

INTERNATIONAL FUEL TAX AGREEMENT (IFTA) 101

ATTORNEY SECTION MEETING

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Who and What Is IFTA All About?

- IFTA is about Qualified Motor Vehicles and the Motor Fuel Taxes they pay to use state and provincial highways.
- A Qualified Motor Vehicle (QMV) is a motor vehicle used, designed, or maintained for the transportation of persons or property, with a power unit that
 - Has a gross vehicle or registered gross vehicle weight over 26,000 pounds or 11,797 kilograms; or
 - Has three axles, regardless of weight; or
 - Has, when used in combination with a trailing unit, a combined weight that exceeds 26,000 pounds or 11,797 kilograms. (See Articles of Agreement, page 17, Consensus Board Interpretation (CBI) to R245, July 1992.)
- Each of the 48 states of the United States, except Oregon, and 10 Canadian provinces that are member jurisdictions of IFTA imposes a tax on motor fuels used by qualified motor vehicles on the highways of that jurisdiction. (Oregon is a member but does not impose a fuel use tax.)
- IFTA is an agreement among these jurisdictions to ensure that these taxes are correctly, accurately, and efficiently apportioned to the jurisdiction in which the fuel is used.
- The operator of a QMV that operates in two or more IFTA member jurisdictions registers the QMV with only one of those jurisdictions, its “base jurisdiction,” pursuant to the International Registration Plan (IRP), and obtains a fuel tax license from the same base jurisdiction, pursuant to IFTA.
- Prior to the implementation of IFTA, operators of QMVs were required to be registered and licensed in every jurisdiction in which they traveled. Now, the QMV operator is only required to have one license and one set of decals for each QMV to be permitted to operate throughout all 58 IFTA member jurisdictions.
- The operator of the QMV submits quarterly returns only to the base jurisdiction and reports where the QMV has traveled during the preceding calendar quarter and its fuel use and purchases; the operator is subject to audit only by the base jurisdiction.

How IFTA Came into Being

- 1983 – Arizona, Iowa, and Washington State form a cooperative association known as the “International Fuel Tax Agreement.”
- 1984 – Congress enacts legislation that authorizes formation of a working group on collection of fuel taxes from motor carriers.

- 1987 – A new model international fuel tax agreement, recommended by the National Governors’ Association (NGA), is adopted by the, at that time, six member states: Arizona, Idaho, Iowa, Minnesota, Oklahoma, and Washington.
- 1990 – IFTA grows to 16 United States-state members.
- 1991 – Congress enacts the Intermodal Surface Transportation Efficiency Act (ISTEA – pronounced “ice tea”) (codified at 49 U.S.C. §§ 31701-31707), which, among other things:
 - Adopts and authorizes the interstate agreement on collecting and distributing fuel use taxes paid by motor carriers (IFTA) recommended by the NGA.
 - Funds a working group to assist in the implementation of IFTA and the International Registration Plan (IRP).
 - Sets a deadline of September 30, 1996, for the 48 contiguous states of the United States and the District of Columbia to become members.
 - Allows an exception for five states: Alaska and Hawaii, because they are not contiguous with the other 48 states; and Maine, New Hampshire, and Vermont, because they were members of a Regional Fuel Tax Agreement (RFTA).
- 1991 – The members of IFTA form International Fuel Tax Association, Inc. (IFTA, Inc.), the administrative body for the IFTA, a not-for-profit corporation with a 9-member governing board (IFTA, Inc. Board of Trustees or Board), and adopt the IFTA, Inc. Bylaws. IFTA, Inc. initially contracts with Lockheed Information Management Systems to serve as the repository for IFTA.
- 1992 – The Base State Working Group (BSWG) is formed, and Alberta becomes the first Canadian jurisdiction member; a total of 22 jurisdictions are members.
 - The BSWG was made up of members from: the NGA; the American Association of Motor Vehicle Administrators (AAMVA); the National Conference of State Legislatures (NCSL); the Federal Tax Administrators (FTA); the Board; and the RFTA.
 - The BSWG provided technical assistance to jurisdictions participating in the IFTA and IRP and recommended procedures.
- 1993 – 28 jurisdictions have become members of the IFTA.
- 1994 – The IFTA members adopt a peer review program, now called “Program Compliance Review,” and the Program Compliance Review Committee is established to oversee the review process; 38 jurisdictions are now members of the IFTA.
- 1994 – IFTA, Inc. opens its office in Chandler, AZ and assumes the repository responsibilities from Lockheed.
- **1996: Deadline Year** – 58 jurisdictions (48 United States states, 10 Canadian provinces), are now members of IFTA, the same as are members currently; the members vote to adopt a dispute resolution process and to readopt the IFTA Articles of Agreement, Procedures Manual, and Audit Manual as they had been amended over the previous several years since many had joined.
- 1996 – IFTA, Inc. receives federal funding to establish an information clearinghouse (IFTA Clearinghouse) and to assist the states in implementing the State On-Line Enforcement Network (STOLEN).

