



MULTISTATE TAX COMMISSION

# **SALES TAX ON DIGITAL PRODUCTS STATUS REPORT**

APRIL 29, 2025

CHAIR - TIM JENNRICH, WASHINGTON

VICE CHAIR – MIA STRONG, LOUISIANA

DEFINITION STUDY GROUP LEAD – RAY LANGENBERG, TEXAS

# THE PROJECT

- The Uniformity Committee established the work group on sales taxation of digital products to draft a white paper on the issues state tax policymakers should consider when deciding whether and how to include digital products in the sales tax base.
- The work group, which is working in coordination with Streamlined and the FTA—has examined the current approach states take to taxing digital products, the treatment of business inputs, and the potential effects of the Internet Tax Freedom Act,
- Recently, the work group, stakeholders, and staff have been studying the issue of bundled transactions—where a single price is charged for separate products, including digital products.

## REGULAR PARTICIPANTS

Chair: Tim Jennrich – Washington  
Vice Chair: Mia Strong - Louisiana  
Josh Pens – Colorado  
Olufemi Obikoyai – DC  
Nick Behlke – Iowa  
Matt Bishop - Iowa  
Jordan Heller – Kansas  
Richard Dobson – Kentucky  
Ben Grossman – Maryland  
Michael Fox – Maryland  
Michael Fatale – Massachusetts  
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Margaret Reisdorf – Minnesota  
Dexter Wilson - Minnesota

Dee Wald – 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  
John Gortakowski – Vermont  
Emily Cramer – West Virginia  
Michael Hardtke – Wisconsin  
Tracey Mueller – Wisconsin  
Ex officio members: Craig Johnson and Allison  
Jares, SST Staff



# PROJECT WEB PAGE

DIGITAL PRODUCTS PROJECT



## PROJECT WEBPAGE

- Information on the project is on the project webpage on the MTC website – [mtc.com](https://mtc.com)
  - Uniformity
  - Uniformity Projects
  - Digital Products Work Group.

The screenshot shows the MTC website with a header containing the logo and mission statement. A navigation bar includes links to 'The Commission', 'Uniformity', 'Nexus', 'Audit', 'Events & Training', and 'Resources'. A secondary navigation bar highlights 'About Uniformity', 'Uniformity Process', 'Uniformity Projects', and 'Uniformity Charter'. The main content area features three columns: 'State Taxation of Partnerships Work Group', 'Model Receipts Sourcing Regulation Review Work Group', and 'Sales Tax on Digital Products Work Group'. A calendar on the right shows upcoming meetings for April, June, and July.

**MTC**  
MULTISTATE TAX COMMISSION

An Intergovernmental state tax agency whose mission is to promote uniform and consistent tax policy and administration among the states, assist taxpayers in achieving compliance with existing tax laws, and advocate for state and local sovereignty in the development of tax policy.

Search

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

About Uniformity  
Adopted Uniformity Recommendations  
Article IV- UDITPA

Uniformity Process  
Amicus Briefs

Uniformity Projects  
Uniformity Developments

Uniformity Charter  
Standing Subcommittee

[State Taxation of Partnerships Work Group](#)  
At its April 2021 meeting, the Uniformity Committee took up a project on state taxation of partnerships based on the recommendations of the Standing Subcommittee that a work group be established to consider issues affecting sourcing of partnership operating income and gains and losses from the sale of partnership interests; entity level taxation issues including transfer pricing or combined filing; and other administrative and enforcement issues including information reporting and withholding.  
[Work Group Project](#) page

[Model Receipts Sourcing Regulation Review Work Group](#)  
At its August 2022 meeting, the Uniformity Committee agreed to undertake a project and form a work group to review its model receipts (sales) sourcing regulations for income apportionment purposes, including special industry regulations and more recently adopted market-based sourcing regulations. The goal of this project is to identify updates, corrections, or conforming changes, to consider issues that may not be sufficiently addressed by existing model regulations, and to make recommendations to the committee for its action.

