

## Testimony of Barry Godwin

Before the United States House of Representatives  
Committee on Small Business

February 14, 2008

### I. Introduction

Ms. Chairman and Members of the Committee, thank you for inviting me to express my views concerning “The Business Activities Tax: The Tax Burdens Felt by Small Businesses Engaged in Interstate Commerce” and the issues it addresses.

I am the Controller at Stingray Boat Company. Like most small business managers, I have multiple responsibilities and perform various tasks. Stingray Boat Company was founded by Al Fink in 1979, where Al remains the President of the company. Al Fink remains keenly involved in the company, from its roots to the top. Stingray Boats is located in Hartsville, South Carolina, employing 240 individuals full time. We are, by all standards, the epitome of the American Dream, and a small business proudly dedicated to our employees and their families. Stingray builds fiberglass boats from 18 to 25 feet in length. We ship to almost every state within the United States, Canada, Europe and Australia.

In my testimony, I will relate three differing experiences that I have had with three different states. I am seeking clarification of P.L. 82-272, as each state is interpreting how tax nexus has occurred between us and them. The burden placed upon Stingray is to incur legal fees, accounting fees and time to address each state as they seek to attach an economic nexus to Stingray business activities. This is another tax in addition to the sales tax incurred by the independent dealer in the jurisdiction of that state.

Until three years ago, we were unaware of nexus implications as it relates to taxes. In 2005, we began to hear more about nexus. We became aware of a situation in which the State of New Jersey had stopped another boat manufacturer's boat load due to nexus issues. We researched what nexus meant to us. Our activities within all states are the same. We operate according to P.L. 82-272. Our boats are sold to independent dealers. All orders are taken within the State of South Carolina via the telephone or internet. Boats are paid for before delivery is taken by the dealer. Sales representatives from Stingray may travel to see a dealer from time to time but do not operate a "Stingray office" within that state. Dealers visit Stingray each year to review new products and test drive the boats. The boats

may be delivered to the dealer on our trucks or by a contract carrier. We reimburse the dealer for warranty work performed by them on our boats. We believe we are operating within the law.

## II. The State of Maine vs. Stingray

In 2006, a revenue agent from the State of Maine sent a letter to us regarding our actions within that state. I responded to Mr. Flynn (representing the State of Maine), that we believed that we were operating within the confines of the law. After I had completed a nexus questionnaire, Mr. Flynn told us that we had created nexus by paying the independent dealer for warranty work performed on one of our boats. I assume that the dealer paid tax to Maine on the amounts received from us as payment for the work done in Maine. Stingray did not perform the work, but because we had paid the dealer, Maine claimed that our action created nexus. I objected to the revenue agent, but we decided it would be less costly to pay the retroactive taxes and fines than to pursue the matter in the courts. The State of Maine agreed to require us to file tax returns and payments covering the years 2003 through 2005 and to abate any penalties during this period.

### III. Washington State vs. Stingray

In mid 2006, we received notification from Washington State that we had created nexus with that state as well. In this case, revenue agent DeLay cited that we had significant activities within the state of Washington which created tax nexus. Mr. DeLay told me that because we were a member of the Northwest Marine Trade Association (NMTA) it demonstrated that maintaining a market in Washington State was crucial to Stingray, thereby creating “significant activity” and nexus. We maintained a membership in the NMTA to receive a manufacturers discount on floor space at the boat show for the dealers in the state and hold our spot for floor space in the future. Because of Washington State’s allegations, we have cancelled our membership in the NMTA.

Mr. Delay cited the fact that our sales representative travels to Washington State as another reason Stingray created nexus. Our sales representative, who lives in Nevada, travels to visit the Washington dealer approximately three times per year. Sales calls to the independent dealers are to discuss improvements to the boats and other business issues. This Washington dealer had approached

us to sell Stingrays. The dealer had flown to South Carolina to meet with our vice-president of sales and company president. The dealer tested our product while here and we mutually agreed we would be good for each other. Since being approved, all orders have been taken via the telephone or the internet. I have appealed to the Washington State Department of Revenue the tax ruling by the tax agent and I am awaiting a resolution.

