litter problems.

**Testimony Against:** None.

**Testified:** (In support) Representative Gombosky, prime sponsor; and Kim Clauson, Washington Restaurant Association.