



**INTERNATIONAL
FUEL TAX
ASSOCIATION, INC.**

Manages
The International Fuel Tax Agreement

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**IN THE MATTER OF THE IFTA PROGRAM COMPLIANCE REVIEW
COMMITTEE AND THE JURISDICTION OF NEW JERSEY
BEFORE THE IFTA DISPUTE RESOLUTION COMMITTEE**

AMENDED ORDER

BY A MAJORITY OF THE DISPUTE RESOLUTION COMMITTEE:

The IFTA Articles of Agreement provides that the IFTA Dispute Resolution Process may be used to resolve a compliance matter where the Program Compliance Review Process has been completed, and, a Final Determination Finding of Non-Compliance has been issued by the Program Compliance Review Committee for certain articles of the governing documents, and, the recommendation for an initiation of a dispute has been approved by the member jurisdictions (IFTA Articles of Agreement R1555.100.015). Per the IFTA Dispute Resolution Process, the IFTA Dispute Resolution Committee (DRC) has the authority to hear and issue a Finding and Order on a Referral for Enforcement of a Final Determination Finding of Non-Compliance (IFTA Dispute Resolution Process Section III). The Dispute Resolution Process further authorizes the DRC to amend its order if so warranted.

All references to the IFTA Articles of Agreement, the IFTA Procedures Manual, and the IFTA Audit Manual are references to said documents in effect at the time of the subject Referral and of this Amended Order.

Statement of the Case and Finding

The Jurisdiction of New Jersey (Respondent) was the subject of a Referral for Enforcement pursuant to Section III of the IFTA Dispute Resolution Process (DRP). The DRC issued its Findings on Referral and Order on October 22, 2012. Among the orders issued by the DRC was a mandate to issue a Resolution for Expulsion for failure to be in compliance with Sections A310 and A320 of the IFTA Audit Manual for the program compliance review period of 2009-2013. The DRP permits a jurisdiction held in continued non-compliance to petition the DRC for Relief from the Penalty (DRP Section III.B.24). New Jersey is not in compliance with Sections A310 and A320 for the program compliance review period of 2009-2013; therefore, the ordered penalty of the issuance of a resolution for expulsion would be implemented on March 10, 2014. New Jersey issued a Request for Relief (dated December 9, 2013) from the imposition of the issuance of an expulsion resolution. Said Request for Relief asks the DRC to stay the ordered penalty in favor of a defined compliance plan to bring New Jersey into compliance with Sections A310 and A320 by December 31, 2018. The DRC finds that

the Request for Relief has merit and accordingly the Findings on Referral and Order issued on October 22, 2012 are hereby amended and superseded by the orders issued herein.

General Comments

The penalty of the issuance of an expulsion resolution would take effect on March 10, 2014. The issuance of this penalty, while authorized by Article R1555.400 of the International Fuel Tax Agreement, would no doubt prove divisive to the IFTA membership, affect multiple stakeholders including the motor carrier industry, and run the risk of damaging the overall mission of the Agreement and perhaps the continued compliant administration of its articles and governing documents.

Examination of this case required a thorough analysis of a very complex issue. The DRC views this matter as containing two separate yet undeniably linked components. The first is the direct issue of non-compliance with the governing documents. There is no question that New Jersey is in non-compliance with both Section A310 and Section A320 for the review period of 2009 through 2013. This non-compliance bears consequences in the form of penalties imposed per Section IV of the Dispute Resolution Process. For example, those penalties might include the loss of voting rights, committee seats, the doubling or tripling of membership dues, and/or the prospect of an expulsion resolution. The second issue requires deeper examination. This issue, at its core, is to determine what New Jersey must do to become compliant with the governing documents. Member jurisdictions rely on base jurisdictions to verify that the correct and timely payment of fuel use tax by licensees has occurred. The provisions of Sections A310 and A320 ensure that taxing jurisdictions are protected from financial harm and that licensees receive fair treatment through audit stratification requirements. When a base jurisdiction does not comply with A310 and A320 her fellow members have been aggrieved by that non-performance and there develops a deterioration of IFTA's overall mission to "*act cooperatively and provide mutual assistance in the administration and collection of motor fuel use taxes.*" There is also a direct correlation between the conducting of audits and a financial result from those examinations (e.g. full compliance, additionally owed tax, or a discovery of the overpayment of tax). This cannot be overlooked. In addition to compliance with the governing documents there is an expectation that taxing jurisdictions' revenues will be protected. It is completely reasonable for member jurisdictions to expect that audits will be conducted compliantly in their behalf and that their revenue stream is not only correct, but remains uninterrupted by the non-compliant acts of a base jurisdiction.

New Jersey has offered a compliance plan in its Request for Relief which would, if followed, bring New Jersey into full compliance by the end of calendar year 2018. In the years subsequent to the DRC's original Order, New Jersey vastly improved its level of compliance; in 2012 they completed audits at a rate of 2.32% and in 2013 they exceeded the 3% threshold (3.71%) and stratification requirements. Clearly, New Jersey has taken the steps necessary to permit future compliance with Sections A310 and A320. What remains is how to address the issue of non-compliance for the review period of 2009-

2013 and how the backlog of audits not conducted in that period should be made up to result in a return to full compliance by the jurisdiction.