[Sales Tax on Digital Products Work Group](#)  
At its July 2021 meeting, the Uniformity Committee considered a recommendation from the Standing Subcommittee to begin drafting a white paper on state sales taxation of digital products and the approaches that states might use. The committee asked MTC staff to begin the process by getting input from stakeholders and doing other research. Based on this work, staff prepared a draft outline of the white paper and presented it to the committee in November, 2021. The committee agreed to form a work group discuss the issues identified in that outline as well as any other related

APR April 2021 - May 1  
**28** 2025 Spring Committee Meetings

JUN June 10 - June 11  
**10** Nexus School – New Hampshire

JUL July 21 - July 25  
**21** 68th Annual Meetings

[View Calendar](#)

## PROJECT WEBPAGE

- On the home page, you will find information on the two study groups that we will be discussing.

### MATERIALS FOR THE DEFINITION STUDY GROUP:

#### 1. Latest Proposals:

Broad Definition – March 24, 2025 ([PDF](#))  
This is a proposal by Ray Langenberg-provided to the definition study group.

COST Proposal for a Business to Business Exclusion – March 25, 2025 ([PDF](#))

#### 2. Proposed Broad Definition (Prior Version) – January 23, 2025

—[Document \(PDF\)](#)

—[Proposed Broad Definition – Slides \(PDF\)\(PowerPoint\)](#)

#### 3. Notes from the January 23, 2025 Meeting ([PDF](#))

These are the notes from the work group discussion held on January 23, 2025.

#### 4. Determining the Tax Base, Ray Langenberg ([PDF](#))

This document was from the October 2023 work group meeting at which Ray Langenberg summarized views on defining the tax base and issues that may be relevant to a broad definition of digital products.

#### 5. White Paper Outline and Research – Imposition (Definitions) Page Link – [HERE](#)

This page contains additional information on imposition of sales tax to certain defined products and the MTC staff research on the approaches that states take including the broad, medium, and narrow approaches.

#### 6. Primer – Definitions Study Group ([PDF](#))

This document summarizes some of the issues and topics that the study group may wish to consider with regard to a broad definition of digital products—including the proposal set out in numbers 1 and 2 above.

7. Staff Research – Digital Products State Taxation Matrix ([PDF](#)) and Matrix Writeup ([PDF](#)) Note: See the Matrix in Excel form on the link to the Imposition (Definitions) Page above. That Excel workbook contains additional sheets with research.

### MATERIALS FOR THE BUNDLING EXERCISE:

- [Note to Volunteers for Bundling Exercise \(PDF\)](#)
- Bundling Exercise:
  - [Bundling Exercise – Final Version \(PDF\)](#)
  - [Bundling Exercise – Final Version \(WORD\)](#)
- Summary of Streamlined Bundling Rules:
  - [Summary of Streamlined Bundling Rules \(PDF\)](#)
  - [Summary of Streamlined Bundling Rules \(WORD\)](#)
- Bundling Group Report – April 3, 2025 – ([PDF](#))

# PROJECT WEBPAGE

That project page also contains a link to white paper subpages to which we are adding information over time.

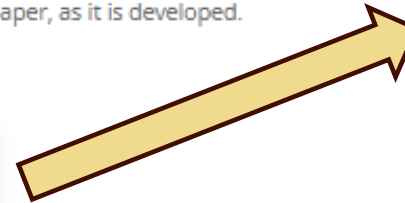
## Sales Tax on Digital Products

### 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.

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

**\*Click Here\* for Digital White Paper Outline and Research**



→ Purpose

→ Imposition (definitions)

→ Issues of sale

→ Exemptions and Exclusions

→ Mixed and Bundled Products

→ Sourcing

→ Alternative Taxes

→ Federal Law

→ Other related issues

→ Appendix

## Sales Tax on Digital Products

### Proposed White Paper Issue Outline

**NOTE: The MTC work group has currently made no findings or final recommendations relating to the project.**

→ Purpose

The topics to the left of this summary are expected to be included in the final white paper with findings and recommendations.

→ Imposition

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.

→ Issues of sale

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

→ Exemptions and Exclusions

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

→ Mixed and Bundled Products

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.

→ Sourcing

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

→ Alternative Taxes

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.

→ Federal Law

During 2021 and 2022, MTC staff conducted 43 separate interviews of individuals or groups representing particular taxpayers, states, or other organizations, as well as practitioners and academics. (See Appendix). They surveyed other relevant research, including studies done by other groups, much of which also is cited throughout this outline. They also monitored work of the Streamlined Sales and Use Tax Governing Board ("Streamlined") and the New Jersey Division of Taxation's study on the taxation of the digital economy generally, which was done in conjunction with Rutgers University.

