

Peter Black Real Estate Co.

INDEPENDENT CONTRACTORS

Real estate agents

Where real estate agents working under independent contracts with a real estate company do not supply any special equipment necessary to perform the job, and it is not their duties to others, the essence of their contracts is their personal labor. The fact that agents occasionally contract with third parties to perform some services necessary to facilitate a sale does not constitute a delegation of their duties under their contracts. Under the negative three-pronged test set forth in *White v. Department of Labor & Indus*, 48 Wn.2d 470 (1956) they are "workers" within the meaning of RCW 51.08.180. ...***In re Peter Black Real Estate Co., BIA Dec., 88 1191 (1989)*** [Editor's Note: Affirmed, *Black Real Estate v. Labor & Indus.*, 70 Wn. App. 482 (1993).]

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: PETER M. BLACK REAL) DOCKET NOS. 88 1191 & 88 1192**
2 **ESTATE CO., INC.)**
3)
4 **FIRM NO. 517202) DECISION AND ORDER**
5 _____

6 **APPEARANCES:**

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8 Firm, Peter M. Black Real Estate Co., Inc., by
9 Platt, Irwin, Colley, Oliver, Miller & Wood, per
10 Stephen E. Oliver

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12 Department of Labor and Industries, by
13 The Attorney General, per
14 Linda M. Gallagher, Assistant

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16 The appeal assigned Docket No. 881191 was filed by the employer, Peter M. Black Real Estate
17 Co., Inc. on March 24, 1988 from an order of the Department of Labor and Industries dated February
18 24, 1988. The order affirmed Notice and Order of Assessment of Industrial Insurance Taxes No.
19 57972, issued by the Department on January 27, 1988. The Notice and Order assessed industrial
20 insurance taxes for the period April 1, 1987 through September 30, 1987 in the amount of \$ 775.12.
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23 The appeal assigned Docket No. 881192 was filed by the employer, Peter M. Black Real Estate
24 Co., Inc., on March 24, 1988 from an order of the Department dated March 14, 1988. The order
25 affirmed Notice and Order of Assessment of Industrial Insurance Taxes No. 57971, issued by the
26 Department on January 27, 1988. The Notice and Order assessed industrial insurance taxes for the
27 period January 1, 1985 through March 31, 1987 in the amount of \$ 2,700.09. The Department orders
28 are **REVERSED IN PART**.
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ISSUES

1. Whether the six individuals who acted as real estate agents pursuant to Peter M. Black's brokerage license during various portions of the relevant periods are workers within the meaning of RCW 51.08.180.
2. Whether Peter M. Black, the president and sole director and shareholder of Peter M. Black Real Estate Co., Inc., is included within the mandatory coverage provisions of the Industrial Insurance Act;

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by the employer in response to a Proposed Decision and Order issued on September 9, 1988 in which the orders of the Department were sustained.

1 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no
2 prejudicial error was committed and said rulings are hereby affirmed.
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4 Although the evidence presented by the parties is well set forth in the Proposed Decision and
5 Order, we believe our own recitation of the evidence is important to the disposition of this appeal.
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7 Status of Real Estate Agents:

