STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12-3, FLORIDA ADMINISTRATIVE CODE

GENERAL; PROCEDURE

AMENDING RULE 12-3.0017

Substantial rewording of Rule 12-3.0017, F.A.C. follows. See Florida Administrative Code for present text.

12-3.0017 Procedures for Sampling Adequate and Voluminous Machine-Sensible Records for Tax Compliance ~~Adoption of Materials That Contain Departmental Procedures.~~

(1)(a) Section 212.12(6)(c), F.S., authorizes the Department to sample taxpayer records for tax compliance that are both adequate and voluminous and to project the findings derived from the sample over the tax audit period. This rule provides the procedures to sample taxpayer records that are both adequate and voluminous using two general sampling methods, non-statistical and statistical, to determine whether the sales and use tax, surtax, surcharge, or any fee imposed or administered under Chapter 212, F.S., is properly collected, accrued, reported, and paid to the Department. This rule also provides the procedures to project a tax deficiency or tax overpayment for the tax audit period based upon the sample findings.

(b) This rule applies to taxpayer records that are available to the Department in a machine-sensible format for purposes of determining tax compliance through an electronic audit of the records. When machine-sensible records are available for only a portion of the audit period, an electronic audit of the available electronic records will be performed for that portion of the audit period. The records for the remaining portion of the audit period will be reviewed for tax compliance without the assistance of electronic auditing.

(c) Rule 12-26.0041, F.A.C., provides the procedures for requesting the use of a sampling method to establish the amount of refund of any sales and use tax when filing an Application for Refund - Sales and Use Tax (Form DR-26S, incorporated by reference in Rule 12-26.008, F.A.C.) independently of a compliance audit being performed by the Department or through the Department's Certified Audit Program.

(2) DEFINITIONS. For purposes of this rule, the following terms are defined:

(a) "Adequate records" has the same meaning as defined in Rule 12-3.0012, F.A.C.

(b) "Machine-sensible records" has the same meaning as defined in Rule 12-24.022, F.A.C., and made available

to the Department as provided in Rule 12-24.026, F.A.C.

(c) "Sales tax" includes any sales and use tax, surtax, surcharge, or fee imposed or administered under Chapter 212, F.S.

(d) "Sampling error" is the amount of inaccuracy in estimating additional tax due or a tax overpayment caused by reviewing a portion of the sampling frame rather than the entire sampling frame.

(e) "Tax overpayment" includes tax overpaid, tax paid in error, or tax paid when no tax was due.

(f) "Voluminous records" has the same meaning as defined in Rule 12-3.0012, F.A.C.

(3) IDENTIFYING THE SAMPLING FRAME.

(a) "Sampling frame" is a group of items, such as accounts, invoices, vendors, or other records, from which a sample will be drawn and reviewed for tax compliance.

(b) The Department will determine the sampling frames from taxpayer records that will be reviewed for tax compliance based on the taxpayer's operations, accounting system, and maintenance of accounting records. Common sampling frames include sales, purchases, or fixed assets.

(4) NON-STATISTICAL SAMPLE SELECTION.

(a) When the Department is not able to conduct a statistical sample on machine-sensible records made available by the taxpayer, a non-statistical sampling method or a detail review of the records will be used to determine tax compliance.

(b) Selecting a Non-Statistical Sample.

1. A sampling frame is selected by the auditor based on the accounting system, operations, and treatment of transactions for sales tax purposes. Consideration will be given to how the machine-sensible records are stored. Sampling frames may consist of source documents that are consecutively numbered, such as invoices, checks or vouchers, or source documents that have no natural numbering system, such as time periods or journals.

2. The Department uses a minimum sample size of 100 sample points or the entire sampling frame if the sampling frame is 100 or less.

3. The taxpayer may request a sample size greater than 100 sample points. The Department will make a good faith effort to reach an agreement with the taxpayer regarding the sample size.

4. The following are examples of sample sizes used by the Department based on the sampling frame:

Sampling Frame	Sample Size
Numbered	100 or more sample points
Time Periods (Days)	30 days
Time Periods (Weeks)	8 weeks
Time Periods (Months)	6 months
Time Periods (Quarters)	2 quarters
Journal Pages and Lines	100 or more sample points

(5) STATISTICAL SAMPLE SELECTION.

(a) Stratified Statistical Sampling.

1. The Department uses stratified statistical sampling as its method for statistically reviewing machine-sensible taxpayer records for tax compliance. Stratified statistical sampling allows for each sampling frame to be divided into multiple subgroups of values with similar characteristics, known as strata.

