

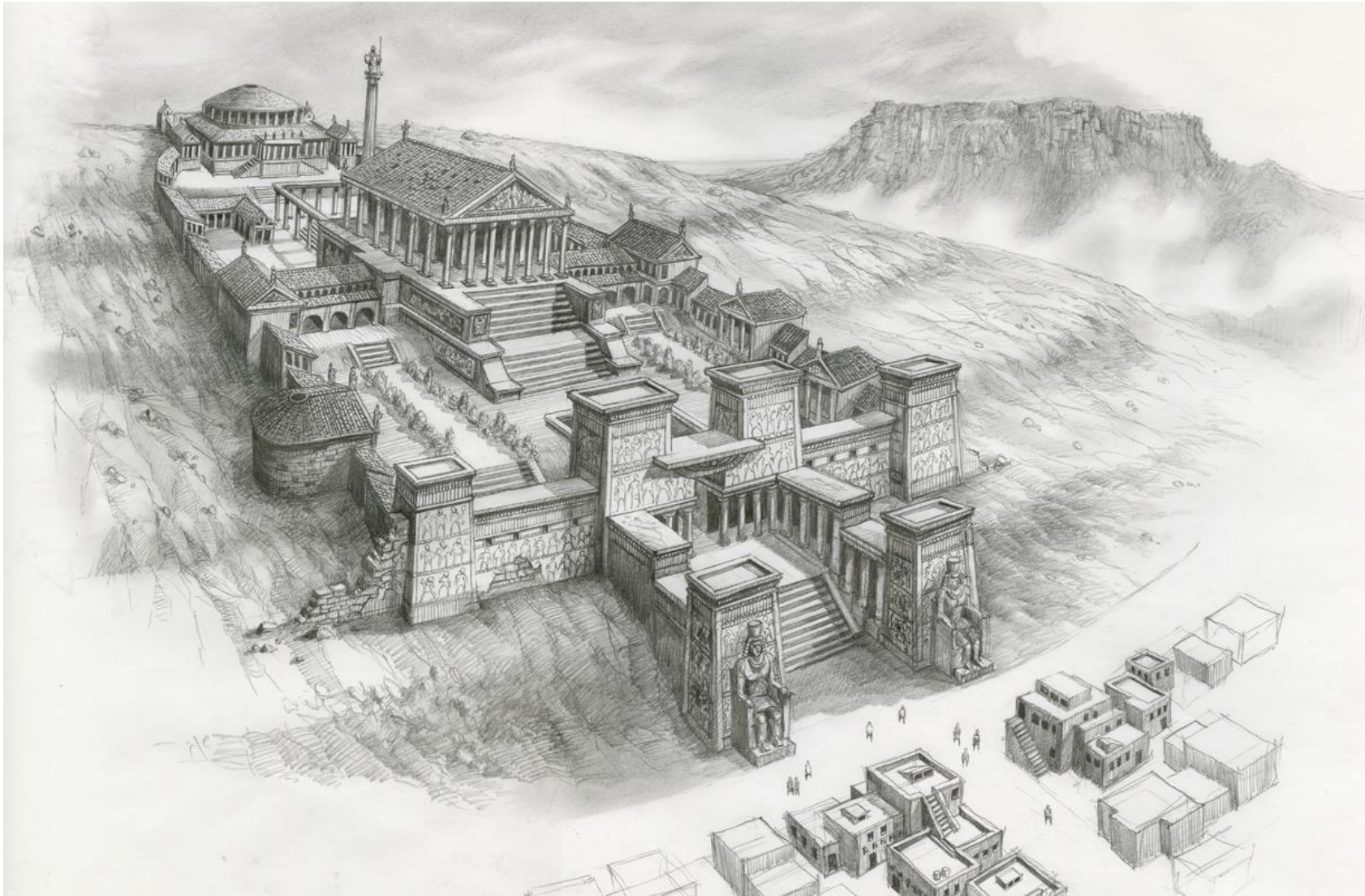
SURVEY OF SALES TAXATION OF DIGITAL PRODUCTS

**Uniformity Committee Meeting
April 25, 2023 – Long Beach, California**

Jonathan W. White, Counsel

- I am speaking for myself.
- My comments do not necessarily represent the views of my employer.
- Nothing in this presentation should be considered legal advice.

