

The Committee approved the April 24, 2008 meeting minutes without amendments during the May 28, 2008, meeting.

Study of the Taxation of Electronically Delivered Products
Committee Meeting Minutes
April 24, 2008

1. Welcome

- Chair Hunter opened the meeting.
 - Present: Chair Ross Hunter, Representative Derek Kilmer, Department of Revenue Director Cindi Holmstrom, Julie Murray, Ron Bueing, Paula Borhauer, Victor Moore, Rich Prem, Bruce Reid, Sheila Gall (standing in for Jim Justin)
 - Present via phone: Steve Collier
 - Absent: Vice Chair Joseph Zarelli, Representative Ed Orcutt, Ben Kim, Greg Silverman, Jim Justin, Chuck Robinson

2. Recap and Minutes

- Chair Hunter asked if TVW was recording the meeting. JoAnne Gordon, Department of Revenue Tax Policy Specialist, explained that TVW does not record Committee meetings for audio or video broadcast. However, meetings are recorded and preserved on a CD, and are used later to compile the minutes.
- Ms. Gordon briefly recapped the Committee's activities from the earlier meetings of October 2, 2007, October 22, 2007, and November 15, 2007.
- The October 22, 2007, meeting minutes were amended and re-approved. The amendment clarifies the difference between I-Tune digital release cards and stored value cards.
- The November 15, 2007, meeting minutes were approved without any amendments.

3. 50 State Survey of Taxation on Digital Products (10:15)

- Dylan Waits, Department of Revenue Tax Policy Specialist, presented the results of a 50 state survey on the taxation of digital products. (Electronic document posted to the Department's Internet site.)
 - The chart (handout) identifies how states tax electronic goods based on the categories of on-line data processing, downloaded software, downloaded books, downloaded music, downloaded video, and other electronic goods.
 - 19 states tax digital goods, 5 states do not impose a sales tax, and 26 states do not tax digital goods
 - Caveat – downloaded software was separated from other digital goods.
 - 32 states tax software downloaded electronically.
 - Most states distinguish between custom software and standard prewritten software. Prewritten software is generally considered to be tangible personal property and subject to tax.
 - Chair Hunter and Mr. Waits discussed the difference between custom and standard, prewritten, software.

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- Mr. Waits cautioned that the 50-state survey is a work in progress. States are actively proposing and enacting new laws. New determinations and case law are also being developed.
- Mr. Waits discussed the impact of the Streamlined Sales and Use Tax Agreement (SSUTA), specifically with respect to Washington State.
 - SSUTA has split digital goods into two groups:
 - Specific products of movies, music and books, for which SSUTA adopted specific definitions; and
 - Products transferred electronically (“other” category).
 - Under SSUTA, neither group of digital goods can be taxed as tangible personal property. Any member state wishing to stay in compliance with SSUTA and tax digital goods should not tax the goods under that theory. The taxation of digital goods must be specifically enumerated.
 - For music, books, and movies, Washington State has two years to comply or be out of compliance with SSUTA.
 - For the “other” category, Washington State has until January 1, 2012, to comply.
 - Committee member Ron Bueing questioned what products make up the “other” category.
 - Mr. Waits responded that it is anything other than music, books, or video.
 - Mr. Prem provided the example of a digital newspaper, such as the Wall Street Journal. A state wanting to tax the electronic version of the Wall Street Journal would have to tax it as a specifically enumerated product.
 - Chair Hunter noted that the state’s sales tax exemption for newspapers tabloid size and printing technology. He asked how an electronic newspaper is distinguished from a book. Mr. Prem explained that this is one of the areas that states are struggling with. He also noted that the issue is an example of determining the difference between an information service, a downloaded newspaper, a downloaded e-book.
 - Rich Prem noted that popular subscription daily blogs present a further complication.
 - Mr. Bueing explained that states define what a newspaper is to avoid discriminating on the basis of content. States have traditionally tried to find ways to distinguish between newspapers and other publications for purposes of sales tax exemptions. Mr. Bueing stated that there are no such distinctions when the content is put into an electronic medium.
 - Chair Hunter noted that this comes back to Mr. Reid’s concern about the 2007 legislation for electronic advertising.¹ He noted a better example

¹ SHB 2585 (chapter 273, Laws of 2008) extended the business and occupation (B&O) tax rate for publishers of printed newspapers to include advertising income generated from the electronic version of a printed newspaper.

