A motion by Oklahoma, South Dakota, Kentucky and Michigan to amend AM07012 relating to specified digital products and the difference between existing states and new states:

NEW SECTION: Specified Digital Products

A. A member state shall not include "specified digital products", "digital audio-visual works", "digital audio works" or "digital books" within its definition of "ancillary services", "computer software", ~~or~~ "telecommunication services" ~~or "tangible personal property"~~.

B. A state which classifies "specified digital products", "digital audio visual works", "digital audio works" or "digital books" within its definition of "tangible personal property" on the effective date of this section may continue to do so. A state which does not classify "specified digital products", "digital audio visual works", "digital audio works" or digital books" within its definition of "tangible personal property" on the effective date of this section may not classify such products within its definition of "tangible personal property" after the effective date of this section.

~~B~~ C. For purpose of Section 327(C) and the taxability matrix, "Digital Audio-Visual Works", "Digital Audio Works", and "Digital Books" are separate definitions.

~~C~~ D. In order to levy a sales or use tax on "specified digital products", "digital audio-visual works", "digital audio works" or "digital books" a state which does not classify "specified digital products", "digital audio visual works", "digital audio works" or digital books" within its definition of "tangible personal property" on the effective date of this section must define such terms as provided in the Library of Definitions and must use such terms in its levying statute.

~~D~~ E. Nothing in this section shall affect a state's ability to classify a product which does not meet the definition of "specified digital products", "digital audio-visual works", "digital audio works" or "digital books" as being included in, or excluded from, the definition of tangible personal property.

~~E~~ F. Nothing in this section or the definition of "specified digital products" shall limit a state's right to impose a sales or use tax or exempt from sales or use tax any products or services that are outside the definition of "specified digital products."

~~F~~ G. Nothing in this section or the definition of "specified digital products" shall limit a state's right to impose a sales or use tax or exempt from sales or use tax any products or services that are otherwise included within the definition of "specified digital products" which are sold to a purchaser other than an end user, sold to a purchaser who does not have the right of permanent use of the product granted by the seller or to which the right of permanent use is conditioned upon continued payment from the purchaser. Such a tax or exemption must be specifically and separately imposed.

~~G~~ H. A state may treat a subscription to “specified digital products” differently than a non-subscription purchase of such product. For purposes of this section, “subscription” means an agreement with a seller that grants a consumer the right to obtain “digital audio-visual works”, “digital audio works” or “digital books”, in a fixed quantity or for a fixed period of time, or both.

~~H~~ I. The tax treatment of a “Digital Code” shall be the same as the tax treatment of the “Specified Digital Product” to which the “Digital Code” relates. The retail sale of the “Digital Code” shall be considered the transaction for purposes of the Agreement. For purposes of this section, “Digital Code” means a code, which provides a purchaser with a right to obtain one or more specified digital products which are either “digital audio-visual works”, “digital audio works” or “digital books”. A digital code may be obtained by any means, including email or by tangible means regardless of its designation as “song code”, “video code”, or “book code.”

~~I~~ J. Notwithstanding the provisions of Section 316 of this Agreement, a member state may provide a product based exemption for specific items within the definition of “specified digital products”, provided such items which are not transferred electronically must also be granted a product based exemption by the member state.