How it Started



[This Photo](#) by Unknown Author is licensed under [CC BY-SA](#)



[This Photo](#) by Unknown Author is licensed under [CC BY-SA](#)

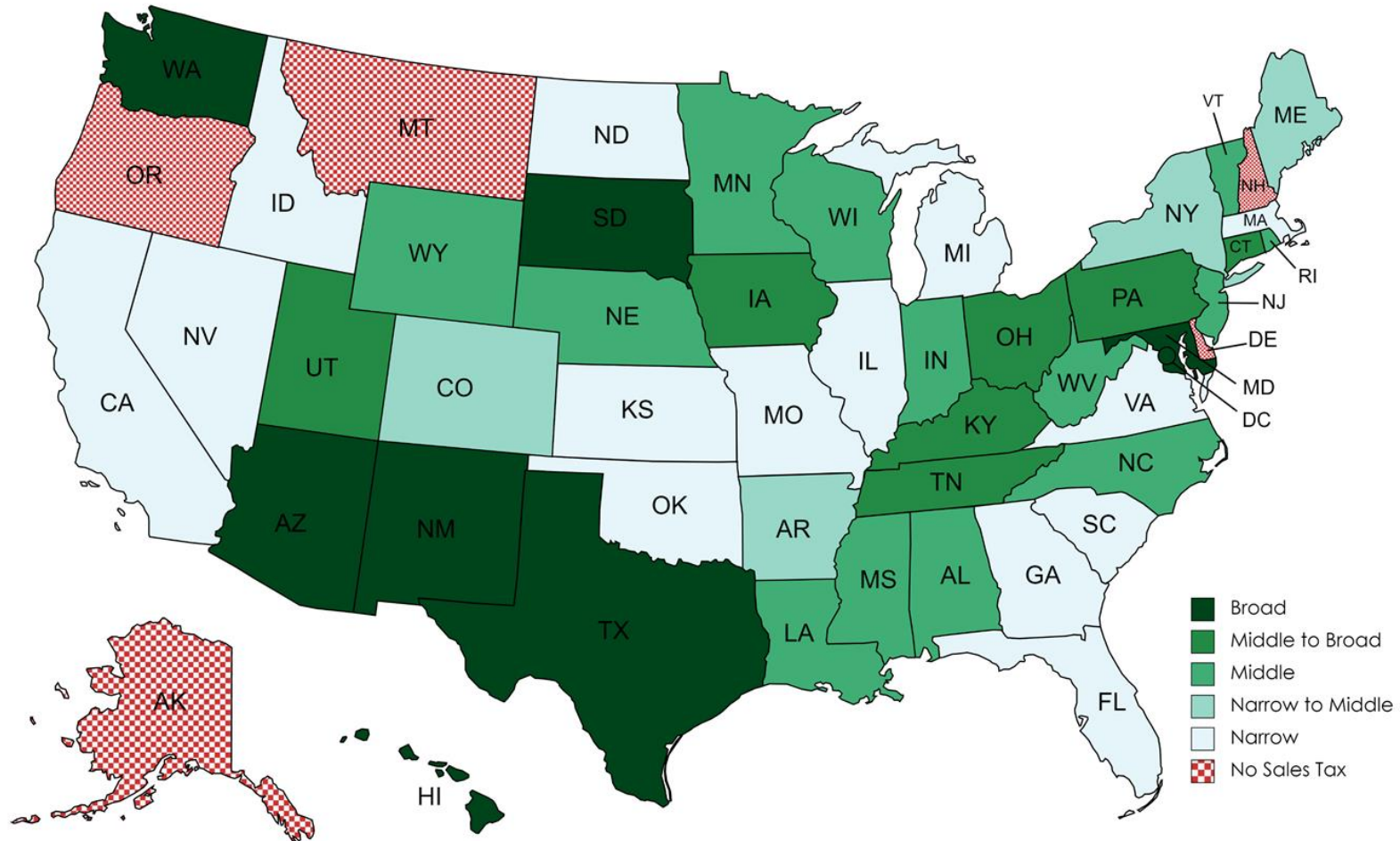
How it's Going

statebystatev18

Jonathan W. White JW

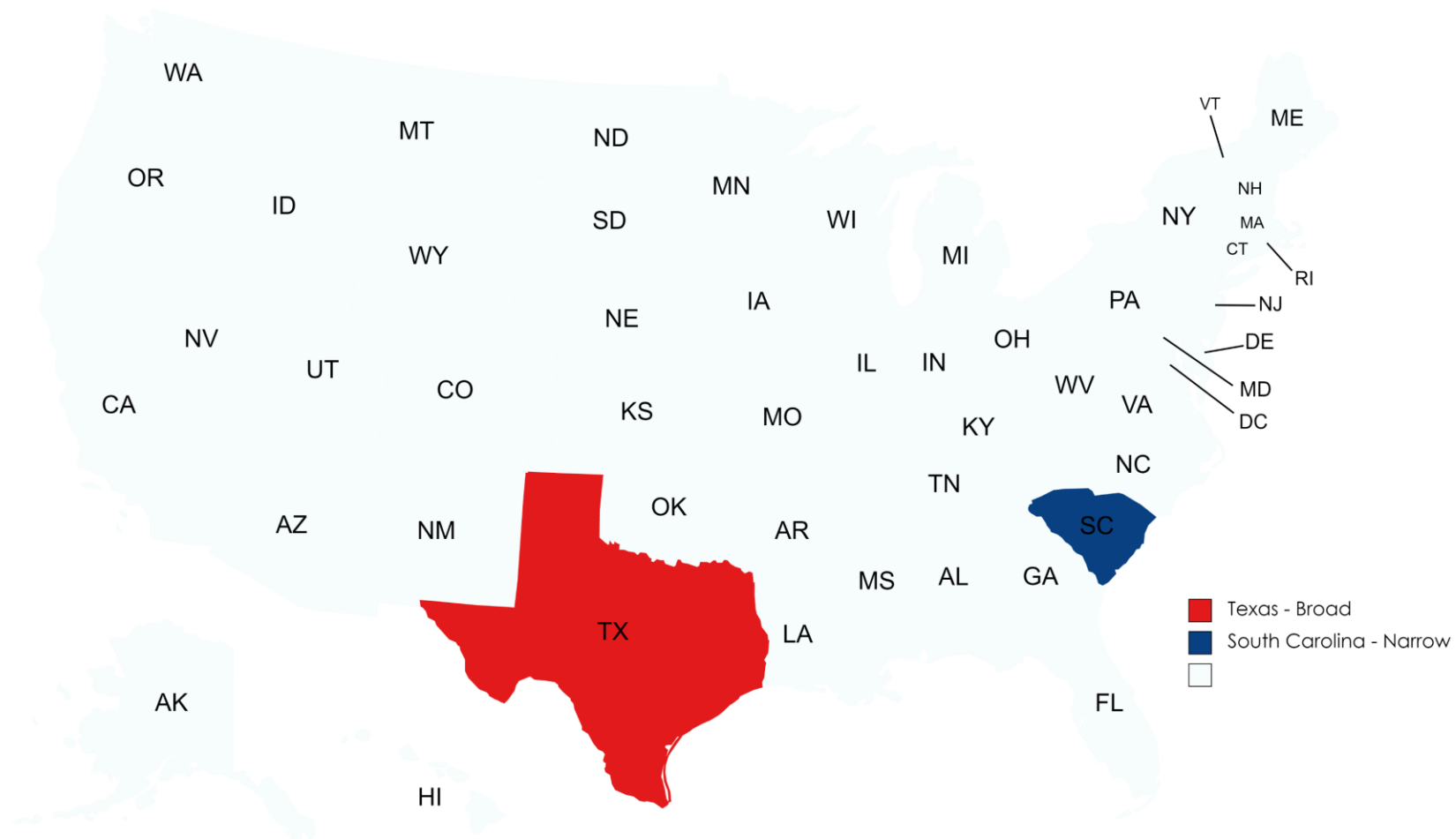
	A	B	C	D	E	F	G	H	I
1	The Big Picture	Digital Base	Streamlined state? (Y/N)	Definition of TPP	Includes Prewritten Software (Y/N)	Definition of software	Definition of Digital Product/Intangible	Define Digital Product (Y/N)	
12	Idaho	Idaho has a narrow base, taxing prewritten software delivered on a tangible medium, certain digital products however delivered, few services, and few cloud products.	1. Narrow	No	Personal property which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. Id. Code § 63-3616(a). Includes computer software that is not custom and that is not delivered electronically. Includes digital music, digital books, digital videos, and digital games when the purchaser has a permanent right to use, regardless of the delivery method. Id. Code § 63-3616(b). Includes statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced by a computer and sold in the same form as produced if printed or delivered on storage media. Id. Regs. § 35.01.02.027.08. Information stored in an electronic medium is TPP only if transferred on storage media that is retained by the user. Id. Regs. § 35.01.02.027.06.a.	