

NO. 81022-2

SUPREME COURT OF THE STATE OF WASHINGTON

DOT FOODS, INC.,

Petitioner,

v.

DEPARTMENT OF REVENUE, STATE OF WASHINGTON,

Respondent.

**RESPONDENT DEPARTMENT OF REVENUE'S
SUPPLEMENTAL BRIEF**

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I. INTRODUCTION

RCW 82.04.423, the direct seller's exemption, provides a business and occupation (B&O) tax exemption to certain out-of-state sellers of consumer products.¹ The exemption is available only to those out-of-state businesses that make sales of consumer products in this state exclusively to or through a "direct seller's representative," a term the statute defines.² In crafting the exemption, the Legislature borrowed freely from federal legislation applying to sales representatives of businesses that do not market consumer products in permanent retail establishments, but rather door-to-door or at other non-permanent locations such as booths at fairs.

The Court of Appeals correctly concluded that petitioner Dot Foods, Inc., failed to qualify for the direct seller's exemption for two independent reasons. First, Dot sold both non-consumer and consumer products in Washington, contrary to the requirement that the out-of-state

¹ This chapter shall not apply to any person in respect to gross income derived from the business of making sales at wholesale or retail if such person:

- (a) Does not own or lease real property within this state; and
 - (b) Does not regularly maintain a stock of tangible personal property in this state for sale in the ordinary course of business; and
 - (c) Is not a corporation incorporated under the laws of this state;
- and
- (d) Makes sales in this state exclusively to or through a direct seller's representative.

RCW 82.04.423(1). A copy of RCW 82.04.423 is appended at A-1.

² For purposes of this section, the term "direct seller's representative" means a person who buys consumer products on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment, or who sells, or solicits the sale of, consumer products in the home or otherwise than in a permanent retail establishment[.]

RCW 82.04.423(2). Subsections (2)(a) and (b) set forth additional requirements, but those requirements no longer are at issue in this appeal.

business exclusively sell consumer products in this state. Second, many of Dot's products eventually were resold in permanent retail establishments, contrary to the statute's "in the home or otherwise than in a permanent retail establishment" requirement. This Court should affirm the Court of Appeals for each of these reasons.

In its petition for review, Dot complains that in 1999 respondent Department of Revenue revised its longstanding interpretation of RCW 82.04.423, allegedly "without any changed circumstances or other facts justifying such a 180 degree change of heart." Pet. for Review at 17. The Department readily admits that before 2000 it erroneously allowed some taxpayers, including Dot, to take the direct seller's exemption. But the law does not render an agency powerless to change an erroneous interpretation of a statute. And when all is said and done, it is the statute that matters. Here, the Court of Appeals properly read RCW 82.04.423 as a whole to correctly conclude that Dot does not qualify for the exemption.

Finally, the decision of the Court of Appeals is in accord with legislative history indicating that the Legislature intended through RCW 82.04.423 to provide a B&O tax exemption with a limited fiscal impact to a discrete subgroup of out-of-state businesses, rather than broadly exempting sellers, like Dot, using traditional methods that result in their products ultimately being sold in permanent retail establishments.

II. STATEMENT OF FACTS³

Dot, “the nation’s leading food redistributor,” sells food and other products. CP at 87 (¶ 2), 118. During the tax periods at issue, most of the products Dot sold were consumer products.⁴ Dot also sold non-consumer, commercial products such as cash register rolls, pretzel display cabinets, urinal screens and blocks, straw dispensers, and chef hats. CP at 87 (¶ 2), 149, 161, 164-66.⁵ Many of Dot’s products eventually were resold in permanent retail establishments such as convenience and grocery stores. CP at 88 (¶ 6), 146-49, 151, 161.⁶

In July 1997, an attorney for Dot wrote the Department to request an advisory ruling that Dot’s sales into Washington would qualify for the direct seller’s exemption. CP at 104, 107-12. The attorney represented that “[t]he products for which the taxpayer’s direct seller’s representative will solicit orders are ‘consumer products.’” CP at 108.

In October 1997, the Department issued a letter ruling stating Dot would qualify for the exemption. CP at 93-94. The ruling explained that it was based on the facts represented by Dot and listed several events that

³ More detailed statements of facts are contained in the Brief of Respondent at 4-11 and in Respondent’s Answer to Petition for Discretionary Review at 2-5.

⁴ Examples of consumer products sold by Dot are Tang, Pop Tarts, Jell-O, and Pampers. CP at 147-48. See also WAC 458-20-246(4)(b)(ii) (defining “consumer product” as including “cosmetics, cleaners and soaps, nutritional supplements and vitamins, food products, clothing, and household goods, purchased for use or consumption. The term does not include commercial equipment, industrial use products, and the like, including component parts.”).

⁵ Dot does not dispute that it sold non-consumer products, but argues that the “vast majority” of its sales were consumer products. Br. of Appellant at 5, 29.

⁶ Dot does not dispute that its products eventually were resold in permanent retail establishments, but argues that neither it nor its representative sold Dot’s products in permanent retail establishments. Br. of Appellant at 5-6, 16.

would render the ruling no longer binding, including “the facts change; . . . the applicable rule(s) change; the [Department] publicly announces a change in the policy upon which this ruling is based; or [Dot] is notified in writing that this ruling is not valid.” CP at 94. Upon receiving the favorable ruling, Dot appointed Dot Transportation, Inc. (DTI), a wholly-owned Delaware subsidiary, as its sales representative. CP at 87, 95.

In late 1999, the Department revised WAC 458-20-246, the administrative rule interpreting RCW 82.04.423.⁷ The Department initiated rulemaking to correct errors it had made in applying the direct seller’s exemption in published determinations and taxpayer instructions. CP at 321. Revised Rule 246 provides a detailed explanation of the Department’s interpretation of the statutory exemption.⁸

Revised Rule 246 went into effect on December 31, 1999. CP at 85. On February 1, 2000, the Department issued a Special Notice for Direct Sellers informing taxpayers it had updated Rule 246. CP at 89 (¶ 12). The notice explained that the Department had revised the rule to provide guidance to taxpayers. CP at 96. The notice also told taxpayers that “[a]s of January 1, 2000, any reporting instructions directed specifically to individual taxpayers that are inconsistent with the revised rule have no effect.” Id.

