DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0283
Use Tax
For Tax Years 2002-2004

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ISSUE

I. **Use Tax**—Imposition

Authority: IC § 6-8.1-5-1; 45 IAC 2.2-3-4

Taxpayer protests the assessment of use tax.

STATEMENT OF FACTS

Taxpayer is an Indiana business operating a recreational facility. As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments for use tax for the tax years 2002, 2003, and 2004. Taxpayer protests imposition of a portion of these assessments. The Department conducted an administrative hearing and this Letter of Findings results. Further facts will be supplied as required.

I. **Use Tax**—Imposition

DISCUSSION

Taxpayer protests imposition of use tax on some of the items listed on the audit report. The Department determined that use tax was due on several items upon which sales tax should have been paid but was not. The Department refers to IC § 6-8.1-5-1(b), which provides that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made.

The Department refers to 45 IAC 2.2-3-4, which states:

> Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Taxpayer claims that several items are from vendors which provide services, rather than tangible personal property. Taxpayer has not provided any documentation in support of its position that these payments are not for tangible personal property. Taxpayer has not met its burden under IC § 6-8.1-5-1(b).

Taxpayer states that there are vendors listed which obviously charge sales tax, and therefore use tax is not due. With one exception, Taxpayer has provided no documentation to support its position that sales tax was collected by vendors. Taxpayer has not met its burden under IC § 6-8.1-5-1(b).

Taxpayer provided one invoice regarding a Bobcat skid steer loader (a machine) and an attachment for the loader. The invoice lists sales tax collected on the purchase of the loader. However, the assessment refers to a "Bobcat" purchased on a different date and for a different amount than the "Bobcat" listed in the supplied invoice. The documentation does not support Taxpayer's contentions regarding the payment of sales tax on the "Bobcat" listed in the Department's audit report. Taxpayer has not met its burden under IC § 6-8.1-5-1(b).

In conclusion, Taxpayer has not met its burden under IC § 6-8.1-5-1(b) regarding its claim that some items listed on the audit report are not subject to use tax.

FINDING

Taxpayer's protest is denied.

JR/BK/DK—June 19, 2007