



MULTISTATE TAX COMMISSION

SALES TAX ON DIGITAL PRODUCTS STATUS REPORT BUNDLING ISSUE

NOVEMBER 19, 2024

CHAIR - TIM JENNRICH, WASHINGTON

VICE CHAIR – MIA STRONG, LOUISIANA



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
- Jordan Heller – Kansas
- Richard Dobson – Kentucky
- Ben Grossman – Maryland
- Michael Fox – Maryland
- Michael Fatale – Massachusetts
- John Haidamous – Michigan
- Mark Chaiken – 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
- Emily Cramer – West Virginia
- Michael Hardtke - Wisconsin
- Tracey Mueller – Wisconsin
- Ex officio members: Craig Johnson and Christie Comanita, SST Staff



UPDATE ON THE PROJECT WEB PAGE

DIGITAL PRODUCTS PROJECT



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.

[*Click Here* for White Paper Outline and Research](#)

Upcoming Meeting Notice

Agenda

Thursday, November 7 2024 - 11:00 a.m. Eastern

[- Work Group Meeting Guidelines](#)

For information about this meeting, contact MTC Uniformity Counsel Helen Hecht at hhecht@mtc.gov.

AGENDA

- I. Introductions and Review of [notes from the October 3, 2024 Work Group Meeting](#) (in PDF form)
- II. Initial Public Comment
- III. Update on Work of Staff on Bundling Section of White Paper and Study Group Exercise on Bundling
 - Bundling Exercise ([PDF](#))([Word](#))
 - Streamlined Bundling Rules ([PDF](#))([Word](#))
- IV. New Business
- V. Adjourn

See Materials from the October 2024 Meeting are in the Project Materials - Prior Meetings drop down below.

Dial-in/Log-in Information

Log-In or Use App to Join ZoomGov Meeting

<https://www.zoomgov.com/j/1616418264?pwd=SmlQdGtLaEwrSElWTEFrSE01SWQwQT09>

Meeting ID: 161 641 8264
Passcode: 230515

Dial-In

+1 669 254 5252 US (San Jose)

Find your local number:

<https://www.zoomgov.com/u/ad9ncVtdQR>

Meeting ID: 161 641 8264

NOTE: Your line will be muted when you join. You will need to un-mute in order to speak. To un-mute by phone, press *6.

If you experience any kind of difficulty participating in the meeting, please contact events@mtc.gov.

Because of the size of this project and the materials associated with the development of the white paper—the project web page was expanded from a single page to a series of pages organized in a way that is similar to the outline for the paper.

The home page contains the meeting information and past meeting materials (which may also be included in other pages).

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)

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

→ Exemptions and Exclusions

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.

→ Mixed and Bundled Products

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

→ Sourcing

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.

→ Alternative Taxes

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.

→ Federal Law

→ 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.

For example – here is the page on the project’s purpose and the considerations that the work group has focused on, as well as those raised by stakeholders.

Project Purpose and Considerations

- 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)

Uniformity Committee Approved White Paper Subjects

- A general survey and description of the kinds of digital products currently offered in the marketplace and the nature of the transactions through which those digital products may be provided to customers;
- A general survey of academic research or other analysis on policy reasons for including digital products in (or excluding them from) the sales tax base;
- A review and summary of general information on the specific types of digital products that states currently tax (which information is available from different sources, including Streamlined);
- Analysis of the extent to which mixed or bundled products (including nondigital services and intangibles) may create issues for taxing digital products;
- A summary of sourcing issues and common approaches to sourcing digital products, including multiple points of use, and
- Analysis of the ways that digital products might be defined, categorized, exempted and sourced.

State Limitations

Dormant Commerce Clause

Internet Tax Freedom Act (ITFA)

State Legislative Reports

Important issues raised by stakeholders

Evolving products

Lack of certainty

Equity/Parity

Flexibility

General mechanics of sales and use taxes

Exemptions

Bundled and Mixed Transactions

Issues related to tax imposition

- Purpose
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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.

