

REMARKS OF SENATOR BOB DOLE

DIRECT SELLING ASSOCIATION

WASHINGTON, D.C.

WEDNESDAY, MARCH 21, 1979

I'm deeply honored by this presentation, and let me say that, in response, I'll try to remember the three cardinal rules of speechmaking; rules not so different from those that govern your industry:

1. Be sincere
2. Be brief
3. Be seated

The men and women who comprise direct selling in America, who work very hard to keep alive the personal touch in our free enterprise system, deserve this award far more than I. For it is they whose dedication and ambition have achieved a \$4 billion industry, and, in the process, stress consumer values like convenience, time and dollar savings, and personal service.

Government could use a lesson from people like yourselves. You take the very concept of free enterprise out from under the glass case we've consigned it to, and give it a meaning that too many have conveniently forgotten. You remind us that free enterprise is more than Fortune 500 corporations and the Chamber of Commerce -- it is, first and foremost, a concept of individual achievement.

You make my job as a United States Senator who happens to believe in the profit motive a lot easier by your presence.

The last few years have not been encouraging ones for the advocates of free enterprise in America. We have witnessed an ever-expanding web of regulation and red tape around thousands of small businesses. \$100 billion each year is siphoned off from the private sector to meet the regulatory bill, and, until recently, the economic straight jacket seemed inescapable.

But with the taxpayer revolt has come a new awareness of what intrusive government can do to gum up the machinery of free enterprise. I've filed legislation to create a new Hoover-type commission, based on those that saved American taxpayers billions of dollars in the 1940's and 50's. I would like to see my friend and colleague Gerald Ford head such a commission, whose assignment would be the review and reform of the present maze of agencies, commissions, committees, blue ribbon panels and just plain roadblocks in the way of economic growth.

The cost of unnecessary regulation cannot be measured in dollars alone. For we shall all suffer unless government begins to cut back on the thousands of rules and restrictions it now enforces. Just last week, it was announced that an oil pipeline planned to connect California to Texas, and thereby cut the price of energy to the oil-starved eastern U.S. will not be built. The reason? A pile of government permits which, stacked one on top of another, would reach higher than the Capitol dome.

It would be tragic if it requires millions of people to suffer hardship, be it a cold living room or a lost job, to persuade the federal government that regulation must itself be regulated.

Now let me briefly conclude with some words of even more immediate impact to your work. I don't have to tell you how significant is the Revenue Act of 1978. As ranking Republican on the Senate Finance Committee, and as a man who has long believed in the work ethic and the independence it promotes, I was very pleased to secure passage of an amendment to that act which will permit employers to distinguish between Independent Contractor and employee tax status. The importance of this to the employer is obvious. But it is equally important to the thousands of individuals who work in the direct selling industry. Many of these persons, because of age, physical condition or constraints of time, might not be able to work outside the field. As direct sellers, they set their own goals, their hours and their methods of operation.

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To permit any drastic changes in the industry because of tax or other rule alterations would devastate their economic aspirations. The amendment I introduced erased retroactive and prospective tax liability. But we cannot let down our guard. Because my amendment will lapse at year's end, the Finance Committee and the Congress itself will soon face the question of what to do next.

I believe that your position is one with a long history of common law endorsement. That law should not be abrogated, and whatever the Congress may decide to do ultimately, it must retain the principles of a common law test.

A great many people share my interest in insuring fair treatment for America's direct salespersons. I have spoken with many of your leaders about the next step in assuring such treatment. So have others in both houses of Congress, and in the Treasury Department itself.

The issue is too important, and the stakes too high, to rush into any hasty legislative action. The amendment I introduced last year has bought us time in which to devise the best permanent answer to the problem of Independent Contractors.

But I can assure you of one thing: I will remain committed, inalterably and permanently, to protecting and strengthening the principles of your association. You literally bring free enterprise into millions of American living rooms, and you do so with a respect for the consumer that no government can hope to match.

For honoring me with this award, I give you my thanks and my pledge of continued support for what you are all about. To anyone who harbors doubts about the conscience of American free enterprise, I would simply invite them to talk with some of you who go door to door or hold home parties or travel a route. You fill me with confidence that free enterprise will survive even modern government -- and that's no mean feat.

