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TITLE 34**PUBLIC FINANCE****PART 1****COMPTROLLER OF PUBLIC ACCOUNTS****CHAPTER 3****TAX ADMINISTRATION****SUBCHAPTER O****STATE AND LOCAL SALES AND USE TAXES****RULE §3.282****Auditing Taxpayer Records**

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Managed audit--A taxpayer self-review and analysis of invoices, checks, accounting records, or other documents or information to determine a taxpayer's liability for tax under Tax Code, Chapter 151, as allowed under a written agreement with the comptroller authorizing a managed audit as described in subsection (f) of this section.

(2) Percentage-based reporting method--A method by which a direct payment permit holder may be authorized to categorize purchase transactions according to standards specified in a letter of authorization issued under the provisions set out in subsection (g) of this section, reviews an agreed-on sample of invoices in those categories to determine the percentage of taxable transactions, and uses that percentage to calculate the amount of tax to be reported.

(b) The comptroller or an authorized representative of the comptroller may audit a taxpayer's accounts and records at any time during regular business hours at the discretion of the comptroller or the comptroller's authorized agent or representative.

(c) The comptroller may use a detailed auditing procedure or a sample and projection auditing method to determine tax liability. Sampling procedure may include manual sampling techniques and computer-assisted audit techniques, whichever produce the most accurate results in the most efficient manner.

(d) A sample and projection auditing method is appropriate if:

(1) the taxpayer's records are so detailed, complex, or voluminous that an audit of all detailed records would be unreasonable or impractical;

(2) the taxpayer's records are inadequate or insufficient, so that a competent audit for the period in question is not otherwise possible; or

(3) the cost of an audit of all detailed records to the taxpayer or to the state will be unreasonable in relation to the benefits derived, and sampling procedures will produce a reasonable result.

(e) Before using a sample technique to establish a tax liability, the comptroller must notify the taxpayer in writing of the sampling procedure to be used.

(f) The comptroller may authorize taxpayers that meet certain requirements to perform managed audits.

(1) A taxpayer who wishes to participate in a managed audit must request authorization from the comptroller's office to conduct a managed audit under this section. Authorization will only be granted as part

of a written agreement between the taxpayer and the comptroller's office. The agreement must:

(A) be signed by an authorized representative of the comptroller and the taxpayer; and

(B) specify the period to be audited and the procedure to be followed.

(2) In determining whether to authorize a managed audit, the comptroller may consider, in addition to other factors the comptroller considers relevant:

(A) the taxpayer's history of tax compliance, including:

(i) timely filing of all reports;

(ii) timely payment of all taxes and fees due the state;

(iii) prior audit history;

(iv) delinquency in other taxes;

(v) correction of problems identified;

(vi) collection of tax that was not remitted; and

(vii) whether a penalty waiver had been denied on prior occasions and the reason for denial;

(B) the amount of time and resources the taxpayer has available to dedicate to the audit;

(C) the extent, availability, and completeness of the taxpayer's records for the period to be covered by the managed audit;

(D) the taxpayer's ability to pay any expected liability; and

(E) the size and sophistication of the taxpayer.

(3) The decision to authorize or not authorize a managed audit rests solely with the comptroller.

(4) A managed audit may be limited to certain categories of liability under Tax Code, Chapter 151, including tax on:

(A) sales of one or more types of taxable items;

(B) purchases of assets;

(C) purchases of expense items;

(D) purchases under a direct payment permit; or

(E) any other category specified in an agreement authorized by this section.

(5) Before the audit is finalized, the comptroller may examine records that the comptroller determines are necessary to verify the results.

(6) Unless the audit or information reviewed by the comptroller under this subsection discloses fraud or willful evasion of the tax, the comptroller may not assess a penalty and may waive all or part of the interest that would otherwise accrue on any amount identified to be due in a managed audit. This subsection does not apply to any amount collected by the taxpayer that was a tax or represented to be a tax but was not remitted to this state.

(7) Except as provided by applicable law, the taxpayer is entitled to a refund of any tax overpayment disclosed by a managed audit. See §3.325 of this title (relating to Refunds and Payments Under Protest).

(g) The comptroller may authorize direct payment permit holders that meet certain requirements to report tax on purchases using a percentage-based reporting method.

(1) A holder of a direct payment permit may request authorization from the comptroller to use a percentage-based reporting method. The authorized percentage must be used for a three-year period specified by the comptroller, unless the authorization is revoked by the comptroller.