2. The Department uses seven or fewer sample strata for each sampling frame, unless the variability of the data indicates that the sampling frame can be sampled without using multiple strata. For example, the range in the dollar values of the sales of a fast food restaurant is relatively consistent. For the sampling frame for sales made by the restaurant, the Department will use a single stratum to determine compliance for sales made by the restaurant.

(b) Stratified Statistical Sampling of Fixed Assets.

1. "Fixed assets" means purchases expensed or depreciated over a time period of greater than one year.

2. The Department and the taxpayer may agree in writing to statistically sample records for fixed assets. A separate Fixed Asset Sampling Agreement for each sample will be prepared and presented to the taxpayer. When a Fixed Asset Sampling Agreement is signed by the taxpayer, the Agreement is final and conclusive with respect to the sampling methodology, and a detail audit of the records for fixed assets may not be requested by either the taxpayer or the Department.

(c) Determine the Detail Threshold. The Department and the taxpayer will establish a detail threshold in dollars to identify and separate sample points that will not be included in a stratified statistical sample. These are records in the sampling frame for which the absolute value of the sample point is above the dollar value of the sample points that will be included in the sample. These records will be reviewed in detail and the findings will be recorded in an exhibit separate from the exhibit documenting the findings of the stratified statistical sample.

(d) Determine the Pilot Sample(s).

1. The Department will select a pilot sample from each stratum within a sampling frame to determine the variability of the tax errors occurring within the taxpayer records. Once the pilot sample from each stratum is selected and reviewed for tax compliance, the findings will be used to determine the final sample size.

2. The boundaries for seven strata in the sampling frame are determined using the cumulative square root of the frequency method.

3. The formula used to calculate the pilot sample size for each stratum is $n = (ZS/E)^2$. As used in the sample size formula:

n = sample size

Z = normal deviate

S = sample standard deviation

E = sampling error

4. The Department will determine the seed number using a random number generator to select the sample points for each stratum of the pilot sample. The seed number is used to start the random selection of the sample points.

5. The Department uses a minimum of 100 sample points for each stratum. When the total number of items within a stratum is 100 sample points or less, all items within a stratum will be examined.

(6) SAMPLING AGREEMENTS.

(a) The Department will make a good faith effort to reach an agreement regarding the method(s) that will be used to sample taxpayer records for tax compliance. A Sampling Agreement will be issued for each sample recorded in an audit exhibit using a sampling method. A Sampling Agreement for each sample will be prepared and presented to the taxpayer.

(b) The Sampling Agreement will provide:

1. The records to be sampled.

2. The time period from which the records will be selected.

3. The unit of measure for the sampling frame and the sample.

4. For non-statistical samples:

a. The method for selecting the sample;

b. The seed number if used; and

c. The number of sample points selected.

5. For stratified statistical samples:

a. The absolute dollar value of the detail threshold;

b. The number of stratum to be used for each sampling frame;

c. The stratum boundaries;

d. The number of sample points in each stratum;

e. The method for selecting the pilot sample;

f. The pilot sample size;

g. The seed number used; and

h. Information on how the variability of the tax errors within the pilot sample will be used to calculate the final sample size.

6. An agreement that the taxpayer will provide the source documents for each sample point.

7. The method that will be used to calculate the tax deficiency or tax overpayment for each stratum or each non-statistical sample.

8. For stratified statistical sampling of records for fixed assets, notifications that a detailed audit of fixed assets may not be requested by the taxpayer or the Department and that no changes will be made to a Fixed Asset Sampling Agreement after the Agreement has been signed by both the taxpayer and the Department.

(c)1. The taxpayer must evidence his or her agreement with the Sampling Agreement by signing the Agreement.

2. When a taxpayer does not agree with the Sampling Agreement, the taxpayer may request a review of the Agreement by the Executive Director's designee. The request must be in writing, be submitted to the Executive Director's designee within 15 days of presentation of the Agreement, and contain the following:

a. The taxpayer's name, address, telephone number, any email address, and business partner number;

b. When applicable, the name, address, telephone number, and any email address of the taxpayer's authorized representative;

c. The audit number and the audit period;

d. A concise statement of the elements of the Sampling Agreement that cause concern, and how each concern may be resolved, including any proposed alternatives; and

e. A statement whether oral presentation of the concerns is requested.

