

MEETING NOTES

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

I. **Welcome and Introductions –**

Gil Brewer, Washington, Chair of the Work Group, convened the meeting and provided introductory information on the work group and its procedures.

II. **Initial Public Comment –**

Karl Frieden (COST) provided feedback on the multi-jurisdiction spreadsheet of current state treatment of digital products presented at the June 1 workgroup meeting. He suggested an additional column for business input exemptions. He stated there will not be much information to add to because so few states provide exemptions from business inputs, but that including it would highlight an important issue.

III. **Review of Notes from the June 1, 2023 meeting –**

Brewer stated that the notes from the June 1, 2023, work group meeting were available on the project page on the MTC website and invited comments and changes to the notes. There were no comments or changes.

IV. **Discussion of June 1, 2023 presentation by MTC staff Jonathan White - digital products state research –**

Brewer reminded the group that the spreadsheet, a summary of the June 1, 2023 presentation, and a video of the presentation are all available on the project page on the MTC website.

Brewer asked for any feedback on the presentation from the June 1 work group meeting and reminded work group members to present any changes to MTC attorney Jonathan White to keep the spreadsheet updated.

Josh Pens (Colorado) commented that the spreadsheet and presentation were helpful. He specifically mentioned the spreadsheet's "shirt sizing," or, the categorization of each state by its tax base, as helpful. He stated that the categorization helped members get their bearings and have a taxonomy to work with.

Emily Cramer (West Virginia) stated that she liked the written summary and how concise it was. She also stated that she liked the micro view of certain states. She stated that narrowing the view and zooming in on certain states to demonstrate the broader issues was helpful.

Brad Heller (California) stated the spreadsheet revealed to him the number of states that have done substantial work on digital products. He stated that this demonstrated a need for uniformity. Brewer agreed and stated that he was surprised to see how many states had dipped their toes on digital products.

Mark Nebergall (public participant) stated he was surprised that some people were surprised to find that so many states had done so much on digital products, specifically noting the Streamlined project and all it has done. Brewer followed up stating that Nebergall has a natural multistate perspective given his role, but that many state staff, including him, are generally forced to focus on their own state's issues, that they develop little multistate perspective.

V. Next steps –

Brewer then asked Nancy Prosser (MTC General Counsel) to provide an update on the project and what the MTC staff had been developing for the work group.

Prosser first walked through the project page on the website, noting the changes to the organization and arrangement of materials. Prosser highlighted the meeting materials and research and analysis sections of the project page. She explained that all materials from each meeting were listed and organized by meeting date. She mentioned that because of this, some items in the research and analysis section are repeats of items in the meeting materials section.

Prosser highlighted the written comments and feedback section that is specifically for feedback from the public and practitioners. Prosser stated that MTC staff are compiling relevant state agency information in a separate section as well and invited the states to inform MTC staff if there are state documents to add to the project page.

Brewer noted Kelvin Lawrence's article from Bloomberg Tax, included in the written comments and feedback section, as particularly interesting and helpful and a unique perspective. He stated he would return to this article later in the meeting.

Prosser then moved to a discussion of the upcoming in-person Uniformity Committee meeting in Austin. She noted that business-to-business exemptions have been a concern of work group members and the business community throughout the project. She stated that Karl Frieden from COST, Jared Walczak from the Tax Foundation, Gil Brewer from Washington and Chair of the work group, Michael Ettlinger from the Institute on Taxation and Economic Policy, and a staff from the Texas Comptroller of Public Accounts will have a focused panel discussion during the Uniformity Committee meeting on business-to-business exemptions and their relevance to digital goods. Prosser stated the MTC's intention is to record the discussion for availability on the website.

Prosser moved to the next steps for the work group and its deliverables and shared an early draft of an Excel spreadsheet presenting the issues noted in the draft whitepaper and columns for inputting how the broad, medium, and narrow approaches revealed in Jonathan White's multistate research interact with each issue. Prosser noted the document is a work in progress and the current version is for demonstration purposes only.

