



MULTISTATE TAX COMMISSION

# **SALES TAX ON DIGITAL PRODUCTS UNIFORMITY PROJECT**

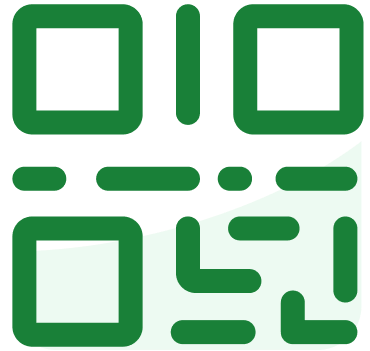
TIM JENNRICH, WA, WORK GROUP CHAIR

MIA STRONG, LA, WORK GROUP VICE-CHAIR

REPORT TO THE UNIFORMITY COMMITTEE

APRIL 30, 2024

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# AGENDA

1. Introductory remarks from the work group Chair and Vice-Chair (Polling Question 1)
2. Webpage resources & whitepaper outline
3. Project scope recap & guiding principles (PQ 2 and 3)
4. Working with the Streamlined states, FTA, and NCSL (PQ 4)
5. What we have studied and achieved so far – refresh on business inputs research (PQ 5)
6. Current project updates (PQ 6 and 7)
7. Trends and developments in the taxation of digital products (PQ 8)
8. Final thoughts for the uniformity committee or work group (PQ 9)
9. Appendix materials

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# THANKS TO OUR REGULAR WORK GROUP MEMBERS

Chair: Tim Jennrich – Washington

Vice Chair: Mia Strong – Louisiana

Josh Pens – Colorado

Olufemi Obikoyai – DC

Jordan Heller – Kansas

Richard Dobson – Kentucky

Ben Grossman – Maryland

Michael Fox – Maryland

Michael Fatale – Massachusetts

John Haidamous – Michigan

Mark Chaiken – New Mexico

Charles Dendy – North Dakota

Victoria Johnson – Oregon

Alison Jares – South Dakota

Shannon Brandt – Texas

Ray Langenberg – Texas

Frank Hales – Utah

Shelley Robinson – Utah

Emily Cramer – West Virginia

Michael Hardtke – Wisconsin

Tracey Mueller – Wisconsin

*Ex officio* members: Craig Johnson and Christie Comanita, SST Staff

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What best describes your profession?

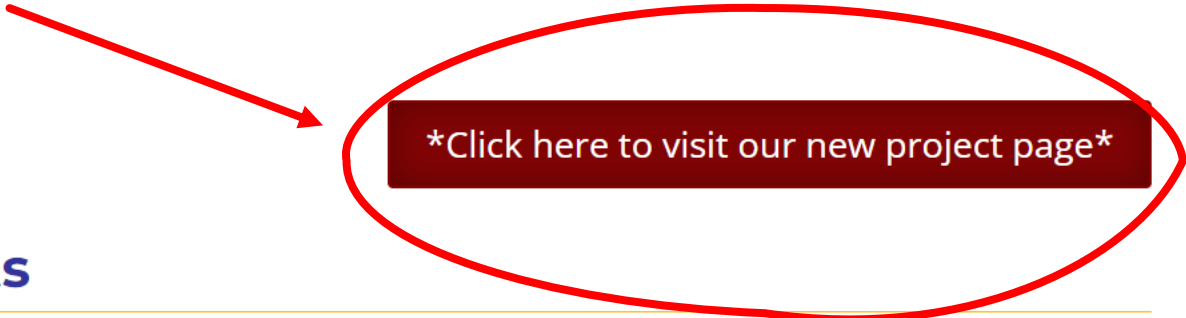
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## **UPDATE ON WEBPAGE AND WHITEPAPER OUTLINE**

- New Webpage Layout and Functionality
- Outline updates:
  - Addition of business inputs summary
  - Addition of ITFA materials

# NEW WEBPAGE

The Commission ▾ Uniformity ▾ Nexus ▾ Audit ▾ Events & Training ▾ Resources ▾



[\\*Click here to visit our new project page\\*](#)

## Sales Tax on Digital Products

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### Project Description

At its July 28, 2021 meeting, the Uniformity Committee considered a recommendation from the Standing Subcommittee to begin drafting the outline of a white paper on state sales taxation of digital products. The committee agreed that MTC staff would begin the process by drafting a detailed outline of the issues to be included in that white paper and conducting research and stakeholder interviews. At the August 2, 2022 meeting of the Uniformity Committee, the committee reviewed the proposed draft outline and agreed that a project work group should be formed to provide ongoing input and review of the white paper, as it is developed.