3. Upon completion of the review by the Executive Director's designee, the review of the records will be completed based upon the findings and directions of the Executive Director's designee on the method of sampling established in the Sampling Agreement. Upon completion of the audit findings, a Notice of Proposed Assessment will be issued to the taxpayer. To obtain further review of the method of sampling used by the Department, the taxpayer must file a written protest, as provided in Rule 12-6.003, F.A.C.

4. Each Department position authorized to review a Sampling Agreement under the provisions of paragraph 212.12(6)(c), F.S., will be designated in writing by the Executive Director. Copies of written designations, signed by the Executive Director, are maintained on file with the agency clerk in the Office of General Counsel.

5. If a taxpayer does not sign the Sampling Agreement but does not request a review of the Agreement by the Executive Director's designee within 15 days of presentation of the Sampling Agreement, the taxpayer is deemed to have accepted the Sampling Agreement and the Department will proceed to conduct the audit using the method set out in the Sampling Agreement.

(d) A taxpayer does not waive any rights to any informal protest or appeal procedure provided in Rule Chapter 12-6, F.A.C., or to the formal proceedings provided in Sections 120.569 and 120.57, F.S., by signing or by declining to sign a Sampling Agreement.

(7) AUDITING THE PILOT SAMPLE FOR STATISTICAL SAMPLES.

(a) For each sample, the Department will provide the sample points selected for review to the taxpayer. The taxpayer is required to provide the source documents necessary to determine tax compliance for each sample point within the pilot sample. All sample points in the pilot sample will be reviewed, and the findings will be recorded in an exhibit in the audit work papers.

(b) After the findings for each sample point have been recorded, the optimal sample size and the sampling error for each stratum will be calculated and provided to the taxpayer. A fractional result would represent a partial record; therefore, all fractional results are rounded up.

1. When the optimal sample size calculated is less than the number of sample points reviewed in the pilot sample, the number of sample points examined is the final sample size. For example, if 100 sample points were reviewed in the pilot sample and the optimal sample size is calculated to be less than 100 sample points, the final sample size remains at 100 sample points.

2. The final sampling error is determined by the Department and the taxpayer. The Department will issue a letter

to the taxpayer confirming the agreed upon value of the sampling error when additional sample points are required for the final sample.

3. When additional sample points are required based on the value of the sampling error, the additional points for the final sample will be randomly selected from the sampling frame using the seed number generated for the pilot sample. The additional sample points selected are added to the pilot sample points. The source documents for each additional sample point are reviewed for tax compliance, and the findings are recorded in the same exhibit as the exhibit used to document the findings of the pilot sample points.

(8) CONDUCTING A SAMPLE - NON-STATISTICAL OR STATISTICAL.

(a) A seed number is used for both numbered and non-numbered sampling frames to select sample points. The seed number is used to start the random selection of the sample points. Spares are also selected as extra sample points to replace either non-existent sample points or non-transactions. When additional sample points are required to complete a sample, the same seed number used to select the original sample points must be used to select the additional sample points.

(b) All randomly-selected sample points will be reviewed and the findings recorded in an audit exhibit.

1. Correctly taxed sample points are recorded as a sample point for which no additional tax or refund is due.

2. An underpayment of tax is recorded for a sample point when the records made available establish that the amount of tax due has not been paid, or when information to establish tax compliance has not been made available to the Department.

3. An overpayment is recorded for a sample point when a tax overpayment occurred, and the taxpayer has met the statutory and administrative requirements to obtain a refund of the tax overpayment.

4. Negative invoices are recorded as credit amounts.

(c) Non-existent or non-transaction sample points will be replaced by spare sample points in the order selected.

1. Examples of non-existent or non-transactions for numbered sampling frames include:

a. Voided invoices, checks, or vouchers; or,

b. Transactions outside the audit period.

2. Examples of non-existent or non-transactions for non-numbered sampling frames include:

a. Time periods (days, weeks, months, or quarters) where the business was closed (e.g., holidays);

b. Journal pages or lines that do not exist; or,

c. Transactions outside the audit period.

(d) Journal entries for adjustments to record expenses for prepaid assets (e.g., maintenance contract expense or equipment rental expense) that do not contain the detail information needed to determine compliance are removed from the sampling frame and reviewed separately. A spare sample point, or a newly selected sample point, is used to replace the journal entry selected as a sample point.

(e) When a credit memorandum is issued by the seller for returned merchandise, the original sales invoice and the credit memorandum are removed from the sampling frame. When a credit memorandum cannot be matched with the original invoice, the absolute value of the credit memorandum will be included in the sampling frame.