→ Other related issues

→ Appendix

From that home page – you can get to the main page for the issue outline.

The headings/buttons on the left will then take you to those sections.



## Issues related to tax imposition

Purpose
→ Imposition
Issues of sale
Exemptions and Exclusions
Mixed and Bundled Products
Sourcing
Alternative Taxes
Federal Law
Other related issues
Appendix

### Relevant history

– [State Sales Tax History and Terminology](#)

### Related Federal and State Efforts

- The [Streamlined Sales and Use Tax Agreement](#) (opens in PDF)
- The [Internet Tax Freedom Act](#) (ITFA)
- The [Digital Goods and Services Tax Fairness Act of 2019](#) (not passed)

## Approaches to Tax Imposition

Broad approach
Medium approach
Narrow approach
State Agency Guidance
Articles and Resources

## Definitions

Streamlined Sales and Use Tax Agreement (SSUTA) definitions
Common state tax definitions
Common and emerging products
Digital Goods and Services Tax Fairness Act (DGSTFA) Definitions
Academic definitions
Federal definitions
Definitions from other bodies of law
Internet Tax Freedom Act (ITFA) definitions
A digital product defines itself
Certified Service Provider (CSP) websites
National Conference of Commissioners on Uniform State Laws definitions
OECD and United Nations Definitions
European VAT definitions
Proposed definitions from work group participants
Articles and Resources

And this is the subsection page for issues related to tax imposition.

Here, for example, is information on definitions. And if you scroll down on these pages, you'll see additional information under headings that help direct you to the information on that topic.

One important page is the appendix page. If you're looking for materials, you may find them here as well as in other places in this outline.

## Appendix

→ Purpose

→ Imposition

→ Issues of sale

→ Exemptions and Exclusions

→ Mixed and Bundled Products

→ Sourcing

→ Alternative Taxes

→ Federal Law

→ Other related issues

→ Appendix

Stakeholder discussions

Written Comments and Feedback

State Tax Agency Information

Resolutions

Whitepaper outline drafts

All Project Articles and Resources

### Relevant history

– [State Sales Tax History and Terminology](#)

### Related Federal and State Efforts

- The [Streamlined Sales and Use Tax Agreement](#) (opens in PDF)
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- The [Digital Goods and Services Tax Fairness Act of 2019](#) (not passed)



# UPDATE ON THE BUNDLING STUDY GROUP

DIGITAL PRODUCTS PROJECT



## **BUNDLING STUDY GROUP**

- The goal was to determine if there were situations or details where the nature of digital products created issues for the Streamlined bundling rules.

