

The Committee approved the minutes from the October 30, 2008, meeting during the November 18, 2008, meeting. There were no amendments.

Study of the Taxation of Electronically Delivered Products Committee Meeting Minutes October 30, 2008

1. Welcome

- Chair Hunter opened the meeting.
- Present: Chair Hunter, Vice-Chair Zarelli, Rep. Orcutt, Cindi Holmstrom, Rich Prem, Julie Murray, Bruce Reid, Ron Bueing, Victor Moore, Paula Borhauer, and Steve Collier
- Absent: Rep. Kilmer, Jim Justin, Greg Silverman, Dr. Ben Kim, and Chuck Robinson.

2. Review and Approve September 25, 2008 Meeting Minutes

- Motion to adopt the September 25, 2008, meeting minutes approved.

3. Review of Changes Made to Draft Language for Major Provisions of a Potential Digital Goods Bill,¹ presented by Gil Brewer, Legislative and External Affairs Liaison, and Dylan Waits, Tax Policy Specialist, Department of Revenue. (02:25)

- Chair Hunter explained his hope that the Committee could agree, for purposes of the final report, if the Committee: 1) has a product that it can agree to; 2) believes it is moving in the right direction; or 3) disagrees.
- Chair Hunter noted that in case the Committee does not agree, he asked the Department to identify how a specific implementation bill addressing the three the specified digital goods defined by the Streamlined Sales and Use Tax Agreement (SSUTA) would affect businesses.²
- Dylan Waits explained that the additional draft language to provide sales and use tax exemptions for purchases of digital data solely for business purposes incorporates a definition of “business purposes.”³
- Bruce Reid asked where the additional language fits.

¹ During the August 12, 2008 committee meeting, Chair Hunter presented the Digital Goods Neutrality Proposal. The Committee agreed it needed to see draft language. During the September 25, 2008, meeting, Department staff presented draft language capturing the intent of Chair Hunter’s proposal. The Committee discussed the draft language and suggested changes, which were incorporated for the October 30, 2008, meeting. Although not a legislative proposal, the draft language contains key elements that can be used to draft legislation. Both the draft language and the edited draft language are available on the Department’s Internet site.

² As of 2010, the SSUTA requires that retail sales and use taxes imposed on the purchase of specified digital products (digital audio-visual works (movies), digital audio works (music), and digital books) must be separately imposed from the general imposition of retail sales and use taxes on the purchase of tangible personal property. For discussion about the SSUTA requirements for “specified digital items,” please refer to the minutes from the October 7, 2007, and November 15, 2007, meetings.

³ The original additional draft language from September 25, 2008 and the revised proposal are available on the Department’s Internet site.

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- Chair Hunter explained that the Committee has struggled to create an exemption that is clear about financial data, which some have liked and others have not. The Department attempted to capture Ron Bueing's proposal to exempt all business data from tax by expanding the current standard financial data exemption⁴.
 - Mr. Waits explained that the language would not exempt business use of all digital goods. The exemption is limited to certain types of digital data.
- Mr. Bueing asked if the Department considered any standard information that would not be included within the definition.
 - Mr. Waits responded yes. Gil Brewer noted that unless medical data is statistical, quantitative, demographic, or similar data, it would not fit within the exemption. Mr. Brewer noted that a physician's desk reference and a legal research database would not be exempt.
 - Mr. Bueing asked if medical data related to patient usage of treatments would be considered statistical, quantitative, demographic, or similar data.
 - Mr. Brewer responded yes.
 - Rep. Hunter clarified that drug trial results would likewise be considered statistical, quantitative, demographic, or similar data. Mr. Brewer also added that epidemiological studies fit the definition.
- Ms. Murray asked what makes data digital data.
 - Mr. Waits explained that digital data is tied to the definition of "electronically delivered."
- Mr. Prem asked if the Department looked at the Internet Tax Freedom Act (ITFA). He queried that exempting digital data, even if taxing physical data, fits within IFTA.
 - Noting that IFTA works in one direction only, Mr. Waits confirmed Mr. Prem's statement.
- Director Holmstrom commented that the estimated revenue loss would be \$1.7 million during FY 2010, \$2.2 million during FY 2011, and would grow slightly in future periods. Ms. Holmstrom also confirmed for Vice-Chair Zarelli that the estimates presented for Chair Hunter's proposal during the September 25, 2008, meeting do not include the estimate for the business data exemption.⁵
 - To provide context, Chair Hunter explained his attempt to take the simplest approach even though the approach has problems, such as that the base language does not exempt everything that is exempt today. To pass legislation requires a broader set of specific exemptions than his proposal provides. He wants to craft a set of stand-alone exemptions that can be "plug and played" with the base language to decide on a reasonable bill.