On this project page, you will find:

- information about upcoming meetings
- prior meeting agendas, materials, and notes
- whitepaper outline drafts
- research and analysis
- resolutions

# NEW WEBPAGE

[The Commission](#) ▾ [Uniformity](#) ▾ [Nexus](#) ▾ [Audit](#) ▾ [Events & Training](#) ▾ [Resources](#) ▾

Thanks for visiting our new project page! We're continuing to work towards our goal of creating a more intuitive, interactive page. To offer input, please e-mail Lila at [ldisque@mtc.gov](mailto:ldisque@mtc.gov).

## Sales Tax on Digital Products

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For information about this or any other MTC uniformity project, contact MTC Uniformity Counsel Helen Hecht at [hhecht@mtc.gov](mailto:hhecht@mtc.gov)

### Upcoming Meeting Notice

[Agenda](#)

[Dial-in/Log-in Information](#)



# NEW WEBPAGE

## White Paper Issue Outline

→ Purpose

On April 28, 2021, representatives from the Washington Department of Revenue gave a presentation to the MTC Uniformity Committee in which they described their state's experience with imposing sales tax on digital products as well as the alternatives considered. They also proposed that the Committee take up a project to help states develop a simpler and more adaptable approach.

→ Imposition

- [Washington Presentation 2021](#) (PowerPoint Slides)

→ Issues of sale

- [Washington Presentation on Sales Taxes on Digital Products 2021](#) (Video)

→ Exemptions and Exclusions

The Committee asked the Standing Subcommittee to review the project proposal. The Standing Subcommittee recommended to the Uniformity Committee that a work group be formed to draft a white paper.

→ Mixed and Bundled Products

- [Final Recommendation](#) - Project on Sales Taxation of Digital Products - as Approved June 17, 2021

→ Sourcing

The Uniformity Committee asked MTC staff to first solicit input from stakeholders and prepare a detailed outline of the white paper, identifying issues to be addressed. It directed staff to talk to stakeholders, review the relevant research, and identify issues to be included in a detailed outline of that paper.

During 2021 and 2022, MTC staff conducted 43 separate interviews of individuals or groups representing



# NEW WEBPAGE

← [Back to project page](#)

## Project Purpose and Considerations

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→ Purpose

→ Imposition

→ Issues of sale

→ Exemptions and Exclusions

→ Mixed and Bundled Products

→ Sourcing



### General Purpose of the White Paper

- Determine the best approach to making existing state sales taxes adaptable and responsive to changes in the digital economy as opposed to creating a new tax or looking at gross receipts taxes.
- Determine the approach that is most responsive to issues identified by stakeholders.
- Determine the approach that will lead to the greatest uniformity.
- Other [economic equity, revenue reliability, etc.]

### State Limitations

Dormant Commerce Clause



# NEW WEBPAGE

← [Back to project page](#)

## Project Purpose and Considerations

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- Other [economic equity, revenue reliability, etc.]

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# PROJECT SCOPE

**The MTC Uniformity Committee Requested a Whitepaper with this Information:**

1. A general survey and description of the kinds of digital products currently offered in the marketplace and the nature of the transactions through which those digital products may be provided to customers;
2. A general survey of academic research or other analysis on policy reasons for including digital products in (or excluding them from) the sales tax base;
3. A review and summary of general information on the specific types of digital products that states currently tax (which information is available from different sources, including Streamlined);
4. Analysis of the extent to which mixed or bundled products (including nondigital services and intangibles) may create issues for taxing digital products;
5. A summary of sourcing issues and common approaches to sourcing digital products, including multiple points of use; and
6. Analysis of the ways that digital products might be defined, categorized, exempted, and sourced.

