

**Florida Department of Revenue
Tax Information Publication**

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**New Law Allows Taxpayers to Use Sampling Methods
To Determine the Amount of a Sales and Use Tax Refund
or Deficiency**

What does this new law do?

Beginning January 1, 2003, taxpayers may establish the amount of a refund or deficiency of sales and use taxes (SUT) by conducting a statistical sample of their records. Taxpayers may also use other sampling methods agreed upon by both the taxpayer and the Department of Revenue (DOR). The amount of a refund or deficiency of sales and use taxes may be established by sampling either in connection with an audit or for an application for refund that is filed independently of any audit. Taxpayers may also establish, through a sample in the same manner, the amount of a refund or deficiency of any other tax imposed or administered by Chapter 212, Florida Statutes (F.S.), and paid directly to DOR.

To qualify for establishing a refund or deficiency through a sample, a taxpayer's records must be adequate and voluminous. Also, the sample must reflect overpayments and underpayments of SUT. Records pertaining to fixed assets may not be sampled even when such records are adequate and voluminous.

What are "adequate and voluminous records"?

To use sampling to determine a refund, a taxpayer must establish to DOR's satisfaction that its records are adequate and voluminous over the period to be sampled for any refund or deficiency established. Taxpayers will provide to DOR a description of the records to be sampled and how those records are maintained over the sample period. The records will be considered "adequate" if they constitute sufficient and accurate books and accounts that are ordinarily maintained by the average

prudent business person engaged in the same type of activity as the taxpayer and that can be used to determine the correct amount of any tax liability or refund for the entire period to be sampled.

Adequate records include summary records of business transactions, as well as source documents supporting the summary records. To be adequate, records must be maintained as provided by Part II of Rule Chapter 12-24, Florida Administrative Code (F.A.C.). Summary records include accounting journals and ledgers, as well as returns and reports required to be filed with governmental or regulatory entities. Source documents include such items as sales slips or invoices, paid bills and invoices, receipts, deposit slips, cancelled checks, bills of lading, leases, contracts, and notes. Adequate records also include resale certificates, consumer's certificates of exemption, agricultural certificates, other approved certificates received when making sales, and any other documentation necessary to determine the exempt status of a sale. It is not essential that records be totally complete to be determined adequate. Materiality, third-party confirmations, and other corroborating evidence that includes related supporting documentation, may be used to establish that records are adequate.

Adequate records are considered voluminous when the records maintained by a taxpayer pursuant to Section 213.35, F.S., are so numerous and extensive that review of the records would be most effectively and expeditiously accomplished by using a sampling methodology.

Does this sampling by the taxpayer prevent future audit by DOR for the same period?

The new law concerning sampling by the taxpayer does not prevent DOR from auditing a taxpayer's records over the same period. Only a compliance audit conducted through the certified audit program prevents DOR from conducting a compliance audit of a taxpayer's records over the same period for which a refund or deficiency is established. Additionally, the new law does not affect DOR's authority to sample a taxpayer's records in an

audit.

How can a taxpayer establish the refund or deficiency?

A taxpayer may establish the amount of a refund or deficiency by one of the following three ways:

- * Through a taxpayer request to sample in the certified audit program pursuant to Section 213.285, F.S.;
- * Through attestation by a certified public accountant as to the adequacy of the sampling method used and the results of the sampling method; or
- * Through a sampling method submitted by the taxpayer and approved by the Department before a refund claim is submitted.

Any application for refund (form DR-26S) filed must state the period for which the refund is requested, be completed in full, and comply with the requirements of Sections 213.255(2) and 215.26, F.S. A taxpayer is not prohibited from filing an application for refund before obtaining approval of the sampling method to be used. In addition to the other requirements in Section 213.255, F.S., the application for refund will not be "complete" for purposes of Section 213.255, F.S., until the sampling method has been approved by DOR, and all other requirements of that section have been satisfied.

Taxpayers must submit a completed and signed Refund Sampling Methodology Application (form DR-370060), as well as the information and documentation required by form DR-370060, to receive approval of a sampling method. When the sampling is completed, the results will be provided to the Department as required on form DR-370061, Refund Sampling Results. The Department may request additional information or documentation after reviewing the completed forms and supplied documentation.

To request a refund by utilizing sampling through the certified audit program, a certified public accountant who qualifies to participate in the certified audit program must complete both a

Request to Participate in the Certified Audit Program (form DR-342000) and a Refund Sampling Methodology Application (form DR-370060) and submit the forms to the Department as provided on form DR-342000. The Department will notify the certified public accountant of other requirements after the Request to Participate has been accepted.

A refund application submitted using sampling through attestation by a certified public accountant is an attestation engagement conducted under the Statements on Standards for Attestation Engagements, # 10 - Agreed Upon Procedures. When the sampling is complete, the certified public accountant must provide a report to the Department concerning the adequacy of the sampling method used in addition to completed and signed forms DR-370060 and DR-370061. In the case of the CPA attestation option, if the taxpayer elects a non-statistical sampling method, this method must be approved by the Department.

