

April 8, 2020

TO: IFTA Commissioners
FROM: IFTA Industry Advisory Committee
RE: Extension for Filing First Quarter IFTA Reports

These are unusual times. There has never been an instance where all of the jurisdictions' government offices were shut down, along with much of business across the continent. These circumstances necessarily affect tax administration. The Internal Revenue Service and Canadian Revenue Agency have been prompt in extending the due date for 2019 annual personal income tax filings and payment, and we believe that every state and province with an income tax has done the same. The reasons for this move should be plain to everyone.

You will have seen the March 23 notice from the IFTA Board of Trustees announcing the Board's altering the dates for the IFTA Clearinghouse nettings, and the Board's encouragement of uniform state and provincial waivers of IFTA credential requirements for licensees. The April 3 follow-up letter from IFTA's Executive Director carries the same message, and many of the jurisdictions have in fact waived IFTA credential enforcement for the time being.

Both the notice from the Board and the Executive Director's letter also urged states and provinces to consider extending the deadline for licensees for first-quarter IFTA tax filing and payment requirements. This is not a measure, however appropriate, that the Board can take on its own. Each jurisdiction must make the decision to extend or not to. To date, however, hardly any jurisdictions have granted such an extension.

The IFTA Industry Advisory Committee writes to strongly urge the states and provinces to consider granting a timely extension of IFTA's filing and payment requirements, for the following reasons.

A large proportion of first-quarter IFTA tax reports and payments will be late – whether or not an extension is granted. Many motor carriers' operations are currently disrupted. As essential businesses, carriers are exempt from government shut-down orders, but carriers whose customers are shut down as non-essential are likely to be closed themselves. The operations of carriers that remain open will hardly be normal. Like all other essential industries, motor carriers are straining these days to provide the needed supplies for all of us. Then too, although a carrier's trucks and drivers may be on the road, its office staff may for their own health be working remotely, and have restricted access to the data they need to prepare and file a quarterly report. Whatever a carrier's situation, however, its attention this month will not be focused on tax compliance.

A large proportion of motor carriers, perhaps the majority of them, do not file and prepare their own IFTA reports – they rely on third parties to do so. Transportation service agencies,

however, are not considered essential businesses, and, at least in the more than 40 states with executive shut-down orders, their offices are currently closed by law. Many staff will be working remotely, but they will have restricted contact with their carrier customers and limited access to the data they need to prepare IFTA reports.

Finally, both licensees and their agents may have difficulty reaching knowledgeable jurisdiction personnel this month to ask questions or otherwise to obtain the information they need to file accurate IFTA reports timely.

In these circumstances, a great many IFTA reports for the first quarter simply will be filed late, whether or not there's an extension. This will involve a lot of problems, but we believe they will be easier to resolve if a blanket extension is in place.

Critical carrier operations will be disrupted further. Without an extension, a licensee that files and pays late is out of compliance. Many jurisdictions automatically suspend delinquent licensees, raising a red flag for enforcement agencies across the continent. Moreover, most of the current waivers for IFTA credential requirements (as well as those for IRP and other regulatory programs) apply only to *compliant* motor carriers. The consequences of late filing that are appropriate in ordinary circumstances could be broadly harmful in times like these, if they serve to hamper the transportation system from functioning as it needs to.

It makes little sense to impose late-filing and late-payment penalties in these circumstances. IFTA's rules impose penalties for delinquent filing and payment. This is entirely appropriate; the penalties encourage timely compliance by taxpayers, and remove the incentive for noncompliance. But what possible use is there in imposing penalties for late-filing in a situation like the present? For the jurisdictions, there will be the hassles involved in collecting penalties and interest from thousands of licensees who were, as a practical matter, not responsible for their tardiness. For licensees, the late-filing penalty may hit some hard – at exactly the wrong time – and for others it will in any event be no encouragement for timely future compliance.

Are the jurisdictions prepared to process first-quarter filings timely? State and provincial offices are closed, and there is no certainty as to when they may reopen. In such a situation, is an IFTA agency even prepared to process a timely IFTA report and post a timely IFTA payment? Many agencies may not be able to – so why insist that those reports be filed timely?

Nothing in IFTA prevents a jurisdiction from extending the deadline. There is nothing in the Agreement that prevents a jurisdiction, when it needs to, from extending the filing and payment date. The notices from the IFTA Board and Executive Director referred to above indicate clearly that this is their considered opinion. The drafters of IFTA were not thinking of a situation like the present – which is unprecedented – and made no provision for it in the Agreement. But that doesn't mean at all that the jurisdictions don't retain their power to grant an extension for their own licensees. The Board has done what it can to remove administrative barriers involving the Clearinghouse calendar, but granting an extension is up to individual states and provinces.

Extensions are a matter for jurisdiction law. Each state or province must consider the granting of an IFTA extension as a matter of the jurisdiction's own law and practice. Statute commonly gives a tax administering agency the flexibility it requires to deal fairly with emergency matters. Given the circumstances at hand, the authority is almost certainly there, in every jurisdiction.

Case-by-case extensions are unworkable. There is no question that a state or province can, on a case-by-case basis, grant an extension to an individual taxpayer – this is commonly done, in appropriate circumstances. But individual determinations of this sort are impractical when nearly all IFTA licensees are facing unusual conditions, and a large proportion of the hundreds of thousands of licensees will simply be unable to file on time. Individual determinations would just be an additional burden for both government and business, and many licensees will not know to ask for an individual extension. A blanket extension for all will avoid these difficulties.

The IAC urges all jurisdictions to consider granting a blanket extension for IFTA filing and payment for the first quarter of 2020. Extraordinary circumstances can only be dealt with successfully by extraordinary measures. Certainly, a blanket extension may create administrative difficulty for the states and provinces, and may cause some confusion and uncertainty for licensees. We believe, however, that the problems that will be created by the lack of an extension will be much more serious. The terms of an extension, like the decision whether to grant one at all, are up to each jurisdiction; we recommend, however, that in the current uncertainty, an extension for IFTA filing and payment for the first quarter be granted until at least June 15. It would be especially helpful if a jurisdiction were to notify IFTA of the extension granted by April 20.

Respectfully submitted,
IFTA Industry Advisory Committee