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**Is the project scope still appropriate? If not, what should change?**

ⓘ Start presenting to display the poll results on this slide.

## POSSIBLE GUIDING PRINCIPLES

1. Tax all retail sales by default.
2. Encourage a system that is simple, easy to administer, and transparent.
3. Favor either clear and specific definitions or broad definitions with clear and specific exemptions, when appropriate.
4. Do not treat digital products as tangible personal property.
5. Avoid distinguishing products based on the manner they are transferred.
6. Distinguish products based on how they are produced and what is produced.
7. Source digital products based on where the products are used/their destination.
8. Exempt business inputs.
9. Exempt products based on who they are sold to, e.g., sold to nonprofits, sold to businesses.

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Are these guiding principles appropriate? If not, what should change or what are we missing?

ⓘ Start presenting to display the poll results on this slide.

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## WORKING WITH STREAMLINED STATES, FTA, AND NCSL

- SST and MTC adopted a joint resolution in 2023
- Federation of Tax Administrators adopted related 2023 resolution
- MTC is a “friend” of the NCSL SALT Task Force



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Any thoughts about how the MTC could work more collaboratively with the Streamlined states, FTA, and NCSL?

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## WHAT WE HAVE STUDIED AND ACHIEVED SO FAR

1. Definitions
2. Items that exist in the marketplace
3. Review of the Streamlined Agreement
4. Analysis of business inputs
5. Survey of digital products taxed by states
5. Analysis of approaches states use to tax digital products
6. Internet Tax Freedom Act
7. Bundling

## SUMMARY OF BUSINESS INPUTS (PYRAMIDING) RESEARCH

1. Experts are split: “avoid pyramiding at all costs” to “it costs too much revenue not to pyramid tax on some items,” and suggestions for a middle ground.
2. The severity of pyramiding depends on the facts and circumstances.
3. Taxing digital business inputs can impose tax on industries that have historically been tax favored.
4. Exempting digital business inputs will be costly if done after the tax base includes them.
5. Consider pyramiding issues when expanding the tax base to include digital products.
6. Exempting business inputs via legislation can be complicated or simple.
7. Anti-pyramiding efforts should be weighed against tax administration pros and cons.

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Is the MTC missing anything with respect to the taxation of business inputs and digital products? If so, what else needs to be studied?

ⓘ Start presenting to display the poll results on this slide.

**CURRENT  
PROJECT:  
DIGITAL TAX BASE  
SPREADSHEET**

- It's not the "how" but what the states tax now (i.e., the tax base)
- What products have states deemed appropriate for sales taxation
- Updates: ongoing as staff track developments
- Expansion: on hold, see bundling

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What does the spreadsheet cover?

ⓘ Start presenting to display the poll results on this slide.

## **CURRENT PROJECT: THREE APPROACHES MATRIX**

- This is the “how”
- Not the tax base
- The Matrix addresses three approaches to developing a sales tax base and the interaction of those three approaches with various aspects of tax administration
- Content – based on the best efforts of MTC staff as well as the input of many work group members
- Conversion – conversion to prose for communication to work group members and potential white paper entry

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What does the matrix cover?

ⓘ Start presenting to display the poll results on this slide.



**CURRENT  
PROJECT:  
INTERNET TAX  
FREEDOM ACT  
(ITFA)**

- Research ongoing but nearing the end of the road
- Staff are prepared for when work group determines to address ITFA
- Annotated ITFA – staff are creating an annotated ITFA statute using the research that has been done

**CURRENT  
PROJECT:  
BUNDLING**

- State-by-state research on bundling and true object test
- Deep and detailed scope
- Large scale assignment, no substantive update at this time
- Stakeholder sessions with non-tax agency staff have started

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# TRENDS AND DEVELOPMENTS IN THE TAXATION OF DIGITAL PRODUCTS

- Internationally there is a trend to adopt digital services taxes or DSTs.
- This trend has been delayed in response to Pillar 1, which would use formulary apportionment to tax certain excess income of large companies deemed to be from digital services.
- The federal government is considering how Pillar 1, versus DSTs, will affect the domestic economy and tax revenues.
- States are . . .
  - Considering expansion of the sales tax bases.
  - Considering stand-alone DSTs including digital ad taxes.

