



MULTISTATE TAX COMMISSION

## MEMORANDUM

<b>To:</b>	MTC Executive Committee
<b>From:</b>	Nancy Prosser, MTC General Counsel and Hearing Officer
<b>Subject:</b>	Hearing Officer Report - Update to the MTC Public Participation Policy
<b>Date:</b>	April 18, 2024

### Recommendations

On April 11, 2024, from 2:30 – 3:30 p.m. Eastern, I served as the hearing officer to receive public comments on the proposed revision to the Commission’s Public Participation Policy (PPP), which was approved by the Strategic Planning Committee at its February 28, 2024 meeting. I received no comments from the public and received no further suggested changes to the draft from MTC staff.

Therefore, I recommend that the Executive Committee approve the revised draft of the PPP (located after this report) for adoption by vote of the Commission when it next meets on July 31, 2024 in Denver, Colorado.

I also recommend that the Executive Committee approve for adoption by vote of the Commission on July 31 changes to the MTC bylaws as approved by the Strategic Planning Committee on February 28, which staff recommended to make the bylaws consistent with the revised PPP (located at the end of this report).

Because there were no suggested changes to the draft revision as noticed for the public hearing, I adopt as my report to the Executive Committee the memo from MTC Executive Director Greg Matson to me as hearing officer, with minor changes, which explains background about the project and specific information about the revision.

### Background

One of the three governing documents of the Multistate Tax Commission (the Commission) is the Public Participation Policy (PPP), in which the MTC “declares . . . that actions of the Multistate Tax Commission be taken openly and that its deliberations be conducted openly.” Section 1. Statement of Policy; Open proceedings; Citation of policy. The PPP also acknowledges that the Commission must protect confidential taxpayer information and comply with applicable state and federal laws. *Id.*

Since its original adoption in the 1990s, the Commission has made minimal changes to the PPP (primarily to address advancements in technology) with the last amendment in 2014. MTC staff regularly consults and refers to the PPP in conjunction with staffing MTC committees and other work of the Commission. For reasons presented in this memo, MTC staff recommended that the Strategic Planning Committee (SPC) charter a project to revise the PPP to improve the clarity and organization of the document and to ensure it reflects how the Commission transacts its business today.

Staff also noted that technical corrections to the MTC bylaws would likely be required if the PPP is revised. For example, Bylaw 7(d) expressly refers to Section 24 the PPP and needs updating if the proposed revised PPP is adopted by the Commission.

### Examples of Suggested Updates

Here are three examples of the challenges presented when working with the current version of the PPP that explain why an update would be helpful:

1. The first example concerns the organization of the PPP. In the spring of 2023, staff researched a question relating to “closed sessions” of the MTC. The request required a close review of the entire PPP because the term “closed session” is mentioned throughout the policy and specifically in these sections:

Section 15. Permitted closed sessions; Lawyer-client privilege

Section 16. Minute book of closed session

Section 17. Statement of reasons and authority for closed session

Section 20. When closed sessions held

Section 26. Prohibition against closed sessions except as expressly authorized

It is inefficient to have to scour the entire PPP to ensure nothing is missed when it comes to something as important as following the rules for “closed sessions.” Moreover, the guidance in sections 20 and 26 is similar yet the guidance appears in separate sections of the PPP:

*Section 20. When closed sessions held:* Each closed session of the Commission or a Commission body shall be held only during a regular or special meeting of the Commission or a Commission body.

*Section 26. Prohibition against closed sessions except as expressly authorized:* Except as expressly authorized by this policy, no closed session may be held by the Commission or a Commission body.

2. The second example concerns definitions. Section 2 of the current PPP is not titled definitions, but that is essentially its purpose. One of the defined terms in Section 2 is “Commission member.” If you search the PPP for that term, however, it does not exist. Instead, there are multiple places where you find references to the term “member of the Commission.”

Another defined term in Section 2 is “Commission body.” It is defined to mean three different things in three separate subsections, which makes it challenging to understand how to interpret the term as it is used throughout the PPP.

Some defined terms appear elsewhere in the PPP, such as in Section 4. “Action taken.” And terms such as “special meeting” appear in the PPP but are not defined.

