



MULTISTATE TAX COMMISSION

## PUBLIC PARTICIPATION POLICY

Proposed for amendment July 31, 2024

**Staff Draft v.8**

**For discussion at the Strategic Planning Committee Meeting  
February 28, 2024**

- A. Definitions
- B. General Provisions
- C. Public Participation Rights and Responsibilities
- D. Meetings
- E. Closed Sessions
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2/28/24 Staff Drafting Note: Three formatting changes were made throughout this draft from version 7 that are not noted in track changes. Subheadings are now underlined and italicized and the “.” after each section heading in any cross reference is deleted. All other changes are identified in track changes and reflect non-substantive refinements intended to improve clarity, consistency, brevity, and grammar.

## A. Definitions

(1) “Bylaw” means a bylaw of the Commission.

(2) “Commission” means the Multistate Tax Commission.

(3) “Commission body” means the Executive Committee; advisory, technical, or other committees established by the Commission or Executive Committee ~~pursuant to~~ under Compact article VI. 2 or bylaw 6(b); and ad hoc groups established by committees under bylaw 6(c) including subcommittees and work groups as those terms are used in bylaws 13(c) and (d).

(4) “Commission member” means the member state representatives described in Compact article VI. 1(a) or an alternate designated under Compact article VI. 1(a) and bylaw 3(f).

(5) “Compact” means the Multistate Tax Compact.

(6) “Day” means a calendar day.

(7) “Executive Committee” means the committee established by Compact article VI. and bylaw 6.

(8) “Meeting” —

(a) “Meeting” means:

(i) a gathering of commission members to transact business, or

(ii) a gathering of a commission body to transact business, ~~vote on matters before the body~~act within the scope of the commission body’s charter, or act to accomplish a specified objective or a specific purpose under bylaw 6(c).

(b) Meeting does not include:

(i) a gathering facilitated by the Commission or a commission body solely to study state and local tax systems and particular types of states and local taxes under Compact article VI. 3(a);

(ii) training facilitated by the Commission or a commission body;

(iii) information sharing sessions facilitated by the Commission or a commission body;

(iv) a gathering for social or ceremonial occasions, whether sponsored in whole or in part by the Commission or a commission body; or

(v) a gathering at a conference or similar gathering sponsored by an entity other than the Commission or a commission body to discuss issues of general interest.

(9) “State member” means Compact member states, and sovereignty, associate, and project member states identified in bylaw 13.

(10) “Policy” means the Multistate Tax Commission Public Participation Policy.

(11) “Remotely” means ~~using a by~~ telephone, videoconference, or similar technological means.

(12) “Special meeting” means a meeting of the Commission referenced in Compact article VI. 1(e) and bylaw 4.

(13) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or a subdivision of a state.

(14) “Subdivision” means a governmental unit or special district of a state.

## **B. General Provisions**

(1) Title. This policy may be cited as the Multistate Tax Commission Public Participation Policy.

(2) Purpose. This policy ensures that the Commission’s business is transacted openly, with limited exceptions, so that the public is informed and can participate.

(3) Protection of confidential taxpayer information. State and federal law imposes penalties, including criminal penalties, for improper disclosure of confidential taxpayer information and improper disclosure also violates the rights of taxpayers, erodes voluntary compliance, and frustrates tax administration. Therefore, while the Commission endeavors to maximize public participation in accordance with this policy, it also takes necessary steps to properly protect confidential taxpayer information.

(4) Applicability. This policy applies to the Commission and commission bodies.

(5) Notices and website information.

(a) The Commission will maintain a copy of this policy on its website and notify each commission member and any person serving as an officer or in a leadership role on a commission body about the policy upon their appointment to membership or assumption of office or leadership role.

(b) The Commission will communicate with the state members, commission bodies, and the public about its business and maintain a description of commission bodies on its website.

(c) The Commission will maintain email distribution lists to notify state members, commission bodies, members of the public, and others about meetings of the Commission and commission bodies and will describe the process for being added or deleted from these lists on its website.

(6) Fees. The Commission will not charge a fee for performing or complying with this policy except as expressly authorized by this policy.

(7) Applicable laws. The Commission and commission bodies will follow applicable federal, state, and local laws.

(8) Conflicts. In the event a conflict exists between this policy and the Compact or the bylaws, deference is given first to the Compact and then to the bylaws.

### **C. Public Participation Rights and Responsibilities**

(1) Registration is not required to attend meetings. No person is required to register their name, provide identification or other information, complete a questionnaire, or otherwise fulfill any condition to attend a meeting of the Commission or a commission body. If an attendance list, register, questionnaire, or similar document is circulated to persons present during the meeting, it will state clearly that signing, registering, or completing the document is voluntary.