⁷ Copies of former and revised Rule 246 are appended at A-2 through A-3 (former rule) and A-4 through A-10 (revised rule).

⁸ In contrast, the initial version of Rule 246 for the most part merely parroted the language of RCW 82.04.423, without any interpretation of the statutory language.

The Department mailed the Special Notice to Dot and Dot received it. CP at 89 (¶ 12).⁹ The taxes Dot seeks to have refunded in this appeal involve periods after December 31, 1999. CP at 27-28, 90 (¶ 17), 98.

III. ISSUES ON REVIEW

1. May Dot qualify for the direct seller's exemption even though it sold non-consumer products in Washington?
2. May Dot qualify for the direct seller's exemption even though its products ultimately were sold in permanent retail establishments?

IV. ARGUMENT

A. **To Qualify For The Direct Seller's Exemption, An Out-Of-State Business Must Exclusively Sell Consumer Products In Washington.**

The goal of statutory construction is to "carry out the Legislature's intent." Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9, 43 P.3d 4 (2002). To determine legislative intent, a court "must look at the whole statute, rather than the single phrase at issue." In re Sehome Park Care Ctr., Inc., 127 Wn.2d 774, 778, 903 P.2d 443 (1995).

In the Department's view, RCW 82.04.423 plainly requires that an out-of-state business exclusively sell consumer products in Washington to qualify for the exemption. Because Dot sold non-consumer products in this state, it is ineligible for the exemption. Dot contends that it qualifies for the exemption merely because DTI, its representative, solicited the sale of some consumer products. Br. of Appellant at 29; Pet. for Review at 7-8.

⁹ Given its February 1, 2000 issuance date, Dot received the notice several weeks before it had to file its first tax return in 2000. See RCW 82.32.045(1) (1999).

But Dot's interpretation does not read the statute as a whole or give effect to the statutory language, and it produces absurd results.

1. The Department's interpretation reads RCW 82.04.423 as a whole and gives effect to all the statute's words.

The direct seller's exemption is available only to businesses that make "sales in this state exclusively to or through a direct seller's representative." RCW 82.04.423(1)(d) (emphasis added). In turn, a "direct seller's representative" is "a person who buys consumer products . . . for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment, or who sells, or solicits the sale of, consumer products in the home or otherwise than in a permanent retail establishment." RCW 82.04.423(2) (emphasis added). Inserting the language of subsection (2) into subsection (1)(d), the direct seller is required to make

sales in this state exclusively to or through a [person who buys consumer products . . . for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment, or who sells, or solicits the sale of, consumer products in the home or otherwise than in a permanent retail establishment.]

(Emphasis added).

Read as a whole, it seems plain that RCW 82.04.423(1)(d) and (2) together specifically limit a "direct seller's representative" to persons who buy consumer products for resale, or who sell or solicit the sale of consumer products. See Dot Foods, 141 Wn. App. at 881-82. Thus, a person who buys non-consumer products for resale, or who sells or solicits the sale of non-consumer products, is not a "direct seller's representative."

At least since 2000, Dot's representative has solicited sales of non-consumer products in Washington for Dot. CP at 87-88 (¶¶ 2, 4, 10). When it did so, DTI was not soliciting the sale of consumer products and, therefore, was not a "direct seller's representative." Therefore, Dot cannot qualify for the exemption in RCW 82.04.423 because it did not make "sales in this state exclusively to or through a direct seller's representative." RCW 82.04.423(1)(d) (emphasis added).

Dot has argued that subsection (1) does not refer to consumer products at all and subsection (2) contains no exclusivity requirement. Br. of Appellant at 27; Pet. for Review at 8. Rather than reading RCW 82.04.423 as a whole, Dot focuses on bits and pieces of RCW 82.04.423 and analyzes those bits and pieces as if they were entirely unrelated. The result is an unreasonable interpretation that gives no meaning to the word "exclusively," contrary to the principle that statutes should be "construed, wherever possible, so that no clause, sentence or word shall be superfluous, void, or insignificant." United Parcel Service, Inc. v. Dep't of Revenue, 102 Wn.2d 355, 361-62, 687 P.2d 186 (1984).

Two hypothetical examples reveal that Dot's proposed interpretation of RCW 82.04.423 is seriously flawed.

- Example 1: Assume Company A uses Sales Representative X to sell in Washington \$100,000,000 of non-consumer products and \$100 of consumer products and that the statute's other requirements are satisfied. Applying Dot's interpretation of RCW 82.04.423, Company A would qualify for the direct seller's exemption and all its sales would be exempt

from B&O taxes. This is because Company A makes sales in this state exclusively through Sales Representative X and Sales Representative X solicits the sale of at least one consumer product.¹⁰ But allowing Company A to take the exemption would be absurd, since its principle business is selling non-consumer products and its sales of consumer products are nominal.¹¹ “An interpretation that produces ‘absurd consequences’ must be rejected, since such results would belie legislative intent.” Troxell v. Rainier Pub. Sch. Dist. No. 307, 154 Wn.2d 345, 350, 111 P.3d 1173 (2005). RCW 82.04.423 should not be construed to exempt all of an out-of-state business’s sales in Washington from the B&O tax merely because it sells a consumer product or two through its representative.

- Example 2: Assume the same facts as Example 1. Further assume that Company B sells both consumer products and non-consumer products in Washington. Company B sells \$100,000,000 of consumer products through Sales Representative Y and \$100 of non-consumer products through Sales Representative Z. Sales Representative Y solely solicits sales of Company B’s consumer products and Sales Representative Z solely solicits sales of Company B’s non-consumer products.

¹⁰ According to Dot, “all the statute requires” is that “Dot Foods sells its food products exclusively through DTI in the state of Washington, and DTI solicits the sale of consumer products for Dot Foods.” Br. of Appellant at 29. Applying the Department’s interpretation, Company A would not qualify for the exemption because it sells non-consumer products in Washington.

