



MULTISTATE TAX COMMISSION

## MEETING NOTES

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

April 4, 2024

#### I. **Welcome and Introductions –**

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 March 7, 2024 Work Group Meeting –**

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

#### IV. **Staff update on research relating to bundling and digital products –**

Nancy Prosser, MTC, began the update on the staff research into bundling of digital products. She noted that the staff had reached out to stakeholders to schedule calls to discuss whether they have seen particular bundling issues. Staff is also studying the Streamlined version of the model bundling rule and have talked to Craig Johnson and Christie Comanita, ex officio members of the work group to discuss that model and will also be talking to those who participated in drafting the model. There will be other stakeholder conversations which are scheduled for the coming weeks. Prosser also noted that anyone who wants to reach out to discuss bundling issues should do so.

Jonathan White, MTC, gave an update on the bundling issue research. He noted that he has reviewed the Streamlined model and is also looking at what other states may be doing. He contrasted this a bit with the larger research he has been doing on state taxation of digital products generally, and that the scope of this research into bundling is going to be much more detailed. He noted that the bundling issue is closely related to the true object test which most states recognize. What he is finding is that in most cases, it is the true object test that non-Streamlined states are applying when it comes to general bundling issues. And most of the authorities take the form of letter rulings. He also noted that it was too early to give a substantive update since there is still more to review. When he's finished with summarizing all the research there will be opportunities for the states to weigh in and provide additional information.

Jennrich noted that bundling can be a difficult issue and especially in the context of digital products. In Washington, Jennrich noted, not only do you have to decide what kind of product the sale involves but also whether those types of products can be unbundled. One

question is whether there are really distinct products. Every product can have different elements that could be itemized—but in the digital world, it’s harder to know when those elements are truly separate. So he encouraged states to bring issues forward so that the group can be aware of them and begin to resolve them. And White noted that the Streamlined rule, which those states must follow, also contains a reference to the true object test and effectively recognizes that test still applies.

Prosser also noted that the MTC has a law student intern doing research in this area and looking at sources we may otherwise not have access to. She reiterated a request for states to bring issues forward if they are seeing them.

Michael Hale (Kansas) wondered whether this was going to become a vehicle to change the nature of states sales taxes to be some kind of net receipts tax. Prosser responded that, no, this was just to research what states are currently doing.

**V. Plans for the April 30 Uniformity Committee meeting in Kansas City –**

Jennrich also noted that there will be an in-person meeting of the MTC uniformity committee during their meetings in Kansas City. He summarized the plans for briefing the committee on the progress of the work group. He noted that we hope to make the presentation to the committee interactive and get further information from those attending. Prosser noted that the agenda for that meeting will be finalized no later than 10 days prior to the meeting.

**VI. Other business –**

No other business.

**VII. Next work group meeting – Thursday, June 6, 2024 at 11:00 a.m. Eastern –**

Jennrich also noted that because the in-person MTC meetings would be the week of the regular work group meeting, the next meeting of the work group will be June 5.

**VIII. Adjourn –**

Finally, Jennrich asked whether there was any new business or any other input from states or the public. There was none. He mentioned the next meeting would be held on April 4, 2024, at 11:00 a.m., Eastern time, and adjourned the meeting.