

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12-26, FLORIDA ADMINISTRATIVE CODE
REFUNDS
AMENDING RULE 12-26.008
CREATING RULE 12-26.0041

12-26.0041 Refund Applications Based on Taxpayer Sampling.

(1) A Taxpayer may apply for a refund of any sales and use tax, surtax, surcharge, or fee imposed or administered under Chapter 212, F.S. (Tax on Sales, Use and Other Transactions), using a sampling method conducted by the taxpayer or the taxpayer's representative to establish the amount of refund due.

(2) RECORDS THAT MAY BE SAMPLED.

(a) Before a sampling method may be used to establish the amount of refund due, the taxpayer's records must be adequate and voluminous, as defined in subsections 12-3.0012(2) and (3), F.A.C.

(b) Any sampling method used to establish the amount of refund due when submitting an Application for Refund - Sales and Use Tax (Form DR-26S, incorporated by reference in Rule 12-26.008, F.A.C.), must be conducted in accordance with this rule.

(c) The Department and the taxpayer may agree in writing to statistically sample records to determine the tax overpayment. A separate Fixed Assets Sampling Agreement for each sample must be agreed upon by the Department and the taxpayer prior to the taxpayer receiving a refund of the tax overpayment for fixed assets based on a statistical sample.

(3) PERSONS QUALIFIED TO SAMPLE RECORDS.

(a) The sampling of records must be planned and conducted by:

1. Any person who has completed training courses on statistical and non-statistical sampling methods conducted by the Department;

2. Any qualified practitioner participating in the Certified Audit Program, as provided in Rule 12-25.037, F.A.C.; or

3. Any person who has a bachelor's degree in statistics or accounting.

(b) For more information regarding statistical and non-statistical sampling training courses offered by the Department, contact Refunds at (850) 617-8585.

(4) REFUND SAMPLING METHODOLOGY APPLICATION.

(a) Applicants who submit a Refund Sampling Methodology Application - Sales and Use Tax (Form DR-370060, incorporated by reference in Rule 12-26.008, F.A.C.) must indicate whether the sampling method will be a statistical or a non-statistical sample, and that the sampling will be conducted through one of the following:

1. The Certified Audit Program: A Refund Sampling Methodology Application - Sales and Use Tax must be submitted through the Certified Audit Program by the qualified practitioner. The Department must approve the sampling method selected by the qualified practitioner as a part of the Agreed Upon Procedures, as provided in Rule 12-25.047, F.A.C.

2. Attestation by a Certified Public Accountant: The Department must approve the sampling method(s) selected by the certified public accountant. To establish the amount of refund due, the sample must be conducted by the certified public accountant in compliance with this rule and with the attestation engagements provided in Rule 12-25.047, F.A.C.

3. A Department of Revenue approved sampling methodology.

(b) A separate Refund Sampling Methodology Application - Sales and Use Tax must be submitted for each sample to be conducted.

(5) SAMPLING METHODS.

(a) For purposes of this rule, the following terms are defined:

1. "Sampling frame" is a group of items, such as accounts, invoices, vendors, or other records over the entire refund period from which a refund is requested.

2. "Stratified statistical sample" means a statistical sample selected from a sampling frame that is divided into multiple subgroups of values with similar characteristics, known as strata.

(b) Statistical Sampling Methods.

1. The invoices or other records must be statistically sampled using a variable sampling method.

2.a. If records are to be stratified for sampling, the cumulative square root of the frequency method must be used to stratify the population. The records must be stratified into seven or fewer strata, unless the variability of the records indicates that they may be sampled without using multiple strata.

b. The sample size per stratum must be 100 or greater. When a stratum consists of less than 100 items, all items in that stratum are examined.

c. The results of the statistical sample must be projected at the mean using a 95 percent confidence level for each stratum. The projected amounts for each stratum are added together and allocated to each reporting period within the refund period.

3. The precision of the stratified statistical sample is calculated using the pooled approach. This approach incorporates the variability of all strata and considers all strata in terms of their relative weights.

(c) Non-Statistical Sampling Methods.

