

Connecticut's Answers to their Questions:

1. Please provide a definition for the term “unjustly benefited” as used by the DRC in its Final Order. [Unfairly benefited](#)
2. Please identify the provisions of the Articles of Agreement that define the term “unjustly benefited.” If none, please identify the provisions of the Articles of Agreement relied upon to determine that the Commissioner “unjustly benefited” from the volume of audits conducted. [Connecticut, the jurisdiction, should not receive the benefit of personnel costs it avoided by failing to meet the audit requirements under the IFTA Audit Manual.](#)
3. Please provide a list of all facts the DRC relied upon to conclude that the Commissioner “unjustly benefited” from the volume of audits he performed. [The DRC concludes respondent’s non-compliance for 10 years and shortfall of 159 total audits constitutes repeated and prolonged non-compliance. Accordingly, after evaluating the complete set of circumstances that led to non-compliance including both the aggravating and mitigating circumstances, the Committee finds the actions against the Respondent are warranted.](#)
4. Please explain how the DRC calculated the amount by which it concluded that the Commissioner “unjustly benefited” from the volume of audits he performed. [In reaching its disgorgement estimate, the DRC calculated the cost per audit completed and then multiplied that figure by the number of missing audits. The results estimated that the jurisdiction had underfunded its audit program by \\$104,403.18 per year, averaged out over a 10-year period. Accordingly, the DRC concluded that over the 10-year period, the jurisdiction had wrongfully benefited by saving \\$1,044,031.77 on its payroll, which resulted in the underfunding of its IFTA audit program.](#)
5. Please explain the discrepancy between the amount that the DRC calculated that the Commissioner “unjustly benefited” from and the average amount of an IFTA assessment issued by the Commissioner. [The jurisdiction of Connecticut unjustly benefited from not hiring auditors to complete the required number of audits. The restitution order, requiring completion of the deficit audits, captures compensation for lost tax revenues associated with that audit activity.](#)
6. Please identify any other Final Order in which the DRC found that a member jurisdiction “unjustly benefited” from an Articles of Agreement violation. In so doing, please identify how said calculations were conducted to determine the amount by which the member jurisdiction “unjustly benefited.” Please provide copies of said Final Orders. [All final orders are available on the IFTA Inc website and may be accessed by Connecticut’s commissioner.](#)
7. Please identify each and every member jurisdiction that has filed a complaint against the Commissioner regarding the volume of audits he performs and the damages that they claim they incurred as a result thereof. If none, please identify how the DRC determined that the Commissioner harmed other member jurisdictions. [There are none. The DRC’s decision aims to promote fairness and compliance within the IFTA framework. By requiring disgorgement and restitution, the decision ensures that jurisdictions are held accountable for their obligations and do not profit from non-compliance. The punitive actions serve as a deterrent to prevent future violations and encourage proper funding and execution of audit programs.](#)
8. Please identify any evidence the DRC considered to show that carriers with Connecticut as a base jurisdiction that were not audited failed to voluntarily comply and pay the amount due. [No way to determine unless the correct percentage of audits are conducted as required by the Audit Manual.](#)
9. Please identify any evidence that DRC considered to show that carriers with Connecticut as a base jurisdiction owe any member jurisdictions any additional tax than what they voluntarily

paid. No way to determine unless the correct percentage of audits are conducted as required by the Audit Manual.

10. Please identify any member jurisdiction that has ever claimed that the Commissioner was deficient in auditing a carrier with a base jurisdiction as Connecticut. There are none.

The Commissioner intends to argue that the DRC made a significant error of interpretation of the Agreement and a procedural error. Upon information and belief, the DRC exceeded the scope of its authority in fashioning its Order. Specifically, the DRC went beyond the scope of its authority to issue “disgorgement,” “restitution,” and a “punitive fine.” In order for the Commissioner to address this argument, please respond to the following questions:

1. How many matters has the DRC reviewed since its inception? Seven
 - a. Of those matters, how many have resulted in “disgorgement” ordered?
 - I. Please provide copies of any decisions in which the DRC determined that a member jurisdiction “unjustly benefited” and “disgorgement” was ordered. Three, and all available on IFTA’s website
 - b. Of those matters, how many have resulted in “restitution” ordered? Four
 - I. Please identify how the DRC calculated the amount of “restitution” ordered in each of those decisions. Audit Shortfall X \$1000.
 - II. Please provide copies of any decisions in which the DRC ordered “restitution.” Connecticut’s commissioner has access to all archives and documents on IFTA Inc’s website.
 - c. Of those matters, how many have resulted in “punitive fine” ordered?
 - I. Please identify how the DRC calculated the amount of the “punitive fine” ordered in each of those decisions. The audit shortfall (159) multiplied by \$1000.
 - II. Please provide copies of any decisions in which the DRC ordered a “punitive fine.” Available to Connecticut’s commissioner on IFTA Inc.
2. On page 14 of the IFTA Dispute Resolution Process a list of progressive discipline for noncompliance is identified. Please explain why the first step of progressive discipline was disregarded and instead the DRC fashioned its own penalties of “disgorgement,” “restitution,” and a “punitive fine.” The DRC has broad discretion in resolving disputes and may take actions that include remedies/sanctions intended to compensate the aggrieved jurisdictions(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-complaint jurisdiction. The committee should carefully consider punitive actions and evaluate the complete set of circumstances that led to non-compliance before taking such action.
3. Please identify the provisions of the Articles of Agreement that authorize the DRC to issue “disgorgement,” “restitution,” and a “punitive fine.” The DRC has broad discretion in resolving disputes and may take actions that include remedies/sanctions intended to compensate the aggrieved jurisdictions(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-complaint jurisdiction.