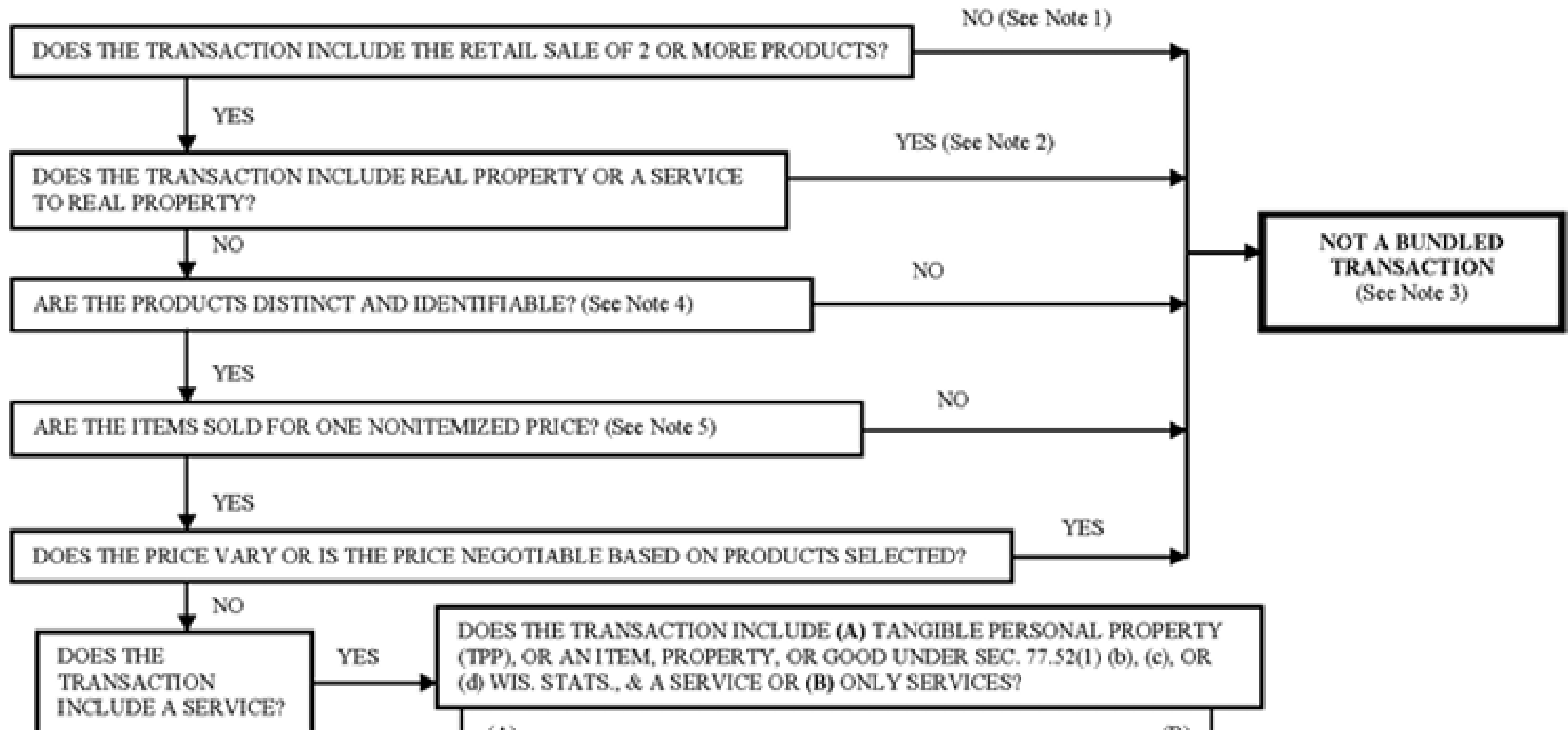
## **BUNDLING STUDY GROUP**

- The bundling study group held four discussion sessions beginning in December, 2024.
- Results were received from Colorado, the District of Columbia, Iowa, Kentucky, Louisiana, Nebraska, South Dakota, Texas, Utah, Vermont, Washington, and Wisconsin.
- The group then agreed upon a report back to the work group which was discussed on the April 3, 2025 work group call.