1. When using a non-statistical method of sampling records to establish the amount of refund due, the invoices or other records must be randomly selected and must be:

a. The greater of 20 percent or 1000 of the invoices or records included within a 36-month refund request. The minimum number of invoices or other records will be adjusted in proportion to the number of months or reporting periods within the designated refund period; or

b. The following minimum time periods must be sampled, within a 36-month refund period, adjusted in proportion to the number of months or reporting periods within the designated refund period:

I. Thirty randomly selected days of invoices or other records;

II. Eight randomly selected weeks of invoices or other records; or

III. Six randomly selected months of invoices or other records.

(d) The period from which the records will be sampled must be the same as the period for which a refund is requested. The sample points must be randomly selected from the entire refund period using one of the following methods:

1. Simple random sample: a type of sample selection in which the sample is selected in such a manner that every item in the population has an equal and independent chance of being selected;

2. Systematic random sample: a type of sample selection in which the initial sample points are randomly selected and the remaining items are selected by applying a fixed or systematic interval. The interval between selected sample points is determined by dividing the number of sample points within the sampling frame by the desired sample size and multiplying the result by the number of separate random starts, rounding down to the nearest whole number.

3. Cluster sample: a type of sample selection where the sampling frame is divided into groups or clusters that will serve as the primary sampling units. A sample of clusters is then randomly selected.

(e) The taxpayer must use the seed number provided by the Department to generate a random sample. The seed number is used to start the random selection of the sample points.

(6) CONDUCTING THE SAMPLE.

(a) The Department will notify the applicant in writing when the sampling methodology identified in the Refund Sampling Methodology Application - Sales and Use Tax (Form DR-370060) has been approved.

(b) The applicant must conduct the sample in accordance with subsection 12-3.0017(8), F.A.C.

(7) ASSIGNMENT OF RIGHTS TO REFUND OF SALES TAX.

(a) To include an overpayment of tax in a sample when the applicant did not remit the tax directly to the Department, the applicant must provide an Assignment of Rights from the dealer who remitted the tax to the Department.

(b) The dealer must assign to the applicant the right to the refund of tax paid to the Department for the invoices or other records identified in the sample. The dealer must also assign to the applicant the right to the refund for the applicant's refund period.

(c) If the applicant is unable to obtain an Assignment of Rights from the dealer, no refund of tax is available to the applicant for a sample point identified as a tax overpayment paid to a dealer. The sample point must remain in the exhibit containing the sample findings as no refund due.

(8) PROJECTING AND ALLOCATING THE SAMPLING FINDINGS.

(a) For purposes of this rule, the following terms are defined:

1. "Sampling frame base" means the total dollar amount of all the invoices or other records in the sampling frame for each reporting period within the refund period.

2. "Sampling frame count" means the number of invoices or other records in the sampling frame.

3. "Sample base" means the total dollar amount of the randomly selected invoices or other records in the sample for each reporting period within the refund period.

4. "Sample count" means the number of invoices or other records in the sample.

5. "Sample error" means the total dollar amount in the sample of all the tax overpayments, less the total dollar amount of all tax underpayments.

(b) The taxpayer must project the findings of the non-statistical sample using ratio estimation or difference estimation. The results of a statistical sample must be projected using difference estimation.

(c) Projection of Non-Statistical Sample Findings Using Ratio Estimation.

1. The findings of the sample using the ratio estimation are projected by dividing the “sample error” by the “sample base.” The result is multiplied by the “sampling frame base” for each reporting period during the refund period.

2. Example: A sample of invoices is systematically chosen using multiple random starting points from the sampling frame identified in the refund request. The total dollar amount of the sample base is \$325,821. Offsetting the tax overpayments and the tax underpayments for the sample of invoices resulted in a net overpayment (sample error) of \$3,918. The sample error (\$3,918) is divided by the sample base (\$325,821). The result, 0.012025, is multiplied by the total monthly dollar amount of the invoices in the sampling frame for each reporting period during the refund period to compute the net amount of refund claimed for each reporting period within the refund period.

3. Example: A sample of invoices is chosen by randomly selecting six months of invoices from the population identified in the refund request. The total dollar amount of the sample base is \$862,631. Offsetting the tax overpayments and the tax underpayments for the six-month sample resulted in a net overpayment of tax or sample error of \$6,134. The sample error (\$6,134) is divided by the sample base for the six-month sample (\$862,631). The result, 0.007111, is multiplied by the total monthly dollar amount of the invoices in the sampling frame for each month during the refund period to compute the net amount of refund claimed for each month of the refund period.

(d) Projection of Statistical or Non-Statistical Sample Findings Using Difference Estimation.

1. The results of the sample using the difference estimation are projected by dividing the “sample error” by the “sample count.” The result is multiplied by the “sampling frame count” for each reporting period during the refund period. When stratified statistical sampling is used, the results of the sample are calculated for each stratum, and then added together to obtain the total for all strata.

