MULTISTATE TAX COMMISSION

MEETING NOTES
MTC Work Group – Sales Taxation of Digital Products
October 3, 2024

I. **Welcome and Opening Remarks, Including Review of Notes from September 5, 2024 Work Group Meeting**

Tim Jennrich (Washington), Chair, convened the meeting (noting that October 3 was the anniversary of the adoption of the federal income tax).

Tim announced that because Nancy Prosser has retired from the MTC, Helen Hecht (MTC) would be helping staff the work group. He expressed appreciation for Nancy's organization, hard work, and dedication to the project. Helen also expressed her appreciation for Nancy's engagement with stakeholders and thanked the work group for their patience during the transition.

Tim also noted that the meeting guidelines and the notes from the September 5 meeting were posted with the agenda and that anyone with changes to the notes should contact Helen at hhecht@MTC.gov.

II. **Initial Public Comment**

Tim invited any initial public comments. There were none.

III. **Update on Work of Staff on Bundling Section of White Paper and Other Developments**

Tim turned the meeting over to Helen to give a report on the work of the staff. She made the following comments:

- This project is different from other MTC projects both in terms of its size and its goal, which is not to draft a particular rule or model, but to study the issues that taxing digital products raise and to capture information on those issues for policy-makers.

- The project is critical because while states tax tangible personal property generally, most tax only certain specific services or digital products. Over time this leads to shrinkage of the tax base and rising rates.

- Issues the work group has considered so far include:

    o The broad, narrow, and medium approaches that states currently use in taxing digital products,

    o Whether expansion of the base could subject business inputs to tax,

    o How the Internet Tax Freedom Act applies to digital products, and

    o The issue of bundling taxable and non-taxable items in a single transaction.

Helen also noted that the bundling issue is a good example of generally of how state approaches can vary. She noted that there is a Streamlined model for bundling, but even that model may be applied somewhat differently, depending on the issue and the states' own laws. Non-Streamlined states may have different approaches. And the guidance on the issue may be found in statutes or regulations or it come from litigation or from informal guidance.

Helen also noted that others are also looking at these same issues. For example, the Tax Foundation published a report in September that acknowledges that the sales tax base is shrinking and that general base expansion can be an option, though the impact on business inputs should be considered.

Project Webpages

Lila Disque (MTC) provided an update on the project's webpages. In her report she noted:

- Meeting materials including agendas and notes are now on the original project page, but all other information is on the "White Paper Outline & Research" page which can be accessed using a button on that project page.

- This white paper page has multiple sections, which are shown on the left side, and generally following the white paper outline. Each section has its own page, which allows for posting of all the information related to the particular issues that may be included in the white paper.

- There may be topics on which no information is currently posted because the work group hasn't yet addressed that topic or is continuing to study the issues.

- The Appendix section is the central location for a number of the reference documents which may also be posted elsewhere in the outline.

- Work is continuing on the page and it may also be possible to create an index of information, although this can be harder because of the website functionality.

A few members commented that the layout of the webpages is helpful and Craig Johnson, Streamlined, noted that the Streamlined agreement has been updated and the link should be to that new agreement.

White Paper - Bundling

Jonathan White (MTC) described the latest draft of the bundling section of the white paper which is posted on the main project page. He noted that the staff had received some feedback and that most of this feedback had been worked into the current draft. There is also other information that will be included shortly. He briefly described the updates to the draft—mainly that some of the detail on true object and mixed transactions had been removed and that the draft has been simplified. He also welcomed any feedback and further input.

NCSL Digital Products Primer Project

Helen mentioned MTC staff's involvement with the project undertaken by the National Council of State Legislatures (NCSL) to develop a primer on sales tax of digital products. She noted that the meeting scheduled for October 2 was cancelled but should be rescheduled. She noted that the NCSL document will be more general or high-level than the MTC white

paper. Jonathan also noted that the NCSL has developed an outline for this primer which covers many issues that the work group is also discussing.

Scott Peterson (Avalara) asked how people can find out about these kinds of projects. Jonathan replied that MTC staff regularly attend and provide information to the NCSL SALT Task Force policy group and were asked to be included in the project drafting the primer.

IV.   Consideration of Possible Study Groups to Consider Bundling Examples and/or Approach to Definitions

Tim then moved onto the consideration of two possible study groups.

Bundling Study Group –

Tim described the bundling study group first and stated his intention to start that group soon. He stated that it would start with a call for volunteers. The participants would then apply the Streamlined framework to 3-4 examples of bundling of taxable and nontaxable items including digital products. predictable and consistent. The study group would then report back to the work group. The work group would take the results into consideration for the development of the white paper.

Tim then asked for feedback. Helen stated that she liked the described approach and believed it will help to identify any issues that the staff might not be aware of and the group should include non-Streamlined states as well.

Mia Strong (Louisiana), vice-chair of the work group, stated she likes the approach and volunteered.

Craig Johnson, Streamlined, asked about whether members of the private sector would be included. Tim responded that initially the group would be for state volunteers. He also stated his preference to keep the group small and nimble to let them get done and report back. Tim mentioned that if the business community wanted to study the examples in parallel that is welcomed.

Helen stated that MTC staff would prepare examples and a document summarizing the Streamlined rules for the study group members to use and would ask Streamlined staff to review this first.

Definitions Study Group –

Tim then described a second potential study group. He reiterated the three approaches (broad, medium, and narrow) that the group had identified in taxing digital products and that his vision is to have two study groups, one for narrow and one for broad. The narrow approach study group could be facilitated by Streamlined and the broad approach study group would be facilitated by the MTC work group. He stated that the study groups include volunteers from Streamlined and non-Streamlined states. He mentioned that the broad approach study group is not for the immediate term but likely would wait until after the bundling study group is completed.

Ray Langenberg (Texas) stated that it will be hard to do the bundling thing in the abstract; meaning you have to know what is and what is not taxable before you can analyze examples under bundling rules. He predicted the group will have difficulty analyzing the examples without knowing what is taxable and not taxable.

Josh Pens (Colorado) stated that the bundling study group would have to make some assumptions about taxability to move forward with the exercise. He noted the importance of carefully identifying the assumptions made. Josh asked if there was some utility in having a study group try to define business inputs. He also noted that it might be useful to consider how those will be defined, whether as anything purchased by a business or some looser version of the sale-for-resale concept. He recommended this might be another thing to put on the to-do list.

Tim stated that assumptions about taxability would help with the bundling study group.

Helen stated that general definitions and exemptions are connected, so it may be that when we look at the population of ways to do develop the tax base, exemptions might be based on how a product is used, or who purchases a product. Helen asked Ray if this made sense. He stated that the group might want to take business inputs into account when discussing the definitions, rather than use a separate definition of business inputs.

Tim asked if we would consider business inputs as part of the study groups or separately. Helen noted that the ideas are interrelated. She stated that a common view is that broad definitions means a broad base which means broad taxation of business inputs. But she noted that the broad approach can be coupled with broad exemptions to alleviate the impact on business inputs. Broad definitions can be coupled with exemptions, broad or otherwise.

Tim opened the meeting to any other feedback or objections to the plan. Craig stated that Streamlined would be glad to facilitate the narrow approach study group. He invited non-Streamlined members to join the narrow group also. There were no objections to the plan.

V.   New Business

Jennrich asked if there was any other business to raise. There was none.

VI.   Adjourn

Jennrich wished everyone a good rest of the week and a Happy Halloween and concluded the meeting.