



MULTISTATE TAX COMMISSION

NOTES of MEETING - DRAFT

MTC Work Group – Sales Taxation of Digital Products

February 2, 2023

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 no initial public comments.

III. Review of Notes from January 5, 2023 meeting –

Brewer asked Nancy Prosser (MTC General Counsel) to summarize the notes from the previous meeting. Prosser mentioned the notes were available on the project page and shared the notes on the screen. She then asked if there were any changes or additions to the notes from the previous meeting. There were none.

Prosser recapped the January meeting, particularly the ongoing discussion of the proposed definition of “digital product” and staff’s discussions with market participants, which would be covered in more detail later.

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. She noted the release of the New Jersey and Mississippi legislative reports. The Mississippi report was released last year, and the New Jersey report was released last week.

V. MTC staff activities since January 5, 2023 meeting –

Prosser presented a set of PowerPoint slides providing background on the project since October of 2022. She recapped the previous meetings and the discussions of “digital product.” She also highlighted what the Uniformity Committee had asked of the project in November, specifically noting the request for a summary of state experiences taxing digital goods and services and for a survey of the market. Prosser stressed that it is not the intent of the MTC staff to suggest what states should tax. The staff is facilitating the meetings and work of the work group members.

Jonathan White (MTC staff) presented a report on the staff’s research of the current taxation of digital products, focusing especially on the non-SSUTA states. This research will be completed in March.

Prosser noted the staff’s meetings and interviews with private-sector representatives from Avalara, Amazon, Eversheds Sutherland, Yetter Tax Consulting, and the Consumer Technology

Association. Prosser noted that the industry people interviewed so far have been a mix of tax people and non-tax people.

Prosser stressed that some cautioned against the breadth of the proposed definition. She noted that stakeholders wanted clarity and certainty in taxation and expressed their frustration with shoehorning of products into existing sales tax categories. She stressed that the most critical thing for most participants was clarity and certainty. Prosser noted that some stakeholders mentioned Washington's approach as helpful because although broad, it gives certainty. Prosser also mentioned that some recommended looking at international definitions, particularly those from Value Added Tax jurisdictions, since many companies are international and will be familiar with those terms. She mentioned that stakeholders cautioned against overstepping into telecommunications and other regulated industries.

Prosser also covered some "pain points" which included the "-aaS" products, which deserve more research, as well as B2B transactions and items that overlap with services. Prosser mentioned a recent Transaction Privilege Tax case from Arizona, and the related issue of broad definitions of tangible personal property overlapping with digital products. She mentioned that tokens are not clearly addressed and raise broad issues.

Prosser requested greater guidance from the work group members on the direction of the project. She asked specifically whether the language of the white paper should be amended to make clear the project is not pushing any specific taxation. Prosser mentioned the need for more guidance on the issue of whether a broad approach or a more narrow, incremental approach is preferred.

VI. Discussion of project scope and definitions –

Brewer mentioned the previous discussions' casting of a broad net as a means of trying to educate everyone on what a digital product is and to expose what states are dealing with in determining the tax base. Brewer turned to how we want the project to go forward and stated it might not be productive to continue to discuss the broad definition, or scope, of digital products. He recommended pivoting back to a discussion of what type of end product should be taxed. He noted the staff's discussion with market participants and his hope that some of those participants would address the work group directly.

Prosser discussed the staff's efforts to set up a group of market sector participants to speak with the work group at a separate meeting in March.

Brewer stated it is important to give a status update at the April meetings in Long Beach. He asked the participants, particularly the regular state participants, what exactly do you want from this project? Brewer stressed that the work group members need to be directing the work.

Brewer queried the type of end product the work group should be trying to achieve. Once that is clear the group can move down that path specifically. He mentioned several different options: a roadmap towards broad taxation of digital products, identified segments of the digital products market, and implementation and administrative details. Brewer stated he wants to discuss this at the in-person meetings in April.

Brewer then opened the meeting to general comments. He asked for comments first from the states, then Streamlined staff, then members of the public.

Brad Heller (CDTFA) stated that he favors a general education direction for the project, meaning something that will help administrators understand products and how to describe them. He also thought the group should consider whether there is a uniform approach states might pursue. He mentioned that California has not taxed digital products, so setting out options to get some uniformity with other states or other tax types even, like VAT, to get some possible buy-in from states may be a useful strategy. He also favors practicality. He wants whatever the result is to give practical options. He mentioned the Digital Goods and Services Tax Fairness Act and its definitions and that those do a good job of describing things in a way that could be explained to an auditor. He also mentioned the streamlined approach and that this demonstrates there is a huge world of digital goods that states might use to determine what to tax. He also mentioned the difficulty with NFTs and their various uses.

Brewer highlighted the statement about uniformity and that that can make it all easier. Brewer then asked for input from the Streamlined work group ex officio members.

Craig Johnson (Streamlined Executive Director) commented first that certainty and clarity were critical issues. He stated that if more definitions are needed then that is something Streamlined could look at. He specifically mentioned “products delivered electronically.” He noted the business community’s objections on grounds that once you define it, they will tax it and the competing observation that once you define it, they will exempt it. Streamlined has had success working out uniform definitions and offered to help with this through the Streamlined process. He noted that input from the business community is important because they will be there when legislatures consider imposing tax.

Johnson commented on the research the staff is doing, noting that the role of permanent use, less than permanent use, or continued payment in taxation must be kept in mind and are important criteria to the business community. He offered to provide a Streamlined spreadsheet and noted his standing offer to help with this project.

Brewer mentioned that the group should not be worried about whether if defined they will tax it or exempt it; those are legislators’ concerns rather than tax administrators’ concerns. He stated that this is about creating a tax system that works well.

Ray Langenberg (TX) stated he might move for adoption of the standing subcommittee’s recommendations as the scope of this work group. He stated the recommendations consist of six bullet points and that in his opinion it is good guidance for the group.

VII. Next steps

Brewer reiterated what had been covered during the meeting and noted the possibility of an additional meeting in March to meet with market participants. He mentioned the next regular meeting is scheduled for March 2. He noted that since the April in-person Uniformity Committee meetings take place immediately before the scheduled May meeting, there will be no May meeting. The work group will then meet again in June.

VIII. Adjourn

Brewer then adjourned the meeting.