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might be the 2007 exemption for financial information where there's a stream of information being paid for, a Bloomberg terminal as an example.²

- Mr. Waits provided additional examples of the “other” category: generic architectural plans ordered and delivered electronically, financial information, and credit reports. He explained that it has been a challenge to determine how big the “other” category is and what can be delivered electronically that is now being delivered in a paper format. The Department has included everything it is now aware of.
- Mr. Bueing asked about the table’s accuracy when it identifies the “other” category as taxable or exempt.
- Mr. Waits explained that the Department tried to identify the general approach and trends of each state. Not many states have statutes addressing digital products. Mr. Waits emphasized that the 50-state table is a work in progress.
- Ms. Holmstrom commented that page five identifies the SSUTA, which summarizes the definitions of videos, books, and music and then the “other” category.” She states that the Committee’s task is to decide what to do with the three defined items and the “other” category. SSUTA provides the framework for compliance, but it doesn’t restrict what can be done with the “other” category.
- Mr. Waits identified the SSUTA steps for sourcing retail sales.
- Mr. Waits led a discussion about states that are of particular interest because of recent changes or proposals for change.
 - New Jersey (an SSUTA member) subjects digital products to sales tax. The state succinctly defines digital property as music, ringtones, movies, books, audio and video works, and similar products. Exclusions from digital property and sales tax include video programming services, on-demand television services, and broadcasting services. New Jersey is an example of a state that looks at the three specific groups defined by SSUTA.
 - Chair Hunter, Mr. Moore, and Mr. Waits discussed on-demand television services and movies delivered electronically as one is taxed and the other is not.
 - New Jersey sources sales based on where the digital goods are received and has established some criteria for merchants to follow.
 - Chair Hunter noted that this appears to be a situation where a New Jersey resident is traveling in another state, purchases a movie which is

² ESHB 1981 (chapter 182, Laws of 2007), codified as RCW 82.08.705 and 82.12.705, provided sales and use tax exemptions for the purchase of electronically delivered standard financial information by an investment management company or financial institution.

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billed to the New Jersey credit card address and it's the New Jersey sales tax that applies.

- Mr. Waits explained that the information for Nebraska (an SSUTA member) is already outdated due to recently enacted legislation. Nebraska has adopted the SSUTA definitions for digital audio works, digital audiovisual works, digital books and digital codes. Under the new legislation, user rights do not determine taxability. Nebraska also has an exemption for resales of digital products. Mr. Waits also identified two court cases related to the taxation of digital products.
- Indiana (an SSUTA member) has introduced but not yet passed a bill that is very similar to Nebraska's, except that Indiana focuses on permanent user rights.
 - Chair Hunter commented that if Indiana's bill becomes law, it would be interesting to see how it drives usage behavior by users in that state.
- Connecticut (nonmember of SSUTA) imposes a one percent sales tax rate on the broadly defined category of computer-related services, which includes all of the digital products discussed by the Committee. The general sales tax rate of six percent does not apply to computer-related services.
 - Mr. Prem provided some background information. In 1998-99 Connecticut imposed a six percent sales tax on computer-related services as a temporary surcharge that was supposed to be phased-out by 2002. With the budget, the one percent tax is "permanently hanging out there as a revenue place holder."
- California treats digital goods as intangibles that are not subject to retail sales tax. A bill was introduced to impose sales tax on digital products based on a tangible equivalent test. The bill directed the State Board of Equalization to "flesh out" the details.
 - Mr. Prem noted that California's bill died the previous Friday (April 18, 2008).
 - There was also discussion about the Governor's position on the bill and some "flaws" to the bill, which included avoiding the state's two-thirds vote requirement to impose a new tax.

4. European Union's (EU) Taxation and Sourcing of Digital Products

- Dylan Waits, Department of Revenue Tax Policy Specialist, presented information about how the EU taxes and sources sales of digital products. (Electronic document posted to the Department's Internet site.) (46:44)
 - In the EU, digital goods are a supply of services. The EU's value added tax (VAT) applies to goods and services.
 - Handout includes two tables for the EU's taxing and sourcing of digital goods.