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I'M DEEPLY HONORED BY THIS PRESENTATION, AND LET ME SAY THAT, IN RESPONSE, I'LL TRY AND REMEMBER THE THREE CARDINAL RULES OF SPEECHMAKING; RULES NOT SO DIFFERENT FROM THOSE THAT GOVERN YOUR INDUSTRY:

1. BE SINCERE
2. BE BRIEF
3. BE SEATED

THE MEN AND WOMEN WHO COMPRISE DIRECT SELLING IN AMERICA, WHO WORK VERY HARD TO KEEP ALIVE THE PERSONAL TOUCH IN OUR FREE ENTERPRISE SYSTEM, DESERVE THIS AWARD FAR MORE THAN I. FOR IT IS THEY WHOSE DEDICATION AND AMBITION HAVE ACHIEVED A \$4 BILLION INDUSTRY, AND, IN THE PROCESS, STRESS CONSUMER VALUES LIKE CONVENIENCE, TIME AND DOLLAR SAVINGS, AND PERSONAL SERVICE.

GOVERNMENT COULD USE A LESSON FROM PEOPLE LIKE YOURSELVES. YOU TAKE THE VERY CONCEPT OF FREE ENTERPRISE OUT FROM UNDER THE GLASS CASE WE'VE CONSIGNED IT TO, AND GIVE IT A MEANING THAT TOO MANY HAVE CONVENIENTLY FORGOTTEN. YOU REMIND US THAT FREE ENTERPRISE IS MORE THAN FORTUNE 500 CORPORATIONS AND THE CHAMBER OF COMMERCE--IT IS, FIRST AND FOREMOST, A CONCEPT OF INDIVIDUAL ACHIEVEMENT.

YOU MAKE MY JOB AS A UNITED STATES SENATOR WHO HAPPENS TO BELIEVE IN THE PROFIT MOTIVE A LOT EASIER BY YOUR PRESENCE.

THE LAST FEW YEARS HAVE NOT BEEN ENCOURAGING ONES FOR THE ADVOCATES OF FREE ENTERPRISE IN AMERICA. WE HAVE WITNESSED AN EVER-EXPANDING WEB OF REGULATION AND RED TAPE AROUND THOUSANDS OF SMALL BUSINESSES. \$100 BILLION EACH YEAR IS SIPHONED OFF FROM THE PRIVATE SECTOR TO MEET THE REGULATORY BILL, AND, UNTIL RECENTLY, THE ECONOMIC STRAIGHT JACKET SEEMED INESCAPABLE.



BUT WITH THE TAXPAYER REVOLT HAS COME A NEW AWARENESS OF WHAT INTRUSIVE GOVERNMENT CAN DO TO GUM UP THE MACHINERY OF FREE ENTERPRISE. I'VE FILED LEGISLATION TO CREATE A NEW HOOVER-TYPE COMMISSION, BASED ON THOSE THAT SAVED AMERICAN TAXPAYERS BILLIONS OF DOLLARS IN THE 1940'S AND 50'S. I WOULD LIKE TO SEE MY FRIEND AND COLLEAGUE GERALD FORD HEAD SUCH A COMMISSION, WHOSE ASSIGNMENT WOULD BE THE REVIEW AND REFORM OF THE PRESENT MAZE OF AGENCIES, COMMISSIONS, COMMITTEES, BLUE RIBBON PANELS AND JUST PLAIN ROADBLOCKS IN THE WAY OF ECONOMIC GROWTH.

THE COST OF UNNECESSARY REGULATION CANNOT BE MEASURED IN DOLLARS ALONE. FOR WE SHALL ALL SUFFER UNLESS GOVERNMENT BEGINS TO CUT BACK ON THE THOUSANDS OF RULES AND RESTRICTIONS IT NOW ENFORCES. JUST LAST WEEK, IT WAS ANNOUNCED THAT AN OIL PIPELINE PLANNED TO CONNECT CALIFORNIA TO TEXAS, AND THEREBY CUT THE PRICE OF ENERGY TO THE OIL-STARVED EASTERN U.S. WILL NOT BE BUILT. THE REASON? A PILE OF GOVERNMENT PERMITS WHICH, STACKED ONE ON TOP OF ANOTHER, WOULD REACH HIGHER THAN THE CAPITOL DOME.

IT WOULD BE TRAGIC IF IT REQUIRES MILLIONS OF PEOPLE TO SUFFER  
HARDSHIP, BE IT A COLD LIVING ROOM OR A LOST JOB, TO PERSUADE  
THE FEDERAL GOVERNMENT THAT REGULATION MUST ITSELF BE REGULATED.

