

# MEETING NOTES

## MTC Work Group – Sales Taxation of Digital Products April 6, 2023

### I. **Welcome and Introductions –**

Nancy Prosser (MTC General Counsel) opened the meeting and announced that Gil Brewer, Washington, Chair of the Work Group, was not feeling well and she would be handling the meeting. Prosser then provided introductory information on the work group and its procedures. Prosser noted that there would be no work group meeting in May due to the in-person MTC meetings in California the end of April.

### II. **Initial Public Comment –**

There were no initial public comments.

### III. **Review of Notes from the March 2, 2023 meeting and the March 28, 2023 special meeting with Avalara representatives –**

Prosser moved to a review of the notes from the March 2 work group meeting and the March 28 special meeting. She mentioned the notes were available on the project page and invited comments and changes to the notes. There were no comments on the notes.

Prosser expressed her gratitude to the Avalara representatives for their time in presenting to the work group.

### IV. **MTC staff update on digital products state research –**

Jonathan White (MTC staff) presented an update on the staff's research into the current sales taxation of digital products. He stated that 27 jurisdictions had responded with feedback and that most of that feedback had been added to the spreadsheet. He thanked the respondents for their feedback. White stated that the MTC will be providing a more detailed presentation of the research at the MTC's in-person meetings in Long Beach later in April. White also announced that the spreadsheet would be released at that time.

Ray Langenberg (TX) asked if there was anything he could do to encourage some feedback from those that have not responded. White noted that several states had responded ensuring they would respond soon. Prosser stated that the MTC staff recognize it is legislative session for many state staff and that other time commitments are likely. She reiterated the MTC's gratitude for those that have already responded and explained that when the spreadsheet is released to the public it will indicate which states have reviewed and verified the information.

### V. **Work group member survey; related discussion –**

Prosser then turned to the survey of the work group members using a PowerPoint presentation that included each question and all responses, which she sent with the meeting notice and is available on the webpage for this project. She presented a recap of the group's

work so far, explained the reasoning behind the survey, and described the survey. The survey was anonymous and limited to the 26 state work group members and the Streamlined Board representatives, who are ex officio members. Fourteen people responded.

Prosser then walked the group through each question and the results.

The survey questions:

1. The final work product expected from this project is a whitepaper. Is a whitepaper still an appropriate final work product?
2. If no, please explain what final work product would be most appropriate.
3. The first topic work group members asked to study was the types of digital products in the marketplace and possible definitions for digital products. We will have a discussion with Avalara representatives about this topic on March 28. Do you want more discussion on this topic in addition to the Avalara presentation?
4. If yes, please explain what information would be helpful.
5. What additional types of digital products would you like to learn more about?
6. Rate your understanding of “digital products” before the first MTC digital products work group meeting.
7. Rate your understanding of “digital products” today.
8. What is the general difficulty of questions you are seeing with respect to sales taxation of digital products—whether those questions are raised by taxpayers, on audit, or otherwise.
9. The Streamlined states have experience working on issues involving digital products and we are planning to have a presentation from Streamlined on that experience and what was learned. Since the work group has both Streamlined and non-Streamlined state members, please tell us what specific issues or questions you would like to see covered in that presentation, for example, definitions, exemptions, sourcing, bundling, other.
10. When we finish studying digital products in the marketplace and definitions, what topic would you like to discuss next? You may want to refer to the project outline or suggest a topic not reflected in the outline.
11. Some might characterize the approach to taxing digital products as generally “broad” or “narrow.” States with a broader approach tax products and services generally, as in New Mexico or South Dakota, or in a state like Washington include broad categories of items in its tax base. States with a narrower approach, like Texas, have specified particular products or services, typically narrowly defined, for inclusion in the tax base. Would it help the work group’s efforts to further study the differences between these approaches?
12. Some suggest there may be an alternative to the very broad or very narrow approaches—using general categories that may not be subject to change as much as some narrower categories might be, but also giving policymakers more choices. Is this an approach that would be useful to study?
13. One approach to this project would be studying ways the states tax digital products – generally broad, narrow, or something in between – along with the pros and cons to each. Is this an appropriate way to proceed?
14. Our focus has been on the taxation of digital products in the context of the sales tax, which is the preferred tax type based on the stakeholder interviews MTC staff completed. Should we maintain that focus as opposed to studying the taxation of digital products and other tax types?

