



September 10, 2007
Pennsylvania Sales and Use Tax
No. SUT-07-005
Telecommunications / Leasing Fiber Optic Cable

ISSUES

1. Is the monthly charge for leasing dark fiber optic cable subject to Pennsylvania Sales Tax or any telecommunications taxes?
2. Is the monthly charge for leasing lit fiber optic cable subject to Pennsylvania Sales Tax or any telecommunications taxes?

CONCLUSIONS

1. The monthly charge for leasing of dark fiber optic cable is not subject to Pennsylvania Sales Tax.
2. The monthly charge for leasing of lit fiber optic cable is taxable as a telecommunications service.

FACTS

Taxpayer is a provider of network infrastructure services with its primary activity being the leasing of fiber to both enterprise and carrier customers, that is, bank and telecommunications providers, respectively. Customers have exclusive use capacity rights but may not sublease or repair the fiber without express consent of Taxpayer. The origination, termination as well as the fiber itself, may or may not be in Pennsylvania.

With dark fiber, Taxpayer provides the fiber that connects to customers' locations but the customer is responsible for the equipment that is necessary to light the fiber optic cable for the transmission of communications. Taxpayer also offers services using its own equipment to light fiber optic cables. These services are invoiced as "Lit Fiber," "Wavechannel," "WDM Services," and/or "Metro Ethernet." In both instances, the fiber is part of a bundle of fiber and is contained in a conduit that is typically buried anywhere from three to six feet underground.

In both instances, Taxpayer has no way of knowing what, if anything, their customers transmit. They simply provide the optical connectivity between locations and are responsible for maintenance. The customer is billed a monthly flat fee for the right to use the cable.

Taxpayer asserts that the fiber falls within the definition of tangible personal property but becomes real property when it is combined with other fiber in an underground conduit, losing its identity to become an integral and inseparable part of the real property. Taxpayer also argues that the capacity leases are not a telecommunications service because it is the customer who initiates any communication (data or otherwise), the volume and type of

traffic, if any, is unknown to Taxpayer, and the amount billed is a monthly flat fee for the right to use.

DISCUSSION

With regard to dark cable, the Department agrees with Taxpayer's assertion that the cable becomes non-taxable real property when it is combined with other fiber in an underground conduit. However, the sale of lit cable is taxable as a telecommunications service. For Pennsylvania Sales Tax purposes, a taxable telecommunications service is defined as "any one-way transmission or any two-way, interactive transmission of sounds, signals or other intelligence converted to like form which effects or is intended to effect meaningful communications by electronic or electromagnetic means via wire, cable, satellite, light waves, microwaves, radio waves or other transmission media." 72 P.S. § 7201 (rr). Who initiates the transmission, the volume and type of traffic, and the method of billing are irrelevant for sales tax purposes. Note, Taxpayer may be entitled to the resale exemption on its purchase of the cable.