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June 8, 2026

Ms. Helen Hecht  
Uniformity Counsel  
Multistate Tax Commission  
444 North Capitol Street, Suite 425  
Washington, DC 20001-1538

**Re: Supplemental Comments – Partnership Distributive Share and Information Reporting**

Dear Ms. Hecht:

The Energy Infrastructure Council (“EIC”) is pleased to submit this supplemental letter for your consideration in connection with the Multistate Tax Commission (“MTC”) State Tax of Partnership project. These comments supplement EIC’s October 31, 2025 comments on the Recommendations dated September 17, 2025 (the “Recommendations”) related to the Revised White Paper on Sourcing Income in Complex Structures. After EIC submitted its original comment letter, the MTC workgroup requested more specific examples showing how the proposed distributive-share approach to apportionment factors, including the “absolute value” methodology illustrated in the workgroup model, may fail to fairly represent the activities of a partnership or its partners. EIC appreciates the opportunity to provide these additional examples and comments.

The EIC is a non-profit trade association committed to advancing the interests of companies that build and operate essential energy infrastructure and related activities. EIC addresses core public policy issues critical to investment in America’s energy infrastructure. Formerly the Master Limited Partnership Association, EIC is also the nation’s only trade association representing master limited partnerships (also known as publicly traded partnerships, “MLPs”). For more than three decades, the association has represented the interests of MLPs in Washington, D.C. and the states. The comments below are informed by that experience and by the practical reporting issues faced by widely held and tiered partnerships.

This supplemental submission focuses on two related items:

First, it reiterates EIC’s comments related to the formulary utilization of distributive share of partnership income to distribute shares of apportionment data to partners. These comments illustrate, through examples like common versus preferred equity, section 704(c) remedial allocations, and section 743(b) adjustments, that a partner’s share of the factors can shift significantly even without an actual change in partnership ownership using the proposed approach.

Second, it provides comments on Part III of the Combined Partnership Draft Provisions dated March 15, 2026, titled “Obligations of Partnerships to File Information Returns and Report Information.”

Together, these comments show that the proposed absolute-value distributive-share approach can materially distort factor representation in common, non-abusive partnership structures, and that Part III reporting obligations should be limited to information within the partnership’s possession or control.

**Reiteration of Prior Recommendation 4 Comment**

**Recommendation 4:** *Use absolute value of distributive share for determining the share of partnership factors to include in the partner's apportionment factor when blending.*

As noted in EIC's prior letter, the requirement to utilize a distributive share calculation in all scenarios leads to potential distortion of apportionment factors at the partner level. The model workbook published by the MTC Partnership Project workgroup utilizes an absolute value approach in calculating the numerator and denominator of distributive income for purposes of this ratio. This approach ensures 100% of the state apportionment factors are reported to partners and avoids overreporting issues to the extent only certain partners receive positive shares of taxable income.

However, in complex partnership structures this approach could distort the amount of apportionment factors received by each partner when compared to their practical ownership of the project.

For example, certain partners may receive significant deductions relative to the partnership as a whole during a period, driving their taxable income into a loss while others remain positive. Those expense allocations affect the partner's tax liability, but they do not reflect additional operational ownership in the partnership that would justify increased factor representation. Similarly, certain partners may receive preferred or gross-receipt allocations. Using an absolute-value model could assign significant apportionment factors to those partners even though their practical ownership of the partnership has not increased when compared to capital or section 704(b) sharing ratios. Finally, state modifications, including depreciation adjustments, could materially alter distributive-share factor calculations if not considered on a state-by-state basis, causing allocations to diverge from the income ultimately sourced to the state.

Additionally, the inclusion of states which utilize a 3-factor apportionment formula could drive additional nuance into these considerations. As a partner's share of distributive income changes throughout the year, the partner would now potentially receive apportionment factors which do not calculate the same ultimate apportionment percentage as the partnership due to differences in the average property factor in particular. This outcome could drive confusion to partners and to state taxing authorities when tracing activity throughout tiered partnership structures.

