

FLSA-831

May 17, 1976

This is in reply to your letter of April 30, 1976, regarding the application of the Fair Labor Standards Act to tipped employees. You ask whether charged tips could be turned over to the employer and taken into the business receipts. At the end of each pay period the employer would total the hourly cash wages due to the employee and the sum of the employee's charged tips. From this total due the employee, the employer would withhold the requisite FICA and income tax amounts and the employee would be issued a check for the balance.

The enclosed statement explains the application of the Act to tipped employees. There are several elements in the plan outlined above which would not comply with the Act. The plan does not indicate that the employer would pay tipped employees at least half of the applicable minimum wage (from his own pocket) for each hour worked and take a tip credit of not more than 50 percent of the required minimum wage. Tips include amounts designated as "tip" by credit card customers on their charge slips. Such tips become the property of the tipped employee and the law forbids any plan where the tips belong to the employer. At no time may the employer "take the total amount appearing thereon (the charge slips) into his receipts." The employer may deduct required income taxes and FICA withholdings from the tips as well as the cash wage paid but the tips must be held aside from the business receipts in a separate account for the employees since such tips may never belong to the employer.

Sincerely,

Ronald J. James
Administrator