

compensate an insured in the event of serious loss.⁵⁶ Finally, by requiring a foreign insurer to appoint an agent for service of process,⁵⁷ the state manifests an interest in providing a local forum for California residents who may have claims against a foreign insurer.

One defect in the *United* opinion is that it does not indicate how much business the defendants had solicited in California but, assuming that the business was substantial, it is difficult to maintain that California did not act in pursuance of its legitimate interest when it subjected the defendants to its regulatory laws. The propriety of California's action is supported by the following statement by Justice Douglas in his concurring opinion in *Travelers Health*:

A state is helpless when the out-of-state company operates beyond the borders, establishes no office in the state, and has no agents, salesmen, or solicitors to obtain business for it within the state. Then it is beyond the reach of process. In the present case, however, that is only the formal arrangement. The actual arrangement shows a method of soliciting business within Virginia as active, continuous, and methodical as it would be if regular agents or solicitors were employed.⁵⁸

It is evident that the effect of a foreign insurer upon a regulating state is not dependant upon the number of agents the insurer employs in the state. That fact coupled with the state interest, embodied in the California Insurance Code should be sufficient to sanction the power exercised in *United*.

STEPHEN L. JOHNSON

Estate Taxation—Marital Deduction—Finality of State Decree Determining Property Interest.—*Commissioner v. Bosch*.¹—The testator, Herman Bosch, executed a trust agreement providing for the payment of trust income to his wife for her life, and granting her a general power of appointment over the principal upon her death. Subsequently, the wife, to avoid the inclusion of the trust corpus as part of her estate subject to federal tax upon her death, executed a partial release of her power of appointment.² Upon the death of Bosch, his executor claimed the widow's trust as a marital

⁵⁶ 66 Cal. 2d at 593, 427 P.2d at 209, 58 Cal. Rptr. at 609.

⁵⁷ Cal. Ins. Code § 1600 (West 1955).

⁵⁸ 339 U.S. at 653-54.

¹ 387 U.S. 456 (1967).

² Under the terms of the trust agreement created in 1930, and amended in 1931, Mrs. Bosch was granted a general power of appointment over the trust corpus. On October 25, 1951, Mrs. Bosch executed a release of her power to appoint the trust corpus in favor of herself, her estate, her creditors or creditors of her estate. Under the Internal Revenue Code, the value of the gross estate includes property with respect to which a general power of appointment is exercised, but the Code also provides that the exercise of a general power of appointment created before October 21, 1942, and partially released prior to November 1, 1951, will not be deemed to be the exercise of a general power of appointment. Int. Rev. Code of 1954, § 2041(a)(1).

deduction—a deduction which can be granted only if a general power of appointment passes with the property interest from the decedent to the surviving spouse.³ The Commissioner of Internal Revenue, believing the widow's release to be valid, disallowed the deduction.⁴ The executor then filed a petition in the Tax Court alleging the invalidity of the wife's release. While this action was pending, he also brought a proceeding in the New York Supreme Court, in part, for a determination of the same issue. The New York trial court found that the release was a nullity and the Tax Court subsequently accepted this finding.⁵ The Court of Appeals for the Second Circuit affirmed the decision of the Tax Court,⁶ and declared that the question as to the release had been authoritatively settled by the New York court.⁷

In granting certiorari, the Supreme Court joined *Bosch* with a companion case, *Second Nat'l Bank v. United States*.⁸ This case was concerned with the effect to be given a state probate court decree in an estate tax case. It was decided by the Second Circuit, through a different panel than that which had presided over *Bosch*. In *Second Nat'l Bank*, however, the court held that a state probate court decree "under no circumstances can be construed as binding and conclusive upon a federal court in construing and applying the federal revenue laws."⁹

In reversing and remanding *Bosch*¹⁰ and affirming *Second Nat'l Bank*, the Supreme Court, HELD: "[W]here the federal estate tax liability turns upon the character of a property interest held and transferred by the decedent under state law, federal authorities are not bound by the determination made of such property interest by a state trial court."¹¹ Justices Harlan, Fortas and Douglas dissented and would give state trial court determinations binding effect under certain circumstances.

