

IN THE MATTER OF FINAL
ORDER OF THE DISPUTE
RESOLUTION COMMITTEE,
DOCKET NO. DRC 2024-0002

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MOTION TO THE BOARD OF
TRUSTEES OF IFTA, INC.

OCTOBER 3, 2024

APPEAL OF FINDINGS

The Commissioner of Revenue Services for the State of Connecticut (“Commissioner”) is in receipt of the Final Order of the Dispute Resolution Committee (“DRC”) and the Rationale for the Decision (“Final Order”)¹ and through the submission of this motion hereby appeals said Final Decision to the Board of Trustees of IFTA, Inc. (“Board”) and does so on several grounds. As an initial matter, and as explained more fully herein, the Commissioner submits that there is no authority in any of the IFTA governing documents² for the DRC to impose the penalties it set forth in its Final Decision. In addition to the foregoing, the Commissioner respectfully submits that he provided ample and mitigating justification as to why he was unable to conduct the requisite number of audits during the subject period.

To that end, and as set forth in the letter that was submitted on the Commissioner’s behalf by IFTA Commissioner L. Michael Romeo, Jr.,³ the impact of a statewide retirement and the implementation of both a new tax administration system and new IFTA administration system were the primary reasons why the Commissioner was not able to dedicate the resources necessary to meet the audit requirements set forth in the IFTA Audit Manual. As explained in said letter, said factors were beyond the control of the Commissioner. Accordingly, the Commissioner submits that he provided sufficient justification to mitigate the imposition of any penalties. Alternatively, and to the extent that the Board determines that the Commissioner is not in compliance with its audit requirements, the types of penalties that can be imposed against the Commissioner are limited and do not include those set forth in its Final Order.

Consistent with the above, the DRC’s ability to impose penalties is limited to those penalties that are specifically prescribed in Section V of the Dispute Resolution Process (“DRP”). As explained more fully herein, Section V of the DRP authorizes the DRC to restrict a member jurisdiction’s voting power, remove a member jurisdiction from participating on any IFTA boards and committees, incrementally increase the member jurisdiction’s membership dues, and, after significant period of noncompliance, pursue a motion to expel a member jurisdiction from IFTA. As the penalties set forth in its Final Order are not included among those listed in Section V of the

¹ The Commissioner acknowledges that said Final Decision was voted on and approved by the DRC on or about September 12, 2024. Accordingly, the Commissioner has forty-five (45) days, or until October 3, 2024, to file this appeal.

² 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.

³ Mr. Romeo is a Tax Division Chief in the Audit Division of the Connecticut Department of Revenue Services.

DRP, it is clear that the DRC has no authority to impose such penalties on the Commissioner.⁴ Accordingly, to the extent that the Board determines it appropriate to impose penalties on the Commissioner under the present circumstances, it is limited to imposing those penalties that are prescribed in Section V of the DRP. In order to do so, it must reject the Final Order and remand this matter back to the DRC.

ARGUMENT

I. The DRC does not have the authority to impose the penalties set forth in its Final Order.

As set forth above, the Commissioner is in receipt of the Final Order, which was voted on and approved by the DRC on or about September 12, 2024. In said Final Order, the DRC seeks to impose a series of penalties on the Commissioner. As explained more fully below, the Commissioner is not aware of any authority in any of the governing documents for the DRC to impose the penalties set forth in its Final Decision. To that end, the Commissioner is unaware of any express authority in the governing documents pursuant to which the DRC is specifically authorized to impose “disgorgement” or “restitution” penalties or to penalize the Commissioner by “withhold[ing] clearing house payments.”

As an initial matter and by way of background, the DRC described the matter before it in its Final Order as follows:

THIS matter comes before the Dispute Resolution Committee (“DRC”) upon the Final Determination Finding of Noncompliance (“FDFNC”) issued by the Program Compliance Review Committee (“PCRC”) on June 11, 2024. In their submission the PCRC alleges that the State of Connecticut (“Respondent”) violated Section A250 of the IFTA Audit Manual in both the 2014-2018 and 2019-2023 Program Compliance Review cycles by failing to perform their required number of audits during those years. In their FDFNC, the PCRC further alleges that Respondent violated Section A260 of the IFTA Audit Manual by failing to meet the 25% high distance audit requirement.

In the “Findings of Law” section of said Final Order, the DRC states that it has “jurisdiction over this matter . . . under R1555 of the IFTA Articles of Agreement.” Upon review, and although section R1555 of the IFTA Articles of Agreement pertains to “compliance matters,” said section contains no provision relative to the imposition of penalties.⁵ In said “Findings of Law” section, the DRC goes on to reference the “principal[s] *[sic]* of Disgorgement” and “restitution” and

⁴ Moreover, and also addressed below, the penalties proposed by the DRC are clearly disproportionate in nature when compared to those set forth in the DRP.

