



MULTISTATE TAX COMMISSION

SALES TAX ON DIGITAL PRODUCTS UNIFORMITY PROJECT

**REPORT TO THE UNIFORMITY
COMMITTEE ON BUNDLING ISSUES**

JULY 30, 2024

BUNDLING AND THE TAXATION OF DIGITAL PRODUCTS - BACKGROUND AND STEPS TO DATE

- At their March 7, 2024 meeting, the work group voted to study bundling issues.
- Staff was charged with doing research on the issue.
- Staff efforts to date.

STAKEHOLDERS WHO PROVIDED INPUT

- **Academics**
 - Andrew Appleby, Stetson College of Law
- **Streamlined Representatives**
 - Craig Johnson & Christie Comanita (work group ex officio members)
 - Sherry Hathaway & Michael Ward (TN)
- **Taxpayers**
 - Amazon – Jessie Eisenmenger & Roger Price
 - Apple – Terry Ryan and Sheila Bayley
 - Charter Communications – Brandi Drake

STAKEHOLDERS WHO PROVIDED INPUT

- **Practitioners & Taxpayer Representatives**
 - Eversheds Sutherland – Michele Borens and Charlie Helms
 - Kranz & Associates – Carolyn Kranz
 - MultiState Associates – Deborah Bierbaum
 - Yetter Tax – Diane Yetter
 - Pillsbury Winthrop Shaw Pittman - Zach Atkins
- **Organizations & Compliance Vendors**
 - Avalara – Scott Peterson (via comments to the press)
 - Council On State Taxation – Fred Nicely
 - SofTec – Mark Nebergall
 - Sovos – Charles (Chuck) Maniace
 - TaxCloud – Bruce Johnson

**PRELIMINARY
TAKEAWAYS &
PERSPECTIVES
FROM
STAKEHOLDER
DISCUSSIONS
ON BUNDLING &
DIGITAL
PRODUCTS**

1. Definitions - what is a bundle vs. a single product with multiple attributes vs. a situation where the true object test applies? Lots of confusion.
2. Software coding bundling issues are very challenging for coding in-house sales tax compliance systems and sales tax compliance software vendors.
3. True object test - does seller or purchaser perspective control? Use a “reasonably prudent buyer” test? Some say use true object instead of tainting rule. Some say true object test is subjective; go with a more objective test instead.

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4. SST approach - Two or more distinct and identifiable products sold for one-nonitemized price.
 - a. Some say it's the best approach and covers digital products, so look no further and don't create any other options for bundling rules.
 - b. Others say it's good but could use an update for digital products since they were not considered when the rule was developed.
 - c. Others say SST doesn't cover digital products because digital components are not distinct and identifiable (a condition under SST to be a bundle).
 - d. Some say the "distinct product" concept is hard to distill with digital products.
 - e. SST states are easier to navigate than non-SST states.

**PRELIMINARY
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5. Other approaches mentioned – Part 1:
 - a. Tainting rule
 - b. De minimis rule
 - c. Accounting rule (unbundling)
 - d. Hierarchy with ultimate default to taxable – new concept.

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- 5. Other approaches mentioned – Part 2:
 - e. Negotiating with states
 - f. Industry specific rules
 - g. Use SST Rule 330.D.3 (relating to % taxability)
 - h. Requesting letter rulings

**PRELIMINARY
TAKEAWAYS &
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6. Product issues/examples – Part 1:
 - a. Some say bundling with digital products is more difficult.
 - b. Sellers like bundles.
 - c. All digital services have some component of software.
 - d. Any digital attribute can be removed from a digital product, so digital products are not like tangible products.
 - e. App with various components/attributes.
 - f. Digital code.

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6. Product issues/examples – Part 2:
 - g. Free item given away with item that is sold – example: Streaming concert video and t-shirt.
 - h. Treadmill/other exercise equipment with videos/streaming services.
 - i. Remember ITFA definitions/implications and the ITFA accounting rule.
 - j. Software maintenance comes up frequently in bundles.
 - k. Often states ask about percentages of different parts of a product, such as a streaming product where a state wants to know the percentage of downloads vs streamed views.
 - l. Some say the ability to download an otherwise streaming digital product should not be considered downloaded software; the true object is the streaming.

