

meet the requirements for such classification as previously explained in this subpart. The following position is adopted for enforcement purposes: All sales other than for resale of stationery, office supplies and equipment, office furniture and office machinery commonly stocked by commercial stationers for sale to individual consumers as well as businesses, including typewriters, adding machines, small duplicating machines, checkwriters, and the like, will be considered to be retail except for the sales set out below:

(1) Sales made on a competitive bid basis. This term covers sales made pursuant to an invitation to bid, particularly sales to Federal, State, and local governments; sales made in a like manner to commercial and industrial concerns and institutions are also included.

(2) Sales made pursuant to a requirements contract or other contractual arrangement involving the sale of a large quantity of goods over a period of time with a substantially lower price structure for the individual deliveries than would prevail for the usual sales of the quantities delivered.

(3) Sales made at quantity discount of 30 percent or more from the price of the ordinary unit of sale.

(4) Sales of school supplies to municipalities, boards of education, or schools in the same manner as the sales of school supply distributors.

(5) Sales of job printing and engraving other than (i) sales of social printing and engraving and (ii) sales of printing and engraving of business envelopes, letterheads, and calling cards.

(6) Sales of specialized machinery and equipment.

§ 779.368 Printing and engraving establishments not recognized as retail.

(a) An establishment which is engaged in printing and engraving is not recognized as a retail establishment for purposes of section 13(a)(4). Therefore, employees of a stationery establishment engaged in printing and/or engraving do not come within the exemption. This fact will not affect the exemption under section 13(a)(2) of employees of stationery establishments

who are not engaged in printing or engraving.

(b) In a combined stationery and printing or engraving establishment there are employees who operate the machines in the printing or engraving department and there may be other employees who also perform work primarily or exclusively for that department. There are in addition various employees in such combined establishments whose work relates to the stationery portion of the business but who also perform some work for the printing department. For example, office workers may keep records of both the printing plant and stationery department, maintenance workers may clean up in both departments; and warehousemen, messengers and stock clerks may handle material for both departments. In some establishments these workers spend relatively little time in the work of the printing department. As an enforcement policy an auxiliary employee will not be considered to be engaged in the making or processing of goods for purposes of the exemption under section 13(a)(2) in any workweek in which an insubstantial amount of his time (20 percent or less) is allocable to the clerical, messenger, or custodial work of the printing department.

FUNERAL HOMES

§ 779.369 Funeral home establishments may qualify as exempt 13(a)(2) establishments.

(a) *General.* A funeral home establishment may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that section. Where the establishment meets these requirements generally all employees employed by the establishment will be exempt except any employees who perform any work in connection with burial insurance operations (see paragraph (b)) or who spend a substantial portion of their workweek in ambulance service operations, as described in paragraph (e) below.

(b) *Burial insurance operations.* There is no retail concept applicable to the insurance business (see § 779.317). Burial associations which enter into burial insurance contracts are generally regulated by the State and the regulations

governing such associations are included in State statutes under Insurance. The contracts issued are very similar in form and content to ordinary life insurance policies. Income received from such operations is non-retail income and employees engaged in such work are not employed in work within the scope of the retail exemption (see § 779.308).

(c) *Accommodation items.* Amounts paid to funeral homes to cover the cost of "accommodation" items are part of the gross receipts of the establishment and are included in its annual gross volume of sales made or business done. Such items may include goods or services procured by the funeral home on behalf of the bereaved with or without profit but on its own credit or through cash payment by it, such as telegrams, long distance calls, newspaper notices, flowers, livery service, honoraria to participating personnel, transportation by common carrier, clothing for the deceased, and transcripts of necessary forms. For the purposes of determining the applicability of the retail or service establishment exemption, receipts of the funeral home in reimbursement for such services are considered derived from sales or services recognized as retail in the industry. Cash advances made as a convenience to a bereaved family are not included in computing the gross volume of sales made of business done when repaid. Of course, if interest is charged it would be included in the gross volume of sales and non-retail income.

