

therefore, a concept of retail selling or servicing does not exist. That it was the intent of Congress to exclude such businesses from the term "retail or service establishment" is clearly demonstrated by the legislative history of the 1949 amendments and by the judicial construction given said term both before and after the 1949 amendments. It also should be noted from the judicial pronouncements that a "retail concept" cannot be artificially created in an industry in which there is no traditional concept of retail selling or servicing. (95 Cong. Rec. pp. 1115, 1116, 12502, 12506, 21510, 14877, and 14889; *Mitchell v. Kentucky Finance Co.*, 359 U.S. 290; *Phillips Co. v. Walling*, 324 U.S. 490; *Kirschbaum Co. v. Walling*, 316 U.S. 517; *Durkin v. Joyce Agency, Inc.*, 110 F. Supp. 918 (N.D. Ill.) affirmed sub nom *Mitchell v. Joyce Agency, Inc.*, 348 U.S. 945; *Goldberg v. Roberts* 291 F. 2d 532 (CA-9); *Wirtz v. Idaho Sheet Metal Works*, 335 F. 2d 952 (CA-9), affirmed in 383 U.S. 190; *Telephone Answering Service v. Goldberg*, 290 F. 2d 529 (CA-1).) It is plain, therefore, that the term "retail or service establishment" as used in the Act does not encompass establishments in industries lacking a "retail concept". Such establishments not having been traditionally regarded as retail or service establishments cannot under any circumstances qualify as a "retail or service establishment" within the statutory definition of the Act, since they fail to meet the first requirement of the statutory definition. Industry usage of the term "retail" is not in itself controlling in determining when business transactions are retail sales under the Act. Judicial authority is quite clear that there are certain goods and services which can never be sold at retail. (*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.)

§ 779.317 Partial list of establishments lacking "retail concept."

There are types of establishments in industries where it is not readily apparent whether a retail concept exists and whether or not the exemption can apply. It, therefore, is not possible to give a complete list of the types of es-

tablishments that have no retail concept. It is possible, however, to give a partial list of establishments to which the retail concept does not apply. This list is as follows:

Accounting firms.
 Adjustment and credit bureaus and collection agencies (*Mitchell v. Rogers d.b.a. Commercial Credit Bureau*, 138 F. Supp. 214 (D. Hawaii); *Mill v. United States Credit Bureau*, 1 WH Cases 878, 5 Labor Cases par. 60,992 (S.D.Calif.).
 Advertising agencies including billboard advertising.
 Air-conditioning and heating systems contractors.
 Aircraft and aeronautical equipment; establishments engaged in the business of dealing in.
 Airplane crop dusting, spraying and seeding firms.
 Airports, airport servicing firms and fixed base operators.
 Ambulance service companies.
 Apartment houses.
 Armored car companies.
 Art; commercial art firms.
 Auction houses (*Fleming v. Kenton Whse.*, 41 F. Supp. 255).
 Auto-wreckers' and junk dealers' establishments (*Bracy v. Luray*, 138 F. 2d 8 (CA-4); *Edwards v. South Side Auto Parts* (Mo. App.) 180 SW 2d 1015. (These typically sell for resale.)
 Automatic vending machinery; establishments engaged in the business of dealing in.
 Banks (both commercial and savings).
 Barber and beauty parlor equipment; establishments engaged in the business of dealing in.
 Blacksmiths; industrial.
 Blue printing and photostating establishments.
 Booking agencies for actors and concert artists.
 Bottling and bottling equipment and canning machinery; establishments engaged in the business of dealing in.
 Broadcasting companies.
 Brokers, custom house; freight brokers; insurance brokers, stock or commodity brokers.
 Building and loan associations.
 Building contractors.
 Burglar alarms; establishments engaged in furnishing, installing and repairing for commercial establishments (*Walling v. Thompson*, 65 F. Supp. 686 (S.D. Calif.)).
 Burial associations (*Gilbreath v. Daniel* (C.A. 8), 19 WH Cases 370).
 Butchers' equipment; establishments engaged in the business of dealing in.
 Chambers of Commerce.
 Chemical equipment; establishments engaged in the business of dealing in.