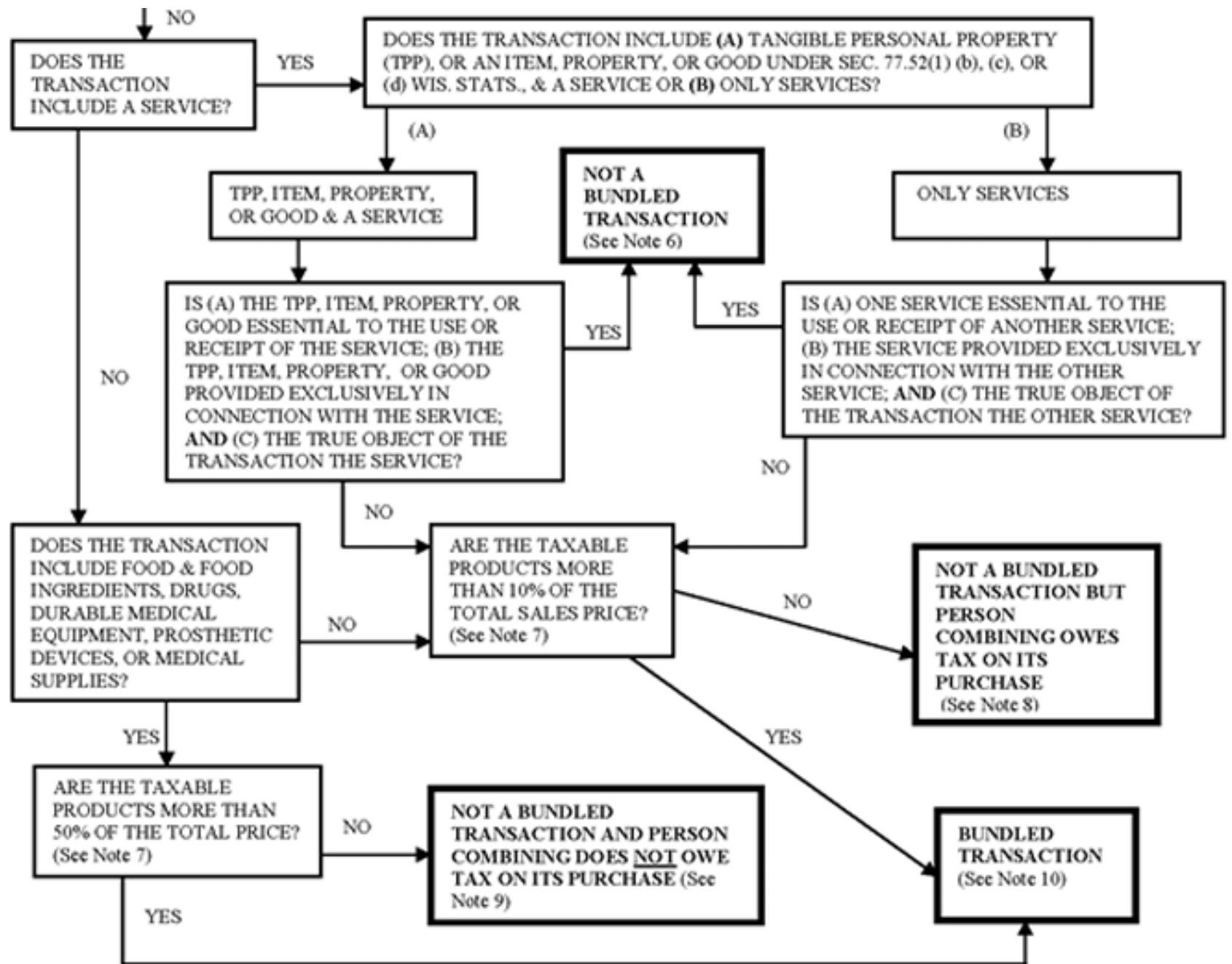
## **BUNDLING ISSUE - STUDY GROUP EXERCISE**

- Summary of the Streamlined bundling rules.
- Examples – that included digital products to which participants applied the bundling rules.
- Asked state volunteers from the states to work through the examples and give input on their results and whether there were gaps or other problems applying the rules to transactions involving digital products.

# STREAMLINED BUNDLING RULES



## STREAMLINED BUNDLING RULES (CONT'D)





## BUNDLING STUDY GROUP – REPORT

- Streamlined bundling rules work reasonably well and non-Streamlined states should consider them.
- The group identified that for a given transaction, there are many ways out of the bundling rules, but only a narrow path to remain under the bundling rules.
- The group was told that the Streamlined bundling rules were meant to be narrow, providing both an objective test for, and a set of subjective exclusions from, the bundling rules.
- Due to this, a given transaction escaping treatment under the bundling rules should not be surprising and is not a bad thing.

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## BUNDLING STUDY GROUP – REPORT

- Under the Streamlined Agreement, the determination of taxability is separate from the bundling determination.
- The taxability of a bundled transaction is up to each state.
- The point that the bundling rules are meant to be narrowly applicable was made and accepted.

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## BUNDLING STUDY GROUP – REPORT

- The group questioned the best way to analyze digital products in general given –
  - Many have no traditional, or analog, equivalent.
  - They can be difficult to fit into the existing categories that are so important for sales tax.
  - The tax base cannot be totally separated from the bundling question.

## BUNDLING STUDY GROUP – REPORT

- The ultimate worry is about taxability, not about bundling. Bundling analysis for its own sake is not the goal.
- Deciding whether parts of a digital product can be separated, and how, is more important and more difficult for digital than for traditional physical items.
- Members agreed that identifying distinct and identifiable products is more difficult with digital products than with physical products.
- So with digital products, sellers have great latitude in asserting whether there are distinct and identifiable products involved.