It would be helpful to have one section of the PPP that contains all defined terms, including all terms that need definitions, and to consolidate various meanings of the term “commission body” into one definition.

3. The final example concerns dated provisions in the PPP that are not relevant to the way the Commission transacts its business today. Section 27 is titled “Maintenance of mailing lists.” It requires the Commission to update its mailing list for materials sent for free to people at least once a year by following a procedure of sending post cards or letters to determine who wants to remain on the mailing lists. MTC staff do not follow this procedure because it is no longer necessary given the use of email to correspond with the public and Commission members.

### The Proposal and Process to Revise the PPP

On July 25, 2023, at its in-person meeting in Austin, Texas, the Strategic Planning Committee voted to charter this project and requested MTC staff to prepare a revised version of the PPP with detailed explanations of the proposed changes for review at its next meeting.

On November 16, 2023, staff presented a memo and an overview of its progress at the SPC meeting and a “crosswalk” to show how the 28 sections of the current PPP were being reorganized into six new sections. A copy of the crosswalk is presented at the end of this memo before the revised draft of the PPP.

The Executive Committee heard an update on the project at its November 16, 2023 meeting and approved a public hearing on the revised PPP before the Committee’s next in-person meeting in May 2024 to allow the revision to move forward and possibly be voted on by the Commission at its July 31, 2024 annual meeting. The current PPP does

not include any provision for amendments, so staff recommended a hybrid approach based on the requirements for amending the MTC bylaws (the PPP has historically been treated as a subset of the bylaws) and holding a public hearing to ensure the public is fully informed about proposed changes to the PPP.

On January 31 and February 28, 2024, the SPC held virtual meetings to allow staff to present and discuss drafts of the revised PPP for discussion and public comment. No public comments or committee comments were received. All changes presented at the February meeting reflected staff edits. At that meeting the SPC voted to advance the proposal to the public hearing already approved by the Executive Committee.

#### Explanation of the Revised Policy

A detailed explanation of all the proposed changes to the PPP is not possible given the breadth of changes to the organization of the PPP. However, the spirit of the original PPP remains along with the substance of the provisions that ensure the public's right to know about the Commission's work and provide input. Below is a high-level explanation of the provisions of the revised PPP.

Overall, staff strove to use plain language, be as concise and precise as possible, and be consistent with the Multistate Tax Compact and the MTC bylaws. Headings are noted via underlying or italics throughout to cue the reader.

The revised PPP starts with section A concerning "Definitions." Staff chose to begin the revision with this section to match the organization of both the Compact and the bylaws, which also start with definitions. The goal was to define terms used in the policy to be consistent with terms used in the Compact and bylaws and define terms that needed further explanation while otherwise relying on plain language definitions. This approach is reflected, for example, in Section A(3), which defines "Commission body" with reference to specific bylaw sections. And although not expressly referenced, the definitions of "State" and "Subdivision" are based on definitions in the Compact. The word "Remotely" is defined with reference to a phrase used in the bylaws.

Staff drafted the definition of "Meeting" to reflect how the Commission and Commission bodies, such as the Uniformity Committee and its work groups, operate. The phrase "transact business" used in the definition and otherwise in the revision is based on terms used in the Compact and bylaws. The public does not receive notice and an opportunity to participate in gatherings that are not meetings (or are closed sessions), so it was important to explain what those gatherings are with respect to the definition of "meeting." Staff added one additional gathering that is not a meeting to the current PPP in Section A(8)(b)(i) concerning gatherings devoted to studying tax systems and specific taxes, which is identified as one powers of the Commission the in the Compact.

Section B identifies “General Provisions” based on current sections of the PPP. Other than updating the wording for clarity, the only new subsection is (8) concerning “Conflicts.” The current PPP has no provision for how to interpret the PPP compared to the Compact and the bylaws, so this provision now addresses any conflicts between the documents if they arise.

The idea to title Section C “Public Participation Rights and Responsibilities” comes from the fact that many states have a Taxpayers Bill of Rights. These PPP provisions essentially establish the public’s right to participate in the work of the Commission. All of the provisions exist in the current PPP but are updated in the revision for clarity and consistency with how the Commission transacts business today.

