



MULTISTATE TAX COMMISSION

NOTES of MEETING - DRAFT

MTC Work Group – Sales Taxation of Digital Products

October 27, 2022

I. Welcome and Introductions –

Gil Brewer, Washington, Chair of the Work Group, convened the meeting.

II. Initial Public Comment –

Gil asked if there were any initial comments on the project or the agenda for the call. There were none.

III. Notes from the prior meeting of September 22, 2022 –

Gil asked if there were any additions or corrections to the notes from the prior call of the work group – held September 22, 2022. There were none.

IV. Review of changes to the detailed white paper outline –

Gil noted the changes that had been made to the detailed outline of the proposed white paper and asked if there were any comments on those changes. There were none.

V. Solicitation of public input –

Helen Hecht, MTC, gave a brief background on the issues covered by the outline. Nancy Prosser, MTC General Counsel, noted that it is for the work group to decide what issues are included and what the white paper focuses on. She also noted that the Internet Tax Freedom Act (ITFA) will be the subject of a presentation and discussion at the upcoming in-person Uniformity Committee meeting. She noted that another presentation could be done for the non-Streamlined states on how the Streamlined agreement has treated digital products. She emphasized the need to hear from work group participants.

Gil noted that ITFA is definitely an issue and that Washington had struggled with the need to be consistent in taxing digital products. He also noted that it would be important to consider how business-to-business (B2B) transactions are taxed or exempted. For example, when does a digital product become a component of another product? Because most states are not now getting significant revenue from tax on B2B transactions, making sure there is a clear B2B exclusion is more possible. He also commented that having this exclusion solves a number of other problems, such as multiple points of use.

Brad Heller, California CDTFA, noted that regardless of the approach, having clear definitions can be helpful. And for the work group, understanding what digital products are will also help in analyzing whether they should be taxed. Also, while it may be hard to put things into categories, this process will be useful. He noted that sourcing and commerce clause issues were also important to be considered.

Karl Frieden, Council On State Taxation (COST), expressed appreciation for Gil's comments on B2B transactions. He also agreed that exempting B2B transactions at the point when the tax base is being expanded is easier than doing it after the tax has already been applied to B2B transactions. He also agreed that excluding B2B transactions reduces complexity.

Gil noted that because Washington did not completely exempt B2B transactions, it may not necessarily be a good example to follow.

Shannon Brandt, Texas, recommended that the work group start with defining what digital products are.

Gil noted that this is a difficult endeavor and asked if this might be a project for a task force, or sub-group.

Craig Johnson, Streamlined, noted that if the work group decides to begin by trying to define digital products, it should look first to what Streamlined and other states have done. He also recommended that industry provide information on what kinds of products they are seeing.

Shannon noted that there were other sources for understanding digital products as well, including asking sales tax auditors what issues they are seeing.

Ray Langenberg, Texas, noted that the work group might want to get away from trying to distinguish tangible products from services, or applying that distinction to digital products. He also commented that this was an issue of general interest and likely not one that would be limited to a sub-group. Instead, he recommended that staff begin working on definitions—or possible approaches to categorizing digital products. He also asked what the timeline for something like this might be.

Gil commented that it would be nice to start on a clean slate, as it were, and think creatively about how it might best be done.

Helen commented that in order to begin work in definitions, it might be important to understand the work group's purpose—whether to think about definitions from a description standpoint, a policy standpoint, or to be able to estimate the size of the market and potential revenue.

Nancy noted that the New Jersey study, which should be released shortly, may shed light on the categories of digital products and their relative market share.

Gil asked staff whether they could begin to work on definitions and if that might spur further discussion.

Michael Fatale, Massachusetts, commented that, out of the box, it may not be a good idea to figure out what is property and a service – this could be problematic. Instead, we might determine what are the types of transactions that are happening and define transactions – then come back to the question of what is tangible. He also noted that this would not be to create legal definitions of these terms—but to enable the group to understand the categories of items being discussed.

Helen asked whether the goal would be to look at the definitions that already exist, create those definitions, or simply describe the products.

Gil responded all of these. Michael responded that he is referring to general categories rather than definitions.

Craig commented that it would also be important to understand how things have changed over time, to look for commonalities and also how things have evolved. The interaction of current definitions with new products is important. And he noted Streamlined has also done work on this.

VI. Next steps

Gil recommended that the staff start working on identifying the types of items that would be included in digital products, including looking at how these products have been defined, continue their research on ITFA, and then report back at the December 8 call.

VII. Adjourn