

## **Gil Brewer: Consensus Builder**

**by Jennifer Carr**

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In April 2021 Gil Brewer and two staff members from the Washington Department of Revenue, Jon Yrjanson and Katie Koontz, made a presentation to the Multistate Tax Commission's Uniformity Committee regarding Washington state's experience taxing sales of digital goods — an area that the state had been dealing with for over a decade, but did not yet “seem to have gotten much traction nationally.”

Even though the Washington DOR certainly did not have all the answers, “we thought it would be a good idea to have that presentation just to let people know we have a decade's worth of experience working on this stuff now,” Brewer told *Tax Notes*. “We just thought it was a good idea to get people talking and working together on it. [We] never thought of something like the project. . . . We had nothing concrete in mind — just kind of wanted to spur people thinking about it.”

Despite these modest expectations, that presentation led to a significant development at the MTC. Two months after the DOR's presentation, the MTC's Uniformity Committee adopted a resolution asking the Standing Subcommittee to “consider a project to prepare a white paper on sales taxation of digital products.”

“Gil's visionary work on digital taxation made Washington a national leader on this topic and provided a blueprint for other states to follow,” Washington DOR Director Drew Shirk told *Tax Notes*.

“Of course, having Gil be the chair of that work group made a lot of sense given his experience — so when he volunteered for that role, there was complete consensus that he take the lead,” said Helen Hecht, the MTC's uniformity counsel.

Since then, the work group has received input from individuals and entities across the state tax world regarding the sales tax issues that have been

created as the economy moves rapidly from one based on tangible goods to intangible products and services. “Not only is it hugely important, but it's just huge in the number of issues that you have to touch on,” Brewer said. And although progress has been slow at times, Brewer noted that the discussions have helped the various groups find a common ground, even if it was only to better understand each other's concerns.

For his work as chair of the MTC's Sales Tax on Digital Products Work Group and in the area of digital products taxation generally, Brewer has been selected as the *Tax Notes State* Person of the Year for 2023.

### A Winding Road to Olympia

Brewer, who grew up in Pittsburgh, found himself thinking about how he was going to earn a living with the English degree he received from the University of Pittsburgh. He was also looking for a smaller school when he decided to pursue a law degree. That led him to the University of Maine. Three years later, his first job was as part of the Maine legislative staff.

In a tale familiar to many in the state and local tax arena, Brewer says he wasn't exactly thrilled when tax was raised as a potential area of employment. “I still remember the interview, and they asked me, ‘what subject areas are you interested in?’” he said. When the interviewer suggested tax “because they have trouble recruiting people for tax,” Brewer was emphatic: “Anything but tax. . . . Do not put me on tax.” Yet, once he was disabused of the popular notion that tax was mostly a bunch of numbers, Brewer says he was hooked.

“What I found is that when you get into the policy side of tax, it's everything. I want to have an electrical engineer on my staff, I want to have a nuclear engineer, I want to have a physician because we get into all those topics.”



*Gil Brewer*

That curiosity and what Jeff Friedman of Eversheds Sutherland (US) LLP described as “his open-minded approach to problem solving” served Brewer well as he worked in policy positions in Hawaii, Micronesia, and Maine before ending up in Washington in 2001. After a brief stint with the West Virginia Tax Department, Brewer returned to the Washington DOR, where he serves as the Senior Assistant Director of Tax Policy.

“His knowledge, expertise, and leadership have been critical to our state’s ability to effectively administer state tax laws and public services with integrity,” Shirk said.

Among the projects Brewer said he is proud to have been a part of at the DOR are implementing the Streamlined Sales and Use Tax Agreement when Washington became a member, administering single-sales-factor sourcing for the state’s business and occupation tax, and helping to develop a tax avoidance statute — “in the end, we got something good out of it and amazingly the problem disappeared.”

