



# **SALES TAX ON DIGITAL GOODS & SERVICES UNIFORMITY PROJECT**

**MTC STAFF STATUS REPORT TO  
THE UNIFORMITY COMMITTEE**

**APRIL 20, 2022**

## PROJECT BACKGROUND AND STEPS TO DATE

- April 28, 2021 – Washington state made a presentation to the Uniformity Committee proposing a project to consider a simpler and more adaptable approach to imposing sales taxes on digital products and assigned the proposal to the Standing Subcommittee for review.
- July 28, 2021 – Uniformity Committee approved a recommendation from the subcommittee to begin work on a project studying the application of sales tax to digital products—starting with a whitepaper—and asked staff to begin to prepare a detailed outline of that whitepaper.
- November 9, 2021 – MTC staff reported to the Committee on its work to date, including stakeholders interviewed to assist with development of a whitepaper.

**COMMITTEE  
MOTION: FOCUS  
ON A DETAILED  
WHITEPAPER  
OUTLINE OF  
IMPORTANT  
ISSUES**

- In July 2021, there was a general consensus that the committee should take up a project to draft a white paper—but there was also discussion of how best to begin that process. Ultimately, the committee adopted a **motion to have MTC staff begin the work on a detailed whitepaper outline—noting the most important issues—and asking for input from the public and the states as part of that process. This more detailed outline would then be considered by the committee for further work.**

**STAKEHOLDER  
DISCUSSIONS  
SO FAR  
(ALMOST  
COMPLETE)**

- **Tax Agencies (11)**
  - Arizona
  - California Department of Tax and Fee Administration
  - Colorado
  - Hawaii
  - Iowa
  - Maryland
  - New Jersey
  - South Dakota
  - Texas
  - Utah
  - Washington State

**STAKEHOLDER  
DISCUSSIONS  
SO FAR  
(ALMOST  
COMPLETE)**

- **Academics (3)**
  - Bill Fox, University of Tennessee
  - Orly Mazur, Southern Methodist University Dedman School of Law
  - Adam Thimmesch, Nebraska College of Law
- **Practitioners (7)**
  - BakerHostetler
  - Deloitte
  - Eversheds Sutherland
  - EY
  - Kranz & Associates
  - KPMG
  - MultiState Associates
- **Industry (2)**
  - Avalara
  - Tax Cloud

**STAKEHOLDER  
DISCUSSIONS  
SO FAR  
(ALMOST  
COMPLETE)**

- **Taxpayers (7)**
  - Amazon
  - Apple
  - AT&T
  - Charter Communications
  - Meta
  - Microsoft
  - Verizon
  
- **Organizations (9)**
  - 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
  - Streamlined Sales Tax Governing Board Staff
  - Tax Foundation

**QUESTIONS WE  
ARE ASKING  
STAKEHOLDERS  
(SLIGHT  
MODIFICATION  
FOR SOME  
STAKEHOLDERS)**

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.
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?

# PRELIMINARY TAKEAWAYS FROM STAKEHOLDER DISCUSSIONS SO FAR

(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.
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.



# PRELIMINARY TAKEAWAYS FROM STAKEHOLDER DISCUSSIONS SO FAR

(IN NO PARTICULAR ORDER  
AND WITH NO PARTICULAR EMPHASIS)

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.
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.

## STAFF TASKS

- 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)

# POSSIBLE ISSUES

1. Survey of Digital Products and Evolution of the Products
  - Software related or enabled including data storage and retrieval
  - Apps of all types
  - Items similar to tangible products – music, books, etc.
  - Streaming and video
  - Gaming systems and software
  - Items similar to traditional services
    - Educational and instruction
    - Design
  - Website, platform, and media related
  - Electronic surveillance and security
  - Other interactive software, data analytics, and artificial intelligence
  - Digital advertising
  - Nonfungible tokens (NFTs)

# POSSIBLE ISSUES

2. Traditional Sales & Use Tax Framework
  - Imposed transaction by transaction
  - Separate statement of tax and collection from customer
  - Sourcing to customer location for tax rate determination and distribution
  - Exemptions – common types
    - Sale for resale
    - Inputs
    - Exemptions to alleviate regressivity
    - Other preferential items
  - Use tax and credit
  - Interaction with other excise taxes – in lieu of or in addition to
3. Streamlined agreement and rules related to digital products
4. Federal laws relating to “digital assets” and other federal proposals
5. International approaches; OECD Pillar 1 and digital services taxes

# POSSIBLE ISSUES

## 6. Challenges Fitting Digital Products into the Traditional Framework

- Definitions
  - Drawing lines depends on what the tax base will include or not include (e.g. services)
  - Pros and cons of broad versus specific definitions
- Differences in transactions
  - Sales versus periodic payments
  - Methods of delivery
- Bundling taxable and nontaxable items
- Sourcing
  - Items delivered electronically
  - B-to-B transactions where the product is used in multiple locations simultaneously
- Exemptions
  - Parity with tangible products and other services

# POSSIBLE ISSUES

7. Pros and Cons to General State Approaches
  - No digital products included
  - Broad interpretation of traditional terms
  - Specific statutory inclusion – Streamlined
  - Specific statutory inclusion – Non-Streamlined
  - Broad-based (statutory) tax imposition
8. Policy Considerations
  - Simplicity and certainty
  - Regressivity
  - Parity
  - Tax on business inputs
9. Revenue Impacts

**PROPOSED NEXT  
STEPS UNTIL  
AUGUST 2022  
UNIFORMITY  
COMMITTEE  
MEETING IN  
ANCHORAGE, AK**

1. Finish stakeholder discussions.
2. Outline issues for a whitepaper as per Committee motion.
3. Solicit names in anticipation of forming a workgroup after the August meeting.
4. Continue monitoring Streamlined activities.
5. Continue development of information and resources on project page.
6. Survey of the market
  - a. Tracking products and their evolution
  - b. Noting ways in which products may be defined
7. Summarize and analyze policy considerations
8. Distill issues and prioritize them
9. Consider the particular problems of a product-by-product approach compared to a more general imposition with related policy-based exemptions.

# 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](mailto: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](#)



# MTC DIGITAL PRODUCTS PROJECT STAFF

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