- 1997 – IFTA, Inc. receives federal funding to contract with the NCSL to conduct a State Legislation and Constitutional Provisions Project; its report is issued in 1999.
- 1998 – The Board formed the Dual Fuel Vehicle Subcommittee to review the issue of dual and alternative fuel use vehicles.
- 2000 – The first two disputes were filed pursuant to the IFTA Dispute Resolution Process; the Board heard the two cases and issued its findings in October 2001.
- 2000 – The IFTA Clearinghouse, which provides an electronic index of currently-qualified licensees, is up and running – Maryland is the first jurisdiction to upload data.
- 2001 – IFTA, Inc. implements the Annual Report database and purchases a building to house its office.
- 2004 – The Board created the IFTA Clearinghouse Advisory Committee, and IFTA members voted to amend the Bylaws to require a two-thirds majority vote of the members and the Board on general business issues.
- 2006 – After several years of work to improve the Dispute Resolution Process, the Dispute Resolution Committee (DRC), which will hear disputes filed by jurisdictions and IFTA licensees, held its organizational meeting, and the Board created the IFTA Technology Advisory Committee which includes not only jurisdiction representatives, but also industry representatives.
- 2007 – The Board created the Alternative Fuels Committee, which will focus on blended fuels and also includes industry representatives.
- 2009 – The member jurisdictions voted to allow the Program Compliance Review Committee, with the concurrence of two-thirds of the jurisdictions casting votes, to bring a Final Determination of Non-Compliance by a jurisdiction to the DRC, pursuant to section R1555, beginning January 1, 2010.
- 2014 – All 48 contiguous states of the United States participate in the IFTA, but the District of Columbia does not, despite its inclusion in the ISTEA. There are now 52 jurisdictions that participate in the IFTA, Inc. Clearinghouse. Six jurisdictions are read-only members.

What is IFTA?

- The International Fuel Tax Agreement is a tax collection agreement by and among the 48 contiguous states of the United States and the 10 Canadian provinces that border on the U.S.
- IFTA provides for uniform administration of motor fuel use tax laws with respect to qualified motor vehicles that are operated in more than one member jurisdiction.
- The Compact Clause of the United States Constitution states that: “No State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State” (Art. I, § 10, cl. 3)
- Congress enacted the Motor Carrier Act of 1991 as part of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA – pronounced “ice tea”), which included a section entitled “Participation in International Registration Plan and International Fuel Tax Agreement.” (Pub. Law 102-240, tit. IV, § 4008, codified as 49 U.S.C. §§ 31701-31707.) This legislation provided, among other things:

- Reporting requirements. After September 30, 1996, a State may establish, maintain, or enforce a law or regulation that has a fuel use tax reporting requirement (including any tax reporting form) only if the requirement conforms with the International Fuel Tax Agreement. (49 U.S.C. § 31705(a) [emphasis added].)
- Payment. After September 30, 1996, a State may establish, maintain, or enforce a law or regulation that provides for the payment of a fuel use tax only if the law or regulation conforms with the International Fuel Tax Agreement as it applies to collection of a fuel use tax by a single base State and proportional sharing of fuel use taxes charged among the States where a commercial motor vehicle is operated. (49 U.S.C. § 31705(b) [emphasis added].)
- The National Conference of State Legislatures (NCSL), which was charged with conducting a State Legislation and Constitutional Provisions Project to review the issues raised by IFTA and the enabling statutes of the various member jurisdictions, concluded that IFTA is a hybrid agreement.
- The core concepts of IFTA are authorized by Congress pursuant to the Compact Clause of the United States Constitution.
- Pursuant to the Compact Clause, the compact provisions are federal law which can preempt the operation of inconsistent state law. (*Cuyler v. Adams* (1981) 449 U.S. 433, 440 [“where Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States’ agreement into federal law under the Compact Clause”].)
- Further, IFTA is implemented by reciprocal statutes.
 - These statutes reflect that IFTA is an agreement to which the jurisdiction is a party, with proper delegations of authority to administrators.
 - There is no delegation of legislative power, other than with respect to the three core provisions of the Agreement, section R130.
 - The jurisdictions clearly retain assessment and collection authority.
- Lastly, IFTA is administered through a reciprocal administrative agreement, which provides flexibility for the details of administration, collection, and enforcement.
- IFTA is not federal law. States are not required to join, and ISTEAA does not dictate what IFTA must or must not include. However, as enacted by ISTEAA, IFTA is a federal mandate to the extent that, if a state wants to collect fuel use tax, it must do so consistent with IFTA. It was begun in 1983 by three states, without federal action; it is referred to in ISTEAA as an “agreement”; and the states are permitted to amend IFTA.
- As stated in *New York v. U.S.* (1992) 505 U.S. 144, 178: “No matter how powerful the federal interest involved, the Constitution simply does not give Congress the authority to require the States to regulate. The Constitution instead gives Congress the authority to regulate matters directly and to pre-empt contrary state regulation. Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state governments as its agents.” See also *Printz v. U.S.* (1996) 521 U.S. 898, 924: “‘Even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts. . . .’” [quoting *New York v. U.S.* at p. 166].)