However, perhaps the biggest legacy issue Brewer says he was able to work on was improving overall uniformity within the department. “We have almost 1,500 employees now, and trying to get everyone on the same page is a chore,” he said. However, the “concerted effort” to get divisions within the DOR speaking “in one voice” on the variety of issues and functions it handles has been successful to a large extent, according to Brewer. It’s “not perfect . . . but we’ve made huge strides,” he said.

### **‘No Magic Silver Bullet Solution’**

Brewer, who has announced his retirement tentatively scheduled for February 1, 2024, certainly signed on to a difficult project with which to wrap up his career. Developing an approach for the sales taxation of digital products — products that are constantly being developed and changed — is no easy feat, especially when it requires the buy-in of individuals and entities with widely differing concerns and perspectives.

“It can be a slow process to get the information that the group needs just to start building a common understanding of the issues and then agree on some common best practices,” Hecht said. Karl Frieden of the Council On State Taxation agreed: “It hasn’t been easy. It’s a contentious topic.”

Despite the slow start, made even rockier when the work group floated a broad definition for what constitutes a digital product — “that got very contentious very quickly,” Brewer said — both sides have gradually come together to make significant progress toward what he hopes will be a guide for state policymakers. Frieden said Brewer’s “very thoughtful and open-minded” approach as chair has been useful. “It led to good dialogue.”

Big issues certainly remain unresolved, however. Frieden cited the taxation of business-to-business purchases and the Internet Tax Freedom Act as examples. Brewer echoed federal preemption through the ITFA — a statute that has very little case law interpreting it and no guidelines or rules implementing it. Despite the daunting task that lies ahead, Brewer remains optimistic: “I think this is a real opportunity for this work group to dig in and again listen to both

sides . . . and find some middle ground that makes sense and will be administrable.”

The outcome might be more manageable, Brewer said, because of the work group’s decision to move away from a “uniformity project in the sense of ‘here’s a recommended statute’” to “more of a guide to best practices and advice.” Brewer said that providing policymakers a range of options will help them make informed decisions and will help the work group because members don’t have to all agree on a proposal — “just, we agree on the impacts of this proposal.”

Finally, Brewer said the continuous changes to digital products make the idea of a work group final product difficult to comprehend. “We’ve been talking lately that this might become one of *those* MTC projects that really never ends. Particularly when you’re looking at the digital environment — it changes every day,” he said. “There’s no magic silver bullet solution.”

### **‘Listen and Simplify’**

Given Brewer’s pending retirement, the digital products work group will have to proceed without him. He does not have any specific retirement plans but looks forward to having the time to relax and perhaps resume the woodworking hobby that his work schedule has made difficult to keep up with.

Regardless of where he lands, it’s clear that the SALT community will be worse off for his absence. “Gil’s retirement will be felt by all of us engaging in the Multistate Tax Commission’s digital products discussion,” Friedman said. “Most importantly, I’ll miss just hanging out with Gil before and after meetings and conferences.”

Friedman said Brewer’s “diplomacy and a good-natured approach and adding his own experiences in a productive way” have been invaluable for the progress the work group has made so far. Hecht concurs with the sentiment: “I just hope he knows that he has made a real impact by showing up and bringing what he knows, which is a lot, to the table to share with others — and by doing it in such a gracious way.”

For his parting advice, Brewer offers “listen and simplify” — two ideas that have been particularly important when wading through the complicated issues raised by the MTC project. Even though he’s been dealing with digital

products for over 10 years in Washington, Brewer said that working with diverse groups from across the nation was eye-opening on a lot of fronts: “Hearing from others’ experience [from] both other state agencies and the private sector, [and] saying ‘oh, I didn’t think of that. I didn’t realize that.’”

“Listen to people; there’s a lot out there. We tend to get focused on what we know. We need to stay open to hearing those other points of view,” he added.

Regarding simplification, Brewer counseled against the tendency to try to “cut things finer and finer and split more and more hairs.” The administrative costs, for both taxpayers and the agencies, can be overwhelming. He said we need to “not worry so much about getting every exact individual situation precisely how we think it’s fair” and accept solutions that are “pretty darn good but balance the administrative costs.”

“There’s got to be a limit, folks.” ■