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## 29 C.F.R. § 779.371

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### Some automobile, truck, and farm implement establishments may qualify for exemption under section 13(a)(2).

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- (a) *General.* The specific exemption from the provisions of sections 6 and 7 of the Act that was provided in section 13(a)(19) prior to the 1966 amendments for employees of a retail or service establishment which is primarily engaged in the business of selling automobiles, trucks, or farm implements was repealed. However, some such establishments may qualify for exemption from both the minimum wage and overtime pay provisions of the Act under section 13(a)(2) as retail or service establishments. These are establishments whose annual dollar volume is smaller than the amount specified in section 13(a)(2) or in section 3(s)(1) and which meet all the other requirements of section 13(a)(2) (see § 779.337). (Such establishments which do not qualify for exemption under section 13(a)(2) may have certain employees who are exempt only from the overtime pay provisions of the Act under section 13(b)(10). Section 13(b)(10) is applicable not only to automobile, truck, and farm implement dealers but also to dealers in trailers, boats, and aircraft. The section 13(b)(10) exemption is discussed in § 779.372 below.)
- (b) *Application of the 75-percent test.* In determining whether, under the section 13(a)(2) exemption, 75 percent of an automobile, truck, or farm implement establishment's sales of goods or services are not for resale and are recognized as retail, the requirements for such classification, including the existence of a retail concept, as explained previously in this subpart, and the specific applications in the industry of these requirements in accordance with the following principles, will govern the classification of sales made by such establishments. The sales of goods or services described in paragraph (c) of this section and in paragraphs (e)(1) through (5) of this section may not be counted toward the required 75 percent. Such sales do not qualify as retail because they either are for resale, are outside the retail concept, or have been determined to lack the requisite recognition as retail sales or services. Other sales of goods or services by the dealer can qualify if they meet the requirements previously explained.

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