8 Peter M. Black Real Estate Co., Inc. is a Washington corporation engaged in the business of
9 real estate sales and brokerage. The corporation's designated broker is Peter M. Black. Although the
10 company was incorporated on March 9, 1979, it did not engage in any work or business until
11 September of 1979.
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13 During the period relevant to these appeals, i.e., January 1, 1985 through September 30, 1987,
14 six licensed real estate sales agents worked with the Peter M. Black Real Estate Co., Inc. pursuant to
15 written and oral agreements. Written contracts signed by five of those sales agents were received into
16 evidence in this matter as Exhibit Nos. 10-14; with the exception of the agreement signed by Ms.
17 Marguerite A. Glover (Exhibit No. 13), the agreements are identical. According to those agreements,
18 the sales agents are deemed to be independent contractors, and not servants, employees, or partners
19 of the broker.
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21 Peter M. Black Real Estate Co., Inc. provides office space for its sales agents, including the use
22 of an office computer. As the designated broker, Mr. Black attempts to insure that the sales agents
23 comply with all relevant laws. However, no supervision is provided concerning the manner in which
24 the sales agents perform their duties. The sales agents work no specific hours, and are not required
25 to be in the office a specific number of hours per day or week. No regular sales or staff meetings are
26 conducted, and no sales training is provided to the sales agents. The agents are not paid a salary or
27 wage, and with the exception of Ms. Glover, are compensated strictly on a commission basis.
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29 Ms. Glover, whose contract differs from those of the other sales agents only with regard to the
30 payment of expenses and compensation, receives a portion of the commissions earned by other sales
31 agents in exchange for her paying certain expenses incurred by Peter M. Black Real Estate Co., Inc.
32 As stated, Ms. Glover's contract is otherwise identical to those signed by the other sales agents.
33 Under those agreements, the sales agents agree to work diligently and with their best efforts to sell,
34 lease, or rent any and all real estate listed with the broker, and to solicit additional listings and
35 customers. Further, only those expenses "which must, be reason of necessity, be paid from the
36 commission," are shared by Peter M. Black Real Estate Co., Inc.
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1 Any other expenses incurred by the sales agent are the responsibility of the sales agent.
2 According to the testimony presented, the sales agent must furnish his or her own automobile,
3 business supplies, and any other equipment the agent desires to use, such as a camera or video
4 camera recorder. Further, a sales agent will occasionally contract with a third party, such as a
5 surveyor, pest inspector, or contractor, whose services are necessary to facilitate a sales transaction.
6 On occasion, the sales agent has become personally liable for such expenses when the transaction
7 did not culminate in a sale.
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11 The Department does not contend that the sales agents are employees of Peter M. Black Real
12 Estate Co., Inc., and it is quite apparent, that due to the absence of any direct control over the manner
13 in which the sales agents perform their duties, the agents are not employees of the company.
14 Although we are urged to find that the sales agents are partners or joint venturers with Peter M. Black
15 Real Estate Co., Inc., we agree with our Industrial Appeals Judge that this is not the case. Although
16 each sales agent has the power to veto the hiring of a new sales agent, no sales agent has a full right
17 of control or management of the business. Ms. Glover is the only sales agent who is contractually
18 obligated to pay any of the expenses incurred by Peter M. Black Real Estate Co., Inc. She is not at
19 risk or liable for any losses incurred by the firm, and she has no right of management or control in the
20 business. We are satisfied that these sales agents are neither partners nor joint venturers. See, State
21 v. Bartley, 18 Wn.2d 477, 139 P.2d 638 (1943).
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28 It is therefore clear that we must characterize the sales agents as independent contractors. If
29 this case had arisen prior to 1937 our discussion would be concluded, because prior to that year
30 independent contractors were not within the scope of the Industrial Insurance Act, nor were the people
31 with whom they had contracted required to pay industrial insurance premiums.
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34 In 1937, however, the Legislature expanded the definition of workman (now "worker") to include
35 within the terms of the Act independent contractors whose personal labor constituted the essence of
36 the contract. Laws of 1937, ch. 211, § 2, p. 1030. The relevant statute, RCW 51.08.180, now reads,
37 in part,:
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40 `worker' means every person in the state who is engaged in the
41 employment of an employer under this title, whether by way of manual
42 labor or otherwise in the course of his or her employment; also every
43 person in this state who is engaged in the employment of or who is
44 working under an independent contract, the essence of which is his or her
45 personal labor for an employer under this title, whether by way of manual
46 labor or otherwise, in the course of his or her employment.
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2 (Emphasis added).

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4 The corollary to this definition of "worker" is the definition of "employer" as contained in RCW
5 51.08.070. That statute reads, in part:

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7 `employer' means any person, body of persons, corporate or otherwise,
8 and the legal representatives of a deceased employer, all while engaged
9 in this state in any work covered by the provisions of this title, by way of
10 trade or business, or who contracts with one or more workers, the
11 essence of which is the personal labor of such worker or workers.

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13 (Emphasis added).

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15 It is readily apparent that in modifying the definition of "worker" the Legislature was intending to
16 expand the coverage of the Act to not only extend the protections of the Act to a greater number of
17 individuals, but to also require the Department to assess industrial insurance premiums on the hours
18 of work performed by such individuals. The 1937 amendment was, as stated by our Supreme Court in
19 White v. Department of Labor and Industries, 48 Wn.2d 470 (1956):

20
21 . . . intended to protect workmen (and to make contracting parties for
22 whom the work is done responsible for industrial insurance premiums) in
23 those situations where the work could be done on a regular
24 employer-employee basis but where, because of the time, place, manner
25 of performance, and basis of payment, it could be urged that the workman
26 was an independent contractor rather than an employee. Prior to the
27 1937 enactment, the independent contractor, when injured, was not
28 entitled to the protection of the Workman's Compensation Act, and the
29 party with whom he had contracted was excused from paying premiums.
30 It was felt to be desirable, and rightly so, to eliminate the technical issue of
31 whether the workman was an employee or an independent contractor by
32 giving him protection in either situation.

