

of enterprise coverage, the establishment's primary source of receipts must be from the sale of gasoline and lubricating oils. (See Senate Report cited above.) An establishment which derives the greater part of its income from the sales of goods other than gasoline or lubricating oils will not be considered a "gasoline service establishment." The mere fact that an establishment has a gasoline pump as an incidental part of other business activities in which it is principally engaged does not constitute it "a gasoline service establishment" within the meaning and for the purposes of these sections.

**§ 779.256 Conditions for enterprise coverage of gasoline service establishments.**

(a) The requirement that the enterprise must be "an enterprise engaged in commerce or in the production of goods for commerce" is discussed in §§ 779.237 through 779.243. Those sections explain which employees are engaged in commerce or in the production of goods for commerce, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person. In connection with the discussion in those sections as it concerns employees of gasoline service establishments, it should be noted that as a general rule such employees normally are "engaged in commerce or in the production of goods for commerce" within the meaning of the Act. For example, gasoline filling station employees servicing motor vehicles used in interstate transportation or in the production of goods for commerce have always been regarded as being "engaged in commerce or in the production of goods for commerce" within the meaning of the Act. Such employees will also be considered as engaged in handling, selling or otherwise working on goods that have been moved in or produced for commerce by any person, if the gasoline or lubricating oils or the other goods with respect to which they perform the described activities have come from outside the State in which the establishment is located.

(b) For periods before February 1, 1969, a gasoline service establishment was within the scope of the enterprise

coverage provisions of the Act only if its annual gross volume of sales was not less than \$250,000, exclusive of excise taxes at the retail level which are separately stated. Until such date, a gasoline service establishment which did not have such an annual gross volume of sales was not a covered enterprise, and enterprise coverage did not extend to it by virtue of the fact that it is an establishment of an enterprise which meets coverage tests of section 3(s). In determining whether the establishment has the requisite annual gross volume of sales the receipts from all sales of the establishment are included without limitation to the receipts from sales of gasoline and lubricating oil. In computing the annual gross volume of sales the gross receipts from all types of sales during a 12-month period are included. These gross receipts are measured by the price paid by the purchaser of the goods or services sold by the establishment (Sen. Rept. 1487, 89th Cong. second session p. 7). Thus, where the establishment sells gasoline for an oil company on commission, annual gross volume is based on the retail sale price and not on the smaller amount retained or received as commissions. A further discussion of what sales are included in the annual gross volume is contained in §§ 779.258 through 779.260.

(c) In computing the annual gross volume of sales, excise taxes at the retail level which are separately stated are not counted. A discussion of the excise taxes which may be excluded under this provision is contained in §§ 779.261 through 779.264. Whether the particular taxes are "excise taxes at the retail level" depends upon the facts in each case. If the taxes are "excise taxes at the retail level" they will be excludable only if they are "separately stated." Where a gasoline station posts a sign on or alongside the gasoline pumps indicating that a certain amount per gallon is for a specific excise tax, this will meet the requirement of being "separately stated". The method of calculating annual gross volume of sales is explained in greater detail in §§ 779.265 through 779.269.