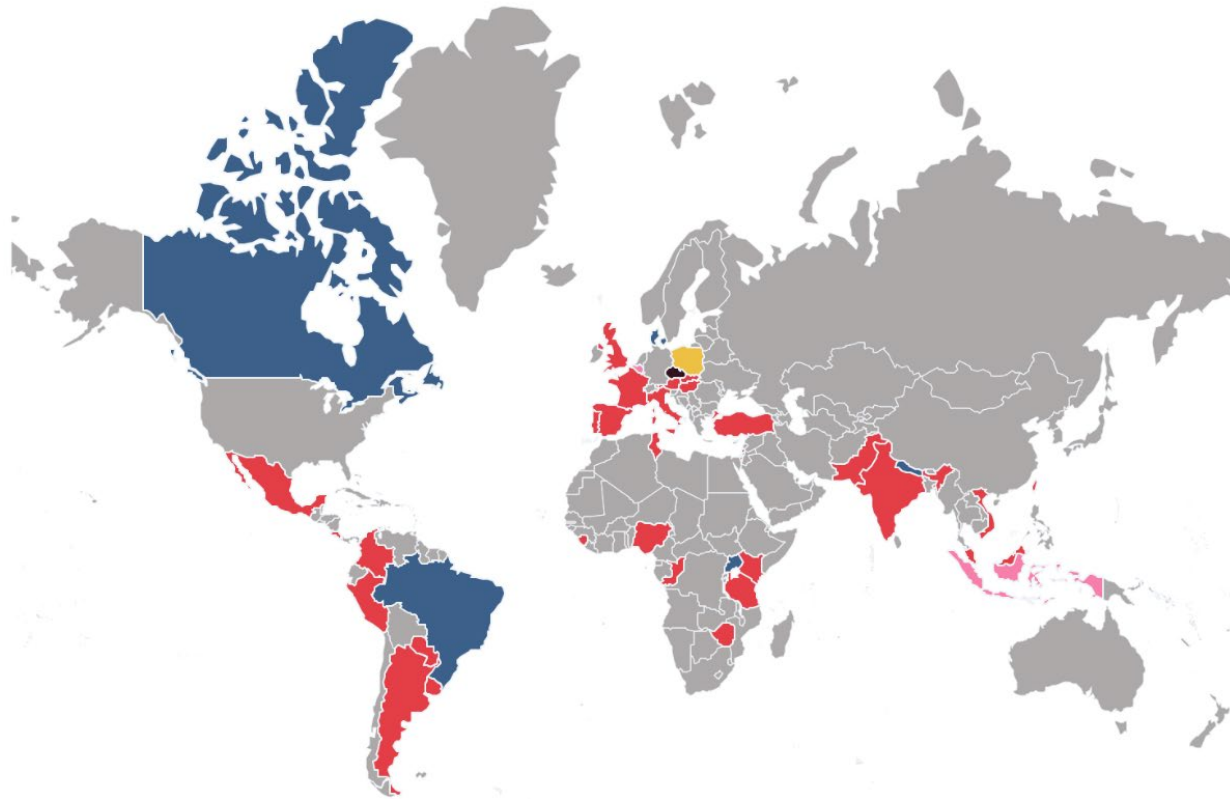
## OECD – Pillar 1 and DSTs

- Goals:
  - Address the use of digital and intangible assets to shift income.
  - Avoid adoption of digital services taxes – or DSTs.
- Approach:
  - Determine excess profits for certain large multinationals.
  - Apportion using a single receipts factor & market-based sourcing.
  - Coordinate this with all the other international tax rules.
- Status:
  - The OECD efforts have been delayed.
  - Other countries are considering digital taxes.
  - The U.S. is now studying the effect on the domestic economy and tax revenues.

**RELATED  
DEVELOPMENTS  
-INTERNATIONAL-**

## Other Countries - DSTs

- The Bi-Partisan Policy Center:
  - Tracking the enactment or proposal of DSTs – some of which may take effect if Pillar 1 fails, and others would be withdrawn if it succeeds.



