

BUMBLING

**Work Group Meeting
July 11, 2024
Jonathan W. White, Counsel**

- I am speaking for myself.
- My comments do not necessarily represent the views of my employer.
- Nothing in this presentation should be considered legal advice.
- This is not a complete or authoritative slide deck or presentation.
- Citations are at the end of the deck.

- Motion to consider bundling passed unanimously.
- Is there any more specificity to this?
- Can you give any more guidance on what would help the group or your state?

What do you want from bundling?

Bundling generally? Or related to digital products?

Should we just keep researching? If so, what scope?

Should we use the Streamlined rule as a base to develop a discussion section of the white paper?

Should we try to define the true object test more objectively?

Lemonade

...can't get the lemons back, can't get the sugar back...



“Sales price” is typically defined to include the value of exempt property that is sold together with taxable property.

Sample language:

- Includes the value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.
- Such total amount includes any services that are a part of the sale.
- Without any deduction for any services necessary to complete the sale.

A bundled transaction is the retail sale of two or more products, except real property and services to real property, where the products are:

- (1) otherwise distinct and identifiable; and
- (2) sold for one nonitemized price.

True object exclusion applies when:

the transaction involves the retail sale of TPP and a service, the TPP is essential to the use of the service and is provided exclusively in connection with the service, and the true object of the transaction is the service.

The true object test is applied to transactions involving inseparable transfers of taxable and nontaxable items or services.

Examples:

- commissioned paintings
- discount cards
- staffing company providing workers (nontaxable service) to a client that repairs TPP (taxable service)

The true object is determined by considering the transaction from the customer's perspective; asking what the customer's principal aim was or what the customer's desired result was.

The true object test characterizes the entire transaction as taxable or nontaxable by determining the “true object,” “essence,” or “purchaser's intent.”

Examples:

- Movie theatres renting film prints. True object was physical film reel, taxable TPP.
- Computer programs transferred on TPP. True object was the transfer of information, nontaxable.
- Tracking of location and status of, and communication with, trucks. True object is the tracking and location service, not communication. So was not a taxable communication service.
- Live webinars and self-study online courses. True object is the instruction and access to the webinars. The software is incidental.

Results in three categories:

- A taxable true object and any crucial, essential, necessary, consequential, or integral elements of the transaction are taxable.
- A transaction with any taxable component that is crucial, essential, necessary, consequential, or integral is taxable, even if the true object is not independently taxable.
- If the true object is not taxable and the taxable items are merely incidental to the true object, then the transaction is not taxable.

Mixed transactions:

SMSA case (TX) – if nontaxable service and taxable property are purchased together and each is independently desired and independently provided, then it's a mixed transaction.

Another way: if neither is incidental

Another way: if the two things are readily separable

Another way: if the values are determinable and each is consequential

Mixed transactions:

Dell case (CA) – if property and services are distinct and consequential elements of the transaction, then the transaction is severable into its taxable and nontaxable components.

Another way: if the goods and services are distinct (not intertwined)

Another way: if each is a significant aspect of the transaction and not incidental to the other

What do you want from bundling?

Should we just keep researching? If so, what scope?

Should we use the Streamlined rule as a base to
create a larger rule?

Should we try to define the true object test more
objectively?

Is a bundling rule a tax imposition?

Is unbundling the answer?

Is Streamlined the answer? Does Streamlined work for digital goods?

Is the Streamlined rule adequate 80% or the time?

Is the true object test adequate 80% of the time?

At what point can it not be unbundled?

What is the point of bundling?

To ensure taxation of all TPP?

To prevent tax avoidance through hiding TPP with nontaxable items?

To prevent tax avoidance through unbundling each taxable item until you find an untaxable product?

References

Nev. Admin. Code § 372.045(2)(a).

Nev. Admin. Code § 372.045(2)(c).

Nev. Admin. Code § 372.045(2)(b).

R.I. Dec. Rul. Req. No. 23017-01 (March 31, 2017).

Tenn Code Ann. § 67-6-102(79)(A)(vi)

Conn. Gen. Stat. § 12-407(a)(8)(iii)

Ky. Rev. Stat. Ann. § 139.010(17)(a)(3).

Tenn. Ltr. Rul. 14-10

Crescent Amusement Co. v. Carson, 213 S.W.2d 27, 187 Tenn. 112 (Tenn. 1948).

Commerce Union Bank v. Tidwell, 538 S.W.2d 405 (Tenn. 1976).

Qualcomm Incorporated v. Loren L. Chumley, No. M2006-01398-COA-R3-CV, 2007 WL 2827513 (Tenn. Ct. App. Sep. 26, 2007).

Tenn. Ltr. Rul. 17-17.

34 Tex. Admin. Code 3.330(d)(2).

Rylander v. San Antonio SMSA L.P., 11 S.W.3d 484 (Tex. App. 2000).

Dell, Inc. v. Superior Ct. of San Francisco, 159 Cal. App. 4th 911 (Cal. Ct. App. 2008).

CLOSING

Jonathan W. White
Counsel

jwhite@mtc.gov