


## FLSA-855

July 19, 1985

This is in response to your letter of June 14 in which you request an opinion as to whether the tips received by employees of a valet parking company may be considered as "sales" for the purpose of applying the provisions of the Fair Labor Standards Act (FLSA). You also wish to know if the valet parking company may retain all these tips received by its parking attendants while they are on duty at various restaurants, and use this money to pay these individuals at a rate of \$5.00 an hour.

 The FLSA, which is administered by the Wage and Hour Division, is the Federal law of most general application concerning wages and hour of work. The Act requires that all covered and nonexempt employees be paid at least \$3.35 an hour for all hours worked and overtime pay of one and one-half times their regular rates of pay for all hours worked over 40 in a workweek.

In a telephone conversation with a member of my staff on July 8, you provided additional information concerning the subject of your inquiry. You indicated in this conversation that the restaurants who use the valet parking company's services exercise no control over the parking attendants who are assigned to the establishments.

We do not agree that the tips received by the employees in the circumstances described in your letter can be regarded as "sales" made by the valet parking company. A tip is a gift or gratuity presented voluntarily by a customer to an individual in recognition of some service performed and, for this reason, would not be considered as part of the sales made or business done by your client.

As explained in FLSA section 3(m), tips received by tipped employees may be counted by an employer as wages for purposes of the Act in an amount up to 40 percent of the applicable minimum wage (currently \$3.35 an hour). In addition, FLSA requires that (1) the tipped employees be informed by the employer of the tip credit provisions of FLSA section 3(m), and (2) all tips received by such employees be retained by the employees. A "tipped employee" is defined as any employee engaged in an occupation in which he or she customarily and regularly receives not less than \$30 a month in tips.


Under FLSA, a tip presented by a customer in recognition of an employee's service becomes the property of that employee, and any agreement, voluntary or involuntary, which provides for the remittance of tips to the employer is invalid. Employees must retain all of their tips whether or not an employer chooses to take the tip credit provided by FLSA section 3(m). Furthermore, an employer must pay the applicable minimum wage (or that part of the minimum wage required by section 3(m) of the Act) to employees who receive tips.

We trust that the above is responsive to your inquiry. If we can be of further assistance, please do not hesitate to contact us again.

Sincerely,

Herbert J. Cohen  
Deputy Administrator

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 Minimum wage has been increased by later amendments to the Act.