● Enacted ● Waiting for Global Solution ● Proposed ● Proposed (rejected) ● Enacted/Proposed/Proposed

**RELATED  
DEVELOPMENTS  
-INTERNATIONAL-**



## Other Resources on International Developments

- Report of the International Monetary Fund - Exploring the Adoption of Selected Digital Technologies in Tax Administration: A Cross-Country Perspective (Dec, 2023),  
<https://www.elibrary.imf.org/view/journals/068/2023/008/article-A001-en.xml>
- Report to the UK House of Commons – Digital Services Tax,  
<https://commonslibrary.parliament.uk/research-briefings/cbp-8719/>
- Big 4 Accounting Firms:
  - KPMG – Taxation of the Digital Economy -  
<https://kpmg.com/us/en/home/insights/2019/06/tnf-digital-economy0.html>
  - PWC – Digital Services Taxes and Global Profit Reallocation -  
<https://thesuite.pwc.com/specialist-areas/digital-services-tax-es-and-global-profit-reallocation>
  - EY - Digital services taxes and other taxes on the digital economy (November 2023),  
<https://www.elibrary.imf.org/view/journals/068/2023/008/article-A001-en.xml>
  - Deloitte – Digital Tax Atlas -  
<https://www.deloitte.com/global/en/services/tax/services/gx-tax-atlas-digital-services-tax.html>.

**RELATED  
DEVELOPMENTS  
-INTERNATIONAL-**

## U.S. Treasury and Congress – Pillar 1 & DSTs

- Treasury Discussions:
  - In October 2023, Treasury asked for input from the public on Pillar 1.
  - That information was due to be submitted in December 2023.
- House Ways and Means Committee:
  - In March – the Ways and Means Committee held hearings.
  - Opponents expressed fear U.S. companies were being targeted for foreign tax.
  - Another concern is the effect on U.S. tax revenue.

**RELATED  
DEVELOPMENTS**

**-FEDERAL-**

## U.S. Treasury and Congress – Pillar 1 & DSTs

- Joint Committee:
  - Issued a report on March 5, 2024 on Pillar 1.
  - Estimates the effect would have been a \$1.4 billion revenue loss had Pillar 1 applied in 2021.
- Congressional Research Service:
  - Issued a report by Jane Gravelle on April 1, 2024 on the effects of Pillar 1,
  - Report compares domestic effects of Pillar 1 to DSTs.
  - Report summarized the current Pillar 1 draft and the history of DSTs.
  - Found that DSTs would mostly be borne by consumers.

**RELATED  
DEVELOPMENTS**

**-FEDERAL-**



## State Legislation – Digital Ad Taxes

- California –
  - A.B. 2829 - Would impose a 5% tax on annual gross revenues from digital advertising services for certain large providers.
- Connecticut –
  - H.B. 5147 – Would impose a 10% tax on gross revenues of companies with more than \$10 billion in revenue from digital advertising services.
- District of Columbia –
  - District’s Tax Revision Commission proposed data mining tax (modeled on New York proposed legislation).
- Maryland –
  - H.B. 1372 – Would impose a social media gross revenues tax at graduated rates on platforms with more than 1 million active monthly users nationwide and more than \$500 million in annual gross revenues that allow users to share content with certain other users.

