

§ 779.329

(d) Sales made pursuant to formal bid procedures, such as those utilized by the agencies of Federal, State, and local governments and oftentimes by commercial and industrial concerns involving the issuance by the buyer of a formal invitation to bid on certain merchandise or services for delivery in accordance with prescribed terms and specifications, are not recognized as retail sales.

§ 779.329 Effect of type of customer and type of goods or services.

In some industries the type of goods or services sold or the type of purchaser of goods or services are determining factors in whether a sale or service is recognized as retail in the particular industry. In other industries a sale or service may be recognized as retail regardless of the type of goods or services sold or the type of customer. Where a sale is recognized as retail regardless of the type of customer, its character as such will not be affected by the character of the customer, with reference to whether he is a private individual or a business concern, or by the use the purchaser makes of the purchased commodity. For example, if the sale of a single automobile to anyone for any purpose is recognized as a retail sale in the industry, it will be considered as a retail sale for purposes of the exemption whether the customer be a private individual or an industrial concern or whether the automobile is used by the purchaser for pleasure purposes or for business purposes. If a sale of a particular quantity of coal is recognized in the industry as a retail sale, its character as such will not be affected by the fact that it is sold for the purpose of heating an office building as distinguished from a private dwelling. If the repair of a wash basin is recognized in the industry as a retail service, its character as such will not be affected by the fact that it is a wash basin in a factory building as distinguished from a wash basin in a private dwelling house. It must be remembered that these principles apply only to those sales of goods or services which have a retail concept, that is, where the subject matter is "retailable." See § 779.321. The "industry-recognition" question as to whether such sales are

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recognized as retail in the industry has no relevancy if in fact the goods and services sold are not of a "retailable" character, as previously explained. If the subject of the sale does not come within the concept of retailable items contemplated by the statute, there can be no recognition in any industry of the sale of the goods or services as retail, for purposes of the Act, even though the nomenclature used by the industry members may put a retail label on the transaction. (See *Wirtz v. Steepleton General Tire Co.*, 383 U.S. 190; *Mitchell v. Kentucky Finance Co.*, 359 U.S. 290.)

SALES NOT MADE FOR RESALE

§ 779.330 Third requirement for qualifying as a "retail or service establishment."

The third requirement for qualifying as a "retail or service establishment" within that term's statutory definition is that 75 percent of the retail or service establishment's annual dollar volume must be from sales of goods or of services (or of both) which are not made for resale. At least three-fourths of the total sales of goods or services (or of both) (measured by annual dollar volume) must not be made for resale. Except under the special provision in section 3(n) of the Act, discussed in § 779.335, the requirement that 75 percent of the establishment's dollar volume be from sales of goods or services "not for resale" is a separate test and a sale which "for resale" cannot be counted toward the required 75 percent even if it is recognized as retail in the particular industry. The prescribed 75 percent must be from sales which are both not for resale and recognized as retail.

§ 779.331 Meaning of sales "for resale."

Except with respect to a specific situation regarding certain building materials, the word "resale" is not defined in the Act. The common meaning of "resale" is the act of "selling again." A sale is made for resale where the seller knows or has reasonable cause to believe that the goods or services will be resold, whether in their original form, or in an altered form, or as a part,