

1 80 percent confidence level, which the Department found to be well within the Board's standard for an
2 acceptable confidence interval of 75 percent. The Department noted further that, at a 90 percent
3 confidence level, the confidence interval is 31.67 percent, still well within the 75 percent standard.

4 Petitioner does not dispute any of the errors found in the test, but it disputes the sampling
5 method for several reasons. First, petitioner states that the use of an 80 percent confidence level and a
6 75 percent confidence interval produces a meaningless result. Petitioner asserts that the confidence
7 level should be at least 90 percent, and the confidence interval should be no more than 10 percent.
8 Petitioner also argues that the portion of the test that was done on an actual basis (stratum 4) should be
9 excluded from the evaluation of the sample, such that the evaluation of the sample is limited to that
10 portion of the population that was tested. Petitioner has computed that, at an 80 percent confidence
11 level, the confidence interval for the first three strata only is 57 percent. Petitioner also asserts that the
12 amount regarded as taxable should be adjusted such that it is the amount computed using the
13 percentage of error, reduced by the percentage of the confidence interval. To support its position,
14 petitioner has provided evidence showing that the Internal Revenue Service and various states evaluate
15 statistical samples at a higher confidence level and require a much lower confidence interval.

16 Petitioner does not dispute that the Department's statistical sampling was conducted in
17 accordance with the provisions of Chapter 13 of the Sales and Use Tax Audit Manual, but disputes the
18 validity of the Audit Manual's guidelines for statistical samples. Those guidelines were developed by
19 the Board based on extensive research and consideration of the input of various interested parties, and
20 were established to ensure the use of uniform procedures for all audits involving statistical sampling.
21 The Board's statistical sampling guidelines are valid and were properly applied here, and there is no
22 basis for treating the audit of petitioner differently from audits of other taxpayers. We conclude that no
23 adjustment is warranted, and that the claim for refund, which is based on the same grounds as the
24 petition, should be denied.¹

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28 ¹ Petitioner claims that the credit interest on its claimed refund should be at the rate applicable to underpayments. Since we find that there was no overpayment, this issue is moot. In any event, the law does not currently allow what petitioner seeks.

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RESOLVED ISSUE

Since petitioner did not participate in the amnesty program, an amnesty interest penalty applies when the liability becomes final. Petitioner filed a request for relief of the amnesty interest penalty, and the Department granted relief of the penalty prior to the appeals conference. We agree, and since petitioner has already paid the tax and interest in full, the normal payment conditions for such relief have already been satisfied.

OTHER DEVELOPMENTS

None.

Summary prepared by Deborah A. Cumins, Business Taxes Specialist III

Statistical Sample

Transactions Examined	Purchases subject to use tax
Confidence level	80%
Confidence interval	24.718 percent
Whether stratification was used, and if so what was stratified	Yes*
Total number of items in the population	Stratum 1 - 31,441 Stratum 2 - 29,809 Stratum 3 - 3,412 Stratum 4 - 325
Number of items randomly selected for the test	Stratum 1 - 330 Stratum 2 - 435 Stratum 3 - 350 Stratum 4 - 325
Number of errors found	Stratum 1 - None Stratum 2 - 5 Stratum 3 - 8 Stratum 4 - 9
Average dollar value of population	Stratum 1 - \$ 319.36 Stratum 2 - \$ 4,311.15 Stratum 3 - \$ 65,488.16 Stratum 4 - \$949,900.53
Dollar value of remaining errors	Stratum 1 - \$ 00.00 Stratum 2 - \$ 12,714.06 Stratum 3 - \$ 726,579.71 Stratum 4 - \$9,253,374.73
Dollar value of sample	Stratum 1 - \$ 105,897.00 Stratum 2 - \$ 1,912,934.40 Stratum 3 - \$ 23,556,900.20 Stratum 4 - \$308,717,673.70
Percentage of error	Stratum 1 - 0.0% Stratum 2 - 00.66% Stratum 3 - 3.08% Stratum 4 - 2.997% (not used because understatement based on actual review for Stratum 4)

* Stratum 1: \$ 100.00 to \$ 699.99
 Stratum 2: \$ 700.00 to \$ 19,999.99
 Stratum 3: \$20,000.00 to \$299,999.99
 Stratum 4: over \$300,000.00