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**From:** [REDACTED]

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**To:** [REDACTED]

**Cc:**

**Bcc:** [REDACTED]

**Subject:** 3508 direct sellers - tangible vs. intangible consumer products

Jason –

As you point out, case law regarding section 3508 eliminates the distinction between tangible and intangible consumer products put forward in Proposed Reg. section 31.3508-1(g)(3). See, e.g. Cleveland Institute of Electronics, Inc. v. United States, 787 F. Supp. 741 (N.D. Ohio 1992)(holding that for section 3508 purposes, the term consumer product included both tangible consumer products and intangible consumer services; thus, a home-study course was a consumer product); R Corp. v. United States, 94-2 U.S.T.C. ¶ 50,380, (D. Fla. 1994)(following Cleveland Institute in holding that cable television subscriptions were intangible services and therefore a consumer product under section 3508).

In Cleveland Institute, the government argued that consumer products were limited to tangible products, as stated in the proposed regulations. The court rejected this distinction between tangible and intangible consumer products, pointing out that it had been six years since the regulations were proposed and they had still not been issued in final form. The court instead relied on the purpose of the statute, as set forth in the legislative history to section 3508--to reduce the number of controversies regarding employment tax status and to increase compliance on the part of independent contractors. It found that these purposes were best served by interpreting the term consumer products to include both tangible consumer goods and intangible consumer services.

CCA 199940006 is the latest advice I'm aware of. It cites to 1996 training materials which state: "cases should not be developed based on a distinction between tangible and intangible products; i.e., both types of products will qualify."

Rebecca