15. One issue raised during our work group calls is whether and how B2B transactions might be exempted from tax. Should the work group study this issue?
16. Rank your interest in studying the following topics from the outline. (9 topics listed).
17. Please add any other comment or information you think would be helpful to the work group.

Responses to the first two questions revealed that a whitepaper is still the preferred work product for the group. One response stated a preference for model language.

Mark Nebergall (public participant) asked what a whitepaper is. Prosser responded that a white paper is an informational document intended to identify issues, possible solutions, and related discussion. She referenced the MTC's whitepaper on marketplace issues and the whitepapers currently being drafted in relation to the MTC's taxation of partnership project as examples.

Responses to questions 3 and 4 revealed a nearly even split between desire for continued study of what is in the marketplace and the position that the work group should move on to other topics. Some respondents thought it would be helpful to hear more from actual sellers after hearing from Avalara. Prosser requested that work group members share any contacts for sellers or others the work group members would like to hear from.

Responses to question 5 revealed that some work group members wanted to learn more about digital advertising, the "anything as a service" category, and cache (computing).

Responses to questions 6 and 7 revealed that members' self-assessed knowledge of "digital products" had increased since the work groups' meetings had begun.

Responses to question 8 revealed that most of the questions respondents field on this topic are generally difficult or considered generally neutral. Few respondents reported digital products questions that were generally easy.

Question 9 asked what the work group members would like to learn about the Streamlined approach to digital products. Prosser mentioned this feedback was timely because staff had arranged for a presentation on Streamlined, both in general and in relation to digital products, at the upcoming MTC Long Beach meeting on April 25. Prosser described the planned presentation by Streamlined Executive Director Craig Johnson and work group member Tim Jennrich from Washington, who has also served as a past president of the Streamlined Board, and a presenter to be named later from industry. The responses were varied, from multiple points of use and sourcing, to the history of the Streamlined definitions, to detail on the definitions themselves, to bundling issues.

Jared Walczak (Tax Foundation) commented that moving towards digital advertising and software-as-a-service products would be entering into a large expansion into business-to-business purchases. He stated that defining these items is only relevant if taxing the items is expected or wanted. He stated that these are items that most experts think do not belong in sales tax bases. Prosser noted his comment and ensured it would be considered.

Question 10 asked about possible next steps. The results were varied. There was no clear single answer, but seeing the various responses was helpful in giving a general sense of the priorities of the work group members.

The next three questions aimed to gauge work group members' feelings about the general approach to take: a narrow approach of defining individual things, a broad approach that

would define items more broadly, or an incremental approach somewhere in between the broad and narrow approaches. The responses revealed that the group favors looking at the different approaches and studying the pros and cons of each approach.

Responses to question 14 revealed that the members overwhelmingly consider the sales and use tax to be the appropriate tax type for the work group to consider.

Responses to question 15 revealed that work group members were interested in studying B2B exemptions for digital products.

Responses to question 16 revealed that work group members have the most interest in studying the Internet Tax Freedom Act, followed by sourcing, then broad and specific definitions, multiple points of use, bundling, NFTs/blockchain, economic data, and business-to-business exemptions.

The final question requested any other comment. Prosser noted a comment stating that the work group was headed in the right direction and that some tension and push-back with the business community is to be expected and encouraging the work group to work hard to maintain a neutral position.

Prosser then paused and asked for any feedback from the participants. There was none.

#### **VI. Next steps –**

Prosser invited feedback on the survey at any time. She described the upcoming in-person meetings at the end of April in Long Beach and invited members' and others' discussion at those in-person meetings. She mentioned that the staff has discussed developing a writeup of the work group's work on definitions and products in the marketplace to date and that that might be coming in June.

#### **VII. Adjourn –**

Prosser then adjourned the meeting.