



To: Ray Langenberg, Helen Hecht, Tim Jennrich and Mia Strong

From: Craig Johnson, Executive Director, Streamlined Sales Tax Governing Board, Inc.

RE: Questions/Comments on Ray's proposal – Automated Digital Products Definition

I am submitting these comments to provide feedback related to the “Proposed Model Digital Product Definition and Related Exemption – 20250509 Draft.” These comments have not been reviewed/approved by the Streamlined Sales Tax Governing Board, but are my initial comments, questions and suggestions for your consideration.

- A.1. – Under the proposed definition, does a physical CD/DVD, etc. now become an “automated digital product” instead of being TPP – or would it be both? If it is both, my thought is that this can result in some states treating these products as TPP and other states treating them as “automated digital products” which reduces uniformity and may lead to confusion. I also see this as potentially adding complexity particularly for multistate sellers trying to map their products to a single product category.
- A.1 – Does this proposal recharacterize “prewritten computer software” from TPP to becoming an “automated digital product”? For SST purposes and I believe for most states that tax prewritten computer software, it is just included in the definition of TPP.
- A.1. – What does “minimal” mean? This will need to be clearly defined or each state will likely interpret it differently creating inconsistent treatment of the same product between states even though they may have the exact same words contained in their laws. I anticipate this would lead to a number of disputes and likely litigation. Maybe the best way to approach this is to develop specific examples interpreting the phrase “...for which additional human intervention required to produce the same or a substantially similar item for additional customers is minimal.” The examples should not just address the extremes, but also the “fringe” cases to provide the best possible direction if a clear and objective definition cannot be provided.
- A.2. – What does “predominantly” mean? Exclusively, primarily, etc.? – Recommend clarifying this.
- B.1. – How is the line drawn using “very limited human response”? Very subjective. Rather than just pulling language from the sources referenced, I would suggest



trying to take the concepts described and provide a number of examples to illustrate the concept. Once those examples are developed, then perhaps a clearer definition/interpretation of the phrase can be provided – leading to greater clarity and understanding.

- B.3. - ITFA – don’t want to give it more credit than it deserves – but it is an issue that needs to be considered for states that want to try to prevent this from becoming an issue.
- C. (page 2, last sentences of 4th paragraph under C.) – If the definition of “automated digital product” is intended to be drafted to cover the requirements contained in Section 332 of the SSUTA, the definition should also include language to address whether continued payments are required. Perhaps something along the lines of the following: “Automated digital product” - an item, including software or a service, or a right to access or use the item regardless of duration **and regardless of whether continued payments are required**, 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.
- Page 3 – 2nd paragraph – Under SST, businesses are an end user of products used in their business – such as accounting software so SST does not achieve a similar result for taxation as the “used predominantly in trade or business exemption.” We specifically stay away from determining taxability and leave that up to the states.

For purposes of the SSUTA, the language about “end user” was to address the “resale” provisions in the states so that a business that purchased specified digital products or other products transferred electronically and then broadcast, rebroadcast, etc., those items, could purchase them for resale - unless the state specifically imposed the tax on purchasers who were not end users.

- Pgs. 4 - 5 – last paragraph of page 4 and first full paragraph of page 5 – Just to be clear, SST does not look at or consider revenue generation but with that being said, under SST states already have the ability to impose tax on “any other product transferred electronically” so while I agree the broad definition would likely generate more revenue, I want to be clear that states can already do this under the SSUTA.



- Pg. 5 – Item 3 – First paragraph – The phrase “If human professionals are more than minimally involved...” is unclear and subject to interpretation. I would suggest that specific examples, including fringe cases, be added to better explain this and to provide clearer guidance if uniformity is desired.
- Pg. 5 – last paragraph – Not sure about the reference to the SST definition of “products” – I am wondering if that is a 4th category of products – TPP, services, digital goods and then “automated digital products.” If this proposal moves forward we might need/want to consider updating the SSUTA to add a new definition for “automated digital products”. The overlap with the current categories still concerns me.