

SENATE BILL REPORT

EHB 1037

As Reported By Senate Committee On:
Ways & Means, March 27, 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: Representatives Gombosky, Cairnes, Linville, Wood, Mielke, Sullivan and Nixon.

Brief History:

Committee Activity: Ways & Means: 3/26/03, 3/27/03 [DP].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rossi, Chair; Hewitt, Vice Chair; Zarelli, Vice Chair; Brown, Doumit, Fairley, Fraser, Hale, Honeyford, Johnson, Parlette, Regala, Roach, Sheahan and Winsley.

Staff: Catherine Suter (786-7442)

Background: The state imposes a litter tax of 0.015 percent of the value of products manufactured, or the gross proceeds of products sold, for certain products. The tax is on manufacturing, wholesaling, and retailing businesses of 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) stating that the litter tax does not apply to sales of food and beverages by retailers for consumption indoors on the seller's premises.

A wholesaler of food, beverages, and restaurant supplies challenged the ETA, arguing that its products should be exempt from litter tax when the products are sold to a retailer for use on the retailer's premises. DOR denied the wholesaler's request for refund of the litter tax on these products. The wholesaler appealed to the Board of Tax Appeals and on June 18, 2002, the board 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 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 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 clarifies existing state policy in a simple manner. Restaurants have up until now been excused from paying this tax, and, where necessary, are accustomed to keeping track of sales for consumption on-premises and those off-premises.

Testimony Against: None.

Testified: Representative Gombosky, prime sponsor (pro); Kim Clauson, Washington Restaurant Association (pro).