¹¹ Just .0001 percent of its total sales (\$100/\$100,000,100).

Company A, as explained in Example 1, would qualify for the direct seller's exemption under Dot's proposed interpretation and would not pay B&O taxes for any of its Washington sales even though just .0001 percent of its sales are of consumer products. But Company B would not qualify for the exemption even though 99.9999 percent of its sales are of consumer products. Because Sales Representative Z does not solicit the sale of consumer products for Company B, it is not a "direct seller's representative." Thus, Company B would not be making sales in this state exclusively through a "direct seller's representative" and would not qualify for the exemption.¹²

Consequently, under Dot's interpretation, a business selling non-consumer products for the most part (Company A) would qualify for the exemption, while a business selling consumer products for the most part (Company B) would not. That result cannot be squared with subsection (1)(d)'s "exclusively to or through a direct seller's representative" requirement and subsection (2)'s repeated references to consumer products.

The Department's interpretation of RCW 82.04.423, in contrast, gives effect to both the word "exclusively" and the statute's consumer product requirement. If an out-of-state business exclusively sells consumer products in Washington to or through direct seller's representatives, it

¹² According to Dot, RCW 82.04.423(1)(d) is satisfied so long as all of a direct seller's "sales are *exclusively through* a direct seller's representative." Br. of Appellant at 28 (emphasis in original). The Department agrees that Company B would not qualify for the exemption because it does not exclusively sell consumer products in Washington.

qualifies for the exemption. If the business does not exclusively sell consumer products to or through such representatives, it does not.

2. RCW 82.04.423 cannot reasonably be read to provide a partial exemption or to include a de minimis exception allowing the sale of some non-consumer products.

Perhaps because Dot's proposed interpretation produces absurd and unreasonable results, Dot suggests that RCW 82.04.423 should be construed either to provide a partial B&O tax exemption limited to the out-of-state business's sales of consumer products or to allow a de minimis exception permitting some sales of non-consumer products. Br. of Appellant at 28-29; Pet. for Review at 9-10. Dot's suggestion finds no support in the words of RCW 82.04.423.¹³

The statute does not allow a partial exemption for some of an out-of-state business's selling income in Washington. The requirements set out in RCW 82.04.423¹⁴ indicate an intent to exempt a distinct subgroup of out-of-state businesses with limited contacts in this state. Amicus

¹³ Indeed, Dot has made no effort to explain how RCW 82.04.423 supports the suggestion, but instead has relied on AgriLink Foods, Inc. v. Dep't of Revenue, 153 Wn.2d 392, 103 P.3d 1226 (2005), and Lone Star Indus., Inc. v. Dep't of Revenue, 97 Wn.2d 630, 647 P.2d 1013 (1982). Br. of Appellant at 28-29; Pet. for Review at 10. Dot's reliance on the two cases is misplaced. First, neither decision involved the direct seller's exemption. In AgriLink, the Court interpreted RCW 82.04.260(4), a statute providing a preferential B&O tax rate for persons processing perishable meat products and/or selling the same at wholesale. 153 Wn.2d at 394. In Lone Star, the Court addressed whether purchases of iron grinding balls and firebrick, used in the manufacture of cement, are subject to retail sales and use taxes. 97 Wn.2d at 631. Second, neither decision supports any argument that the Legislature did not mean "exclusively" when it used that word in RCW 82.04.423(1)(d).

¹⁴ No real property in Washington, no stock of tangible personal property in Washington, not incorporated under Washington law, and making sales in Washington exclusively to or through a direct seller's representative. RCW 82.04.423(1)(a)-(d).

below described the exemption as providing “nexus relief.” Mem. of Amicus Curiae at 4. The requirements plainly are intended as a bright-line threshold. Cf. RCW 82.04.424 (exempting certain sellers with limited connections to Washington from B&O tax). That is, if a business satisfies each and every statutory condition, none of its gross income is subject to B&O tax. If it fails to satisfy any of the conditions, the exemption is lost entirely.

Regarding Dot’s de minimis argument, nothing in RCW 82.04.423 remotely suggests that the Legislature intended to allow the exemption if only a de minimis amount of non-consumer products is sold. Rather, RCW 82.04.423(1)(d) and (2) require that out-of-state businesses make “sales in this state exclusively to or through a . . . person who buys consumer products . . . for resale, . . . or who sells, or solicits the sale of, consumer products . . .” (Emphasis added). It does not require out-of-state businesses to make sales exclusively through a person who for the most part buys consumer products for resale or who mostly sells consumer products.

Dot’s de minimis argument should be rejected for practical reasons as well. Grafting such an exception into RCW 82.04.423 would introduce considerable uncertainty into its application. For example, should de minimis sales be determined by value or number? Does a de minimis exception also apply to other requirements, such as the one in subsection (1)(a) that the out-of-state business “not own or lease property within this state”? This Court should not rewrite RCW 82.04.423 by adding a de minimis exception to the statute.

In sum, the requirement in subsection (1)(d) that the out-of-state business make “sales in this state exclusively to or through a direct seller’s representative” and the multiple uses of the term “consumer products” in subsection (2)’s definition of “direct seller’s representative” are rendered meaningless if selling any amount of non-consumer products through a representative is permitted. The Court of Appeals correctly concluded that Dot failed to qualify for the direct seller’s exemption in RCW 82.04.423 because it sold non-consumer products in Washington through DTI. Dot Foods, 141 Wn. App. at 882. The Court of Appeals should be affirmed.

B. To Qualify For The Direct Seller’s Exemption, The Consumer Products Sold By An Out-Of-State Business Must Not Ever Be Sold In A Permanent Retail Establishment.

