



To: Commission
From: Gregory S. Matson, Executive Director
Date: August 3, 2022
Subject: Proposed Amendment to Bylaw 14(d)

Multistate Tax Commission Bylaw 14 provides for a voluntary alternative dispute resolution (ADR) program. The proposed amendment to Bylaw 14(d) deletes a provision with respect to maintaining a list of people who can conduct mediations/arbitrations in non-multistate tax matters. The change was approved by the Executive Committee at its meeting on April 29, 2021, as part of an update to the Commission's ADR program (the April 19, 2021, memo to the Executive Committee describing this update—less attachments—is attached here).

The original program documents from 1995 and Bylaw 14 required the MTC to not only maintain a list of people who can conduct mediation/arbitration in multistate tax matters, but to also maintain a list of people who can conduct such mediations/arbitrations in non-multistate tax matters, something the MTC has never done. The proposed amendment to Bylaw 14(d) eliminates this requirement:

(d) Qualification of Mediators or Arbitrators; Maintenance of Registry.

~~1. Mediators or Arbitrators for Matters of Multistate Impact.~~

The Executive Committee is to establish minimum qualifications for persons applying to act as mediators or arbitrators under the commission ADR program in matters or controversies that have a multistate impact; and no person is authorized to act as such under the program unless he or she has met such minimum qualifications. In establishing such qualifications, the Executive Committee should consider, among other qualification, the required minimum amount of (a) education, knowledge, and experience in matters of state taxation of interstate and foreign commerce; and (b) training in ADR processes. The executive director will maintain a list of such qualified mediators and arbitrators and make it available to the states and taxpayers.

~~2. Mediators or Arbitrators for Matters Not of Multistate Impact~~

~~The executive director also will maintain a registry or listing of those persons desiring to provide mediation or arbitration services to states and taxpayers in tax controversies and matters that do not have a multistate impact. Such registry will not be limited to those persons that have met the minimum set of qualifications described in paragraph (d)(1) and the recipients of such registry will be clearly so notified.~~

Notice of this proposed amendment was provided to the states pursuant to Bylaw 12 on May 7, 2021, and is properly before the Commission for adoption.

ATTACHMENT



To: Executive Committee

From: Nancy Prosser, General Counsel

Date: April 19, 2021

Subject: **Proposed Update to the MTC Voluntary Alternative Dispute Resolution Program**

This is a summary of proposed changes to the MTC Voluntary Alternative Dispute Resolution Program for consideration by the Executive Committee on April 29, 2021. The program was established to allow a taxpayer and one or more states, or one or more states without a taxpayer, to resolve disputes using mediation, arbitration, or a combination of the two. The MTC is also to maintain a list of people with knowledge of state and local tax and skills in conducting mediation and arbitration.

Bylaw 14 establishes the program, which provides in subsection (a) that the Executive Committee “by resolution” may establish specific procedures for the program.

The current program documents are dated 1995. They consist of a procedures document and a series of forms and agreements for participants to complete. Because there are too many changes in form and substance to use track changes in the new documents, we provide this summary. MTC staff updated the required list of mediators in the fall of 2020.

1. The original program documents did not expressly limit the type of taxes that could be addressed through the program, but now it is made clear that the tax types are limited to those addressed by the Multistate Tax Compact.
2. We took the package of several “forms” that were last updated in 1995 and merged everything into two documents. One explains the ADR program and procedures; the second provides a sample agreement for the parties to indicate their intent to follow the MTC procedures and choose a mediator / arbitrator from the MTC list.
3. Because of ample access to word processing software and for overall ease, there is no longer a requirement that taxpayers and states complete specific forms to participate in the program. Instead, the instructions indicate what information needs to be provided and we provide a template for the required agreement.
4. The 1995 program documents and Bylaw 14 require the MTC to not only maintain a list of people who can conduct mediation / arbitration in multistate tax matters, but to also maintain a list of people who can conduct such mediations / arbitrations in non-multistate tax matters. This is something the MTC has not done. So, while that second requirement

is proposed for deletion, ~~it also requires an amendment to bylaw 14(d)(2).~~ The Executive Committee could approve an amendment of the bylaw that would be considered at the August meeting of the Commission (under Bylaw 12) by making the following change:

(d) Qualification of Mediators or Arbitrators; Maintenance of Registry.

~~1. Mediators or Arbitrators for Matters of Multistate Impact.~~

The Executive Committee is to establish minimum qualifications for persons applying to act as mediators or arbitrators under the commission ADR program in matters or controversies that have a multistate impact; and no person is authorized to act as such under the program unless he or she has met such minimum qualifications. In establishing such qualifications, the Executive Committee should consider, among other qualification, the required minimum amount of (a) education, knowledge, and experience in matters of state taxation of interstate and foreign commerce; and (b) training in ADR processes. The executive director will maintain a list of such qualified mediators and arbitrators and make it available to the states and taxpayers.

~~2. Mediators or Arbitrators for Matters Not of Multistate Impact~~

~~The executive director also will maintain a registry or listing of those persons desiring to provide mediation or arbitration services to states and taxpayers in tax controversies and matters that do not have a multistate impact. Such registry will not be limited to those persons that have met the minimum set of qualifications described in paragraph (d)(1) and the recipients of such registry will be clearly so notified.~~

5. The 1995 documents reference administration fees that the MTC could charge relating to the program. We deleted that reference as we cannot imagine a scenario under which the Commission would charge anything for administering the program.
6. We updated the signature language in the agreement based on the current language in the MTC nexus VDA application, which reflects the ability to use scanned and digital signatures.
7. We updated the documents to incorporate plain language, be more concise, delete the use of “shall,” and make the information more readable.
8. Once any ADR process is completed, the original procedures said the mediator / arbitrator had to provide the MTC executive director with a form with certain information while keeping the parties’ identities anonymous. The procedures also required the parties to send a form to the MTC executive director to provide feedback on their experience. Those two things cannot reasonably happen, so we revised the procedures to require the mediator / arbitrator to provide certain feedback while keeping the parties anonymous and giving the parties the option to provide feedback.

9. The 1995 documents reference two agreements: one to participate in an ADR process and a separate confidentiality agreement. We merged the two agreements into one.

The proposed new program documents are attached.