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- Mr. Prem noted that the EU has defined use and enjoyment on a residence-based principle similar to that of New Jersey. An EU resident traveling outside the EU and purchasing digital goods will pay the VAT when the purchase is charged to a credit card with an EU address. The EU has a similar set of steps for sourcing.
- Mr. Bueing noted that from an important business perspective, the VAT differs from the sales tax because the VAT allows credit for tax paid on business inputs.

5. Canada's Taxation and Sourcing of Digital Products

- Dylan Waits, Department of Revenue Tax Policy Specialist, presented information about how Canada taxes and sources sales of digital products. (Electronic document posted to the Department's Internet site.) (51:02)
 - Mr. Waits presented information about the federal Canadian goods and services tax (GST), and provincial sales taxes (PST). Four provinces do not impose a provincial sales tax. Some provinces impose a provincial sales tax while others use the harmonized sales tax (HST), under which the federal government collects both the GST and the PST for the provinces. Quebec has the QST whereby it collects the GST on behalf of the federal government and Quebec's PST.
 - Ms. Murray asked if those who "go it alone" and collect the PST have the same tax base as the federal Canadian government.
 - Mr. Prem responded that the provinces are required to have the same tax base as the federal government.
 - Mr. Waits explained that his research indicates that some provinces are more aggressive than others about asserting the tax on digital goods.
 - Some digital goods and services are considered telecommunications services.
 - Chair Hunter asked if the GST is a VAT.
 - Mr. Waits responded that the GST appears to be more of a straight up sales tax than a VAT.
 - Ms. Borhauer clarified that the GST allows for the input tax credit for businesses, similar as to what is allowed under a VAT. She commented that the GST and HST both operate much more as a VAT. The PST operates more as a sales tax.
 - Chair Hunter asked if anything over five percent is a sales tax and if anything less than five percent is a value added.
 - Mr. Prem responded that it's more complicated and that it depended on the tax provincial regime. The federal government-administered HST allows input credits. The self-administered PST is like Washington's sales tax.
 - Ms. Borhauer noted that the PST can be a different tax base than the GST. The PST operates independently of the GST and HST.
 - Chair Hunter and Mr. Waits discussed the zealously of some provinces. Mr. Waits explained that some provinces were strict about how the tax must be collected and remitted to the appropriate province. Others have put

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- forward the guidelines and encourage businesses to collect and remit the tax. Chair Hunter asked if this actually happens.
- Mr. Prem noted that as a publicly traded company, they have to certify that they are in compliance with all laws. Most of the large companies are doing so because they have different requirements to obey.
- Mr. Waits explained the sourcing requirements and explained how Canadian rights for where the products can be used can impact sourcing.
- Chair Hunter summarized that there is a “mish mash” of things going on in different states and countries. He noted that the EU does things that we can’t do because of the Commerce Clause. The EU distinguishes between business buyers and non-business buyers.
- Chair Hunter invited the members to comment on what’s been learned.
 - Mr. Bueing questioned what the Committee does with the information in the context of the group. Chair Hunter noted that the legislation required the Committee to look at the information.
 - Ms. Murray asked the business members if there are preferred characteristics to a tax system. She asked what some of the good and bad qualities of each system.
 - Mr. Prem responded businesses are sensitive to cost effectiveness for sourcing issues. He noted that for the EU and Canada, there have been lively discussions about how much responsibility a retail seller should have to verify where the customers are. He used the example of a consumer getting a Swiss credit card for digital purchases. Reasonableness prevailed with the recognition that there will always be people who go to absurd lengths to avoid the tax. He explained that a good thing to come out of the discussion was the rational of what’s a tax that can be administered by business and government. Pyramiding of goods and services was also discussed and the need for clarity for business to business transactions. There was a discussion about channel neutrality and that a lack of neutrality can quickly make a business uncompetitive. Mr. Prem encouraged the Committee to think about incentives to keep Washington businesses competitive with business that are outside the state.
 - Chair Hunter noted that he was struck with the difficulty of determining the differences between some of the products and how that will be difficult for tax administrators to work out.
 - Mr. Bueing stressed the need for product-specific clarity. Businesses do not want to be the policeman or the auditor for the states. Clever people will get away with it and the person who didn’t collect the tax gets caught holding the bag. For sourcing, there must be clear rules that use readily available information and business systems. He spoke to the need to have, in the situation of bundled sales, the ability to purchase for resale, similar to what there is for tangible personal property. The niche players are likely to be put at a disadvantage because of the pyramiding.