⁵ The Commissioner notes that section R1555.300 provides that

The IFTA, Inc. Board of Trustees shall request a resolution to expel a member jurisdiction which has failed to bring its IFTA program into compliance one year following its loss of voting power under the penalty provisions of the IFTA Dispute Resolution Process.

As the Commissioner has never lost any of his voting powers (nor has he otherwise been subject to any penalty or sanction during his time as a member of IFTA), he submits that R1555.300 is of no application to the present matter.

concludes with regard thereto that the Commissioner “must disgorge all wrongful benefit it received from failing to comply with its audit requirements” and that he “should be required to conduct their required 3% audits in compliance with A250 and A260 of the Audit Manual in the future in addition to the audits they failed to conduct in the two previous Review cycles.” In said section, the DRC also references the Commissioner’s “Repeated and Prolonged Non-Compliance” and concludes that as a result thereof that “punitive actions against the [Commissioner] is *[sic]* warranted.” Nowhere in this section, however, does the DRC cite to or reference any authority to support its purported “legal findings” relative to the imposition of disgorgement, restitution, or punitive penalties.

Despite the glaring lack of authority to support its actions, the DRC nonetheless goes on to make the following orders:

THE DRC FURTHER ORDERS Respondent to disgorge \$1,044,031.77 in unjust benefits it received due to its failure to conduct its required number of audits and meet the High/Low Distance requirements. This sum is to be collected by IFTA Inc., who will distribute the funds as detailed in Exhibit C.

THE DRC FURTHER ORDERS Respondent to pay a punitive fine in the amount of \$159,000, as detailed in Exhibit C.

THE DRC FURTHER ORDERS IFTA Inc. to withhold clearing house payments to the Respondent until the complete assessment has been satisfied and to take any other actions consistent with the Agreement to enforce this order.

Within its orders, the DRC also stated that “[a]dditional sanctions, including but not limited to, those specified in Section V of the DRP will be considered by the DRC for continued noncompliance.” Although Section V of the DRP was not cited to by the DRC in its “Findings of Law” as support for its determination as to the imposition of penalties against the Commissioner, said section references certain “remedies” that are within the purview of the DRC. However, and as explained below, none of the penalties set forth in the DRC’s Final Order are listed among said remedies.

To that end, Section V of the DRP, in pertinent part, provides as follows:

The DRC, through the authority established in this Dispute Resolution Process and R1555, is empowered to grant appropriate relief to a Member Jurisdiction or Licensee and may take action including but not limited to the following to ensure a Member Jurisdiction’s compliance with the Agreement.

1. If the Respondent fails to bring its program into compliance by the date determined by the Committee, the Respondent shall suffer immediate loss of voting power and all Board and standing committee seats.
2. If the Respondent fails to bring its program into compliance after 60 days of its loss of voting power, the Respondent’s membership dues for the current year will be double. The Committee may grant an extension beyond the 60-day period if it believes the Respondent is taking reasonable steps to come into compliance.

3. If the Respondent fails to be in compliance after one year of its loss of voting power and membership dues being doubled the Respondent's membership dues for the next fiscal year will be tripled and a resolution for expulsion may be issued pursuant to the IFTA Articles of Agreement.

4. If the Respondent fails to be in compliance after one year of its membership dues being tripled, a resolution for expulsion will be issued pursuant to the IFTA Articles of Agreement.

5. If the expulsion resolution fails, the Respondent's membership dues will remain tripled until its program is in compliance. Upon compliance, the Respondent's membership dues for the next fiscal year will reduce to the amount assessed all jurisdictions in good standing.

As set forth above, Section V of the DRP sets forth five (5) "actions" that the DRC is authorized to take in connection with the DRP. As the Board is aware, IFTA 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 United States. As such, said document functions as a contract by and among said states and provinces and must be construed as such. Therefore, consistent with said principles, the only penalties that the DRC is authorized to impose against the Commissioner are constrained by said actions.

