other functions as well. In such situations the leased department is an integral part of the retail store and considered to be such by the customers. It is clear that such departments are not separate establishments but rather a part of the retail store establishment and will be considered as such for purposes of the exemptions. The same result may follow in the case of leased departments engaged in the retail sale of goods or services in a departmentalized store where all or most of the departments are leased or otherwise individually owned, but which operate under one common trade name and hold themselves out to the public as one integrated business unit.

§ 779.307 Meaning and scope of "employed by" and "employee of."

Section 13(a)(2) as originally enacted in 1938 exempted any employee ''engaged in'' any retail or service establishment. The 1949 amendments to that section, however, as contained in section 13(a)(2) and (4) exempted any employee ''employed by'' any establishment described in those exemptions. The 1961 and 1966 amendments retained the ''employed by'' language of these exemptions. Thus, where it is found that any of those exemptions apply to an establishment owned or operated by the employer the employees ''employed by'' that establishment of the employer are exempt from the minimum wage and overtime provisions of the Act without regard to whether such employees perform their activities inside or outside the establishment. Thus, such employees as collectors, repair and service men, outside salesmen, merchandise buyers, consumer survey and promotion workers, and delivery men actually employed by an exempt retail or service establishment are exempt from the minimum wage and overtime provisions of the Act although they may perform the work of the establishment away from the premises. As used in section 13 of the Act, the phrases ''employee of'' and ''employed by'' are synonymous.

§ 779.308 Employed within scope of exempt business.

In order to meet the requirement of actual employment ''by'' the establishment, an employee, whether performing his duties inside or outside the establishment, must be employed by his employer in the work of the exempt establishment itself in activities within the scope of its exempt business. (See *Davis* v. *Goodman Lumber Co.,* 133 F. 2d 52 (CA–4) (holding section 13(a)(2) exemption inapplicable to employees working in manufacturing phase of employer's retail establishment); *Wessling* v. *Carroll Gas Co.,* 266 F. Supp. 795 (N.D. Iowa); *Oliveira* v. *Basteiro,* 18 WH Cases 668 (S.D. Texas). See also, *Northwest Airlines* v. *Jackson,* 185 F. 2d 74 (CA–8); *Walling* v. *Connecticut Co.,* 154 F. 2d 522 (CA–2) certiorari denied, 329 U.S. 667; and *Wabash Radio Corp.* v. *Walling,* 162 F. 2d 391 (CA–6).)

§ 779.309 Employed "in" but not "by."

Since the exemptions by their terms apply to the employees ''employed by'' the exempt establishment, it follows that those exemptions will not extend to other employees who, although actually working in the establishment and even though employed by the same person who is the employer of all under section 3(d) of the Act, are not ''employed by'' the exempt establishment. Thus, traveling auditors, manufacturers' demonstrators, display-window arrangers, sales instructors, etc., who are not ''employed by'' an exempt establishment in which they work will not be exempt merely because they happen to be working in such an exempt establishment, whether or not they work for the same employer. (*Mitchell* v. *Kroger Co.,* 248 F. 2d 935 (CA–8).) For example, if the manufacturer sends one of his employees to demonstrate to the public in a customer's exempt retail establishment the products which he has manufactured, the employee will not be considered exempt under section 13(a)(2) since he is not employed by the retail establishment but by the manufacturer. The same would be true of an employee of the central offices of a chain-store organization who performs work for the central organization on the premises of an exempt retail outlet of the chain (*Mitchell* v. *Kroger Co.,* supra.)