WORK GROUP OBSERVATION ON STREAMLINED BUNDLING RULES

- Step 1: Is there a bundled transaction?
 - Two or more distinct and identifiable products with the following not being distinct and identifiable:
 - ❖ Elements of sales price, e.g., material and labor costs
 - ❖ Packaging
 - ❖ Items offered for free
 - Sold for one nonitemized price.
 - And excluding the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

WORK GROUP OBSERVATION ON STREAMLINED BUNDLING RULES

- Step 2: Exception transactions
 - Transactions that would be bundled transactions except...
 - The true object transactions is one of the products.
 - The taxable product is de minimis
 - The transaction contains specified industry products (food, drugs, etc.) and the taxable products are X% or less of the purchase price.
- Step 3: Specify tax treatment of bundled transactions and exception transactions, including applicable unbundling rules.

WORK GROUP BUNDLING EXAMPLES

1. Assume a state does not tax software as a service but does tax software as TPP. What should be the taxability outcome if a seller of SaaS includes with the subscription an app that allows a purchaser to more easily access the SaaS platform?
2. Charges for personal services (e.g., training or consulting) or a membership to a trade or professional organization that include access to a digital library of forms, templates, articles, and/or training videos.

WORK GROUP BUNDLING EXAMPLES

3. Vendor's nonitemized offering includes the following:
 - The right to use an online portal to access the vendor's proprietary digital research library,
 - The right to receive personal consulting from professional analysts, and
 - The right to view prerecorded online presentations, meetings, or workshops

WORK GROUP BUNDLING EXAMPLES

4. Vendor's nonitemized offering includes the following:
 - The right to access a Communications As a Service (CaaS) platform
 - includes access to use VOIP, SMS/MMS texting through IP protocol, instant messaging and audio/video conferencing tools
 - The ability to store and manage data
 - Storage and management of communication data
 - The ability to integrate (e.g., through an Application Programmable Interface) the software platform with other 3rd party software

WORK GROUP BUNDLING EXAMPLES

5. Vendor's nonitemized offering includes following:
 - Lease of a live-stream camera with unlimited 4G LTE Data
 - A web-based platform to access the live video streaming of a location (e.g., construction site)
 - The ability to control the camera through customer's computers or electronic devices.
 - Unlimited storage of videos
 - Access to weather data
 - Allows the customer to create time-lapsing videos/photos

WORK GROUP BUNDLING EXAMPLES

6. Vendor's nonitemized offering is the sale of a Non-Fungible Token that provides the owner with the following:
 - Free admission to a set number of music concerts annually – (sourced to respective state)
 - Access to in-person educational events
 - Lifetime subscription to video streaming service
 - Lifetime subscription to downloadable software
 - Lifetime subscription to music streaming service

WORK GROUP BUNDLING EXAMPLES

7. Vendor's nonitemized offering is the sale of remote access software, providing users with the following:
 - The right to exclusively use the software product remotely
 - Users can download an application (e.g., mobile, desktop, tablet) that provides access to the vendor's remote access software
 - The downloaded application does not include any offline functionality for the user
 - The ability to create 3D renderings of a building or structure that can be downloaded or shared via email

WORK GROUP BUNDLING EXAMPLES

8. Vendor's nonitemized offering is the sale of remote access software, providing users with the following:
 - The right to use the software product remotely
 - Users can download an application (e.g., mobile, desktop, tablet) that provides access to the vendor's remote access software
 - The downloaded application includes various offline functionalities when not connected to the vendor's platform, such as:
 - The ability for the user to take pictures within the application installed on their device
 - Data storage within the user's device
 - Geolocation tracking features, such as:
 - Location history logging
 - The ability to tag the location where photos are taken or data is collected
 - The ability to create 3D renderings of a building or structure that can be downloaded or shared via email