(f)1. When the taxpayer is unable to provide the source documents to determine the tax compliance of a sample point, an underpayment of tax will be recorded for the sample point.

2. The Department will determine if third-party confirmations or other evidence submitted by the taxpayer for invoices or other records that cannot be located are an acceptable substitute for missing invoices or records. The evidence must provide information directly related to missing invoices or records and must be sufficient to identify the item or items purchased or sold.

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

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

(b) The dealer must assign the rights to the taxpayer to recover sales tax paid to the Department for the invoices or other records identified in the sample and for the audit period or the refund period from which the sample was used to determine the amount of tax overpayment.

(c) No refund or credit of tax is available to the taxpayer for a sample point identified as a tax overpayment paid to a dealer if the taxpayer is unable to obtain an Assignment of Rights from the dealer.

(10) PROJECTING AND ALLOCATING NON-STATISTICAL SAMPLE FINDINGS.

(a) The sample findings are represented by the amount of additional tax due or tax paid that was not due for the sample, or by the amount of the additional taxable amount for the sample. The dollar value of the sampling frame for each reporting period is used to obtain the amount of additional tax due or tax overpayment for each reporting period within the sampling frame. Two methods are commonly used to project the findings of the sample results for the sampling frame.

(b) Percent of Error Projection. The percent of error is used when the sampling frame consists of tax accounting records for multiple counties. The percent of error is calculated as a percentage of the total additional tax due or overpayment for each reporting period within the time period of the sampling frame using the following formula: (Additional tax due or Tax overpayment ÷ Total dollar value of the sampling frame) x (Sampling frame value for each reporting period) = Additional tax due or Tax overpayment for the reporting period.

(c) Error Ratio Projection. The error ratio is used when the sampling frame consists of tax accounting records for a single county. The error ratio is calculated as a percentage of the total additional taxable amount for the sampling frame using the following two-step formula:

1. (Additional taxable amount of the sample points ÷ Total dollar value of the sampling frame) x (Sampling frame value for each reporting period) = Additional taxable amount for the reporting period:

2. (Additional taxable amount for the reporting period) x (Sales tax, plus surtax, rate) = Additional tax due for the reporting period.

(11) PROJECTING RESULT OF A STRATIFIED STATISTICAL SAMPLE.

(a) The results of each stratified statistical sample are projected by stratum using the difference estimator or the mean estimator. The projection for each stratum is added to calculate the projection for the sample. Two methods are used to project the results of a stratified statistical sample.

(b) Difference Estimator. The difference estimator calculates the average error for each stratum. The average error is the additional tax due or tax overpayment in each stratum divided by the sample size of each stratum. The average error is multiplied by the total number of units in each stratum to determine the additional tax due or tax overpayment for the stratum. The results of each stratum are totaled to determine the additional tax due or the tax overpayment for the sampling frame.

(c) Mean Estimator. The average tax due for each stratum is the sum of the tax due for each sample point in the stratum divided by the number of sample points in the stratum. The average tax due is multiplied by the total number of units in each stratum to determine the tax due for the stratum. The results of each stratum are totaled to obtain the total tax due for the sampling frame. Tax remitted by the taxpayer for the sampling frame is subtracted to determine the additional tax due or the tax overpayment for the sampling frame.

(12) PRECISION FOR A STRATIFIED STATISTICAL SAMPLE.

(a) Upon completion of each stratified statistical sample, the precision of the sample is calculated. Precision is

one-half of the range that may contain the projected amount at a given confidence level. The range is expressed as a plus or minus amount from the mean. The plus amount added to the mean is the upper confidence limit. The minus amount subtracted from the mean is the lower confidence limit.

(b) The pooled approach is used to calculate the precision for a stratified statistical sample. This approach incorporates the variability of all strata and considers all strata in terms of their relative weight.

(13) ALLOCATING TAX, PENALTY, AND INTEREST. The Department projects additional tax due at the mean with precision at a 95 percent confidence level. The additional tax due or tax overpayment calculated from the results of a statistical sample will be apportioned based on the filing frequency of the taxpayer. Additional tax due, plus the related penalty and interest, are allocated over the time period of the audit exhibit. When totals for each taxpayer filing period within a sampling frame are not available, an average additional tax due per filing period will be used.

Rulemaking Authority 212.12(6)(c), 213.06(1) FS. Law Implemented 92.525, 95.091(3), 212.12(5), (6), 212.13, 212.17, 213.25, 213.34, 213.345, 213.35, 213.37, 213.756, 215.26 FS. History–New 10-1-03, 12-29-25, Amended ___.