



25 Sigourney Street Ste 2
Hartford CT 06106-5032

POLICY STATEMENT

Audit Examination Policy for Retail Transactions

Purpose: This Policy Statement establishes a policy to minimize the potential multiple taxation of retail sales where audit examinations of a retailer and of a retail customer disclose that proper taxes were not paid with respect to a particular taxable sale made by the retailer to its retail customer. The Policy Statement has been revised because the Department of Revenue Services (DRS) no longer issues Audit Verification letters.

Effective Date: Upon issuance.

Statutory Authority: Conn. Gen. Stat. §§ 12-415, 12-416 and 12-426.

Background: The Connecticut Sales and Use Taxes Act imposes sales and use taxes on retailers and their retail customers. To determine whether proper taxes have been paid with respect to retail sales, DRS conducts audit examinations of both retailers and their retail customers. The possibility has always existed that, where proper taxes were not paid with respect to a particular retail sale, and where audit examinations were conducted both of a retailer and of one of its retail customers, an audit assessment might be made against both the retailer and the retail customer with respect to the same retail sale.

Definitions: As used in this Policy Statement

Audit assessment means an assessment made by DRS because of an audit examination.

Audit examination means an examination conducted by the Audit Division of DRS to determine whether the proper amount of tax was reported on tax returns filed or required to be filed by a taxpayer.

Audit examination period means the taxable periods of returns under audit examination by the Audit Division of DRS.

Perpetually audited taxpayer means a retail customer whose tax returns for all taxable periods are always subjected to audit examination as designated by DRS.

Retailer means a person engaged in the business of making sales, as defined in Conn. Gen. Stat. Section 12-407(a)(2), at retail.

Retail customer means a person, who may or may not be engaged in business, to whom a retail sale is made by a retailer.

Sampling means conducting an audit examination using one or more taxable periods as a test period. Errors in reporting taxable retail sales (or purchases) during the period will be extrapolated to calculate the errors for the entire audit examination period. In contrast, sampling is not an audit examination involving a detailed examination of the books and records of the taxpayer.

Tax returns means tax returns required to be filed under the provisions of the Sales and Use Taxes Act, including tax returns required to be filed by persons who are not retailers.

Taxable period means the monthly, quarterly or other period for which a tax return is required to be filed under Conn. Gen. Stat. Section 12-414.

Taxable retail sales means those retail sales properly subject to sales and use taxes, whether or not those sales were treated as taxable by the retailer.

The Policy as Applied in Examinations of Retailers: In conducting a sales and use tax audit examination of a retailer, DRS will consider separately those taxable retail sales that were made by the retailer to every retail customer who is a perpetually audited taxpayer. If DRS determines that the retailer failed to collect tax on taxable retail sales to a perpetually audited taxpayer, DRS will make an audit assessment in connection with those sales against the perpetually audited taxpayer, not against

the retailer. If the audit examination of the retailer is conducted by sampling, DRS will not consider these sales as errors in reporting taxable retail sales. Conn. Gen. Stat. § 12-15 prevents DRS from identifying perpetually audited taxpayers.

If the retailer establishes that, one of its retail customers (who DRS determines is not a perpetually audited taxpayer) has already been subjected to a sales and use tax audit by DRS for some or all of the same taxable periods as the retailer, DRS will consider separately those taxable retail sales made to that retail customer as follows:

If the audit examination period of the retailer is the same as the audit examination period of the retail customer, DRS will not make an audit assessment against the retailer in connection with untaxed sales to the retail customer.

If the audit examination period of the retailer overlaps but is not the same as the audit examination period of the retail customer, and a detailed examination of the retailer's books and records is made, DRS will not make an audit assessment against the retailer in connection with untaxed sales to the customer during the overlapping taxable periods.

If the audit examination period of the retailer overlaps but is not the same as the audit examination period of the retail customer, DRS conducts the audit examination of the retailer by sampling, and the taxable period or periods chosen as the test period were taxable periods within the audit examination period of the customer, DRS will not make an audit assessment against the retailer in connection with untaxed sales to the customer. Additionally, for sampling purposes DRS will not consider the sales as errors in reporting taxable retail sales.

However, if the audit examination period of the retailer overlaps but is not the same as the audit examination period of the retail customer, DRS conducts the audit examination of the retailer by sampling, and the taxable period or periods chosen as the test period were not taxable periods within the audit examination period of the customer, DRS will make an audit assessment against the retailer in connection with taxable retail sales made by the retailer to the retail customer during the audit examination period of the retailer. For sampling purposes, DRS will consider the sales as errors in reporting taxable retail sales.

Establishing that the retail customer was subjected to an audit examination for one or more of the same taxable periods: The retailer may establish that one of its retail customers has been subjected to a sales and use tax audit examination by

DRS for some or all of the same taxable periods as the retailer by obtaining correspondence from the retail customer that lists the company name, Connecticut tax registration number, and audit period.

However if the retail customer has gone out of business and the retail customer's records are not available, the retailer may establish that taxes were paid either to the retailer or directly to DRS on taxable retail sales made by the retailer to the customer. **EXAMPLE:** The retailer may have billed the customer for taxes not previously collected on some sales, and the retailer may have proof of the payment of these billed taxes by the retailer to DRS. If the retailer is able to so establish that taxes were paid on the sales, DRS will not consider the sales as errors in reporting taxable retail sales for sampling purposes.

The Policy as Applied in Examinations of Retail Customers:

In conducting an audit examination of a retail customer who is a perpetually audited taxpayer for sales and use taxes, DRS will make an audit assessment against that retail customer in connection with taxable retail sales made to that customer on which tax was not collected by the retailer. This will happen even if the retailer or retailers making those sales to the retail customer were subjected to audit examination. This is because DRS did not choose to make an audit assessment against the retailer in connection with taxable retail sales made to a perpetually audited taxpayer.

