

Report of the Chair of the Digital Products Definition Study Group
By Ray Langenberg
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The Study Group: [list members]

The task: The Definition Study Group was tasked with evaluating methods to broadly define a digital products tax base.

Evaluations: The Chair invited members of the Group to identify existing methods for evaluation, to propose new methods, to discuss the criteria for evaluation, and to evaluate. The Group evaluated, but did not endorse or reject, the following existing approaches: Washington, South Dakota, Ohio, Utah, and Maryland. The Study Group received one proposed new method, for the taxation of “automated digital products.” The Appendix contains a lead document for each method and other written comments submitted by Group members.

Criteria for evaluation:

- Clarity and ease of application
- Revenue generation or stability
- Compatibility with other elements of the tax structure
- Pyramiding of taxes
- Other considerations

Categorizing the methods:

Early in the project, MTC staff member Jonathan White drafted a multipage memorandum and matrix analyzing the strengths and weaknesses of broad, medium, and narrow methods for the taxation of digital products. The analysis is included in this Report and may be useful to a state in evaluating the appropriate digital tax base.

For this Report, the Chair has rearticulated the broad, medium, and narrow methods as the unitary definition method, the expansive definition method, and the specific definition method.

The unitary definition method:

The unitary definition method uses a single definition for inclusion in the tax base with one or more exclusions applied to the definition, and external exemptions such as the sale-for-resale exemption.

- **Washington**

In Washington, the term “digital products” consists of:

“Digital automated service,’... any service transferred electronically that uses one or more software applications.”

“Digital goods,’... sounds, images, data, facts, or information, or any combination thereof, transferred electronically, including, but not limited to, specified digital products and other products transferred electronically not included within the definition of specified digital products.”

The tax base has been limited by over a dozen exclusions, including an exclusion for services involving primarily human effort. The Washington legislature has now repealed the primarily human effort exclusion, effective October 1, 2025.

- **Utah**

Utah imposes sales and use tax on amounts paid or charged for a sale of: (i) a “product transferred electronically” and (ii) a repair or renovation of a product transferred electronically, including maintenance agreements.

Utah’s definition of “product transferred electronically” is limited to “a product transferred electronically that would be subject to a tax under this chapter if that product was transferred in a manner other than electronically.”

The State Tax Commission has interpreted “product transferred electronically” to be limited to products that can be downloaded by the purchaser.

- **South Dakota**

South Dakota broadly imposes tax based on gross receipts received from sales of tangible personal property, products transferred electronically, and services.

- **Tax on “automated digital products”**

The only new method is a proposed tax on “automated digital products,” using the following definition for “automated digital product” – “an item, including software or a service or a right to access or use the item regardless of duration, that is provided in a binary format and for which additional human intervention required to produce the same or a substantially similar item for additional customers is minimal.”

A product would be exempt from taxation as an automated digital product if the product would be used predominantly for a trade or business.

The expansive definition method:

The expansive definition method uses several expansive, but not all-inclusive, definitions for inclusion in the tax base with one or more exclusions applied to the definitions, and external exemptions.

- **Ohio**

In addition to the inclusion of “specified digital products” under the Streamlined Sales Tax Agreement, the tax base also includes transactions in which “[a]utomatic data processing, computer services, or electronic information services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic data processing, computer services, or electronic information services rather than the receipt of personal or professional services to which automatic data processing, computer services, or electronic information services are incidental or supplemental.”

“Automatic data processing’ means processing of others’ data, including keypunching or similar data entry services together with verification thereof, or providing access to computer equipment for the purpose of processing data.”

“Computer services’ means providing services consisting of specifying computer hardware configurations and evaluating technical processing characteristics, computer programming, and training of computer programmers and operators, provided in conjunction with and to support the sale, lease, or operation of taxable computer equipment or systems.”

“Electronic information services’ means providing access to computer equipment by means of telecommunications equipment for either examining or acquiring data stored in or accessible to the computer equipment or placing data into the computer to be retrieved by a designated recipient with access to the computer equipment.”

Automatic data processing, computer services, and electronic information services do not include personal or professional services.

- **Maryland**

The specific definition method:

The specific definition method uses multiple narrow definitions aimed at specific products, typically with exclusions, and external exemptions.

An example of the specific definition approach is Wisconsin, which taxes “specified digital products,” as defined in the Streamlined Sales Tax Agreement, plus “additional digital goods” transferred electronically: greeting cards, finished artwork, periodicals, video or electronic games, and newspaper or other news or information products.

The Chair’s general critique of the categories:

In addition to the White memorandum and matrix, and the specific critiques of the particular methods in the Appendix, the Chair offers the following general critique for consideration by the Digital Products Work Group.

Generally speaking, because unitary and expansive definitions will be broader than specific definitions, they have the potential to raise more revenue and be more adaptable to new and innovative products than specific definitions. But, revenue from broad terms of inclusion could be significantly reduced by terms of exclusion that are added to the definitions.

Generally speaking, unitary and expansive definitions have the potential to be less clear than specific definitions focused on particular products. But, multiple specific definitions for multiple products also require the articulation of more taxability boundaries than are required for a unitary definition or for a few expansive definitions. For example, the definition of “digital book” in the Streamlined Sales Tax Agreement still requires a detailed rule to explain what is and is not a “book.” There are similar detailed explanations for “digital audio visual works,” and “digital audio works.” Ultimately, clarity depends upon the articulation of ascertainable terms of inclusion and exclusion rather than the type of approach.

Pyramiding of taxes:

The Study Group did not attempt to catalog potential exclusions and exemptions. But, in response to the concerns of group participants, the pyramiding of taxes was listed as a criterion for evaluation. Accordingly, the scope of any business-to-business exclusions are discussed in the evaluations. In addition, the proposed definition of “automated digital products” includes a proposed business-to-business exclusion, and the Council on State Taxation submitted a stand-alone memorandum on the business-to-business exclusion.