#### IV. The State of New Jersey vs. Stingray

On July 23<sup>rd</sup>, 2007 I received a call transferred over from our truck fleet dispatcher at 10:15 am. The person on the other end was Ms. Kostak, a revenue agent for the State of New Jersey. I was immediately told that our truck had been pulled over at the weigh station on the interstate highway and could not move until we paid New Jersey for jeopardy assessment taxes. I asked Ms. Kostak why they were doing this. I was told that we had a dealer in the state of New Jersey. This incident was becoming unbelievable, so I asked her to fax me proof that she was who she said she was. I asked what I could do to let the driver go and I was told to pay the New Jersey Division of Revenue money. I asked how much and I was told it

depended upon our sales into New Jersey. I looked up the sales for the past seven years as requested and Ms. Kostak quoted me a price of \$46,200 to release the truck. I then told her I would need to discuss the issue with our company president. Ms. Kostak told me I had until 1pm that day to get them the money or the truck would be impounded and we would need to make arrangements to retrieve the driver. I asked her, "Can I not send you a check or work something out to let the truck pass through New Jersey?" and I was told to wire them the money.

I first talked to our truck driver and asked him what had happened. Our driver was passing through the State of New Jersey carrying a load of boats for delivery into Massachusetts. Our driver told me that the agent pulled his rig over at the weigh station and asked him if we had a boat dealer in New Jersey. The driver had never delivered into New Jersey and told the agent, Ms. Kostak, that he did not know. (Our driver told me that there were ten other trucks stopped at the weigh station for the same interrogation.) Because he did not know whether we have a New Jersey dealer, he gave Ms. Kostak our home office number and the dispatcher's name. Ms. Kostak called our dispatcher and found out that we have a dealer in

New Jersey, asked more probing questions and then was passed over to me.

After talking to Ms. Kostak, I discussed the situation with our company president. We decided to call another boat manufacturer who also had been stopped by a New Jersey revenue agent while transporting boats through New Jersey. Their company president told us that his boat company had spent over \$140,000 in legal fees and the issue was not yet resolved after two years. We were also given contact information for the company's attorney. I contacted the attorney to find out our options. The attorney was not encouraging and did not feel we could win against the State of New Jersey. The attorney told me that it was very likely that unless we paid the amount requested, our trucks would be stopped each time thereafter in New Jersey. The attorney suggested that we pay the amount demanded and then appeal in the tax courts of New Jersey. After consultation with our company's president, we decided to pay what Ms. Kostak demanded so that we could free our load of boats to be delivered and let our driver go.

I called Ms. Kostak again, by now it was close to 12:30 in the afternoon. I told Ms. Kostak that I was appalled by how the State of

New Jersey was operating. I asked her how we had created nexus with New Jersey. I told Ms. Kostak that we believed we were operating within the law. Ms. Kostak told me that because our trucks had delivered our boats into the State of New Jersey that this action created nexus. Ms. Kostak reminded me of the deadline to pay them the money or our boats would be impounded. I knew we had boats to deliver into another state and my only choice was to wire the money, which I did. Ms. Kostak had to certify that the funds were in the bank before releasing our property. Finally, at 1:30pm our truck and driver were on the road again.

When our truck crossed the New Jersey state line, Stingray did not have an outstanding issue, warrant or any other legal matter or business activity with New Jersey. In fact, the State of New Jersey did not know we had an independent dealer in the state. Ms. Kostak gathered "evidence" along the way to invoke a jeopardy assessment against Stingray. The manner in which the State of New Jersey acted is commonly defined as extortion. Fortunately, I have never been the victim of a crime in my life. But, that day in July, I believe I was strong-armed by a state of the United States of America. Under the theory that nexus existed, I and my company were treated like

someone on the run from the law. This entire episode was an unbelievable manner in which to conduct business. Since that day, we have paid New Jersey almost double the original amount that Stingray “owed” in interest and taxes. Lawyers tell me that because of federal law (P.L. 86-272), New Jersey’s tax imposition is likely unconstitutional.

#### V. Conclusion

I thank the Chairwoman and Members of the Committee for inviting me to testify and submit this written statement. I believe that the small businesses of America are well served by the Committee’s attention to these issues so important to our survival and future business in America.

I am sure each state within the United States has reason for “interpreting” P.L. 86-272. Unfortunately for small business, the end result is confusion, unexpected costs, another “hat” for small business owners to wear and as testified above a restriction to interstate commerce. I urgently ask that Congress enact the Business Activity Tax Simplification Act recently introduced by Congressmen Boucher, Goodlatte and others to clarify

P.L. 86-272, and thereby to eliminate the unwarranted time and cost burdens placed upon small businesses that participate in interstate commerce.