



MULTISTATE TAX COMMISSION

## MEETING NOTES

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

June 6, 2024

[See also the presentation slides for this meeting on the project page – here:  
[https://www.mtc.gov/uniformity/sales-tax-on-digital-products/.](https://www.mtc.gov/uniformity/sales-tax-on-digital-products/)]

#### I. **Welcome and Opening Remarks –**

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 April 4, 2024 Work Group Meeting –**

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

#### IV. **Review of April Uniformity Committee Meeting –**

Jennrich noted that he, Mia Strong (Louisiana), the work group vice chair, and staff gave an update to the committee on the project and that this presentation is on the MTC website on the uniformity committee page. He also noted that the work group used polling to ask the committee for feedback on the project and its progress. [See also the presentation slides for this meeting.] The work group is responding to that feedback, including being aware of the time spent and the desire to make progress. He also acknowledged that there was a request to bring the MTC, NCSL, SST, and FTA organizations together and that was being worked on.

Jennrich also talked about the discussion that the work group has had on principles for the project which are still being considered. He noted that collaboration with Streamlined is also ongoing. And he also summarized the input that has been received on defining digital products, B2B sales, bundling, and other information and invited those who have input to reach out.

#### V. **New Project Page in Development –**

Jennrich reminded the work group that we are revamping the project page to better capture the information on the project. Nancy Prosser (MTC) added that the goal is to take the topics in the white paper and organize them on the web page so that information is easier to find.

#### VI. **Updates on Various Digital Presentations/Meetings**

Prosser noted that staff are watching what other state tax groups are discussing when it comes to taxing digital products. Greg Matson, MTC Executive Director, is speaking on the subject today. Prosser attended the National Council of State Legislatures meeting recently in

Canada where the subject was discussed. And Jonathan White (MTC), also attended the recent Streamlined meeting to represent the work group.

Jennrich thanked White for attending the Streamlined meeting. He noted that Streamlined is looking for new projects to consider, and in that context, Jennrich suggested that they consider voluntary definitions of additional specific digital products and that this may be the path for states that take the “narrow approach,” whereas this work group can consider the broad approach.

Craig Johnson, Streamlined Executive Director, spoke briefly and agreed that it was important for the various state tax groups to work together. He noted that Streamlined has been working on the sourcing of transactions that don’t require a physical address for delivery and a formal proposal has passed the first of two required votes. That proposal would not require specific address information and would also allow states to impose the highest of the potentially applicable rates within a five-digit zip code.

Prosser also noted that the Institute for State Policy Leaders is having a meeting at the end of June. She will be on a panel discussing taxation of digital products with a focus on business inputs. She noted that this work group has not taken any formal position on how business inputs should be treated with respect to digital products, and for now this work group has finished its work on the topic.

## **VII. Update on Staff Research Related to Bundling and Digital Products**

Prosser introduced this topic by saying that staff is continuing to conduct stakeholder interviews on the bundling issue then turned it over to White. [Slides related to his presentation were not available at the time but are being added to the project page.] White noted that the research into the topic of bundling was prompted by the work group’s decision to look into that topic generally. The goal of his presentation is not to provide a substantive report on the topic but to solicit additional guidance from the work group on what kind of information they are looking for. With that in mind, he began with a thought experiment using lemonade and its components.

Jennrich noted that with respect to the question of—what is a bundle—states have much more experience with tangible products than with digital products. Mark Chaiken (New Mexico) noted that with some things—like manufactured products (including lemonade)—once you’ve put certain things together, you can’t take them apart (or they wouldn’t be any use if you did). White also noted that the definition of what is the “sales price” of a product is often the starting point for what is a sale, and might also lead to the question of what is a bundle.

Michale Hale (Kansas) asked -- How do we balance/juxtapose the idea of "un-bundling" with what most states tax as "gross receipts"? White noted that this also goes to the bigger question of how states impose tax. Bruce Johnson (TaxCloud), noted that one way to think of the lemonade example is that, when something can’t be unbundled, then that’s not a bundle. Jennrich noted, however, that there are some “products” where the costs can be broken out and sometimes people argue that this makes them able to “unbundle” those items.

Josh Pens (Colorado) noted that they often get asked whether it matters if the products can be acquired separately—if not from this seller, then from any seller anywhere in the world. He noted that there have been ruling requests for such issues in his state. So if the seller,

itself, does not unbundle—then the question is can it be unbundled for tax purposes at all. White noted that this input helps to show that states are grappling with this.

Diane Yetter (Sales Tax Institute) noted that this discussion made her think of sales where the portions of the sale may be done by different parties in the process. So the question might be—who's paying for the separate items when they are purchased. Example – sofa that gets re-upholstered where the purchaser enters into one contract versus two—with separate sellers. So what about digital products where the two items are necessary for each other—but sold separately? For example, what if software requires implementation, then if the buyer has separate contracts, even if the sellers are related, are these separate sales?

White noted that the Streamlined bundling rule is the main authority on this on the question of bundling. He briefly reviewed how the rule works. He solicited whether there is anything about digital products that doesn't fit within this rule. Jennrich noted that there may be things that are offered for free along with a product sold. He also noted that the legislature in each state can define a "product" as part of its law. And this may drive the bundling analysis.

White reviewed the idea of subscriptions which include a variety of digital products. Are there necessarily distinct and identifiable products in this kind of subscription—in the same way as bundled tangible products? He noted that this might be the focus of the group—whether the current approach used by Streamlined will work for digital products—or whether there are other considerations that need to apply to digital products. He posed the question of what, exactly, the work group is looking for.

Michale Hale (Kansas) gave an example of cable television where the taxpayer argued that the franchise fee charge was not a taxable service. The question was whether the payment of the fee was necessary to maintain the subscription. This is how service type issues may come up. You can itemize all the various parts—but that doesn't mean they are sold separately as products with different receipts.

White noted the remainder of items in the slides, which participants can look at. He also noted that he did not get through all the slides so there may be more discussion of this topic at the next work group meeting. Jennrich noted that the research could be focused on digital products—with the goal of providing lessons learned and recommendations.

Mark Nebergall (McDermott) asked—when does a "feature" of a digital product become a "product" in and of itself and how do the bundling rules apply to that question. White responded also asking whether this means there needs to be additional rules.

Jennrich asked that work group members reach out with their additional comments and questions.

#### **VIII. Next Uniformity Committee Meeting – July 30, Denver, Colorado –**

Jennrich noted the upcoming committee meeting in Colorado. He also solicited any feedback from the work group members about what they might like to hear about at that meeting.

#### **IX. Next Work Group Meeting – Thursday, July 11, at 11:00 Eastern (No August Meeting)**

Jennrich noted the next work group meeting would be July 11 due to the July 4 holiday and there will be no August meeting. In September the work group will meet again on the first Thursday.

#### **X. Other Business**

Finally, Jennrich asked whether there was any new business or any other input from states or the public. Ray Langenberg (Texas) asked the work group to consider having 90-minute meetings (in light of the discussion of these issues). Jennrich noted staff could send out a poll on that question. Other input was to consider simplifying the preliminaries to save time.

**XI. Adjourn**

Jennrich concluded the meeting.