

§ 779.383 “Hotel” and “motel” exemptions under section 13(b)(8).

(a) *General.* A hotel or motel establishment may qualify for exemption from the Act’s overtime pay requirements, even if it is in an enterprise described in section 3(s) and is not exempt under section 13(a)(2) because it exceeds the monetary test for exemption under that section. The first part of section 13(b)(8) provides that the overtime provisions of section 7 of the Act shall not apply with respect to “any employee employed by an establishment which is a hotel, motel * * *.” The 13(b)(8) exemption is applicable irrespective of the annual dollar volume of sales of a hotel or motel establishment or of the enterprise of which it is a part.

(b) *Definition of “hotel”.* The term *hotel* as used in section 13(b)(8) means an establishment known to the public as a hotel, which is primarily engaged in providing lodging or lodging and meals for the general public. Included are hotels operated by membership organizations and open to the general public and apartment hotels which provide accommodations for transients. However, an establishment whose income is primarily from providing a permanent place of residence or from providing residential facilities complete with bedrooms and kitchen for leased periods longer than 3 months would not be considered a hotel within the meaning of the Act. An apartment or residential hotel is not considered a hotel for purposes of section 13(b)(8) unless more than half of its annual dollar volume is derived from providing transient guests representative of the general public with lodging or lodging and meals. (See paragraph (c) of this section.) Establishments in which lodging accommodations are not available to the public are not included. Also excluded from the category of hotels are rooming and boarding houses, and private residences commonly known as tourist homes. Resort or other hotels even if they operate seasonally are regarded as hotel. (See Cong. Rec., August 25, 1966, pages 19729–19732; Cong. Rec., August 26, 1966, pages 19907–19911.)

(c) *“Transient guests”.* In determining who are “transient guests” within the meaning of § 779.382 and paragraph (b)

of this section, as a general rule the Department of Labor would consider as transient a guest who is free to come and go as he pleases and who does not sojourn in the establishment for a specified time or permanently. A transient is one who is entertained from day to day without any express contract or lease and whose stay is indefinite although to suit his convenience it may extend for several weeks or a season.

(d) *Definition of “motel”.* The term *motel* as used in section 13(b)(8) means an establishment which provides services similar to that of a “hotel” described in paragraph (b) of this section, but which caters mostly to the motoring public, providing it with motor car parking facilities either adjacent to the room or cabin rented or at some other easily accessible place. Included in the term “motel” are those establishments known to the public as motor hotels, motor lodges, motor courts, motor inns, tourist courts, tourist lodges and the like.

(e) *Hotel and motel establishments engaged in other activities.* The primary function of a hotel or motel is to provide lodging facilities to the public. In addition, most hotels or motels provide food for their guests and many sell alcoholic beverages. These establishments also may engage in some minor revenue producing activities; such as, the operation of valet services offering cleaning and laundering service for the garments of their guests, news stands, hobby shops, the renting out of their public rooms for meetings, lectures, dances, trade exhibits and weddings. The exception provided for “hotels” and “motels” in section 13(b)(8) will not be defeated simply because a “hotel” or a “motel” engages in all or some of these activities, if it is primarily engaged in providing lodging facilities, food and drink to the public.

MOTION PICTURE THEATERS

§ 779.384 May qualify as exempt establishments.

Section 13(a)(9) of the Act as amended in 1966 exempts from the minimum wage and overtime pay requirements “any employee employed by an establishment which is a motion picture