⁴ See ESHB 1981 (chapter 182, Laws of 2007), codified as RCW 82.08.705 and 82.12.705, which provides sales and use tax exemptions for the purchase of electronically delivered standard financial information by an investment management company or financial institution.

⁵ The revenue estimates for Chair Hunter's proposal are available on the Department's Internet site.

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- Mr. Reid sought to clarify that the intent is not to draft a bill. The draft language is a reference point for discussion only and that the discussion is not about an actual bill and amendments.
 - Chair Hunter noted that the Committee is not discussing a bill, but is discussing possible bill language. There are two goals: not to disadvantage Washington businesses and to have simple tax language that captures items that are becoming more “ephemeral and less concrete”.
 - Mr. Reid commented that another goal is to provide a “business friendly” climate with respect to investments in the state by businesses engaged in electronic commerce. (17:33)
- Ms. Murray asked Director Holmstrom if the proposed business digital data exemption is for state and local sales tax or state sales tax alone.
 - Director Holmstrom confirmed the estimate is for the state sales tax and includes changes in the business and occupation (B&O) tax.
- Mr. Reid asked if the estimate is static or includes dynamic impacts, such as property tax from increased investment in local jurisdictions.
 - Chair Hunter commented that the state does not do dynamic scoring.
 - Mr. Reid commented that it doesn’t have to be dynamic – it’s about increased investment in the state. He pointed to the increased property tax base in Grant County resulting from data center investments.
 - Chair Hunter confirmed that the estimates do not contemplate such investments. He also explained why the state’s fiscal note policy does not allow dynamic scoring. The Legislature passes legislation that it believes will improve revenue, but the cost measurement is static.
 - Mr. Reid and Chair Hunter discussed the importance of the impact data centers on local property tax values.
- Mr. Collier asked if the hypothetical purchase by an insurance company of accident information for a specific individual is still just data if it is accompanied by a police report.
 - Mr. Waits replied that hypothetically, inclusion of police reports would take the transaction beyond what is covered by the language.
 - Mr. Collier responded that this is a problem.
- Mr. Hunter replied that the intent of the language is to cover business-to-business transactions that are fundamental to business activities. He asked about a Bloomberg machine that included stock quotes and analyst comments about certain stocks.
 - Mr. Brewer noted that the language includes “associated analysis or discussion of the data” and said he doesn’t agree with Mr. Waits’ analysis.
 - There was more discussion about standard vs. custom information.
 - Chair Hunter noted that the language must be “crisper” if the quick analysis by two knowledgeable people is different. Vice-Chair Zarelli

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agreed and noted the need for clarity. His concern is less for the Department and more for the taxpayer.

- Mr. Brewer noted that the Department could work further on the language. He also commented that it appears that the Committee wants to see the type of information identified by Mr. Collier included within the exemption language.
- Chair Hunter asked if tax is currently collected on such transactions. Mr. Collier indicated no. Mr. Brewer clarified that the question was not whether the transactions are subject to tax but whether the tax is being collected.
- Mr. Bueing noted the importance of clarity because, regardless of a taxpayer's argument, exemptions are always construed narrowly.
- Ms. Murray stated her understanding that digital data is something that is less than digital goods.
 - Mr. Waits confirmed her understanding.
 - Ms. Murray commented that it sounds like everybody assumes that the exemption is for digital goods. She suggested that the business community provide examples to clarify.
- Mr. Reid commented on the following:
 - To make sure everyone understands the intent, everyone's understanding should be reflected in the report,
 - The intent of the group and the Legislature, if it gets that far, should be well-established in the bill history,;
 - What's being done is not simplistic; and
 - The Committee should use the SSUTA definitions as a starting point. The different examples are a slippery slope that's becoming a "rat hole." Mr. Reid noted the Committee's businesses members that are multi-state taxpayers deal with standard definitions for digital goods in other states.
- Chair Hunter noted that these are good points/questions. After the last meeting, he asked the Department to outline what would happen under a specific and narrow imposition approach. Such an approach would require the Legislature to act every time something happens in the "electronic market." Tangible products are taxable unless the Legislature provides an exemption. Chair Hunter believes it simpler to create a system that taxes digital goods except for certain exemptions.
 - Mr. Reid said he believes the Legislature should bear the burden to specify particular goods or services rather than imposing tax on all items except for specified exemptions.
 - The philosophical differences between narrow and broad tax impositions were further discussed.
- Mr. Waits noted the following remaining changes to the draft:

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- A definition for the term “financial instruments” was included.
- The exclusion for digital lottery games from the definition of “digital automated services” was eliminated.
- For purposes of exemptions for business inputs, on-demand software was incorporated in the definition of the term “consumer.”
- The use tax exemption language was altered to clarify that business e-mail communications would be exempt.
- Language was incorporated to address the bundling of products and/or services obtained through the use of a code that does not meet the definition of “digital code.”
 - Chair Hunter asked how the cost would be determined.
 - Mr. Brewer explained that the same SSUTA principles for the bundling of tangible personal property would apply to the bundling of digital goods.
 - Mr. Bueing sought and received clarification that any bundled sale that included a retail item would be considered a retail sale unless it could be separated.
 - The treatment of bundled goods was further discussed.
- Language was incorporated to define “the value of” digital goods, digital codes, digital automated services, and on-demand software for use tax purposes when such products are sold for less than the product’s true value.
- Committee members further discussed value issues.
 - Noting that there are situations where there are no comparable retail prices, Mr. Bueing asked two questions:
 - Is there a need to create a rule for valuing digital goods when there are no comparable prices, or would use tax simply not be due?
 - Are use tax exemptions adequate to cover goods that are provided for free, such as the ability to download back issues of a magazine for free, which when first published, were \$5 per issue?
 - Mr. Waits explained there is no intent to create a new use tax valuation or liability. The intent is to incorporate digital goods into the existing methodology.
 - The answer to Mr. Bueing’s first question is that the intent is for the existing rules to apply; and
 - The answer to the second question is that the intent is for same use tax liability to apply if the back issues were actually received.
 - Mr. Bueing noted the importance of making sure that existing exemptions for tangible personal property also apply to digital goods.
 - Mr. Waits clarified that Mr. Bueing wants to first make sure there’s a use tax liability before looking at value.

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- 4. Review of Questions from Committee Meeting of September 25, 2008**, presented by Gil Brewer, Legislative and External Affairs Liaison, and Dylan Waits, Tax Policy Specialist, Department of Revenue. (01:09:07)
- Mr. Waits explained there were several issues discussed during the September meeting that staff indicated it would review and provide additional information.⁶
 - **Specified products included in definition.**⁷
 - Staff talked with a board member of the Streamlined Sales and Use Tax Governing Board and the chair of the Sales and Local Advisory Committee. The consensus is that it is not necessary to use the SSUTA specified definitions for digital audio-visual works (movies), digital audio works (music), and digital books if the tax imposed on digital goods is broad enough to include these items.
 - Mr. Brewer and Mr. Reid clarified that the Department, Mr. Prem, Mr. Reid, and Mr. Bueing discussed the issues during a fact finding telephone conversation. Mr. Brewer explained that on this issue, they agreed the specific definitions are not necessary for Chair Hunter's proposal.
 - **Potential ITFA Anti-Discriminatory Clause.**⁸
 - Mr. Waits explained there is no case law associated with ITFA. ITFA concerns are real and must be considered. He also explained that the issue turns on ITFA's use of the word "similar," but generally it should be clear whether an item is similar or not.
 - Mr. Brewer added that questions will arise. Without further guidance, it requires looking to the federal statute to determine whether something is a similar product.
 - Mr. Collier asked if it required human effort and if it would represent a new revenue stream (in the tangible world it would be a service and not a retail sale).
 - Mr. Waits compared it to remote access software which is not currently a retail sale but would be under the proposal.
 - Using his example of obtaining a police report, Mr. Collier noted that in the tangible world, his company would have had to hire a consultant to obtain the police report, which would make the transaction a service. He also noted that this appears to create a new revenue source.
 - Chair Hunter replied it is a new revenue stream in the consumer world. The increase is offset by exemptions for the business community. The Chair also explained the intent is to keep the tax base relatively neutral as the digital products sector grows at the expense of the tangible world.
 - Director Holmstrom noted the corresponding B&O tax reduction from the service rate of 1.5 percent to the retailing rate.

⁶ A handout identifying the issues was prepared for the Committee. The handout is available on the Department's Internet site.

⁷ For previous discussion about the issue area, refer to page five of the September 25, 2008, meeting minutes.

⁸ Ibid., page six.

