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**Sent:** Friday, January 17, 2025 2:42 PM

**To:** Carmen Martorana <[cmartorana@iftach.org](mailto:cmartorana@iftach.org)>

**Subject:** Questions re February 3 hearing

Dear Mr. Martorana.

I am following up on two matters related to this agency's scheduled IFTA appeals hearing that is set for February 3, 2025.

First, you requested in a December 9, 2024 e-mail to "please let me know whether your jurisdiction plans on attending the Appeals Hearing in-person or virtually." In answer to your question, please be advised that this agency will have two individuals who will represent its interests in person at the hearing.

Second, in a letter dated January 6, 2025 signed by Richard Rodney, president of the IFTA, Inc. Board of Trustees, which this agency received via email, it was stated that the IFTA Dispute Resolution Commission (DRC) Chair would be attending the February 3 hearing virtually. Further, the January 6 letter stated that this agency was entitled to pose questions to the DRC Chair, but also requested that these questions be submitted to the IFTA Board through a communication to you at least two weeks prior to the hearing. This agency's questions for the DRC Chair are set forth below.

- (1) Why did you deviate from the specific rules laid out for imposing penalties set forth in the DRC charter and governing documents, as previously applied, for example, in the New Jersey case? What authority in the IFTA governing documents did you rely upon in imposing the penalties?
- (2) Is there any prior precedent in the history of IFTA for imposing monetary penalties on a non-compliant member, other than a doubling or tripling of that member's membership fee?
- (3) Have there been other specific instances in the past 25 years (other than the New Jersey example referenced above) where there was a non-compliant IFTA member that either was not penalized or was penalized without the imposition of monetary damages as in this case? Assuming the answer is yes, why did you deviate from the practice in those cases in this instance?
- (4) Were the residual effects of the COVID pandemic considered at all when imposing these member penalties? If no, why not?
- (5) What authority in the IFTA governing documents did you rely upon in crafting the specific penalties that were imposed? Why did you determine that it was appropriate to base the penalties for non-compliance entirely on presumed salaries that DOR might have been paid to auditors that DOR had not hired? Was there any determination that there was a shortfall in IFTA fuel taxes collected that occurred by reason of the Massachusetts non-compliance?
- (6) Did you consider that imposing monetary penalties for audits that DOR did not perform and also requiring DOR to "make-up" those audits during future years is effectively penalizing DOR twice for the same purported offense?

We look forward to the IFTA response to our questions.

Thank you for your attention to this matter.

Michael T. Fatale  
General Counsel  
Massachusetts Department of Revenue

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