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- Ms. Murray asked how businesses feel about the state's sourcing rules, adopted under SSUTA, with respect to digital products. She also asked if that wouldn't be the sourcing scheme the state would use or whether there would be the ability to change.
- Mr. Prem confirmed that the current sourcing rules adopted under SSUTA would control the sourcing for sales of digital goods. Mr. Prem also noted that there's broadness to the terms. He explained that SSUTA has also struggled with how to provide further clarity for services and digital goods around the concepts of "first use" and "access." Even the people at SSUTA have admitted that there's not a lot of clarity. He encouraged the Committee to be careful and thoughtful.
- Chair Hunter commented that these (SSUTA) are tax administrators who have a high tolerance for ambiguity.
- Mr. Waits further addressed Ms. Murray's question by noting that New Jersey is a member of SSUTA. New Jersey has tried to establish a sales tax on digital goods that fits within the SSUTA sourcing rules. It appears that, within the SSUTA rules, New Jersey's focus is the billing address.
- Mr. Reid questioned why the Committee is talking about compliance and administrative issues instead of the policy of whether or not the state will tax digital goods. He noted that states that do not tax digital goods, such as Oklahoma, Iowa, North Carolina, Ohio, and Illinois have significant data center investments by Yahoo, Google, and Microsoft. He commented that Nebraska hasn't listened to the industry's message. He believes that Nebraska will drop off the investment radar screen because of recently enacted laws.
- Chair Hunter noted that he was trying to extract "learnings" from the information.
- Ms. Borhauer asked Mr. Waits how current the Canadian information is. Mr. Waits believes it is current although not as current as the 50-states analysis. For a decision-making timeline, the EU was within 2001-2003 and Canada was within 2002-2005.
- Mr. Moore noted that states all have different approaches; he assumes that the SSUTA gives broad discretion as to what can be taxed and not taxed.
- Chair Hunter summarized what the state is able to do under SSUTA. If it wants to tax music, movies, and books, it must do so explicitly. Currently, Washington State does it based on court cases and says it's tangible personal property. Under SSUTA, all the states will have to either not tax these items or tax it explicitly. The same thing is true for the "other" category. He noted that SSUTA has not spent enough time thinking about the "other category"
- Mr. Moore summarized that for the "other" category, the SSUTA does not give much in the way of guidance or requirements. Chair Hunter confirmed this understanding.
- Mr. Waits noted that SSUTA has determined that the three defined products and the "other" category is not tangible personal property. The SSUTA has also introduced the concepts of permanence, time limit, and subscription-based user

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- rights. Mr. Waits confirmed for Chair Hunter that the state may distinguish based on user rights for these groups.
- Ms. Murray asked if the state has the leeway to make its own definitions. Mr. Waits answered yes with respect to the “other” category.
- Chair Hunter asked about the leeway to provide for specific exemptions for pyramiding. Mr. Waits responded yes. Chair Hunter and Mr. Waits further discussed how sourcing is not as flexible. The SSUTA has fairly well defined and structured the sourcing rules. It has not been determined what business will have to do to stay within the five sourcing rules. New Jersey is the most overt in saying they will rely upon the billing address for digital goods.
- Chair Hunter concluded that providing clarity for the sourcing rules would be an important thing to do if the state were to tax these things, which it currently does.

