

§ 794.118 Effect of unrelated activities.

The term “independently owned and controlled” has reference to independence of ownership and control by others. Accordingly, the fact that the petroleum jobber may himself engage in other businesses which are not related to the enterprise engaged in the wholesale or bulk distribution of petroleum products, will not affect the question whether the petroleum enterprise is independently owned or controlled. For example, the fact that the wholesale or bulk petroleum distributor also owns or controls a wholly separate tourist lodge enterprise or job printing business will not affect the status of his enterprise engaged in the wholesale or bulk distribution of petroleum products as an “independently controlled” enterprise.

ANNUAL GROSS VOLUME OF SALES

§ 794.119 Dependence of exemption on sales volume of the enterprise.

It is a requirement of the section 7(b)(3) exemption that the annual gross volume of sales of the enterprise must be less than \$1 million exclusive of excise taxes. This dollar volume test is separate and distinct from the \$250,000 annual gross volume (of sales made or business done) test in section 3(s)(1) of the Act. This latter test is for the purpose of determining coverage as an enterprise engaged in commerce or in the production of goods for commerce; whereas the \$1 million test is for limiting the 7(b)(3) exemption to enterprises with annual sales of less than that amount.

§ 794.120 Meaning of “annual gross volume of sales.”

The annual gross volume of sales of an enterprise consists of its gross receipts from all types of sales during a 12-month period (§ 794.122). The gross volume derived from all sales transactions is included, and will embrace among other things receipts from service, credit, or similar charges. However, credits for goods returned or exchanged (as distinguished from “trade-ins”), rebates, discounts, and the like are not ordinarily included in the annual gross volume of sales. In determining whether the million dollar

limit on annual gross sales volume is or is not exceeded, the sales volume from all the related activities which constitute the enterprise must be included; the dollar volume of the entire business in all establishments is added together. Thus, the gross volume of sales will include the receipts from sales made by any gasoline service stations of the enterprise, as well as the sales made by any other establishments of the enterprise. These principles and their application are considered in more detail in parts 776 and 779 of this chapter, which contain general discussions of “annual gross volume” as used in other provisions of the Act.

§ 794.121 Exclusion of excise taxes.

The computation of the annual gross volume of sales of the enterprise for purposes of section 7(b)(3) is made “exclusive of excise taxes.” It will be noted that the excise taxes excludable under section 7(b)(3) are not, like those referred to in section 3(s)(1) and section 13(a)(2), limited to those “at the retail level which are separately stated.” Under section 7(b)(3), therefore, all excise taxes which are included in the sales price may be excluded in computing the annual gross volume of the enterprise.

§ 794.122 Ascertainment of “annual” gross sales volume.

The annual gross volume of sales of an enterprise engaged in the wholesale or bulk distribution of petroleum products consists of its gross dollar volume of sales during a 12-month period. Where a computation of annual gross volume of sales is necessary to determine the status of the enterprise under section 7(b)(3) of the Act, it must be based on the most recent prior experience which it is practicable to use.

§ 794.123 Method of computing annual volume of sales.

(a) Where the enterprise, during the portion of its current income tax year up to the end of the current payroll period, has already had a gross volume of sales in excess of the amount specified in the statute, it is plain that its annual gross volume of sales currently is in excess of the statutory amount.