U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210

CCPA-43

December 9, 1970

In your letter you ask whether proper credits for tips, meals and lodging are included in the computation of an employee's earnings under the Federal Wage Garnishment Law.

The statutory definition of the term "earnings" embraces generally compensation for personal services. When the contract of employment provides for the employer to provide meals and lodging, the dollar value of the meals and lodging would be considered to be encompassed by the term "earnings". Thus, in applying the restrictions of section 303(a) to an individual's earnings, equal treatment is afforded to individuals having such an arrangement with individuals who provide for their own meals and lodging from compensation which is otherwise payable to them.

On the other hand, tips are generally not considered within the meaning of the term "earnings" because garnishment is inherently a procedural device to reach assets in the hands of the garnishee, here the employer. Typically, tips are paid by a third person to an employee, and do not pass through the hands of the employer.

There may be so-called tipping situations where customer payments would constitute "earning" under the Title III definition. For example, where in lieu of tipping, a customer in a restaurant is charged ten percent of the check and this amount is in turn paid to the waiter, there is no gift by the customer, and there is compensation flowing from the garnishee to the waiter. Similarly, where the employment agreement is such that amounts presented by customers as tips belong to the employer and must be credited or turned over to him, the employee is not receiving tips and his earnings would be measured by the compensation payable to the employee under the employment agreement.

Sincerely,

Robert D. Moran
Administrator