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- **Internet Services and Web-Hosting Conformity with New Digital Goods Definitions.**⁹
 - Mr. Waits explained that the general consensus is there may be a conflict between Chair Hunter’s proposal and the statutory definition of Internet service.¹⁰ Further consideration is necessary if Chair Hunter’s proposal is introduced as a bill.
- **Multiple Points of Use (MPU) Questions and Apportionment Issues.**¹¹
 - Mr. Waits noted that MPU can be attributed to digital goods and tangible personal property. MPU should be addressed as a whole and not limited to digital goods.
 - Mr. Bueing explained that the critical element is the ability to use digital goods from a variety of locations. A large company with consultants will establish a billing address to make sure delivery occurs outside the state and only pay tax on site licenses used in Washington. A small business will take delivery in Washington and pay tax on all of the licenses even though some may be used outside the state – simply the business doesn’t know to have the transaction billed to an out-of-state location. He recommended addressing the MPU issue so that an uninformed business is not disadvantaged.
 - Chair Hunter asked if Mr. Bueing was suggesting that the Committee provide an automatic apportionment rule so that a seller could apportion the sales tax based on the number of Washington locations that the buyer anticipates it will use the product.
 - Mr. Bueing responded that he suggests an exemption, similar to a resale exemption, for products a business reasonably believes it will use outside Washington.
 - Chair Hunter asked if the business data exemption would reduce the problem.
 - Mr. Bueing replied yes, depending on the scope of the exemption. He also noted that the problem would remain for some items, such as on-demand software. He added that on-line applications are increasing.
 - Chair Hunter asked if the situation already exists with software licenses.
 - Mr. Bueing replied that on-demand software is currently a service and not taxable. He agreed the situation already exists for electronically delivered software – an anomaly not seen with tangible personal property. Mr. Bueing explained that he would not commonly order computers for all locations and take delivery in Washington. He does commonly receive one bill for all software on a single license from a single vendor.
 - Mr. Reid commented that the Streamlined Sales and Use Tax Project (SSTP) already did the work on MPU and the Committee should learn from that. He noted the SSUTA did not include the MPU approach.

⁹ Ibid., page seven.

¹⁰ RCW 82.04.297 defines the term “Internet services.”

¹¹ For previous discussion, refer to page eight of the September 25, 2008, meeting minutes.

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- Chair Hunter asked how the MPU approach would work for a company that bought digital music to play in elevators nationwide.
- Mr. Prem explained that the purchaser would give the seller an MPU certificate for software. The sale would be exempt and the buyer would report the percentage of the use that would occur in the state.
- Director Holmstrom remembered that the MPU approach was not accepted because not all states participate in the SSTP.
- Mr. Prem explained there were problems with credits. States allow credit for another state's sales tax, but not for another state's use tax. Until all states adopt the SSUTA, multi-state businesses risk multiple use taxation.
- Mr. Reid asked if apportionment and sourcing go hand-in-hand. He would like to make sure that both are considered relative to one another.
 - Mr. Waits explained digital goods sourcing follows the SSUTA rules. He understands no state has resolved the apportionment issue for MPU.
- Mr. Bueing and Chair Hunter discussed how, from a practical perspective, MPU would work in Washington.
- Vice-Chair Zarelli asked why use tax-reporting for digital goods couldn't work the same way as for a company that receives office products out-of-state and then reports use tax based on how much product was sent to Washington.
- Mr. Bueing explained the differences between tangible goods and web-based applications. He noted that no one identifies on their computer how much they access digital goods from other locations. Generally, there are no records on the user's server for time and expense.
- The purchase and taxation of software licenses was further discussed.
- Chair Hunter noted he had no problem with a MPU approach, but wondered about the drafting.
 - Mr. Brewer indicated belief that the Department could use the SSTP's work as a starting point to draft the language.
- Ms. Murray asked if this meant that all business purchases of digital goods would become a use tax event rather than a sales tax event or was it limited to software.
 - Mr. Bueing replied that it would only apply to those digital goods that have potential MPU.
 - Ms. Murray commented that the state does not have 100 percent use tax reporting compliance with businesses. This provides a point of sale opportunity to avoid tax. She asked why businesses wouldn't be required to pay and then request a credit.
 - Exemption certificates, pay permits, purchase tracking, audits, and fraud were further discussed. Ms. Murray cautioned that the Department does not audit buyers and sellers at the same time.
 - Mr. Reid commented that the Department can come back with the specific issues after drafting the MPU approach. He also recalled that the SSTP

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dropped the MPU approach partially because the purchasers' group had administrative concerns. Mr. Reid recommended that the Department work with stakeholders on the purchasing side to make sure that the concept can be supported by both sellers and buyers.