That Dot sold non-consumer products in Washington through DTI is a sufficient basis to affirm the Court of Appeals. An additional reason is that many of Dot’s products ultimately were sold in permanent retail establishments. Notwithstanding RCW 82.04.423(2)’s repeated use of the phrase “in the home or otherwise than in a permanent retail establishment,”¹⁵ Dot argues that it qualifies for the direct seller’s exemption because DTI itself did not solicit the sale of Dot’s products in permanent retail establishments. Br. of Appellant at 15-16. But the Court of Appeals correctly concluded that “RCW 82.04.423, construed as a whole, limits the

¹⁵ Recall that a “direct seller’s representative” is “a person who buys consumer products on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment, or who sells, or solicits the sale of, consumer products in the home or otherwise than in a permanent retail establishment.” RCW 82.04.423(2) (emphasis added).

direct seller's exemption to those whose products are never sold in a permanent retail establishment." Dot Foods, 141 Wn. App. at 882, 888.¹⁶

Before this appeal, RCW 82.04.423 had been the subject of one reported appellate decision, Stroh Brewery Co. v. Dep't of Revenue, 104 Wn. App. 235, 15 P.3d 692, review denied, 144 Wn.2d 1002 (2001). Stroh produced beer and other alcoholic beverages that it sold at wholesale to Washington distributors for resale to restaurants, grocery stores, and other retail outlets. Although its products eventually were resold in permanent retail establishments, Stroh contended its distributors qualified as direct seller's representatives because they did not sell Stroh's products in their own permanent retail establishments. Id. at 238. The Court of Appeals disagreed: "Fairly and consistently interpreted, the exemption does not apply if either the direct seller's representative or anyone else sells the direct seller's products in a permanent retail establishment." Id. at 242.

When RCW 82.04.423 is construed as a whole and effect is given to all the language used, it seems plain the Legislature intended to limit the exemption to businesses selling consumer products that are never sold in permanent retail establishments. RCW 82.04.423(1) exempts from B&O tax

¹⁶ The Court of Appeals found Dot's interpretation of the "in the home or otherwise than in a permanent retail establishment" requirement "does not construe the statute as a whole. It does not address the 'wholesale or retail' distinction in RCW 82.04.423(1), nor does it offer an explanation for the statute's differentiation between sales 'to or through' a direct seller's representative." Id. at 886. In contrast, the Department's interpretation "is reasonable; it construes the statute as a whole, giving meaning to every word, and it complies with the legislature's intent to apply the B & O tax as broadly as possible." Id. at 887-88.

“gross income derived from the business of making sales at wholesale or retail . . .” (Emphasis added). This same structure is paralleled in subsection (1)(d). Making sales “to . . . a direct seller’s representative” refers to the direct seller making sales at wholesale to a person who resells in the home or otherwise than in a permanent retail establishment. Making sales “through a direct seller’s representative” refers to the direct seller making sales at retail through a person who sells or solicits sales in the home or otherwise than in a permanent retail establishment.¹⁷

In addition, in subsection (2)’s wholesaling part,¹⁸ the phrase “for resale” is coupled with “by the buyer or any other person” to ensure that the exemption for wholesalers is limited to those wholesalers of consumer products that are never sold at retail in permanent retail establishments. But in subsection (2)’s retailing part,¹⁹ the “by the buyer or any other person” language is unnecessary to ensure that the consumer products are never sold at retail in a permanent retail establishment. Since a retail sale is the final sale, the requirement that the direct seller’s representative either sells or solicits sales “in the home or otherwise than in a permanent retail establishment” necessarily limits the exemption to those retailers of consumer products that are never sold in permanent retail establishments.

¹⁷ A person “sells” consumer products on behalf of a retailing direct seller by delivering the consumer products. A person “solicits sales of” consumer products on behalf of a retailing direct seller by taking orders for later delivery.

¹⁸ I.e., the part defining a “direct seller’s representative” as “a person who buys consumer products . . . for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment.”

¹⁹ I.e., the part defining a “direct seller’s representative” as “a person . . . who sells, or solicits the sale of, consumer products in the home or otherwise than in a permanent retail establishment.”

Here, although Dot does not sell consumer products to DTI for resale, Dot is a wholesaler. CP at 87-88 (¶¶ 2, 6). Therefore, it must qualify for the exemption under the wholesaling part of RCW 82.04.423(2). And that it cannot do because many of its products eventually were resold in permanent retail establishments. CP at 88 (¶ 6), 146-49, 151, 161.²⁰

Furthermore, to apply the retailing part of RCW 82.04.423(2) to permit Dot to take the direct seller's exemption--even though its products were sold in permanent retail establishments--would render meaningless the "or any other person" language in the first part of subsection (2) and eviscerate the twice-stated limitation that qualifying sales be "in the home or otherwise than in a permanent retail establishment." Statutes, however, should be interpreted "so that all the language used is given effect, with no portion rendered meaningless or superfluous." Prison Legal News, Inc. v. Dep't of Corr., 154 Wn.2d 628, 645, 115 P.3d 316 (2005).

Dot's proposed interpretation also is illogical. It is implausible that the Legislature, in the first part of RCW 82.04.423(2), would expressly exclude from the exemption wholesalers whose products eventually are resold in permanent retail establishments, but then in the very same sentence

²⁰ Dot has inaccurately claimed that the Department and the Court of Appeals have improperly read RCW 82.04.423(2) to add the "any other person" language of the first part to the definition of a "direct seller's representative" into the second part of subsection (2). Br. of Appellant at 20; Pet. for Review at 16. To the contrary, correctly read, subsection (2) contains a first part applying to wholesaling direct sellers and a second part applying to retailing direct sellers. As explained above, since a retail sale is the final sale, the "by the buyer or any other person" language is unnecessary in the retailing part of subsection (2) to ensure that the direct seller's consumer products are sold "otherwise than in a permanent retail establishment."

nullify that restriction by including within the exemption wholesalers whose products are sold in permanent retail establishments.²¹

In sum, the Department's interpretation, unlike Dot's, gives meaning to all the language in RCW 82.04.423, and especially the requirement that the consumer products be sold "in the home or otherwise than in a permanent retail establishment." It is undisputed some of Dot's products were sold in permanent retail establishments. CP at 88 (¶ 6). That alone forecloses Dot's claim to the direct seller's exemption. This Court should reject Dot's flawed interpretation and affirm the Court of Appeals.

