



Special Notice

WASHINGTON STATE DEPARTMENT OF REVENUE

APRIL 23, 2010

Direct Seller's B&O Tax Exemption Repealed

Introduction & Background

Revised Code of Washington (RCW) 82.04.423 provides a business and occupation (B&O) tax exemption for certain out-of-state businesses that sell consumer products exclusively to or through a direct seller's representative. The Department of Revenue's (Department's) position has been that this exemption is limited to those businesses who sell their consumer products exclusively to or through "door to door" type sellers, and not in permanent retail establishments (stores).

On September 10, 2009, in the case of *Dot Foods, Inc. v. Washington Dep't of Revenue*, 166 Wn.2d 912, 215 P.3d 185 (2009), the Washington Supreme Court held that the exemption in RCW 82.04.423 also applies to out-of-state businesses selling both consumer and non-consumer products ultimately sold at retail in stores.

New law

Effective May 1, 2010, Second Engrossed Substitute Senate Bill (2ESSB) 6143, Part IV repeals the direct seller's B&O tax exemption. For tax reporting periods prior to May 1, 2010, 2ESSB 6143, Part IV confirms the Department's position and clarifies that the direct seller's B&O tax exemption is retroactively limited to out-of-state businesses that:

- Do not own or lease real property in the state,
- Are not incorporated in the state,
- Do not maintain inventory in this state, and
- Make sales in this state exclusively to or through a direct seller's representative.

The term direct seller's representative is limited to 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.

However, 2ESSB 6143, Part IV does not affect any final judgments, not subject to appeal, entered by a court of competent jurisdiction before May 1, 2010.

How do I report?

Effective May 1, 2010, businesses can no longer take this exemption and must report their sales in Washington to or through a direct seller's representative to the Department on their excise tax returns. If a business is not registered with the Department because the business may have qualified for this exemption and had no other sales to report, the

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business must now register with the Department and remit wholesaling and/or retailing B&O tax on its sales in Washington to or through its direct seller's representatives.

For tax reporting periods prior to May 1, 2010, an out-of-state business may still take this exemption, but only if the business meets the necessary requirements set forth in RCW 82.04.423 and Washington Administrative Code (WAC) 458-20-246.

Registering with the Department of Revenue

To register with the Department you must complete a Master Business Application (MBA) with the Department of Licensing (DOL). You may visit DOL's web site at <http://www.dol.wa.gov/business/file.html> to complete the MBA electronically or to download the paper version. Please remember to include payment for all necessary licensing fees with your application.

Once the application is processed, you will receive a Master Business License. The license will note your nine-digit Tax Registration Number, also known as your Unified Business Identifier (UBI) number.

Filing an excise tax return with the Department of Revenue

Once you have registered your business, you will receive a packet of information from the Department that includes a letter with your:

- UBI/tax registration number, and
- Filing frequency (monthly, quarterly, annual).

Depending on your gross income, you may be required to report your excise taxes on a monthly, quarterly, or annual basis.

Electronic filing is the preferred method for filing your tax return. E-file calculates the tax, checks for accuracy, and flags potential errors before you file. Go to dor.wa.gov to sign up.

For more Information

Contact the Department's Telephone Information Center at 360-705-6705.