



MULTISTATE TAX COMMISSION

MEETING NOTES

MTC Work Group – Sales Taxation of Digital Products

March 7, 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. There were none.

III. **Review of Notes from February 1, 2024 Work Group Meeting –**

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

IV. **Discussion of and Possible Vote on New Work Group Vice Chair; Comments from the Chair and Vice Chair –**

Jennrich told the work group that he thought having a vice chair was a good idea both for the sake of having diverse views and having succession planning in place. He explained he had reached out to Mia Strong with the Louisiana Department of Revenue about serving as vice chair. Strong is a Louisiana native who works at the Louisiana Department of Revenue as a senior sales tax attorney in the Tax Policy and Planning division. She has been with LDR for almost ten years and recently served as the Confidential Assistant to former Secretary Kevin Richard. She also currently serves as a Commissioner on the Louisiana Sales and Use Tax Commission for Remote Sellers. After describing Strong's background, Jennrich stated that he and the MTC staff had not heard from anyone else. Jennrich opened the topic for discussion, there was none.

Frank Hales (Utah) made a motion to elect Mia Strong as Vice Chair of the Work Group.

Nancy Prosser (MTC) explained the voting process. Jennrich asked for discussion on the motion. There was none. Prosser took rollcall the vote. The motion passed unanimously (CO, DC, KY, LA, MD, OR, SD, TX, UT, WA, WI – present and voting yes). Mia Strong is vice chair of the work group.

Strong thanked the work group members for the vote of confidence.

V. **Staff Updates to the project page and whitepaper outline –**

Jennrich moved to discussion of the work group's next topic. Jennrich mentioned there had been a lot of work on the website and the formatting for the eventual whitepaper. Jennrich invited Lila Disque (MTC) to explain the website changes and show a mockup of what the

whitepaper would look like. He mentioned his hope to move forward at the next meeting if there are no big issues with the format presented today. Jennrich stated that in addition to the website changes, he wants to develop some substance for members to react to.

Jennrich then invited Disque to present. Disque shared a screen showing the mockup website and explained the transition of the existing outline, which was a static pdf document, to a flexible outline sited on the MTC website, with some organizational changes recommended by Jennrich.

Disque explained that the screen being shared was a sandbox version that was not on the live website. She walked through the formatting, showing the way the sidebar menu will provide links to different pages with unlimited links and ability to expand each section.

Jennrich asked for the work group's reaction and discussion. Esther van Mourik (Colorado) said it looked great. Strong said it looked great and will be easy to navigate. Diane Yetter (Sales Tax Institute) wrote in the chat that she liked the ease of navigation between sections.

Bobby Dike (KPMG) asked if this was available on the MTC's site. Disque explained that it was not live yet. She explained the page would be further developed, vetted for mobile device functionality, and tested before going live.

Ray Langenberg (Texas) wrote in the chat that it was a 'digital product for digital products' and further stated, "well, boom."

VI. Discussion of and possible vote on next topic to study, including Ray Langenberg's Proposed Uniform Definitions for the Tax Base –

Jennrich moved to consideration of what topic to consider next. He noted the brief discussion at the prior work group meeting and the informal survey that was circulated. Jennrich thanked members for the input. He reiterated that all topics would be covered regardless of which topic comes next.

Jennrich mentioned that three respondents expressed a preference to consider the Internet Tax Freedom Act (ITFA) next; while three voted for bundling, one for sourcing, and one with no preference.

Jennrich also mentioned Langenberg's proposal for a definition of digital products. Jennrich described it as an opening for future discussion, and as something more concrete to react to and discuss. Jennrich mentioned the study of the approaches, broad, medium, and narrow, and whether we might entertain proposals for each. Jennrich mentioned that Langenberg's proposal would be discussed more carefully later to give members time to read and consider it. Jennrich then invited Langenberg to explain his proposal.

Langenberg explained he was offering the proposal in his personal capacity and that the proposal was not specifically for Texas or aimed at expanding Texas's tax base; he stated Texas already has a broad base. He explained that states need to stay ahead of the curve and that more and more products are becoming digital and less and less remaining analog. He opined that states are already looking for, and will continue to look for, ways to tax digital products. Langenberg wants the group to develop some creative ways to address digital products.

Langenberg addressed the expected criticism of 'if you can define it, you can tax it' and said it is true. But he reiterated that states must stay ahead of the curve. Langenberg mentioned an

old saying, “you can’t put new wine in old wineskins,” and that he has no idea what that means, but that the work group needs to put new wine into new wineskins. He explained that there are new products all the time and the old tangible personal property paradigm has not worked and will not work for the future.

Langenberg finally voiced his willingness to take all feedback that comes to him from this proposal, but he would like to hear others’ constructive ideas, not merely criticism of his idea.

Jennrich said it was his intent to bring this proposal up at the April meeting or another future meeting for further discussion. He invited members and others to reach out to MTC staff or Langenberg with any feedback in the meantime. Langenberg invited this as well. Jennrich mentioned the three approaches that have been studied and queried how this, and possible other proposals, would fit with the three approaches the group has studied.

Jennrich then asked for input from the group about what to consider next. He mentioned his preference to move to bundling rather than moving immediately to the Internet Tax Freedom Act’s (ITFA) federal preemption and opened the question for discussion. He pointed out that bundling builds off the imposition topic we have already studied.

Richard Dobson (KY) stated he thought studying bundling next would be appropriate as it fits with the overall flow of the discussions so far and supports what has been done already. Josh Pens (CO) stated a preference for bundling, but stated the group will have to keep ITFA in the background as bundling will intersect with ITFA. He stated that moving to bundling does not necessarily mean leaving ITFA behind. Pens stated the group might consider spending a session on a refresher on ITFA and possibly on the Mobile Telecommunication Sourcing Act (another federal law preemption state tax authority) as well.

Strong (LA) stated a preference for bundling and further stated it would be very helpful to Louisiana. She mentioned that other states might be dealing bundling questions currently, so considering bundling might provide immediate benefit to several states.

Craig Johnson (Streamlined Sales and Use Tax Governing Board) mentioned that the Streamlined project has been considering digital goods sourcing for the last two or three years. He believes there could be a successful proposal at the State and Local Advisory Council (SLAC) meeting next week. He stated that Streamlined would invite input on that proposal from the members of this work group if it gets approved by the SLAC next week.

Dike asked where he could find the Streamlined proposal. Johnson stated it could be found on the agenda of the SLAC page on Streamlined’s website.

Langenberg made a motion that the work group consider bundling next. Strong seconded. Jennrich asked for discussion of the motion. Langenberg asked if there would be some research from the staff on bundling that would be presented at the April meeting. Jennrich responded that was possible. Prosser responded the staff had done some preliminary research on bundling, would continue that, and would report at the April meeting.

Jennrich closed discussion and asked Prosser to take the rollcall vote. The motion passed unanimously (CO, DC, KY, LA, MD, OR, SD, TX, UT, WA, WI – present and voting yes). The work group will consider bundling next.

VII. Adjourn –

Finally, Jennrich asked whether there was any new business or any other input from states or the public. There was none. He mentioned the next meeting would be held on April 4, 2024, at 11:00 a.m., Eastern time, and adjourned the meeting.