



MEETING NOTES
MTC Work Group – Sales Taxation of Digital Products
September 11, 2025

I. Welcome, Review of Notes from June Call, and Initial Public Comment

Tim Jennrich (Washington), Chair of the Work Group, convened the meeting. He noted the group last met in June and notes from that meeting are online. There was no public comment

II. Report from the Definitions Study Group

Tim then announced a report from the definitions workgroup. Several months ago a study group, led by Ray Langenberg, started looking at how states impose tax on digital products, and identified broad, incremental, and narrow approaches. Ray prepared the final report.

Ray's written report is posted online and summarizes the work that has been done by the work group. A lot of the study group work is also enshrined in the list of documents incorporated in the appendix to his report. He discussed the criteria for evaluation: clarity, ease of application, revenue generation and stability, compatibility with other elements of the tax structure, pyramiding of tax, and other considerations. In addition Jonathan White had initially prepared a memorandum with various things to consider for a state that is trying to expand the tax base. The memo is referenced in the summary and attached to the report.

Ray rearticulated the narrow, medium and broad methods into "specific, expansive and universal" definitions. He interpreted a "specific" definition to mean a method that uses multiple narrow definitions of specific products, typically with specific exclusions for each product, and then generally applicable exemptions. The primary example of that is the Streamlined Sales and Use Tax Agreement's specified digital products, digital audiovisual works, digital audio works, and digital books. Some states, like Wisconsin, have expanded upon that by adding "additional digital goods." The advantage of this approach is well-thought-out definitions that have been tested. But the limitation is that it may limit revenue generation and is not designed to expand with product innovation.

The "expansive" definition method uses several broad, but not all-inclusive, definitions for inclusion in the tax base, with one or more exclusions applied to the definitions as well as generally applicable exemptions. Ohio adopted an expansive definition and has taxed categories like automatic data processing, computer services, and electronic information services with relatively broad definitions. Texas falls into this category because it taxes data processing and information services and cable services. Louisiana also uses an expansive method; they tax things like providing prewritten computer software access services and providing information services, in addition to the Streamlined specified digital products. These more expansive definitions tend to be very nebulous. States' administrative

agencies can adopt extensive guidance on what's in and out, but the drawback is that there's plenty of room for taxpayer challenge.

The "universal" definition method uses a single, broad definition of digital products with one or more specific exclusions applied to that definition and generally applicable exemptions, such as the sale for resale exemption. Ray put Washington into that category. For example, they tax digital automated services, which are any services transferred electronically that uses one or more software applications, *but* Washington has then limited its tax base by over a dozen exclusions, which can significantly affect the revenue generation. Utah has an interesting approach in that they tax products transferred electronically in a very broad definition – Ray would call it a universal definition. But then they define it as being 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." As a result, Utah taxes all the specified digital products in Streamlined, because all of those probably have a tangible counterpart, but it is not clear to Ray what else it might cover. Ray suspects that as time goes on, fewer and fewer products are going to be downloaded by the purchaser, and most products are going to be things that can only be accessed online. He noted that South Dakota has a broad definition, but since South Dakota taxes nearly all services and tangible personal property, it's not really a model for any other state unless that state also wants to go all in and tax everything.

Finally, Ray presented his own new proposal for automated digital products, which is defined as "a digital product that can be provided to multiple customers in the same or substantially similar form, with minimal human intervention." A product would be exempt from taxation as an automated digital product since it would be used predominantly for a trade or business. Ray recognizes that the weak point of this definition is how to define or analyze "minimal human intervention." But he emphasized that this is a concept that has been used by the OECD, the United Nations, and by the European Union, such that there is some non-binding guidance already out there about what is and is not minimal human intervention. It is also an objective determination to some extent, because you can look at the economies of scale of a company and if they can produce an additional product for an additional customer with for very little additional cost, then that is a strong indicator that there is minimal human intervention. Ray also pointed out that this proposal has been honed by comments and advice that came from members of the group.

