



## **MULTISTATE ALTERNATIVE DISPUTE RESOLUTION PROCESS DOCUMENTS**

(As approved by the MTC Executive Committee 4/29/21)

Please email completed documents and requested information to Multistate Tax Commission Executive Director Gregory S. Matson at [gmatson@mtc.gov](mailto:gmatson@mtc.gov) or mail hard copies to 444 North Capitol Street NW, Suite 425, Washington, DC 20001-1538.

If you have any questions about the process or these materials, please contact Gregory S. Matson or Multistate Tax Commission General Counsel Nancy Prosser at [nprosser@mtc.gov](mailto:nprosser@mtc.gov).

1. Procedures to Initiate and Conduct a Multistate Alternative Dispute Resolution Process
2. Multistate Alternative Dispute Resolution Process and Confidentiality Agreement

**PROCEDURES TO INITIATE AND CONDUCT A  
MULTISTATE ALTERNATIVE DISPUTE RESOLUTION PROCESS**

The following procedures allow interested parties to conduct a multistate alternative dispute resolution (ADR) process under Multistate Tax Commission (MTC) Bylaw 14.

**I. APPLICABILITY OF ADR PROCESS TO TAXPAYERS AND STATES VOLUNTARILY ELECTING TO PARTICIPATE**

The MTC offers its multistate ADR process relating solely to taxes defined in Article II of the Multistate Tax Compact when a taxpayer and two or more states voluntarily agree to participate, or when two or more states voluntarily agree to participate without the necessity of a taxpayer being a party.

**II. INITIATION OF MULTISTATE ADR PROCESS; ROLE OF THE MTC.**

- A. *Initiation of Multistate ADR Process.* The multistate ADR process begins with the submission of the Multistate Alternative Dispute Resolution Process and Confidentiality Agreement to the MTC executive director.
- B. *Role of MTC.* As soon as practical, the MTC executive director will send to each party's representative a list of qualified mediators and arbitrators. Thereafter, unless requested by the mediator(s) or arbitrator(s), agreed to by all parties, and approved by the executive director, no MTC employee will participate in the ADR process that is conducted, except for maintaining the records of the ADR process and performing acts as required to inform the MTC Executive Committee and the Commission on the conduct and effectiveness of the MTC ADR process.

**III. TYPES OF ALTERNATIVE DISPUTE RESOLUTION PROCESSES.**

Unless otherwise unanimously agreed to by the parties, the ADR processes available to any taxpayer and affected states will be mediation and arbitration or a combination as described below. The parties will decide what process to use by unanimous consent.

- A. *Mediation.* Mediation is the process in which a neutral person helps the parties in reaching a mutually acceptable settlement of the issues, but the person does not have the authority to enter any decision, binding or otherwise. The mediator may conduct informal joint and separate meetings with the parties to understand the facts, develop or refine the issues, and explore the potential for settlement.
- B. *Arbitration.* Arbitration is the process in which the parties present their respective cases to a neutral person or persons and a decision is entered. The decision can be binding or advisory depending on the agreement of the parties.
- C. *Arbitration-Mediation.* Arbitration-Mediation is the process in which the arbitration process is first conducted, but before the arbitrator makes the decision known, the parties are first given an opportunity to reach settlement through the mediation process. Unless the parties

unanimously agree, a different person will be selected to conduct the mediation segment of this process.

- D. *Mediation-Arbitration.* Mediation-Arbitration is the process in which mediation efforts are first used and, failing the reaching of a settlement, the matter is thereafter arbitrated, and a decision entered. Unless, subsequent to the failed mediation effort, the parties unanimously agree, a different person or persons will be selected to conduct the arbitration segment of this process.

#### IV. QUALIFICATION AND APPOINTMENT OF MEDIATORS AND ARBITRATORS

- A. *List of Qualified Mediators and Arbitrators for Multistate ADR Processes.*

The MTC executive director will keep a list of qualified mediators and arbitrators to participate in the multistate ADR processes. The list will be comprised of persons having the minimum amount of education, knowledge, and experience in multistate tax issues and adequate training or experience conducting ADR to participate in the MTC process.