NOW LET ME BRIEFLY CONCLUDE WITH SOME WORDS OF EVEN MORE  
IMMEDIATE IMPACT TO YOUR WORK. I DON'T HAVE TO TELL YOU HOW  
SIGNIFICANT IS THE REVENUE ACT OF 1978. AS RANKING REPUBLICAN  
ON THE SENATE FINANCE COMMITTEE, AND AS A MAN WHO HAS LONG  
BELIEVED IN THE WORK ETHIC AND THE INDEPENDENCE IT PROMOTES,  
I WAS VERY PLEASED TO SECURE PASSAGE OF AN AMENDMENT TO THAT  
ACT WHICH WILL PERMIT EMPLOYERS TO DISTINGUISH BETWEEN  
INDEPENDENT CONTRACTOR AND EMPLOYEE TAX STATUS. THE IMPORTANCE  
OF THIS TO THE EMPLOYER IS OBVIOUS. BUT IT IS EQUALLY IMPORTANT  
TO THE THOUSANDS OF INDIVIDUALS WHO WORK IN THE DIRECT SELLING  
INDUSTRY. MANY OF THESE PERSONS, BECAUSE OF AGE, PHYSICAL  
CONDITION OR CONSTRAINTS OF TIME, MIGHT NOT BE ABLE TO WORK  
OUTSIDE THE FIELD. AS DIRECT SELLERS, THEY SET THEIR OWN  
GOALS, THEIR HOURS AND THEIR METHODS OF OPERATION.

TO PERMIT ANY DRASTIC CHANGES IN THE INDUSTRY BECAUSE OF TAX OR OTHER RULE ALTERATIONS WOULD DEVASTATE THEIR ECONOMIC ASPIRATIONS. THE AMENDMENT I INTRODUCED ERASED RETROACTIVE AND PROSPECTIVE TAX LIABILITY. BUT WE CANNOT LET DOWN OUR GUARD. BECAUSE MY AMENDMENT WILL LAPSE AT YEAR'S END, THE FINANCE COMMITTEE AND THE CONGRESS ITSELF WILL SOON FACE THE QUESTION OF WHAT TO DO NEXT.

I BELIEVE THAT YOUR POSITION IS ONE WITH A LONG HISTORY OF COMMON LAW ENDORSEMENT. THAT LAW SHOULD NOT BE ABROGATED, AND WHATEVER THE CONGRESS MAY DECIDE TO DO ULTIMATELY, IT MUST RETAIN THE PRINCIPLES OF A COMMON LAW TEST.

A GREAT MANY PEOPLE SHARE MY INTEREST IN INSURING FAIR TREATMENT FOR AMERICA'S DIRECT SALESPERSONS. I HAVE SPOKEN WITH MANY OF YOUR LEADERS ABOUT THE NEXT STEP IN ASSURING SUCH TREATMENT. SO HAVE OTHERS IN BOTH HOUSES OF CONGRESS, AND IN THE TREASURY DEPARTMENT ITSELF.



THE ISSUE IS TOO IMPORTANT, AND THE STAKES TOO HIGH, TO RUSH INTO ANY HASTY LEGISLATIVE ACTION. THE AMENDMENT I INTRODUCED LAST YEAR HAS BOUGHT US TIME IN WHICH TO DEVISE THE BEST PERMANENT ANSWER TO THE PROBLEM OF INDEPENDENT CONTRACTORS.

BUT I CAN ASSURE YOU OF ONE THING: I WILL REMAIN COMMITTED, INALTERABLY AND PERMANENTLY, TO PROTECTING AND STRENGTHENING THE PRINCIPLES OF YOUR ASSOCIATION. YOU LITERALLY BRING FREE ENTERPRISE INTO MILLIONS OF AMERICAN LIVING ROOMS, AND YOU DO SO WITH A RESPECT FOR THE CONSUMER THAT NO GOVERNMENT CAN HOPE TO MATCH.

FOR HONORING ME WITH THIS AWARD, I GIVE YOU MY THANKS AND MY PLEDGE OF CONTINUED SUPPORT FOR WHAT YOU ARE ALL ABOUT. TO ANYONE WHO HARBORS DOUBTS ABOUT THE CONSCIENCE OF AMERICAN FREE ENTERPRISE, I WOULD SIMPLY INVITE THEM TO TALK WITH SOME OF YOU WHO GO DOOR TO DOOR OR HOLD HOME PARTIES OR TRAVEL A ROUTE. YOU FILL ME WITH CONFIDENCE THAT FREE ENTERPRISE WILL SURVIVE EVEN MODERN GOVERNMENT--AND THAT'S NO MEAN FEAT.





by the Hon. Robert Dole  
U.S. Senator, Kansas

The recently signed Revenue Act of 1978 contains a provision which I sponsored to allow employers to continue to treat individuals as independent contractors if there was a "reasonable basis" for treating them as independent contractors in the past. This resolves, at least temporarily, an issue that has been nagging at Congress for several years.

#### IRS Launches Aggressive Audit Campaign

Since the early 1970's, the Internal Revenue Service has undertaken an aggressive audit campaign of employment taxes. The problem of increased audits and retroactive tax assessments issued by the IRS was recognized in the 1976 Tax Reform Act Conference Report. Congress made it clear in the 1976 legislation that the IRS "not apply any changed position or any newly stated position in this general subject area to past, as opposed to future taxable years". However, the warnings were largely ignored.