6. Potential Revenue Impacts

- Steven Smith, Department of Revenue Tax Policy Specialist, and Gil Brewer, Department of Revenue Legislative Affairs Liaison, led a discussion about the potential revenue impacts associated with sales of digital products in Washington State. (Electronic document posted to the Department’s Internet site.) (01:54)
 - The first page of the handout was identified as the most important. The other six pages are supplementary to answer questions.
 - The revenues are for state retail sales tax.
 - Mr. Smith addressed the 2008 estimates for each category and its conventional counterpart.
 - Mr. Bueing asked if the categories were adjusted on the basis of user rights. Mr. Brewer responded that the Department was not able to make those distinctions when looking at the data used to prepare the estimates.
 - Mr. Smith identified the data sources used to prepare the estimates and to extend the numbers to the future. Projections were made using the rate of growth and changes in the rate of growth. Music and ring tones are the most developed consumer digital products.
 - Computer and video games were broken out separately as it is unclear from SSUTA where they will finally be categorized.
 - The “other” category includes goods that have already been digitized and could be digitized within the next 10 years. This is a catch-all category and is assumed to be more business than household purchases.
 - Chair Hunter asked if the numbers are real numbers or adjusted for inflation. Mr. Smith responded that the numbers are in today’s numbers and have not been adjusted. Mr. Smith further clarified that everything is in 2008 dollars.
 - Mr. Prem asked:
 - If the numbers included anything subject to sales tax? He used the example of videos and movies and if it included people renting movies. Mr. Smith

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- responded that it was only sales taxable sales; it included movie rentals, but did not include theatre attendance.
- If there was any data as to how much of the estimate of sales data were new sales or used sales? He used the example of books, in Seattle every sale of new books, there may be 5, 6, 7, or 8 used book sellers. Mr. Smith responded that based on his data, used books sales were not represented in the data. Mr. Smith noted he would do further research as to if the data source included used books.
 - There was a subsequent discussion as to digital rights management with respect to resale sales of digital goods.
 - There was a subsequent discussion about the assumptions for pricing. Amazon.com assumes that prices for digital goods will decrease.
 - Mr. Smith agreed with the assumption that as goods are digitized prices are falling. This was implicitly assumed in the estimate.
 - Mr. Prem was also interested in the (tax) compliance gap assumptions.
 - Data page seven includes compliance assumptions
 - For the retail sales tax overall, the state has about a 99% compliance rate. For conventional goods, would be about the same.
 - For digital goods, tax avoidance is easier and there's a learning curve whenever tax laws/interpretations change.
 - Wisconsin's research for compliance rates was considered for the data.
 - Mr. Smith noted that perhaps the compliance rate for music should be reconsidered. He mentioned reading in the Wall Street Journal that Apple has 80% of the digital music market and collects sales tax in all of the states in which it does business. Chair Hunter noted that the top four music sellers (two members of the committee, RealNetworks, Apple) appear to have nexus in Washington.
 - For the "other" category, Mr. Smith explained that the majority of these purchases are believed to be business purchases. Because businesses are audited, over time the compliance rate will increase for this category.
 - Mr. Smith noted he is open to any information that will help improve the estimates.
 - Chair Hunter noted that, looking at the growth in the digital goods area, it might be worthwhile brainstorming and investing in how to improve compliance rates.
 - Mr. Bueing asked:
 - If the compliance rate takes into account use tax compliance? The response was yes.
 - How were the numbers developed for the "other" category?
 - Non-exhaustive list of "other" on digital page five.
 - Chair Hunter noted Corbis is the largest supplier of stock photos and Getty is second.

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- Mr. Bueing noted that these and magazines are generally limited use licenses and not sure how Washington has taxed such items.
 - Mr. Waits noted that it is something the Department is looking at currently, but has not yet issued a conclusion.
 - Mr. Smith walked the members through digital page six, which describes the procedures for determining an estimate for the “other” category, specifically the NAICS codes and further analysis.
 - Mr. Reid asked if the music and ringtones category included both downloads and subscription services. The response was yes. The assumption for subscription services was that half would be taxable. There was further discussion between Chair Hunter and Mr. Waits as to the current taxability of subscription services. Mr. Waits stated that currently subscription services that provide downloaded digital goods are subject to retail sales tax.
 - Ms. Holmstrom noted that Mr. Smith had done a great job of developing some pretty difficult estimates and encouraged others to provide additional data to improve the estimates.
 - Chair Hunter stated his hopes that the compliance rate can be significantly improved by 2018. He noted that the state ought to be able to have better compliance than it has today.
 - Mr. Prem noted:
 - A potential need to adjust the compliance figures for nexus and when we assume that everyone domestically will have compliance.
 - A need to consider the long term impact of businesses moving activities outside the country. The EU and Canadian structures provide export exemptions, which exempt GST and VAT from sales to persons in the US.
7. Presentation of Amazon.com’s Kindle.
- Rich Prem, Committee member, made a presentation about Kindle, Amazon.com’s wireless reading device. (02:53)
 - Kindle operates through cellular phone service – high speed sprint.
 - Kindle is registered to an Amazon account through a secure computer. Purchase of content is through this account – not through credit card.
 - Content can be “pushed” to user regardless of user’s location, example is daily Wall Street Journal.
 - Emphasis on speed and convenience.
 - Stock issues are alleviated with Kindle as compared to limited print runs that may end up out of stock.
 - A lot of time went into replicating the look and feel of conventional books.
 - People with no technology background can be up and running within 15-20 minutes.
 - Device is popular with early adopters. Target market was travelers.
 - Books, newspapers, and blogs are available as content.