- IFTA established three **core provisions**, as reflected in ISTEAs:
 - The base jurisdiction concept for reporting, payment, and auditing motor carrier fuel use taxes.
 - Jurisdictional retention of sovereign authority to determine tax rates and exemptions and to exercise other substantive tax authority.
 - A uniform definition of “qualified motor vehicle” for purposes of imposing the motor fuel use taxes imposed by each jurisdiction. (IFTA, at R245, R800.)
- In addition to IFTA, itself (i.e., the Articles of Agreement), the governing documents include the Audit Manual and the Procedures Manual: “The Audit Manual and Procedures Manual authorized by this Agreement are equally expressive of, and constitute evidence of this multijurisdictional agreement. The provisions of all three IFTA documents shall be equally binding upon the member jurisdictions and IFTA licensees and are known as the IFTA governing documents.” (IFTA, at R120.)
- IFTA is widely accepted, effective, and adaptable – **AND LARGELY UNTESTED IN COURT**, which is the principal reason we are all here.

Benefits of IFTA

Benefits of IFTA to the trucking industry include:

- One license and one set of decals for each qualified motor vehicle to operation through all member jurisdictions.
- One tax return filed each quarter with the base jurisdiction.
- One tax payment or refund.
- One audit by the base jurisdiction.
- Reduced administrative costs.
- One set of requirements for state, national, and international use of highways.

Benefits of IFTA to the member jurisdictions include:

- Fewer taxpayers.
- Lower administrative costs.
- Increased audit coverage.
- Increased enforcement.
- Tax rate changes and important notices (such as suspension of motor carrier regulations during declared emergencies) are posted on the IFTA, Inc. Web site.
- Electronic reporting through the IFTA, Inc. Clearinghouse.
- Electronic funds netting through the IFTA, Inc. Clearinghouse.
- Uniformity with respect to licensing, tax reporting, auditing, and compliance reviews.

Additional Information/Resources

- Information about the IFTA is available to the public on the Web site maintained by IFTA, Inc. at www.iftach.org/, including:
 - Under “Manuals” on the left – the Articles of Agreement (i.e., IFTA), Audit Manual, and Procedures Manual.

- Under “About Us” on the left – in addition to the IFTA, Inc. staff and contact information, the Board of Trustees, Bylaws, Articles of Incorporation, Strategic Plan, and a more technically detailed “IFTA 101” that describes how IFTA works, the amendment or ballot process, consensus Board interpretations, dispute resolution, program compliance reviews, enforcement, and the IFTA, Inc. clearinghouse.
- A myriad of other information, including Annual Reports, Biodiesel Information, Ballot Proposals, Committees, and Meetings.
- IFTA attorneys who are members of the Attorney Section Steering Committee may sign up with the IFTA, Inc. Webmaster Tom King and log in and access jurisdictional contact and confidential Attorney Section information. If you are interested in being on the committee, please contact Collin Davis or Ed Beaudette.

IFTA, Inc.

- IFTA, Inc. presently has eight staff members:
 - Lonette Turner – CEO/CFO
 - Debora Meise – Senior Director
 - Amanda Koeller – Program Administrator
 - Jason DeGraf – Information Services Director
 - Richard Beckner – Program Compliance Administrator
 - Patricia Platt – Program Compliance Administrator
 - Tammy Trinker – Office and Events Administrator
 - Tom King – Webmaster

TRUST

(Dedicated to Clark Snelson)

IFTA is based on cooperation and trust. Merriam-Webster Dictionary says the word “trust” is both a verb and a noun. How often does that happen? The word is both a concept and an action. As a noun, the word “trust” means confidence or faith in something. This meaning deals with the relationship of parties. For example, the trust-based relationship between a parent and a child, where the relationship is based on care and concern about the well-being of the other party (assuming the child is not a teenager). As a verb – the action portion of the definition – the word “trust” means to entrust or give someone a task, duty, or responsibility. For example, “I trust my employer to deposit my paycheck into my bank account every month.”

The key to the success of IFTA has been that we embody both the concept and the action part of the word “trust.” We have confidence that the other jurisdictions will take care of our interests. We trust each other to do what is in everyone’s best interest. In the early years, there were many skeptics to an international agreement whereby you collected fuel use taxes for me. The predominant question was, “Do I trust you enough to collect my taxes against your local taxpayer?” Thankfully, the response to that question has been “yes” – and IFTA is the result.