**RELATED  
DEVELOPMENTS**

**-STATE-**

## State Legislation – Digital Ad Taxes (cont'd)

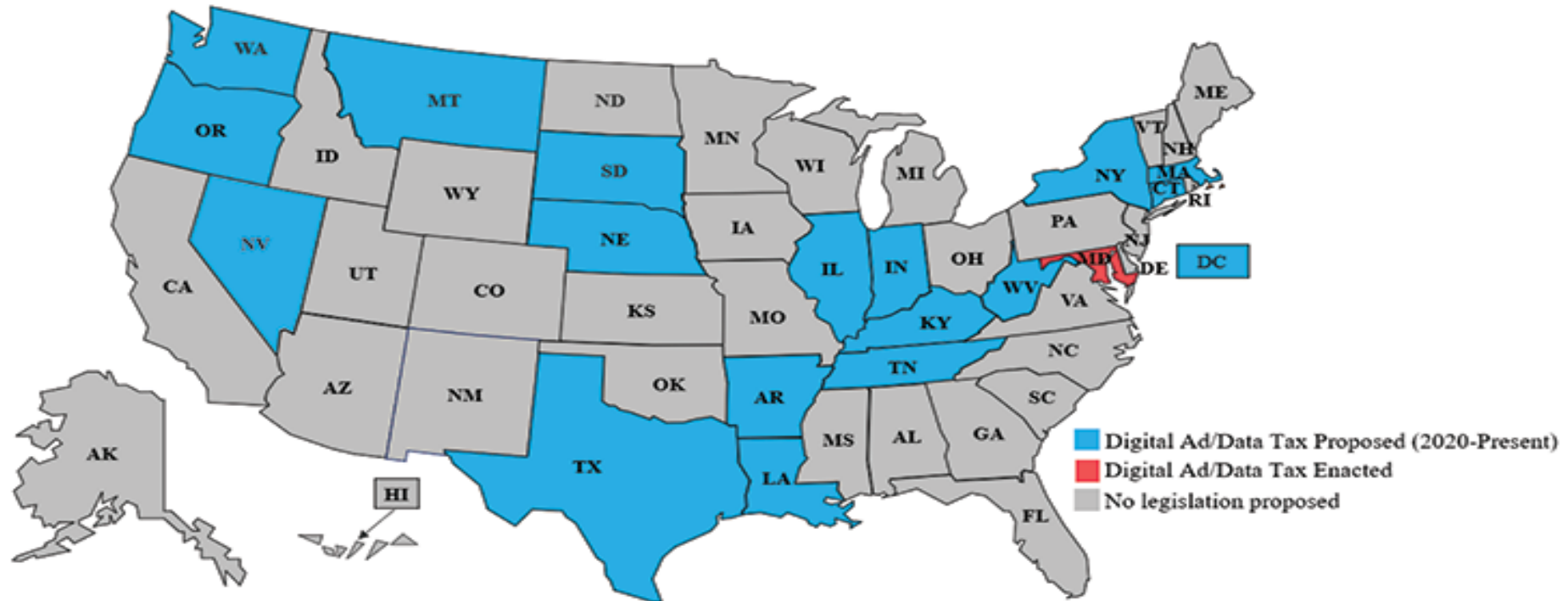
- Massachusetts –
  - H.D. 1683 – Would impose a tax on the sale of digital advertising, sourced using the IP address of the consumer's device.
  - H.D. 3052 - (A different version of the tax on the sale of digital advertising .)
- Nebraska – [session ended]
  - L.B. 388, L.B. 1354, and L.B. 1310 – Would impose a tax on digital ads for companies with more than \$1 billion in revenue.
- New York –
  - S.B. 1845 – Would impose a 5% tax on the gross income of a corporation that derives income from data individuals have shared with the corporation.
- Tennessee –
  - S.B. 1891, H.B. 2234, and S.B. 2065 – Would create a data transaction privilege tax at the rate of 9.5% on gross revenues derived from data transactions from digital advertising services if the gross revenues are over \$50 million.

## OTHER RELATED DEVELOPMENTS

**-STATE-**

# FROM THE COUNCIL ON STATE TAXATION

**Figure 1.**  
**State Digital Advertising Services and Data Mining Tax Proposals (2020-2023)**



Source: Council On State Taxation research. Proposals include both digital services taxes and their sales tax equivalents.

# State Legislation – Tax on Digital Products

## ➤ Kansas –

- H.B. 2584 – Would impose sales and use tax on digital property and subscription services. Defines digital property as media or products encoded in machine-readable formats and includes streaming services related to digital property.

## ➤ Illinois –

- S.B. 2307 - Creates a Commercial Data Collector Tax, an excise tax on the collection of consumer data by commercial data collectors. A commercial data collector is a for-profit entity that collects, maintains, uses, processes, sells, or shares consumer data in support of its business activities and collects consumer data, other than contact information, on more than 1 million Illinois individuals in a month. The tax rate is based on the number of consumers the entity collects data from.