(2) Recording meetings is permitted. A person attending a meeting of the Commission or a commission body may record the proceedings in the absence of a reasonable finding by the Commission or the commission body that such recording constitutes, or would constitute, a disruption of the meeting. If the person presiding over the meeting knows it will be recorded in whole or part, the person will inform the public during the meeting.

(3) Public records.

~~(a) Subject to subsection (b) of this section, documents that are distributed for discussion or consideration at a meeting of the Commission or a commission body are public records.~~  
Except as provided in subsection (b) of this section, documents, including electronic copies, for consideration or discussion at a meeting of the Commission or a commission body are public records and will be made available.

~~(i) The word “document” as used in this section means a written, printed, or electronic matter, including recording, that provides information or serves as an official record.~~

~~(ii) Public records distributed to the Commission or a commission body in connection with a meeting must be made available to the public before, or during,~~

~~the meeting or promptly thereafter.~~

~~(iii) The Commission or a commission body may charge a fee for a copy of a public record to cover the direct costs of duplication.~~

~~(iv) This policy does not require the Commission or a commission body to place a paid advertisement or other paid notice in a publication.~~

(b) This section does not apply to a document that:

(i) is a preliminary draft, note, or memoranda not retained by the Commission or commission body in the ordinary course of business;

(ii) pertains to pending litigation to which the Commission, commission body, or state member is a party until the pending litigation has been finally adjudicated or otherwise settled;

(iii) contains information that, if released, would constitute an unwarranted invasion of personal privacy, such as medical files; or

(iv) is properly discussed in a closed session of the Commission or a commission body under section E. of this policy.

(c) The Commission or a commission body may charge a fee for a copy of a public record to cover the direct costs of duplication.

(4) Public participation in uniformity matters. Members of the public are welcome to provide comments on uniformity matters and the Commission or commission bodies may solicit public participants to provide advice when developing uniformity recommendations. The Compact requires that public hearings be conducted for each proposed uniformity recommendation before it is considered for adoption by the Commission. The Commission will provide public notice of these hearings through its distribution lists and on the Commission's website. The Commission will allow the public to participate remotely in such hearings whenever possible.

(5) Disturbances during meetings. When a meeting is interrupted by a disturbance, including willful interruptions or disorderly conduct by individuals, the person presiding during the meeting can act as necessary to address the disturbance and continue or conclude the meeting.

(6) Public comments during meetings.

(a) Except as otherwise provided in this section, the Commission ~~or~~ and commission bodies ~~y~~ must provide an opportunity for members of the public to address ~~them-~~ Commission or at the commission body on each agenda item before or during ~~the~~ consideration of the item. This section is not applicable if the agenda item has previously been considered by the Commission or a commission body at a meeting where interested members of the public had the opportunity to provide comments on the

item, whether before or during consideration of the item, unless the item has been substantially changed since the Commission or commission body heard the item, as determined by the Commission or the commission body.

(b) The Commission ~~or~~ and commission bodiesy may adopt reasonable policies and procedures to ensure that the intent of subsection (6)(a) of this section is followed, including, but not limited to, policies and procedures limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.

(c) Section C(6) of this policy is not applicable to closed sessions held under section E of this policy.

(d) During the annual commission meeting held under article VI. (e) of the Compact and bylaw 4, members of the public may provide comments on the activities and operations of the Commission and any topic related to the purposes of the Compact.

(e) The Commission ~~or~~ and commission bodiesy may receive public comments on matters that are not included as an agenda item in a meeting notice but may not act on those matters at the same meeting unless the meeting is an emergency meeting under except as provided in section D(4) of this policy.

(7) Complaints. Complaints involving alleged failures of the Commission or ~~a~~-commission bodiesy to follow this policy must be submitted in writing within 10 days of the alleged failure to the Commission's executive director, who will send a copy of the complaint to each member of the Executive Committee. The executive director or the general counsel will investigate the complaint and prepare a report of findings and recommendations for remedial steps that may be necessary. A copy of this report will be forwarded to each commission member within 45 days of receipt of the complaint and must be included on the agenda for discussion and possible action at the next meeting of the Commission or the Executive Committee, whichever occurs first.

## **D. Meetings**

(1) Required open and public meetings. All meetings of the Commission and commission bodies are open to the public and all persons are permitted to attend except as otherwise provided in this policy. Refer to section A(8) of this policy for a definition of the term "meeting."

