

**FLSA-1392**

May 11, 1977

This is in further reference to your letter of November 16, 1976, concerning the application of sections 13(a)(1) and 13(b)(1) of the Fair Labor Standards Act to the route salesmen of your client,

In the absence of more specific information as to the actual job functions of the route salesmen, we are unable to advise whether they may be considered to be employed for the purpose of "making sales" and are therefore within the section 13(a)(1) exemption (assuming all other tests are met) or whether they are employed for service and delivery duties and are therefore nonexempt. In this regard we refer you to sections 541.500 through 541.508 of Regulations, Part 541 with particular reference to section 541.505 as the application of the outside salesmen exemption relates to driver salesmen. See also Hodgson v. Kisses Coal and Ice Co., 435 F. 2d 377 (C.A. 6, 1970), cert. denied 402 U.S. 973 (1971), holding that routemen employed by a soft drink bottling and distributing company were not "outside salesmen" exempt under section 13(a)(1) of the Act. The Court held that the routemen were not exempt because they did not themselves make the actual solicitation and sales of the company's goods and services. The actual persuasion and selling had been done earlier by a sales manager, whereas the routemen spent most of their time merely restocking customers' allotted shelf space pursuant to the agreements between the customers and the sales manager.

As concerns section 13(b)(1), you are of the opinion (contrary to that of our Baltimore Area Office) that the exemption would apply since the route salesmen regularly transport checks drawn on out-of-State banks; said checks are subsequently shipped out-of-State by the bank. In support of this position you cite section 782.7 of I.B. Part 772 and a Regional Solicitor's opinion (related to you by our Newark Area Office) regarding an armored car company whose vehicles transported checks drawn on out-of-State banks, which checks were subsequently sent out of State by the bank.

We are inclined to reach a different conclusion. In our view the exemption would not be applicable to the route salesmen of \*\*\*. In the New Jersey armored car opinion of the Regional Solicitor, the armored car crews picked up bags of coins, currency and checks and transported them to the bank for subsequent out-of-State transmittal. It was held that the transportation of checks to the main bank for further transmittal was the initial step of a continuity of interstate movement and that the section 13(b)(1) exemption applied under these circumstances. We respectfully submit that this differs significantly from the situation with respect to the route salesmen who pick up the checks from their customers and presumably return them to the office of \*\*\* before they continue on to the bank for subsequent out-of-State transmittal. In our view the checks are not in the initial step of a "practical continuity of movement" between States when the route salesmen picks them up since the "processing" in the office of \*\*\* would constitute a break in such movement. Accordingly, we do not feel that the 13(b)(1) exemption would apply to the route salesmen in this situation.

We trust that the above is of assistance to your office in this matter.

Sincerely,

Warren D. Landis  
Administrator