U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210

WHD-OL-1999-NNNN

July 12, 1999

Dear **NAME***

This is in response to your letter concerning the application of the Fair Labor Standards Act (FLSA) to certain automatic charges imposed by a private club. We regret the delay in responding.

Your client is a private club that serves food and beverages to Club members and their guest on its premises. The Club imposes an automatic charge, variously described on some Club forms as either a "service charge" or a "gratuity", on all food and beverage transactions. The amount of the charge is 15% for a la carte service and 20% for banquet service.

The amount of the charge is set by the Club in advance of the service being rendered and without regard to the quality of the service. In other words, the member must pay the automatic 15% or 20% whether or not he or she feels the service merits such an amount.

The amount of these automatic charges is non-negotiable. The server is not authorized to modify or delete the charge. The Club member is normally presented with, and signs, a check or "chit" when he or she is first seated and before the service is rendered. The chits come in various forms, some of which refer to "service charge" being added, while others use the word "gratuity".

If a member is dissatisfied with any aspect of his or her experience at the Club, the Club may, in its discretion, write off all or any portion of the member's bill for a particular function. Such write-offs could include the automatic charge.

The automatic charges appear on the member's monthly statement as "service charges", in contrast to "additional gratuities", which is how the statements describe additional tips left by members for particular servers. The automatic charges variously described as service charges are billed and collected by the Club under a separate accounting code. The Club reports the charges as "service charges" to state revenue authorities and pays sales taxes on the amounts so reported.

Based on the above facts, you pose two questions:

1. Do the amounts collected as automatic charges belong to the Club or to the servers?

2. Would our opinion change if the members who pay the automatic charges believe that such charges are distributed to the servers?

It is our opinion that compulsory charges which are added to members' bills are gross receipts to an employer. Therefore, the employer has complete discretion in choosing the manner in which the compulsory charge is to be used, which would include using it to pay employees. Where compulsory charges are imposed and the employee receives no tips, the employer must pay the entire minimum wage and overtime required by the FLSA. Whether the member believes the automatic fee is distributed to the servers does not change our position.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein.

Sincerely,

Daniel F. Sweeney
Office of Enforcement Policy
Fair Labor Standards Team

*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).