

**April 22, 2016**  
**Pennsylvania Sales and Use Tax**  
**No. SUT-16-001**  
**Disaster Recovery Monthly Customer Membership Fee**

ISSUE:

Is sales tax imposed on a monthly customer membership fee for information technology disaster recovery services?

CONCLUSION:

Sales tax is not imposed on a monthly customer membership fee for information technology disaster recovery services.

FACTS:

Taxpayer is a global software and information technology services company. Taxpayer provides three main service offerings, one of which is disaster recovery. Taxpayer maintains disaster recovery centers and mobile units that include equipment as identified in customer contracts. This equipment includes telecommunications equipment; servers and server accessories; desktops and laptops; networking, server and computer software; and tapes and disks. Customers pay a monthly customer membership fee for the right to have access to this equipment in the event of a disaster.

However in the event of a disaster, the customer is required to pay an additional fee to formally declare the disaster, as well as an additional contracted amount per hour or day for actual use of the equipment. With the exception of annual customer-performed testing, the equipment is held idle while awaiting use in the event of a disaster.

DISCUSSION:

The Tax Reform Code of 1971, as amended, provides for the imposition of a sales and use tax on the retail sale of tangible personal property and certain services. 72 P.S. § 7202(a). Disaster recovery is not one of the specified taxable services. However, the sale or lease of disaster recovery equipment, such as that offered by Taxpayer, is subject to tax.

Accordingly, Taxpayer is required to collect sales tax on the fee for the declaration of a disaster and the daily usage fee. These fees must be a reasonable charge for the rental of such equipment. Taxpayer is also responsible for remitting tax on its use of the equipment. If Taxpayer does not pay sales or use tax on the total purchase price of the equipment, Taxpayer is required to pay use tax based on the fair market value of the equipment during any period for which sales tax is not being charged.