

been removed. Seasonally operated amusement or recreational establishments and motion picture theaters also no longer are specifically exempt under section 13(a)(2), but have specific exemptions set out for them in sections 13(a)(3) and 13(a)(9) of the Act as amended in 1966.

(b) Hotels, motels, and restaurants continue to be eligible for exemption under section 13(a)(2), but must meet all the requirements of that section for exemption in the same manner as other retail or service establishments. However, a special overtime exemption is provided for such establishments, regardless of size, in the first part of section 13(b)(8). Hospitals, residential care establishments, and schools for physically or mentally handicapped or gifted children are specifically excluded by the Act from consideration for exemption under section 13(a)(2); however, residential care establishments are exempt from the overtime pay requirements of the Act under the second part of section 13(b)(8) as long as overtime premium of not less than one and one-half times the employee's regular rate of pay is paid to him for time worked in excess of 48 hours in the workweek. In addition, section 7(j) of the amended Act provides a special overtime arrangement for hospital employees whereby overtime pay is due an employee after 8 hours in a day or 80 hours in a 14-day work period rather than on the basis of the 7-day workweek as is normally required by the Act. This provision, though, requires an agreement or understanding on the part of both the employer and the employee prior to the performance of the work. See § 778.601 of this chapter.

(c) The amendments of 1966 also repealed the exemption from both the minimum wage and overtime pay provisions which was in the Act for certain food service employees employed by retail or service establishments that were not exempt under section 13(a)(2). This exemption (formerly found in section 13(a)(20) is now an exemption from the overtime provisions only and is set out in section 13(b)(18). Those establishments now excluded by the Act from consideration for exemption under section 13(a)(2) (hospitals, residential care establishments, etc.) may

utilize this exemption where they meet the Act's definition of retail or service establishment in the last sentence of section 13(a)(2) and the conditions set out in section 13(b)(18). Likewise, the special exemption for any employee of a retail or service establishment primarily engaged in the business of selling automobiles, trucks, or farm implements was repealed by the 1966 amendments. In its stead the overtime exemption set out in section 13(b)(10) and previously discussed in § 779.372 was provided for certain employees of any nonmanufacturing establishment primarily engaged in the business of selling automobiles, trailers, trucks, farm implements, or aircraft to the ultimate consumer.

(d) A special exemption from the overtime pay requirements is also included in the amended Act for bowling establishments which do not meet the tests under section 13(a)(2) for exemption as a retail or service establishment. Section 13(b)(19) states that the overtime pay requirements of the Act shall not apply with respect to "any employee of a bowling establishment if such employee receives compensation for employment in excess of 48 hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed." Unlike the overtime pay exemption in section 13(b)(18), this exemption is not dependent upon the establishment meeting the definition of retail or service establishment.

HOTELS AND MOTELS

§ 779.382 May qualify as exempt 13(a)(2) establishments.

A hotel or motel establishment may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act. However, the establishment must meet all of the requirements of section 13(a)(2) (see § 779.337). In determining whether an establishment is a retail or service establishment within the meaning of section 13(a)(2) the dollar volume received from the leasing or rental of space to other than transient members of the general public cannot be counted as derived from retail sales of goods or services. Therefore, receipts from tenants who are not transient

guests (see § 779.383(c)) must be included in the 25 percent tolerance provided for sales for resale or sales not recognized as retail.

§ 779.383 “Hotel” and “motel” exemptions under section 13(b)(8).

(a) *General.* A hotel or motel establishment may qualify for exemption from the Act’s overtime pay requirements, even if it is in an enterprise described in section 3(s) and is not exempt under section 13(a)(2) because it exceeds the monetary test for exemption under that section. The first part of section 13(b)(8) provides that the overtime provisions of section 7 of the Act shall not apply with respect to “any employee employed by an establishment which is a hotel, motel * * *.” The 13(b)(8) exemption is applicable irrespective of the annual dollar volume of sales of a hotel or motel establishment or of the enterprise of which it is a part.

(b) *Definition of “hotel”.* The term *hotel* as used in section 13(b)(8) means an establishment known to the public as a hotel, which is primarily engaged in providing lodging or lodging and meals for the general public. Included are hotels operated by membership organizations and open to the general public and apartment hotels which provide accommodations for transients. However, an establishment whose income is primarily from providing a permanent place of residence or from providing residential facilities complete with bedrooms and kitchen for leased periods longer than 3 months would not be considered a hotel within the meaning of the Act. An apartment or residential hotel is not considered a hotel for purposes of section 13(b)(8) unless more than half of its annual dollar volume is derived from providing transient guests representative of the general public with lodging or lodging and meals. (See paragraph (c) of this section.) Establishments in which lodging accommodations are not available to the public are not included. Also excluded from the category of hotels are rooming and boarding houses, and private residences commonly known as tourist homes. Resort or other hotels even if they operate seasonally are regarded as hotel. (See Cong. Rec., Au-

gust 25, 1966, pages 19729-19732; Cong Rec., August 26, 1966, pages 19907-19911.)

(c) *“Transient guests”.* In determining who are “transient guests” within the meaning of § 779.382 and paragraph (b) of this section, as a general rule the Department of Labor would consider as transient a guest who is free to come and go as he pleases and who does not sojourn in the establishment for a specified time or permanently. A transient is one who is entertained from day to day without any express contract or lease and whose stay is indefinite although to suit his convenience it may extend for several weeks or a season.

(d) *Definition of “motel”.* The term *motel* as used in section 13(b)(8) means an establishment which provides services similar to that of a “hotel” described in paragraph (b) of this section, but which caters mostly to the motor-ing public, providing it with motor car parking facilities either adjacent to the room or cabin rented or at some other easily accessible place. Included in the term “motel” are those establishments known to the public as motor hotels, motor lodges, motor courts, motor inns, tourist courts, tourist lodges and the like.

(e) *Hotel and motel establishments engaged in other activities.* The primary function of a hotel or motel is to provide lodging facilities to the public. In addition, most hotels or motels provide food for their guests and many sell alcoholic beverages. These establishments also may engage in some minor revenue producing activities; such as, the operation of valet services offering cleaning and laundering service for the garments of their guests, news stands, hobby shops, the renting out of their public rooms for meetings, lectures, dances, trade exhibits and weddings. The exception provided for “hotels” and “motels” in section 13(b)(8) will not be defeated simply because a “hotel” or a “motel” engages in all or some of these activities, if it is primarily engaged in providing lodging facilities, food and drink to the public.