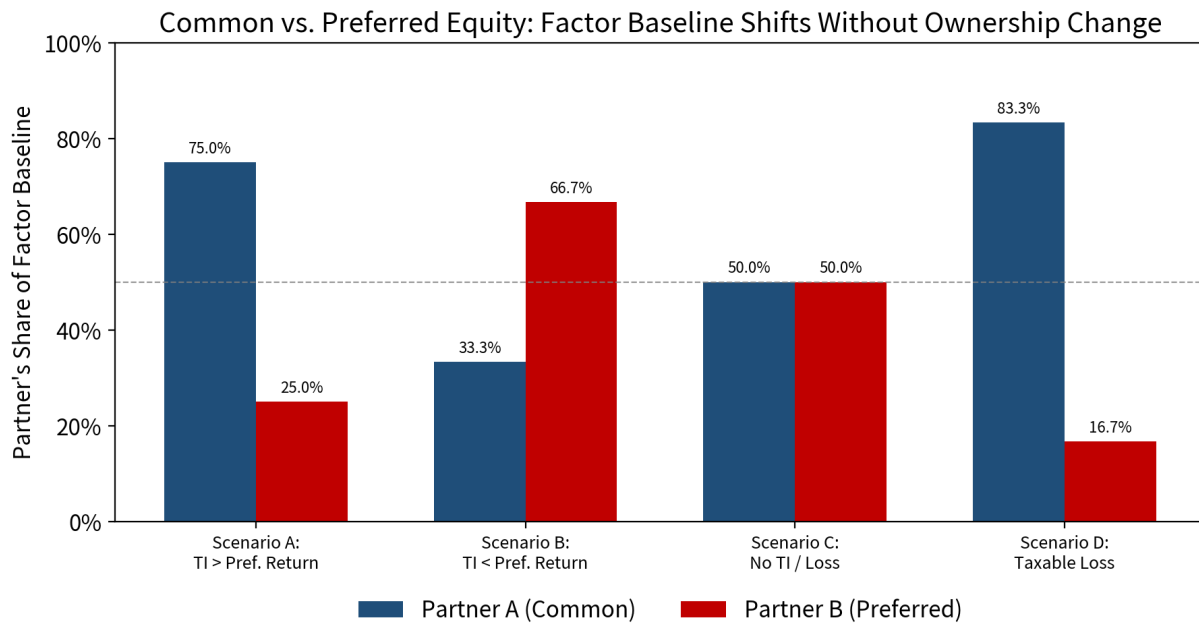
EIC continues to recommend the inclusion of other optional approaches or flexibility for determining the share of partnership factors to include in the partner's apportionment factor when blending rather than one default approach. Each partnership may have unique circumstances that require the utilization of different but still reasonable approaches to distribute these factors in an economically rational approach. The additional examples below are intended to demonstrate why flexibility is necessary; they are not intended to prescribe a single alternative method for all partnership structures.

#### **Illustrative Example 1 – Common Equity vs. Preferred Equity**

The first example considers a partnership with both common and preferred equity. Partner A owns the common equity and Partner B owns preferred equity. Partner B is allocated items of gross revenue or income equal to its preferred return of \$100, and Partner A is allocated all remaining items of taxable income or loss. The partnership ownership arrangement is assumed to remain consistent over the relevant period. The examples also maintain the same amount of gross revenue or income, with the only change being the amount of gross deductions or expenses recognized by the partnership.

Preferred equity is common in modern partnership structures. The presence of a preferred return may affect the timing and character of taxable allocations, but it generally does not indicate that the preferred holder has taken on additional operating ownership of the assets, employees, property, receipts, or other factors of the partnership. Likewise, the common partner’s residual exposure to upside and downside is not changed from year to year merely because the partnership’s deductions fluctuate. Nevertheless, the absolute value of taxable income approach changes the factor baseline dramatically across the scenarios below.

