

FLSA-70

May 20, 1970

This is in further reply to your letter of April 23, 1970, concerning the application of the Fair Labor Standards Act to your client's operation of a package liquor store and lounge on the same premises.

You state that typically the liquor store and the lounge are located in the same building, but they are separately incorporated, have separate employees, etc. You ask if they would be considered separate establishments on the same premises, as discussed in section 779.305 of our Interpretative Bulletin, Part 779.

Under certain circumstances two or more physically separated portions of a business, though located on the same premises, may constitute more than one establishment. Primarily the two physically separated portions of the business must be engaged in operations which are also functionally separated from each other. Since there is no such functional separation between activities of selling goods or services at retail, on the basis of the information you have provided, we would consider the package liquor store and lounge as departments of a single establishment for purposes of application of the Fair Labor Standards Act.

Insofar as your question concerning "excise taxes separately stated" is concerned, in the absence of a sales slip or invoice, the amount of the tax may either be separately stated orally at the time of the sale, or visually by means of a poster or other sign reasonably designed to inform the purchaser that the amount of the tax, either as a stated sum per unit or measured by the gross amount of the sale, or as a percentage of the price, is included in the sales price. Federal excise taxes on alcoholic beverages are levied on the manufacture of the product. They are neither levied nor collected at the retail level and thus are not excludable. (See sections 779.261 through 779.264 of Interpretative Bulletin, Part 779.) Whether local taxes are levied at the retail level depends upon the laws of the particular State or municipality.

If you have any additional questions in this or any other matter concerning the application of the Fair Labor Standards Act, it is suggested that you get in touch with our Area Office at ***. That office will be pleased to offer every assistance possible.

Sincerely,

Robert D. Moran
Administrator

Enclosure