§ 404.1069 Real estate agents and direct sellers.

(a) Trade or business. If you perform services after 1982 as a qualified real estate agent or as a direct seller, as defined in section 3508 of the Code, you are considered to be engaging in a trade or business.

(b) Who is a qualified real estate agent. You are a qualified real estate agent as defined in section 3508 of the Code if you are a salesperson and—
(1) You are a licensed real estate agent;
(2) Substantially all of the earnings (whether or not paid in cash) for the services you perform as a real estate agent are directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and
(3) Your services are performed under a written contract between yourself and the person for whom the services are performed which provides you will not be treated as an employee with respect to these services for Federal tax purposes.

(c) Who is a direct seller. You are a direct seller as defined in section 3508 of the Code if—
(1) You are engaged in the trade or business of selling (or soliciting the sale of) consumer products—
(i) To any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary of the Treasury prescribes by regulations, for resale (by the buyer or any other person) in the home or in other than a permanent retail establishment; or
(ii) In the home or in other than a permanent retail establishment; and
(2) Substantially all of your earnings (whether or not paid in cash) for the performance of these services are directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and
(3) Your services are performed under a written contract between yourself and the person for whom the services are performed which provides you will not be treated as an employee with respect to these services for Federal tax purposes.

[48 FR 46515, Sept. 8, 1983]