

RCW 82.04.423 Exemptions—Sales by certain out-of-state persons to or through direct seller's representatives. (1) Prior to May 1, 2010, this chapter does 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 only 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 at retail, or solicits the sale at retail of, only 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 may 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 August 23, 1983. [2010 1st sp.s. c 23 s 402; 1983 1st ex.s. c 66 s 5.]

Retroactive application—2010 1st sp.s. c 23 ss 402 and 702: "Sections 402 and 702 of this act apply both retroactively and prospectively." [2010 1st sp.s. c 23 s 1704.]

Application—Refunds—2010 1st sp.s. c 23 ss 702 and 1704: See note following RCW 82.04.360.

Application—Final judgments—2010 1st sp.s. c 23 s 402: "Section 402 of this act does not affect any final judgments, not subject to appeal, entered by a court of competent jurisdiction before May 1, 2010." [2010 1st sp.s. c 23 s 1706.]

Intent—Findings—2010 1st sp.s. c 23: "(1) A business and occupation tax exemption is provided in RCW 82.04.423 for certain out-of-state sellers that sell consumer products exclusively to or through a direct seller's representative. The intent of the legislature in enacting this exemption was to provide a narrow exemption for out-of-state businesses engaged in direct sales of consumer products, typically accomplished through in-home parties or door-to-door selling.

(2) In *Dot Foods, Inc. v. Dep't of Revenue*, Docket No. 81022-2 (September 10, 2009), the Washington supreme court held that the exemption in RCW 82.04.423 applied to a taxpayer: (a) That sold nonconsumer products through its representative in addition to consumer products; and (b) whose consumer products were ultimately sold at retail in permanent retail establishments.

(3) The legislature finds that most out-of-state businesses selling consumer products in this state will either be eligible for the exemption under RCW 82.04.423 or could easily restructure their business operations to qualify for the exemption. As a result, the legislature expects that the broadened interpretation of the direct sellers' exemption will lead to large and devastating revenue losses. This comes at a time when the state's existing budget is facing a two billion six hundred million dollar shortfall, which could grow, while at the same time the demand for state and state-funded services is also growing. Moreover, the legislature further finds that RCW 82.04.423 provides preferential tax treatment for out-of-state businesses over their in-state competitors and now creates a strong incentive for in-state businesses to move their operations outside Washington.

(4) Therefore, the legislature finds that it is necessary to reaffirm the legislature's intent in establishing the direct sellers' exemption and prevent the loss of revenues resulting from the expanded interpretation of the exemption by amending RCW 82.04.423 retroactively to conform the exemption to the original intent of the legislature and by prospectively ending the direct sellers' exemption as of May 1, 2010." [2010 1st sp.s. c 23 s 401.]

Effective date—2010 1st sp.s. c 23: See note following RCW 82.32.655.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.