## BUNDLING STUDY GROUP – REPORT

- Various members observed that the Streamlined rules are seller focused.
- When the purchaser is responsible for paying use tax, the seller-focused nature of the rules might pose difficulties, especially where documentation focuses on the seller's records.
- For example, whether the seller has a catalog that lists the prices separately and that those prices add up to the total price the seller is charging may be critical documentation.

## BUNDLING STUDY GROUP – REPORT

- Streamlined rules - sale of two or more distinct and identifiable products is treated as a bundled transaction if no exception or exclusion applies.
- Distinct and identifiable products do not include –
  - packaging or similar items incidental or immaterial to the retail sale, or
  - products provided free of charge with a required purchase.
- Sellers may have broad ability to assert whether one or more distinct and identifiable digital products is offered.
- The group recommends that the rules allow states to determine when digital components are a single product.

## BUNDLING STUDY GROUP – REPORT

- The members consistently raised issues with the one non-itemized price element,
- The Streamlined language reads “separately identified by product on binding sales documents or other sales-related documents such as invoices, bills of sale, receipts, contracts, service agreements, and price lists made available to the purchaser in either paper or electronic form.” Question – how does this work in practice?
- Members noted this is a more pressing problem with digital products than with traditional products.
- The study group recommends any state considering this approach add detail to the one non-itemized price requirement and its exceptions. This could be in the form of a presumption or anti-abuse rules as well as more detailed rules for how to determine the price.

## BUNDLING STUDY GROUP – REPORT

- The de minimis exclusion excludes a transaction from the Streamlined bundling rules if the price of the taxable component is 10% or less of the total price.
- Example – tax preparation software as a Service (SaaS) packaged with an application may raise the de minimis exclusion –
  - For some, the application has little intrinsic value.
  - But application of the de minimis exclusion may be problematic.
  - How do you determine the value of the app?
- Regarding whether the ten percent threshold of the de minimis rule is appropriate, the group identified the issue but did not discuss it.



## BUNDLING STUDY GROUP – REPORT

- Also while discussing the de minimis exclusion, the concept of breaking up digital products arose again.
  - The bundling rules may encourage vendors to take one traditional product, break it down into several non-taxable components and justify the taxable parts being less than 10%
- The suggestion made was to impose a threshold question of whether a transaction is composed of ‘integral’ components.
- If the answer is yes, then the transaction is one product and should not be artificially separated to avoid taxation.

## BUNDLING STUDY GROUP – REPORT

- There were some challenges with application of the true object exclusions:
  - Under the one involving tangible personal property and services, the tangible personal property must be essential to the use of the service, not the other way around. Additionally, the tangible personal property must be offered exclusively in connection with the service and the true object must be the service.
  - The app question rises here also; are taxable applications essential to a non-taxable SaaS, or are they just helpful?
  - Whether the service to service true object exclusion applies when there are more than two services.
- An issue specifically created by digital products is the terminology used in the true object exclusion. Whether an item is “TPP, item, property, or good,” on the one hand, or a “service,” on the other.
- These references do not include digital products or digital services.

- Consider expanding the language used in the exclusions to bundling, including the true object exclusion, to apply to digital products.
- Consider clarifying the applicability of the service-to-service true object exclusion to transactions involving more than two services.
- Consider adding a third iteration of the true object exclusion for transactions involving digital products.

## **BUNDLING STUDY GROUP – REPORT - RECOMMENDATIONS**

- Consider clarifying the de minimis exclusion, including adding detail on valuation methods. The related question is who determines whether something is a single product or distinct and identifiable products.
- Consider adding detail to the one non-itemized price element and its exceptions, particularly the role of a price list and the labeling and pricing of components.
- Consider developing a threshold inquiry to determine whether a transaction is one product or a set of distinct and identifiable products.

## **BUNDLING STUDY GROUP – REPORT - RECOMMENDATIONS**



## CONNECTING TO STREAMLINED

- Streamlined states are also reviewing the exercise for possible input and action on the bundling rules.
- Non-streamlined states may participate in those discussions.



# UPDATE ON THE DEFINITIONS STUDY GROUP

DIGITAL PRODUCTS PROJECT



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## BUNDLING STUDY GROUP

- Includes representatives from 26 different firms, groups, or states.
- Group has held two discussion sessions so far.

