

Wage and Hour Division, Labor

§ 779.318

Schools (except schools for mentally or physically handicapped or gifted children): (All now excluded, see § 779.337(b)).

School supply distributors.

Security dealers.

Sheet metal contractors.

Ship equipment, commercial; establishments engaged in the business of dealing in.

Shopping analysts services.

Siding and insulation contractors.

Sign-painting shops.

Special trade contractors (construction industry).

Stamp and coupon redemption stores.

Statistical reporting, business and financial data; establishments engaged in furnishing.

Store equipment; establishments engaged in the business of dealing in.

Tax services.

Telegraph and cable companies.

Telephone companies; (*Schmidt v. Peoples Telephone Union of Maryville, Mo.*, 138 F. 2d 13 (CA-8)).

Telephone answer service; establishments engaged in furnishing. (*Telephone Answering Service v. Goldberg*, 15 WH Cases 67, 4 L.C. par. 31,104 (CA-1)).

Title and abstract companies.

Tobacco auction warehouses (*Fleming v. Kenton Loose Leaf Tobacco Warehouse Co.*, 41 F. Supp. 255 (E.D. Ky.); *Walling v. Lincoln Loose Leaf Warehouse Co.*, 59 F. Supp. 601 (E.D. Tenn.)).

Toll bridge companies.

Trade associations.

Transportation equipment, commercial; establishments engaged in the business of dealing in.

Transportation companies.

Travel agencies.

Tree removal firms.

Truck stop establishments (*Idaho Sheet Metal Works, Inc., v. Wirtz*, 383 U.S. 190, rehearing denied 383 U.S. 963; *Wirtz v. Steepleton General Tire Co., Inc.*, 383 U.S. 190, rehearing denied 383 U.S. 963).

Trust companies.

Undertakers' supplies; establishments engaged in the business of dealing in.

Wagers, establishments accepting, as business in which they are engaged.

Warehouse companies; commercial or industrial (*Walling v. Public Quick Freezing and Cold Storage Co.*, 62 F. Supp. 924 (S.D. Fla.)).

Warehouses equipment and supplies; establishments engaged in the business of dealing in.

Waste removal contractors.

Watchmen, guards and detectives for industries; establishments engaged in supplying (*Walling v. Sondock*, 132 F. 2d 77 (CA-5); *Walling v. Wattam*, 3 WH Cases 726, 8 Labor Cases, par. 62,023 (W.D. Tenn., 1943); *Walling v. Lum*, 4 WH Cases 465, 8 Labor Cases, par. 62,185 (S.D. Miss., 1944); *Walling v. New Orleans Private Patrol Service* 57 F. Supp. 143

(E.D. La., 1944); *Haley v. Central Watch Service*, 4 WH Cases 158, 8 Labor Cases, par. 62,002 (N.D. Ill., 1944)).

Water supply companies (*Reynolds v. Salt River Valley Water Users Assn.*, 143 F. 2d (863 (CA-9)).)

Water well drilling contractors.

Window displays; establishments engaged in the business of dealing in.

Wrecking contractors.

§ 779.318 Characteristics and examples of retail or service establishments.

(a) Typically a retail or service establishment is one which sells goods or services to the general public. It serves the everyday needs of the community in which it is located. The retail or service establishment performs a function in the business organization of the Nation which is at the very end of the stream of distribution, disposing in small quantities of the products and skills of such organization and does not take part in the manufacturing process. (See, however, the discussion of section 13(a)(4) in §§ 779.346 to 779.350.) Such an establishment sells to the general public its food and drink. It sells to such public its clothing and its furniture, its automobiles, its radios and refrigerators, its coal and its lumber, and other goods, and performs incidental services on such goods when necessary. It provides the general public its repair services and other services for the comfort and convenience of such public in the course of its daily living. Illustrative of such establishments are: Grocery stores, hardware stores, clothing stores, coal dealers, furniture stores, restaurants, hotels, watch repair establishments, barber shops, and other such local establishments.

(b) The legislative history of the section 13(a)(2) exemption for certain retail or service establishments shows that Congress also intended that the retail exemption extend in some measure beyond consumer goods and services to embrace certain products almost never purchased for family or noncommercial use. A precise line between such articles and those which can never be sold at retail cannot be drawn. But a few characteristics of items like small trucks and farm implements may offer some guidance; their use is very widespread as is that

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of consumer goods; they are often distributed in stores or showrooms by means not dissimilar to those used for consumer goods; and they are frequently used in commercial activities of limited scope. The list of strictly commercial items whose sale can be deemed retail is very small and a determination as to the application of the retail exemption in specific cases would depend upon the consideration of all the circumstances relevant to the situation. (*Idaho Sheet Metal Works, Inc. v. Wirtz and Wirtz v. Steepleton General Tire Company, Inc.*, 383 U.S. 190, 202, rehearing denied 383 U.S. 963.)

[35 FR 5856, Apr. 9, 1970, as amended at 36 FR 14466, Aug. 6, 1971]

§ 779.319 A retail or service establishment must be open to general public.

The location of the retail or service establishment, whether in an industrial plant, an office building, a railroad depot, or a government park, etc., will make no difference in the application of the exemption and such an establishment will be exempt if it meets the tests of the exemption. Generally, however, an establishment, wherever located, will not be considered a retail or service establishment within the meaning of the Act, if it is not ordinarily available to the general consuming public. An establishment, however, does not have to be actually frequented by the general public in the sense that the public must actually visit it and make purchases of goods or services on the premises in order to be considered as available and open to the general public. A refrigerator repair service shop, for example, is available and open to the general public even if it receives all its orders on the telephone and performs all of its repair services on the premises of its customers.

§ 779.320 Partial list of establishments whose sales or service may be recognized as retail.

Antique shops.
Auto courts.
Automobile dealers' establishments.
Automobile laundries.
Automobile repair shops.
Barber shops.
Beauty shops.

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Bicycle shops.
Billiard parlors.
Book stores.
Bowling alleys.
Butcher shops.
Cafeterias.
Cemeteries.
China, glassware stores.
Cigar stores.
Clothing stores.
Coal yards.
Confectionery stores.
Crematories.
Dance halls.
Delicatessen stores.
Department stores.
Drapery stores.
Dress-suit rental establishments.
Drug stores.
Dry goods stores.
Embalming establishments.
Farm implement dealers.
Filling stations.
Floor covering stores.
Florists.
Funeral homes.
Fur repair and storage shops.
Fur shops.
Furniture stores.
Gift, novelty and souvenir shops.
Grocery stores.
Hardware stores.
Hosiery shops.
Hotels.
Household appliance stores.
Household furniture storage and moving establishments.
Household refrigerator service and repair shops.
Infants' wear shops.
Jewelry stores.
Liquor stores.
Luggage stores.
Lumber yards.
Masseur establishments.
Millinery shops.
Musical instrument stores and repair shops.
Newsstands.
Paint stores.
Public parking lots.
Photographic supply and camera shops.
Piano tuning establishments.
Public baths.
Public garages.
Recreational camps.
Reducing establishments.
Restaurants.
Roadside diners.
Scalp-treatment establishments.
Shoe repair shops.
Shoeshine parlors.
Sporting goods stores.
Stationery stores.
Taxidermists.
Theatres.
Tourist homes.
Trailer camps.