Scenario	Partnership Revenue	Partnership Deductions	Partnership Net TI/(Loss)	Partner-A TI/(Loss)	Partner B TI	A Factor Share	B Factor Share
A – Taxable Income > Preferred Return	\$1,000	\$(600)	\$400	\$300	\$100	75.0%	25.0%
B – Taxable Income < Preferred Return	\$1,000	\$(950)	\$50	\$(50)	\$100	33.3%	66.7%
C – No Taxable Income/Loss	\$1,000	\$(1,000)	\$0	\$(100)	\$100	50.0%	50.0%
D – Taxable Loss	\$1,000	\$(1,400)	\$(400)	\$(500)	\$100	83.3%	16.7%



**Observation and conclusion.** The chart shows that Partner B’s share of the factor baseline ranges from 16.7% to 66.7%, even though Partner B’s preferred equity interest does not change. Partner A’s share similarly ranges from 33.3% to 83.3%. Those swings are driven solely by the partnership’s annual deductions, not by any change in management rights, voting rights, capital ownership, residual economics, or cash distribution rights.

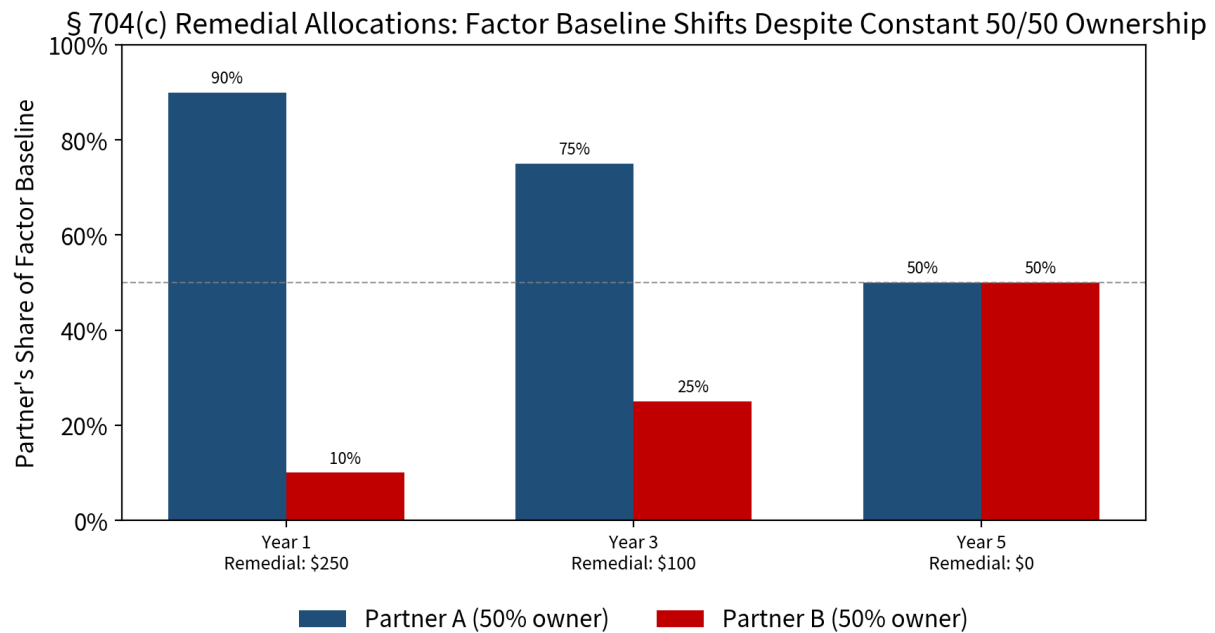
This illustrates the precise concern raised in EIC’s original Recommendation 4 comment. The existence of preferred equity changes taxable-income allocations without changing the partnership’s underlying business activity or practical ownership from a voting or cash-distribution perspective. The preferred partner has not acquired a larger share of the partnership’s workforce, property, sales, receipts, or operational presence in any state. Yet the proposed approach would shift apportionment factors among the partners solely because the preferred allocation interacts differently with the partnership’s annual taxable income or loss. That result does not fairly represent the partnership’s activities and supports retaining flexibility rather than mandating a single taxable-income-based method.

