

FINAL BILL REPORT

EHB 1037

C 120 L 03

Synopsis as Enacted

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.

House Committee on Finance
Senate Committee on Ways & Means

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 on-premises 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 BTA 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:

Retail sales of food and beverages that are consumed indoors on the seller's premises are exempt from litter tax. Sales by wholesalers are not exempt.

Votes on Final Passage:

House 94 1

Senate 46 1

Effective: May 7, 2003