- To move forward, Chair Hunter proposed that the Department report back to him about what the SSTP did. He explained that the Committee will not get language anytime soon because the final report must be completed. He noted his openness to the MPU concept, if it works. The Committee will have to have an e-mail discussion or "something" else.
- Mr. Collier noted his support of the MPU concept. As a buyer, he prefers the decision on tax to be his because vendors have a tendency to be too conservative and simply collect the tax. He doesn't want to have to chase down vendors to determine if they've withheld too much sales tax.
- **Expand Inputs Beyond Advertising to Any Website Given Away for Free.**¹²
 - Mr. Waits noted that businesses prefer the proposed exemption be expanded to include other sorts of revenue. He explained this is an issue for Chair Hunter to consider.
 - Chair Hunter noted his concern about businesses purchasing music and claiming the exemption based simply on being in business and putting the music on their website. He explained that he wants more boundaries than just putting the product on a website.
 - Ms. Murray noted her understanding that the exemption was proposed to be comparable with the tangible world example of the exemption for community newspapers. She questioned the theory that the exemption should go beyond advertising revenue.¹³
 - Mr. Reid commented that the comparison to the tangible world is a red herring. This is because newspapers that also publish on line have a lower B&O tax rate for advertising income than other forms of e-commerce.¹⁴ He's interested in data centers because his company has acquired a large amount of content to either sell or make available for viewing, such as Comstock info, etc. He believes that taxing this content comes back to the business climate issue. He questioned what would happen if a website has some initial advertising that disappears "drilling down" to the content pages. Mr. Reid commented that business inputs must be dealt with in a way that provides certainty.
 - Chair Hunter agreed the advertising aspect doesn't work.
 - Mr. Prem agreed with Mr. Reid's comments. The proposal broadly imposes tax and "carves out" business exemptions so that the Legislature doesn't have to frequently revisit the taxation. However,

¹² Ibid., page ten.

¹³ For previous discussion, refer to page three of the May 29, 2008, meeting minutes.

¹⁴ See RCW 82.04.214.

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they oppose creating huge new revenue streams. They have to recognize that a new category of previously untaxed products would become subject to tax.

- Chair Hunter said that the trade-off for the broad imposition is the broad business inputs exemption.
- Vice-Chair Zarelli urged the Committee not to be short-sighted with respect to sales tax collection when the long-term goal is to create jobs.
 - Ms. Murray agreed, but expressed concern for businesses that don't have an opportunity to move business inputs into the digital world.
 - Chair Hunter commented that this doesn't represent a "major shift in how the world works" because the exemption represents \$2 million.
 - Director Holmstrom noted that the estimated revenue impact of expanding the business input exemption to other items given away for free (beyond advertising) to be \$1.3 million loss during FY 2010, \$1.7 during FY 2011, and \$1.9 during FY 2012.
- **Payment Processing Clarification (Bundling).**¹⁵
 - Mr. Waits noted that payment processing services is a part of the larger bundling issue and was addressed during the earlier discussion.
- **Human Element (Live Events) and "Primarily" Questions**¹⁶
 - Mr. Waits explained that most examples identified during the previous committee meeting, such as sporting events, games, concerts, or broadcasts, would be defined as a "digital good." On the other hand, a help desk service would be excluded from the definition of a digital automated service because there is human interaction – a human answers specific questions.
 - Mr. Brewer qualified Mr. Waits' statement as providing that the service is more than 50 percent the person's judgment and expertise as opposed to a computer that provides answers.
 - Chair Hunter asked Mr. Brewer if he felt this approach is relatively "clean."
 - Mr. Brewer responded yes, for most situations. He noted that there will be questions as interconnectivity grows, but believes that the Department can resolve most questions.

5. Association of Washington Business (AWB) Proposed Language, presented by Ron Bueing, Committee member. (02:21:56)

- Mr. Bueing presented two handouts: 1) AWB's legislative objectives for digital goods; and 2) a draft proposal that provides a sense of AWB's ideal proposal.¹⁷
- Mr. Bueing explained that AWB's comments can be categorized in five areas:

¹⁵ For previous discussion, refer to page five of the September 25, 2008, meeting minutes.

¹⁶ Ibid.

¹⁷ AWB's handouts are available on the Department's Internet site.