### Illustrative Example 2 – Section 704(c) Remedial Allocations

The second example considers a partnership with section 704(c) remedial allocations. Partner A and Partner B are each 50% owners throughout the example. The partnership’s income items are assumed to remain constant over the five-year period, with \$1,000 of gross revenue or income and \$(600) of gross deductions or expenses each year, resulting in \$400 of partnership net taxable income in each year. Partner A contributed built-in gain property subject to section 704(c), with remedial allocations decreasing in future years until no more allocations are made beginning in Year 5.

Section 704(c) remedial allocations are tax-only allocations designed to address differences between tax basis and book value of contributed property. These allocations may materially alter a partner’s taxable income in a year, but they do not by themselves change the underlying business activity of the partnership. They also do not change the partners’ relative economic ownership of the partnership. In this example, the partners remain 50/50 owners in every year and the partnership has the same taxable income each year. Despite those constants, the proposed factor baseline changes significantly.

Tax Year	PS-Gross Revenue	PS-Gross Deductions	PS Net TI	704(c) to A	704(c) to B	A Net TI/(Loss)	B Net TI/(Loss)	A Factor Baseline	B Factor Baseline
Year 1	\$1,000	\$(600)	\$400	\$250	\$(250)	\$450	\$(50)	90.0%	10.0%
Year 3	\$1,000	\$(600)	\$400	\$100	\$(100)	\$300	\$100	75.0%	25.0%
Year 5	\$1,000	\$(600)	\$400	\$0	\$0	\$200	\$200	50.0%	50.0%



**Observation and conclusion.** The partnership’s operations are identical in each year shown. Partnership taxable income remains \$400 in Year 1, Year 3, and Year 5, and ownership remains 50/50. Yet Partner A’s share of the factor baseline moves from 90% to 75% to 50%, while Partner B’s share moves from 10% to 25% to 50%.

Even with identical partnership operations and the same taxable income at the partnership level, the partner-level allocations swing from year to year solely because the section 704(c) remedial allocation burns off over time. Taxable income therefore is not a reliable proxy for true ownership of the partnership’s business activity. This concern is particularly significant for partnerships holding long-lived infrastructure assets, where built-in gain layers and remedial allocations may persist for many years and overlap with additional acquisitions, contributions, and transfers. A mandatory taxable-income-based approach would convert a tax accounting mechanism into an apportionment-factor ownership rule, even though that mechanism is not intended to measure operational ownership.

**Illustrative Example 3 – Section 743(b) Adjustments for Partnerships with Section 754 Elections**

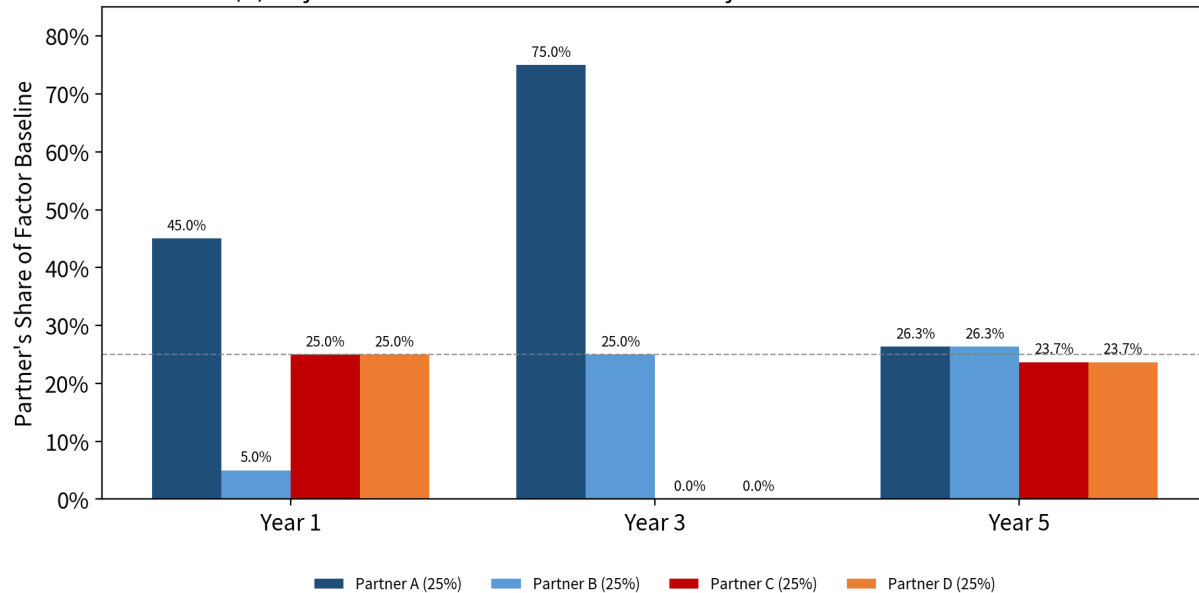
The third example considers section 743(b) adjustments in a partnership with a section 754 election in place. Partners A, B, C, and D each own 25% of the partnership throughout the example. The partnership’s gross revenue or income and gross deductions or expenses are held constant, and the partners’ economic ownership percentages do not change. However, certain partners have outside basis adjustments under section 743(b), including additional depreciation, depletion, or amortization deductions that are specific to the purchasing partner.

