

§ 779.250

Much of the goods purchased by retailers are produced from a local intrastate supplier. In many instances these goods may have been stored at the supplier's establishment for some time. However, as long as the particular goods purchased have moved across State lines at some stage in the flow of trade to the retailer, they would have to be included in determining whether or not the enterprise has purchased or received for resale such out-of-State goods amounting to \$250,000.

§ 779.250 Goods that have not lost their out-of-State identity.

Goods which are purchased or received by the enterprise from within the State will be considered goods which "have moved across State lines" if they have previously been moved across State lines and have not lost their identity as out-of-State goods before they are purchased or received by the enterprise. Also goods which have been assembled within the State after they were moved across State lines but before they are purchased or received by the enterprise will still be regarded as goods which "have moved across State lines." Such goods are still identifiable as goods brought into the State. This is also true in certain cases where goods are processed to some extent without losing their identity as out-of-State goods. For example, out-of-State furniture or television sets which are put together within the State, or milk from outside the State which is pasteurized and bottled within the State, before being purchased or received by the enterprise, are goods which "have moved across State lines." They have already moved across State lines and they retain their out-of-State identity, despite the assembly or processing within the State.

§ 779.251 Goods that have lost their out-of-State identity.

(a) Goods which are purchased or received by the enterprise within the State will not be considered goods which have "moved across State lines" if the goods, although they came from outside the State, had been processed or manufactured so as to have lost their identity as out-of-State goods before they are purchased or received by

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the enterprise. This assumes, of course, that the goods so manufactured or processed do not move across State lines before they are sold by the enterprise. Thus where an enterprise buys bread baked within the State which does not move across State lines before it is resold by the enterprise, the bread is not "goods, which have moved across State lines" even if the flour and other ingredients came from outside the State. The same conclusion will follow, under the same circumstances, where clothing is manufactured from out-of-State fabrics.

(b) In those cases where goods are composed in part of goods which have, and in part of goods which have not, moved across State lines, the entire product will be considered as goods which have moved across State lines, if, as a practical matter, it substantially consists of goods which are identifiable as out-of-State goods. Whether goods have been so changed as to have lost their out-of-State identity is question which will depend upon all the facts in a particular case.

§ 779.252 Not in deliveries from the reselling establishment.

Goods which move across State lines only in the course of deliveries from the reselling establishment of the enterprise are not included as goods which "move or have moved across State lines." Thus, goods delivered by the enterprise to its customers outside of the State are not, for that reason, considered goods which "move or have moved across State lines." The purpose of the provision excepting "deliveries from the reselling establishment" is to limit the test to goods which flow into the enterprise and to exclude those goods which only cross State lines when they flow out of the enterprise as an incident of the sale of such goods by the enterprise. In other words, this is an inflow test and not an outflow test.

§ 779.253 What is included in computing the total annual inflow volume.

The goods which the establishment purchases or receives for resale that move or have moved across State lines must "amount in total annual volume to \$250,000 or more." It will be noted

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that taxes are not excluded in measuring this annual dollar volume. Thus, the total cost to the enterprise of such goods will be included in calculating the \$250,000. This will include all taxes and other charges which the enterprise must pay for such goods. Generally, all charges will be included in the invoice of the goods. But whether included in the invoice or not, the total amount which the enterprise is required to pay for such goods, including charges for transportation, insurance, delivery, storage and any other will be included in computing the \$250,000. The dollar volume of the goods purchased or received by the enterprise is the "annual" volume. The method of calculating the annual dollar volume is explained in § 779.266.

THE GASOLINE SERVICE ESTABLISHMENT ENTERPRISE

§ 779.254 Summary of coverage and exemptions prior to and following the 1966 amendments.

The ordinary gasoline service establishment is a covered enterprise under the Act if it has an annual gross volume of sales made or business done of not less than \$250,000 a year, exclusive of excise taxes at the retail level which are separately stated, and meets the other tests of section 3(s)(5) of the prior Act and section 3(s)(1) of the amended Act. Beginning February 1, 1969, enterprise coverage extends to any gasoline service establishment in an enterprise which has an annual gross volume in such amount, even if the establishment's annual gross volume is less. However, a gasoline service establishment with gross sales of less than \$250,000, exclusive of excise taxes at the retail level which are separately stated, may qualify for the minimum wage and overtime pay exemption provided in section 13(a)(2) of the Act if it meets the requirements of that section. Section 779.313 summarizes the requirements. An overtime pay exemption, which was repealed by the 1966 amendments, existed until February 1, 1967, for employees of ordinary gasoline service establishments under the prior Act. Thus, nonexempt employees of a covered gasoline service establishment enterprise are subject to the minimum wage standards for previously covered

employment and the overtime pay requirements for newly covered employment as listed below:

Minimum wage:	Beginning
\$1.40 an hour	February 1, 1967.
\$1.60 an hour	February 1, 1968 and thereafter.
Overtime pay after:	
44 hours in a workweek	February 1, 1967.
42 hours in a workweek	February 1, 1968.
40 hours in a workweek	February 1, 1969 and thereafter.

The particular considerations affecting coverage and exemptions are discussed in subsequent sections. The statutory language contained in section 3(s)(5) of the prior Act and 3(s)(1) of the amended Act may be found in § 779.22.

§ 779.255 Meaning of "gasoline service establishment."

(a) A gasoline service station or establishment is one which is typically a physically separate place of business engaged primarily ("primarily" meaning 50 percent or more) in selling gasoline and lubricating oils to the general public at the station or establishment. It may also sell other merchandise or perform minor repair work as an incidental part of the business. (See S. Rept. 145, 87th Cong., first session, p. 32.) No difference in application of the terms "gasoline service establishment" and "gasoline service station" was intended by Congress (see Senate Report cited above) and both carry the same meaning.

(b) Under section 3(s)(5) of the prior Act and until February 1, 1969, under section 3(s)(1) of the amended Act, the covered enterprise is always a single establishment—a gasoline service establishment, even though such establishment may be a part of some larger enterprise for purposes of other provisions of the "enterprise" coverage of the new amendments. As noted above this term refers to what is commonly known as a gasoline service station, a separate "establishment." What constitutes a separate establishment is discussed in §§ 779.303 through 779.306. While receipts from incidental sales and services are included and counted in determining the establishment's annual gross volume of sales for purposes