This decision marks the first time that the Supreme Court has held, absent collusion or a nonadversary proceeding, that a state trial court decision affecting property rights cannot bind the federal court when these property rights are subject to controversy in a proceeding involving a federal tax question. In the past, state trial court decrees settling property rights have been ascribed binding effect in federal proceedings provided the state action had not been collusive.¹² The test used to determine the existence of collusion has generally revolved around the adversary character of the pro-

³ Id. § 2056(b)(5).

⁴ A valid release of the widow's power of appointment would preclude appointment in favor of herself or her estate and, therefore, her interest would not qualify for the marital deduction under the Code. Id.

⁵ *Bosch v. Commissioner*, 43 T.C. 120 (1964).

⁶ 363 F.2d 1009 (2d Cir. 1966).

⁷ Id. at 1014.

⁸ 351 F.2d 489 (2d Cir. 1965).

⁹ Id. at 494.

¹⁰ Upon remand, the Second Circuit upheld the widow's partial release concluding that the New York Court of Appeals would not follow the decision of the New York Supreme Court. 382 F.2d 295 (2d Cir. 1967).

¹¹ 387 U.S. at 457.

¹² See *Pierpont v. Commissioner*, 336 F.2d 277 (4th Cir. 1964), cert. denied, 380 U.S. 908 (1965); *Faulkerson's Estate v. United States*, 301 F.2d 231 (7th Cir.), cert. denied, 371 U.S. 887 (1962); *Gallagher v. Smith*, 223 F.2d 218 (3d Cir. 1955).

ceeding. The three dissenters in *Bosch* essentially supported the approach previously taken by the federal courts, but differed on what prerequisites should be met by the state proceeding.

In reaching its decision, the Court first cited its opinion in *Freuler v. Helvering*¹³ which held, in part, that where the United States was not a party to the state action the resulting decree did not have the effect of res judicata in the federal action.¹⁴ Next, the Court maintained that the rigid limitations within which the marital deduction can be allowed reflect congressional intent that the statute be strictly construed and applied. The Court found support for this conclusion in a Senate Finance Committee report submitted prior to the enactment of the marital deduction allowance.¹⁵ This report advised that "proper regard" be given to a state court interpretation of a will in a bona fide adversary proceeding. The Court found no suggestion that finality be given to such a decree and thought this was consistent with the Rules of Decision Act¹⁶ and the principles inherent in the *Erie* doctrine.¹⁷ The Rules of Decision Act provides that in the absence of federal legislation, the laws of the states shall be regarded as the rules of decision in civil actions in federal courts. With this in mind, the Court referred to *Erie* and concluded that federal courts must adhere only to the decisions of a state's highest court. If a state's highest court has not spoken on the same facts and issue of law before the federal court, the latter should apply what it finds to be the state law and give only "proper regard" to a state trial court determination of the issue in controversy. The underlying conclusion of the Court appears to be that the federal interest is paramount in the collection of federal revenue and to consider a state trial court decree binding would jeopardize the enforcement of the strict prescriptions of the marital deduction legislation. Accordingly, the *Bosch* holding requires that the federal courts make their own determination of property interests through an independent examination of the applicable state law.¹⁸ The Court concluded that its holding "would avoid much of the uncertainty that would result from the 'non-adversary' approach . . ." and yet be fair to the taxpayer while protecting the federal revenue.¹⁹ The Court failed to clarify the uncertainty to which it referred. Its reliance on *Erie*, however, would suggest that it is more than the mere uncertainty resulting from the varying tests used to determine the existence of collusion, but

¹³ 291 U.S. 35 (1934).

¹⁴ *Id.* at 43.

¹⁵ S. Rep. No. 1013, Pt. 2, 80th Cong., 2d Sess., 4 (1948).

¹⁶ 28 U.S.C. § 1652 (1964).

¹⁷ *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938).

¹⁸ The application of the *Bosch* rule is illustrated by a recent district court decision, *Underwood v. United States*, 270 F. Supp. 389 (D.C. Tenn. 1967). In that case, the testator had provided that the executor's fee should not exceed 5% of the gross amount of the estate. The probate court had allowed 8% after the executor refused to serve for less. Applying the *Bosch* rule, the federal court disallowed a deduction of the additional 3% as an administrative expense, having construed the local law as dictating that the direction of the testator controls. The federal statute allowed deductions for administrative expenses if allowed by the law of the jurisdiction in which the estate was administered. The federal court felt required by *Bosch* to determine independently the law of the state. *Id.* at 395.