Yes	Computer program is a sequence of instructions written for the purpose of performing a specific operation in a computer. Id. Regs. § 35.01.02.027.01. Computer software means any computer program, part of a program or any sequence of instructions for automatic data processing equipment or information stored in an electronic medium. Id. Code § 63-3616(b). Canned software is prewritten software offered to customers on an off-the-shelf basis with little or no modification at the time of the transaction beyond the parameters needed to run the program. Id. Regs. § 35.01.02.027.06. Custom computer program means any computer software written or prepared exclusively for a customer and includes services separately stated for modifying prewritten programs. Id. Code § 63-3616(b)(ii); see also, Id. Regs. § 35.01.02.027.01.f.	Digital product, or, information stored in an electronic medium, is any electronic data file other than a computer program that can be contained on and accessed from storage media. Id. Regs. § 35.01.02.027.01.g. Digital products includes digital music, digital books, digital videos, and digital games, but is broader than those listed items. Id. Regs. § 35.01.02.027.06.	Yes
13	Illinois	Illinois has a narrow base, taxing prewritten software however delivered and digital products if they are sold along with something tangible. Services generally not taxable. Information and data not taxable.	1. Narrow	No	Corporeal property either real or personal. <i>Farrand Coal Co. v. Halpin</i> , 140 N.E. 2d 698 (Ill. 1957). Includes electricity, <i>Exelon Corp. v. Illinois Dept. of Rev.</i> , 917 N.E. 2d 899 (Ill. 2009). Corporeal means of the nature of, consisting of, or pertaining to, matter or a material body; physical bodily; material — opposed to spiritual or immaterial... tangible or palpable. Includes computer software no matter how transmitted.	Yes	A set of statements, data, or instructions to be used directly or indirectly in a computer in order to bring about a certain result in any form in which those statements, data, or instructions may be embodied, transmitted, or fixed, by any method now known or hereafter developed, includes prewritten software. 35 ILCS 105/3-25. Custom software is the software that results from real and substantial changes to the operational coding of prewritten software in order to meet the purchase's specific requirements. A package of various prewritten software is not custom. 86 Ill. Admin. Code tit. § 130.1935(c).	None	No
							Computer software means a set of coded		