- B. *Conflict of Interest.*

Unless agreed to in writing by all parties, no mediator or arbitrator will have any personal or financial interest in the result of any ADR process. Prior to accepting any specific appointment, the mediator(s) or arbitrator(s) will disclose to the parties any circumstance likely to create in fact or in appearance any conflict of interest or bias on his or her part. Upon receipt of such information, the parties will either unanimously accept such person or select another person from the list provided to serve as mediator or arbitrator.

- C. *Selection Process.*

The procedure to be followed by the parties for selecting the mediator(s) or arbitrator(s) will be as follows:

1. The parties will first have an opportunity to unanimously agree among themselves as to their choice from the list kept by the executive director of the persons pre-qualified to act as mediators or arbitrators. The parties may also select by unanimous agreement any other person(s) to act as mediator(s) or arbitrator(s). In that event, the ADR process will no longer be conducted under the MTC process and the parties may proceed as they deem appropriate.
2. If the selection of the particular person(s) required to conduct the ADR process is not agreed upon within ten business days from the date the parties have received the pre-qualified list, the remaining person(s) required to act as mediator(s) or arbitrator(s) will be appointed by the parties from the list of pre-qualified persons maintained by the MTC as follows:
  - a. Within ten business days from the date the parties have failed to agree on the selection of the mediator(s) or arbitrator(s) required to conduct the

ADR process, each party will select one person acceptable to it from the pre-qualified list and simultaneously exchange the names.

- b. Within five business days from the exchange, the two persons selected will select the remaining person(s) required to conduct the mediation or arbitration.
- c. No MTC ADR process will begin until the parties have selected the person(s) to conduct the process.

**V. MEDIATION AND ARBITRATION PROCEDURES CONDUCTED UNDER MTC ADR PROCESS.**

*A. Mediation Procedures.*

1. The mediation process is informal in nature and, given the expertise of the mediator in issues of state taxation, the presentation of witnesses or representation by counsel will seldom be necessary. Each party, however, will advise the mediator in writing and at least ten business days in advance of the initial mediation session —
  - a. of the party's intention to present witnesses;
  - b. whether the party will be represented by counsel;
  - c. who will be present at the mediation session that is authorized to agree to and execute any settlement reached; and
  - d. a brief statement of facts, law, and issues to be resolved.
2. At least three business days in advance of the initial mediation session, the mediator will distribute to each party the information provided in subparagraphs a, b, c, and d of paragraph 1, provide a written description of the mediation process to be followed, and inform the parties as to any additional information the mediator determines should be either provided to the mediator or mutually exchanged among the parties.
3. At the initial session of the mediation, each of the parties will be given an opportunity to present their positions as to the issues under consideration and will provide all information reasonably necessary for the mediator to understand the issues presented. The mediator may require or allow any party to supplement such information.
4. The mediator does not have the authority to impose a settlement on the parties but will attempt to help all parties reach a satisfactory resolution of their dispute. The mediator may conduct joint and separate meetings with the parties. The mediator may also obtain expert advice concerning technical aspects of the dispute if the parties agree in advance and assume the expenses. The mediator will decide on arrangements for obtaining expert advice.

5. There will be no stenographic or other record of the mediation process unless agreed to in writing by all parties with costs shared equally by all parties.
6. If the parties agree to a resolution of the dispute, they will prepare and execute a closing or settlement agreement. Should any party be required by law or otherwise to obtain review and approval of the agreement by another person or body, such approval will be sought without delay and within the time agreed upon by the parties. If approval is not obtained within the time agreed upon, then, unless otherwise agreed to in writing by the parties, the mediation will be considered terminated without agreement.
7. When each mediation is concluded, the mediator(s) will report to the MTC executive director the number and types of parties, the types of tax issues addressed, whether any agreements were reached, and the number of hours or days used in the process. The mediator will ensure the parties remain anonymous if that is their preference. In addition, each party has the option to notify the MTC executive director about the effectiveness of the mediator(s) and the ADR process.
8. In all other respects the mediator(s) will determine the process to be followed.