¹⁹ 387 U.S. at 465.

in addition, uncertainty as to the accuracy of a state trial court's interpretation and application of its own state law.

In order to assess the Court's decision and, in particular its rejection of the nonadversary approach, a brief summary of prior federal law in this area is helpful. The tendency of the federal courts to adopt a test based on the collusiveness of a proceeding, in order to determine whether a state decision should be given effect, evolved from the Supreme Court's decisions in *Freuler* and *Blair v. Commissioner*.²⁰ In *Freuler* the Court rejected a contention that the state proceeding was "collusive in the sense that all the parties joined in a submission of the issues and sought a decision which would adversely affect the Government's right to additional income tax."²¹ In that case, a trustee had distributed trust income to the beneficiaries which should have been retained to cover trust depreciation. He had deducted the amount representing trust depreciation from his trustee's return but, following the Commissioner's ruling that the beneficiaries had to report these amounts as income, he filed an accounting in the state trial court. The Supreme Court held as binding the resulting state decree which required the beneficiaries to repay to the trustee the amounts in question. It was emphasized that the decision of the state court both established the law of the state respecting the distribution of the trust estate and adjudicated the property rights of the beneficiaries.²² Important to the Court's holding, however, was its conclusion that the state decree was within the meaning of the "order governing the distribution" referred to in the federal statute upon which tax liability turned.²³ It is meaningful to note that the Court in *Bosch* did not refer to its decision in *Freuler* other than to cite it as support for the res judicata proposition.

In *Blair*, summarily dismissed by the Court in *Bosch* because it involved a state appellate court decision,²⁴ the Supreme Court again held a state decision binding. Here, the state court had upheld the petitioner's power to assign trust income to his children. The Commissioner contended, however, that the trust was unassignable and that the petitioner was liable for taxes on the entire trust income. Citing *Freuler*, the Court rejected the contention that the trustee's action to obtain a construction of the will was collusive and declared that the state decision had settled the property rights.²⁵

In *Freuler* and *Blair*, the Supreme Court's consideration of the state proceedings in order to determine whether they had been collusive was cursory and, therefore, failed to set forth adequate guidelines for the federal courts to follow. Nevertheless, the lower federal courts apparently determined that *Freuler* and *Blair* provide a general rule to be followed, namely, that absent collusion the courts must accept state decrees affecting property rights as binding. In *Gallagher v. Smith*,²⁶ the Court of Appeals for the Third Circuit, relying on *Freuler*, concluded that where property rights have been settled in

²⁰ 300 U.S. 5 (1937).

²¹ 291 U.S. at 45.

²² *Id.*

²³ *Id.* at 44-45.

²⁴ 387 U.S. at 462 n.3.

²⁵ 300 U.S. at 10.

²⁶ 223 F.2d 218 (3d Cir. 1955).

a noncollusive state proceeding they could not be changed by an independent examination of state law.²⁷ Though the state proceeding had not been adversary, the circuit court, satisfied that the questions respecting property rights had been fairly presented to the state trial court and been given its independent consideration, found it to be noncollusive.²⁸

In two other court of appeals cases involving estate tax controversies, the state trial court decrees determining property interests which would decide the validity of claimed marital deductions were found to be collusive and, therefore, not binding. In *Pierpont v. Commissioner*,²⁹ the fact that the proceeding had been nonadversary, that the examiner-master had failed to make an independent inquiry into state law, and that the court had no more than "rubber stamped" the examiner's report led to this finding.³⁰ The court, however, citing *Freuler*, stated that a decision determining property rights must be followed if it is not collusive.³¹ In *Faulkerson's Estate v. United States*,³² the Seventh Circuit found that an ex parte state proceeding which had been brought solely to affect the Government's right to additional tax was collusive.³³ The federal court, however, did not preclude the binding effect of a state court decree

where the state court proceeding was adversary and not *ex parte*; where a hearing was had on the merits; where the question of law has been settled by the appellate courts of the state or where the judgment of an intermediate court may be fairly accepted as evidencing the law of the state; and where the judgment is not collusive³⁴