Ray mentioned a recent ruling from Indiana, which taxes specified digital products, that AI-generated products are not "specified digital products." The world is moving towards artificial intelligence, and if a state is limited to the Streamlined-type products it may not capture those things. Other definitions, however, may expand to capture those emerging automated products. Ray reminded the audience that the more specific definitions you have, the more criteria that you need to list as to what's in and what's out.

Finally, he mentioned that, while the group didn't attempt to look at all potential exclusions and exemptions, they did do a review of business-to-business transactions. Those resources are referenced in the memo and appended to it. And in Ray's definition of automated digital products, there is a proposed business-to-business exclusion.

Tim thanked Ray for his report and invited comments. Craig Johnson noted that with regard to the Streamlined approach, there are some specifically defined terms but any member state may impose tax on any other product transferred electronically and remain compliant. So as different products come

out, states may more specifically define them, which is something the Streamlined group is trying to do at this time. Richard Dobson questioned “minimal human intervention” and asked for a practical example of what would be excluded and why that’s an appropriate exclusion. Ray responded that this is intended for a state that does not currently tax very many services. He views this as a quasi-objective standard for not taxing professional services.

Helen Hecht mentioned that the other ongoing work is related to sourcing, but with each new topic we need to think about whether that affects any of the issues that have already been considered – like bundling – or creates new issues. She recommended that people stay current with the project page to maintain awareness of all the moving pieces.

George Salis, from Vertax, cautioned against directly adopting OECD and EU standards that may not apply directly to how things are done in the United States. Ray agreed but said states can look to the guidance from those organizations to guide their interpretation of “minimal human intervention.”

Helen noted it’s important to be aware that that the definition may overlap to some extent with existing definitions of either tangible personal property or services.

III. Sourcing Issues – Multiple Points of Use – State Experiences

Tim then presented on Washington’s Multiple Points of Use (MPU) exemption. The presentation is available online. Under Washington law, only products that meet the statutory definition qualify, and the product must be concurrently available for use inside and outside the state. The “user” is the employee or agent authorized to use the product, and the taxable base is the purchase price multiplied by the fraction of Washington users over total users. The statute includes an anti-distortion provision that allows—or requires—an alternative method when the standard method would result in distortion. Because Washington is a Streamlined state, bundled-transaction rules apply. A bundle with an MPU-eligible item and a non-taxable service can still be apportioned and receive MPU treatment; however, if the bundle also includes taxable hardware, the presence of any taxable component renders the entire bundle taxable and there is no apportionment relief. Adopted in 2009, the MPU exemption advances fairness by aligning tax with use attributable to Washington and avoiding potential over-taxation when states tax without apportionment and rely solely on use-tax credits.

Mark (Nebergall?) mentioned his difficulty with the whole MPU concept of tangible personal property, such as software being concurrently available for use in more than one location. To him, tangible personal property is in a single state and to the extent it ever “leaves” the state it is the Licensee of the software in that state that is using the software to provide a service to its employees.

Bruce Johnson said the idea of a MPU certificate has problems, but from a retailer point of view, shifting the burden from the retailer to the user of the product is the right thing to do. He emphasized that past MPUs have run into trouble letting the perfect be the enemy of the good, especially with timing issues. He would like to put in as a placeholder that in applying credits for use tax, whether it's intangible property or tangible property, there is a drop dead date. If something is more than a year old, it should not be subject to use tax. Use tax should be viewed, in Bruce’s mind, as an anti-avoidance device for the sales tax; if you buy something and you pay the sales tax that's due in the appropriate jurisdictions, the fact that eventually it ends up in another jurisdiction should not create a new tax.

IV. Next Steps

Tim said he would like to include the report of the study group with all materials and comments as part of the white paper and he also foresees further discussion once the group has had an opportunity to review it in depth.

V. Adjourn

At this point the group was out of time so the meeting adjourned. Tim will resume his presentation at the next meeting.