Q&A ON BALLOT 3-2023

Q: Ballot 3-2023 has been through several iterations. Can you explain why this has gone through three (3) Comment Periods?

A: This Ballot has been through several iterations for a variety of reasons. Let's look at the chronology and history of this ballot from its original form to what is now before the membership for consideration:

1. The first version of the ballot was offered on May 31, 2023, for the First Comment Period ending June 30, 2023. This ballot was intended to provide for an alternative method for taxing the operations of qualified motor vehicles by applying tax on alternative fuels based on distance. This came about after the passage of Indiana House Bill 1050 and to represent options for all jurisdictions who may in the future follow a similar taxing methodology.
2. This first version of the ballot received numerous comments. Some of those comments were related to the use of the words "specific schedules" and there was also concern expressed by some (notably the AAC) that the language as proposed could pose an issue with the Compact Clause and the intent of the ISTEA legislation.
3. After the First Comment Period an amended version of the ballot was created which focused on changing the language to make clear that the intent of the proposed amendment was to be consistent with applying a consumption-based tax as outlined in ISTEA. The new language attempted to make it clear that in the proposed language a consumption-based tax was being applied to distance rather than simply having a tax imposed on distance. This was born out of an understanding that Indiana's legislation was within their fuel use tax statutes and that it was indeed a "consumption" tax consistent with the IFTA. The words "specific schedules" were removed and the concept of a consumption-based tax attempted to remove much of the concern related to a Compact Clause breach.
4. This post First Comment Period version was intended to be presented at the ABM. Three (3) member jurisdictions determined that the changes made after the First Comment Period were "substantive" and thus invoked their right under Article R1625 to require a Second Comment Period. This resulted in a halt to the voting process pending the Second Comment Period review by the membership. No vote was held at the ABM.
5. On the day before the ABM, The Board of Trustees held their 3Q2023 meeting. At this meeting Ballot 3-2023 was discussed. It was determined that a ballot might not be needed as Indiana was essentially establishing a new tax rate for alternative fuel vehicles and a different method of calculating the tax due and thus could do so at any time at their discretion without a ballot being needed. It was determined that no language existed in the IFTA Governing Documents that mandates a specific tax calculation method upon member jurisdictions. While the Board was generally of the opinion that a

ballot was not needed, the decision was made to move forward with the ballot independent of Indiana's decision that it did not need a ballot to establish a new tax rate and method of applying that tax rate. The purpose of going forward with the ballot is to clarify the recordkeeping requirements in certain situations **and** acquiring a membership acceptance of the concept.

6. On the day after the ABM, the IFTA Team and the IFTA Board Liaisons met with the AAC to work on language that would not only acknowledge Indiana's right to apply their fuel use tax consumption rate to the taxable distance rather than to taxable gallons but would ease most concerns over any potential conflict with the Compact Clause. This new language became the basis for the ballot version that went out for the Second Comment Period Ending October 15, 2023.
7. During the Second Comment Period several jurisdictions expressed concern that the amended language posed a risk to confusion on how and even if records would be required to be maintained. The dissent with this version of the ballot focused on what records would be needed for a fleet of vehicles of the same fuel type (e.g. EV) where some vehicles only traveled in jurisdictions that applied the tax rate to distance and others that traveled in jurisdictions that apply a tax rate to taxable fuel (e.g. taxable KWh). The language did not make it clear enough that if any vehicle of the same fuel type operated in a jurisdiction that applied the tax rate to taxable fuel, the entire fleet's total fuel purchased and miles must be reported including those vehicles that only operated in a jurisdiction that applied the tax rate to distance. The fear was that the language might not be specific enough to result in records being available to determine compliance in an audit.
8. The comments made in the Second Comment Period led the Board to amend the language to ease concerns about the recordkeeping requirements and a possible interpretation that would result in a gap in the requirements. That resulted in the language that was presented for the Third Comment Period Ending on November 16, 2023. This language brings greater clarity to what is required to be kept for records dependent on where the operations of such qualified motor vehicles occurred.

Q: Given the language in the Third Comment Period, there has been concern expressed about the newest language being complex and difficult to understand. Can you provide specific examples to illustrate exactly how the language offered in the Third Comment Period will work if ratified?

A: Yes, let's walk through the language a sentence at a time with specific examples.

1. *"The licensee must report all fuel placed in the supply storage unit used to propel the qualified motor vehicle, as taxable on the tax return, excluding qualified motor vehicles that only travel in jurisdictions that either impose a tax on the consumption of fuel solely by applying a tax rate to distance or does not impose any tax on that vehicle fuel type."*

EX: Let's say a qualified motor vehicle only operates in a jurisdiction that imposes a consumption tax on distance. Let's use Indiana as that example. If a qualified motor vehicle operating on electricity (for example) **only** travels in jurisdictions like Indiana that only tax that fuel type by applying the tax rate to distance, the language highlighted in yellow would apply. That is, under Ballot Proposal 3-2023 R820 and P550 no fuel records for that vehicle would be required to be maintained. This is because fuel records would have no bearing on the tax due and since the vehicles did not operate in any other jurisdiction, the fuel records and reporting of total fuel are not required.

EX: Let's say a qualified motor vehicle operates on electricity (for example) and **only** operates in jurisdictions that either apply the tax to distance and/or only operates in jurisdictions that do not tax that fuel type. The language highlighted in green would apply. The same criteria explained in "a" above would also apply meaning, there would be no point to requiring fuel records for that reporting period.