Section 743(b) adjustments are fundamentally different from partnership operating activity. They arise from transactions in partnership interests and are specific to the transferee partner. They do not represent a new employee, new asset, new sale, or new physical presence of the partnership. In widely held partnerships, including MLPs, these adjustments can be significant and can vary materially by partner depending on acquisition date, purchase price, and prior transfers. The

partnership’s business activity may be unchanged, but the taxable income reported to a particular partner can vary dramatically because of partner-specific outside basis adjustments.

Tax Year	Partner A TI/(Loss)	Partner B TI/(Loss)	Partner C TI/(Loss)	Partner D TI/(Loss)	PS Net TI/(Loss)	A Factor Baseline	B Factor Baseline	C Factor Baseline	D Factor Baseline
Year 1	\$225	\$(25)	\$(125)	\$(125)	\$(50)	45.0%	5.0%	25.0%	25.0%
Year 3	\$150	\$50	\$0	\$0	\$200	75.0%	25.0%	0.0%	0.0%
Year 5	\$100	\$100	\$90	\$90	\$380	26.3%	26.3%	23.7%	23.7%

§ 743(b) Adjustments: Outside-Partner Tax Adjustments Distort Factor Baselines



**Observation and conclusion.** Each partner owns 25% of the partnership in each year. Nevertheless, the proposed approach produces factor baseline shares of 45.0%, 5.0%, 25.0%, and 25.0% in Year 1; 75.0%, 25.0%, 0.0%, and 0.0% in Year 3; and 26.3%, 26.3%, 23.7%, and 23.7% in Year 5. In Year 3, two partners that collectively own 50% of the partnership would receive no share of the factor baseline under the absolute-value taxable-income approach because partner-specific adjustments reduce their taxable income to zero.

This result is especially problematic because section 743(b) adjustments are outside-basis adjustments. For partnerships with a section 754 election in place, those adjustments can materially change the income or deduction reported to one partner. But the transactions giving rise to them occur outside the partnership’s operating activity and do not change ownership of partnership property, payroll, receipts, or other apportionment factors. As a result, the absolute-value taxable-income approach does not fairly represent partnership ownership. Instead, it makes apportionment-factor reporting depend on partner-specific purchase history and basis adjustments, which are not a reliable measure of a partner’s share of the partnership’s business activity.

#### Requested Flexibility Under Recommendation 4

The examples above show that a single mandatory approach based on the absolute value of distributive share taxable income will often produce results that do not fairly represent partnership

activity. The distortions arise in common, non-abusive structures: preferred equity arrangements, section 704(c) remedial allocation layers, and section 743(b) basis adjustments for partnerships with section 754 elections. These items affect taxable income, but they do not necessarily measure operational ownership or the partner's share of the partnership's in-state and out-of-state activities.