Specifically, the DRC is authorized to restrict a member jurisdiction's voting power, remove a member jurisdiction from participating on any IFTA boards and committees, incrementally increase the member jurisdiction's membership dues, and, after period of noncompliance, pursue a motion to expel a member jurisdiction from IFTA. Not listed among the specified "actions" or "remedies" is the ability of the DRC to impose "disgorgement" or "restitution" penalties⁶ or to penalize the Commissioner by "withhold[ing] clearing house payments."⁷ As such, given that the DRC is bound by the express terms of the governing documents, the Commissioner respectfully submits that the DRC is acting beyond said terms in seeking to impose the penalties set forth in its Final Order. Accordingly, as the penalties the DRC is seeking to impose are clearly not authorized by the governing documents, the Commissioner submits that the DRC is without authority to impose such penalties and, therefore, the Board must reject said penalties.⁸ Moreover, not only are the DRC's proposed penalties not authorized by the

⁶ The Commissioner notes for record purposes that he was not notified of the scope and types of penalties being contemplated by the DRC or of the methodology for calculating the "disgorgement" or "restitution" penalties or the "punitive" penalty prior to a hearing held on August 19, 2024. As a direct result of the DRC's failure to provide the Commissioner with either the rationale for or the methodology used to determine the dollar value of the proposed penalties in advance of said hearing, the Commissioner was not given the opportunity to challenge the imposition of said penalties or to address any issues associated with the calculation thereof with the DRC at said hearing.

⁷ For Connecticut purposes, IFTA governs the collection and remittance of the taxes imposed under Chapter 222 of Title 12 of the Connecticut General Statutes.⁷ Stated simply, Connecticut collects its motor carrier road tax through IFTA. Thus, if the Board were to move forward and adopt the DRC's proposal to penalize the Commissioner by "withhold[ing] clearing house payments" due and owing Connecticut it would be ratifying the unlawful taking of Connecticut taxes.

⁸ The Commissioner recognizes that Section V of the DRP contains the following language:

governing documents, said penalties are also inconsistent with the types of penalties or actions that are prescribed in said governing documents.

To that end, the DRP authorizes the DRC to restrict a member jurisdiction's voting power, remove a member jurisdiction from participating on any IFTA boards and committees, incrementally increase the member jurisdiction's membership dues, and, after period of noncompliance, pursue a motion to expel a member jurisdiction from IFTA. As evidenced by the foregoing, it is clear that a member jurisdiction that is found to be out of compliance with the requirements of IFTA is essentially subject to progressive discipline. As such, if the DRC were to impose "disgorgement" or "restitution" penalties or to penalize the Commissioner by "withhold[ing] clearing house payments," the DRC would be completely disregarding the progressive nature of the discipline that is expressly set forth in the DRP.

In addition to the foregoing, the Commissioner respectfully submits that he provided ample and mitigating justification as to why he was unable to conduct the requisite number of audits during the subject period.

II. The Commissioner provided sufficient justification to mitigate the imposition of any penalties. Alternatively, and to the extent that the DRC determines that penalties are warranted, the types of penalties that it can impose are limited and do not include those set forth in its Final Order.

As set forth above, and for record purposes, the Commissioner respectfully submits that he provided ample and mitigating justification for his inability to conduct the requisite number of audits during the subject period. Alternatively, and to the extent that the DRC has the authority to impose penalties, the types of penalties that it can impose are limited and do not include those set forth in its Final Order. The Commissioner addresses each argument in more detail below.

As the Board is aware, the Commissioner, acting through IFTA Commissioner L. Michael Romeo, Jr., submitted a letter to Scott Greenawalt, Dispute Resolution Committee Chair, on or

The DRC has broad discretion in resolving disputes and may take actions that include remedies/sanctions intended to compensate the aggrieved jurisdiction(s) or licensee(s), and/or bring the non-compliant jurisdiction into compliance, and/or ensure the membership of achieved compliance. Punitive actions should only be imposed for repeated or prolonged noncompliance by the non-compliant jurisdiction. The Committee should carefully consider punitive actions and evaluate the complete set of circumstances that led to non-compliance before taking such action.

As set forth above, Section V of the DRP provides that "DRC has broad discretion in resolving disputes." Allowing the DRC to have such broad discretion without any standards for exercising said authority is problematic. Moreover, and as evidenced by the Final Order, such unfettered and unchecked authority is ripe for abuse. Thus, in order to avoid the additional arbitrary and capricious actions that will most certainly follow, the DRC should be limited to taking the actions prescribed in Section V of the DRP until such time as the Board adopts standards and guidelines for applying any penalties beyond those specially prescribed therein. Consistent therewith, and although the above-quoted language references "punitive actions," the DRP similarly contains no guidelines as to when such "punitive" actions are appropriate or how such actions will be imposed or calculated. Accordingly, without any applicable standards, the Commissioner submits that the DRC should be precluded from exercising or imposing any penalties beyond those specially prescribed therein.

about August 1, 2024.⁹ In said letter, Mr. Romeo provided Chairman Greenawalt with a written narrative explaining the mitigating circumstances regarding the findings of the Program Compliance Review Committee (“PCRC”) relative to Connecticut’s compliance with its IFTA audit goals as well as details regarding Connecticut’s plans to both meet its current IFTA audit requirements and make up any deficits from the prior periods. While the Board can certainly read Mr. Romeo’s letter for itself, it is important to highlight for record purposes the mitigating circumstances cited by Mr. Romeo.

