

FLSA-449

November 24, 1992

This is in reply to your letter requesting an opinion as to whether an employer can take a wage credit for the reasonable cost or fair value pursuant to section 3(m) of the Fair Labor Standards Act (FLSA) and Regulations, 29 CFR Part 531, of certain facilities furnished to employees.

You state that the employer operates a number of automobile dealerships with franchises from different American and foreign manufacturers. The employee is employed as a retail automobile salesperson and is paid at least the minimum wage required by the FLSA for all hours worked each workweek, plus periodic commissions on sales made. The facility furnished is the use of a company car. The decision to accept or reject the use of the car is voluntary on the part of the employee, and the car is not used to conduct any business on behalf of the employer.

The company car is not what is known in the retail automobile industry as a "demonstrator." Therefore, the company car is not used for customer demonstrations or any other business purpose, need not be returned to the employer based on customer desires, and contains no advertisement or dealer name anywhere on the vehicle. Because the car can come from any of the employer's different American and foreign dealerships, the car driven by the employee is generally not among the cars sold by the employer at the employee's business location.

The FLSA requires that all covered and nonexempt employees be paid a minimum wage of \$4.25 an hour and not less than one and one-half times their regular rates of pay for all hours worked in excess of 40 in a workweek. Section 3(m) of the FLSA defines the term "wage" to include the "reasonable cost" to an employer of furnishing any employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by an employer to employees. As stated in section 531.32 of the regulations "other facilities" must be something like board or lodging. An employer may make deductions from employees' wages for the reasonable cost of such facilities furnished employees for their benefit. These deductions are permissible even if the result is to reduce an employee's wages below the statutory minimum.

It is our opinion that the furnishing of a car to an employee under the circumstances described in your letter would qualify as a "facility" such as board or lodging furnished for an employee's benefit. Therefore, a deduction may be made from the wages of an employee for the reasonable cost of the car, provided such a facility is customarily furnished by the employer to employees. See section 531.31 of the regulations for a discussion of "customarily" furnished.

This opinion is based exclusively on the facts and circumstances described in your letter 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. You have also represented that this opinion is not sought on behalf of a client or firm that is under investigation by the Wage and Hour Division, or that is in litigation with respect to, or requiring compliance with, the provisions of the FLSA.

Sincerely,

Karen R. Keesling
Acting Administrator