B. *Arbitration Procedures.*

1. The arbitration process is more formal in nature than mediation, but less formal than either a formal administrative hearing or litigation.
2. The arbitrator(s) will take such steps as determined necessary or desirable to avoid delay and to achieve a just, speedy, and cost-effective resolution.
3. Each party will cooperate in the exchange of documents, exhibits, and information within such party's control if the arbitrator(s) consider such production to be consistent with the goal of achieving a just, speedy, and cost-effective resolution.
4. Each party may conduct discovery as agreed by all the parties; however, the arbitrator(s) may provide for or place such limitations on the conduct of such discovery as the arbitrator(s) deem appropriate.
5. At the request of a party, the arbitrator(s) may order the taking of the deposition of, or the submission of written interrogatories to, persons who may possess information determined by the arbitrator(s) to be necessary to a determination of the matter.
6. Except as otherwise provided in these procedures and absent an agreement by the parties, the arbitrator(s) will decide what rules of evidence apply. The substantive tax laws of the respective state parties to the arbitration will control issues of tax liability. The arbitrator(s) will also select which procedural rules will be followed. However, no error by the arbitrator(s) in the application of any rule of evidence or procedure will be grounds for vacating any decision by the arbitrator(s)

7. When more than one arbitrator is conducting the arbitration, all decisions of the arbitrators must be by a majority.
8. Any party desiring a stenographic or other recording of the proceedings will make arrangements directly with a stenographer or other person responsible for recording the proceedings and will notify the arbitrator(s) and all other parties of such arrangements at least ten business days in advance of the arbitration hearing. The requesting party or parties will pay the costs of any recording and the recording or transcript will be made available to the arbitrator(s) and other parties as decided by the arbitrator(s).
9. Unless otherwise requested by any party, the arbitrator(s) will enter a written or recorded decision without a statement of reasons supporting the decision. When requested by any party, a written or recorded statement of the reasons upon which the decision is based will be provided.
10. Where the parties have agreed that an arbitration proceeding will be binding upon the parties, an official record will be made and maintained by the arbitrator(s).
11. Parties to a binding arbitration proceeding consent that the arbitration decision may be entered in any state judicial or administrative body having jurisdiction thereof. Notwithstanding this provision, to the extent that applicable state laws regarding arbitration and the appeal and entry of judgments provide otherwise, state laws will control.
12. The decision by the arbitrator(s) will be made promptly and, unless otherwise agreed by all parties or specified by law, no later than thirty (30) days from the date of the closing of the arbitration hearing.
13. When each arbitration is concluded, the arbitrator(s) will report to the MTC executive director the number and types of parties, the types of tax issues addressed, whether any decision was reached, and the number of hours or days used in the process. The arbitrator(s) will ensure the parties remain anonymous if that is their preference. In addition, each party has the option to notify the MTC executive director about the effectiveness of the arbitrator(s) and the ADR process.
14. In all other respects, the arbitrator(s) will decide the process to be followed.

## **VI. PRIVACY OF ADR PROCESS.**

All ADR processes are private. The parties and their representatives may attend the sessions, but other persons, including representatives of the MTC, may attend only with the unanimous permission of the parties and the mediator(s) or arbitrator(s).

**VII. CONFIDENTIALITY OF ADR PROCESS.**

Except as otherwise authorized in these procedures or required by law, neither the MTC, party, nor mediator or arbitrator may disclose the existence, content, or results of any MTC ADR process without the prior written consent of all parties. Therefore, except as may be authorized, required, or consented to, no MTC employee, party, mediator, arbitrator, or any agent or other representative thereof, may make public, offer, or introduce as evidence or otherwise refer to in any administrative, judicial, or other proceeding any statement made or any document or item of evidence provided while setting up or during the course of any MTC ADR process or any finding, conclusion, order, or result or lack thereof relating to such process. This prohibition applies, but is not limited to, the following matters:

- A. Views expressed or suggestions made by a party with respect to possible settlement of the dispute;
- B. Admissions made by any party in the course of the ADR proceedings;
- C. Statements made or views expressed by any witness, mediator(s) or arbitrator(s) or other person privy to the ADR process; or
- D. The fact that another party had or had not indicated a willingness to accept a proposal for settlement.

