

September 21, 2022

Helen Hecht
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Dear Helen:

We are submitting this letter regarding the Multistate Tax Commission's [Sales Tax on Digital Products Project Work Group](#) and its Discussion Draft of Detailed Outline of a White Paper on Sales Taxation of Digital Products. Unfortunately, we are unable to attend the first video conference of the Work Group scheduled for September 22 and offer our views as to its scope. We are writing to express our own views, which may be different than those of our clients and colleagues.

We appreciate the MTC Staff's significant efforts to prepare the Discussion Draft and general willingness to take on such an important project. We look forward to constructively participating in the Work Group discussions and contributing to its work product. As the Work Group begins to draft a white paper, we would like to note the importance of defining its scope.

By way of background, the Discussion Draft does not fully incorporate the Streamlined Sales and Use Tax Agreement's adoption of its Digital Products definitions and operating rules, which took effect on January 1, 2008.¹ The Agreement generally took a balanced approach with respect to its Digital Products definitions, limiting defined terms to "specified digital products" – "digital audio works," "digital audiovisual works," and "digital books."² This limited approach to defining Digital Products allowed stakeholders to develop definitions and a series of important "toggles" – "end user," "permanent use," "conditioned on continued payment," and "subscriptions" – that allow member states to use the uniform definitions and also provide needed flexibility.

¹ See SSUTA, App. C, Product Definitions ("Digital Products") and SSUTA § 332. Subsequently, effective January 1, 2010, the Governing Board approved SSUTA § 333 and amendments to SSUTA § 332. Collectively, these model rules and definitions provide member states numerous options to tax digital products, if done so by statute.

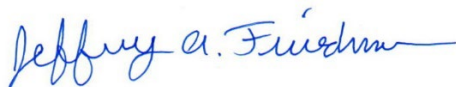
² Consistent with the Digital Products provisions, some member states tax digital goods beyond those "specified digital products" defined in the Agreement.

Importantly, the Agreement makes clear that it does not “influence a member state to impose a tax,”³ and certainly no member state was required to adopt the Digital Product provisions *unless and until* its legislature decided to impose tax on those items. Nonetheless, the adoption of the Digital Products provisions in 2008 paved the way for member states to legislatively expand their tax bases to include digital products using uniform definitions and toggles.

The Streamlined experience to define a limited number of digital products provides an important backdrop to the MTC’s effort. We encourage the MTC to follow a similar path: to carefully – and explicitly – define the scope of the whitepaper. Specifically, the MTC’s Discussion Draft notes that there is “almost unanimous agreement” that the proposed whitepaper is a good idea. However, there is no description of the scope of this effort. More concerning, the Discussion Draft defines “digital products” to include “digital goods, digital services, or other items.” This broadly defined term does not reflect a clear scope and could unintentionally imply that the Work Group is seeking to sweep in many transactions that presently are outside the scope of states’ tax bases. If that is the mission of this MTC effort, we request that the Discussion Draft explicitly acknowledge it so that stakeholders can determine how best to engage with the Work Group. If the scope is not intended to be as broad as implied, we also ask the MTC explicitly refine its Discussion Draft.

We appreciate the opportunity to provide our views and look forward to future discussions with the Work Group.

Respectfully,



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³ SSUTA § 103.