



International Fuel Tax Association, Inc.
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January 6, 2025

Sent via e-mail : Fox, Michael <MFOX@marylandtaxes.gov>

Michael W Fox
Assistant Attorney General
Office of the Attorney General
Comptroller of Maryland
Baltimore, MD 21202

Dear Mr. Fox:

The IFTA, Inc. Board of Trustees (Board) is in receipt of your letter dated December 20, 2024, which included a number of questions concerning the scheduled Appeals Hearing on February 3rd, 2025.

The following represents the Board's responses to your specific questions.

First, with respect to the specific format of the Appeals Hearing, as indicated in prior correspondence, the Appeals Hearing will be conducted on February 3, 2025, in Palm Springs, CA. The Board will allow each respondent jurisdiction up to one hour to provide any additional testimony or other evidentiary information they wish to present to supplement their written appeal which the Board has already reviewed. The exact order of appearance by respondent jurisdictions has not been determined yet but you will be notified by email, prior to the scheduled hearing, of the approximate time your jurisdiction is scheduled to appear. You may use your allotted time to provide any additional information you deem appropriate for the Board to consider before they make their determination, and you may, during this time, ask the Board questions. The Board may in turn also have questions for you. The Dispute Resolution Committee (DRC) Chair will be attending virtually. This Appeals Hearing is not intended to allow for direct examination of the DRC Chair since any questions of the DRC Chair could have been addressed at the DRC Hearing. Because the DRC Chair will be responding on behalf of the entire committee, we respectfully ask that if you have any questions for the DRC Chair, that you please submit those questions to the Board by sending your written questions directly to the IFTA, Inc. Executive Director at least two weeks prior to the scheduled Appeals Hearing. This will allow the DRC Chair time to address the questions with the entire committee before the hearing. The Board will ask the DRC Chair to respond to those questions in writing and the response will be provided to the

Board and the inquiring jurisdiction at least three days prior to the hearing. If based on the DRC responses, your jurisdiction has any follow-up questions of the DRC Chair, you may use some of your one hour allocated time to ask the Board to address those follow-up questions with the DRC Chair after your presentation. The Board has planned an additional half-hour of time after each jurisdiction's presentation to allow the Board to ask questions to the DRC Chair if they deem necessary.

In general, it is worth noting that this Appeals Hearing is not designed to be a formal court proceeding nor is the entire DRC process designed to simulate a formal court proceeding. The Intermodal Surface Transportation Efficiency Act mandated that all of the 48 Contiguous United States be in compliance with the International Fuel Tax Agreement by 1996. The governing documents which represent the International Fuel Tax Agreement include the Articles of Agreement, the Procedural Manual, the Audit Manual, and the Bylaws of the Association. Section R1510 of the Articles of Agreement outlines the conditions for Membership and R1555 outlines the procedures related to compliance matters including the stipulation that disputes may be resolved in accordance with the Dispute Resolution Process. Both the Agreement and Dispute Resolution Process were voted on and approved by Membership and each Member agrees to abide by the procedures contained within the Agreement. Because this is not designed to be a formal court proceeding, the Board has greater flexibility with respect to how the Appeals Hearing is conducted and it does not necessarily follow a prescribed formal set of rules with respect to submission of evidence and other typical formal court procedures. In accordance with Section V of the Dispute Resolution Process, the Board has complete authority to affirm, reverse, remand, or modify the DRC's decision. The Board was not part of the original DRC decision and did not have any authority to intervene in the original DRC decision until an appeal was filed.

The Board has received and reviewed your written appeal including the arguments you presented on why the Board should accept a request to appeal the DRC's decision. Based on that written appeal and the alleged circumstances, the Board determined they have the authority to hear an appeal. The purpose of the Appeals Hearing will be to allow respondent jurisdictions to further supplement their arguments contained in the written appeal for consideration before the Board makes their determination.

With respect to your specific questions:

- 1) The Board has reviewed all the facts and evidence provided to the Dispute Resolution Committee (DRC) and the focus of this Appeals Hearing is to allow respondent jurisdictions to provide any supplemental information you would like the Board to consider before they make their determination.

