DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 05-0415
Individual Adjusted Gross Income Tax
For 2001 through 2004

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Individual Adjusted Gross Income Tax Assessments.

Authority: IC 6-8.1-5-1(a); IC 6-8.1-5-1(b).

Taxpayer maintains that the assessments are being protested because the income that has been used in the Department's calculations is incorrect.

STATEMENT OF FACTS

The taxpayer and his spouse are Indiana residents. The Department of Revenue (Department) completed an audit based upon the best information available for the tax years 2001 through 2004. In 2001 and 2002 the taxpayer was a sole proprietor. For the tax years 2003 and 2004 the taxpayer was a shareholder of a Subchapter S corporation.

DISCUSSION

I. Individual Adjusted Gross Income Tax Assessments.

Taxpayer's representative contends that the assessments are being protested because the income that has been used in the calculations is incorrect.

Lacking proper documentation, the Department was forced to base the proposed assessments upon the best information it had available. Indiana law provides as follows: "If the department reasonably believes that a person has not reported the proper amount of tax due, the department *shall* make a proposed assessment of the amount of the unpaid tax due on the basis of the best information available to the department." IC 6-8.1-5-1(a) (*Emphasis added*). In taxpayer's case, the Department believed that the "best information available" consisted of the limited records provided by the taxpayer. After obtaining that information, the Department fulfilled its legal responsibility to make a "proposed assessment." Indiana law provides that, "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is wrong." IC 6-8.1-5-1(b).

At hearing, the taxpayer's representative provided additional documentation in support of its protest. The representative contends that the assessments are being protested because the income that has been used in the calculations is incorrect. The representative argues that the auditor's computations were based upon all invoices that were mailed during the years in question (accrual basis). However, according to the taxpayer's representative, the returns were filed reporting income on the cash basis of accounting. Therefore, when reviewing the information on the cash basis, there should be no change to the taxpayer's personal return for the years in question.

FINDING

Taxpayer's protest is sustained subject to audit verification of taxpayer's records.

BRK/JMM/DK – 06/29/03