



International Fuel Tax Association, Inc.  
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January 6, 2025

Sent via e-mail: Connors, Evi S. (DOR) [connorse@dor.state.ma.us](mailto:connorse@dor.state.ma.us) and Fatale, Michael T. (DOR) <[fatale@dor.state.ma.us](mailto:fatale@dor.state.ma.us)>

Mr. Michael T. Fatale  
General Counsel  
Department of Revenue  
Massachusetts

Dear Mr. Fatale,

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

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

**Logistic Questions**

- 1) With respect to your question on whether the Board would consider some sort of mediation.

The Dispute Resolution Process does not allow for or include any type of process in which a referral to a third-party mediator would be used as a precursor to an Appeals Hearing.

Membership (the 58 Member jurisdictions) previously voted on and approved of the Dispute Resolution Process and this process must be followed by the Board. There is no membership approved process in which a third-party mediator can be used to broker a resolution.

- 2) Yes, the designated representatives from the respondent jurisdictions, if they elect to participate virtually via Teams, will have full functionality including the ability to speak directly to the Board and to provide additional testimony if desired within the prescribed time allowed by the Board (1 hour). However, if your jurisdiction anticipates providing additional supplemental documents, we ask that you please send these documents directly to the IFTA, Inc. Executive Director at least two weeks

prior to the hearing so that he can create copies for the Board and bring these documents to the Appeals Hearing. If you participate virtually, you will have the opportunity to display documents, Power Point presentations, or other evidentiary information through Teams. If you plan on participating in-person, you may bring any additional supplemental information with you, but again we would ask that you please provide the IFTA, Inc. Executive Director with any additional documents you would like the Board to review, at least two weeks prior to the Appeals Hearing.

- 3) The Appeals Hearing will include formal written Minutes after it concludes. We may also try to record the entire Hearing through the Teams application but cannot guarantee that this will work correctly or that it can be uploaded successfully following the Appeals Hearing. IFTA, Inc. does not plan on hiring a formal transcriptionist or stenographer, but you are free to hire your own transcriptionist or stenographer. IFTA, Inc. and the Board have no objection to you initiating your own recording of the Appeals Hearing.
- 4) Yes, during your allotted time, you may address the Board and ask questions. 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.

### **Substantive Questions**

- 1) 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) The Board has already found cause to hold an Appeals Hearing and review the findings issued by the DRC. The Board does not envision a scenario where they would not issue a formal Findings within the subscribed 60 day period. Therefore, there should be no concern on a respondent jurisdiction's part that the Board may not issue Findings within the required 60-day period. The expectation is that a formal written Findings will be drafted the day after the Appeals Hearing after the Board has had time to deliberate. The final written Findings will be sent to the respondent jurisdictions and all of Membership soon after the 1Q 2025 IFTA Board of Trustees meeting.

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 IFTA Board of Trustees 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.

We hope this has addressed all of 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", with a stylized flourish at the end.

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