

part of a single enterprise. The answer, in each case, as to whether or not the “enterprise” includes certain activities will depend upon whether the particular activities are “related” to the business purpose of such enterprise and whether they are performed with its other activities through “unified operation” or “common control,” or whether, on the other hand, they are performed for a separate and distinct business purpose. As the Senate Report states,

related activities conducted by separate business entities will be considered a part of the same enterprise where they are joined either through unified operation or common control into a unified business system or economic unit to serve a common business purpose.

(S. Rept. 145, 87th Cong., 1st Sess., p. 41; see also H. Rept. 1366, 89th Cong., 2d Sess., p. 9.) §§ 779.205 through 779.211 discuss the terms of the definition and may aid in making these determinations.

RELATED ACTIVITIES

§ 779.205 Enterprise must consist of “related activities.”

The enterprise must consist of certain “related activities” performed for a common business purpose; activities which are not “related” are not a part of the enterprise even if performed by the same employer. Moreover, even if activities are “related” they may be excluded from the enterprise if they are performed only “for” the enterprise and not as a part of it by an independent contractor. This is discussed separately in § 779.206.

§ 779.206 What are “related activities.”

(a) The Senate Report on the 1961 amendments states as follows, with respect to the meaning of related activities:

Within the meaning of this term, activities are “related” when they are the same or similar, such as those of the individual retail or service stores in a chain, or departments of an establishment operated through leasing arrangements. They are also “related” when they are auxiliary and service activities such as central office and warehousing activities and bookkeeping, auditing, purchasing, advertising and other services. Likewise, activities are “related” when they are part of a vertical structure such as the manufacturing, warehousing, and retailing of a par-

ticular product or products under unified operation or common control for a common business purpose. (Senate Report No. 145, 87th Cong., 1st Sess., Page 41.)

Thus, activities will be regarded as “related” when they are the same or similar or when they are auxiliary or service activities such as warehousing, bookkeeping, purchasing, advertising, including, generally, all activities which are necessary to the operation and maintenance of the particular business. So also, all activities which are performed as a part of the unified business operation will be “related,” including, in appropriate cases, the manufacturing, warehousing, and distribution of its goods, the repair and maintenance of its equipment, machinery and its premises, and all other activities which are performed for the common business purpose of the enterprise. The Senate Report on the 1966 amendments makes it plain that related, even if somewhat different, business activities can frequently be part of the same enterprise, and that activities having a reasonable connection with the major purpose of an enterprise would be considered related. (Senate Report No. 1487, 89th Cong., 2d Sess., Page 7.) A more comprehensive discussion of “related activities” will be found in part 776 of this chapter.

(b) Generally, the answer to the question whether particular activities are “related” or not, will depend in each case upon whether the activities serve a business purpose common to all the activities of the enterprise, or whether they serve a separate and unrelated business purpose. For example, where a company operates retail or service establishments, and also engages in a separate and unrelated construction business, the construction activities will not be “related” and will constitute a separate enterprise if they are conducted independently and apart from the retail operations. Where, however, the retail and construction activities are conducted for a common business purpose, they may be “related,” and if they are performed through unified operation or common control, they will be a part of a single enterprise. Thus, a retail store enterprise may engage in construction activities as an additional outlet for

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building materials which it sells, or otherwise to serve its retail operations. It may act as its own contractor in constructing or reconstructing its own stores and related facilities. In such a case, the construction activities will be “related” activities. Other examples may also be cited. The answer in each case will necessarily depend upon all the facts.

§ 779.207 Related activities in retail operations.

In the case of an enterprise which has one or more retail or service establishments, all of the activities which are performed for the furtherance of the common business purpose of operating the retail or service establishments are “related activities.” It is not material that the enterprise sells different goods or provides different services, or that it operates separate retail or service establishments. As stated in the definition, the enterprise includes all related activities whether performed “in one or more establishments.” Since the activities performed by one retail or service establishment are the “same or similar” to the activities performed by another, they are, as such, “related activities.” (See Senate Report No. 145, 87th Cong. 1st Sess. p. 41.) For example, in operations of a single retailing business a drug store may sell a large variety of different products, and a grocery store may sell clothing and furniture and other goods. Clearly all of these activities are “related.” Similarly it is clear that all activities of a department store are “related activities,” even if the store sells a great variety of different types of goods and services and even if, as in some cases, the departmentalized business is conducted in more than one location, as where the department selling garden supplies or electrical appliances is located on separate premises. Whether on the same premises or at separate locations, the activities involved in retail selling of goods or services, of any type, are related activities and they will be considered one enterprise where they are performed, through unified operation or common control, for a common business purpose.

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§ 779.208 Auxiliary activities which are “related activities.”

As stated in Senate Report No. 145, 87th Congress, 1st Session, cited in § 779.206, auxiliary and service activities, such as central office and warehousing activities and book-keeping, auditing, purchasing, advertising and other similar services, also are “related activities.” When such activities are performed through unified operation or common control, for a common business purpose, they will be included in the enterprise. The following are some additional examples of auxiliary activities which are “related activities” and which may be included in the enterprise:

- (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,