



## MEETING NOTES

### MTC Work Group – Sales Taxation of Digital Products

February 1, 2024

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

Tim Jennrich (Washington), Chair of the Work Group, convened the meeting and provided introductory information on the work group and its process. He noted, in particular, that the discussions are typically informal and state participants who speak during those discussions do so from their own experience.

#### II. **Initial Public Comment –**

Jennrich invited any initial public comments. Karl Frieden, Council On State Taxation (COST), noted that he and Fred Nicely, also of COST, had written an article on the subject of taxing business inputs, published in Tax Notes – State. Frieden asked if the article could be placed on the MTC's project website relating to this project and Nancy Prosser (MTC) responded that would be done.

#### III. **Review of Notes from January 11, 2024 Work Group Meeting –**

Jennrich asked for if there were any changes to the notes of the January meeting. There were none.

#### IV. **Discussion of Work Group Vice Chair –**

Jennrich told the work group that he would like to invite state members to volunteer if they are interested in being a vice chair of the work group and described that role. He noted the chair and vice chair have the support of MTC staff in the work and did not expect the role to take up too much time.

#### V. **Staff Updates – Business Inputs, Matrix and Spreadsheet on State Approaches, and Summary of ITFA Panel –**

Prosser and Jonathan White (MTC) gave a report on the various different subjects that the work group and staff have been working on: the summary of the staff research into the treatment of business inputs, the summary of the Internet Tax Freedom Act panel at the November, 2023 meeting, the spreadsheet defining states' current digital tax bases, and the general matrix describing the approaches that states take to taxing digital products—including how the different approaches may be considered broad, medium, and narrow. The matrix lists important issues, such as sourcing, that states need to consider when taxing digital products and how each issue might affect states taking different approaches. White noted that the work on the matrix and spreadsheet has been continuing as states provide additional information and a revised version of the matrix will be issued by the next work group meeting. Prosser stated that the staff has not received additional comments on the

matrix from non-state stakeholders and so staff will continue to develop the matrix based on the information received to date.

#### **VI. Update on SST Codes and Sourcing Projects –**

Jennrich introduced Craig Johnson (Streamlined) and invited him to give an update. Johnson noted that the Streamlined states have been working on the issue of what kinds of information sellers must obtain and use in sourcing digital products. The way the states typically specify this in their law generally is in terms of the details of the customer's address. Some states may need the physical street address in order to determine the proper tax. Others may only need the nine-digit zip code. If the seller can't obtain anything more than the 5-digit zip code, then the states may not get sufficient information to determine the proper local tax—so this also affects local governments. Sellers must use "due diligence" to get the necessary information. But sellers are also worried that asking customers for identifying information may be seen as overly intrusive. In addition, Johnson noted that states should be cognizant of the potential undue burdens that collecting the information might put on interstate commerce. For all these reasons, Streamlined has been working on a proposal for specific rules that apply to transactions that don't require a physical delivery address. Under the proposal, the seller would request the nine-digit zip code, but would only be required to get the five-digit zip code. The proposal would allow states to select from options in determining the tax rate for the five-digit zip code. This proposal is scheduled to be discussed at future Streamlined meetings.

Johnson also noted that the Streamlined states are working on the issue of how to tax the sale of digital codes of various sorts. The proposal being discussed would allow the seller to charge tax at the time the customer purchases the code—rather than, at the time the code is used by the customer. Johnson also noted that the treatment of digital codes would need to be consistent with other rules on digital products that the states have adopted as part of the agreement. This proposal is also expected to be discussed at future Streamlined meetings.

#### **VII. Next Steps Discussion –**

Jennrich noted that the project has made a lot of progress. He observed that he agreed with Prosser and White that it would be the right time to finalize work on the matrix. He suggested that this might be a good time to pivot back to the white paper outline and begin to build out that outline and summarize the information from the different topics there. He expressed his thoughts that this would be good, not only to capture everything while it is still fresh, but also to give people something to review and consider. Helen Hecht (MTC) explained where people can find the most recent version of the outline on the MTC website. Mark Nebergall (SoFTEC and McDermott, Will & Emery) suggested that we include in the outline information from the proposed Digital Goods and Services Tax Fairness Act (DGSTFA). Prosser responded that the outline includes a section on DGSTFA.

Jennrich also noted that there is additional work to be done on the application of ITFA to the issues the project has been discussing and that this might be a good next topic for further discussion. He asked for feedback from the work group to see if there were other topics states might want to turn to next. Work group members Mia Strong (LA) and Ray Langenberg (TX) suggested bundling. Olufemi Obikoyai (DC) suggested sourcing. Michael Fatale (MA) commented that the application of ITFA might be too variable given differences between the

states. Jennrich asked that those that have other ideas reach out by email to him or to MTC staff.

Jennrich asked for any other comments or new business items and there were none.

**VIII. Adjourn.**

Jennrich noted the next work group meeting on March 7 and the upcoming MTC meetings in Kansas City the last week of April, and the meeting was adjourned.