

29 C.F.R. § 779.323

Particular industry.

In order to determine whether a sale or service is recognized as a retail sale or service in the “particular industry” it is necessary to identify the “particular” industry to which the sale or service belongs. Some situations are clear and present no difficulty. The sale of clothes, for example, belongs to the clothing industry and the sale of ice belongs to the ice industry. In other situations, a sale or service is not so easily earmarked and a wide area of overlapping exists. Household appliances are sold by public utilities as well as by department stores and by stores specializing in the sale of such goods; and tires are sold by manufacturers' outlets, by independent tire dealers and by other types of outlets. In these cases, a fair determination as to whether a sale or service is recognized as retail in the “particular” industry may be made by giving to the term “industry” its broad statutory definition as a “group of industries” and thus including all industries wherein a significant quantity of the particular product or service is sold. For example, in determining whether a sale of lumber is a retail sale, it is the recognition the sale of lumber occupies in the lumber industry generally which decides its character rather than the recognition such sales occupies in any branch of that industry.

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