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35 48 Wn.2d at 474.

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37 Although the 1937 amendment expanded the definition of "worker", the expansion was not
38 complete. As stated by the court in Haller v. Department of Labor and Industries, 13 Wn.2d 164, 167
39 (1942) the amendment evidenced a legislative intention "to extend industrial insurance protection to
40 some, but not all, independent contractors" (Emphasis added). The White court, too,
41 recognized that even with the 1937 amendment there would remain independent contractors who
42 would not be subject to the mandatory coverage of the Act. It noted that while a person might be an
43 independent contractor not covered under the Act, that did not prevent him or her from having the
44 protection of the Act if he or she desired to qualify as a working employer, gave necessary notice to
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1 the director, and paid the necessary premiums. 48 Wn.2d 477-478; See RCW 51.12.115 and RCW
2 51.32.030.
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4 Our analysis of whether these salespeople are independent contractors whose personal labor
5 is the essence of the contract should be tempered by the Legislature's declaration of policy as
6 contained at RCW 51.12.010. This declaration provides that:
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9 There is a hazard in all employment and it is the purpose of this title to
10 embrace all employments which are within the legislative jurisdiction of
11 this state.
12

13 RCW 51.12.020 goes on to provide a list of the only employments which are not subject to mandatory
14 coverage.
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16 Yet, while there is a presumption in favor of mandatory coverage, the Legislature did not intend
17 to include all independent contractors within the mandatory coverage of the Act. RCW 51.12.020
18 excludes a number of employments from mandatory coverage, including "sole proprietors." RCW
19 51.12.020(5). Thus the Legislature contemplated that individuals who are engaged in a business for
20 themselves, hold themselves out to the public as independent business people, or otherwise act
21 and/or operate as independent entrepreneurs, should be excluded from the mandatory coverage of
22 the Act. In a sense, the statutory framework creates a continuum, with independent contractors, who
23 are covered pursuant to RCW 51.08.180, on one end and sole proprietors, who are excluded pursuant
24 to RCW 51.12.020(5), on the other.
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29 Our courts have not delineated a clear cut test for determining whether personal labor is the
30 essence of an independent contract. In Haller, supra, which was only the second case decided under
31 the 1937 amendment, the court stated that the determination must:
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34 depend upon the provisions of the contract, the nature of the work to be
35 performed, the situation of the parties, and other attendant circumstances.
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37 13 Wn.2d at 167.
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39 The above quoted framework for analyzing whether personal labor is the essence of the
40 contract has been reiterated by the courts on several occasions. Massachusetts Mutual Life
41 Insurance Co. v. Department of Labor and Industries, 51 Wn. App. 159, 163 (1988); Lloyd's of
42 Yakima Floor Center v. Department of Labor and Industries, 33 Wn. App. 745, 749 (1982); Cook v.
43 Department of Labor and Industries, 46 Wn.2d 475, 476 (1955).
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1 Early cases dealing with the "personal labor" inclusion characterized the inquiry in terms such
2 as whether the independent contractor's "personal efforts constitute the main essential in
3 accomplishing the objects of the employment", Norman v. Department of Labor and Industries, 10
4 Wn.2d 180, 184 (1941), or whether the labor to be performed was "the vital sine qua non, the very
5 heart and soul" of the contract. Haller, at 168. Where others could have performed the work under a
6 contract to haul logs it was said that "labor that can be done by others is not personal as the word is
7 used in the statute." Crall v. Department of Labor and Industries, 45 Wn.2d 497, 499 (1954).
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10 It was not until the Supreme Court's decision in White, supra, that a somewhat more workable
11 test was developed to explain the results reached up to that time. In White the court analyzed the
12 factual situations in its prior cases of Norman, Haller, Crall and Cook and concluded that the 1937
13 amendment:
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16 was not intended to cover an independent contractor (a) who must of
17 necessity own or supply machinery or equipment (as distinguished from
18 the usual hand tools) to perform the contract (the Crall and Cook cases,
19 supra), or (b) who obviously could not perform the contract without
20 assistance (the Haller and Cook cases, supra), or (c) who of necessity or
21 choice employs others to do all or part of the work he has contracted to
22 perform (the Haller and Crall cases, supra).
23
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25 (Emphasis added)¹
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27 A recent case involved the question of whether personal labor was the essence of the contract
28 between an insurance company and its various insurance agents. Massachusetts Mutual Life
29 Insurance Co., supra. In Massachusetts Life it was noted that the insurance company had never
30 disapproved a career agent's contract, that general agents and sales agents may and do delegate
31 their duties to others (e.g. telephone solicitation) and that agents may represent up to 50 insurance
32 companies at a time. Relying solely on the fact that the agents may and do delegate their duties to
33 others, the court held that the insurance agents were not "workers" for purposes of the Act.
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36 By specifying instances in which personal labor is not the essence of the independent contract,
37 the White case provides a framework for resolving a number of cases involving similar facts. Yet the
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43 ¹ The court in White cautioned, in dicta, that the mere fact a person might own and use machinery and equipment
44 in his or her work does not make him or her an independent contractor. If, in the operation of a truck, tractor or other
45 equipment the person "is subject to the direction and control of the employer" the person is an employee, even though the
46 amount paid for the use of the equipment may be much more than would be paid for the person's services as an operator of
47 the equipment. 48 Wn.2d at 477.

