



SALES TAX ON DIGITAL GOODS & SERVICES UNIFORMITY PROJECT

MTC STAFF STATUS REPORT TO
THE UNIFORMITY COMMITTEE

AUGUST 2, 2022

PROJECT BACKGROUND AND STEPS TO DATE

- April 2021 Meeting – Washington state presentation to the Uniformity Committee.
- July 2021 Meeting – Standing Subcommittee recommended drafting a white paper and the Uniformity Committee asked MTC staff to begin to prepare a detailed outline of that whitepaper.
- November 2021 and April 2022 Meetings – MTC staff reported on interviews with stakeholders.

RECAP - WASHINGTON PRESENTATION

Why now?

- Nexus barriers lowered after Wayfair decision
- Possible erosion of tax base as transactions become digital
- Online sellers could get an advantage over main street merchants
- Old tax categories may not fit new transactions

RECAP - WASHINGTON PRESENTATION

Washington's Approach – High Level:

- Sourcing using the streamline model law (destination)
- Broad imposition on digitally supplied services
- Many specialized exclusions and exemptions
- Broad taxation of digital goods (broader than SSUTA)
- Also addressed prewritten software remotely accessed (i.e. not delivered)

RECAP - WASHINGTON PRESENTATION

Trends:

- Movement toward holistic solutions and consolidation
- Exclusions becoming obsolete drive controversy
 - Data processing
 - Advertising
- Disappearance of pure remote access to prewritten software
- Compliance
 - Wayfair has spurred interest along with marketplace fairness and tax discovery efforts
- The legislation has grown our tax base and it continues to grow

STAKEHOLDER DISCUSSIONS

- Tax Agencies (12)
 - Arizona
 - California Department of Tax and Fee Administration
 - Colorado
 - Hawaii
 - Iowa
 - Maryland
 - New Jersey
 - New Mexico
 - South Dakota
 - Texas
 - Utah
 - Washington State

STAKEHOLDER DISCUSSIONS

- **Academics (4)**
 - Bill Fox, University of Tennessee
 - Orly Mazur, Southern Methodist University Dedman School of Law
 - Adam Thimmesch, Nebraska College of Law
 - Hayes Holderness, University of Richmond, School of Law
- **Practitioners (7)**
 - BakerHostetler
 - Deloitte
 - Eversheds Sutherland
 - EY
 - Kranz & Associates
 - KPMG
 - MultiState Associates
- **Industry (2)**
 - Avalara
 - Tax Cloud

STAKEHOLDER DISCUSSIONS

- **Taxpayers (7)**
 - Amazon
 - Apple
 - AT&T
 - Charter Communications
 - Meta
 - Microsoft
 - Verizon

- **Organizations (10)**
 - AICPA – State & Local Tax TRP
 - American Bar Association – written comments submitted
 - Center on Budget Policy and Priorities
 - Council On State Taxation
 - Electronic Transactions Association
 - Motion Picture Association
 - National Taxpayers Union Foundation
 - National Conference of State Legislatures (informal)
 - Streamlined Sales Tax Governing Board Staff
 - Tax Foundation

STAKEHOLDER DISCUSSIONS GENERAL QUESTIONS

1. Which states have the best / worst approach to taxation of digital items and why?
2. Which states have the best guidance for taxpayers/CSPs?
3. Which states have the best systems for taxation of digital products?
4. How much of a problem is the fear of qui tam or other suits for sourcing/charging the wrong rate?
5. Would it make things simpler if states would allow taxpayers to “build in” the cost of the tax, rather than charging it on the bill or invoice, so that the tax would work more like a gross receipts tax?
6. In addition to the concerns that states’ taxation of digital products lacks uniformity (definitions, sourcing, etc.) and likely may be over-reliant on “B to B” transactions, please identify any other major concerns states’ taxation of digital products and be as specific as possible.

STAKEHOLDER DISCUSSIONS GENERAL QUESTIONS

7. How would you approach the taxation of digital products irrespective of what states are currently doing? What are your specific suggestions on how such taxes should be structured, imposed, and administered?
8. What issues relating to the taxation of digital products should the MTC be focusing on and in what priority?
9. How should the MTC approach this uniformity project in order to get maximum positive input from interested parties (in particular private sector/industry participants) to produce the best possible end result that states can use for sound policy guidance?
10. What would you like to see as the end result for this project?
11. Any other thoughts for us / the Uniformity Committee?
12. Who else should we be talking to?