At the conclusion of the MTC ADR process and after receipt of notification from all parties that no further need exists, the mediator(s) or arbitrator(s) will return or destroy all documents received from the parties and destroy any record of the proceedings, except as required by law; as necessary for the enforcement of any finding, conclusion, or order; or to be used for the purpose of completing the report required under paragraphs V. A. 7 and V. B. 13.

**VIII. REPRESENTATION BY LEGAL COUNSEL OR OTHERS.**

Any party may participate with or without representation by legal counsel or others.

**IX. FEES AND EXPENSES.**

- A. Each party will bear the fees and expenses for its own counsel, expert witnesses, travel, and the preparation and presentation of its case. Except as otherwise agreed by the parties, the fees and expenses of the mediator(s) or arbitrator(s) will be shared one-half by the taxpayer and the remaining one-half by the states in equal amounts between or among them. If only states are participating in the process, each state will pay an equal amount between or among them unless otherwise agreed.
- B. In the event that an MTC ADR session has been scheduled and a party fails to appear, that party will be responsible for the payment of the reasonable costs and fees of the mediator(s) or arbitrator(s) and the reasonable travel expenses actually incurred by the other parties, unless the party has provided reasonable notice in writing to the mediator(s) or arbitrator(s) and all other parties that it will not appear; or, if reasonable notice is not provided, the mediator(s) or arbitrator(s) determines that good cause exists. It will be

presumed, subject to a contrary showing under the circumstances, that giving five days advanced written notice is reasonable notice.

**X. DATE, TIME, AND PLACE FOR ADR PROCESS.**

Unless unanimously agreed by all of the parties and the mediator(s) or arbitrator(s), the date, time, and place for the ADR process will be selected by the mediator(s) or arbitrator(s) with consideration being given to the location and convenience of the parties and their witnesses. The ADR process may occur in person or remotely.

**XI. TERMINATION OF ADR PROCESS.**

Due to the voluntary nature of the ADR processes, unless otherwise agreed to in writing by the parties, an ADR process will end at any time —

- A. by all parties executing a document stating that an agreement has been reached by all of the parties to the ADR process;
- B. by the entry of a decision by the arbitrator(s) in either a binding or non-binding arbitration process;
- C. by a written declaration of a mediator during a mediation process that further efforts at mediation are no longer worthwhile; or
- D. by a written declaration of any party to a mediation or non-binding arbitration to the effect that such ADR proceeding is terminated.

**XII. TAXPAYER'S DUTY TO PERFECT PROTESTS AND APPEALS.**

It is the duty of the taxpayer to protect its right to protest or appeal any assessment or proposed assessment or to pursue any right to refund relating to any issue that may also be subject to an MTC ADR process. Compliance with all conditions and time limits for perfecting and pursuing any administrative and judicial protests and appeals or requests for refund will be the sole responsibility of the taxpayer. Any agreement by a representative of any party state to an ADR process that is intended to alter applicable conditions or time limits must be authorized by law and executed in writing to be effective.



**MULTISTATE ALTERNATIVE DISPUTE RESOLUTION PROCESS**  
**AND CONFIDENTIALITY AGREEMENT**

The parties signing this document agree to initiate an alternative dispute resolution (ADR) process under the procedures adopted by the Multistate Tax Commission (MTC) and explained in the *Procedures to Initiate and Conduct a Multistate Alternative Dispute Resolution Process* (the Procedures).

The parties may use this form or one of their own choosing as long as the same information is provided.

**I. PARTIES TO THE ADR PROCESS**

Taxpayer Name:  
Address:  
Phone:  
Email:

Taxpayer Representative Name:  
Address:  
Phone:  
Email:

State 1:  
State 1 Representative:  
Address:  
Phone:  
Email:

State 2:  
State 2 Representative:  
Address:  
Phone:  
Email:

Add information for additional states as applicable.

