

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

WISCONSIN DEPARTMENT OF REVENUE *v.* WILLIAM WRIGLEY, JR., CO.

CERTIORARI TO THE SUPREME COURT OF WISCONSIN
No. 91–119. Argued January 22, 1992—Decided June 19, 1992

During 1973–1978, respondent chewing gum manufacturer, which is based in Chicago, sold its products in Wisconsin through a sales force consisting of a regional manager and various “field” representatives, all of whom engaged in various activities in addition to requesting orders from customers. Wisconsin orders were sent to Chicago for acceptance, and were filled by shipment through common carrier from outside the State. In 1980, petitioner Wisconsin Department of Revenue concluded that respondent’s in-state business activities during the years in question had been sufficient to support imposition of a franchise tax. Respondent objected to the assessment of that tax, maintaining that it was immune under 15 U.S.C. §381(a), which prohibits a State from taxing the income of a corporation whose only business activities within the State consist of “solicitation of orders” for tangible goods, provided that the orders are sent outside the State for approval and the goods are delivered from out-of-state. Ultimately, the State Supreme Court disallowed the imposition of the tax.

Held: Respondent’s activities in Wisconsin fell outside the protection of §381(a). Pp.4–20.

(a) In addition to any speech or conduct that explicitly or implicitly proposes a sale, “solicitation of orders” as used in §381(a) covers those activities that are *entirely ancillary* to requests for purchases—those that serve no independent business function apart from their connection to the soliciting of orders. The statutory phrase should not be interpreted narrowly to cover only actual requests for purchases or the actions that are absolutely essential to making those requests, but includes the entire process associated with inviting an order. Thus, providing a car and a stock of free samples to salesmen is part of the “solicitation of orders,” because the only reason to do it is to facilitate requests for purchases. On the other hand, the statutory phrase should not be interpreted broadly to include all activities that are routinely, or even closely, associated with solicitation or customarily performed by salesmen. Those activities that the company would have reason to engage in anyway but chooses to allocate to its in-state sales force are not

covered. For example, employing salesmen to repair or service the company's products is not part of the "solicitation of orders," since there is good reason to get that done whether or not the company has a sales force. Pp.8-16.

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(b) There is a *de minimis* exception to the activities that forfeit §381 immunity. Whether a particular activity is sufficiently *de minimis* to avoid loss of §381 immunity depends upon whether that activity establishes a nontrivial additional connection with the taxing State. Pp.16–17.

(c) Respondent's Wisconsin business activities were not limited to those specified in §381. Although the regional manager's recruitment, training, and evaluation of employees and intervention in credit disputes, as well as the company's use of hotels and homes for sales-related meetings, must be viewed as ancillary to requesting purchases, the sales representatives' practices of replacing retailers' stale gum without cost, of occasionally using "agency stock checks" to sell gum to retailers who had agreed to install new display racks, and of storing gum for these purposes at home or in rented space cannot be so viewed, since those activities constituted independent business functions quite separate from the requesting of orders and respondent had a business purpose for engaging in them whether or not it employed a sales force. Moreover, the nonimmune activities, when considered together, are not *de minimis*. While their relative magnitude was not large compared to respondent's other Wisconsin operations, they constituted a nontrivial additional connection with the State. Pp.17–20.

160 Wis.2d 53, 465 N.W.2d 800, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which WHITE, STEVENS, SOUTER, and THOMAS, JJ., joined, and in Parts I and II of which O'CONNOR, J., joined. O'CONNOR, J., filed an opinion concurring in part and concurring in the judgment. KENNEDY, J., filed a dissenting opinion, in which REHNQUIST, C. J., and BLACKMUN, J., joined.