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- Self-publishing available with Kindle - #2 best selling book is self-published book on getting the most out of the Kindle.
- International content – to appeal to expatriate community.
- Everything purchased via Kindle goes to Kindle and to “Your Media Locker.” Content can be moved back and forth. Kindle stores seven days of newspapers and then auto archives back to the media library.
- When connected to receive newspapers every day, battery charge lasts for two days. Battery charge in reading mode will last a week. No power is used until you turn the page.
- Kindle is bundled with services. Price of the device also includes the wireless connection for users doing downloads. Users can also access dictionary and Wikipedia on the internet. Personal documents can also be moved to the Kindle (10 cent charge). Music can be downloaded to the Kindle and played in the background. E-Books-plus.
- 10.3 ounces – weight of a paper back and focus is on ergonomics.

8. Future Meetings

- Chair Hunter (03:16:44) noted that the information acquiring phase is complete. He asked that members e-mail him if there are other issues or topics that they wish to hear about.
- Chair Hunter proposed that:
 - Members submit proposals for resolve.
 - Address as many of the various technical issues as possible, such as sourcing, what should/should not be taxed.
 - Present the proposals.
 - Have a “mosh pit” period to bounce proposals off one another.
 - Determine for the June meeting if there’s agreement.
- If there’s no agreement, then the Committee may come up with a couple of structured options that the Legislature could choose from. The chances of getting a proposal unharmed through the legislature is much higher if the Committee does agree on one proposal – even though it may not be an optimum proposal for everyone. By the end of the June meeting, Chair Hunter hopes that the Committee can come to agreement on one proposal and then come back to agree on an actual final report.
- Mr. Prem noted that there was much discussion on the digital products side, but that he is also concerned about the delivery mechanism and infrastructure side (server farm issue). He also noted that Governor Gregoire had substantive legislation introduced last session on the subject and believes that this is something important. It’s important as his company makes future infrastructure decisions for the delivery of their products.
- Mr. Reid agreed with Mr. Prem that the Committee needs to focus on the business investment side for those companies that will build/run data centers/server farms to house exponential amounts of digital goods.

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- Chair Hunter explained that these are decisions the Committee could make that would affect siting decisions, he had not anticipated making those decisions. He expressed a desire that everyone be on the same page and to what those decisions could be and their effect. He asked if other members felt they needed analysis in this regard. Mr. Prem and Mr. Reid both agreed.
- Ms. Murray noted that the Committee had agreed to a set of principles and that each proposal needs to respond to that set of principles. She noted that the business climate and competitiveness are one of those principals and that a proposal shouldn't be contrary to the general consensus of the Committee.
- Chair Hunter agreed but also noted that the Committee should also consider what will happen in the Legislature to any proposal.
- Ms. Murray believes that part of the input at the next meeting will come from the contrarian viewpoint. Chair Hunter agreed and noted that he intended there be a ranking of the proposals.
- Mr. Prem used as an example a data platform that has a number of smaller sellers of digital content. He questioned whether a company that has content on the data server establishes nexus. Chair Hunter agreed that you wouldn't want to create a lot of nexus where it didn't exist otherwise until there's a national consensus.
- Chair Hunter stated he is interested in having a written document of Mr. Prem's and Mr. Reid's analysis of implications. He asked if they can work with Mr. Waits over the next two weeks to provide a document to the Committee that outlines the issues for electronic distribution. Doing so would allow members to come to the next meeting with structured proposals that are a page or two long. He noted that if they could get the proposals to Mr. Waits and Mr. Smith, they could come up with some rough revenue estimates on the impacts.
- Ms. Holmstrom noted that the members should be prepared to compare the proposals to the Committee's goals and vision statement and see how they stand up. She noted her understanding that this is where the Committee ultimately wants to end up – with a proposal that balances the seven goals set out (in the preliminary report).
- Mr. Prem agreed. He envisions a three-to-four sentence proposal followed by three-to-four paragraphs that address how the proposal fits in with the principles laid out.
- Ms. Murray agreed with Mr. Prem's concept.
- Chair Hunter said he'd give them two pages apiece. More is ok for the server farm issue – preferably a Word document that people can read rather than a PowerPoint presentation.
- Chair Hunter reiterated the need for a document from Mr. Prem, Mr. Reid, and Mr. Waits about server farm/distribution issues.
 - Mr. Bueing noted a desire to be involved in the server farm/distribution document.
 - Chair Hunter noted a need for the document turn around to be quick.
 - Mr. Reid noted that he isn't opposed to input but that he wants to avoid it becoming a group effort because it is an industry specific issue.