(2) Remote meetings. The Commission and commission bodies may meet remotely, in whole or in part, provided:

(a) the person presiding can conduct the meeting in an orderly manner;

(b) those participating remotely are provided the means to hear and speak during the meeting;

(c) the meeting notice includes remote access information in addition to any location information;

(d) at least one commission member, representative of a commission body, or an employee of the Commission or a state member is physically present at any location specified in the meeting notice; and

(e) if the meeting is being conducted entirely remotely, votes taken during the meeting are by roll call except votes related to motions to approve minutes and to recess or adjourn.

(3) Meeting notices and agendas.

(a) The Commission and commission bodies must provide meeting notices to persons who request them.

(b) Unless otherwise required by the Compact or bylaws, meeting notices must be issued at least 10 days in advance of the meeting. In counting the notice period, day one is the day after the meeting notice is issued, the day the meeting is to be held is counted, and the Eastern time zone controls whether a notice is timely.

(c) Meeting notices must include the name, email address, and telephone number of a person who can provide information about the meeting.

(d) Meeting notices must include ~~a specific~~ agenda, including items of business to be transacted as provided in bylaw 4. No item can be added to the agenda once issued, unless a new notice is issued prior to the 10-day notice period, subject to these exceptions:

(i) Upon a determination by a majority vote of the Commission or a commission body that an emergency exists as defined in subsection D(4) of this policy. Notice that an emergency item will be added to an agenda must be provided as soon as it is practical and delivered at least 24 hours before the meeting as noticed.

(ii) Upon a determination by a two-thirds vote of the Commission or a commission body, or, if less than two-thirds of the Commission or a commission body are present, a unanimous vote of those present, that there exists a need to take immediate action and that the need for action came to the attention of the Commission or the commission body after the meeting notice agenda was issued.

(e) If the Commission or a commission body fails to provide a meeting notice ~~pursuant to~~required by this policy and a person complains under section C(7) of this policy, business transacted by the Commission or ~~a~~ commission body at the improperly noticed meeting is invalid. If the meeting is rescheduled and properly noticed following verification of the failure, materials or comments submitted by persons at the improperly noticed meeting may be relied on by the Commission or commission body at the rescheduled meeting. A person may respond to those materials or comments and have the person's response considered by the Commission or commission body prior to its vote or decision at the rescheduled

meeting. A person appearing at the improperly noticed meeting may appear at the rescheduled meeting or may request that the person's previously submitted ~~material documents~~ and comments be considered at the rescheduled meeting. Nothing in this section prohibits a person from supplementing ~~materials documents~~ ~~and~~ comments previously submitted at the improperly noticed meeting.

(4) Emergency meetings.

(a) During an emergency, the Commission or a commission body may meet without complying with the 10-day notice requirement of subsection D(3)(b) of this section and instead follow the notice provisions of subsection D(3)(d) of this section.

(b) An emergency means one or more of the following, as determined by a majority of the Commission or ~~a~~-commission body present at a meeting prior to an emergency meeting or at the beginning of an emergency meeting:

(i) an actual or pending action by Congress or one of its committees or subcommittees, by an agency of the federal government, or by a court of the United States that would preempt or disrupt the operation of a law of a state member or that would adversely affect taxpayers of a state member;

(ii) administrative disciplinary matters, including, but not limited to, consideration of proposed decisions and stipulations, and pending litigation, which require immediate attention;

(iii) consideration of actions by the Commission necessary to meet statutory deadlines for the administration of tax laws in a state member where a decision must be made in less than 10 days; and

(iv) actions necessary to ensure the availability to a taxpayer of commission procedures to resolve a tax dispute with the Commission or a state or states where a decision must be made in less than 10 days.

(c) The Commission or commission body must send minutes from an emergency meeting to all persons requesting meeting notices promptly after the meeting.

(5) Continuance of hearing at meeting. A hearing that is held, noticed, or ordered to be held by the Commission or a commission body at a meeting may be continued to a subsequent meeting of the Commission or ~~the~~-commission body with notice provided according to this policy.

## E. Closed Sessions

(1) Closed sessions permitted.



(a) Except as provided in subsection (b) of this section, the Commission or a commission body may only hold a closed session for reasons permitted by this section and only during a meeting, special meeting, or emergency meeting of the Commission or ~~a~~ commission body.

(b) The Commission or a commission body may hold a meeting consisting entirely of a closed session when no business will be transacted other than that for which a closed session is permitted. The Commission or commission body must provide notice in accordance with section D(3) of this policy that a meeting will occur under this subsection.

(c) During a closed session the Commission or ~~the~~ commission body may discuss only those matters identified in the notice required by this section.

(2) Notice of closed session. Prior to holding a closed session, the Commission or ~~a~~ commission body must provide notice in accordance with section D(3) of this policy. The Commission or commission body must identify the specific provision of this section under which the closed session is being held but must not identify names or other information which would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session.

