

§ 779.209

- (a) Credit rating and collection services;
- (b) Promotional activities including advertising, sign painting, display services, stamp redemptions, and prize contests;
- (c) Maintenance and repair services of plant machinery and equipment including painting, decorating, and similar services;
- (d) Store or plant engineering, site location and related survey activities;
- (e) Detective, guard, watchmen, and other protective services;
- (f) Delivery services;
- (g) The operation of employee or customer parking lots;
- (h) The recruitment, hiring and training activities, and other managerial services;
- (i) Recreational and health facilities for customers or employees including eating and drinking facilities (note that employees primarily engaged in certain food service activities in retail establishments may be exempt from the overtime provisions under section 13(b)(18) of the Act if the specific conditions are met; see § 779.388);
- (j) The operation of employee benefit and insurance plans; and
- (k) Repair and alteration services on goods for sale or sold to customers.

§ 779.209 Vertical activities which are “related activities.”

(a) The Senate Report also states (see § 779.206 that activities are “related” when they are “part of a vertical structure such as the manufacturing, warehousing, and retailing of a particular product or products.” Where such activities are performed through unified operation or common control for a common business purpose they will be regarded as a part of the enterprise.

(b) Whether activities are vertically “related” activities and part of a single enterprise, or whether they constitute separate businesses are separate enterprises, depends upon the facts in each case. In all of these cases of so-called “vertical operations,” the determination whether the activities are “related,” depends upon the extent to which the various business activities, such as a wholesaling and retailing or manufacturing and retailing, are inter-

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related and interdependent and are performed to serve a business objective common to all. The mere fact that they are under common ownership is not, by itself, sufficient to bring them within the same enterprise. Thus, where a manufacturing business is carried on separately from and wholly independently of a retail business, with neither serving the business purpose of the other, they are separate businesses even if they are under common ownership. However, where the manufacturing operations are performed in substantial part for the purpose of distributing the goods through the retail stores, or the retail outlet serves to carry out a business purpose of the manufacturing plant, retailing and manufacturing will be “related” activities and performed for a “common business purpose,” and they will be a single enterprise if they are performed through unified operations or common control.

(c) In these cases of “vertical operations” a practical judgment will be required to determine whether the activities are maintained and operated as separate and distinct businesses with different objectives or whether they, in fact, constitute a single integrated business enterprise. The answer necessarily will depend upon all the facts in each case.

§ 779.210 Other activities which may be part of the enterprise.

(a) An enterprise may perform certain activities that appear entirely foreign to its principal business but which may be a part of the enterprise because of the manner in which they are performed. In some cases these activities may be a very minor and incidental part of its business operations. For example a retail store may accept payments of utility bills, provide a notarial service, sell stamps, bus and theater tickets, or travellers’ checks, etc. These and other activities may be entirely different from the enterprise’s principal business but they may be performed on the same premises and by the same employees or otherwise under such circumstances as to be a part of the enterprise.