EX: If the qualified motor vehicle operates solely in Indiana and Kentucky for example (one jurisdiction that imposes consumption tax by applying the tax rate to distance and one jurisdiction that does not tax the fuel type), then no fuel records would be required.

2. Ballot 3-2023 (in the Third Comment Period Ending November 16, 2023) is not limited to what the carrier must do **if** they travel only in a jurisdiction that taxes the consumption of fuel by applying a tax rate to distance or does not tax that same fuel type at all. In fact, if **any** qualified motor vehicle of the same fuel type travels in any other jurisdiction that imposes tax on the consumption of fuel by applying a tax rate to net taxable fuel, all exemptions afforded as illustrated in #1 above do not apply and all fuel recordkeeping requirements must be complied with. See the language highlighted in blue below. Here is the specific language that supports this:

   "The licensee must report all fuel placed in the supply storage unit used to propel the qualified motor vehicle, as taxable on the tax return, excluding qualified motor vehicles that only travel in jurisdictions that either impose a tax on the consumption of fuel solely by applying a tax rate to distance or does not impose any tax on that vehicle fuel type. If any qualified motor fuel vehicle of the same fuel type travels in any other jurisdiction that imposes tax on the consumption of fuel by applying a tax rate to net taxable fuel, then the exemption from reporting does not apply and the total fuel placed in the supply storage unit of all qualified motor vehicles must be reported."

EX: Let's say a carrier has a qualified motor vehicle operating on electricity (for example) and only operates in a jurisdiction that imposes the consumption tax on distance (e.g. Indiana). Another fleet vehicle of the same fuel type (electricity) operates in Indiana (imposes consumption tax on distance), Ohio (currently, e.g. 3Q2023, does not tax electricity at all) and Pennsylvania (imposes tax by applying a tax rate to net taxable fuel, e.g. "kWh" basis). Since a qualified motor vehicle in the carrier's fleet using the **same** fuel type (electricity) **does** travel in a jurisdiction that imposes tax by applying a tax rate to net taxable fuel (Pennsylvania), no exemption from recordkeeping is permitted based on the language above highlighted in blue. This means all fuel purchased and all miles traveled for the entire fleet of that fuel type, including the vehicles that only traveled in IN, must be reported on the IFTA return and all fuel records for all vehicles must be maintained. This language (in blue highlight) addresses any concerns about having the correct consumption rate for the fuel type (e.g. MPG or KPL), the correctness of reporting total fuel, and the maintenance of records for total fuel placed into the storage supply unit of a qualified motor vehicle.

Q: It has been expressed by some that this ballot could result in the unintended consequence of becoming applicable to any fuel type, not just electricity or other alternative fuels.

A: While that is true, the condition of a jurisdiction not taxing a fuel type while records must still be maintained exists today. Let's use the most popular fuel type as the example, diesel.

EX: In the Third Quarter of 2023, diesel fuel is taxed by every jurisdiction *except* Alberta and Oregon. Alberta has had a temporary exemption from tax on diesel which will expire on December 31, 2023. Oregon has had a long standing exemption from tax on diesel. Fuel purchased in both Alberta and Oregon and placed into a qualified motor vehicle must nevertheless be reported on the IFTA tax return as part of total fuel. Nothing in Ballot 3-2023 would change that requirement. In fact, the language proposed in both R820 and P550 further supports the requirements already in place and enforced.

EX: Let's say a jurisdiction (let's call it Jurisdiction X) decided to stop imposing tax on the consumption of diesel by applying a tax rate to net taxable fuel **in favor** of imposing the tax on diesel consumed by applying a tax rate to distance. If a carrier's qualified motor vehicle that is powered by diesel fuel never left the borders of Jurisdiction X or traveled only in jurisdictions that apply the tax rate to distance, then an exemption from fuel recordkeeping *may* exist if and **only** if **no other qualified motor vehicle** in the carrier's fleet that is powered by diesel operates in a jurisdiction that imposes tax on diesel by applying a tax rate to net taxable fuel. From a practical standpoint as it exists today, an **exemption** from recordkeeping for diesel fuel would

be nearly non-existent as the only jurisdictions that do not impose tax on diesel are Alberta and Oregon. Again, the language being proposed states the following: *"If any qualified motor fuel vehicle of the same fuel type travels in any other jurisdiction that imposes tax on the consumption of fuel by applying a tax rate to net taxable fuel, then the exemption from reporting does not apply and the total fuel placed in the supply storage unit of all qualified motor vehicles must be reported."*

Unless **all** member jurisdictions simultaneously decided to impose tax on diesel by applying a tax rate to distance rather than by applying a tax rate to net taxable fuel, the recordkeeping requirements would almost always remain as they are today. It is highly unlikely that this could happen as it is the member jurisdiction's sovereign right to determine a tax rate and exercise substantive taxing authority such as determining not only how to tax but whether to tax at all. So, concerns about widespread changes being made across the entire membership at the same time are not really possible and are under the purview of an individual jurisdiction's legislative process, not the IFTA Agreement or membership at large. Thus, Ballot 3-2023 merely provides a pathway for jurisdictions to impose tax as they see fit while maintaining protections for other member jurisdictions' tax by enforcing recordkeeping requirements as applicable to the situation.