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## Goal of the Chair

- Articulate broad criteria for evaluation
- Identify proposed and existing definitions for evaluation
- Written evaluations
- Finish before the MTC Annual Meeting



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## Broad Criteria

- Clarity and ease of application
- Revenue generation or stability
- Compatibility with other elements of the tax structure
- Pyramiding of taxes
- Other considerations (catch-all)

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## Proposed and Existing Definitions for Evaluation

- Langenberg Proposal
- Washington
- Utah/Maine
- Ohio
- South Dakota

## **Langenberg Proposal**

- “Automated digital product” - an item, including software or a service or a right to access or use the item regardless of duration, that is provided in a binary format and for which additional human intervention required to produce the same or a substantially similar item for additional customers is minimal.
- Exemption: A product is exempt from taxation as an automated digital product if the product will be used predominantly for a trade or business.

## Washington

- Revised Code of Washington 82.04.192

Digital products definitions. ...

(3)(a) "Digital automated service," except as provided in (b) of this subsection (3), means any service transferred electronically that uses one or more software applications.

(b) "Digital automated service" does not include:

(i) Any service that primarily involves the application of human effort by the seller, and the human effort originated after the customer requested the service;

(ii) The loaning or transferring of money or the purchase, sale, or transfer of financial instruments.

## Utah

- Utah Code 59-12-101 (103)

(a) "Product transferred electronically" means a product transferred electronically that would be subject to a tax under this chapter if that product was transferred in a manner other than electronically.

(b) "Product transferred electronically" does not include:

- (i) an ancillary service;
- (ii) computer software; or
- (iii) a telecommunications service.

## Maine

- Maine Rev. Stat. Title 36 §1811. Sales tax - 1. Tax imposed; rates. A tax is imposed on the value of all tangible personal property, products transferred electronically and taxable services sold at retail in this State. Value is measured by the sale price.
- Maine Rev. Stat. Title 36 § 1752 (9-E). Product transferred electronically. “Product transferred electronically” means a digital product transferred to the purchaser electronically the sale of which in nondigital physical form would be subject to tax under this Part as a sale of tangible personal property.

## Ohio

- Ohio Revised Code Section 5739.01(B)(3)(e):

Automatic data processing, computer services, or electronic information services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic data processing, computer services, or electronic information services rather than the receipt of personal or professional services to which automatic data processing, computer services, or electronic information services are incidental or supplemental.

## Ohio

- Ohio Revised Code Section 5739.01(Y)(1)(c):

"Electronic information services" means providing access to computer equipment by means of telecommunications equipment for the purpose of either of the following:

- (i) Examining or acquiring data stored in or accessible to the computer equipment;
- (ii) Placing data into the computer equipment to be retrieved by designated recipients with access to the computer equipment.



## South Dakota

- South Dakota Codified Law 10-45-2.4 - There is hereby imposed a tax . . . upon the gross receipts of all sales, leases, or rentals of any product transferred electronically.

The tax is imposed if:

- (1) The sale is to an end user;
  - (2) The sale is to a person who is not an end user, unless otherwise exempted by this chapter;
  - (3) The seller grants the right of permanent or less than permanent use of the products transferred electronically; or
  - (4) The sale is conditioned or not conditioned upon continued payment.
- South Dakota Codified Law 10-46-1(8A) “Product transferred electronically,” any product obtained by the purchaser by means other than tangible storage media. A product transferred electronically does not include any intangible such as a patent, stock, bond, goodwill, trademark, franchise, or copyright.

## **COST Proposed B2B Exclusion**

- The sale of a “[Insert digital products definition (DP)]” to a qualified business that is the exclusive user of the [DP], including sharing the use of the [DP] with other qualified business users, is not subject to the [insert state SUT definition]; provided, however, that this exclusion shall not apply to non-business use of a [DP] by a qualified business unless the non-business use is inconsequential.
- “Inconsequential” is based on consideration of the [DP] value and the frequency of which it is used for a non-business purpose, which is based on the non-business use being so small as to make accounting for that use unreasonable and/or impractical.
- “Qualified Business” means all for profit [and non-profit] entities including sole proprietorships, partnerships, LLCs, corporations and other similar entities.”



# **QUESTIONS – DISCUSSION?**