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## 29 C.F.R. § 779.329

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### Effect of type of customer and type of goods or services.

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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 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.)

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