(2) The authorization to report under this subsection may be revoked if the comptroller determines that the percentage being used is no longer representative because of a change in the taxpayer's business operations or in law, including a change in the interpretation of a law or rule. For example, two decisions from the Court of Appeals changed the list of items that may be purchased tax free by manufacturers. Subsequently the legislature passed two bills that significantly changed the tax responsibilities of manufacturers. Each of these changes affected a manufacturer's percentage used to report taxable purchases.

(3) The decision of the comptroller to deny or revoke authorization under this section is not subject to appeal.

(4) When authorizing reporting under this section, the comptroller may categorize transactions by dollar amount, by type of taxable item purchased, by the purpose for which the taxable item will be used, or by other standards appropriate to the taxpayer's operations.

(h) A taxpayer who holds a permit issued under Tax Code, Chapter 151, who has paid Texas tax in error on purchases of taxable items, whether sales tax was remitted directly to this state or to a retailer holding a permit under Tax Code, Chapter 151, may compute the amount of overpayment by use of a projection based on a sampling of transactions.

(1) The sampling method must be one that has been approved by the comptroller.

(2) The taxpayer must record the method by which the projection and computation were performed and must make available, on request by the comptroller, information explaining the method employed and the records on which the projection and computation were based.

(i) A taxpayer who holds a permit issued under Tax Code, Chapter 151, may obtain reimbursement for amounts determined to have been overpaid by taking a credit on one or more sales tax returns or by filing a claim for refund with the comptroller within the limitation period specified by Tax Code, Chapter 111. See §3.325 of this title. A taxpayer is required to keep contemporaneous records to substantiate and enable verification of the taxpayer's credit or refund claim for a minimum of four years from the date on which the record is made, and throughout any period in which any tax, penalty, or interest may be assessed, collected, or refunded by the comptroller, or in which an administrative hearing or judicial proceeding is pending, unless the comptroller authorizes in writing a shorter retention period.

(1) A taxpayer may take a credit by amending the sales tax return for the period in which the tax was originally paid.

(2) If a taxpayer chooses to take the credit by claiming a refund, the claim must identify the period in which the tax was originally paid.

(3) A taxpayer who claims a credit or submits a refund request for local taxes must identify the period in which the local tax was paid and the local taxing jurisdiction to which the local tax was reported.

(4) Interest will be paid on tax amounts found to be erroneously paid for reports due on or after January 1, 2000, whether claimed on a request for refund or claimed in an audit. See also §3.325 of this title and Tax Code, §111.064.

(j) If records are inadequate to accurately reflect the business operations of the taxpayer, the auditor will determine the best information available and base the audit report on that information. See §3.281 of this title (relating to Records Required; Information Required) for information on proper records.

(k) Resale and exemption certificates.

(1) Resale and exemption certificates should be available at the time of the audit. All certificates obtained on or after the date the comptroller's auditor actually begins work on the audit at the seller's place of business or on the seller's records after the entrance conference are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained.

(2) The seller has 60 days from the date written notice is received by the seller from the comptroller in which to deliver the certificates to the comptroller. Written notice shall be given by the comptroller upon the filing of a petition for redetermination or claim for refund. For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption by submitting proof from the United States Postal Service or by other competent evidence showing a later delivery date. If the seller is not in possession of the certificates within 60 days from the date written notice is given by the comptroller that certificates pertaining to periods or transactions specified in the notice are required, any deductions claimed which require resale or exemption certificates will be disallowed. Exemptions claimed by those certificates acquired during this 60-day period will be subject to independent verification by the comptroller before the deductions will be allowed. Certificates delivered after the 60-day period will not be accepted. See §3.285 of this title (relating to Resale Certificate; Sales for Resale); §3.287 of this title (relating to Exemption Certificates); and §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(3) When a 60-day letter has been received, a resale or exemption certificate is the only acceptable proof that a taxable item was purchased for resale or qualifies for exemption.

(l) Both sellers and purchasers are subject to audit and assessment of tax on any transactions on which tax was due but has not been paid.

(m) The comptroller may proceed against either the seller or purchaser, or against both, until the tax, penalty, and interest have been paid.

Source Note: The provisions of this §3.282 adopted to be effective January 1, 1976; amended to be effective December 21, 1983, 8 TexReg 5037; amended to be effective December 31, 1984, 9 TexReg 6333; amended to be effective August 5, 1985, 10 TexReg 2321; amended to be effective September 16, 1991, 16 TexReg 4844; amended to be effective September 19, 2000, 25 TexReg 9219; amended to be effective June 6, 2002, 27 TexReg 4727; amended to be effective August 15, 2013, 38 TexReg 5109

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