To that end, Mr. Romeo identified two primary factors that mitigate the PCRC’s findings relative to Connecticut. In said letter, Mr. Romeo explained that a statewide retirement¹⁰ and the implementation of a new tax administration system and a new IFTA administration system during the periods before the PCRC were the primary reasons why the Commissioner was not able to dedicate the resources necessary in order for Connecticut to meet its audit goals. As Mr. Romeo aptly pointed out, the circumstances that contributed to Connecticut falling short of its audit goals were beyond the control of the Commissioner. As such, the Commissioner submits that such circumstances provide the Board with more than sufficient justification to mitigate the imposition of any penalties being proposed by the DRC. Alternatively, and to the extent that the Board determines it appropriate to impose penalties on the Commissioner, the types of penalties that can be imposed are limited and do not include those set forth in the DRC’s Final Order.

Consistent with the above, the DRC’s ability to impose penalties is limited to those penalties that are specifically prescribed in Section V of the DRP. As explained herein, Section V of the DRP authorizes the DRC to restrict a member jurisdiction’s voting power, remove a member jurisdiction from participating on any IFTA boards and committees, incrementally increase the member jurisdiction’s membership dues, and, after significant period of noncompliance, pursue a motion to expel a member jurisdiction from IFTA. As the penalties set forth in its Final Order are not included among those listed in Section V of the DRP, it is clear that the DRC has no authority to impose such penalties on the Commissioner. Accordingly, to the extent that the Board determines it appropriate to impose penalties on the Commissioner under the present circumstances, it is limited to imposing those penalties that are prescribed in Section V of the DRP.

III. The filing of this motion shall not constitute a waiver of any arguments or of any legal remedies that may be available to the Commissioner.

As a final matter, and as the Board is aware, Section V of the DRP also provides that “[n]othing in this article shall preclude a Member Jurisdiction from seeking judicial relief after exhausting its remedies under the Agreement.” In order to protect any and all legal remedies and rights that may

⁹ For record purposes, the Commissioner hereby incorporates said letter by reference herein and makes it a part of this motion.

¹⁰ It is important to note that the statewide retirement, which was precipitated by pending changes to state employee health and pension benefits, hit the Connecticut Department of Revenue Services (“DRS”) particularly hard. To that end, the Connecticut DRS had over one hundred (100) of employees retire during the subject period, the great majority of whom were from its Audit Division. As the Audit Division is responsible for IFTA compliance, it is clear that its ability to meet its IFTA obligations (as well as its responsibility for conducting audit of the forty-seven (47) other taxes and fees administered by the DRS) was severely impacted by said retirements.

be available to the Commissioner, nothing in this motion nor any action of the Commissioner relative to this matter should be taken or construed as a waiver of any such legal rights and remedies said Commissioner may seek to exercise. Consistent therewith, the Commissioner may seek to raise constitutional arguments as to IFTA. As such, and although constitutional arguments cannot be waived, failure to address such arguments herein should not be viewed as a waiver of said arguments in any future forum.

CONCLUSION

As set forth herein, there is no authority in any of the governing documents for the DRC to impose “disgorgement” or “restitution” penalties or to penalize the Commissioner by “withhold[ing] clearing house payments.” As such, given that the DRC is bound by the express terms of the IFTA governing documents, the Commissioner respectfully submits that the DRC is acting beyond said terms in seeking to impose said penalties. Accordingly, as the penalties the DRC is seeking to impose are clearly not authorized by the governing documents, the Commissioner submits that the DRC is without authority to impose such penalties and, therefore, the Board must reject said penalties.

Additionally, the Commissioner respectfully submits that he provided ample and mitigating justification for his inability to conduct the requisite number of audits during the subject periods. As such, based on the circumstances identified by the Commissioner, the Commissioner submits that the Board should accept said explanation and reject the penalties that the DRC is seeking to impose on said Commissioner and rescind the Final Order in its entirety.

Alternatively, and to the extent that the Board determines that the Commissioner is not in compliance with its audit requirements, the types of penalties that can be imposed against the Commissioner are limited and do not include those set forth in the DRC’s Final Order. Therefore, in the event of such a decision, the Commissioner respectfully submits that the Board must reject the DRC’s Final Order and must remand the matter back to the DRC with instructions that it apply the DRC in accordance with its express terms.

RESPECTFULLY SUBMITTED

MARK BOUGHTON, COMMISSIONER
OF REVENUE SERVICES FOR THE
STATE OF CONNECTICUT

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