STAKEHOLDER DISCUSSIONS TAKE-AWAYS

(IN NO PARTICULAR ORDER
AND WITH NO PARTICULAR EMPHASIS)

1. **There is general support for the project:** The majority of people are supportive of this project and can see value from the MTC proceeding to help provide information and guidance to policymakers, taxpayers, and tax administrators. In only one interview were we told not to move forward.
2. **Be mindful of the Streamlined states:** We are mindful of what the Streamlined states are doing with respect to taxation of digital products, particularly their current project on sourcing. Richard Cram is monitoring their activities.
3. **B to B transactions:** Attention is needed to bundling, multiple points of use, and related issues; eliminating “B to B” transactions could simplify taxation issues. Iowa has statutory language.

STAKEHOLDER DISCUSSIONS TAKE-AWAYS

(IN NO PARTICULAR ORDER
AND WITH NO PARTICULAR EMPHASIS)

4. **Definitions needed:** Some are concerned that clear definitions will lead to more taxation of digital goods and services, but many people said clear definitions were important.
5. **Broad versus piecemeal approach:** Washington state is a good model among the states as to how to tax digital items given the broad definitions and clear guidance. In contrast, and for example, trying to navigate how to tax software depending on how it is sold (TPP vs. SaaS vs. downloaded) is a burden and leads to greater risk of getting it wrong.
6. **Sales and use versus other tax type:** Taxing digital goods and services through a sales and use tax is the best way to proceed; creating a new or separate tax, such as a gross receipts tax, adds complexity to the overall tax system and has its own problems / doesn't solve other problems, such as not allowing for exemptions based on purchaser status and requiring sellers to still determine proper tax rates.

STAKEHOLDER DISCUSSIONS TAKE-AWAYS

(IN NO PARTICULAR ORDER
AND WITH NO PARTICULAR EMPHASIS)

7. **Legislation versus administrative guidance:** There is a preference for state legislatures to address taxation of digital items rather than through administrative guidance.
8. **Whitepaper versus model statute:** Most people liked the idea of developing a whitepaper / best practices for policymakers to use as guidance. Fewer people asked for model statutory language.
9. **Focus on today versus the future:** Stakeholders recommended focusing on the digital goods that exist now (instead of trying to look ahead) and making rules that are broad enough to cover future innovation.

OTHER STAFF RESEARCH

- Review of the market and states (ongoing)
- Studies done by AZ and LA (links on the project page)
- Pending legislative studies in NJ and MS
- Various online sources, including CSPs (select links on project page)
- Streamlined state information – available on the Streamlined website
- State revenue department information (see selected state links on project page)
- Survey of the literature and studies (see links on project page)
- Stakeholder and state administrator discussions (almost complete)

DETAILED OUTLINE OF WHITE PAPER

- Based on:
 - Stakeholder discussions as described.
 - Research cited in the outline as well as on the project webpage – here:
<https://www.mtc.gov/Uniformity/Project-Teams/Sales-Tax-on-Digital-Products>.

DIGITAL PRODUCTS

What are digital products? (Good question.)

- Items that are based in or make significant use of digital technology
- Items whose physical form or result is variable
- Items that may or may not have a traditional good or service as a close analog
- Items that are often provided on a per-use or periodic-payment basis
- Items that may be sold with or embedded in other products

DIGITAL PRODUCTS

Examples:

- Software and apps (with user interface)
- Digital books, music, art, etc.
- Artificial intelligence based services
- Online and similar platforms
- Online or electronic streaming of information
- Operating and communications systems (example – home safety systems)

WHITE PAPER DRAFT OUTLINE

I. General Purpose or Goal of the White Paper –

A. Determine the best approach to making existing state sales taxes adaptable and responsive to changes in the digital economy as opposed to creating a new tax or looking at gross receipts taxes.