The committee should carefully consider punitive actions and evaluate the complete set of circumstances that led to non-compliance before taking such action.

4. Please identify the definition of “disgorgement” relied upon. Please identify the provisions of the Articles of Agreement that define the term “disgorgement.” If none, please identify the provisions of the Articles of Agreement relied upon to determine that the DRC had the authority to order “disgorgement.” This information is in your Final Order. The principle of Disgorgement is a legal remedy that requires a party that has profited from wrongful acts to give up those profits. The primary purpose of disgorgement is to prevent unjust enrichment and to make improper conduct profitable. Disgorgement is not intended to punish the wrongdoer but to remove any financial incentive or gain obtained through wrongful actions and provide specific and general deterrence so that neither the wrongdoer nor others will conclude that future violations may be in their financial best interests.
5. Please identify the definition of “restitution” relied upon. Please identify the provisions of the Articles of Agreement that define the term “restitution.” If none, please identify the provisions of the Articles of Agreement relied upon to determine that the DRC had the authority to order “restitution.” This is in Connecticut’s Final Order. The DRC further concludes that restitution is a legal remedy designed to restore an injured party to the position they would be in if a wrongful act had not occurred. It aims to prevent unjust enrichment by ensuring that the party who caused the harm compensates the injured party for their losses. The DRC concludes restitution should be applied in this matter and the Respondent 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.
6. Please identify the definition of “punitive fine” relied upon. Please identify the provisions of the Articles of Agreement that define the term “punitive fine.” If none, please identify the provisions of the Articles of Agreement relied upon to determine that the DRC had the authority to order “punitive fine.” The DRP section V. The DRC concludes Respondent’s non-compliance for 10 years and shortfall of 159 total audits constitutes repeated and prolonged non-compliance. Accordingly, after evaluating the complete set of circumstances that led to non-compliance including both the aggravating and mitigating circumstances, the Committee finds punitive actions against the Respondent is warranted.
7. Please identify how the amount of “disgorgement” was calculated in the Final Order and where said calculation appears in the Articles of Agreement. Total cost savings (Cost/Audit X Audit Deficit) See DRP section V.
8. Please identify how the “restitution” was calculated in the Final Order and where said calculation appears in the Articles of Agreement. 159 audits were not completed to reach the 3% requirement. See DRP section V.
9. Please identify how the “punitive fine” was calculated in the Final Order and where said calculation appears in the Articles of Agreement. 159 missing audits X \$1000. See DRP section V
10. Please identify the “complete set of circumstances” that the DRC analyzed to determine that punitive measures were warranted. 10 years of repeated and prolonged non-compliance.
11. Please identify what, if any, consideration was given by the DRC to the extenuating circumstances of the COVID 19 pandemic in ordering disgorgement,” “restitution,” and a “punitive fine.” Membership voted to discard 2020 COVID by ballot. Therefore, 2020 was able to be removed.

The DRC made a procedural error in issuing its Final Order. Upon information and belief, the DRC failed to consider the applicable defenses to a breach of contract “impracticability/impossibility” and “frustration of purpose.” The Commissioner contends that no breach occurred as performance was excused by extraordinary events, and the DRC’s failure to consider said defenses renders its determination procedurally defective. In order for the Commissioner to address this argument, please respond to the following questions:

1. The DRC reached seven (7) conclusions of law in its Final Order. Said conclusions are silent as to the defenses raised by the Commissioner. What, if any, consideration did the DRC give to the fact that any noncompliance was beyond the Commissioner’s control and as a result of the effects of the COVID-19 and the extraordinary staffing issues that resulted there from? [The COVID year was excluded if the jurisdiction chose to do so. DRC followed the DRP to render findings related to 10 years of non-compliance with the Audit Manual.](#) Did the DRC analyze and apply the raised defenses of “impracticability/impossibility” and “frustration of purpose”? [Connecticut’s comments were taken into consideration.](#)
2. If the DRC did analyze and apply the raised defenses of “impracticability/impossibility” and “frustration of purpose,” please identify why said defenses are not applicable to mitigate the breach. [10 years of prolonged non-compliance with the Audit Manual.](#)

The Commissioner intends to argue that the DRC abused its discretion made a significant error of interpretation of the Articles of Agreement and a procedural error in ordering “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 Articles of Agreement to enforce this order.” Said order is clearly beyond the authority of the DRC and violates the Commissioner’s sovereign immunity. In order for the Commissioner to address this argument, please respond to the following questions:

1. What provision of the Articles of Agreement authorize the DRC to order those taxes held in trust for the State of Connecticut not be paid over to the Commissioner? [The DRP gives the DRC broad discretion in resolving disputes.](#)
2. Does the DRC concede that neither Maryland, Massachusetts, nor Connecticut would have a basis for knowing based on the Dispute Resolution Process that penalties of the type the DRC imposed (disgorgement and fines) could be expected for non-compliance with audit requirements? [Membership voted and approved the DRP. The DRP states, "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."](#)