Here's another section on issues of sale. This section has been set up to capture information which the work group has not yet addressed—but may be addressed in the future. So, there may be topics which do not yet have materials.

Issues of sale

→ Purpose

→ Imposition

→ Issues of sale

→ Exemptions and Exclusions

→ Mixed and Bundled Products

→ Sourcing

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Issues of sale – outright sales, lease, license, for permanent use, etc.

NOTE: In addition to the definitions of items that are relevant, above, some states and the SSUTA distinguish different types of transactions when taxing various products. Therefore, this section summarizes the types of transactions that are commonly defined or used in the imposition of sales tax. Bundled products or transactions are covered in a separate section below.

Sale	●
Lease or rental	●
License or License to Use	●
Subscriptions or Access Charges	●
Service Contract	●
Exchange of user data for certain products and sales of that data	●
Non-Fungible Tokens ("NFTs") as transactions	●

Under the section on exemptions and exclusions there is information about the question of how to treat sales of business inputs—including information from the panel presentation at the 2023 MTC annual meeting in Austin.

Exemptions and Exclusions

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Tax Pyramiding

[Tax Pyramiding and Business Inputs](#) – MTC Staff Paper

Video from July 25, 2023 Uniformity Committee [Panel and Discussion of Tax on Business Inputs](#) (links to Vimeo)

- [State Digital Services Taxes](#) (Frieden and Lindholm)
- [Down the Rabbit Hole](#) (Frieden, Nicely, and Nair)
- [Effect on State Revenue](#) (Texas) (PDF)
- [ITEP Slides](#) (Ettlinger) (PDF)

Karl Frieden and Frederick Nicely, [Digital-Business Input Exemptions: Lessons from Sales Tax History](#) (posted with permission from State Tax Notes)

- Exemptions based on the nature of the item or use
- Typical exemptions related to services

Appendix

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.

→ Purpose

→ Imposition

→ Issues of sale

→ Exemptions and Exclusions

→ Mixed and Bundled Products

→ Sourcing

→ Alternative Taxes

→ Federal Law

→ Other related issues

→ Appendix

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Stakeholder discussions

Written Comments and Feedback

State Tax Agency Information

Resolutions

Whitepaper outline drafts

All Project Articles and Resources



UPDATE ON THE BUNDLING ISSUE

DIGITAL PRODUCTS PROJECT



BUNDLING ISSUE – DRAFT SECTION OF WHITE PAPER

- Draft Section of the White Paper – with research on Streamlined and other rules as well as a summary of stakeholder input. – [HERE](#)
- Covers:
 - Why and how states have developed bundling rules.
 - Results of staff research into current state practices on bundling.
 - Streamlined States - Basics
 - Streamlined Exclusions
 - True object exclusions
 - De minimis exclusion
 - Food, drug, and medical equipment exclusion
 - Other States Rules
 - Not Bundling
 - True Object Test and Mixed Transactions
 - Stakeholder Input
 - Federal Law
 - Comparison of Different Approaches

BUNDLING ISSUE - STUDY GROUP EXERCISE

- Summary of the Streamlined bundling rules.
- Examples – that include digital products to which participants will apply the bundling rules.
- Asking state volunteers from the states to work through the examples and give input on their results and if there are gaps or other problems applying the rules to transactions involving digital products.

BUNDLING ISSUE - STUDY GROUP EXERCISE

- Results expected by the meeting in January – will be provided to the work group and used in completing the summary on bundling for the white paper.
- If the results highlight issues or questions that may need to be addressed, this information will be provided to Streamlined for their consideration.

POSSIBLE NEXT STUDY GROUP - DEFINITIONS

- Based on staff research and work group discussions, we have focused on three approaches to defining digital products for inclusion in the tax base which we've termed "broad," "medium," and narrow.
- The work group has discussed forming a study group to consider the broad approach.
- The study group might also wish to take business inputs into account when discussing the definitions.
- Streamlined is also considering definitions of products, in addition to those it already has adopted, following the narrow approach.



QUESTIONS – DISCUSSION?