Wage and Hour Division, Labor § 779.371

(a) General. The specific exemption from the provisions of sections 6 and 7 of the Act that was provided in section 13(a)(19) prior to the 1966 amendments for employees of a retail or service establishment which is primarily engaged in the business of selling automobiles, trucks, or farm implements was repealed. However, some such establishments may qualify for exemption from both the minimum wage and overtime pay provisions of the Act under section 13(a)(2) as retail or service establishments. These are establishments whose annual dollar volume is smaller than the amount specified in section 13(a)(2) or in section 3(s)(1) and which meet all the other requirements of section 13(a)(2) (see §779.337). (Such establishments which do not qualify for exemption under section 13(a)(2) may have certain employees who are exempt only from the overtime pay provisions of the Act under section 13(b)(10). Section 13(b)(10) is applicable not only to automobile, truck, and farm implement dealers but also to dealers in trailers, boats, and aircraft. The section 13(b)(10) exemption is discussed in §779.372 below.)

(b) Application of the 75-percent test. In determining whether, under the section 13(a)(2) exemption, 75 percent of an automobile, truck, or farm implement establishment’s sales of goods or services are not for resale and are recognized as retail, the requirements for such classification, including the existence of a retail concept, as explained previously in this subpart, and the specific applications in the industry of these requirements in accordance with the following principles, will govern the classification of sales made by such establishments. The sales of goods or services described in paragraph (c) of this section and in paragraphs (e)(1) through (5) of this section may not be counted toward the required 75 percent. Such sales do not qualify as retail because they either are for resale, are outside the retail concept, or have been determined to lack the requisite recognition as retail sales or services. Other sales of goods or services by the dealer can qualify if they meet the requirements previously explained.

(c) Nonretail automobile and truck sales and servicing. None of the following sales of automobiles, trucks, automotive parts, accessories, servicing and repair work will be considered as retail:

(1) Sales for resale. For example, sales of new or used automobiles and trucks, tires, accessories or services, to service
stations, repair shops and automobile
or truck dealers, where these establish-
ments resell the various items or where
they use them in repairing customers’
vehicles or in reconditioning used cars
for resale, are sales for resale. (Note
that a “sale” for purposes of the Act
need not be for profit under section
3(k); it includes any “exchange * * * or
other disposition”). However, internal
transfers of such items between depart-
ments within the dealer’s establish-
ment, such as transfers of parts from
the parts department to the service de-
partment of an automobile dealer’s es-
tablishment, will not be considered
sales for resale. Such transfers from
one department to another will be dis-
regarded in computing the establish-
ment’s sales for determining the appli-
cability of this exemption.

(2) Sales made pursuant to a formal in-
vitation to bid. Such sales are made
under a procedure involving the
issuance by the buyer of a formal invi-
tation to bid on certain merchandise
for delivery in accordance with pre-
scribed terms and specifications. Sales
to the Federal, State, and local govern-
ments are typically made in this man-
ner.

(3) Fleet sales. Sales in a fleet quan-
ty for business purposes (a sale of five
or more cars or trucks at a time, for
example); and sales to fleet accounts as
described in paragraphs (c)(3) (i) and
(ii) of this section. (As here used, a
“fleet account” is a customer oper-
ating five or more automobiles or
trucks for business purposes.)

(i) Automobiles and trucks. Sales and
term leases of automobiles and trucks
to national fleet accounts as des-
ignated by the various automotive
manufacturers, at fleet discounts, and
sales and term leases to other fleet ac-
counts at discounts equivalent to those
provided in sales to national fleet own-
ers are not recognized as retail.

(ii) Automotive parts and accessories.
Sales of parts and accessories to fleet
accounts at wholesale prices are not
recognized as retail. Wholesale prices
are prices equivalent to, or less than,
those typically charged on sales for re-
sale.

(4) Sales and term leases of special-
ized heavy motor vehicles or bodies
(16,000 pounds and over gross vehicle
weight) and of tires, parts, and acces-
sories designed for use on such special-
ized equipment. The following is a par-
tial list illustrating the types of items
of equipment not considered to qualify
as subjects of retail sale:

(i) Single unit trucks, including:

Armored (money carrying).
Buses (integral).
Coal.
Drilling.
Dump.
Hook and ladder (fire department).
Chemical wagons (fire department).
Garbage.
Mixer.
Refrigerator.
Special public utility.
Steel haulers.
Street-cleaning.
Tank.
Wrecker.

