

OCT 22 1980

Thank you for your letter requesting on behalf of your client, a ruling under the Fair Labor Standards Act (FLSA) on the participation of hostesses in a tip pool.

You state your client operates a chain of restaurants. Each restaurant has a tip pool to which the dining room waiter/waitress personnel contribute a maximum of 15% of their daily gross sales. This tip pool contribution averages 9 - 11% of the tips they receive, but in no event is such contribution in excess of 15% of the tips they receive. We assume that these percentages are determined by considering the tips in excess of those used for the tip credit, i.e., those in excess of 40% of the Federal minimum wage. The tip pool contribution is split among busboys and bartenders. (Cocktail waitresses also contribute 15% of their daily sales (never more than 15% of their tips to bartenders).) The tip pool is shared daily at the end of each shift. The amounts received either individually or from the tip pool amount to well in excess of \$30 a month, thereby qualifying such employees as "tipped employees" within the meaning of section 3(t) of the Act. In accordance with section 3(s) of the Act, the employer takes a tip credit on the waiter/waitress personnel as well as the tip pool recipients.

~~Your client also claims to include hostess personnel in the tip pool and utilizes the tip credit when compensating them. You state that on a regular and customary basis, hostess personnel also perform duties related to a tipped occupation although these duties themselves do not produce tips. Such duties include refilling water glasses and coffee cups, cleaning the salad bar, getting away condiments, bus dirty glasses from the service stations and bar, and cleaning and resetting tables. They also "floor" throughout the dining room to insure customer satisfaction, and handle customer complaints and problems. They are also cross-trained as cocktail waitresses. You state your client has reviewed a number of other restaurants in the area which typically include hostess personnel in their tip pools and presumably claim a tip credit when compensating them. Accordingly, you ask if your client may do the same with respect to his or her hostess personnel.~~

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As indicated by Section 531.56 of 29 CFR Part 531, to which you refer, employees who share in tips are tipped employees if they customarily and regularly receive more than \$30 a month in tips from the tip pool. Therefore, based on your assurances that waitress personnel customarily and regularly participate in tip pools in your client's area of operation, it is our opinion that your client may claim a tip credit not to exceed 40% of the Federal minimum wage or the actual amount of tips they receive whichever is less, when compensating them. Of course, the waitress personnel must customarily and regularly receive more than \$30 a month in tips.

Sincerely,

Henry T. White, Jr.  
Deputy Administrator