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January 15, 2009

Office of Clerk
Washington Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

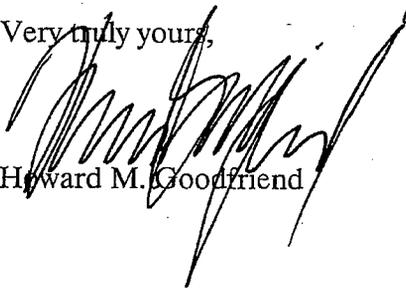
Re: *Dot Foods, Inc. v. Washington Dept. of Revenue*, Cause No. 81022-2

Dear Clerk:

Petitioner Dot Foods' Answer to Amicus Curiae Briefs of Melanuca, Inc. and Direct Selling Association contained two pages that cited an authority incorrectly. The attached pages have been corrected, and I have included copies of the original pages in redline to show the correction.

Thank you for your courtesy.

Very truly yours,


Howard M. Goodfriend

HMG/co

cc: Client
Counsel of Record

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TABLE OF AUTHORITIES

FEDERAL CASES

| | |
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| <i>Tyler Pipe Industries, Inc. v. Dept. of Revenue</i> , 483 U.S. 232, 107 S. Ct. 2810, 97 L.Ed.2d 199 (1987) | 4 |
| <i>Vehicles Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.</i> , 463 U.S. 29, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983) | 10 |

STATE CASES

| | |
|---------------------------------------------------------------------------------------------------------------------------------------------------|----|
| <i>Aviation West Corp. v. Dept. of Labor and Industries</i> , 138 Wn.2d 413, 980 P.2d 701 (1999) | 10 |
| <i>Dot Foods, Inc. v. Department of Revenue</i> , 141 Wn. App. 874, 173 P.3d 309 (2007), <i>rev. granted</i> , 163 Wn.2d 1052 (2008) | 10 |
| <i>Stroh Brewery Co. v. Dept. of Revenue</i> , 104 Wn. App. 235, 15 P.3d 692, <i>rev. denied</i> , 144 Wn.2d 1002 (2001) | 3 |

STATUTES

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|---------------------|---------------|
| RCW 82.04.423 | <i>passim</i> |
|---------------------|---------------|

RULES AND REGULATIONS

| | |
|----------------------|---|
| RAP 10.1 | 1 |
| RAP 10.2 | 1 |
| WAC 458-20-246 | 9 |

2. Sales Placed With An Out-Of State Seller Through The Solicitation Efforts Of A Direct Seller's Representative Are Exempt Under RCW 82.04.423

DSA and Melaleuca both ask this Court to expressly hold what would appear to be self-evident from the plain statutory language – that sales that are transmitted electronically by a Washington customer to an out-of-state direct seller qualify for the exemption as “sales in this state exclusively . . . through a direct seller’s representative.” RCW 82.04.423(1)(d). They cite a July 1, 2008 Excise Tax Advisory Statement in which the Department announces its intent to disallow the exemption where a direct seller makes “[i]nternet sales, mail orders, and similar sales directly to customers” even if those sales are solicited through the activities of a direct seller's representative. (See Melaleuca Br. at App. D)

In this case, however, the Department has never claimed that the method of transmission of customer orders to Dot Foods headquarters in Illinois was “one of DOR’s grounds for denial of Dot Foods’ claims,” as Melaleuca mistakenly asserts. (Melaleuca Br. at 12) Quite to the contrary, the Department denied Dot Foods’ exemption because under its January 1, 2000 revision to WAC 458-20-246, “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

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*Vehicles Mfrs. Ass'n of U.S., Inc. v. State Farm
Mut. Auto Ins. Co.*, 463 U.S. 29, 103 S.Ct.
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Wn. App. 874, 173 P.3d 309 (2007), *rev.
granted*, 163 Wn.2d 1052 (2008) 10

Stroh Brewery Co. v. Dept. of Revenue, 104
Wn. App. 235, 15 P.3d 692, *rev. denied*, 144
Wn.2d 1002 (2001) 3

STATUTES

RCW 82.04.423 *passim*

RULES AND REGULATIONS

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RAP 10.2 1

WAC 458-420-246 9

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DECLARATION OF SERVICE BY RONALD R. CARPENTER

The undersigned declares under penalty of perjury, under the
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laws of the State of Washington, that the following is true and correct:

That on January 15th, 2009, I arranged for service of the Errata
Letter, to the court and the parties to this action as follows:

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| Office of Clerk Washington Supreme Court Temple of Justice P.O. Box 40929 Olympia, WA 98504-0929 | <input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail |
| Jacquelyn A. Beatty Karr Tuttle Campbell 1201 3rd Ave., Suite 2900 Seattle, WA 98101-3284 | <input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail |
| Cameron G. Comfort Office of the Attorney General Revenue Division 7141 Cleanwater Dr. SW PO Box 40123 Olympia, WA 98504-0123 | <input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail |
| Dirk Giseburt Davis Wright Termaine LLP 1201 3rd Ave., Ste 2200 Seattle, WA 98101-3045 | <input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail |
| Dean A. Heyl Jeremy D. Tunis Direct Selling Association 1667 K. Street, NW, Suite 1100 Washington, DC 20006 | <input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail |

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| G. Kim Risenmay Stoel Rives LLP 600 University Street, Suite 3600 Seattle WA 98101 | <input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail |
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DATED at Seattle, Washington this 15th day of January, 2009.



Carrie O'Brien