taken only with respect to wage payments made under the Act to those employees whose occupations in the workweeks for which such payments are made are those of ''tipped employees'' as defined in section 3(t). Under section 3(t), the occupation of the employee must be one ''in which he customarily and regularly receives more than $30 a month in tips.'' To determine whether a tip credit may be taken in paying wages to a particular employee it is necessary to know what payments constitute ''tips,'' whether the employee receives ''more than $30 a month'' in such payments in the occupation in which he is engaged, and whether in such occupation he receives these payments in such amount ''customarily and regularly.'' The principles applicable to a resolution of these questions are discussed in the following sections.

[32 FR 13575, Sept. 28, 1967, as amended at 76 FR 18855, Apr. 5, 2011]

§ 531.52 General characteristics of "tips."

A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for him. It is to be distinguished from payment of a charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, who has the right to determine who shall be the recipient of the gratuity. Tips are the property of the employee whether or not the employer has taken a tip credit under section 3(m) of the FLSA. The employer is prohibited from using an employee's tips, whether or not it has taken a tip credit, for any reason other than that which is statutorily permitted in section 3(m): As a credit against its minimum wage obligations to the employee, or in furtherance of a valid tip pool. Only tips actually received by an employee as money belonging to the employee may be counted in determining whether the person is a ''tipped employee'' within the meaning of the Act and in applying the provisions of section 3(m) which govern wage credits for tips.

[32 FR 13575, Sept. 28, 1967, as amended at 76 FR 18855, Apr. 5, 2011]

§ 531.53 Payments which constitute tips.

In addition to cash sums presented by customers which an employee keeps as his own, tips received by an employee include, within the meaning of the Act, amounts paid by bank check or other negotiable instrument payble at par and amounts transferred by the employer to the employee pursuant to directions from credit customers who designate amounts to be added to their bills as tips. Special gifts in forms other than money or its equivalent as above described such as theater tickets, passes, or merchandise, are not counted as tips received by the employee for purposes of the Act.

§ 531.54 Tip pooling.

Where employees practice tip splitting, as where waiters give a portion of their tips to the busboys, both the amounts retained by the waiters and those given the busboys are considered tips of the individuals who retain them, in applying the provisions of section 3(m) and 3(t). Similarly, where an accounting is made to an employer for his information only or in furtherance of a pooling arrangement whereby the employer redistributes the tips to the employees upon some basis to which they have mutually agreed among themselves, the amounts received and retained by each individual as his own are counted as his tips for purposes of the Act. Section 3(m) does not impose a maximum contribution percentage on valid mandatory tip pools, which can only include those employees who customarily and regularly receive tips. However, an employer must notify its employees of any required tip pool contribution amount, may only take a tip credit for the amount of tips each employee ultimately receives, and may not retain any of the employees' tips for any other purpose.

[32 FR 13575, Sept. 28, 1967, as amended at 76 FR 18856, Apr. 5, 2011]

§ 531.55 Examples of amounts not received as tips.

(a) A compulsory charge for service, such as 15 percent of the amount of the bill, imposed on a customer by an employer's establishment, is not a tip