

NCSL STATE AND LOCAL TAXATION TASKFORCE MEETING

PURSUING UNIFORMITY IN DIGITAL TAXATION
MAY 19, 2022

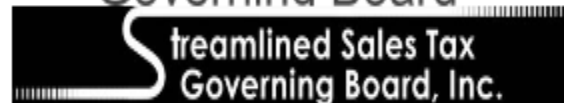
Fred Nicely

Council On State Taxation



Craig Johnson

Streamlined Sales Tax
Governing Board



Nancy Prosser

Multistate Tax



MULTISTATE TAX COMMISSION



DISCLAIMER

We speak for ourselves; our comments may not represent the views of our organizations or their members.

AGENDA

- 👤 Brief Introductions & Perspectives
- 👤 Issues Facing States and Businesses
 - 👤 Tax Imposition
 - 👤 Definitions
 - 👤 Sourcing
- 👤 Role of NCSL and Other Interested Organizations

INTRODUCTION S

🏠 Fred Nicely – COST

🏠 Craig Johnson – Streamlined

🏠 Nancy Prosser - MTC

ISSUES FACING STATES AND BUSINESSES

- 🚩 Unclear imposition of tax
- 🚩 Varying definitions amongst the states
- 🚩 Varying rules related to sourcing
- 🚩 Internet Tax Freedom Act
- 🚩 Fast-changing technology
- 🚩 New business models
- 🚩 Revenue impacts

UNCLEAR IMPOSITION OF TAX

- 👤 How are states taxing digital goods?
 - 👤 Tangible personal property
 - 👤 Services statutes
 - 👤 Specific imposition language
 - 👤 Clarification of existing laws v. new imposition to apply prospectively
 - 👤 Business inputs v. end user consumers only

VARYING DEFINITIONS

- 🏠 How do states define “digital products”?
 - 🏠 Specific definitions
 - 🏠 Fitting them under otherwise “tangible” forms of the product
 - 🏠 Books
 - 🏠 Movies
 - 🏠 Music
 - 🏠 Remote Access to Software – SaaS
- 🏠 New Products: Non-Fungible Tokens (NFTs)
- 🏠 Streamlined v. non-streamlined states

SOURCING ISSUES

- 📍 Uniform Rules
- 📍 TPP (delivery) v. Service (first use)
- 📍 Determining Sourcing – SSUTA Rules (Hierarchy)
 - 📍 Over the Counter
 - 📍 Delivery
 - 📍 Business Records
 - 📍 Billing Location
 - 📍 Origin (Last Resort)
- 📍 No physical “delivery” needed to access digital products

INTERESTED PARTIES

What Role Should They Play?

 NCSL


 NGA

 FTA

 MTC

 SSTGB

 National SALT Business Organizations (*e.g.*,
COST, TEI, Tax Foundation, AICPA)

 Congress and OECD

QUESTIONS
AND
CONTACT
INFORMATION

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ADDENDUM


COST
SUPPLEMENTAL
MATERIALS ON
ITS WEBSITE:

COST.ORG

 **Policy Positions (over 25 positions):**

-  [Digital Service Taxes](#)
-  [Marketplace Facilitator Laws](#)
-  [Sales Taxation of Business Inputs](#)
-  [Simplification of States' Sales Tax Systems](#)
-  [Sourcing Sales & Use Taxes](#)

 **Studies and Scorecards**

-  [Global Perspective on U.S. Sales Taxes](#)
-  [Yearly Business Tax Burdens Study](#)
-  [Scorecard: Best & Worst of State Tax Administration](#)
-  [Post-Wayfair – Modernizing the States Sales Tax Systems](#)
-  [Scorecard: Best & Worst of Sales Tax Systems](#)
-  Soon to be updated with greater focus on digital products

STREAMLINED SALES TAX SUPPLEMENTAL INFORMATION

[STREAMLINEDSALESTAX.ORG](https://streamlinedsalestax.org)



- [!\[\]\(86b7331e04fe40a56bcff2e9c065738b_img.jpg\) State and Local Advisory Council \(SLAC\) – Digital Goods Sourcing Workgroup](#)
- [!\[\]\(92f87f30b7499b35d0173f4346c498d6_img.jpg\) State Guide to the Streamlined Sales Tax Project](#)
- [!\[\]\(497b6684f704c0aa6fbea9f0fd4d56c7_img.jpg\) Streamlined Sales and Use Tax Agreement \(SSUTA\)](#)
- [!\[\]\(4320279ad715106747262028f44bd102_img.jpg\) Nonmember State Participation Option](#)
 - [!\[\]\(25e9c4c673069177325c65bf4771169e_img.jpg\) Model Act for Nonmember State Participation](#)
- [!\[\]\(6b6b004b0c53329d45621b2f7dfbf9f0_img.jpg\) Certified Service Provider Information](#)
- [!\[\]\(2f530a7d490199e92998d46739a98d2c_img.jpg\) Remote Seller Guidance](#)
- [!\[\]\(203bc4096062b081e602b11a3ed5a0fa_img.jpg\) Marketplace Facilitator Guidance](#)
- [!\[\]\(1e547046bf46be3af94c1ef718de74cb_img.jpg\) Streamlined Sales Tax Exemption Certificate](#)

MTC UNIFORMITY PROJECT PAGE

MTC.GOV

- www.mtc.gov/Uniformity/Project-Teams/Sales-Tax-on-Digital-Products
- Research & Articles
- Selected State Tax Agency Information - Tax Imposition Related to Digital Products Generally
- Written Comments Submitted
- Streamlined Sales Tax Information
- Economic and Statistical Information
- Related Federal Information

WHAT IS THE MULTISTATE TAX COMMISSION?