C. The Legislature Enacted RCW 82.04.423 Intending It To Have A Limited Fiscal Impact.

This Court should affirm because the Department offers the only reasonable interpretation of RCW 82.04.423.²² But if the Court finds RCW 82.04.423 ambiguous, the legislative history shows that the Legislature did not intend the direct seller's exemption to apply expansively.

In 1983, HB 566 and SB 3482 were proposed to "impose the wholesaling and retailing B&O taxes only upon persons who either own or lease real property within Washington or who regularly maintain a stock of tangible personal property in Washington for sale in the regular course

²¹ See Oregon Dep't of Revenue v. ACF Indus., Inc., 510 U.S. 332, 343, 114 S. Ct. 843, 127 L. Ed. 2d 165 (1994) ("It would be illogical to conclude that Congress, having allowed the States to grant property tax exemptions in subsections (b)(1)-(3) [of former 49 U.S.C. § 11503], would turn around and nullify its own choice in subsection (b)(4).").

²² That Dot has offered different interpretations does not mean that RCW 82.04.423 is ambiguous. AgriLink Foods, Inc. v. Dep't of Revenue, 153 Wn.2d 392, 396, 103 P.3d 1226 (2005) ("a statute is not ambiguous merely because different interpretations are conceivable."). Dot's proposed interpretations ultimately are unreasonable because, among other reasons, they fail to read the statute as a whole.

of business.”²³ See Resp’t’s Answer to Mem. of Amici (Amici Answer), at A-7. For the 1983-85 biennium, the estimated fiscal impact of these companion bills was \$34 million. Amici Answer, at A-6.

Neither HB 566 nor SB 3482 passed the Legislature. In their stead, the language that is now codified at RCW 82.04.423 was added to SSB 3244. Amici Answer, at B-1. The Enrolled Bill Analysis prepared by the Office of Financial Management indicates that an important purpose of the substitute language used in SSB 3244 was its significantly reduced fiscal impact:

Section 5 is a modified version of a bill section originally contained in HB 566. The apparent intent of this section is to exempt from B&O taxes the monies earned by firms such as Avon, Amway, etc. The section was added as a House floor amendment and was later concurred in by the Senate. Initial review of the provisions of this section by the Department of Revenue indicates that implementation may result in a \$1.2 million loss to state revenue from B&O tax. . . .

Amici Answer, at B-6.

To define the term “direct seller’s representative” in SSB 3244, the Legislature borrowed heavily from a 1982 federal statute designating certain persons performing services as direct sellers as non-employees for purposes of federal employment taxes.²⁴ “Direct selling” and “direct sales” refer to a method of selling that does not use permanent retail establishments to market the products being sold:

²³ These are the requirements subsequently set out in RCW 82.04.423(1)(a) and (b).

²⁴ Compare RCW 82.04.423(2) with 26 U.S.C. § 3508(b)(2). A copy of 26 U.S.C. § 3508 (1982), is appended at A-11 through A-12.

Direct selling companies market their products through person to person contact away from a fixed retail location through a network of independent sellers. Frequently these sales presentations are in the home, in the form of a sales “party,” or through door to door solicitations, presentations, or sometimes, as part of a get-together – one person to one person. In any case, these approaches all are considered direct sales. . . .

CP at 198-99. Well-known companies marketing consumer products through direct selling activities include Mary Kay, Avon, Pampered Chef, Longaberger, and Creative Memories. CP at 201-02.

That the Legislature modeled the definition of a “direct seller’s representative” on a federal statute applying to persons that sell consumer products in places other than permanent retail establishments is illuminating. It is persuasive evidence the Legislature did not intend RCW 82.04.423 to apply to out-of-state businesses, like Dot, that use traditional selling methods that result in the eventual sale of their products in permanent retail establishments. As stated by Judge Richard Hicks, “this little exemption . . . wasn’t intended to exempt manufacturers like Stroh’s or even redistributors like Dot Foods whose products end up down the line in permanent retail establishments.” RP at 11.

Finally, if the Court remains uncertain about the intended meaning of RCW 82.04.423, despite the legislative history discussed above, it should keep in mind the well-established principle that the taxpayer bears the burden to establish eligibility for a tax exemption and in interpreting the scope of a tax exemption, courts “resolve ambiguities in favor of taxation and against exemption.” In re Sehome Park, 127 Wn.2d at 778.

V. CONCLUSION

For the reasons stated herein and in the Department's previous briefs, this Court should affirm the judgment of the Court of Appeals.

RESPECTFULLY SUBMITTED this 5th day of September, 2008.

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APPENDIX

RCW 82.04.423 Exemptions — Sales by certain out-of-state persons to or through direct seller's representatives.

(1) This chapter shall not apply to any person in respect to gross income derived from the business of making sales at wholesale or retail if such person:

(a) Does not own or lease real property within this state; and

(b) Does not regularly maintain a stock of tangible personal property in this state for sale in the ordinary course of business; and

(c) Is not a corporation incorporated under the laws of this state; and

(d) Makes sales in this state exclusively to or through a direct seller's representative.

(2) For purposes of this section, the term "direct seller's representative" means a person who buys consumer products on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment, or who sells, or solicits the sale of, consumer products in the home or otherwise than in a permanent retail establishment; and

(a) Substantially all of the remuneration paid to such person, whether or not paid in cash, for the performance of services described in this subsection is directly related to sales or other output, including the performance of services, rather than the number of hours worked; and

(b) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such purposes for federal tax purposes.

(3) Nothing in this section shall be construed to imply that a person exempt from tax under this section was engaged in a business activity taxable under this chapter prior to the enactment of this section.

[1983 1st ex.s. c 66 § 5.]

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WAC 458-20-246 Sales to or through a direct seller's representative. Under RCW 82.04.423, the business and occupation tax does not apply to any out-of-state person in respect to the gross income derived from the business of making sales in this state of "consumer products" at wholesale or retail to or through a "direct seller's representative," subject to certain requirements explained more fully below. The effective date of this exemption is August 23, 1983. For an outline of the tax liability of persons making sales of goods which originate in other states to customers in Washington, other than sales to or through a "direct seller's representative," see WAC 458-20-193B.