The court in *Gallagher* emphasized that property rights settled by a state court even in a nonadversary proceeding, if binding upon the parties, should be binding in the federal tax case. The court in *Pierpont* read *Freuler* differently and would require the proceeding to be adversary. In the *Faulkerson* case an approach was adopted that is somewhat akin to that used in *Bosch*, i.e., requiring that the property rights established in the local court rest upon well established state law. While these cases range between wide extremes, each has established some basis upon which the state court decree will be accepted as final on the question of property rights before the federal courts. The presence or absence of collusiveness is determinative in each. It is interesting to note that the Supreme Court denied certiorari in both *Pierpont* and *Faulkerson* which may indicate that the Court has previously acquiesced in the use of a "collusion" test by the federal courts.³⁵

The three dissenting members of the Court in *Bosch* concurred in varying degrees with the tests used by the federal courts. Justice Douglas, who was

²⁷ Id. at 225.

²⁸ Id. at 226.

²⁹ 336 F.2d 277 (4th Cir. 1964), cert. denied, 380 U.S. 908 (1965).

³⁰ Id. at 281.

³¹ Id.

³² 301 F.2d 231 (7th Cir.), cert. denied, 371 U.S. 887 (1962).

³³ Id. at 232.

³⁴ Id. at 233.

³⁵ See notes 29 & 32 supra.

concerned with the potential unfairness to the taxpayer, maintained that, absent collusion, where a state court has reached a deliberate decision construing state law, even though the proceeding was nonadversary, the federal court must give the decision binding effect as being declaratory of the state law.³⁶ Justice Harlan, on the other hand, felt that adverse financial interests should be represented in the state action.³⁷ Justice Fortas concurred with Justice Harlan, but added a separate comment. He would consider: the jurisdiction of the court and the binding effect of the decree upon the parties; the precedential value of the court's decisions; the deliberateness of the court's conclusion; the opportunity of the Internal Revenue Commissioner to participate; the potentially off-setting tax consequences; and, more generally, whether the state decision had authoritatively determined future property rights rather than merely labeled past events. The order in which these factors would be considered and the weight to be given them was not indicated.³⁸ Underlying both Justices' dissents was a deep concern that the majority's decision would be "widely destructive both of the proper relationship between state and federal law and of the uniformity of the administration of law within a State."³⁹ This concern reflected the dissenters' belief that the *Bosch* holding would lead to frequent disregard of considered state trial court decisions resulting from adversary proceedings when the identical questions of fact and law are before a federal court. The Court's rejection of the non-adversary approach suggests that the majority viewed the problem as requiring more than the mere formulation of an adequate test to determine whether a state proceeding was collusive. The Court could have found collusion in *Bosch* and *Second Nat'l Bank* as indicated by its statement that "[i]t can hardly be denied that both state proceedings were brought for the purpose of directly affecting federal estate tax liability."⁴⁰

In addition to relying on its belief that the marital deduction statute should be strictly construed, the Court seems to have placed substantial weight on its interpretation of the Senate Finance Committee report. This report states: "If the surviving spouse takes under the decedent's will, the interest passing to her is determined from the will. In this connection proper regard should be given to interpretations of the will rendered by a court in a bona fide adversary proceeding."⁴¹ The report, however, does not indicate what limitations, if any, are to be placed upon "proper regard." The Committee's recommendation that "proper regard" be given to the interpretation of a will in an adversary proceeding could be interpreted as advising that a state pro-

³⁶ See 387 U.S. at 466-71 (dissenting opinion).

³⁷ Id. at 481 (dissenting opinion). In a recent article it was stated that *Freuler* "suggests that economic or financial adverseness, and not mere legal adverseness, is required before a decree will be given binding effect." Fried, *External Pressures on Internal Revenue: The Effect of State Court Adjudications in Tax Litigation*, 42 N.Y.U.L. Rev. 647, 659 (1967). The author suggested that Harlan, "[a]lthough he did not define the term 'collusion,' . . . did set forth the requirement for collusiveness, i.e., economic adverseness." Id. at 670.

³⁸ 387 U.S. at 483-84 (dissenting opinion).

³⁹ Id. at 480 (dissenting opinion).

⁴⁰ Id. at 463.