In section C(2), concerning the right of the public to record any meeting, staff added the last sentence to indicate that if the person presiding over the meeting knows the meeting or any part of it will be recorded, that will be announced. This reflects the use of technology at times to record presentations during meetings that can be made available via the MTC’s website. In section C(7) concerning “Complaints,” staff updated the process for how the public can complain about an alleged failure to follow the PPP to make clear to who and when the complaint must be made and what will happen thereafter.

As identified in the crosswalk, Section D brings together in one place all the existing sections of the PPP concerning meetings, including emergency meetings. Meetings are key to the public’s participation in the work of the Commission. Staff rewrote much of the language of the existing provisions to enhance clarity, but the overall substance remains. Given the importance of remote participation and the frequent use of virtual-only meetings to advance the work of the Commission, such as the current monthly work group meetings of the Uniformity Committee, staff paid careful attention to the requirements for remote meetings. Staff maintained the requirement that any votes taken during a meeting where all participants are remote must be by roll call but added exceptions for motions to approve minutes and to recess or adjourn. However, that does not deny a participant’s ability to request a roll-call vote on those matters.

Section E compiles provisions relating to closed sessions of the Commission or Commission bodies. As explained above in one of the examples staff provided as a reason for this project, the current PPP contains several provisions relating to closed sessions, so this was an opportunity to reorganize an important part of the PPP for greater clarity. The overall substance of the current provisions remain with one addition staff recommends—Section E(1)(b). This new provision allows for a meeting consisting solely of a closed session if the purpose of the meeting only concerns a matter for which a closed session is permitted. For example, one permitted reason for a closed session is “Commission staff compensation and benefits.” If the Executive Committee needs to

meet solely for the purpose of discussing the executive director's compensation, Section E(1)(b) requires that the public receive notice of the meeting but allows for the meeting to occur without any public participation, including time for public comments.

Section F is an entirely new provision that requires an annual review of the PPP by the Executive Committee to ensure the policy remains accurate and consistent with the work of the Commission over time. It includes a process for amendments that is similar to the process for amending the MTC bylaws.

# Mapping MTC Public Participation Policy Sections, Existing to Proposed, January 2024

Section 1	Statement of Policy; Open proceedings; Citation of Policy
Section 2	"Multistate Tax Commission"; "Commission"; "Commission member"; "Commission body"; "Member State"; and "Day"
Section 3	Providing copy of policy to members of the Commission or Commission bodies
Section 4	"Action taken"
Section 5	Required open and public meetings, subsection (c)
Section 5	Required open and public meetings, subsections (a) & (b)
Section 6	Prohibited conditions of attendance
Section 7	Recording proceedings
Section 8	Notice of meeting
Section 9	Agenda and other "writing" as public record; Inspection
Section 10	Public participation in regulations and uniformity proposals
Section 11	Public report of action taken regarding public employee
Section 12	Conditions for taking action on items not appearing on posted agenda
Section 13	Emergency meetings
Section 14	Opportunity for public to address the Commission
Section 15	Permitted closed sessions; Lawyer-client privilege
Section 16	Minute book of closed session
Section 17	Statement of reasons and authority for closed session
Section 18	Clearing room where meeting willfully interrupted
Section 19	Commission bodies subject to policy
Section 20	When closed sessions held
Section 21	Continuance or recontinuance of hearing
Section 22	Annual meetings for comments on Commission and multistate tax issues
Section 23	Fees
Section 24	Complaints regarding public participation policy
Section 25	Prohibition against use of certain facilities
Section 26	Prohibition against closed sessions except as expressly authorized
Section 27	Maintenance of mailing lists
Section 28	Maintenance of description of Commission committees and other groups



A. Definitions
B. General Provisions
C. Public Participation Rights and Responsibilities
D. Meetings
E. Closed Sessions
F. Annual Review and Amendments



MULTISTATE TAX COMMISSION

**PUBLIC PARTICIPATION POLICY**

Proposed for amendment July 31, 2024

**For Consideration by the MTC Executive Committee**

**May 2, 2024  
9:00 a.m. Central**

- A. Definitions
- B. General Provisions
- C. Public Participation Rights and Responsibilities
- D. Meetings
- E. Closed Sessions
- F. Annual Review and Amendments

## 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 under Compact article VI. 2(b) and (c) 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. 2(a) 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, 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 state 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 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 to 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) 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.

