

**FLSA-714**

February 27, 1981

This is in reply to your letter of January 28, 1981, concerning the application of the overtime provisions of the Fair Labor Standards Act (FLSA) to employees of \*\*\* Ski Corporation, \*\*\*.

You indicate that \*\*\* is a winter ski resort which opens about December 1 and closes at the end of March. During the season \*\*\* employs approximately 120 workers. During the off-season, six employees are employed in office, maintenance and repair, and occasionally construction functions. Estimated total revenues for the 1980-81 season are in excess of \$1,000,000 and are derived from the sale of lift tickets; ski shop sales; rental of ski equipment; a ski school; a cafeteria, two bars and a restaurant; land sales, lodging management fees; and miscellaneous sources (nursery, locker, vending, etc.). At the end of the ski season, in March all operations cease, except for the activities of the off-season employees discussed above.

Section 13(a)(3) of the FLSA provides an exemption from the minimum wage and overtime provisions for "any employee employed by an establishment which is an amusement or recreational establishment, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year." The information you have provided indicates that such tests are met by \*\*\*, and thus the minimum wage and overtime exemption would be applicable to employees employed by the establishment with one possible exception.

Employees of your establishment who engage in construction or reconstruction work do not qualify for the section 13(a)(3) exemption in any workweek in which they are so engaged. For example, employees of your ski resort who, in addition to their maintenance and repair work, engage in the erection of new structures, buildings, and places of entertainment are not within the section 13(a)(3) exemption in any workweek that some construction work is performed. In those workweeks such employees would be entitled to receive a minimum wage of at least \$3.35 per hour and to overtime compensation of not less than one and one-half times their regular rate of pay for all hours worked in excess of forty in the workweek.

Please let us know if we may be of further assistance.

Sincerely,

Henry T. White, Jr.  
Deputy Administrator

Enclosures