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- Chair Hunter expressed the need for clarity. It would be fine if they can all agree on one document, otherwise three separate documents will be ok. He asked that the document or documents Mr. Prem, Mr. Reid, and Mr. Bueing provide to Mr. Waits be circulated – in two weeks – for the members to consider in time for the May meeting. Committee member proposals should be circulated one week before the committee meeting on May 29th.
- Mr. Reid asked the Department to clarify its opinion of the use tax on digital inventory. He asked if there are first use issues for the owner of the inventory or licensee. Is use tax due on the value of the inventory sitting on the servers?
 - Chair Hunter responded that he could guarantee that the answer to that issue would eventually be no.
 - Mr. Prem noted that this is a huge uncertainty that needs clarity.
 - Chair Hunter noted that these are good questions to consider now so that, if there can be agreement among the Committee, a thoughtful piece of legislation can be crafted that includes all of the decisions made by the Committee.
 - Ms. Holmstrom agreed. She suggested that members note within their proposals any key issues that the members want to make sure are addressed.
 - Ms. Murray suggested that maybe committee members could share key issues before completing the proposals. She noted that some issues on the retail sales tax can bleed over into the B&O.
 - Chair Hunter suggested a time frame for how the work could be accomplished for the final report.
 - Mr. Waits clarified expectations for when proposals should be submitted on May 22nd for the May 29th meeting, along with some revenue estimates. Ms. Holmstrom noted that it may not be possible to have revenue estimates that soon. Mr. Waits also clarified when the final report is to be submitted to the Legislature and how that impacts the suggested time frame for the Committee.
 - Ms. Holmstrom noted that the Committee also needs to consider the process in light of the Open Public Meetings Act.

9. Public Comment (03:42:41)

- No public comments.
- Chair Hunter noted that the Committee had received written comment from the Washington Technology Industry Association (WTIA) and the AeA – Washington Council. WTIA and the AeA – Washington Council both support exempting sales of digital products from sales tax. (Copies of the April 23, 2008 memorandum were made available during the meeting. An electronic copy of the memorandum is available on the Department's Internet pages for the Study at: <http://dor.wa.gov/Content/AboutUs/StatisticsAndReports/DigitalGoods/Default.aspx>)
- Chair Hunter identified those persons who signed in for the meeting: Terry Byington (AeA – Washington Council), Mike Bernard (Madison Cooke, Inc.), Lew McMurrin (Washington Technology Industry Association), Mike Kelly (K & L Gates), Sheila

[DOR Internet pages for the Study of Electronically Delivered Products
http://dor.wa.gov/Content/AboutUs/StatisticsAndReports/DigitalGoods/Default.aspx](http://dor.wa.gov/Content/AboutUs/StatisticsAndReports/DigitalGoods/Default.aspx)

The Committee approved the April 24, 2008 meeting minutes without amendments during the May 28, 2008, meeting.

- Gall (Association of Washington Cities), Stephanie Anderson (K & L Gates), Ralph Amon (Boeing), Mike Howisey (Moss Adams, LLP), Reid Okimoto (KPMG LLP), Bob Longman (Russell Investments), and Greg Pierce (Microsoft).
- Meeting Adjourned.

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