States' "Digital" Sales Tax Bases



Source: MTC staff research.

A Broad State and a Narrow State

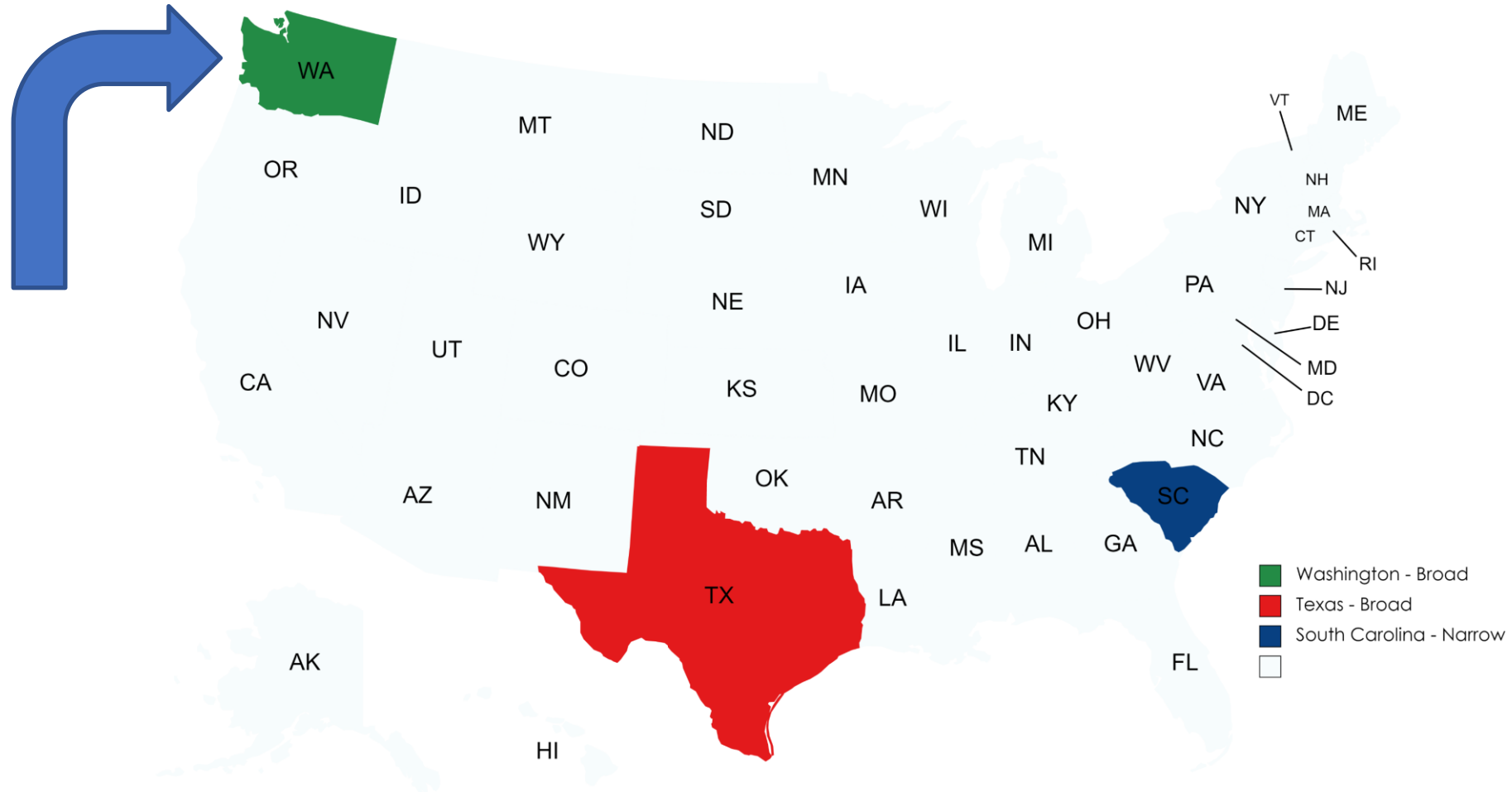


Source: MTC staff research.

The bases differ, big surprise.

The basic characterization of single items differ greatly across states, and for good reason: statute drafting decades ago.

Another Broad State



Source: MTC staff research.