DEFINITIONS

For purposes of the exemption explained herein, the following definitions shall apply:

The term "consumer product" means any article of tangible personal property, or component part thereof, of the type sold for personal use or enjoyment. The term includes only those kinds of items of tangible personal property which are customarily sold at stores, shops, and retail outlets open to the public in general. It includes such things as home furnishings, clothing, personal effects, household goods, food products, and similar items purchased for personal use or consumption. The term does not include commercial equipment, manufacturing items, industrial use products, and the like, including component parts thereof. However, if a product is primarily used for personal use or enjoyment, it remains a "consumer product" within this definition notwithstanding that a portion of the product's distribution is for commercial, industrial, or manufacturing purposes.

A "direct seller's representative" is a person who (a) buys "consumer products" on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or other than in a permanent retail establishment or (b) sells or solicits the sale of "consumer products" in the home or other than in a permanent retail establishment. In order to be considered a "direct seller's representative" a person must also show that:

1. Substantially all of the remuneration paid, whether or not paid in cash, for the performance of services is directly related to sales or other output, including the performance of services, rather than the number of hours worked; and
2. The services performed are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for federal tax purposes.

BUSINESS AND OCCUPATION TAX

WHOLESALE AND RETAILING. The business and occupation tax does not apply to an out-of-state seller making wholesale or retail sales to or through a "direct seller's representative." The out-of-state seller must show that it is represented in this state by a "direct seller's representative," as defined above. In addition, the out-of-state seller must also show that it:

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1. Does not own or lease real property within this state;
2. Does not regularly maintain a stock of tangible personal property in this state for sale in the ordinary course of business;
3. Is not a corporation incorporated under the laws of this state; and
4. Makes sales in this state exclusively to or through a "direct seller's representative."

Thus, a representative who solicits sales of "consumer products" in this state, other than in a permanent retail establishment, and also meets the other requirements of the law as set forth above, qualifies as a "direct seller's representative." If the out-of-state seller and the in-state representative can factually establish compliance with all of the above listed requirements, the out-of-state seller is exempt from business and occupation tax.

The exemption is available only where an out-of-state seller is present in this state and represented exclusively by a "direct seller's representative." If an out-of-state seller makes wholesale or retail sales of "consumer products" in Washington to or through a "direct seller's representative" and also has a branch office, local outlet, or other local place of business, or is represented by any other employee, agent, or other representative, no portion of the sales are exempt from business and occupation tax.

The business and occupation tax likewise applies to the gross income of a "direct seller's representative" who buys "consumer products" for resale and does in fact resell the products. The measure of the business and occupation tax is the gross proceeds of sales.

SERVICE. The law provides no similar business and occupation tax exemption with regard to the compensation paid to the "direct seller's representative." Thus, the representative will remain subject to the business and occupation tax on all commissions or other compensation earned.

SALES AND USE TAX

An out-of-state vendor is required to pay or collect and remit the tax imposed by chapter 82.08 or 82.12 RCW if the vendor regularly solicits or makes retail sales of "consumer products" in this state through a "direct seller's representative," as defined above, even though such sales are exempt from business and occupation tax pursuant to RCW 82.04.423.

Every person who engages in this state in the business of acting as a "direct seller's representative" for unregistered principals, and who receives compensation by reason of sales of "consumer products" of such principals for use in this state, is required to collect the use tax from purchasers, and remit the same to the department of revenue, in the manner and to the extent set forth in WAC 458-20-221. [Statutory Authority: RCW 82.32-300, 84-24-028 (Order 84-3), § 458-20-246, filed 11/30/84.]

RCW 82.04.423 Exemptions — Sales by certain out-of-state persons to or through direct seller's representatives.

(1) This chapter shall not apply to any person in respect to gross income derived from the business of making sales at wholesale or retail if such person:

(a) Does not own or lease real property within this state; and

(b) Does not regularly maintain a stock of tangible personal property in this state for sale in the ordinary course of business; and

(c) Is not a corporation incorporated under the laws of this state; and

(d) Makes sales in this state exclusively to or through a direct seller's representative.

(2) For purposes of this section, the term "direct seller's representative" means a person who buys consumer products on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment, or who sells, or solicits the sale of, consumer products in the home or otherwise than in a permanent retail establishment; and

(a) Substantially all of the remuneration paid to such person, whether or not paid in cash, for the performance of services described in this subsection is directly related to sales or other output, including the performance of services, rather than the number of hours worked; and

(b) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such purposes for federal tax purposes.

(3) Nothing in this section shall be construed to imply that a person exempt from tax under this section was engaged in a business activity taxable under this chapter prior to the enactment of this section.

[1983 1st ex.s. c 66 § 5.]

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WAC 458-20-246 Sales to or through a direct seller's representative.

(1) **Introduction.** RCW 82.04.423 provides an exemption from the business and occupation (B&O) tax on wholesale and retail sales by a person who does not own or lease real property in the state, is not incorporated in the state, does not maintain inventory in this state, and makes sales in this state exclusively to or through a "direct seller's representative." This rule explains the statutory elements that must be satisfied in order to be eligible to take this exemption.

(2) **Background.** The statutory language describing the direct seller's representative is substantially the same language as contained in the federal Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, PL 97-248. See 26 USC 3508. The federal law designates types of statutory nonemployees for social security tax purposes. The purpose of the direct seller provision in the federal tax law is to provide that a direct seller's representative is not an employee of the direct seller, thereby relieving the direct seller of a tax duty. Under the federal law, the direct seller is a business that sells its products using a representative who either purchases from the direct seller and resells the product or sells for or solicits sales on behalf of the direct seller. Retail sales are limited to those occurring in the home or in a temporary retail establishment, such as a vendor booth at a fair.

The 1983 Washington state legislature used the same criteria to delineate, for state tax purposes, the necessary relationship between a direct seller and a direct seller's representative.

(3) **The direct seller's exemption.** The exemption provided by RCW 82.04.423 is limited to the B&O tax on wholesaling or retailing imposed in chapter 82.04 RCW (Business and occupation tax). A direct seller is subject to other Washington state tax obligations, including, but not limited to, the sales tax under chapter 82.08 RCW, the use tax under chapter 82.12 RCW, and the litter tax imposed by chapter 82.19 RCW.