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- Action during 2009 is critical to clear up uncertainties in the law and to encourage economic development.
- Any resulting digital goods tax policy should not expand the tax base.
- Definitions in any possible legislation should be more closely aligned with those established in the SSUTA. The AWB draft:
 - Specifies the items that are to be taxed rather than using the digital automated services and other definitions used in Chair Hunter's Proposal.
 - Includes specified digital products (movies, books, and music).
 - Includes other digital goods, which includes standard electronically delivered information and on-demand software services.
 - Within the imposition statute, includes defining the above items as retail sales.
- Tax should be narrowly imposed.
 - Limit the tax to items that are currently known - does not include items of which they are currently unaware.
- Any business inputs exemption should be broad and cover all ingredients regardless of technology. The draft:
 - Exempts business inputs by amending the definition of consumer in RCW 82.08.190.
 - Exempts items provided free of charge, but eliminated the advertising income requirement.
 - Based on the earlier committee discussions, Mr. Bueing recognized additional language may be necessary to prevent abuse.
 - Provides a use tax exemption for products of a non-commercial nature created solely for an internal business use.
 - Director Holmstrom asked a question to which Mr. Bueing replied that the intent is to exempt digital business inputs entirely.¹⁸
 - Responding to another question, Mr. Bueing noted that digital goods are specific to the items identified. AWB assumes that the Legislature would discuss whether additional items should or should not be subject to the tax before adding such items would be added to the definition¹⁹
 - Mr. Bueing noted that other items in the draft were simply carried over. The AWB group has not discussed bundling and value issues.
 - Mr. Bueing noted his belief that the AWB proposal is not significantly different than Chair Hunter's proposal. He explained that the main difference between the two draft proposals is that the AWB draft specifically identifies taxable items as opposed to identifying a universe of digital goods and creating a very broad business inputs exemption.

¹⁸ The recording equipment did not pick up Director's Holmstrom's voice.

¹⁹ Ibid.

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6. Discussion of AWB Proposal (02:34:25)

- Chair Hunter asked if, under the AWB proposal, the use of on-demand software would be taxable or not taxable.
 - Mr. Bueing responded that the proposal includes on-demand software within the definition of “other digital goods,” which are subject to tax.
 - Noting that the title of the category sounded broad, Chair Hunter asked what other digital products would not include.
 - Mr. Bueing explained that the title is two different items: 1) electronically delivered standard information; and 2) on-demand software services.
 - Chair Hunter asked how the proposal would treat business purchases of software on-line that is not a component of a product. He used Windows licenses as an example.
 - Mr. Bueing responded that Windows licenses would be subject to either retail sale or use tax as tangible personal property.
 - Director Holmstrom asked about on-demand software services. She noted that the proposal exempts other digital goods used to carry on a business activity.
 - Chair Hunter sought further clarification that a business purchase of Windows on line would be exempt from tax.
 - Mr. Bueing responded yes. He further noted that he was unsure if that was the intent, but that is the way it would work in the context of an application service provider model.
 - Another member made a comment to which Mr. Bueing replied that the transaction is currently subject to service B&O tax.²⁰
 - Chair Hunter commented that one of the goals was to avoid creating an advantage for delivering products in one form or another. Chair Hunter also explained that there is currently a different tax treatment for software use. Over time, the on-line offering will become more prevalent as interconnectivity improves. Chair Hunter commented that it seems “crazy” to have different tax treatments.
 - Mr. Bueing explained that revenue neutrality is the reason the AWB group went this direction because these items have generally been treated as services. Mr. Bueing explained that his group understands the philosophy of taxing similar items delivered dissimilarly the same. The desire to continue with the existing tax treatment overrode the understanding. Mr. Bueing also explained that the draft can easily be modified by removing on-demand software services from the broader inputs exemption.
 - Director Holmstrom sought and received confirmation from Mr. Bueing that the proposal subjects income from on-demand software services to the lower service B&O tax while exempting sales tax under the business inputs exemption. Mr. Bueing added that sales to non-business consumers would be subject to retail sales tax.

²⁰ The recording equipment did not pick up the member’s voice.