**II. ADR PROCESS AGREED UPON**

The parties unanimously agree that the ADR process to be used in this matter is (check one):

- Mediation
- Non-binding arbitration
- Binding arbitration
- Mediation - arbitration (non-binding)
- Mediation - arbitration (binding)
- Arbitration (non-binding) - mediation
- Arbitration (binding) - mediation
- Other: \_\_\_\_\_

**III. NUMBER OF MEDIATORS OR ARBITRATORS  
TO BE APPOINTED FROM THE MTC LIST**

The qualities of a mediator or arbitrator are critical to the effectiveness of any ADR process. Where multistate tax issues are at issue, it is important to the overall credibility and effectiveness of the process that the mediator or arbitrator be knowledgeable in state tax matters and trained in alternative dispute resolution procedures. Therefore, if the parties want the process to be conducted under the MTC's Multistate ADR process, the parties unanimously agree to select the required number of mediators or arbitrators from the list of those pre-qualified by the MTC. But the parties may select any mediator or arbitrator not listed on the MTC's pre-qualified list if they unanimously agree to do so. In that event, the ADR process will not be conducted under the MTC process and will proceed under the terms and conditions as the parties agree.

The number of MTC-approved mediators or arbitrators unanimously agreed upon is \_\_\_\_\_.

**IV. WAIVER OR EXTENSION OF APPLICABLE STATUTES OF LIMITATION**

All parties agree that neither the signing of this agreement, nor the agreement to enter into, or the entering into of any ADR process, will satisfy, extend, waive, or in any manner limit or affect the application of any state's statute of limitations with respect to any administrative or judicial review of any assessment, protest of assessment, request for refund, or any other adjustment to any tax liability. The parties are responsible to protect their respective interests under applicable statutes of limitations and no ADR process will proceed unless all parties unanimously agree that such interests have been satisfied.

By signing this agreement, the parties unanimously acknowledge Article XII of the Procedures and that no issue regarding the application of any statute of limitation or the satisfaction, extension, waiver, or other limitation is outstanding.

**V. DESCRIPTION OF ISSUES TO BE ADDRESSED**

- A. Tax periods:
- B. Tax types (must be within the scope of the Multistate Tax Compact\*):
- C. Stage of dispute (check appropriate box):

As to State 1:

- Pre-filing of return
- Post-filing of return and pre-assessment
- Post-filing request for refund
- Audit in progress
- Post-assessment
- Post denial of refund
- Informal conferences concluded
- Formal conferences concluded
- Administrative hearings concluded

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\* Generally, an income tax, capital stock tax, gross receipts tax, sales tax, or use tax paid by any corporation, partnership, firm, association, governmental unit or agency, or person acting as a business entity in more than one state.

- Post-filing of action for judicial review
- Other stage:

As to State 2:

- Pre-filing of return
- Post-filing of return and pre-assessment
- Post-filing request for refund
- Audit in progress
- Post-assessment
- Post denial of refund
- Informal conferences concluded
- Formal conferences concluded
- Administrative hearings concluded
- Post-filing of action for judicial review
- Other stage:

Add information for additional states as applicable.

D. Brief description of all agreed issues to be addressed in the ADR process:

## **VI. NOTIFICATION AND INVITATION TO OTHER STATES**

The taxpayer agrees to notify the party states to this agreement whether one or more additional states may be interested in this proceeding by reason of an assessment, refund, or other formal process that is pending in other states regarding that relates to an issue or issues to be addressed in this ADR process.

The taxpayer has disclosed to the party states the existence or non-existence of any other such state(s) and all parties to this ADR process  have agreed  have not agreed that other states will be notified about this ADR process and invited to participate.

Other states will not be invited to participate unless there is unanimous agreement among the parties. However, nothing prohibits the taxpayer or any party state from conducting a separate ADR process with other states.

## **VII. AGREEMENT TO APPLY STATEMENT OF SPECIFIC PROCEDURES**

An important element of the MTC's multistate ADR process is the establishment of a consistent and uniform process for parties to use in the resolution of multistate tax issues. By enforcing the use of this process, taxpayers and states nationwide will be more able to understand the ADR process and feel more confident in its application and results. Therefore, the parties unanimously agree that, unless good cause requires and the mediator(s) or arbitrator(s) agrees, these Procedures will apply and control the ADR process selected by the parties. To the extent that any requirement contained in the Procedures conflicts with a provision of any statute, regulation, or other written provision having the force and effect of law, however, the requirement will not be binding upon the parties and the statute, regulation, or other written provision of law will apply.