2. Example: A sample of invoices is chosen by simple random selection from the sampling frame identified in the refund request. The number of invoices chosen in the random sample (sample count) is 951. Offsetting the tax overpayments and the tax underpayments in the random sample resulted in a net overpayment or sample error of \$60.54. The sample error (\$60.54) is divided by the sample count (951). The result, 0.063659, is multiplied by the total number of invoices per month in the sampling frame for each reporting period during the refund period to

compute the net amount of refund claimed for each reporting period of the refund period.

3. Example: A sample of invoices is chosen by randomly selecting thirty days of invoices from the population identified in the refund request. The total number of invoices in the thirty-day sample (sample count) is 3,298. Offsetting the overpayment of tax on the invoices in the sample against the underpayment resulted in a net overpayment (sample error) of \$102.47. The sample error (\$102.47) is divided by the sample count (3,298). The result, 0.031070, is multiplied by the total number of invoices per month in the sampling frame for each month during the refund period to compute the net amount of refund claimed for each month of the refund period.

(e) Upon completion of the conducted sample, the following attachments and documentation must be submitted to the Department:

1. For the findings of a statistical sample:

a. Approval number.

b. Sampling frame size.

c. Sample size.

d. Formulas and calculations used.

e. Copy of the sampling report from the sampling software used to record the sample.

f. If stratification is used:

(I) Detail threshold amount.

(II) Method of determining stratum boundaries.

(III) Number of strata.

(IV) Stratum boundaries.

(V) Method used to calculate precision.

(VI) Confidence level.

(VII) Precision amount.

g. Estimator used.

h. Projected refund amount.

2. For the findings of a non-statistical sample:

a. Approval number.

b. Sampling frame size.

c. Sample size and method used to determine sample size.

d. Number of ranges and the beginning and ending range numbers for each range.

e. Sample points.

f. Copy of the sampling report from the sampling software used to record the sample.

g. Method of selecting and using spares.

h. Formulas and calculations used.

i. Estimator used.

j. Projected refund amount.

(f) When the sample size required to reach an acceptable precision is not sufficient, the Department will require additional sample points.

(g) When the amount of refund claimed exceeds the amount of tax paid in the sampled population, the Department will require additional sample points from the sampling frame.

(9) APPLICATIONS FOR REFUND BASED ON A SAMPLING METHODOLOGY.

(a) To obtain a refund of sales taxes using a sampling method to establish the refund amount due, the following must be submitted to the Department:

1. Form DR-370060, Refund Sampling Methodology Application - Sales and Use Tax, including the information and documentation required to be submitted with the application; and

2. Form DR-26S, Application for Refund - Sales and Use Tax, with sufficient information and documentation required for the Department to determine the eligibility for a tax refund and amount of refund due, that meets the requirements of Section 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C.

(b) Filing form DR-370060, Refund Sampling Methodology Application - Sales and Use Tax, with the Department does not toll the statute of non-claim period (refund period). Form DR-26S, Application for Refund - Sales and Use Tax, must be filed with the Department to toll the statute of non-claim, as provided in Section 215.26, F.S.

(c) To withdraw an application for refund using a sampling method to establish the amount of refund due, the applicant must submit a written request to:

Florida Department of Revenue

Refunds

P.O. Box 6470

Tallahassee, Florida 32314-6470.

Rulemaking Authority 212.12(6)(c)3.b., 212.17(6), 212.18(3), 213.06(1) FS. Law Implemented 92.525, 95.091(3), 212.054, 212.12(6), 212.13(2), 212.17, 213.25, 213.34, 213.35, 213.37, 213.756, 215.26 FS. History-New .

12-26.008 Public Use Forms.

(1) No change.

Form Number	Title	Effective Date
(2) through (5) No change.		
(6)(a) No change.		
(b) DR-370060	<u>Refund Sampling Methodology Application</u> <u>(http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXXX)</u>	<u>XX/XX</u>
(7) through (11) No change.		

Rulemaking Authority 212.08(5)(n)4., (o)4., (p)3.c., (v)5., 212.12(6)(c)3., 213.06(1) FS. Law Implemented 72.011, 92.525, 199.218, 201.11, 202.23, 206.41, 206.64, 206.8745, 206.9875, 206.9942, 212.08(2)(j), (5)(n), (o), (p), (v), (7), 212.12(6)(a), (c), 212.13(1), (2), 212.17(1), (2), (3), (6), 213.255(2), (3), (4), (12), 213.34, 213.37, 215.26, 220.725, 220.727, 624.5092, 681.104 FS. History-New 11-14-91, Amended 4-18-93, 10-4-01, 9-28-04, 4-16-18, 1-8-19, 7-8-19, 1-1-24, 12-29-25, 1-25-26, .