⁴¹ S. Rep. No. 1013, Pt. 2, 80th Cong., 2d Sess., 4 (1948).

ceeding should be given conclusive effect, provided it was adversary and not collusive. The Commissioner in *Bosch* relied upon such an interpretation of the report to support his argument that a nonadversary test should be adopted.⁴² As he noted, the Treasury Regulations prescribe that a surviving spouse's right will be recognized where settled "pursuant to a decision of a local court upon the merits in an adversary proceeding following a genuine and active contest."⁴³ Furthermore, the Commissioner saw no suggestion in the Regulations that a decision, correct or incorrect, should be overcome as long as it was genuinely adversary.⁴⁴ The widely divergent interpretations of the Senate report would indicate that this report is inconclusive. It is suggested that the Court was aware of this inconclusiveness and would claim the strict limitations imposed by the language of the marital deduction statute to be the real basis for its holding.

The Court's reasoning that the *Erie* doctrine supports its conclusion that binding effect should not be given to a state trial court decree is also open to criticism. While the majority reasoned that the *Bosch* decision was consistent with the well established *Erie* doctrine, Justices Harlan and Fortas pointed out that the cases from which the latter decision was derived did not involve situations where the federal court was confronted by the same legal and factual circumstances upon which a state court had passed.⁴⁵ In addition, fundamental to *Erie* was the elimination of discrimination resulting from having a different rule applied in the federal courts than in the state courts. The Supreme Court sought in *Erie* to achieve uniformity in the administration of the law within the state and even pointed, in that decision, to the lack of regard for state determinations construing deeds and devises of real estate.⁴⁶ Justices Harlan and Fortas predicted that *Bosch* would be destructive of this uniformity because of the incongruity stemming from differing federal and state court determinations of state law with respect to the same controversy and, for this reason, they were unwilling to agree that the principles inherent in the *Erie* doctrine led to the conclusion reached by the majority.

Underlying the reluctance of Justices Harlan and Fortas to accept the majority's position appears to be a more narrow conception of the interests of the federal treasury which they felt would be satisfied by a considered judgment in a state court. For this reason they would look for more positive direction, both from the legislative history of the statute and the *Erie* doctrine,

⁴² Brief for Petitioner at 16-17, 387 U.S. 456 (1967).

⁴³ Treas. Reg. 20.2056(e)-2(d)(2) (1966).

⁴⁴ Brief for Petitioner at 17 n.15, 387 U.S. 456 (1967).

⁴⁵ 387 U.S. at 477 (dissenting opinion). Justice Douglas also criticized the majority's interpretation of the policy dictated by the *Erie* line of cases. He contended that the federal courts are obligated to follow the decision of a lower state court in the absence of a decision of the state's highest court showing that the state law is other than announced by the lower court. *West v. American Tel. & Tel. Co.*, 311 U.S. 223 (1940), which Douglas cited to support this conclusion, involved an intermediate appellate court decision, however. The Court in *West* did add that a federal court would not be bound if it were convinced that the highest court of the state would decide otherwise. The Court, in a decision following *West*, rejected a trial court decision as having no precedential value. *King v. Order of United Commercial Travelers of America*, 333 U.S. 153 (1948).

⁴⁶ 304 U.S. at 76.

before they would accept the rule adopted by the majority. It is apparent that the majority failed to answer the critical question posed by Justices Harlan and Fortas, namely, the potentially destructive effect of conflicting state and federal court determinations. It is unfortunate that the Court in attempting to protect against the so-called uncertainty of the nonadversary test, failed to dismiss doubt as to the uncertainty which could result to the taxpayer through future federal court adherence to the *Bosch* decision. Any doubt might have been dismissed had the Court more clearly defined the implications of its decision. It is submitted that the needed clarity could have been provided had the Court dealt at greater length with the *Freuler* and *Blair* cases.

The *Freuler* and *Blair* cases had substantial influence on federal court decisions and an underlying concern with promoting uniformity in the administration of state law. Although *Freuler* involved a federal statute which the Court construed as calling for property distribution in accordance with the determination of a state court, and was distinguishable on that basis, the failure of the Court to explain its decision that the determination of the state court established the law of the state and adjudicated the property rights involved, was extremely unfortunate. The Court's summary dismissal of the *Blair* case was likewise unfortunate. While the Court noted a distinction in that *Blair* dealt with an appellate court decree, that case did, nevertheless, rely on *Freuler* and stood for the fundamental proposition expressed in both opinions, i.e., that the state court had adjudicated property rights which were binding on the parties. In *Blair*, the fact that an appellate court decision was involved seemed merely to support the Court's finding that the state determination was not collusive. Nowhere in that pre-*Erie* decision did the Court suggest that a state trial court decree should be any less binding than a state appellate court decree.