(d) *Nonretail services.* Calling for and preparing bodies and crematory service for other funeral homes, burial insurance operations, and ambulance or livery transportation service (as distinguished from the use of ambulances or other vehicles as a necessary part of the undertaking, funeral, or burial services of the establishment), are some examples of a funeral home providing goods or services which will be "resold" or which are not recognized as retail.

(e) *Ambulance service.* The typical ambulance service establishment, engaged exclusively or nearly so in providing a specialized form of transportation for sick, injured, aged, or handicapped persons, is a part or branch of the trans-

portation industry. Since there is no traditional retail concept in the transportation industry, such ambulance service establishments cannot qualify for the section 13(a)(2) exemption (see § 779.317). Income from the same typical ambulance services would be considered nonretail in applying the 25 percent tolerance for nonretail income in a funeral home. If an establishment engaged in a combination of funeral home and ambulance services meets all the tests for exemption under section 13(a)(2), as applied to the combined sales of both types of services, those of its employees who are engaged in the funeral home's activities and functions will be exempt as employees of a retail or service establishment. This exemption, however, does not apply to any employee regularly engaged in non-exempt ambulance transportation activities in any workweek when he devotes a substantial amount of his working time to such nonexempt work. More than 20 percent of the employee's working time in the workweek will, for enforcement purposes, be considered substantial.

(f) *Out-of-State sales.* An arrangement with a funeral home to embalm and ship human remains to a point outside the State for burial is not a sale within the State. The reverse situation where an out-of-State funeral director ships the remains to a funeral home to arrange for local interment also is not a sale within the State.

(g) *Work for more than one establishment.* Employees performing central office, supply, or warehouse functions for more than one funeral home establishment are not within the exemption (see § 779.310). However, where certain mortuaries may operate more than one exempt establishment and where employees such as embalmers employed by an exempt funeral home may be called upon in a given workweek to perform for another exempt establishment or establishments in the same enterprise work which is a part of the funeral home services sold by that establishment or establishments to customers, such employees do not lose the exemption where at all times during the workweek the employee is employed by one or the other of such exempt establishments either inside or outside the

§ 779.370

establishment in the activities within the scope of its own exempt business (see § 779.311(b)). In addition, where an establishment offering complete funeral home services also has outlying chapels where only the funeral services of the deceased persons are conducted, employees of the main establishment who are otherwise exempt do not lose the exemption by virtue of the activities which they may perform in connection with the funeral services held at the chapel. These activities are in such a case part of their employment by the exempt main establishment.

CEMETERIES

§ 779.370 Cemeteries may qualify as exempt 13(a)(2) establishments.

(a) *General.* A cemetery may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if it meets all the requirements of that section, including the requirement that the retail or service establishment be open to the general public. So long as a cemetery is open to any persons of a particular religion rather than merely the members of a specific organization or place of worship, it will be considered for enforcement purposes to be "open to the general public."

(b) *Annual dollar volume.* As used in the Act, annual gross volume means the gross receipts from all the business activities of the establishment during a 12-month period (see §§ 779.265 through 779.269). Sums received from the following types of transactions are part of the annual gross volume of sales made or business done:

- (1) Sales of lots or plots.
- (2) Annual tax or assessment levied on lot owners, and
- (3) Gifts or bequests.

Interest from any trust funds for permanent or current maintenance is also included in the annual gross volume of sales made or business done. The allocation of the gross receipts to any trust funds or other accounts of the establishment does not affect the annual gross volume.

(c) *Nonretail sales or income.* Sales of lots or plots to a burial society or a fraternal organization for the use of the members are sales for resale and as such may not be counted as part of the

29 CFR Ch. V (7-1-06 Edition)

75 percent of annual dollar volume of sales of goods or services which is not for resale and recognized as retail in the industry under section 13(a)(2). Such sales are counted as part of the annual gross volume in the period in which the transaction between the cemetery and the burial society or fraternal organization is completed. Any interest from trust funds or other investments also is not recognized as retail receipts under section 13(a)(2).

AUTOMOBILE, TRUCK, FARM IMPLEMENT, TRAILER, AND AIRCRAFT SALES AND SERVICES

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

(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 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