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7. General Discussion (02:43:56)

- Vice-Chair Zarelli commented that the question is a broad tax imposition or a narrow tax imposition. He noted that the Committee can't move forward with building legislation and making recommendations until the imposition issue is resolved.
- Chair Hunter explained his preference for the broad imposition strategy with specific exemptions because the approach is simpler for the long run. To not disadvantage Washington businesses, he was willing to trade a number of specific exemptions in exchange for the broad imposition. The AWB proposal seems more advantageous to businesses "all over the place." Chair Hunter also noted his diminished interest in the AWB proposal because it lacks the broad imposition treatment.
- Ms. Murray said that despite her earlier comments, she is in favor of broad protections for businesses if they can move to the broader imposition. She commented that the AWB proposal seems to be the best of both worlds for businesses. She agreed that the proposal deals with everything that is now known. She added that the purpose for the broader imposition is to deal with unknown in the future and to not have to a new study every few years to deal with the new products.
- Chair Hunter summarized three end points:
 - Tax everything all the time regardless of what's invented;
 - Exempt everything especially if it's for business; or
 - Broad imposition to avoid more committees with specific exemptions that are more advantageous to business than the current situation.
- Chair Hunter noted that in the final report, the Committee can:
 - Agree to find a middle position and note that Committee is reasonably close; or
 - Agree to disagree and lay out the positions.
- Mr. Reid observed that the AWB proposal allows consideration of all interests. He commented that the AWB proposal "framed up" what will be subject to tax along with the business inputs exemptions. The structure allows for an additional component that would go to Chair Hunter's broader imposition. When the Legislature considers language, each side of the issue can be cleanly considered instead of being all "munched up." Chair Hunter and Mr. Reid further discussed bill drafting strategy. Mr. Reid commented that they will not reach an agreement on the imposition issue.
- Vice-Chair Zarelli agreed with Chair Hunter's earlier comments that the issue is likely to be on the table during the upcoming session. Noting the upcoming challenges, Vice Chair Zarelli noted:
 - Either proposal is likely to create some level of additional revenue.
 - His hope that the Committee can come to an agreement to move forward.
 - Absent an agreement, the issue is left to the will of the Legislature as a whole, which he believes can be "potentially very dangerous."

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- Speaking with “political honesty,” Vice-Chair Zarelli also noted that it would all be about dollars – not about good public policy and what’s good for business. He further encouraged the members to come together and give and take a little bit to move the group in a better direction than they might be if they do nothing at all.
- Chair Hunter explained he has outlined a narrow imposition proposal that implements the SSUTA definitions of specified digital products, but doesn’t include any other items discussed by the Committee.²¹
 - Mr. Collier asked Chair Hunter if his narrow imposition proposal was based on AWB’s proposal.
 - Chair Hunter replied that he didn’t see the AWB proposal before the Committee meeting. He explained the proposal is his take on a narrow imposition bill. He further explained that he has to move a bill in the upcoming session and he had a sense from the previous meeting that the Committee was not interest in his proposal for a broad imposition.
- Ms. Murray asked about point number four, to ratify the Department’s current position on the taxation of digital goods.
 - Chair Hunter referred back to the first two meetings and the difference in interpretation concerning current law.²² He said this proposal would amend the law to resolve any ambiguities. He noted that this is an extreme interpretation but would be a starting point.
 - Mr. Bueing commented that this narrow imposition is not attractive. He further commented that he would be happy to go back and talk further with the membership. He explained that supporting Chair Hunter’s proposal would misrepresent the business coalition because the proposal is not supported.
 - Chair Hunter and the other legislative members meeting with the AWB membership was discussed.
- Vice-Chair Zarelli suggested that the strategy might be to focus on a broad imposition bill with as many business inputs exemptions as can be negotiated because it didn’t sound like there’s hope for the other one. Or, they can walk away and wait for the Legislature to act.
 - Ms. Murray agreed and explained that she’d like to know what will get the Committee to come to an agreement.
 - Mr. Bueing noted that the broader exemption language in Chair Hunter’s proposal is attractive and bears further discussion. He explained that the proposal needs to, but does not address some areas, such as still images.
 - Chair Hunter agreed that major stock image industry players are in the state. He thinks a broad business inputs exemption could cover such sales.

²¹ Earlier in the meeting (page three), Chair Hunter noted that he had asked the Department to identify how a specific implementation bill would look. Chair Hunter provided the Department’s e-mail response to Committee members. The e-mail is available on the Department’s Internet site.

²² The November 30, 2008, Preliminary report summarized the differences in the interpretation of current law. The Preliminary Report is available on the Department’s Internet site.