## ➤ Massachusetts –

- H.D. 74 – Would establish a 5% tax on the annual gross revenue of streaming operators from the sale of streaming entertainment services.

**OTHER RELATED  
DEVELOPMENTS**

**-STATE-**

## State Legislation – Tax on Digital Products (cont'd)

- Missouri –
  - H.J.R. 111 - Proposes a constitutional amendment that would add licenses for digital products and online purchases of tangible personal property to the sales tax base (and a commensurate reduction to the income tax rate).
  - S.J.R. 50 - Proposes a constitutional amendment that would reverse the state constitution's ban on taxing sales of subscriptions and licenses for digital products services that aren't already subject to tax.
  
- South Dakota [signed by the governor]
  - H.B. – 1019 - Would expand the definition of "seller" in statutes governing sales and use tax to include any person making sales, leases or rentals of any product transferred electronically.
  
- Vermont –
  - S. 181 - Would levy a 5% tax on the gross receipts of video streaming service providers that earn more than \$250,000 a year from such services from Vermont residents. Video streaming service is the distribution or broadcasting of video programming displayed by the viewer for a fee on a subscription basis, and does not include cable service.

# OTHER RELATED DEVELOPMENTS

## -STATE-

## State Legislation – Tax on Digital Products (cont'd)

- Virginia –
  - Session has adjourned and will reconvene for a special session on May 13.
  - During the session, bills were considered that would expand the sales tax base to include digital products.
  - H.B. 30 (Budget Bill) – Would add digital personal property to the definition of tangible personal property.
  - S.B. 703 – Would tax streaming services.

## OTHER RELATED DEVELOPMENTS

**-STATE-**

## Other State Developments

- Maryland –
  - The states digital ad tax continues to face various challenges in court.

**OTHER RELATED  
DEVELOPMENTS**

**-STATE-**

## Other Resources on State Digital Tax Developments

- CSPs –
  - Vertex - 2023 Sales Tax Trends: Digital Taxes Take Off - <https://www.vertexinc.com/resources/resource-library/2023-sales-tax-trends-digital-taxes-take>
  - Avalara – State-by-state guide to the taxability of digital products – <https://www.avalara.com/blog/en/north-america/2019/02/state-by-state-guide-to-digital-products-and-sales-tax.html/>
- State Digital Services Taxes: A Good and Permissible Idea (Despite What You Might Have Heard), Young Ran (Christine) Kim & Darien Shanske, <https://ndlawreview.org/2023/01/state-digital-services-taxes-a-good-and-permissible-idea-despite-what-you-might-have-heard/>

**OTHER RELATED  
DEVELOPMENTS**

**-STATE-**



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Are there any trends or developments that we are missing? Any other thoughts to share on state activities and taxation of digital products?

ⓘ Start presenting to display the poll results on this slide.

**WRAP UP &  
FINAL THOUGHTS**

Final Polling Question

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**Any other thoughts for the Uniformity  
Committee or work group on this project?**

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## **APPENDIX**

Additional and more detailed slides  
relating to this project update

# WORKING WITH STREAMLINED STATES, FTA, AND NCSL

- SST staff serve as *ex officio* members of the MTC work group.
  - MTC and SST staff attend each other's meetings and regularly consult.
  - MTC staff monitor the related SST projects:
    - Sourcing of sales without need for physical addresses.
    - Updating the SST Agreement relating to digital codes.
  - SST and MTC adopted a joint resolution in 2023 titled: [Joint Resolution Supporting State Efforts to Promote Uniformity in the Taxation of Digital Products.](#)
- Federation of Tax Administrators adopted related Resolution [2023-1: Supporting State Efforts to Promote Transparency, Certainty, and Clarity of State Tax Policies.](#)
- MTC is a “friend” of the NCSL SALT Task Force and attends meetings; next meeting in May

# WHAT WE HAVE STUDIED AND ACHIEVED SO FAR

1. Definitions for digital products.
2. Identification of what items exist in the marketplace, including a presentation by SST certified service provider Avalara representatives.
3. Presentation by Streamlined representatives ([watch via the MTC project page](#)).
4. Survey of state treatment of digital products ([website](#) has spreadsheet and details)
5. Panel discussion on digital products and business inputs at July 2023 Uniformity Committee meeting ([watch via the MTC project page](#)).
6. Developing [a matrix with “three approaches” to taxing digital products](#) used by the states today and possible guiding principles for policy makers.
7. Internet Tax Freedom Act – presentation on what states and taxpayers need to know about definitions and the anti-discrimination provision at the Nov. 14, 2023 Uniformity Committee (audio and transcript posted to the website).