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- Clubs and fraternal organizations with a select or restricted membership.
- Common and contract carriers; establishments engaged in providing services, fuel, equipment, or other goods or facilities for the operation of such carriers (*Idaho Sheet Metal Works v. Wirtz*, 383 U.S. 190, rehearing denied 383 U.S. 963; *Wirtz v. Steepleton General Tire Co., Inc.* 383 U.S. 190, rehearing denied 383 U.S. 963; *Boutell v. Whaling*).
- Common carrier stations and terminals.
- Construction contractors.
- Contract Post Offices.
- Credit companies, including small loan and personal loan companies (*Mitchell v. Kentucky Finance Co.*, 359 U.S. 290).
- Credit rating agencies.
- Dentists' offices.
- Dentists supply and equipment establishments.
- Detective agencies.
- Doctors' offices.
- Dry cleaners (see 95 Cong. Rec., p. 12503 and § 779.337 (b) of this part).
- Drydock companies.
- Drydock
- Dye houses, commercial (*Walling v. Kerr*, 47 F. Supp. 852 (E.D. Pa)).
- Duplicating, addressing, mailing, mail listings, and letter stuffing establishments (*Goldberg v. Roberts d.b.a. Typing and Mailing Unlimited*, 15 WH Cases 100, 42 L.C. par. 31,126 (CA-9; *Durkin v. Shone*, 112 F. Supp. 375 (E.D. Tenn.); *Hanzley v. Hooven Letters*, 44 N.Y.S. 2d 398 (City Ct. N.Y. 1943)).
- Educational institutions (for express exclusion see § 779.337(b)).
- Electric and gas utilities (*Meeker Cooperative Light & Power Assn. v. Phillips*, 158 F. 2d 698 (CA-8); *New Mexico Public Service Co. v. Engel*, 145 F. 2d 636 (CA-10); *Brown v. Minngas Co.*, 51 F. Supp. 363 (D. Minn.)).
- Electric signs; establishments engaged in making, installing and servicing.
- Elevators; establishments engaged in repairing (Cf. *Muldowney v. Seaberg Elevator Co.*, 39 F. Supp. 275 (E.D.N.Y.)).
- Employment Agencies (*Yunker v. Abbye Employment Agency, Inc.*, 32 N.Y.S. 2d 715 (N.Y.C. Munic. Ct. 1942)).
- Engineering firms.
- Factors.
- Filling station equipment; establishments engaged in the business of dealing in.
- Finance companies (*Mitchell v. Kentucky Finance Co.*, 359 U.S. 290).
- Flying schools.
- Gambling establishments.
- Geological surveys; firms engaged in making.
- Heating and air conditioning systems contractors.
- Hospital equipment (such as operating instruments, X-ray machines, operating tables, etc.); establishments engaged in the business of dealing in.
- Insurance; mutual, stock and fraternal benefit, including insurance brokers, agents, and claims adjustment offices.
- Income tax return preparers.
- Investment counseling firms.
- Jewelers' equipment; establishments engaged in the business of dealing in.
- Job efficiency checking and rating; establishments engaged in the business of supplying.
- Labor unions.
- Laboratory equipment; establishments engaged in the business of dealing in.
- Landscaping contractors.
- Laundries (see 95 Cong. Rec. p. 12503 and § 779.337 (b) of this part).
- Laundry; establishments engaged in the business of dealing in commercial laundry equipment.
- Lawyers' offices.
- Legal concerns engaged in compiling and distributing information regarding legal developments.
- License and legal document service firms.
- Loan offices (see credit companies).
- Loft buildings or office buildings, concerns engaged in renting and maintenance of (*Kirschbaum v. Walling*, 316 U.S. 517; Statement of Senator Holland, 95 Cong. Rec., p. 12505).
- Machinery and equipment, including tools—establishments engaged in selling or servicing of construction, mining, manufacturing and industrial machinery, equipment and tools (*Roland Electric Co. v. Walling*, 326 U.S. 657; *Guess v. Montaque*, 140 F. 2d 500 (CA-4); cf. *Walling v. Thompson*, 65 F. Supp. 686 (S.D. Calif.)).
- Magazine subscription agencies (*Wirtz v. Keystone Serv.* (C.A. 5), 418 F. 2d 249).
- Medical and dental clinics.
- Medical and dental laboratories.
- Medical and dental laboratory supplies; establishments engaged in the business of dealing in.
- Messenger; firms engaged in furnishing commercial messenger service (*Walling v. Allied Messenger Service*, 47 F. Supp. 773 (S.D.N.Y.)).
- Newspaper and magazine publishers.
- Oil well drilling; companies engaged in contract oil well drilling.
- Oil well surveying firms (*Straughn v. Schlumberger Well Surveying Corp.*, 72 F. Supp. 511 (S.D. Tex.)).
- Packing companies engaged in slaughtering livestock (*Walling v. Peoples Packing Co.*, 132 F. 2d 236 (CA-10)).
- Painting contractors.
- Pharmacists' supplies; establishments engaged in the business of dealing in.
- Photography, commercial, establishments engaged in.
- Plumbers' equipment; establishments engaged in the business of dealing in.
- Plumbing contractors.
- Press clipping bureaus.

