

## FLSA-646

August 15, 1984

This is in reply to your letter of July 20 requesting on behalf of a client, an opinion under the Fair Labor Standards Act (FLSA) copy enclosed, as to whether the value of an apartment furnished to a resident manager of an apartment building may qualify as a minimum wage credit. You ask this question because of the Supreme Court's ruling in Rowan Companies, Inc. v. U. S. No.88 780, that certain items furnished to employees by and for the convenience of an employer are not taxable income.

Since the Supreme Court in the Rowan case ruled on the issue of taxable income for FICA and FUTA purposes, it is our opinion that the definition of wages under FLSA is unchanged. Under FLSA, section 3(m) defines the term "wage" to include the "reasonable cost" or "fair value," as determined by the Secretary of Labor to an employer of furnishing any employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by the employer to his employees. Labor Department Regulations (29 CFR Part 531, copy enclosed) set out in greater detail the procedures and factors to be applied in making determinations of "reasonable cost" or "fair value" under FLSA section 3(m). It should be noted that "reasonable cost" means actual cost.

Accordingly, a wage credit may be claimed against cash wages due the employee residing in an apartment furnished by the employer. However, the wage credit may not exceed the lesser of the apartment's "reasonable cost" or fair value. Since you did not provide any cost or fair value figures associated with the apartment we are unable to determine whether the amount of wage credit your client wishes to claim against cash wages owed the resident manager is proper under FLSA.

If you have any particular questions regarding the calculation of the apartment's "reasonable cost" or "fair value" you may wish to contact this office again.

Sincerely,

Stephanie R. Glyder, Chief  
Branch of FLSA Enforcement

Enclosures