1 White test is incomplete. It does not further delineate the circumstances under which personal labor is
2
3 the essence of an independent contract.

4 In reviewing the factual scenarios presented by the court cases as well as the applicable
5 statutes, there are a number of factors in addition to the White criteria which seem to be important to
6
7 the determination of whether personal labor is the essence of the contract. These include:

- 8
9 (1) Right of Control. Does the employer exercise control over the time, place
10 or manner of performance of the contract? Although technically the "right
11 of control" test is for determining whether the individual is an employee as
12 distinguished from an independent contractor, it nevertheless continues to
13 have a great bearing on whether the essence of the contract is personal
14 labor. The more control exercised by the employer in the day-to-day
15 performance of the contract, the more likely that personal labor is deemed
16 the essence of the contract (See, e.g., Lloyd's);
- 17
18 (2) Spurious Independent Contracts. Although not cited as a reason in the
19 case law, independent contracts established only as a guise or subterfuge
20 to avoid industrial insurance premiums should not be condoned. See
21 RCW 51.04.060;
- 22
23 (3) Special Abilities of the Independent Contractor. If the independent
24 contractor has special or superior abilities of critical importance to the
25 employer, this tends to suggest that the essence of the contract is
26 personal labor (See, e.g., Lloyd's and Norman.) On the other hand, if who
27 performs the contract is a "matter of indifference" to the employer, this
suggests the contrary (Haller, 13 Wn.2d at 164);
- 28
29 (4) Exclusivity of Contract. If the independent contractor is not limited in his
30 ability to concurrently contract with others there is a likelihood that the
31 courts will conclude that the essence of the contract is not personal labor.
(See, e.g., Crall; Massachusetts Life);
- 32
33 (5) Indicia of Independent Business. Although personal labor of the
34 independent contractor may be involved, the circumstances may suggest
35 that he or she is simply engaged in an independent business or
36 occupation. See, e.g., Camp v. Department of Labor and Industries, 55
37 Wn.2d 839 (1960); RCW 51.12.020(5).
- 38
39 (6) Work can be Performed Within an Employer/Employee Relationship. If
40 the work could be done on a regular employer/employee basis but the
41 parties have chosen to structure the relationship as an independent
42 contract, then it is more likely that the essence of the contract is personal
labor and that the independent contractor is a "worker". See, White.
- 43
44 (7) Nature of the Work. If the "employer" is getting its basic work done
45 through the services of the independent contractor, then that person is
46 more likely to be considered a "worker". Department of Labor and
47 Industries v. Tacoma Yellos Cab Company, 31 Wn. App. 117, rev. denied,

1 97 Wn.2d 1015 (1982). The flip side of this test is set forth in RCW
2 51.12.020(3) which excludes from coverage "a person whose employment
3 is not in the course of the trade, business, or profession of his or her
4 employer"

- 5
6 (8) Furtherance of the Independent Contractor's Interests as Opposed to the
7 "Employer's" Interests. RCW 51.08.180 includes independent contractors
8 within the coverage of the Act if the essence of the contract is personal
9 labor and if the contractor is acting in the course of employment. The
10 latter term is defined in RCW 51.08.013 as "the worker acting at his or her
11 employer's direction or in the furtherance of his or her employer's business
12" If the independent contractor is furthering his or her own business
13 interests rather than those of an employer, then the independent
14 contractor should not come within the statutory definition of "worker".

