

**(GEN) FLCRA**  
U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
Wage and Hour Division  
WASHINGTON, D.C. 20210



JUN 1 1978

This letter is in response to your inquiry of February 13, 1978, concerning the Farm Labor Contractor Registration Act of 1963 and the exemption afforded by Section 3(b)(2) of the Act as amended in 1974.

Your letter cites our opinion letter of October 3, 1977, which states that the addition of the word personally to Section 3(b)(2) in 1974 narrowed the applicability of the exemption to an individual. You refer to Senate Report 93-1295, a part of the legislative history of the 1974 amendments to the Act, and you quote that portion of the Senate Report which deals with Section 3(b)(2).

You then ask, first, whether we have considered Senate Report 93-1295 in interpreting Section 3(b)(2) and ask how, in the light of the Senate Report, we concluded that this exemption is unavailable to corporate farmers.

We have, indeed, considered Senate Report 93-1295 in making our determination as to the applicability of the exemption of Section 3(b)(2). That document discusses the meaning of the word farmer and the meaning of the expression solely for his own operation. At no place in that report is there any discussion of the meaning of the word personally. In the absence of clear indication to the contrary, we can only conclude that personally means, as commonly defined, in person, as distinguished from through an agent. As pointed out in our opinion letter WH-433 of October 3, 1977, only a natural person can act other than through an agent.

I am enclosing for your information copies of the relevant portions of the Hearings conducted by the Subcommittee on Agricultural Labor of the House of Representatives Committee on Education and Labor in October 1975 and June and July 1976. In the 1975 hearings, Assistant Secretary of Labor [redacted] statement (page 14) discusses the inapplicability of Section 3(b)(2), as amended in 1974, to corporations. The same point is made by Associate Solicitor [redacted] and Deputy Assistant Secretary of Labor [redacted] (page 17). In 1976,

Congressman [REDACTED] Associate Administrator [REDACTED] and Deputy Associate Solicitor [REDACTED] discuss changing personally in Section 3(b)(2) to directly and conclude that the two words in that context would be equivalent.

In response to direct questioning before the House of Representatives Subcommittee on Economic Opportunity on February 22, 1978, Counsel for Employment Standards [REDACTED] said:

The statute prior to 1974 did not contain the word personally. The sole change made in the statute, in the definitions and the requirements, as to who is or is not engaged in the activity, is the addition of one word, personally. In order to give it any meaning at all, it had to be given the meaning that is normally given to the word personally.

Under 3(b)(2) it said you had to engage personally, and it had to be given a meaning. There had been no other change made in the legislative history all the way from 1964 forward. We then took the position of equal enforcement and uniformity, and the way we had viewed the same word in the Fair Labor Standards Act was keyed into this Act. Internal Revenue's use of the word personally also was keyed in because of your definition of agricultural worker, and we followed the same line of approach that personally, in order to be given a meaning, meant the person had to engage in the activity him or herself.

There could have been no other reason for putting it in. The legislative history itself does not mention it anywhere except that it appears in the bill. We are charged with the enforcement and carrying out of the law as written. We did investigate the history, we did assume that Congress in its enactment of the statute had a reason for putting it in, and we gave it a meaning.

In view of the above, we can only reiterate our response to previous questions on Section 3(b)(2). A corporate farmer, unless under the effective control of an individual whose authority is equivalent to that of a sole proprietor, is not eligible for the exemption embodied in Section 3(b)(2).

Thank you very much for your interest in this matter. We regret the delay in responding to your request.

Sincerely,

Herbert J. Cohen  
Assistant Administrator

Enclosures