Prosser noted that the information filled into this matrix will be a starting point to discussion. She stated that a fuller description of each issue was needed and that the detail garnered through this document will ultimately drive development of the whitepaper.

Prosser walked through several of the issues in the matrix, noting again that the current information is only a starting point. Prosser noted the issue of the degree to which each approach can adapt to changes in products, noting that a broad approach may allow more administrative flexibility. Brewer stated that he agreed there may be more flexibility but

added that with a broad approach comes more exemptions. He stated these exemptions must be managed and maintained; it is not only flexibility with the tax base but with the exemptions. He stated that as the economy changes it takes effort to keep exemptions aligned with what the legislature and the public wanted and expected to be exempt. He offered this as an example of the things the group might hear from state representatives to be added to the matrix.

Bruce Johnson (public participant) stated that some of the questions or issues presented might be leading questions. He used the adaptability question as an example, stating that some would think administrative flexibility is a good thing while others would think there should be little flexibility. He mentioned that it should be a fair representation of each perspective.

Ray Langenberg (Texas) stated he believes the research done so far satisfies the uniformity committee's charge to explore what digital products states currently tax. He then asked whether the work group needs to vote or otherwise make it clear that that work is appended to the work group's white paper. Brewer agreed that the research done satisfies the requirement. Langenberg asked whether the matrix being presented now will be part of that text in the whitepaper. Brewer used the shirt sizing analogy from earlier in the meeting to state that the idea is to present three approaches and pros and cons of each.

Langenberg questioned whether this is the best way to get there, he stated that there are many different broad approaches, that looking at one broad approach is not the way. He stated that he would present two approaches: (1) taxing digital products within the rubric of tangible personal property, and (2) taxing digital products outside the rubric of tangible personal property.

Langenberg explained that Texas has gone outside the rubric of tangible personal property, with amusement services as just one example. He mentioned the Streamlined Agreement goes outside the rubric of tangible personal property in their treatment. Langenberg stated that going outside the rubric of TPP is the better option. He wants to focus on the way states have gotten to their current tax bases, whether inside the rubric of tangible personal property or outside the rubric of tangible personal property.

Mark Nebergall stated that he agrees with Langenberg that the method of going outside the rubric of tangible personal property is the better option.

Brewer stated he could think of another permutation with no categories: that the state taxes all consumer purchases. He stated that the work group must deal with all the issues, however it looks at the approaches. Brewer stated that the 'within tangible personal property' and 'outside of tangible personal property' dichotomy would get worked in through the comments and development of the spreadsheet. He stated that under the narrow approach there is already mention that in narrow states a common requirement is that tangible personal property have some physical component.

Diane Yetter (public participant) stated her support for using the matrix because it provides organization to the issues. She stated that she would prefer more specificity in the document than is represented by the current examples. Yetter requested notation of representative states for certain provisions or examples, meaning, a designation of which state or states carry a provision being discussed. She stated that in some instances a narrow state might have a broad approach to a particular issue and it may be important to note that.

Yetter pointed to the MTC's prior marketplace facilitator project, staffed primarily by MTC National Nexus Director Richard Cram, as a possible model for this project. She described that project's study of various definitions of marketplace facilitator, generation of a generic broad definition and a generic narrow definition, and notation of the differences within that larger categorization. Overall, Yetter requested more specificity. Prosser reiterated that the current version of the document is just a starting point.

Brewer returned to Kelvin Lawrence's article from Bloomberg Tax. He stated that the article recommended focusing on definitions before moving to the analysis the work group is now considering. Brewer stated his belief that the work group can move on without developing a set of specific definitions. Brewer again invited work group members and the public to provide input into the matrix spreadsheet. Brewer mentioned the upcoming in-person uniformity committee meeting and the August 3 work group meeting that is scheduled soon thereafter. Brewer stated the August meeting may be cancelled and invited feedback on whether to do so.

VI. Adjourn –

Brewer then adjourned the meeting.