15
16 However, even though these additional criteria appear to be important to a determination of
17 whether an independent contractor is a "worker", the most recent pronouncement from the Court of
18 Appeals still relies almost exclusively on the negative White test. See, Massachusetts Life. In
19 Massachusetts Life, the Court of Appeals noted that the insurance agents involved there "may and do"
20 delegate duties to others and, just on that basis, excluded them from coverage.
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23 In the final analysis, the courts have frequently listed a number of factors, but have consistently
24 turned to the three-pronged negative test of White for the resolution of the question of whether an
25 independent contractor is a "worker." In the absence of clear guidance from the courts, we do not feel
26 it is appropriate for us to expand the White test beyond the parameters which have been set by case
27 law, particularly in light of the statutory preference for mandatory coverage.
28

29
30 Evaluating this case under the three guidelines articulated in White for exclusion of independent
31 contractors, there is no question but that the sales agents are covered workers. Although sales
32 agents do supply some of their own equipment, such as an automobile or a VCR, these more closely
33 resemble "tools of the trade", as distinguished from those situations in which the essence of the
34 contract is the machinery or equipment itself. See, Lloyd's, at 751. Further, Peter M. Black Real
35 Estate Co., Inc. and the sales agents do not contemplate that the labor of obtaining and selling
36 property listings will be done by others, in whole or in part. Although agents will occasionally contract
37 with third parties for the performance of services necessary or desirable to facilitate a sales
38 transaction, we do not view this as tantamount to delegating their duties under their contracts. While
39 the sales agents who work with Peter M. Black Real Estate Co., Inc. can and frequently do share the
40 effort and commission involving a particular sales transaction, a sales agent may not delegate any of
41 the duties involved in obtaining and selling property listings to any person who is not also a sales
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1 agent with Peter M. Black Real Estate Co., Inc. Under such facts, we can only conclude that the sales
2 agents work under an independent contract, the essence of which is the sales agent's personal labor;
3 the agents are therefore workers within the meaning of RCW 51.08.180.
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6 Status of Peter M. Black:

7 Peter M. Black Real Estate Co., Inc. was incorporated on March 9, 1979. Since that time, Mr.
8 Peter Black has remained its sole shareholder and director. According to the uncontroverted evidence
9 in this case, the firm did not conduct or engage in any business until approximately September of
10 1979. Under these facts, we can only conclude that Mr. Black is excluded from the mandatory
11 coverage provisions of the Act.
12

13 As pointed out by our Industrial Appeals Judge, executive officers of corporations were first
14 excluded from mandatory coverage under RCW 51.12.020 effective June 7, 1979. However, that
15 statute also provided that "[a]ny officer who is considered by the department to be covered on and
16 after June 30, 1977, shall continue to be covered until such time as the officer voluntarily elects to
17 withdraw from coverage..." Laws of 1979, ch. 128, § 1, p. 489. (That portion of the statute was
18 deleted by the Legislature in 1987; Laws of 1987, ch. 316, § 2, p. 1123). It is stipulated that Mr. Black
19 never voluntarily elected to withdraw from coverage.
20

21 However, before an entity becomes subject to the provisions of our Industrial Insurance Act, it
22 must be "engaged in this state in any work covered by the provisions' of the Act. RCW 51.08.070.
23

24 It is therefore quite apparent that the mere act of incorporating an entity is not sufficient to make
25 that entity an employer under our Act. The entity, corporate or otherwise, must first be engaged in this
26 state in work covered by the provisions of the Act. It is uncontroverted that Peter M. Black Real Estate
27 Co., Inc. first engaged in any work in this state in September of 1979. Therefore, the entity was not an
28 employer in this state prior to June 7, 1979. Since Peter M. Black Real Estate Co., Inc., was not an
29 employer in this state within the meaning of RCW 51.02.070 between June 30, 1977 and the effective
30 date of the 1979 amendment, June 7, 1979, it follows that Mr. Black was not required to specifically
31 withdraw from coverage under the above-quoted proviso of the 1979 legislation. Thus, pursuant to
32 RCW51.12.020 as amended in 1979, Peter M. Black, as an officer, director, and shareholder of the
33 corporation is excluded from mandatory coverage under the Act. Because Mr. Black did not
34 voluntarily elect to be covered under the Act, it was error for the Department to assess premiums or
35 him.
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1 After consideration of the Proposed Decision and Order, the Employer's Petition for Review
2 filed thereto, and a careful review of the entire record before us, we hereby enter the following
3 Findings of Fact and Conclusions of Law.
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6 **FINDINGS OF FACT**