The distinction between independent contractor and employee tax status is important because employers do not have to withhold on wages of independent contractors, such as direct sellers, nor pay social security or unemployment taxes. If the IRS prevails on a reclassification of employment tax status from independent contractor to employee, the employer becomes liable for employment taxes which have not been withheld or paid to the Treasury.

#### Common Law Test

Independent contractors are distinguished from employees for tax purposes by common law. The adoption of the common law rules in the tax laws and the application of these rules by the courts have produced decisions that are widely understood and accepted. How-

ever, several years ago, many taxpayers, including direct sellers, insurance salesmen, and realtors, complained that the IRS was distorting the common law test used in making the employment classification. According to testimony before the Senate Finance Committee on my proposal last July, the Internal Revenue Service's change of position was having a serious adverse impact on a number of small businesses.

Once a redetermination is made, the taxpayer is allowed to offset against the tax assessment the individual's payments of income tax, and, in some cases, the social security taxes. However, this offset system is inadequate. The employer must locate the reclassified worker in order to prove that the income has been reported and paid. To the extent that the workers cannot be found or refuse to cooperate, the government essentially collects the tax twice.

Because employment tax issues are largely factual, even if the redetermination is reversed in litigation, there are substantial legal expenses involved. In addition, disclosure of the potential liability in financial statements may impede the ability to raise capital or otherwise transact business.

#### Direct Sellers

The inability of individuals to work as independent contractors would severely restrict business ventures. The direct selling industry is able to offer many opportunities to persons who, because of age, physical condition, or time constraints, might not be able to work in other circumstances. Direct selling representatives set their own goals, hours and methods of operations. Any alteration of factors because of drastic changes in the tax rules would be devastating to the selling industry.

# Protecting Independence

## 1978 Tax Bill

Under the independent contractors provision in the 1978 Tax Bill, taxpayers are relieved of all employment tax liability prior to January 1, 1979, provided the taxpayer had a reasonable basis for not treating the workers as employees. The bill extends relief prospectively through December 31, 1979, as long as the taxpayer files all required federal tax returns (including information returns) after December 31, 1978 and the reasonable basis requirement is met.

Reasonable basis is defined by the statute as reasonable basis on any number of criteria, including judicial precedent, published rulings, a past IRS audit position concerning the taxpayer in which there was no tax assessment on this issue or a long standing recognized practice of a significant segment of the industry in which the individual is engaged. In addition, the bill prohibits the Department of Treasury or the IRS from publishing any regulations or Revenue Rulings with respect to employment tax status before 1980. The bill also provides a special rule for refunds or overpayments. If a refund or overpayment is not barred on the date of enactment, the statute of limitations for filing a claim for refund or credit will not expire for at least one additional year.

The new independent contractor rules were enacted over strong opposition of the Administration. However, the 1978 tax act only provides an interim solution to a very complicated problem. In order to arrive at any substantive solution, a lengthy period of Congressional deliberation is anticipated in early 1979. Whatever the outcome, the pressure and interest from both Treasury and taxpayers will be intense. Your views should be heard. Write your Congressman and inform him of the importance of this issue.



Senator Robert Dole was elected to the Kansas legislature at age 26, before becoming county attorney of Russell County. He served four terms in the House of Representatives and later, in 1968, ran for the Senate and won. He was re-elected in 1974. Chosen as chairman of the Republican National committee from 1971-73, Senator Dole was nominated by the Republican Party for vice president in 1976 and appeared on the slate as Gerald R. Ford's running mate.



M E M O

TO: Rick Smith  
FROM: Jack Nutter  
SUBJECT: Independent Contractors

DATE: March 13, 1979

You have undoubtedly read the article on independent contractors. It will supply you with the factual information necessary to write the bulk of the speech.

Dole is the hero for the direct selling industry. The amendment in the Revenue Act was one of the more significant provisions. It essentially erased retroactive and prospective employment tax liability. However, because it is effective only until the end of this year, the Committee is faced with the decision on what to do next.

The direct selling industry has favorable common law precedence. Many in that industry would prefer to have no additional legislation but allow their sales people to test for independent contractor status under the common law. Dole should stress in his remarks that he does not believe that the common law should be abrogated. At least if the common law test is eliminated, he should stress that the principles of the common law test should be retained.

We have been talking with all of the inner-industry groups in the so-called independent contractor coalition. Treasury is working on their suggestions on employment taxes. There is also a draft floating around in the House. The Joint Committee has also recently released a staff study and recommendations on the issue.

I have told Dole to be very careful. We would not want to alienate any of the friends we have already acquired. Generally, he should stress a "go-slow" approach. The issue is too important to rush into any hasty legislative solution.