Wage and Hour Division, Labor

§ 779.262

In determining whether the enterprise or establishment, as the case may be, has the requisite annual dollar volume of sales, excise taxes will not be counted if they are taxes that are collected at the retail level and are separately identified in the price charged the customer for the goods or services at the time of the sale. Excise taxes which are levied at the manufacturer’s, wholesaler’s, or other distributive level will not be excluded in calculating the dollar volume of sales nor will excise taxes be excluded in cases where the customer is charged a single price for the merchandise or services and the taxes are not separately identified when the sale is made. (S. Rept., 146, 87th Cong., first session, p. 39.)

In applying the above rules to determine annual gross volume of sales or business under section 3(s) or annual dollar volume of sales for purposes of the $250,000 test under section 13(a)(2), excise taxes which (a) are levied at the retail level and (b) are separately stated and identified in the charge to the customer at the time of sale need not be included in the calculation of the gross or dollar volume of sales. Excise taxes which are levied at the manufacturer’s, wholesaler’s or other distributive level will not, ordinarily, be excluded in calculating the volume of sales, nor will excise taxes, even if levied at the retail level, be excluded in cases where the customer is charged a single price for the merchandise or services and the taxes are not separately identified when the sale is made. Excise taxes will be excludable whether they are levied by the Federal, State, or local government provided that the tax is “levied at the retail level” and “separately stated”.

§ 779.262 Excise taxes at the retail level.

(a) Federal excise taxes are imposed at the retail level on highway vehicle fuels other than gasoline under the provisions of 26 U.S.C. 4041. Such excise taxes are levied at the retail level on any liquid fuel sold for use, or used in a diesel-powered highway vehicle. A similar tax is imposed on the sale of such special motor fuels as benzene and liquefied petroleum gas when used as a motor fuel. To the extent that these taxes are separately stated to the customer, they may be excluded from gross volume of sales. The extent to