(4) **Who may take the exemption.** The B&O tax exemption may be taken by a person (the direct seller) selling a consumer product using the services of a representative who sells or solicits the sale of the product as outlined in statute. There are ten elements in the statute that must be present in order for a person to qualify for the exemption for Washington sales. The person must satisfy each element to be eligible for the

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exemption. The taxpayer must retain sufficient records and documentation to substantiate that each of the ten required elements has been satisfied. RCW 82.32.070.

(a) The four statutory elements describing the direct seller. RCW 82.04.423 provides that a direct seller:

(i) Cannot own or lease real property within this state. For example, if the direct seller's representative is selling vitamins door to door for the direct seller, but the direct seller owns or leases a coffee roasting factory in the state, the direct seller is not eligible for this exemption; and

(ii) Cannot regularly maintain a stock of tangible personal property in this state for sale in the ordinary course of business. This provision does not, however, prohibit the direct seller from holding title to the consumer product in the state. For instance, the direct seller owns the consumer products sold by the direct seller's representative when the representative is making retail sales for the direct seller. However, the personal property must not be a stock of goods in the state that is for sale in the ordinary course of business. The phrase "sale in the ordinary course of business" means sales that are arm's length and that are routine and reasonably expected to occur from time to time; and

(iii) Is not a corporation incorporated under the laws of this state; and

(iv) Makes sales in this state exclusively to or through a direct seller's representative. This provision of the statute describes how sales by the direct seller may be made. To be eligible for the exemption, all sales by the direct seller in this state must be made to or through a direct seller's representative. The direct seller may not claim any B&O tax exemption under RCW 82.04.423 if it has made sales in this state using means other than a direct seller's representative. This requirement does not, however, limit the methods the direct seller's representative may use to sell these products. For example, the representative can use the mail or the internet, if all other conditions of the exemption are met. The direct seller's use of mail order or internet, separate from the representative's use, may or may not be found to be "sales in this state" depending on the facts of the situation. If the direct seller's use of methods other than to or through a direct seller's representative constitutes "sales in this state," the exemption is lost. Additionally, a direct seller does not become ineligible for the exemption due to action by the direct seller's representative that is in

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violation of the statute, such as selling a product to a permanent retail establishment, if the department finds by a review of the facts that the ineligible sales are irregular, prohibited by the direct seller, and rare.

If a seller uses a direct seller's representative to sell "consumer products" in Washington, and also has a branch office, local outlet, or other local place of business, or is represented by any other type of selling employee, selling agent, or selling representative, no portion of the sales are exempt from B&O tax under RCW 82.04.423. For example, a person who uses representatives to sell consumer products door to door and who also sells consumer products through retail outlets is not eligible for the exemption. The phrase "sales exclusively to ... a direct seller's representative" describes wholesale sales made by the direct seller to a representative. The phrase "sales exclusively ... through a direct seller's representative" describes retail sales made by the direct seller to the consumer. The B&O tax exemption provided by RCW 82.04.423 is limited to these types of wholesale and retail sales.

(b) The six statutory elements describing the direct seller's representative. RCW 82.04.423 provides the following elements that relate to the direct seller's representative:

(i) How the sale is made. A direct seller's representative is "a person who buys consumer products on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment, or who sells, or solicits the sale of, consumer products in the home or otherwise than in a permanent retail establishment." The direct seller sells the product using the services of a representative in one of two ways, which are described by two clauses in the statute. The first clause ("a person who buys ... for resale" from the direct seller) describes a wholesale sale by the direct seller. The second clause (a person who "sells or solicits the sale" for the direct seller) describes a retail sale by the direct seller.

(A) A transaction is on a "buy-sell basis" if the direct seller's representative performing the selling or soliciting services is entitled to retain part or all of the difference between the price at which the direct seller's representative purchases the product and the price at which the direct seller's representative sells the product. The part retained is remuneration from the direct seller for the selling or soliciting services performed by the representative. A transaction is on a "deposit-

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commission basis” if the direct seller’s representative performing the selling or soliciting services is entitled to retain part or all of a purchase deposit paid in connection with the transaction. The part retained is remuneration from the direct seller for the selling or soliciting services performed by the representative.

(B) The location where the retail sale of the consumer product may take place is specifically delineated by the terms of the statute. The direct seller may take the exemption only if the retail sale of the consumer product takes place either in the home or otherwise than in a permanent retail establishment. The resale of the products sold by the direct seller at wholesale is restricted by the statute through the following language: “For resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment.” This restrictive phrase requires the product be sold at retail either in the home or in a nonpermanent retail establishment. Regardless of to whom the representative sells, the retail sale of the product must take place either in the buyer’s home or in a location that is not a permanent retail establishment. Examples of permanent retail establishments are grocery stores, hardware stores, newsstands, restaurants, department stores, and drug stores. Also considered as permanent retail establishments are amusement parks and sports arenas, as well as vendor areas and vendor carts in these facilities if the vendors are operating under an agreement to do business on a regular basis. Persons selling at temporary venues, such as a county fair or a trade show, are not considered to be selling at a permanent retail establishment.

(ii) What product the direct seller must be selling. The direct seller must be selling a consumer product, the sale of which meets the definition of “sale at retail,” used for personal, family, household, or other nonbusiness purposes. “Consumer product” includes, but is not limited to, cosmetics, cleaners and soaps, nutritional supplements and vitamins, food products, clothing, and household goods, purchased for use or consumption. The term does not include commercial equipment, industrial use products, and the like, including component parts. However, if a consumer product also has a business use, it remains a “consumer product,” notwithstanding that the same type of product might be distributed by other unrelated persons to be used for commercial, industrial, or manufacturing purposes. For example, desktop computers are used extensively in the home as well as in businesses, yet they are a consumer product when sold for nonbusiness purposes.