As provided on form DR-370060, taxpayers will provide a description and justification of the sampling method to be used. Taxpayers will define the population to be sampled, including a description of the account numbers and names as assigned by the taxpayer's accounting system. Any items within those accounts excluded from the sample must also be described, along with an explanation of why the items are excluded. The entire invoice will be included in the population and the sample. In addition, taxpayers will describe the method of randomly choosing the sample, as provided on form DR-370060.

The sample will be chosen from the population to be sampled using the Department's random number generator, WinSample. WinSample may be obtained by one of the following methods: 1) by accessing the Department's Internet site at (<http://www.myflorida.com/dor/>); or 2) by contacting the Department's Refund Subprocess at 850-488-8937. The Department will assign a seed number to be used by WinSample to generate the list of random sample points. Sample items selected in the random sample that cannot be located will be considered as representing taxable transactions. The entire invoice must be included in the sample.

After completing the sample, the results will be provided to the Department as described by form DR-370061, Refund Sampling Results. The results of the sample may be projected using ratio estimation or difference estimation allocated on a monthly basis. Additional information may be requested by the Department after reviewing form DR-370061, and attached documentation.

When using a non-statistical sampling methodology, a random sample not based on time will be a minimum of 1000 invoices or records from a thirty-six (36) month refund period, or 20 percent of the total invoices or records, whichever is greater. When using a non-statistical sampling methodology based on a time period, records randomly chosen from a thirty-six (36) month refund period will include the following minimum time periods: 1) thirty (30) randomly selected days of invoices or records; 2) eight (8) randomly selected weeks of invoices or records; or 3) six (6) randomly selected months of invoices or records.

Statistical samples will be projected at the mean using a ninety-five percent (95%) confidence level. Only variable sampling may be used. Taxpayers will identify the nature of the sample points (e.g. total invoice amounts, expensed amounts on an invoice, tax amounts, or other). Taxpayers must provide population parameters and other information as required on form DR-370061.

Are there other requirements?

Yes. Unless specifically authorized by statute or rule, taxpayers who are entitled to a refund from a dealer **must request** the refund from the dealer. Refund requests must be filed within three (3) years of the date the tax was paid. Refund requests for tax paid on repossessed items must be filed within twelve (12) months following the month in which the property was repossessed. Refund requests for tax paid on bad debts or worthless accounts must be filed within twelve (12) months following the month in which the bad debt was charged off for federal income tax purposes.

Taxpayers should retain the documentation concerning any refund received for as long as required by Section 95.091(3), F.S. For refunds made on or after July 1, 1999, the time period is three (3) years after the refund is made. A listing of the documents sampled should also be retained, as well as all the documents and records concerning the refund for the period included in the refund.

As provided in Section 213.756, F.S., no overcollection of sales tax from customers will be refunded or used to offset an underpayment of SUT unless the overcollection of sales tax resulting from the sample has been refunded to all customers affected in the period. Documentation must be provided to the Department substantiating that the overcollection of sales taxes has been refunded to all affected customers.

Penalties and interest must be calculated as provided in Section 212.12(2) and (3), F.S., for any underpayment of SUT projected from the sample. Any amounts to be refunded are offset month-by-month against underpayments, as provided in Section 213.34 and Rule 12-26.009, F.A.C. Any deficiencies reported under Section 212.12(6)(c)3., F.S., will be treated as appropriate under either Section 213.285, F.S., certified audits, or Section 213.21(7), F.S., voluntary disclosures.

Contact the Refund Subprocess of the Department at 850-488-8937 for further information regarding the requirements of Section 212.12(6)(c)3., F.S.

References: Sections 95.091(3); 212.12(2), (3), (4), (6); 212.13(2); 212.17; 213.21(7); 213.25; 213.255; 213.285; 213.34; 213.35; 213.37; 213.756; 215.26; 473.302(7)(a); and 473.322, Florida Statutes. Section 28 of CS/SB 426 (Chapter 2002-218, Laws of Florida). Rules 12-24.023; 12-24.024; 12-24.025; 12-24.028; 12-24.030; 12-26.003; 12-26.009; and 12A-1.014, Florida Administrative Code

FOR MORE INFORMATION

This document is intended to alert you to the requirements

contained in Florida laws and administrative rules. It does not by its own effect create rights or require compliance.

For forms and other information, visit our Internet site at www.myflorida.com/dor. Or call Taxpayer Services, 8:00 a.m., to 7:00 p.m., ET, Monday through Friday, excluding holidays, at 800-352-3671 (Florida only), or 850-488-6800.

Hearing- or speech-impaired persons should call our TDD at 800-367-8331 or 850-922-1115.

For a detailed written response to your questions, write the Florida Department of Revenue, Taxpayer Services, 1379 Blountstown Highway, Tallahassee, FL 32304-2716.

To receive a fax copy of a form, call 850-922-3676 from your fax machine telephone.