- 📍 An interstate governmental entity governed by the Multistate Tax Compact.
- 📍 Members are state tax agency heads.
- 📍 Focus is uniformity, assisting taxpayers with compliance, and advocacy for state sovereignty relating to multistate income/franchise and sales/use taxes.
- 📍 Work is done in public via committees. All are welcome.
- 📍 Uniformity Committee is known for developing model statutes and regulations. If adopted by the Commission, they are recommendations to the states. Helen Hecht is MTC Uniformity Counsel.
- 📍 One current uniformity project focuses on taxation of digital goods and services.

MTC SALES TAX ON DIGITAL GOODS & SERVICES UNIFORMITY PROJECT: BACKGROUND AND COMMITTEE ACTION

- 📍 April 28, 2021 – Washington State made a presentation to the Uniformity Committee proposing a project to consider a simpler and more adaptable approach to imposing sales taxes on digital products and assigned the proposal to the Standing Subcommittee for review.
- 📍 July 28, 2021 – Uniformity Committee approved a recommendation from the subcommittee to begin work on a project studying the application of sales tax to digital products—starting with a whitepaper—and asked staff to begin to prepare a detailed outline of that whitepaper.
- 📍 November 9, 2021, and April 20, 2022 – MTC staff reported to the Committee on its work to date, including stakeholders interviewed to assist with development of a whitepaper.
- 📍 August 2, 2022 – Next Committee meeting; workgroup likely to be formed.

MTC
STAKEHOLDER
DISCUSSIONS
SO FAR

11 State Tax Agencies

9 Organizations

7 Tax Practitioners / Firms

7 Large Taxpayers

3 Academics

2 CSP Representatives

POSSIBLE ISSUES IDENTIFIED BY MTC

1. Survey of Digital Products and Evolution of the Products

- 🚩 Software related or enabled including data storage and retrieval
- 🚩 Apps of all types
- 🚩 Items similar to tangible products – music, books, etc.
- 🚩 Streaming and video
- 🚩 Gaming systems and software
- 🚩 Items similar to traditional services
 - 🚩 Educational and instruction
 - 🚩 Design
- 🚩 Website, platform, and media related
- 🚩 Electronic surveillance and security
- 🚩 Other interactive software, data analytics, and artificial intelligence
- 🚩 Digital advertising
- 🚩 Nonfungible tokens (NFTs)

POSSIBLE ISSUES IDENTIFIED BY MTC (CONT'D)

2. Traditional Sales & Use Tax Framework

- ▲ Imposed transaction by transaction
- ▲ Separate statement of tax and collection from customer
- ▲ Sourcing to customer location for tax rate determination and distribution
- ▲ Exemptions – common types
 - ▲ Sale for resale
 - ▲ Inputs
 - ▲ Exemptions to alleviate regressivity
 - ▲ Other preferential items
- ▲ Use tax and credit
- ▲ Interaction with other excise taxes – in lieu of or in addition to

3. Streamlined agreement and rules related to digital products

4. Federal laws relating to “digital assets” and other federal proposals

5. International approaches; OECD Pillar 1 and digital services taxes

POSSIBLE ISSUES IDENTIFIED BY MTC (CONT'D)

6. Challenges Fitting Digital Products into the Traditional Framework

🚩 Definitions

- Drawing lines depends on what the tax base will include or not include (e.g. services)
- Pros and cons of broad versus specific definitions

🚩 Differences in transactions

- Sales versus periodic payments
- Methods of delivery

🚩 Bundling taxable and nontaxable items

🚩 Sourcing

- Items delivered electronically
- B-to-B transactions where the product is used in multiple locations simultaneously

🚩 Exemptions

- Parity with tangible products and other services

POSSIBLE ISSUES IDENTIFIED BY MTC (CONT'D)

7. Pros and Cons to General State Approaches
 - ⚠ No digital products included
 - ⚠ Broad interpretation of traditional terms
 - ⚠ Specific statutory inclusion – Streamlined
 - ⚠ Specific statutory inclusion – Non-Streamlined
 - ⚠ Broad-based (statutory) tax imposition
8. Policy Considerations
 - ⚠ Simplicity and certainty
 - ⚠ Regressivity
 - ⚠ Parity
 - ⚠ Tax on business inputs
9. Revenue Impacts