## VIII. CONFIDENTIALITY AGREEMENT

This explains the privacy and confidentiality agreement to be followed by the parties participating in the MTC ADR process.

### 1. **Private Nature of ADR Process.**

The MTC ADR process will be private and no person, other than witnesses for each party and one person representing management of each party and their respective legal counsel or other representative will, without the unanimous consent of all parties and approval of the mediator or arbitrator, attend any session of the ADR process.

### 2. **Confidentiality of the ADR Process.**

(a) In order to promote communication among the parties and third-party neutral(s) during the ADR process, all parties agree that all written or oral statements prepared and made during the course of the ADR process are privileged settlement discussions made without prejudice to any party's legal position and do not waive any rights. Such statements include, but are not limited to:

- (1) Views expressed or suggestions made by a party with respect to possible settlement of the dispute;
- (2) Admissions made by any party in the course of the ADR proceeding;
- (3) Statements made or views expressed by any witness, mediator(s) or arbitrator(s) or other person privy to the ADR process; or
- (4) The fact that another party had or had not indicated a willingness to accept a proposal for settlement.

Such statements are not discoverable and inadmissible for any purpose in any other ADR process or any administrative, judicial, or other action or proceeding absent the prior written consent of all parties and the third-party neutral(s).

(b) The privileged character of any statement is not altered or affected in any manner by disclosure to the third-party neutral(s). Therefore, disclosure of any such statements, information, records, reports, including those submitted by third parties, or other documents received or prepared by the third-party neutral(s) during the course of the ADR process cannot be compelled. Notwithstanding this limitation, evidence of any statement in the custody or possession of any party that would be discoverable or admissible at trial had the ADR process not been held does not lose its character as being discoverable or admissible at trial merely because such evidence has been disclosed, presented, or otherwise used during the ADR process.

(c) No third-party neutral will be called as a witness by any party or otherwise compelled to disclose or testify in any type of ADR process or judicial action or administrative or other proceeding as to any records, reports, or other documents received or prepared by the third-party neutral(s) during the course of the ADR process or information disclosed or statements made in the course thereof or otherwise communicated to the third-party neutral in confidence.

(d) At the conclusion of the ADR process and after notification by all parties, the third-party neutral(s) will return or destroy all documents received from the parties and destroy any notes or record of the proceedings, except as required by law or to complete the confidential information report to the MTC. Notwithstanding any provision to the contrary, the third-party neutral(s) and each of the parties may maintain a copy of any final order or award entered by the third-party neutral(s) and any settlement agreement for the purpose of enforcement. Any award, order, or agreement will be discoverable and admissible for the purpose of its enforcement according to its terms.

(e) Except as authorized or required by law, unanimously agreed to under this agreement, or as may be necessary for internal communications purposes within the business or governmental structure of the respective parties, no public disclosure will be made concerning the existence of this ADR process, any written or oral statements made or presented. during its course, or the results or lack thereof from the process.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

## IX. SIGNATURES

The persons signing this agreement represent by their signatures that they have authority to bind the parties. This agreement may be signed in counterparts, each of which is considered an original, and all of which constitute one and the same document. An electronically scanned and transmitted version of an original signature or a verifiable digital signature will be considered a valid signature. No provision of this agreement will be waived or modified except in writing and signed by all the parties.

Taxpayer Representative Signature: \_\_\_\_\_

Taxpayer Representative Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

NOTE: The taxpayer has the option after signing this agreement to have its name and all identifying information redacted from the information submitted to the MTC. It is the responsibility of the taxpayer to redact the identifying information and provide contact information for the following person to receive notices and information from the MTC on its behalf if the taxpayer wants to remain anonymous.

Name:

Address:

Telephone:

Email:

State 1 Representative Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

State 2 Representative Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Add signature lines for additional states as needed.