

truck, farm implement, or aircraft mechanics, used car reconditioning mechanics, and wrecker mechanics) in the servicing of an automobile, trailer, truck, farm implement, or aircraft for its use and operation as such. This includes mechanical work required for safe operation, as a vehicle, farm implement, or aircraft. The term does not include employees primarily performing such nonmechanical work as washing, cleaning, painting, polishing, tire changing, installing seat covers, dispatching, lubricating, or other nonmechanical work. Wrecker mechanic means a service department mechanic who goes out on a tow or wrecking truck to perform mechanical servicing or repairing of a customer's vehicle away from the shop, or to bring the vehicle back to the shop for repair service. A tow or wrecker truck driver or helper who performs nonmechanical repair work is not exempt. When employed by an establishment qualifying under section 13(b)(10) which sells and services trailers, mechanics primarily engaged in servicing the trailers for their use and operation as such may qualify for the exemption. "Trailers" include a wide variety of non-powered vehicles used for industrial, commercial, or personal transport or travel on the highways by attaching the vehicle to the rear of a separate powered vehicle. Mechanics servicing mobile homes for operation and use as a trailer, if and to the extent that they are operated as such on their own suspension systems would appear to be performing work within the purview of the exemption provided for mechanics in section 13(b)(10) to the same extent as mechanics servicing automobiles, ordinary travel, boat, or camping trailers, trucks, and truck or tractor trailers. On the other hand, there is no indication in the statutory language or the legislative history of any intent to provide exemption for mechanics whose work is directed to the habitability as a residence of a dwelling to be used as such on a fixed site in a particular locality, merely because the home is so designed that it may be moved to another location over the highways more readily than the traditional types of residential structures. Accordingly, servicemen checking, servicing, or re-

pairing the plumbing, electrical, heating, air conditioning, or butane gas systems, the doors, windows, and other structural features of mobile homes to make them habitable or more habitable as residences are, while so engaged, not deemed to qualify as "mechanic(s) * * * servicing * * * trailers" within the meaning of section 13(b)(10). (*Snell v. Quality Mobile Home Brokers*, 424 F. 2d 233 (C.A. 4); *Schultz v. Louisiana Trailer Sales, Inc.* 428 F. 2d 61 (C.A. 5) certiorari denied, 400 U.S. 902.)

(4) Employees variously described as service manager, service writer, service advisor, or service salesman who are not themselves primarily engaged in the work of a salesman, partsman, or mechanic as described above are not exempt under section 13(b)(10). This is true despite the fact that such an employee's principal function may be diagnosing the mechanical condition of vehicles brought in for repair, writing up work orders for repairs authorized by the customer, assigning the work to various employees and directing and checking on the work of mechanics.

(d) *Primarily engaged*. As used in section 13(b)(10), primarily engaged means the major part or over 50 percent of the salesman's, partsman's, or mechanic's time must be spent in selling or servicing the enumerated vehicles. As applied to the establishment, primarily engaged means that over half of the establishments annual dollar volume of sales made or business done must come from sales of the enumerated vehicles.

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OTHER ESTABLISHMENTS FOR WHICH
SPECIAL EXCEPTIONS OR EXEMPTIONS
ARE PROVIDED

§ 779.381 Establishments within special exceptions or exemptions.

(a) As stated in § 779.338, the special exceptions provided in the 1961 amendments for hotels, motels, restaurants, hospitals, institutions for the sick, the aged, the mentally ill or defective, and schools for physically or mentally handicapped or gifted children have been removed. Seasonally operated amusement or recreational establishments and motion picture theaters also no longer are specifically exempt under

section 13(a)(2), but have specific exemptions set out for them in sections 13(a)(3) and 13(a)(9) of the Act as amended in 1966.

(b) Hotels, motels, and restaurants continue to be eligible for exemption under section 13(a)(2), but must meet all the requirements of that section for exemption in the same manner as other retail or service establishments. However, a special overtime exemption is provided for such establishments, regardless of size, in the first part of section 13(b)(8). Hospitals, residential care establishments, and schools for physically or mentally handicapped or gifted children are specifically excluded by the Act from consideration for exemption under section 13(a)(2); however, residential care establishments are exempt from the overtime pay requirements of the Act under the second part of section 13(b)(8) as long as overtime premium of not less than one and one-half times the employee's regular rate of pay is paid to him for time worked in excess of 48 hours in the workweek. In addition, section 7(j) of the amended Act provides a special overtime arrangement for hospital employees whereby overtime pay is due an employee after 8 hours in a day or 80 hours in a 14-day work period rather than on the basis of the 7-day workweek as is normally required by the Act. This provision, though, requires an agreement or understanding on the part of both the employer and the employee prior to the performance of the work. See §778.601 of this chapter.

(c) The amendments of 1966 also repealed the exemption from both the minimum wage and overtime pay provisions which was in the Act for certain food service employees employed by retail or service establishments that were not exempt under section 13(a)(2). This exemption (formerly found in section 13(a)(20) is now an exemption from the overtime provisions only and is set out in section 13(b)(18). Those establishments now excluded by the Act from consideration for exemption under section 13(a)(2) (hospitals, residential care establishments, etc.) may utilize this exemption where they meet the Act's definition of retail or service establishment in the last sentence of section 13(a)(2) and the conditions set

out in section 13(b)(18). Likewise, the special exemption for any employee of a retail or service establishment primarily engaged in the business of selling automobiles, trucks, or farm implements was repealed by the 1966 amendments. In its stead the overtime exemption set out in section 13(b)(10) and previously discussed in §779.372 was provided for certain employees of any nonmanufacturing establishment primarily engaged in the business of selling automobiles, trailers, trucks, farm implements, or aircraft to the ultimate consumer.

(d) A special exemption from the overtime pay requirements is also included in the amended Act for bowling establishments which do not meet the tests under section 13(a)(2) for exemption as a retail or service establishment. Section 13(b)(19) states that the overtime pay requirements of the Act shall not apply with respect to "any employee of a bowling establishment if such employee receives compensation for employment in excess of 48 hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed." Unlike the overtime pay exemption in section 13(b)(18), this exemption is not dependent upon the establishment meeting the definition of retail or service establishment.

HOTELS AND MOTELS

§779.382 May qualify as exempt 13(a)(2) establishments.

A hotel or motel establishment may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act. However, the establishment must meet all of the requirements of section 13(a)(2) (see §779.337). In determining whether an establishment is a retail or service establishment within the meaning of section 13(a)(2) the dollar volume received from the leasing or rental of space to other than transient members of the general public cannot be counted as derived from retail sales of goods or services. Therefore, receipts from tenants who are not transient guests (see §779.383(c)) must be included in the 25 percent tolerance provided for sales for resale or sales not recognized as retail.