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29 C.F.R. § 779.321

Inapplicability of "retail concept" to some types of sales or services of an eligible establishment.

(a) Only those sales or services to which the retail concept applies may be recognized as retail sales of goods or services for purposes of the exemption. The fact that the particular establishment may have a concept of retailability, in that it makes sales of types which may be recognized as retail, is not determinative unless the requisite portion of its annual dollar volume is derived from particular sales of its goods and services which have a concept of retailability. Thus, the mere fact that an establishment is of a type noted in § 779.320 does not mean that any particular sales of such establishment are within the retail concept. As to each particular sale of goods or services, an initial question that must be answered is whether the sales of goods or services of the particular type involved can ever be recognized as retail. The Supreme Court in *Wirtz* v. *Steepleton General Tire Co.,* 383 U.S. 190, confirmed the Department's position that (1) The concept of "retailability" must apply to particular sales of the establishment, as well as the establishment or business as a whole, and (2) even as to the establishment whose sales are "variegated" and include retail sales, that nonetheless classification of particular sales of goods or services as ever coming within the concept of retailability must be made. Sales of some particular types of goods or services may be decisively classified as nonretail on the ground that such particular types of goods or services cannot ever qualify as retail whatever the terms of sale, regardless of the industry usage or classification.