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Printers' and lithographers' supplies; establishments engaged in the business of dealing in.

Printing and binding establishments (*Casa Baldrige, Inc. v. Mitchell*, 214 F. 2d 703 (CA-1)).

Protection and Shopping services for industry; establishments engaged in supplying (*Durkin v. Joyce Agency, Inc.*, 110 F. Supp. 918 (N.D. Ill.) affirmed sub nom. *Mitchell v. Joyce Agency, Inc.*, 348 U.S. 945).

Quarris (*Walling v. Partee*, 3 WH Cases 543, 7 Labor Cases, par. 61,721 (M.D. Tenn.)).

Radio and television broadcasting stations and studios.

Ready-mix concrete suppliers.

Real estate companies.

Roofing contractors.

Schools (except schools for mentally or physically handicapped or gifted children): (All now excluded, see § 779.337(b)).

School supply distributors.

Security dealers.

Sheet metal contractors.

Ship equipment, commercial; establishments engaged in the business of dealing in.

Shopping analysts services.

Siding and insulation contractors.

Sign-painting shops.

Special trade contractors (construction industry).

Stamp and coupon redemption stores.

Statistical reporting, business and financial data; establishments engaged in furnishing.

Store equipment; establishments engaged in the business of dealing in.

Tax services.

Telegraph and cable companies.

Telephone companies; (*Schmidt v. Peoples Telephone Union of Maryville, Mo.*, 138 F. 2d 13 (CA-8)).

Telephone answer service; establishments engaged in furnishing. (*Telephone Answering Service v. Goldberg*, 15 WH Cases 67, 4 L.C. par. 31,104 (CA-1)).

Title and abstract companies.

Tobacco auction warehouses (*Fleming v. Kenton Loose Leaf Tobacco Warehouse Co.*, 41 F. Supp. 255 (E.D. Ky.); *Walling v. Lincoln Loose Leaf Warehouse Co.*, 59 F. Supp. 601 (E.D. Tenn.)).

Toll bridge companies.

Trade associations.

Transportation equipment, commercial; establishments engaged in the business of dealing in.

Transportation companies.

Travel agencies.

Tree removal firms.

Truck stop establishments (*Idaho Sheet Metal Works, Inc., v. Wirtz*, 383 U.S. 190, rehearing denied 383 U.S. 963; *Wirtz v. Steepleton General Tire Co., Inc.*, 383 U.S. 190, rehearing denied 383 U.S. 963).

Trust companies.

Undertakers' supplies; establishments engaged in the business of dealing in.

Wagers, establishments accepting, as business in which they are engaged.

Warehouse companies; commercial or industrial (*Walling v. Public Quick Freezing and Cold Storage Co.*, 62 F. Supp. 924 (S.D. Fla.)).

Warehouses equipment and supplies; establishments engaged in the business of dealing in.

Waste removal contractors.

Watchmen, guards and detectives for industries; establishments engaged in supplying (*Walling v. Sondock*, 132 F. 2d 77 (CA-5); *Walling v. Wattam*, 3 WH Cases 726, 8 Labor Cases, par. 62,023 (W.D. Tenn., 1943); *Walling v. Lum*, 4 WH Cases 465, 8 Labor Cases, par. 62,185 (S.D. Miss., 1944); *Walling v. New Orleans Private Patrol Service* 57 F. Supp. 143 (E.D. La., 1944); *Haley v. Central Watch Service*, 4 WH Cases 158, 8 Labor Cases, par. 62,002 (N.D. Ill., 1944)).

Water supply companies (*Reynolds v. Salt River Valley Water Users Assn.*, 143 F. 2d (863 (CA-9).)

Water well drilling contractors.

Window displays; establishments engaged in the business of dealing in.

Wrecking contractors.

§ 779.318 Characteristics and examples of retail or service establishments.

(a) Typically a retail or service establishment is one which sells goods or services to the general public. It serves the everyday needs of the community in which it is located. The retail or service establishment performs a function in the business organization of the Nation which is at the very end of the stream of distribution, disposing in small quantities of the products and skills of such organization and does not take part in the manufacturing process. (See, however, the discussion of section 13(a)(4) in §§ 779.346 to 779.350.) Such an establishment sells to the general public its food and drink. It sells to such public its clothing and its furniture, its automobiles, its radios and refrigerators, its coal and its lumber, and other goods, and performs incidental services on such goods when necessary. It provides the general public its repair services and other services for the comfort and convenience of such public in the course of its daily living. Illustrative of such establishments are: Grocery stores, hardware stores, clothing stores, coal dealers, furniture stores, restaurants, hotels, watch repair establishments, barber