## SUMMARY OF BUSINESS INPUTS (PYRAMIDING) RESEARCH

1. Some advocate that pyramiding should always be avoided, while others advocate that there are multiple policy considerations that affect the extent to which pyramiding exists in a sales and use tax base.
2. The severity of pyramiding depends on the facts and circumstances, including whether the eventual retail sale will be exempt from tax and the incidence of the tax.
3. Taxing digital business inputs can impose tax on industries, such as agriculture, that have historically been tax favored.
4. Exempting digital business inputs will be costly if done after the tax base is expanded to include digital business inputs.
5. Exempting business inputs should be considered in tandem with any proposed expansion of the tax base to include digital products.
6. Exempting business inputs can be complicated or simple. A simple version would rely on the identity of the purchaser as a commercial entity, such as the current Iowa statute.
7. Exempting business inputs, or any other anti-pyramiding effort, should be weighed against tax administration pros and cons, including the ability for exemptions to keep pace with the tax base.

## PROJECT BACKGROUND AND STEPS TO DATE - 1

- April 2021 – Washington State presentation to the Uniformity Committee (UC) to consider an MTC project to examine sales taxes on digital products.
- July 2021 – UC approves recommendation to begin work on a project studying the application of sales tax to digital products – starting with a whitepaper – and asks MTC staff to begin a detailed outline of that whitepaper.
- November 2021 and April 2022 – MTC staff reports to the Committee, including a recap of stakeholder interviews. Stakeholders included taxpayers and their representatives, states, academics, and industry and association representatives – over 40 in total.



## PROJECT BACKGROUND AND STEPS TO DATE - 2

- August 2022 - UC approves work group (WG) formation. WG chair selected and work group members solicited. SST staff included as ex officio members.
- September 2022 – WG meetings begin the first Thursday of each month at 11:00 a.m. Eastern. Public is welcome at all meetings.
- October 2022 – WG directs MTC staff to research definitions for digital products.
- November 2022–March 2023 – WG and stakeholders discuss various definitions for digital products and digital products in the marketplace.

## PROJECT BACKGROUND AND STEPS TO DATE - 3

- April 2023 – WG hears results of anonymous survey of WG members to solicit input on various aspects of the project.
- April 2023 - UC meets to discuss next steps. Hears presentations on the Streamlined experience with digital products and the results of MTC staff research about current treatment of digital products by the states.
- August 2023 UC Meeting – Panel discussion on the taxation of digital products and business inputs.
- Fall 2023 – Staff research into state treatment of digital products and development of “three approaches” matrix; identification of trends.

## PROJECT BACKGROUND AND STEPS TO DATE - 4

- November 2023 – Panel discussion at UC meeting on the basics of the Internet Tax Freedom Act.
- January 2024 – Farewell to Chair Gil Brewer (WA); WG committee votes in new chair Tim Jennrich (WA).
- March 2024 – WG votes to have Mia Strong (LA) serve as vice-chair and begin studying bundling issues.

# LOOKING OUT FOR POTHoles (GIL BREWER'S THOUGHTS AS OF APRIL 2023)

- Potential challenges
  - Perception as “the largest tax increase in history.”
  - Political inertia.
  - Legislative vs. administrative change.
  - The potential product/transactional variety in the digital world is infinite, and the pace of change is daunting.
  - Simply imposing a traditional sales tax regime on the digital world may well be impossible.
  - Is it possible to maintain parity between taxation/exemption of traditional products and digital products?
  - Desire for a broad B2B exemption.
  - ITFA preemption limitations.
  - International complications.
  - The sheer/scope size of the undertaking.