

1 Petitioner operated a wholesale and retail nursery business. For audit, petitioner provided
2 federal income tax returns for 2007 and 2008, purchase invoices for 2009, sales invoices, sales
3 journals, resale certificates, and miscellaneous other records. The Sales and Use Tax Department
4 (Department) found that recorded amounts of accrued sales tax, net of tax accrued in connection with
5 claimed bad debts and claimed exempt purchases of diesel fuel, exceeded reported sales tax by
6 \$44,292. The Department divided that amount by the applicable tax rates to establish unreported
7 taxable sales of \$548,463.

8 Petitioner contends that it did not understate its reported taxable sales, but it has provided no
9 evidence or even a specific explanation. The understatement of reported taxable sales is based solely
10 on petitioner's records, and petitioner has offered no reasonable explanation for the discrepancy.
11 Accordingly, we find no adjustment is warranted.

12 **Issue 2:** Whether adjustments are warranted to disallowed amounts of claimed nontaxable sales
13 for resale or claimed cash discounts. We find no adjustments are warranted.

14 The Department examined nontaxable sales for resale and claimed cash discounts for the fourth
15 quarter 2008 (4Q08). With respect to sales for resale, the Department examined available resale
16 certificates and allowed additional adjustments based on customers' responses to XYZ letters. Based
17 on that examination, the Department computed an error rate of 0.92 percent in claimed nontaxable
18 sales for resale. The Department applied that percentage to claimed nontaxable sales for resale for the
19 audit period to compute the amount disallowed of \$76,598. With respect to claimed cash discounts,
20 the Department found that the cash discounts related to taxable transactions represented 81.85 percent
21 of total cash discounts. Since petitioner had claimed total cash discounts on its returns, the Department
22 applied the percentage of 81.85 percent to compute the amount related to taxable transactions, and it
23 disallowed the remainder of \$20,902.

24 Petitioner disputes the disallowed amounts of claimed nontaxable sales for resale and claimed
25 cash discounts. With respect to both items, petitioner asserts that the percentages computed based on
26 the Department's examination of 4Q08 should not be applied to the remainder of the audit period
27 because that quarter was not representative of its business throughout the audit period. Petitioner states
28 that an actual examination of all transactions for the audit period would render a more accurate result.

1 We note that petitioner approved the audit plan to use the 4Q08 as a sample period. While petitioner is
2 correct that an actual examination would provide a more accurate result, the review of transactions in a
3 test period is a standard and accepted auditing procedure. Petitioner has provided no evidence that an
4 increase in the size of the sample would result in a reduction of the amounts disallowed. Accordingly,
5 we find there is insufficient evidence to support an adjustment to the disallowed amounts of claimed
6 nontaxable sales for resale or claimed cash discounts.

7 **Issue 3:** Whether adjustments are warranted to the disallowed amount of claimed bad debts.

8 We find no adjustment is warranted.

9 Petitioner claimed bad debt deductions, totaling \$589,334, on returns filed for 1Q07 and 4Q07.
10 The Department reviewed the recorded bad debts and found that the amounts claimed as bad debts
11 included sales tax. Petitioner provided an itemization of the bad debts without tax included
12 (\$551,730), and the Department disallowed the remainder of \$37,604, which represented sales tax
13 included in the claimed amount. Petitioner contends that the entire amount of claimed bad debts
14 should be allowed but has not explained its reasoning.

15 Since petitioner reported its total sales net of tax, each of the deductions it claimed on its return
16 had to be net of tax in order to avoid overstating the amount of the deductions. Thus, the Department
17 appropriately disallowed the amount of sales tax included in the bad debt deduction, and no adjustment
18 is warranted.

19 **Issue 4:** Whether adjustments are warranted to the disallowed diesel fuel exemptions. We find
20 no adjustment is warranted.

21 Petitioner uses diesel fuel in its nursery operations, which it purchased from an in-state
22 supplier. On its returns for 3Q07, 4Q07, and 1Q08, petitioner claimed partial exemptions totaling
23 \$844,373 for diesel fuel it purchased for use in farming. The Department disallowed the entire amount
24 claimed because the exemption is available only to retailers. Petitioner contends that the claimed
25 exemption should be allowed because the retailer from whom it purchased the fuel allegedly informed
26 petitioner that it should claim the exemption on its own returns.