The failure of the majority to deal meaningfully with *Freuler* and *Blair*, in combination with other aspects of their opinion, leaves the scope of application of the *Bosch* decision unclear. For example, it can reasonably be argued that the holding was meant to have limited application and was not intended to cover federal tax controversies such as those found in *Freuler* and *Blair* where federal income taxes were at issue. The fact that the Court did not deal with *Freuler* and *Blair*, that the holding was expressly limited to estate tax controversies, and that the Court supported its conclusion through the strict construction of a specific piece of estate tax legislation, could suggest that the Court intended *Bosch* to apply only to federal estate tax controversies involving the marital deduction. At the same time, the fact that the holding refers to estate tax controversies without further limitation, and the fact that the body of the Court's opinion is phrased in very general and comprehensive terms, can reasonably lead to the conclusion that *Bosch* is intended to serve as precedent for any estate tax controversy. Should either of these two possible conclusions be correct, *Freuler* and *Blair* would remain viable precedent, but only in the area of federal income tax proceedings.

Most significant with respect to the possible implications of the *Bosch* decision, is the fact that it may well represent a major shift in the Court's attitude as to how much weight should be given to state trial court determina-

tions in matters involving federal taxes generally. *Freuler* and *Blair* may no longer be viable precedent insofar as they give binding recognition to the determination of property rights by state courts. The fact that the *Bosch* holding is expressly limited to estate tax controversies does not rule out this result because the Court could not reasonably have extended this holding beyond the area of federal taxation with which it was immediately concerned. It is not difficult to imagine that the Court, when faced with a case involving a federal income tax controversy, will point to the principles expressed in *Bosch*. It could well find that strict construction of the tax statute involved was necessary and could again refer to the finding that the *Erie* doctrine requires a federal court to look to state law as propounded by the state's highest court. The fact that both the *Blair* and *Freuler* decisions preceded the establishment of the *Erie* doctrine is significant in this regard.

It is submitted that when the implications and scope of the *Bosch* decision become clear, the *Freuler* and *Blair* cases will no longer be viable in any significant respect. The Court's clear rejection of the nonadversary or collusion test as evidenced by its express language and by its failure even to consider the guidance provided by the Treasury Regulations casts doubt upon the future validity of this test in any area of federal taxation. The elimination of this test would appear to leave no other reasonable ground on which to base a determination that a state trial court decision should or should not be given binding effect. The only alternatives, then, are to give state trial court decisions binding effect under all circumstances in all federal non-estate tax controversies, or, likewise, to preclude the binding effect of state trial court decisions under all circumstances. The *Bosch* decision would seem to demand the latter alternative.

JOHN V. WOODARD

Fair Labor Standards Act—1966 Amendments—Interstate Commerce—State Sovereignty.—*Maryland v. Wirtz*.¹—In 1966, Congress amended the Fair Labor Standards Act (FLSA).² The amendments extended the Act's minimum wage and overtime provisions to employees of certain enterprises, *whether public or private*, engaged in the operation of schools, hospitals, and related institutions, and employees of electric railway, trolley and motorbus systems.³ States and their political subdivisions, insofar as they are employers

¹ 269 F. Supp. 826 (D. Md. 1967), prob. juris. noted, 88 S. Ct. 772 (1968).

² 29 U.S.C. §§ 201-19 (1964), as amended, 29 U.S.C. §§ 203-04, 206, 207, 213, 214, 216, 218 (Supp. II, 1965-66).

³ It should be noted that not all employees engaged in these activities are covered because § 13 of the Act exempts persons employed in a bona fide executive capacity (including any employee employed in the capacity of academic, administrative personnel or teacher in elementary or secondary schools). 29 U.S.C. § 213 (1964), as amended, 29 U.S.C. § 213 (Supp. II, 1965-66). Also, the 1966 Amendments provide for an escalation of the minimum wage and overtime provisions over a five-year period for first-covered employees, i.e., they will receive \$1.00 per hour for the first year with increases of 15 cents per hour each year until the wage reaches \$1.60 per hour. Id. § 206. Overtime pay will be required for time worked over 44 hours per week the first year, over 42 hours per week the second, and for over 40 hours per week thereafter. Id. § 207.