

sells” within the meaning of the 13(a)(4) exemption and cannot, therefore, be exempt under that section.

AUTOMOTIVE TIRE ESTABLISHMENTS

§ 779.365 May qualify as exempt 13(a)(2) or 13(a)(4) establishments.

(a) An establishment engaged in the selling of tires, tubes, accessories and of repair services on tires may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that exemption. Similarly, an establishment engaged in retreading or recapping tires may qualify as an exempt establishment under section 13(a)(4) of the Act if it meets all the requirements of that exemption.

(b)(1) In determining whether, under the 13(a)(2) exemption, 75 percent of the establishment’s sales are not made for resale and are recognized as retail sales in the industry, sales other than those described hereinafter in the subparagraphs of this paragraph may be so counted if they meet all the requirements for such classification as previously explained in this subpart. Not eligible for inclusion in the requisite 75 percent are sales of goods that cannot be the subject of a retail sale because the goods are not of a “retailable” type or the sales of such goods lack the “retail concept” (see § 779.321). Nor can sales for resale be counted toward the 75 percent. For example, sales of tires, tubes, accessories or services to garages, service stations, repair shops, tire dealers and automobile dealers, to be sold or to be used in reconditioning vehicles for sale are sales for resale. Further, the sales of tires, tubes, accessories and tire repair services, including retreading and recapping, which are described in the following paragraphs (b) (2) through (7), are not recognized as retail in the industry.

(2) Sales made pursuant to a formal invitation to bid: Such sales are made under a procedure involving the issuance by the buyer of a formal invitation to bid on certain merchandise for delivery in accordance with prescribed terms and specifications. Sales to the Federal, State and local governments are typically made in this manner.

(3) Sales to “national accounts” as known in the trades; that is, sales where delivery is made by the local tire dealer under a centralized pricing arrangement between the customer’s national office and the tire manufacturer; payment may be made either to the local dealer or direct to the tire manufacturer under a centralized billing arrangement with the customer’s national office.

(4) Sales to fleet accounts at wholesale prices: As used in this section, a “fleet account” is a customer operating five or more automobiles or trucks for business purposes. Wholesale prices for tires, tubes, and accessories are prices equivalent to, or less than, those typically charged on sales for resale. If the establishment makes no sales of passenger car tires for resale, the wholesale price of such tires will be taken to be the price typically charged in the area on sales of passenger car tires for resale. If the establishment makes no sales of truck tires for resale, the wholesale price of such tires will be taken to be the price charged by the establishment on sales of truck tires to fleet accounts operating 10 or more commercial vehicles, or if the establishment makes no such sales, the wholesale price will be taken to be the price typically charged in the area on sales of truck tires to fleet accounts operating 10 or more commercial vehicles. (See *Wirtz v. Steepleton General Tire*, 383 U.S. 190, 202, rehearing denied 383 U.S. 963.)

(5) Sales of a tire rental service on a mileage basis known in the trade as “mileage contracts”: This is a leasing arrangement under which a tire dealer agrees to provide and maintain tires or tubes for motor vehicles of a fleet account.

(6) Sales of servicing and repair work performed under a fleet maintenance arrangement on tires for trucks and other automotive vehicles whereby the establishment undertakes to maintain the tires or tubes for a fleet account at a price below the prevailing retail price.

(7) Sales, repair, recapping, or rental of truck or machinery tires suitable for use only on trucks or equipment of a

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specialized kind that cannot themselves be the subject of a retail sale because their lack of a concept of "retailability" as previously explained precludes the recognition of their sale as "retail;" to any industry.

§ 779.366 Recapping or retreading tires for sale.

(a) Some automotive tire establishments engage in recapping and retreading work on tires which the establishment expects to sell in their reconditioned form. Such activities are not performed as a service for a customer but constitute manufacturing goods for sale. Employees performing such work may be exempt only if they are employed by an establishment which meets all the requirements of the 13(a)(4) exemption.

(b) For purposes of meeting the retail recognition requirement of section 13(a)(4), an establishment engaged in retreading or recapping of tires which qualifies for exemption under section 13(a)(2) is recognized as a retail establishment in the industry if not more than 50 percent of the annual dollar volume of its sales resulting from its retreading and recapping operations comes from the sale of tires retreaded and recapped for sale.

COMMERCIAL STATIONERS

§ 779.367 Commercial stationers may qualify as exempt 13(a)(2) establishments.

(a) A commercial stationer's establishment may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that exemption. Where the establishment meets these requirements all employees employed by the establishment will be exempt, except any employees who are engaged in the making or processing of goods, such as printing and engraving. The commercial stationer ordinarily has a store on the street level located in the shopping section of the community where other stores are located and many people pass by. He has store clerks who sell over the counter to the consuming public and may have outside salesmen who sell to offices. He makes very few, if any, sales to other dealers for resale. He keeps in stock

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and displays the various items sold over the counter and by outside salesmen. The number of items in stock typically ranges from 5,000 to 15,000. Primarily, items sold are stationery, pens, pencils, blotters, briefcases, calendars, clocks, greeting cards, thumbtacks, typewriter ribbons, carbon paper, paper clips, ink, commercial envelopes and typewriter paper, filing supplies and similar items. In addition he may also sell filing cabinets, office desks and chairs, other items of office furniture and supplies and equipment generally, as well as standard and portable typewriters and certain other small office machines.

(b) In determining whether, under the 13(a)(2) exemption, 75 percent of the establishment's sales are recognized as retail sales, in the case of commercial stationery establishments which in general operate as described in § 779.367(a), the sales made which are of "Retailable" items and are not for resale will be recognized as retail if they meet the requirements for such classification as previously explained in this subpart. The following position is adopted for enforcement purposes: All sales other than for resale of stationery, office supplies and equipment, office furniture and office machinery commonly stocked by commercial stationers for sale to individual consumers as well as businesses, including typewriters, adding machines, small duplicating machines, checkwriters, and the like, will be considered to be retail except for the sales set out below:

(1) Sales made on a competitive bid basis. This term covers sales made pursuant to an invitation to bid, particularly sales to Federal, State, and local governments; sales made in a like manner to commercial and industrial concerns and institutions are also included.

(2) Sales made pursuant to a requirements contract or other contractual arrangement involving the sale of a large quantity of goods over a period of time with a substantially lower price structure for the individual deliveries than would prevail for the usual sales of the quantities delivered.