



MULTISTATE TAX COMMISSION

## **NOTES of MEETING - DRAFT**

### **MTC Work Group – Sales Taxation of Digital Products**

**December 8, 2022**

#### **I. Welcome and Introductions –**

Gil Brewer, Washington, Chair of the Work Group, convened the meeting.

#### **II. Initial Public Comment –**

Brewer asked if there were any initial comments on the project or the agenda for the call. There were none.

#### **III. Review of Notes from October 27, 2022 meeting –**

Nancy Prosser (MTC) provided a high-level summary of MTC staff key takeaways from the work group meeting on October 27:

- Multiple work group members indicated that having clear definitions of digital products and understanding what they are would be beneficial to discussing how and if they should be taxed.
- Various people provided suggestions for sources of definitions, including the SST agreement, to help with this task. One work group member suggested we consider the types of transactions that occur and avoid trying to categorize digital products as either property or a service.
- It was also suggested that we keep in mind the interaction of new products and current definitions.

Prosser explained that during the November in-person Uniformity Committee meeting in Little Rock, Arkansas, staff reported on their plan to address the work group's request, including a list of possible sources staff would review. She asked if there were any additions or corrections to the notes from the prior call of the work group held October 27, 2022. There were none.

#### **IV. Review of changes to the detailed white paper outline –**

Prosser summarized the changes that had been made to the detailed white paper outline as highlighted and sent with the agenda for the meeting. There were no questions or comments.

#### **V. Discussion of definition for digital products and next steps –**

Brewer solicited input from the group and noted that work group member Ray Langenberg (Texas) had submitted a definition of a digital product to MTC staff after the November committee meeting in Little Rock and that staff had further modified the definition. These were included in the circulated outline draft.

Langenberg addressed the definition he submitted to staff and explained that he had further refined his initial definition as follows:

Digital Product - An item that is received by the consumer in a binary form.

Langenberg then described how the definition would work. He noted that the key with this definition is the term “received,” which would govern the form of the product, as defined.

Mark Nebergall (public participant) noted that this definition might be too narrow in that some electronic items are provided in hexadecimal formats.

Mark Chaiken (New Mexico) commented that one idea might be to say that it is “readable electronically.”

Ester van Mourik (Colorado) commented that the definition might not be entirely accurate given her review of a simple online definition of binary form; she said she would try to provide follow-up information.

Brewer made a comment about taking the broad approach to a definition. He noted that this is somewhat different than the approach taken by Washington and that there had been issues with that approach. He also noted that there would be challenges with the broad definition, especially since this is a tax definition versus a strictly technical definition.

In response to a question from Todd Lard (TEI), Langenberg explained he had changed the proposed definition from “delivered” to “received” in part because of ITFA. His perspective is that what matters is the form in which the item is accessed by the person paying for that item. So, the definition is focused on the final form of the item, not necessarily the form in which it might take throughout the delivery process.

One comment was that this definition may include items so broadly that the state would not want to impose tax. Brewer reminded participants that this exercise was not meant to involve a determination of what is taxable but to simply provide a broad definition.

Langenberg commented several times during the call that he agreed with Brewer and that the criteria for what may ultimately be taxable would involve more development and next steps in this discussion. He added that the definition may be too short, or the word “binary” too abstract, or that the definition should refer to something capable of being read or processed by a device.

Carolynn Kranz (public participant) noted it was important to make sure the definition was easily understandable by a broad range of people. Dianne Yetter (public participant) suggested the definition might work better using “computer device.” Chaiken noted that quantum computing was on the horizon so a definition based on binary form may be insufficient.

Helen Hecht (MTC) asked Langenberg if the receipt as a digital item depended on whether the customer controlled the thing that would convert the digital item into perceivable form. He responded that would be one way of distinguishing a movie in a movie theatre (which may use a digital item to project that movie), but that a digital item would be “received” in that form where the customer’s device receives the item.

Nebergall asked whether the “receipt” meant that the customer would receive the item using some type of device. Langenberg responded that there could be other differences and similarities, but that this would be a matter more for a tax policy discussion.

Hecht asked a follow-up question as to whether this means a service that results in a “digital product” under the Langenberg definition would be a digital product. Langenberg agreed that’s how the definition would work. Not that that would determine the tax result—but that it would define the item or product.

Nebergall asked whether even a movie (the example being discussed) might take some digital form—for example—a QR code. Langenberg’s response was that the QR is not the product received but represents that product, like a digital code.

## **VI. Next steps**

Chair Brewer asked those on the call if they had ideas about next steps. He had two specific options:

One - allow people to think more about the discussion and continue the discussion in January while staff continues to compile additional research that may be relevant.

Two - see if staff can find people like CSP and industry reps to discuss what they are seeing in the marketplace to help educate staff and the members about the types of digital products that currently exist.

Brewer also noted they could send additional ideas to the staff of the work group for them to incorporate into the outline or into future materials for discussion.

Hecht noted that if people want additional detailed information on any of the things being discussed, staff could try to provide that information and not have to do so as part of the work group calls.

There was no specific decision made on how to proceed, but Brewer reminded everyone the next meeting is Thursday, Jan. 5, 2023, at 11:00 a.m. EST.

## **VII. Adjourn**