Accordingly, EIC recommends that the model rules provide more flexibility rather than one required methodology. Partnerships should be permitted to use a reasonable method, consistently applied, that better reflects the particular partnership's economics and activities. Depending on the facts, such a method could include capital account ratios, section 704(b) sharing ratios, distribution waterfall percentages, partnership-level apportionment information, or another reasonable approach supported by the partnership's books and records. EIC is not requesting that the MTC adopt one specific alternative approach for all taxpayers. Instead, EIC requests that the model rules recognize that the appropriate method may differ across partnership structures and should be flexible enough to avoid the distortions shown in the examples above.

### **Additional Comments on Part III – Obligations of Partnerships to File Information Returns and Report Information**

EIC also respectfully provides comments on Part III of the Combined Partnership Draft Provisions dated March 15, 2026. Part III would require a partnership to provide to its direct partners the information necessary for its direct and indirect partners to properly compute and report their state tax. The obligation would apply not only to a partnership doing business in the state, but also to any partnership that has a direct or indirect partner doing business in or residing in the state. Part III would also require reporting to the state tax agency, as directed by that agency, including information necessary to verify information provided to partners and “any other information the partnership may have or obtain” necessary for direct or indirect partners to properly report state tax.

EIC appreciates the importance of providing partners with the information necessary to comply with state tax obligations. However, the proposed Part III reporting obligation, as drafted, exceeds existing state statutory requirements and would impose duties that are impractical—and, in many cases, impossible—for partnerships in larger structures to satisfy. A partnership may have tens, hundreds, thousands, or, in the case of an MLP, hundreds of thousands of partners. Those partners may themselves be partnerships, corporations, trusts, nominees, brokers, custodians, or other intermediaries. In most cases, the partnership does not have visibility into every indirect partner in the chain, does not have privity with those indirect partners, and does not have the contractual or practical ability to determine where every direct or indirect owner resides or does business.

The difficulty is not merely administrative. It is often impossible as a matter of available information. A partnership may know its own state activities and may be able to provide state-source information and apportionment data regarding its own operations to its direct partners. But a partnership generally cannot know whether a corporate partner is doing business in a particular state based on that corporate partner's separate operations. It cannot know whether an upper-tier partnership has an indirect partner resident in a state. It cannot know whether a beneficial owner held through a broker or nominee has moved during the year. It cannot know whether an indirect partner's activities create a filing obligation under another state's particular nexus standard. Those facts are outside the partnership's books and records and are often legally or practically inaccessible to the lower-tier partnership.

The proposed rule would also create circular and unworkable obligations in tiered structures. A lower-tier partnership's filing and reporting obligation could depend on the residency or business

activities of an indirect owner several tiers above it. At the same time, that lower-tier partnership may not be able to identify those upper-tier indirect owners without receiving information from the very parties whose reporting obligations the provision is attempting to facilitate. In publicly traded structures, ownership may change daily, and much of the ownership may be held through intermediaries. Requiring the operating partnership to track each partner's and indirect partner's residency and business footprint would create a compliance burden that is disproportionate to any expected state tax benefit and would expose partnerships to penalties for failing to obtain information that is not within their possession or control.

For these reasons, partnerships should not be responsible for reporting information that depends on where their partners are doing business or where their indirect partners are resident. That obligation should remain with the partners whose facts determine their own filing responsibilities. EIC recommends that Part III be revised to limit a partnership's reporting obligations to information within the partnership's possession or control and reasonably reflected in the partnership's own books and records, including information about the partnership's own income, items, character, sourcing, and apportionment data. A partnership should provide that information to its direct partners, and direct partners should be responsible for providing appropriate information to their own owners in accordance with their own reporting obligations.

EIC further recommends that any model provision include reasonable limitations and safe harbors. The rule should also provide penalty protection where a partnership makes a good-faith effort to provide state-source and apportionment information based on its own books and records. Without these limitations, Part III would create an obligation that many partnerships could not satisfy even with significant additional systems and expense.

The EIC greatly appreciates the opportunity to provide these supplemental comments. If you have any questions about our comments, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Lori E. L. Ziebart", with a long horizontal line extending to the right.

Lori E. L. Ziebart  
President & Chief Executive Officer  
Energy Infrastructure Council