



SALES TAX ON DIGITAL GOODS & SERVICES UNIFORMITY PROJECT

MTC STAFF STATUS REPORT

NOVEMBER 9, 2021



PROJECT BACKGROUND

- 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.

MTC DIGITAL PRODUCTS PROJECT STAFF

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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

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](#)

ISSUES & TASKS

- Review of the market (begun and ongoing)
- Survey of the current system
 - What states are doing (ongoing review)
 - Studies done by Arizona and Louisiana (links on the project page)
 - 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 discussions (underway)
- State administrator discussions (starting soon)

**STAKEHOLDER
DISCUSSIONS
SO FAR
(MORE TO COME)**

- Natalia Garrett - Arizona Department of Revenue (has since left)
- Carolyn Kranz - Kranz & Associates
- Scott Peterson - Avalara
- Jessie Eisenmenger, Matt Fox, Stephen McDonald - Amazon
- John Ficara, Denise Harding, Jennifer Maloney – New Jersey (concerning their legislatively mandated state study)
- Todd Lard and Charlie Kearns - Eversheds Sutherland
- Fred Nicely – Council On State Taxation
- Max Behlke - Electronic Transactions Association
- Michael Mazerov - Center on Budget Policy and Priorities
- Deborah Bierbaum - AT&T
- Bruce Johnson - Tax Cloud
- Elena Xu and Howard Lam – Meta
- Matt Hunsaker – BakerHostetler
- Written Comments received from the ABA – see project page for details

QUESTIONS WE ARE ASKING 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?

A FEW PRELIMINARY TAKEAWAYS FROM STAKEHOLDER DISCUSSIONS SO FAR

(IN NO PARTICULAR ORDER
AND WITH NO PARTICULAR EMPHASIS)

- 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
- The MTC should be mindful of what the Streamlined states have done and are doing with respect to taxation of digital products; the Streamlined approach is beneficial to taxpayers because they can rely on those states having to follow the Streamlined rules
- Guidance is needed with respect to definitions and sourcing, but attention is needed to bundling, multiple points of use, and related issues; eliminating “B to B” transactions would simplify taxation issues
- Some are concerned that clear definitions will lead to more taxation of digital goods and services
- 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, 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.
- 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.

POSSIBLE ISSUES

- 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

- 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
- Streamlined Agreement and Rules Related to Digital Products

POSSIBLE ISSUES

- Challenges in 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

- 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
- Policy Considerations
 - Simplicity and certainty
 - Regressivity
 - Parity
 - Tax on business inputs
- Revenue Impacts

OTHER RELATED ISSUES

- Impact of cryptocurrency on the administration and enforcement of sales tax
- Federal treatment of cryptocurrency

**NEXT STEPS
UNTIL APRIL
2022
UNIFORMITY
COMMITTEE
MEETING**

- More stakeholder discussions
 - Summary of stakeholder concerns and input
- State administrator discussions
 - Summary of experience taxing digital goods & services
- Survey of the market
 - Tracking products and their evolution
 - Noting ways in which products may be defined
- Summary of analysis and policy considerations
- Distillation of the issues and prioritization of those issues
- Outline of a whitepaper and continued development of information and resources on project page