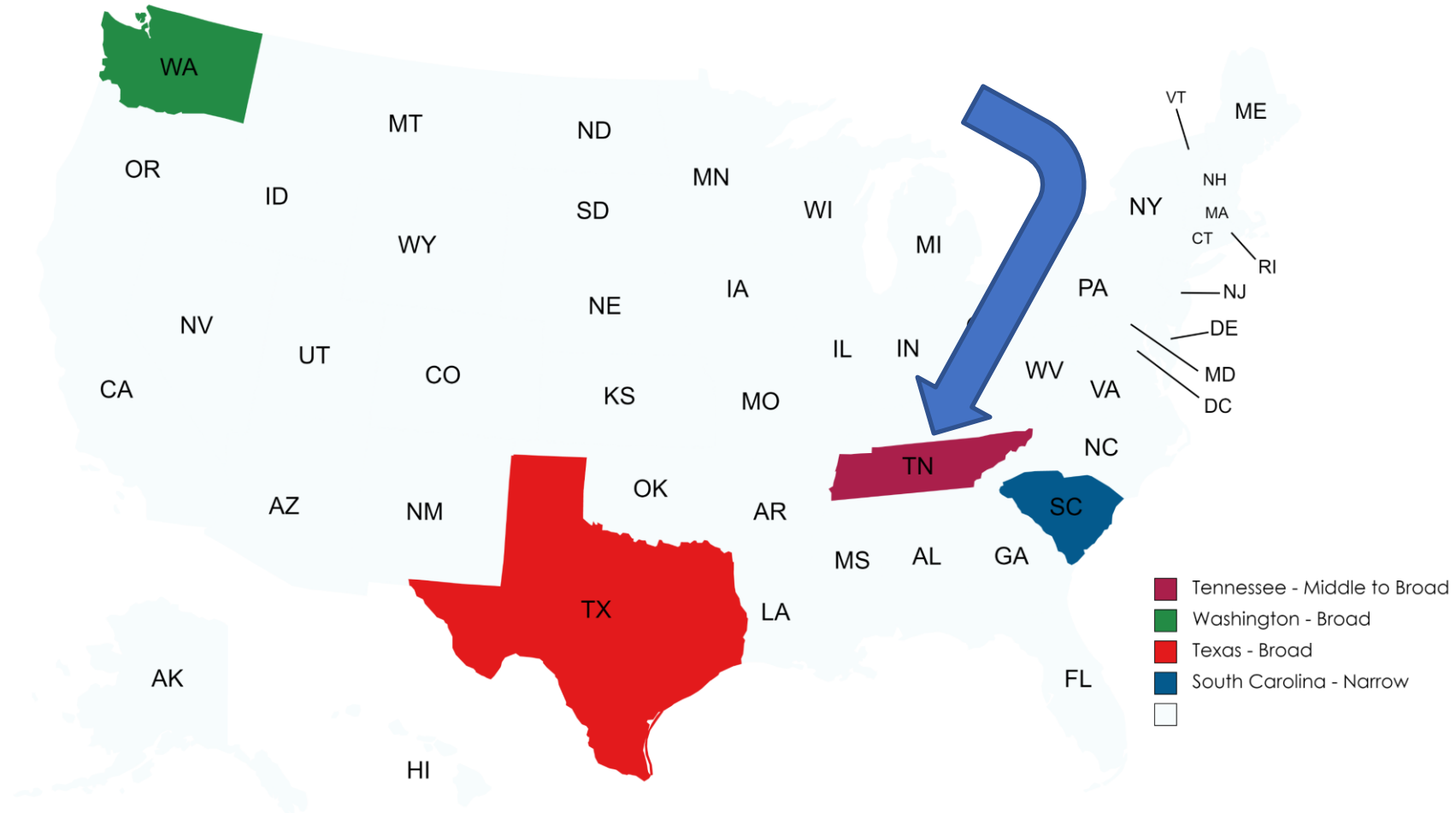
Digital automated services means services transferred electronically that use one or more software applications but does not include services primarily (more than 50% based on time and costs) involving the application of human effort after the customer requests the service.

Digital automated service does not include data processing services.

For sales tax, the characterization of an item is for squeezing it into or out of the tax base.

That characterization follows through to affect the sourcing decisions.

Another Broad State



Source: MTC staff research.

Computer programming and code writing services, **implementation**, and **consulting and professional services** that include creating, designing, developing, fabricating, programming, or modifying taxable software are taxable **even if separately stated**.

Standalone installation of software is taxable if the software remains TPP after installation.

