

1 examining a random sample of sales of up to \$100,000 and examining all sales greater than \$100,000.
2 In the post-D&R reaudit, the Department disallowed five claimed nontaxable sales, four from the
3 sample and one in excess of \$100,000. Petitioner contends that all five sales were valid sales for
4 resale. Alternatively, for two invoices, petitioner contends that the sales were exempt sales in
5 interstate commerce. For a third invoice, petitioner argues that the transaction was a construction
6 contract and that some of the receipts represented nontaxable charges for installation labor, and, failing
7 that, petitioner claims the invoice should be removed from the sample because it is a unique non-
8 reoccurring error (this is addressed in Issue 2).

9 For all the transactions in question, we find that petitioner has failed to provide a valid resale
10 certificate or sufficient proof, such as an XYZ letter response, that the sales were in fact for resale.
11 Regarding the claimed sales in interstate commerce, we do not understand petitioner to dispute that it
12 shipped the merchandise to its purchasers in California. Rather, petitioner contends that, because its
13 customers subsequently shipped the merchandise out of state and first functionally used the
14 merchandise out of state, the sales were exempt as sales in interstate commerce. Petitioner is mistaken:
15 since it delivered the products to its purchasers in California, the sales do not qualify for the
16 exemption. (Cal. Code Regs., tit. 18, § 1620 subd. (a)(3)(A).) With respect to the claim that one
17 transaction was a construction contract, we find petitioner has failed to provide sufficient
18 documentation to support this assertion. In summary, petitioner has failed to establish that any of the
19 sales in question were nontaxable or exempt. Thus, we find that no further adjustments are warranted.

20 **Issue 2:** Whether adjustments are warranted to the sampling method. We find no adjustments
21 are warranted.

22 Transactions were selected at random from claimed nontaxable sales made throughout the audit
23 period of up to \$100,000. In the reaudit, four sales were disallowed resulting in an error rate of
24 3.99 percent, which was applied to recorded nontaxable sales up to \$100,000 to compute disallowed
25 nontaxable sales for the first strata of \$882,407. Petitioner contends that the sample errors should be
26 assessed only on an actual basis and not be projected because they all occurred during a period for
27 which it had new and inexperienced employees and its Chief Financial Officer, who normally
28 supervised these employees, was also absent (October 2006 through June 2007). Alternatively,

1 Regarding the sale to Applied Biosystems, petitioner has submitted the same evidence that was
2 provided earlier (a purchaser order and sales invoice, an email stating that the purchaser considered the
3 purchase to represent improvements to real property, vendor invoices showing property sold to
4 petitioner and shipped to Applied, and a profit and loss statement for 2007) along with a spreadsheet
5 on which an estimated amount of nontaxable installation labor or \$15,222 has been computed. The
6 spreadsheet is the only documentation that the Department had not previously reviewed. The
7 Department notes that the purchase order refers to a proposal that might establish who was responsible
8 for installing the property. However, that proposal has not been provided, and the available evidence
9 does not establish that petitioner installed the property. Accordingly, we find that petitioner has not
10 demonstrated that the transaction with Applied Biosystems was a construction contract or that any
11 portion of the sale represented charges for nontaxable labor.

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

Transactions Examined	Claimed exempt sales
Confidence level	80%
Confidence interval	74.92%
Total number of items in the population	3534
Number of items randomly selected for the test <i>(Strata one sample units were selected randomly. Strata two was examined on a census basis)</i>	Strata one random 312 Strata two census 112 Total sample 424
Number of errors found	Strata one 4 Strata two 1 Total 5
Whether stratification was used, and if so what was stratified	Strata one sales 0-\$100,000 Strata two sales in excess of \$100,000
Average dollar value of population	\$ 6,462.65 strata one \$233,472.28 strata two
Dollar value of remaining errors	\$ 88,436 strata one \$116,064 strata two \$204,500 total errors in sample.
Dollar value of sample	\$ 2,216,392 strata one \$26,148,895 strata two \$28,365,287 total dollar value of items examined in the sample.
Percentage of error	3.99% strata one
Were XYZ letters sent	yes
Number of XYZ letters sent	Unknown*
Percentage of XYZ letters sent in relation to number of questioned items	Unknown*
Number of responses to XYZ letters received	Unknown*
Percentage of responses to XYZ letters received in relation to the number of XYZ letters sent	Unknown*
Number of responses to XYZ letters received accepted as proof of valid exempt/nontaxable sales	Unknown*
Percentage of responses to XYZ letters received accepted as proof of valid exempt/nontaxable sales	Unknown*
Number of responses to XYZ letters treated as taxable	3
Percentage of responses to XYZ letters treated as taxable	Unknown*

* The audit did not list or indicate the number of XYZ letters sent to petitioner's customers or the number of responses to XYZ letters received.