B. Determine the approach that is most responsive to issues identified by stakeholders.

C. Determine the approach that will lead to the greatest uniformity.

D. Other [may want to note the common criteria used to evaluate taxes – economic equity, revenue re-liability, etc.]

WHITE PAPER DRAFT OUTLINE

II. Describe the Categories and Sub-Categories of Digital Products and Transactions Generally –

- A. SSUTA definitions of digital products.
- B. Other common state tax definitions.
- C. Typical forms of digital product transactions.
- D. Common and emerging products

III. Important Limitations Facing States that Must be Considered –

- A. Enforcement generally
- B. ITFA's non-discrimination provision and its interpretation and application [which would include survey of litigation and case law as well as other information]

WHITE PAPER DRAFT OUTLINE

IV. Important Issues Raised by Stakeholders –

- A. Continually changing products
- B. Lack of certainty and areas needing more guidance generally and process for obtaining specific, timely guidance
- C. Concern for equity/parity between digital products and other items
- D. Need for some flexibility
- E. General mechanics of the sales tax – especially exemptions and sourcing
- F. Related issues
- G. Provide time for taxpayers to implement changes and for agency to issue necessary guidance

**WHITE PAPER
DRAFT OUTLINE**

V. Survey of the Main Approaches to Including Digital Products in the Tax Base –

- A. States with broad tax bases – generally
- B. States that have specifically enumerated certain digital products – survey
- C. States that have interpreted “tangible personal property” to include digital products – survey
- D. Example – contrasting approaches – taxation of software

WHITE PAPER DRAFT OUTLINE

VI. Pros and Cons of Applying an Alternative Tax –

- (A) True gross receipts taxes
- (B) Digital advertising taxes
- (C) “Data mining” taxes
- (D) Alteration of sales tax mechanics – simplifying the sales tax

VII. Conclusions

ISSUE DEVELOPMENT – EXAMPLE

Issue III. B. In the Detailed Outline

ITFA's non-discrimination provision and its interpretation and application [which would include survey of litigation and case law as well as other information]

- (1) “Electronic commerce”
- (2) “Similar property, goods, services, or information”
- (3) “Internet access”

PROJECT PAGE

- Research & Articles
- Selected State Tax Agency Information - Tax Imposition Related to Digital Products Generally
- Written Comments Submitted
- Streamlined Sales Tax Information
- Economic and Statistical Information
- Related Federal Information

Home Library STREAMLINED SALES TAX GOVERNANCE INPUT Synonyms: 187 Synonyms SALES TAXATION OF ELECTRONIC strawman - Google Search

v/Uniformity/Project-Teams/Sales-Tax-on-Digital-Products

Tax on Digital Products

Sales Tax on Digital Products

Description of Project

At its July 28, 2021 meeting, the Uniformity Committee considered a recommendation from the Standing Subcommittee to begin drafting the outline of a white paper on state sales taxation of digital products. The committee agreed that MTC staff would begin the process and report out at the November, 2021 committee meeting. Those interested in the project can follow the process on this webpage and can also contact Helen Hecht, MTC Uniformity Counsel, at hhecht@mtc.gov.

BACKGROUND INFORMATION

Project Proposal and Recommendation

Presentation by the State of Washington Department of Revenue to the Uniformity Committee at its April 2021 meeting recommending that the committee consider a project to modernize state sales and use tax systems to include digital products.

- [Washington Presentation](#) (Slides)
- [Washington Presentation on Sales Taxes on Digital Products](#) (Video)

Recommendation by the Standing Subcommittee to the Uniformity Committee that the committee begin a project.

- [Final Recommendation - Project on Sales Taxation of Digital Products](#) - as Approved June 17, 2021

Resources

Research and State Information

Research & Articles

Article by Natalia Garrett and Grant Nülle, "[Digital Goods and Services: How States Define, Tax, and Exempt These Items](#)," Tax Analysts, Tax Notes State, May 18, 2020.

Slides of Natalia Garrett - [Digital Goods: How States Define, Tax and/or Exempt Louisiana Research - Digital Products \(2021\) - State Chart](#) and [State Breakdown](#)

National Tax Association Paper (Hecht - 2014) - [Sourcing of Digital Goods and Services for Sales Tax - The Evolution of a Federal Legislative Proposal](#)

Report to the MTC Uniformity Committee (Hamer - 2019) - [Sourcing Digital Goods and Services](#)

Avalara - [State-by-state guide to the taxability of digital products](#) - Gail Cole, Dec. 4, 2020

Presentation to the Arizona State Legislature - Ad Hoc Joint Committee on the Tax Treatment of Digital Goods and Services - [Tax Treatment of Digital Goods and Services: Overview and Cross-State Comparison](#) - 2017

Center on Budget Policy and Priorities (Mazerov - 2012) - [States Should Embrace 21st Century Economy by Extending Sales Taxes to Digital Goods and Services](#)

New York City Independent Budget Office - Fiscal Brief (2015) - [To Tax or Not To Tax the New Economy: Digital](#)

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