

MTC Amicus Brief Requirements and Process

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November 2022

MTC attorneys provide support to the states in a variety of ways, including the drafting of amicus briefs in high-level federal and state court proceedings—typically at the United States Supreme Court and the states’ highest courts of appeals. This document explains the requirements and process.

Who to Contact

You can contact the MTC General Counsel, or any MTC attorney you know or who is working with you on a case. The MTC legal team and Executive Director will evaluate whether your case is appropriate for the MTC to file an amicus brief (see more details below).

We will discuss staffing for the project and identify the best person to be the lead drafter. We will want to work with you to develop a strategy and coordinate our briefing to present the best case to the court that does not result in the MTC writing another “party” brief. Typically, many if not all MTC attorneys will work on the brief.

When to Contact Us

We need at least eight weeks’ notice prior to the filing due date—the sooner the better. Do not hesitate to contact us in the early stages of litigation to help you evaluate your case’s issues and identify arguments and authorities that are applicable.

Local Counsel

You must help us find local counsel who can work with the MTC attorney who will appear *pro hac vice* unless an MTC attorney is already licensed in your state. This is essential to our ability to file an amicus brief, so it is helpful if you have already thought about this before you request assistance.

Required Request to MTC Executive Director Greg Matson

Before we can begin working on the brief, MTC Executive Director Greg Matson needs to receive a written request for our help from the head of your state’s tax agency. There are no formal requirements for the content or format; the agency head can send an email to Greg at gmatson@mtc.gov. The request needs to explain what the case is about and why it would be helpful for the MTC to file an amicus brief.

Required Consent from the MTC Executive Committee

The members of the MTC Executive Committee must consent to the filing of any amicus brief. Greg Matson will communicate with the Executive Committee regarding the brief, explain why staff recommends that the MTC participate as an amicus, and also remind the committee members that our briefs always state that we are filing on behalf of the MTC and no state other than the one involved in the case.

Costs

The MTC does not charge states for drafting and filing amicus briefs. Our time and any costs for appearing *pro hac vice*, such as filing fees and fees to local counsel to compensate them for their assistance, are covered by the membership and program fees the states pay the MTC.

How we Evaluate Whether to Draft an Amicus Brief

We give priority to cases that:

1. Pertain to multistate income, franchise, or sales and use taxation of a corporation, partnership, firm, association, governmental unit or agency, or person acting as a business entity.
2. Raise issues involving –
 - a. UDITPA or MTC regulations under UDITPA
 - b. MTC uniformity models, regulations, or other guidance adopted by the Commission
 - c. Corporate income taxes, generally
 - d. Sales and use taxes, generally
 - e. Taxing jurisdiction, generally
 - f. Dormant commerce clause or due process limitations on state taxing authority
 - g. Federal preemption
3. May or will be heard before the U.S. Supreme Court or a state's highest court
4. Involve an issue on which states are generally aligned
5. Where we have something to add

We decline involvement in cases that:

1. Support a position contrary to MTC uniformity models or general positions
2. Involve significant conflicting interests of the states
3. Are not feasible because of insufficient resources or time to devote to the case
4. Support a position the MTC would decline to file on the merits
5. Are objectionable to the MTC Executive Committee