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- Ms. Murray noted the difficulty of getting broader input about business impacts while debating the broad vs. the narrow approach. She suspects that businesses will bring up more un-thought of issues if the Committee agrees to the broader tax imposition approach. .
- Chair Hunter noted that there is one more meeting before the final report. The Committee can try to develop more business community support for the broad imposition approach or more support for a narrow imposition approach by the Legislative community.
- Director Holmstrom noted she believes the Committee has made progress on a variety of issues by discussing and sharing information. She explained that it has been helpful for the Department and hopes that they can continue work on the issues.
 - Director Holmstrom noted that the final report is different than having a legislative proposal and suggested separating the two. She recommended that the final report lay out the issues to be considered. She suggested that next week, the Department provide a draft of the final report for review by the members.
 - Director Holmstrom also recommended continuing to work on drafting because there is further work to be done with any one of the three proposals.
- Paul Borhauer urged that clarity be provided wherever possible so that whenever questions arise, the whole issue doesn't have to be revisited.
- Vice-Chair Zarelli suggested that the report lay out the facts as the Committee has found them, continue working into the session, decide the main imposition issue, and have business come forth with its Christmas wish list.
 - Mr. Bueing commented that some AWB members are unwilling to support the broad imposition approach. He hesitated to say if broad business exemptions would bring them on board. He further noted that the broader the business inputs exemptions become, the easier it is to support the broad imposition language.
- Chair Hunter noted the Department's proposed time line for the final report.²³
- Mr. Collier pointed out that the Committee was appointed to address the inconsistency with financial information.²⁴ He noted Chair Hunter's proposal addresses the inconsistency and he's disappointed to see it held hostage for broader issues. He explained he doesn't understand the down side to including an exemption for digital equivalents to tangible personal property and his belief that such an exemption would make the "worriers" feel more comfortable.
 - Chair Hunter asked for a medium size set of examples so that he can understand the specific concerns.
 - Mr. Collier noted that Ralph Amon provided the example of digital maps.²⁵
 - Mr. Collier, Chair Hunter, Vice-Chair Zarelli, Ms. Murray, Mr. Bueing, Mr. Waits, and Mr. Brewer further discussed an exemption for digital equivalents

²³ The draft outline for the final report and the time line appear on the Department's Internet site.

²⁴ See chapter 522, Laws of 2007 (SHB 1128).

²⁵ Ralph Amon, representing the Boeing Company, gave public comment during the September 25, 2008, meeting. For further discussion, please refer to page 16 of the minutes for that meeting.

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where there is a current exemption for the tangible equivalent. They concluded it appropriate to review all exemptions for tangible personal property to determine if the digital equivalent would be taxable or exempt under Chair Hunter's proposal.

- Director Holmstrom asked the Committee members to contact Mr. Waits if there are specific issues they want to see addressed that may not be included in the outline. Chair Hunter asked Mr. Waits to combine all of the issues and forward them to him and the other Committee members.

8. Final Comments (03:25:42)

- Chair Hunter commented that the Committee has been an educational experience and thanked the members for helping to educate him. He explained that the process has been fascinating and that he enjoyed working with all of the members.
- Mr. Brewer asked if the Department should also send the draft final report to the listserv. Chair Hunter replied yes.
- Mr. Reid sought and received confirmation that Mr. Brewer's e-mail to Chair Hunter concerning the narrow imposition proposal is now a part of the public record and can be shared with others. He also asked if everything is posted to the website in real time. He explained that he directs persons calling for information to the web site. Director Holmstrom explained the Department posts all handouts to the Internet site.

9. Public Comment (03:28:42)

- Ralph Amon explained the Boeing Company:
 - Supports the AWB proposal to group specified digital products separately from other digital products.
 - Will not oppose a broad expansion of other digital goods provided that there is a tax exemption for when such goods acquired for business purposes.
- Mr. Amon also noted concern about imposing retail sales tax on charges for the access to prewritten software. He explained that the Boeing Company has various subsidiaries that access the company's software. The Boeing Company pays sales tax when acquiring the software. Such charges to subsidiaries are currently not subject to tax. It would expand the company's tax base if access to prewritten software were taxed absent an exemption for use for business purposes.

10. Meeting Adjourned.²⁶ (03:34:19)

²⁶ Although Chair Hunter typically identifies persons who sign the attendance sheets at committee meetings, he did not do so for the October 30th meeting. For the record, the following persons signed the attendance roster: Ralph Amon (the Boeing Company), Lew McMurrin (Washington Technology Industry Association), Rick O'Neill (the Boeing Company), Tom McBride, Denny Eliason (Alliances Northwest), T.K. Bentler (Motion Picture Association of America, Inc.), and Terry Byington (AeA – Washington Council).

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