(3) Minutes of closed session. Minutes of a closed session will be made available only upon request to the state members or members of the commission body eligible to attend, including individuals eligible to attend the closed session, but will not be made available to the public. Minutes may consist of a recording of the closed session.

(4) Permitted reasons for closed sessions.

(a) *Pending litigation ~~involving-affecting~~ the Commission, a commission body, or a state member.* The Commission or a commission body may hold a closed session based on the advice of the executive director, general counsel, or their representative to confer with, or receive advice regarding pending litigation when public discussion would prejudice the position of the Commission, a commission body, or a state member. Pending litigation includes pending or expected matters before a court, administrative body, hearing officer, mediator, or arbitrator that may affect the Commission, commission body, or a state member.

~~(i) "Litigation" includes, but is not limited to, an adjudicatory proceeding before a court, administrative body exercising adjudicatory authority, hearing officer, mediator, or arbitrator.~~

~~(ii) "Pending litigation" means one or more of the following facts and circumstances exist:~~

~~(1) The Commission or a commission body must decide whether a closed session is authorized pursuant to this subsection;—~~

~~(2) There is a significant exposure to litigation against the Commission, a~~

~~commission body, or a state member;~~

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~~(3) The Commission, a commission body, or a state member has decided to initiate or is deciding whether to initiate litigation; or~~

~~(4) Litigation has been initiated formally.~~

~~(1) An adjudicatory proceeding has been initiated formally;~~

~~(2) There is a significant exposure to litigation against the Commission, a commission body, or a state member;~~

~~(3) The Commission or a commission body must decide whether a closed session is authorized pursuant to this subsection; or~~

~~(4) The Commission, a commission body, or a state member has decided to initiate or is deciding whether to initiate litigation.~~

(iii) Notice of a closed session to discuss pending litigation ~~involving the Commission, a commission body, or a state member~~ must identify ~~the title of or otherwise specifically identify~~ the litigation to be discussed unless doing so would jeopardize the ability to effectuate service of process upon one or more unserved parties, jeopardize the ability to conclude settlement negotiations, or prejudice the litigation position of the Commission, ~~a~~ commission body, or ~~a~~ state member.

(iv) If after the closed session notice has been provided under subsection (2) of this section additional pending litigation matters arise, and the postponement of the discussion would prevent the Commission or ~~the~~ commission body from complying with a statutory, court-ordered, or other legally imposed deadline, the Commission or commission body may discuss those additional matters in a closed session. The Commission or commission body will promptly notify the public of ~~the title of, or otherwise specifically identify,~~ the litigation discussed if required by this subsection.

(v) Either before the closed session, if possible, or no later than one week after the closed session, the executive director, general counsel, or their representative must submit to the Commission or ~~the~~ commission body a memorandum stating the specific reasons and ~~legal~~ authority for the closed session concerning pending litigation and ~~include the title of the~~ identify the litigation or the existing facts and circumstances on which it ~~is based~~ may be based ~~to~~. The memorandum is exempt from disclosure under attorney-client privilege and the privilege is not waived if the Commission or ~~a~~ commission body is ordered by a court to disclose the memorandum as part of pending litigation.

(b) *Purchase, sale, exchange, or lease of real property.* The Commission or Executive Committee may hold a closed session with a negotiator engaged to assist with the purchase, sale, exchange, or lease of real property by or for the Commission.

(c) *Discussion of confidential taxpayer information or information protected by state or federal law.* The Commission or a commission body may hold a closed session concerning confidential tax returns and data or other matters the public disclosure of which is prohibited by a state member's law or federal law.

(d) *Investments.* The Commission or Executive Committee may hold a closed session to discuss investment decisions relating to commission retirement, pension, or endowment funds. ~~For purposes of consideration of shareholder voting on corporate stocks held by the Commission,~~ Closed sessions relating to votes on corporate stocks owned by the Commission for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation.

(e) *Commission staff compensation and benefits.* The Commission or Executive Committee may hold a closed session concerning employee and executive director compensation and benefits and may include necessary persons, including a facilitator.

(f) *Appointment, employment, or dismissal of a commission employee.* The Commission or Executive Committee may hold a closed session concerning the appointment, employment, or dismissal of an employee, including the Commission's executive director, and will report at its next meeting business transacted during the closed session.

## **F. Annual Review and Amendments**

The Executive Committee will review this policy annually and determine if amendments are needed. Amendments approved by the Executive Committee will be effective after a vote of the Commission. The Executive Committee will give at least 60 days' notice that the Commission will consider proposed amendments to this policy at its next meeting and include the full text of the proposed amendments.