

§ 779.319

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.