(ii) Full trailers and semitrailers
(tractors and semitrailer and truck and
trailer combinations), including:

Auto carrier.
Coal.
Dump.
Garbage.
House carrier.
Low bed carry all.
Pole (lumber).
Refrigerator.
Tank.
Van.

(5) Sales of servicing and repair work
peculiar to the servicing and repair of
specialized vehicles referred to in para-
graph (c)(4) of this section, or per-
formed under a fleet maintenance ar-
rangements on trucks and other auto-
motive vehicles whereby the establish-
ment undertakes to maintain a cus-
tomer’s fleet at a price below the pre-
vailing retail prices.

(6) Sales to motor carriers of serv-
ices, fuel, equipment, or other goods or
facilities by establishments commonly
referred to as truck stops. Such estab-
ishments, which are physically laid
out and specially equipped to meet the
highway needs of the motor transpor-
tation industry, offer a variety of serv-
ices to truckers on a “one-stop” basis,
and provide services principally to
motor carriers and their crews. They
are an integral part of the interstate
transportation industry and are not
within the traditional retail establishments (see paragraphs (c) (4) and (5) of this section).

(7) Sales of diesel fuel (and LP gas) for use as truck or bus fuel and the repair and servicing of trucks and buses used in over-the-road commercial transportation (including parts and accessories for such vehicles) are specialized goods and services “which can never be sold at retail * * * whatever the terms of the sale.” (Idaho Sheet Metal Works, Inc. v. Wirtz, 383 U.S. 190, 202, rehearing denied 383 U.S. 963; Wirtz v. Steepleton General Tire Company, Inc., 383 U.S. 190, 202, rehearing denied 383 U.S. 963.) Sales of these items are nonretail whether made by truck stops or other establishments (see paragraphs (c) (4) and (5) of this section).

(d) Nonspecialized truck parts, accessories and services. Sales of parts and accessories which are of the type used by small trucks engaged in local transportation or by farm vehicles and are not nonretail under paragraph (c)(6) of this section will be tested under paragraphs (b) and (c)(3) (ii) of this section, even when made on occasion for use in larger vehicles. Likewise, repairs and servicing of a minor nature (such as tire repair, battery recharging, cleaning of fuel lines, or minor electrical rewiring) performed on any type vehicle will be considered retail in nature unless nonretail under paragraph (c)(6) of this section or unless a fleet maintenance arrangement as in paragraph (c)(5) of this section is present.

(e) Farm implement sales. Sales of farm machinery, such as equipment necessary for plowing, planting, thinning, weeding, fertilizing, irrigating, and harvesting of crops, and raising of livestock on the farm, and the repair work thereon, will be considered as retail (whether sold to farmers or nonfarmers) when they satisfy the tests referred to in paragraph (b) of this section. The following, which fail to satisfy these tests, must be classified as nonretail:

(1) Sales for resale. For example, sales of new or used machinery, parts, accessories or services to service stations, repair shops and other dealers, where these establishments resell these items or where they use them in repairing customers’ farm implements or in reconditioning used farm implements for resale, are sales for resale. However, this does not apply to internal transfers of such items between departments within the dealer’s establishment. Transfers of parts from the parts department to the service department of a farm implement dealer’s establishment will not be considered sales for resale, and will be disregarded in computing the establishment’s sales for determining the applicability of the section 13(a)(2) exemption.

(2) Sales made pursuant to 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 Federal, State and local governments are typically made in this manner.

(3) Sales of specialized equipment not ordinarily used by farmers, such as:

- Bulldozers.
- Scrapers.
- Land levelers.
- Graders.
- Cotton ginning machinery.
- Canning and packing equipment.

(4) Sales of junk.

(5) Sales of machinery or equipment which are sold “installed”, where the installation involves construction work. Installations which require extensive planning, labor and use of specialized equipment ordinarily constitute construction work. In such cases the cost of installation ordinarily is substantial in relation to the cost of the goods installed.

(1) Quantity sales to farmers. It should be noted that the concept of fleet sales discussed in paragraphs (c)(3) and (5) of this section is not applied to sales to farmers, even though the farmer uses five or more vehicles on his farm.

(g) Particular activities which lack a retail concept. Any receipts derived from warehousing, construction, including water well drilling, or manufacturing activities performed by the automobile, truck, or farm implement dealer are not receipts from retail sales. These activities and the manufacturing of farm implements are not retail activities.

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