(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 and commission bodies must provide an opportunity for members of the public to address each agenda item before or during 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 and commission bodies 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 and commission bodies 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 except as provided in section D(4) of this policy.

(7) Complaints. Complaints involving alleged failures of the Commission or commission bodies 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 an 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 required by this policy and a person complains under section C(7) of this policy, business transacted by the Commission or 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 documents and comments be considered at the rescheduled meeting. Nothing in this section prohibits a person from supplementing 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 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, that 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 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 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 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 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 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) Notice of a closed session to discuss pending litigation must 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, commission body, or state member.

(ii) 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 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 litigation discussed if required by this subsection.

(iii) 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 commission body a memorandum stating the specific reasons and authority for the closed session concerning pending litigation and identify the litigation or the existing facts and circumstances on which it may be based. The memorandum is exempt from disclosure under attorney-client privilege and the privilege is not waived if the Commission or 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. Closed sessions relating to votes on corporate stocks owned by the Commission 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.



MULTISTATE TAX COMMISSION

## MEMORANDUM

**To:** MTC Executive Committee  
**From:** Nancy Prosser, MTC General Counsel and Hearing Officer  
**Subject:** Hearing Officer Report - Proposed Bylaw Changes to Accompany Update to the Public Participation Policy  
**Date:** April 18, 2024

Changes are needed to make the MTC bylaws consistent with the proposed revision to the Commission's Public Participation Policy (PPP), which I recommend this committee approve for a vote of the Commission at the July 31, 2024 meeting. These changes are only needed if the Commission approves the revision to the PPP. These bylaw changes were approved by the Strategic Planning Committee at its February 28, 2024 meeting.

First, the heading of bylaw 4 needs to change from "Meetings" to "Commission Meetings" and the heading of bylaw 5 needs to change from "Quorum, Voting, and Minutes Requirements" to "Commission Quorum, Voting, and Minutes Requirements."

Second, bylaw 7(d) needs revision regarding "Hearings and Procedures for Uniformity Recommendations" as follows, both with and then without track changes:

All hearings are open to the public and, in addition to any other notice required, ~~must be~~ announced no less than 30 days in advance ~~of such hearings, in a mailing to the names on the mailing list maintained by the office of the Multistate Tax Commission, and in such other manner as the executive director deems appropriate.~~ In counting the 30-day notice period, the day after the day that the notice is issued is day one. ~~In the event that~~ If the hearing is not properly noticed ~~pursuant to~~ under this bylaw, and upon timely complaint of any person, the hearing will be rescheduled to provide for proper notice. A complaint of improper notice must be made within 30 days of the completion of the hearing or within 15 days of the date of the report described in section (e), whichever is earlier, and ~~must be made pursuant to~~ subject to Section 24 of the procedure for complaints outlined in the Commission's Public Participation Policy. ~~In counting the period for submitting a timely complaint, the day after the completion of the hearing or the date of the report, as the case may be, is day one.~~



All hearings are open to the public and, in addition to any other notice required, must be announced no less than 30 days in advance. In counting the 30-day notice period, the day after the day that the notice is issued is day one. If the hearing is not properly noticed under this bylaw, and upon timely complaint of any person, the hearing will be rescheduled to provide for proper notice. A complaint of improper notice must be made within 30 days of the completion of the hearing or within 15 days of the date of the report described in section (e), whichever is earlier, and is subject to the procedure for complaints outlined in the Commission's Public Participation Policy.

Finally, bylaw 11, regarding "Parliamentary Authority" needs to be amended to expressly include a reference to the Public Participation Policy as follows:

Except where inconsistent with the provisions of the Compact, ~~or~~ these Bylaws, or the Public Participation Policy, Mason's Manual of Legislative Procedure is the parliamentary authority for all meetings of the Commission.