



MULTISTATE TAX COMMISSION

MEETING NOTES

MTC Work Group – Sales Taxation of Digital Products

April 3, 2025

I. Introductions and Review of Notes from March 6, 2025 Work Group Meeting

Tim Jennrich (Washington), Chair of the Work Group, convened the meeting.

Tim stated that the group's process guidelines and notes from the March 6 meeting were posted on the project page and that anyone with changes to those notes should contact Helen Hecht, at hhecht@MTC.gov.

II. Initial Public Comment

Jennrich invited any initial public comments. There were none.

III. Report on the Bundling Study Group

Jennrich invited study group Vice-Chair Mia Strong (Louisiana) to provide a report on the bundling study group and turned the meeting over to her. Mia presented the bundling study group's report.

Mia recapped the group's sessions, which began in late 2024 and continued through March 21. She stated that the concept was to take the Streamlined bundling rules and apply them to various scenarios involving digital products. She stated the group had completed its work and the report she was about to cover represented the group's report back to the full work group.

Mia first mentioned that the Streamlined rules worked well and that the recommendations were not a strong critique but just areas where the digital goods created confusion and ambiguity when applying the rules. Overall, the group believed the rules did not break, but saw some room for clarification.

Mia mentioned the group discussed the Streamlined bundling rules being purposefully narrow purposefully. That the goal was not to bundle everything. She noted this was helpful in applying the rules in some instances. She noted that Louisiana had adopted the Streamlined bundling rule recently so learning about the background and policy history was helpful to Louisiana.

She stated the group agreed that classifying digital products is more difficult than classifying traditional products and tax administrations are less familiar with digital products. Additionally, the group agreed that digital products are more easily broken apart than traditional products.

Turning to the rules themselves, Mia shared the group's observation that the Streamlined rules have a seller-centric orientation and that this can lead to documentation issues when the purchaser is the party responsible for the tax rather than the seller.

Mia then described the substantive provisions of the Streamlined rules that the group thought needed some clarification. These included the one non-itemized price element, particularly the price list exception, the de minimis exception, and the true object exclusions. See the study group's report for more information.

On a broader note, Mia mentioned the de minimis rule's 10% threshold and stated that the policy behind this is important and will drive administration of the exception. The group believed there may be a need for detail on the de minimis rule generally. She noted the example of a software-as-a-Service (SaaS) product that is accompanied by an application. In this case, the inclusion of the app, which in some states would be considered TPP, raised questions about the applicability of the policy goal behind the de minimis rule and the valuation method used.

Mia then described the recommendation for a formal pre-bundling analysis to be added. She referred to the study group's report for more detail but stated that the group acknowledged that such a pre-bundling analysis may already be done in some states, but the group felt it should be made official and described and defined.

Mia wrapped up by stating that, overall, digital goods reveal some grey areas that present opportunities for some detail to be added to the Streamlined rules. She then invited any members of the study group to add anything they wanted to add and invited questions from the group.

Craig Johnson (Streamlined) commended the group on the exercise and for including Streamlined in the process. He mentioned his intention to get the business community's input on the bundling exercise. He stated he would be considering the recommendations to see if there are areas to clarify the rules and that this might create an additional work group at Streamlined to work on this.

Mark Nebergall (Software Finance & Tax Executives Council) referred to the example of a SaaS product with an application. Mark provided his conception of the meaning of distinct and identifiable, stating that the test is whether a component is separately sold. If it is, then it is distinct and identifiable. Mia stated that is not in the rules. Mark responded that either way he would not consider the application described to be distinct and identifiable and so the application of the de minimis test would never be reached.

Jonathan White (MTC) stated that the SaaS example Mia mentioned comes from the study group's report and is not found in the exercises themselves. The general example was shared by more than one study group member to demonstrate the difficulty of applying the de minimis rule.

Craig followed up on Mark's version of the rule that if two components are sold separately, then they are distinct and identifiable. Craig used the lemonade example, stating that the grocery store does sell the lemons, water, and sugar, so the availability might not be the best test to whether two things are distinct and identifiable.

Mia closed saying the study group was great to work with and did a lot of good work. She thanked the study group members and the MTC staff.

IV. Report on Definitions Study Group

Tim moved to discussion of the MTC definitions study group and invited staff from Streamlined to share any information about a potential definitions study group at Streamlined. Craig stated there is a request to take on a similar project for the narrow approach. He stated it is moving forward and that Alison Jares (Streamlined) issued a request for work group members. Alison stated the work group would likely get started before the next Streamlined Governing Board meeting, which is scheduled for May.

Tim pointed out that states that are not part of Streamlined could participate in the work group. Craig followed up that this is the case with all the Streamlined work groups and that the business community is welcomed as well.

Tim then moved to discussion of the MTC definitions study group, which is covering the broad approach, and turned to Ray Langenberg (Texas), who is leading that group.

Ray described the second study group session, which was held March 28, and stated the group discussed three things: criteria for evaluation, what to evaluate, and the business-to-business exemption. He stated that the next session is scheduled for April 11 and the plan is to talk about the same three things.

Ray shared his screen to share the criteria for evaluation with the group. There are five: clarity and ease of application, revenue generation and stability, compatibility with other elements of the tax structure, pyramiding of taxes, and other considerations. He mentioned receiving some good ideas, specifically equity from Karl Frieden (Council on State Taxation). Ray stated the compatibility with other elements of the tax structure criterion contained that concept. He stated he will present these criteria to the group at the April 11 session.

Ray said the group would evaluate his model definition and several existing state approaches that generally fit into the broad approach. He mentioned there were some volunteers to prepare summaries and critiques of other state approaches. He stated that summaries of the identified state approaches would be furnished soon and the evaluation process would start session following the April 11 session. He stated that an evaluation of his proposal plus several existing state approaches will be enough for a meaningful report and that he intends to complete this before the MTC annual meeting.

He noted the receipt of model language from the Council on State Taxation staff.

Ray then described his proposal for the group, reading the definition and the proposed exemption for business-to-business transactions. He stated this proposal is what the group will consider at the April 11 session and invited any comments to be sent to him or the MTC staff.

V. New Business

Tim moved to discuss any new business.

Helen Hecht (MTC) mentioned that the webpage was very detailed and if anyone needs help finding anything, let her or the MTC staff know.

There was no other new business.

VI. Adjourn

Tim then adjourned the meeting.