- 7 1. On January 27, 1988 the Department of Labor and Industries issued a
8 Notice and Order of Assessment No. 57971 to Peter M. Black Real Estate
9 Co., Inc. assessing taxes due and owing the State Fund in the amount of
10 \$2,700.09 for the period from January 1, 1985 through March 31, 1987
11 (Docket No. 88 1192) and also Notice and Order of Assessment No.
12 57972 assessing taxes due and owing the State Fund in the amount of
13 \$775.12 for the period from April 1, 1987 through September 30, 1987
14 (Docket No. 88 1191).

15 On February 24, 1988 the firm, Peter M. Black Real Estate Co., Inc.,
16 protested both notices and orders of assessment. On February 24, 1988
17 and March 14, 1988 the Department issued orders affirming Notice and
18 Order of Assessment Nos. 57971 and 57972.
19

20 On March 24, 1988 the firm filed notices of appeal with the Board of
21 Industrial Insurance Appeals from the orders dated February 24, 1988 and
22 March 14, 1988. On April 15, 1988 the Board issued orders granting the
23 appeals, assigning Docket Nos. 88 1191 and 88 1192 to the appeals and
24 directing that hearings be held on the issues raised by the appeals.
25

- 26 2. On March 9, 1979, Peter M. Black Real Estate Co., Inc. was incorporated.
27 Since that date, Mr. Peter M. Black has been the sole shareholder,
28 president, and a member of the corporation's board of directors. Peter M.
29 Black Real Estate Co., Inc. did not engage in any work or business in this
30 state or elsewhere until September of 1979.
- 31 3. From January 1, 1985 through September 30, 1987, the sales agents of
32 Peter M. Black Real Estate Co., Inc. were not required to work any specific
33 hours, work any period of time in the office or attend any meetings.
34 Agents supplied their own automobiles, cameras and other business
35 supplies. The company provided office space, some furniture, a computer
36 and legal advice. No real estate agent was authorized to hire other
37 persons to list or sell property on his or her behalf. No real estate agent
38 had the right to manage or control Peter M. Black Real Estate Co., Inc. or
39 was liable for its losses, if any.
- 40 4. During the period from January 1, 1985 through September 30, 1987, the
41 real estate sales agents were working under an independent contract with
42 Peter M. Black Real Estate Co., Inc., the essence of which was the
43 agents' personal labor.
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- 45 5. Peter M. Black did not elect to be voluntarily covered under the Industrial
46 Insurance Act.
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3 **CONCLUSIONS OF LAW**
4

- 5 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
6 and the subject matter of this appeal.
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8 2. During the period from January 1, 1985 through September 30, 1987, the
9 real estate sales agents associated with Peter M. Black Real Estate Co.,
10 Inc. were workers within the meaning of RCW 51.08.180.
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12 3. During the period from January 1, 1985 through September 30, 1987,
13 Peter M. Black was excluded from the mandatory coverage of the
14 Industrial Insurance Act pursuant to RCW 51.12.020 as amended in 1979.
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16 4. The order of the Department of Labor and Industries dated February 24,
17 1988, which affirmed Notice and Order of Assessment No. 57972 issued
18 on January 27, 1988, which assessed industrial insurance taxes due and
19 owing to the state fund in the amount of \$775.12 for the period from April
20 1, 1987 through September 30, 1987, and the order of the Department of
21 Labor and Industries dated March 14, 1988, which affirmed Notice and
22 Order of Assessment No. 57971 issued on January 27, 1988, which
23 assessed industrial insurance taxes in the amount of \$2,700.09 for the
24 period from January 1, 1985 through March 31, 1987, are incorrect and
25 should be reversed, and this matter remanded to the Department with
26 direction to delete the assessment based upon coverage of Peter M.
27 Black, and to issue a revised Notice and Order of Assessment of Industrial
28 Insurance Taxes for the period from January 1, 1985 through September
29 30, 1987 for coverage of the real estate sales agents associated with
30 Peter M. Black Real Estate Co., Inc.

31 It is so ORDERED.

32 Dated this 23rd day of March, 1989.

33 BOARD OF INDUSTRIAL INSURANCE APPEALS

34 /s/
35 SARA T. HARMON Chairperson

36
37 /s/
38 FRANK E. FENNERTY, JR. Member

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40 /s/
41 PHILLIP T. BORK Member
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