(iii) How the person is paid. The statute requires that “substantially all of the remuneration paid to such person, whether or not paid in cash, for the performance of services described in this subsection is directly related to sales or other output, including the performance of services, rather than the number of hours worked.” The remuneration must be for the performance of sales and solicitation services and it must be based on measurable output. Remuneration based on hours does not qualify. A fixed salary or fixed compensation, without regard to the amount of services rendered, does not qualify.

Remuneration need not be in cash, and it may be the consumer product itself or other property, such as a car.

(iv) How the contract is memorialized. The services by the person must be performed pursuant to a written contract between the representative and the direct seller. The requirement that the contract be in writing is a specific statutory condition of RCW 82.04.423.

(v) What the contract must contain. The sale and solicitation services must be the subject of the contract. The contract must provide that the representative will not be treated as an employee of the direct seller for federal tax purposes.

(vi) The status of the representative. A person satisfying the requirements of the statute should also be a statutory nonemployee under federal law, since the requirements of RCW 82.04.423 and 26 U.S.C. 3508 are the same. The direct seller must maintain proof the representative is a statutory nonemployee.

(5) Tax liability of the direct seller’s representative. The statute provides no tax exemption with regard to the “direct seller’s representative.” The direct seller’s representative is subject to the service and other activities B&O tax on commission compensation earned for services described in RCW 82.04.423. Likewise, a direct seller’s representative who buys consumer products for resale and does in fact resell the products is subject to either the wholesaling or retailing B&O tax upon the gross proceeds of these sales. Retail sales tax must be collected and remitted to the department on retail sales unless specifically exempt by law. For example, certain food products are statutorily exempt from retail sales tax (see WAC 458-20-244).

(a) Subject to the agreement of the representatives, the direct seller may elect to remit the B&O taxes of the representatives and collect and remit retail sales tax as agents of the representatives through an agreement with the department. The direct seller's representative should obtain a tax registration endorsement with the department unless otherwise exempt under RCW 82.32.045. (See also WAC 458-20-101 on tax registration.)

(b) Every person who engages in this state in the business of acting as a direct seller's representative for unregistered principals, and who receives compensation by reason of sales of consumer products of such principals for use in this state, is required to collect the use tax from purchasers, and remit the same to the department of revenue, in the manner and to the extent set forth in WAC 458-20-221. (Collection of use tax by retailers and selling agents.)

(6) The retail sales and/or use tax reporting responsibilities of the direct seller. A direct seller is required to collect and remit the tax imposed by chapter 82.08 RCW (Retail sales tax) or 82.12 RCW (Use tax) if the seller regularly solicits or makes retail sales of "consumer products" in this state through a "direct seller's representative" even though the sales are exempt from B&O tax pursuant to RCW 82.04.423.

[Statutory Authority: RCW 82.32.300. 99-24-007, § 458-20-246, filed 11/19/99, effective 12/31/99; 84-24-028 (Order 84-3), § 458-20-246, filed 11/30/84.]

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Subtitle E—Employment Taxes

PART I—IN GENERAL

SEC. 269. TREATMENT OF REAL ESTATE AGENTS AND DIRECT SELLERS.

(a) GENERAL RULE.—Chapter 25 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new section:

“SEC. 3508. TREATMENT OF REAL ESTATE AGENTS AND DIRECT SELLERS.

26 USC 3508.

(a) GENERAL RULE.—For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller—

“(1) the individual performing such services shall not be treated as an employee, and

“(2) the person for whom such services are performed shall not be treated as an employer.

(b) DEFINITIONS.—For purposes of this section—

“(1) QUALIFIED REAL ESTATE AGENT.—The term ‘qualified real estate agent’ means any individual who is a sales person if—

“(A) such individual is a licensed real estate agent,

“(B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and

“(C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be

treated as an employee with respect to such services for Federal tax purposes.

“(2) DIRECT SELLER.—The term ‘direct seller’ means any person if—

“(A) such person—

“(i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment; or

“(ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment,

“(B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and

“(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.

“(3) COORDINATION WITH RETIREMENT PLANS FOR SELF-EMPLOYED.—This section shall not apply for purposes of subtitle A to the extent that the individual is treated as an employee under section 401(c)(1) (relating to self-employed individuals).”

(b) AMENDMENT OF SOCIAL SECURITY ACT.—Section 210 of the Social Security Act is amended by adding at the end thereof the following new subsection.

42 USC 410.

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"Treatment of Real Estate Agents and Direct Sellers

Ante, p. 551.

"(p) Notwithstanding any other provision of this title, the rules of section 3508 of the Internal Revenue Code of 1954 shall apply for purposes of this title."

(c) INDEFINITE EXTENSION OF PROVISIONS RELATING TO EMPLOYMENT STATUS FOR EMPLOYMENT TAXES.—

26 USC 3401
note.
26 USC 530.

(1) TERMINATION OF CERTAIN EMPLOYMENT TAX LIABILITY.—

(A) Subparagraph (A) of section 530(a)(1) of the Revenue Act of 1978 (relating to termination of certain employment tax liability for periods before July 1, 1982) is amended by striking out "ending before July 1, 1982".

(B) Paragraph (3) of section 530(a) of such Act is amended by striking out "and before July 1, 1982".

(C) The subsection heading of subsection (a) of section 530 of such Act is amended by striking out "FOR PERIODS BEFORE JULY 1, 1982".

(2) PROHIBITION AGAINST REGULATIONS AND RULINGS ON EMPLOYMENT STATUS.—Subsection (b) of section 530 of such Act is amended—

(A) by striking out "July 1, 1982 (or, if earlier.", and

(B) by striking out "taxes" and inserting in lieu thereof "taxes".

(3) CERTAIN REGULATIONS, ETC., PERMITTED.—Nothing in section 530 of the Revenue Act of 1978 shall be construed to prohibit the implementation of the amendments made by this section.

26 USC 3508
note.
26 USC 280.

(d) CLERICAL AMENDMENT.—The table of sections for chapter 25 of such Code is amended by adding at the end thereof the following new item:

Sec. 3508. Treatment of real estate agents and direct sellers."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to services performed after December 31, 1982.

(2) SUBSECTION (c).—The amendments made by subsection (c) shall take effect on July 1, 1982.

26 USC 3508
note.