In conducting an audit examination of a retail customer who is not a perpetually audited taxpayer for sales and use tax where the customer establishes that a retailer that made taxable retail sales to the customer already was subjected to a sales and use tax audit examination by DRS for some or all of the same taxable periods as the customer, DRS will consider separately those taxable retail sales made to the customer by that retailer as follows:

If the audit examination period of the retail customer is the same as the audit examination period of the retailer, DRS will not make an audit assessment against the customer in connection with untaxed sales made by the retailer to the customer.

If the audit examination period of the retail customer overlaps but is not the same as the audit examination period of the retailer, and a detailed examination of the customer's books and records is made, DRS will not make an audit assessment against the customer in connection with the sales made by the retailer to the customer during the overlapping taxable periods.

If the audit examination period of the retail customer overlaps but is not the same as the audit examination period of the retailer, DRS conducts the audit examination of the retail customer by sampling, and the taxable period or periods that are chosen as the test period were taxable periods within the audit examination period of the retailer, DRS will not make an audit assessment against the retail customer in connection with the sales by the retailer to the customer. For sampling purposes, DRS will not consider the transactions as errors in reporting taxable retail purchases by the customer.

On the other hand, DRS will not refrain from making an audit assessment against any customer who induced the retailer, through the issuance of any certificate or other statement to the retailer not to collect tax on those sales, or who made a taxable use of items sold by the retailer to the customer after to the sale.

Furthermore, if the audit examination period of the retail customer overlaps but is not the same as the audit examination period of the retailer, DRS conducts an audit examination of the customer by sampling, and the taxable period or periods chosen as the test period for the customer were not taxable periods within the audit examination period of the retailer, DRS will make an audit assessment against the customer in connection with taxable retail sales made by the retailer to the customer. For sampling purposes, DRS will consider the transactions as errors in reporting taxable retail purchases by the customer).

Establishing that the retailer was subjected to an audit examination for one or more of the same taxable periods: The retail customer may establish that a retailer who made taxable sales to the customer was already subjected to a sales and use tax audit examination by DRS for some or all of the same taxable periods as the retail customer by obtaining correspondence from the retailer that lists the company name, Connecticut tax registration number, and period audited.

However if the retailer has gone out of business and the retailer's records are not available, the customer may establish that taxes were paid either to the retailer or directly to DRS on taxable retail sales made to the customer by the retailer but on which the retailer did not collect tax. **EXAMPLE:** The retail customer may have been billed by the retailer for one or more sales made to the customer for taxes not previously collected, and the customer may have proof of the payment of these billed taxes by the customer to the retailer, or schedules establishing that

the customer reported and paid the tax directly to DRS. If the retail customer is able to establish that taxes were paid on the sales, DRS will not consider the transactions as errors in reporting taxable retail purchases by the customer for sampling purposes.

Notification of Perpetually Audited Taxpayers: DRS will notify in writing those taxpayers whom it will treat as perpetually audited taxpayers. A person designated as a perpetually audited taxpayer shall not willfully induce or attempt to induce a retailer not to collect taxes on taxable retail sales made by the retailer to the person.

Audit Examinations Being Currently Conducted on a Retailer and a Retail Customer: Where a retailer or one of its retail customers can establish that DRS is currently conducting audit examinations of both the retailer and the retail customer, and the audit examination periods overlap, DRS will not make an audit assessment against the retailer in connection with taxable retail sales that were made to the customer by the retailer and on which the retailer failed to collect taxes. DRS will make an audit assessment against the retail customer instead.

Effect on Other Documents: This Policy Statement modifies and supersedes **Policy Statement 93(4)**, *Audit Examination Policy for Retail Transactions*, which may not be relied upon on or after the date of issuance of this Policy Statement.

Effect of This Document: A Policy Statement is a document that explains in depth a current Department policy or practice affecting the liability of taxpayers. A Policy Statement indicates DRS's informal interpretation of Connecticut tax law and may be referred to for general guidance by taxpayers or tax practitioners.

For Further Information: To order forms and publications or for further information, Call DRS during business hours, Monday through Friday:

- **1-800-382-9463** (Connecticut calls outside the Greater Hartford calling area only); **or**
- **860-297-5962** (from anywhere).

TTY, TDD, and Text Telephone users only may transmit inquiries anytime by calling 860-297-4911.

Forms and Publications: Visit the DRS website at www.ct.gov/DRS to download and print Connecticut

tax forms and publications. Forms and publications may be ordered through voice-mail 24-hours a day by choosing Option 3 on your touch-tone telephone.

Paperless Filing/Payment Methods (fast, easy, free, and confidential): Business and individual taxpayers can use the **Taxpayer Service Center (TSC)** at www.ct.gov/TSC to file a variety of tax returns, update account information, and make payments online.

File Electronically: You can choose first-time filer information and filing assistance or log directly into the **TSC** to file returns and pay taxes.

Pay Electronically: You can pay taxes for tax returns that cannot be filed through the **TSC**. Log in and select the *Make Payment Only* option. Designate a payment date up to the due date of the tax and mail a paper return to complete the filing process.

DRS E-Alerts Service: Get connected to the latest news from DRS. Receive notification by email of changes to legislation, policies, and procedures. **DRS E-Alerts** provide information for employer's withholding tax, News – Press Releases, and Top 100 Delinquency List. Visit the DRS website at www.ct.gov/DRS and select How Do I? from the navigation bar.

PS 2013(1)
Sales and Use Taxes
Sales Tax
Issued: 03/05/2013