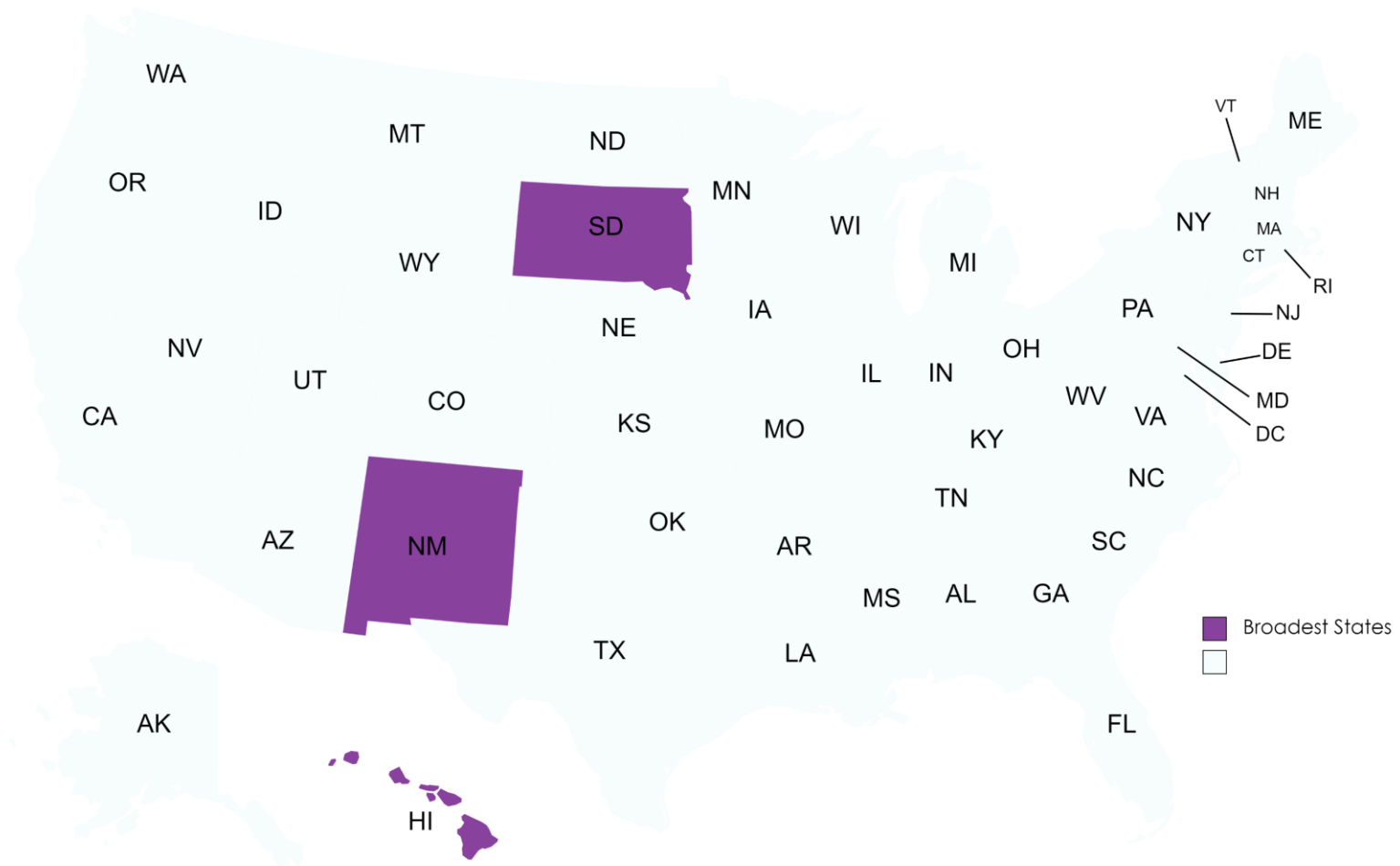
The prewritten software script is repeating itself.

Is this the way?



[This Photo](#) by Unknown Author is licensed under [CC BY-NC-ND](#)

The Broadest States – Just for Fun



■ Broadest States
□

Source: MTC staff research

CLOSING

Jonathan W. White
Counsel
jwhite@mtc.gov