DEPARTMENT OF STATE REVENUE
LETTERS OF FINDINGS NUMBERS: 00-0268 & 00-0269
ADJUSTED GROSS INCOME AND STATE GROSS RETAIL TAX
For Years 1996, 1997, AND 1998

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ISSUES

I. Tax Administration —Validity of Audit Assessment

Authority: IC § 6-8.1-5-4

Taxpayer protests an Audit assessment based on the best available information.

STATEMENT OF FACTS

Taxpayer is an individual who buys and sells antiques. Due to a lack of reliable records, the audit was based on the best information available, which was the taxpayer's bank statements, canceled checks, and tax returns. The canceled checks showed that the taxpayer purchased several thousand dollars worth of antiques from individuals and antique auctions. The bank statements showed deposits far in excess of amounts available per individual income tax returns. The auditor was provided no evidence that all income from various sources was in fact deposited in the checking account and took the position that the deposits were the result of business activities. The total deposited in the checking account, with adjustments for cost of goods sold and other expenses, was considered gross receipts and inasmuch as no invoices were available for any sales or purchases, sales and use tax was calculated for all nonexempt transactions that could be identified. Taxpayer disagreed with the assessment total and protested, maintaining that additional documentation would be provided to reduce the assessment. As part of the hearing on this protest, taxpayer provided prepared summaries purporting to show taxpayer's actual income and transactions.

I. Tax Administration—Validity of Assessment

DISCUSSION

The overlying issue for the taxpayer's protest is the audit's assessment of tax based on inferences drawn from taxpayer records related to bank deposits. Taxpayer contends that the inferences resulting in assessment were not properly drawn and provided documentation refuting the audit finding and reducing the assessment. This issue revolves around the burden of proof in an audit situation, which IC § 6-8.1-5-4 defines as:

> Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records in this subsection include *all source documents necessary to determine the tax*, including invoices, register tapes, receipts, and canceled checks. *(Emphasis added)*

Taxpayer does not cite any statute, regulation, or case law for the proposition that the auditor was required to accept assertions as to the nature of the transactions based solely on the summary documentation prepared by the taxpayer. The statute requires taxpayer to keep source documentation and have it available to support taxpayer's claims as to the nature of the transactions. During the audit taxpayer presented contradictory information and documentation as to his activities. The taxpayer, having signed an exemption certificate reporting that he was an out of state retailer and wholesaler of antiques to obtain a retail sales tax exemption, later denied having any out of state activity, or that he was a retailer or wholesaler, when questioned regarding sales and use tax obligations. Taxpayer's current assertion that the Department is now required to accept taxpayer's selective and unsupported assertions absent statutorily required documentation is not sustainable.

FINDING

Taxpayer's protest is denied.

JM/MR 030910