

## DEPARTMENT OF STATE REVENUE

04-20150317.LOF

**Letter of Findings Number: 04-20150317**  
**Sales and Use Tax**  
**For the Years 2008, 2009 & 2010**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 requires the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

**HOLDING**

Indiana Watercraft Dealer was required to collect Indiana sales tax on the sale of a watercraft.

**ISSUE****I. Sales and Use Tax - Exemption.**

**Authority:** IC §6-8.1-5-1; IC § 6-8.1-5-4; IC § 6-2.5-2-1; IC § 6-2.5-1-2; IC § 6-2.5-4-1; IC § 6-2.5-9-3; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E. 2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Indiana Dep't of State Rev. v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014); [45 IAC 2.2-2-1](#).

Taxpayer, an Indiana Watercraft Dealer, disagrees with the assessment of additional sales tax on the sale of a watercraft.

**STATEMENT OF FACT**

Taxpayer is a licensed retail merchant in the State of Indiana. Taxpayer sells new and used yachts and boats as well as trailers and all-terrain vehicles. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer's business records for tax years 2008 to 2010. The audit reviewed Taxpayer's sales via a stratified statistical sample to arrive at additional taxable sales.

Taxpayer protests the Department's assessment as it applied to a specific sale and provided additional evidence to support its protest. This Letter of Findings is based on the additional evidence provided by Taxpayer and the information contained within the protest file. Further facts will be supplied as necessary.

**I. Sales and Use Tax - Exemption.****DISCUSSION**

Using a stratified statistical sample, the Department assessed additional sales tax on Taxpayer's sales for which Indiana sales tax was not collected. Taxpayer disagrees with one of the sales sampled.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "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 made." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." Indiana Dep't of State Rev. v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b). A person who acquires tangible personal property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). A retail merchant, such as Taxpayer, is required to "collect the tax as agent for the state." IC § 6-2.5-2-1(a). The retail merchant "must keep books and records so that the department can determine the amount, if any, of the [retail merchant's] liability for tax by reviewing those books and records." IC § 6-8.1-5-4(a). Additionally, the retail merchant "holds those taxes in trust for the state and is personally liable for the payment of those taxes . . . ." IC § 6-2.5-9-3.

Taxpayer argues that sales tax was not due on the sale of a particular watercraft as the purchaser paid use tax on the watercraft when it was registered in Indiana. Thus, Taxpayer requests that the sale be removed from the Department's audit sample and that the additional tax which resulted from the sample be recalculated. However, upon review, the Department cannot agree with this request. Indiana sales tax is due at the time of the transaction. Taxpayer is the agent for the state and is required to collect the sales tax at the time of the sale unless the transaction is specifically exempted by Indiana law. That is, Indiana sales tax is a trust tax that, at the time of sale, must be collected by a retail merchant and remitted to the Department unless a specific exemption applies. There is no statutory exemption for a subsequent payment of use tax by the purchaser who uses the watercraft. Taxpayer has not met its burden under IC § 6-8.1-5-1(c), therefore Taxpayer's protest is denied.

### FINDING

Taxpayer's protest is respectfully denied.

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