The Board will hear and review any information that a respondent jurisdiction wishes to submit at the Appeals Hearing. However, it should be noted that the Findings of Fact created by the Program Compliance Review Committee with respect to whether your jurisdiction was found in non-compliance of completing the minimum required number of audits has been stipulated in the finding of facts and your jurisdiction did not object to or refute those findings. Therefore, the issue of whether your jurisdiction was non-compliant with the minimum audit requirement issue is not something the Board needs to address nor is the Board willing to

re-address with new facts. In accordance with Section V of the Dispute Resolution Process, the purpose of this Appeals Hearing is to focus on the sanctions imposed by the Dispute Resolution Committee (DRC) and whether the DRC made a procedural error, and/or whether the DRC abused its discretion in deciding the issue or taking action, and/or whether the DRC made a significant error in interpretation of the Agreement.

- 2) Yes, the Board will allow both testimony and appellate arguments at the Appeals Hearing. The respondent jurisdiction may present anything they like during their allotted one-hour time.
- 3) As noted above, the Board will allow the Comptroller to ask questions of the DRC Chair through the Board. However, if you have any questions for the DRC Chair, please send these to the IFTA, Inc. Executive Director at least two weeks prior to the Appeals Hearing.
- 4) Yes, if there are additional submissions your jurisdiction would like the Board to consider, please provide this directly to the IFTA, Inc. Executive Director, Mr. Carmen Martorana, at least two weeks prior to the scheduled Appeals Hearing so that he can make copies and provide that information to the Board prior to the Appeals Hearing.
- 5) The Appeals Hearing will have formal Minutes prepared and posted to our website soon after the conclusion of the Hearing. We also plan on recording the entire Appeals Hearing through Microsoft Teams (Teams), but we cannot guarantee that the recordings from Teams will work correctly or that we can upload the recording properly after the Hearing. We will not be hiring a stenographer, but your jurisdiction can provide a stenographer at your expense if you wish to do so.
- 6) The Board has no objection to your jurisdiction initiating your own recording of the Appeals Hearing or hiring your own stenographer to produce transcripts.
- 7) If the Comptroller's representatives appear remotely via Teams, they may present through Teams any information they would like the Board to consider including Power Point Presentations, oral arguments, testimony, additional evidence, or other exhibits. If there are documents your jurisdiction would like the Board to review during deliberations, please send those documents directly to Mr. Martorana at least two weeks prior to the scheduled hearing.
- 8) If your jurisdiction representatives appear remotely through Teams, your representative's audio and video will be turned on so that you can appear on video, ask and answer questions, and see and interact with the Board. The email you are referring to on December 18th, 2024, is for non-respondent jurisdiction representatives who wish to listen in on the Appeals Hearing. Their audio and video will be turned off so there will be no disruptions. Only respondent jurisdiction representatives, the Board, and the DRC Chair will be able to use the audio and video functions in Teams.
- 9) Yes, if your jurisdiction representatives appear in-person we will have a projector, screen, and Wi-Fi available to present any information you wish during the Appeals Hearing.

- 10) The only people appearing on "behalf of IFTA" will be the Board which consists of 9 Trustees. In addition, the DRC Chair will appear virtually and some of the IFTA, Inc. staff will be present to assist with conducting the Appeals Hearing but they do not have a vote in the final determination of the Board. It is important to note that the Board was not included in the DRC hearing process and had no authority to intervene in the DRC's decision until the appeals were filed. The decision of the DRC is not a decision on behalf of IFTA, Inc. or the Board. The DRC is a standing committee whose responsibilities include resolving disputes between jurisdictions and determining appropriate actions when a Program Compliance Review has determined a Final Findings of Non-Compliance that rise to the level that requires DRC intervention. The Board represents membership which consists of the 58 member jurisdictions of IFTA. Any decision of the Board is on behalf of all member jurisdictions.

With regard to your final two questions:

The Board fully intends to provide its determination in writing within the 60-day period outlined in Section V of the Dispute Resolution Process. In the event the sanctions imposed by the DRC are affirmed or modified and the Jurisdiction indicated they are still not in agreement and they intend to seek judicial relief outside of the Agreement, the Board would then seek legal counsel as to the constitutionality of a jurisdiction in non-compliance seeking judicial relief outside of the Agreement and whether or not any sanctions must be stayed until a judicial proceeding determines whether it has jurisdiction to hear arguments related to the Agreement.

We hope this has addressed all your questions and concerns. As previously requested, please let the Executive Director, Mr. Martorana, know of your decision to appear in-person or virtually on February 3, 2025. If you still have questions that need to be answered before making that decision, please contact Mr. Martorana directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney Richard", written over a horizontal line.

Rodney Richard (AR), President
IFTA, Inc. Board of Trustees