In considering the relief request and in issuing an amended order, there are three unique yet related questions the DRC must address. The first is whether or not New Jersey is in compliance with Sections A310 and A320 for the review period of 2009-2013. By their own admission, verified by the PCRC and concurred with by the DRC, New Jersey is non-compliant with Sections A310 and A320 of the Agreement. The second question asks what consequence is borne upon New Jersey for their continued non-compliance. This Amended Order addresses that. The third, and perhaps most important question is to address what New Jersey must do to become compliant with IFTA and return to being a member in good standing. The Compliance Plan attached addresses what New Jersey must do to bring herself into compliance. The DRC has already imposed penalties under Section IV of the DRP. These penalties were and are imposed because New Jersey was and is non-compliant with Sections A310 and A320. These penalties address the issue of non-compliance but do not establish what New Jersey must do to become compliant again. The DRC opines that compliance by New Jersey may be reached in two separate yet related fashions. First, by making up the backlog of audits and remaining currently compliant in accordance with the Compliance Plan attached, a return to full compliance will be achieved. Second, in the event New Jersey is still out of compliance at the end of the Compliance Plan's term, the payment of relief defined in section eight of the Compliance Plan shall constitute a return to full compliance and provide relief to the affected jurisdictions who have been aggrieved by the non-compliance.

After careful consideration of the evidence presented by the Jurisdiction of New Jersey in its Request for Relief, the IFTA Dispute Resolution Committee presents its Amended Order as follows:

1. The penalty of the issuance of a Resolution for Expulsion which would be imposed on March 10, 2014 pursuant to the IFTA Dispute Resolution Committee's Order dated October 22, 2012 and in accordance with Article R1555.400 of the International Fuel Tax Agreement is hereby abated and removed from the Order.
2. The Respondent (New Jersey) is ordered to participate in and comply with a defined compliance plan as enumerated in *Attachment A* herein. Successful completion of the compliance plan shall return New Jersey to a membership status in good standing and will result in its membership dues being returned to the level assessed all member jurisdictions in good standing and shall result in the restoration of New Jersey's voting power and all committee and Board seats held (if applicable).
3. Annual membership dues assessed New Jersey shall remain at triple the amount assessed jurisdictions in good standing until New Jersey has successfully met the requirements of the compliance plan herein.

4. The Jurisdiction of New Jersey shall be subject to a Program Compliance Review for the period of January 1, 2009 through December 31, 2013 in accordance with Article R1510.200 and Section P1210 of the Agreement. Said review shall take place on site in Trenton, New Jersey not later than February 28, 2014. Said review shall include, as observers, the Chairs of the IFTA Program Compliance Review Committee and the IFTA Dispute Resolution Committee.
5. The Findings, Order, and Compliance Plan herein may be appealed by New Jersey in accordance with Section V of the IFTA Dispute Resolution Process.

ISSUED THIS 14th DAY OF January, 2014

FOR THE MAJORITY:



Mark Byrne
Chair

Gary Frohlick
Vice-Chair

Rodney Richard

Marc Levasseur

Bernie Meagher

Gregg DalPonte

Rick Taylor

Scott Bryer

Doug Miller

Dawn Lietz

ATTACHMENT A
DEFINED COMPLIANCE PLAN

As part of the IFTA Dispute Resolution Committee's Amended Order, the Jurisdiction of New Jersey shall participate in and complete the terms of the compliance plan as defined below.

1. The compliance plan shall commence on January 1, 2014 and shall be completed not later than December 31, 2018.
2. The terms defined in this compliance plan shall include compliance with the provisions of both Section A310 and Section A320 of the IFTA Audit Manual.
3. For the calendar year 2014, New Jersey is ordered to complete audits at a rate of 3% of its base accounts plus 20% of the backlog of audits (not conducted) from the 2009-2013 program compliance review period. Failure to meet the stated goal in 2014 shall result in any shortfall of the goal being rolled over into 2015 thereby increasing the goal for 2015. If New Jersey exceeds the 2014 stated goal for audit count, strata, or both, such excess shall be rolled over into 2015 thereby reducing the goal for 2015.
4. For the calendar year 2015, New Jersey is ordered to complete audits at a rate of 3% of its base accounts plus 20% of the backlog of audits (not conducted) from the 2009-2013 program compliance review period plus any shortfall from 2014. Failure to meet the stated goal in 2015 shall result in any shortfall of the goal being rolled over into 2016 thereby increasing the goal for 2016. If New Jersey exceeds the 2015 stated goal for audit count, strata, or both, such excess shall be rolled over into 2016 thereby reducing the goal for 2016.
5. For the calendar year 2016, New Jersey is ordered to complete audits at a rate of 3% of its base accounts plus 20% of the backlog of audits (not conducted) from the 2009-2013 program compliance review period plus any shortfall from 2014 and/or 2015. Failure to meet the stated goal in 2016 shall result in any shortfall of the goal being rolled over into 2017 thereby increasing the goal for 2017. If New Jersey exceeds the 2016 stated goal for audit count, strata, or both, such excess shall be rolled over into 2017 thereby reducing the goal for 2017.
6. For the calendar year 2017, New Jersey is ordered to complete audits at a rate of 3% of its base accounts plus 20% of the backlog of audits (not conducted) from the 2009-2013 program compliance review period plus any shortfall from 2014, 2015, and/or 2016. Failure to meet the stated goal in 2017 shall result in any shortfall of the goal being rolled over into 2018 thereby increasing the goal for 2018. If New Jersey exceeds the 2017 stated goal for audit count, strata, or both, such excess shall be rolled over into 2018 thereby reducing the goal for 2018.

7. For the calendar year 2018, New Jersey is ordered to complete audits at a rate of 3% of its base accounts plus 20% of the backlog of audits (not conducted) from the 2009-2013 program compliance review period plus any shortfall from 2014, 2015, 2016 and/or 2017.
8. If the Jurisdiction of New Jersey remains in non-compliance with this plan after December 31, 2018, New Jersey shall pay an amount (relief) due and payable to IFTA, Inc. to be distributed to the member jurisdictions based on the average amount per audit collected by all IFTA member jurisdictions and transmitted through the IFTA Clearinghouse multiplied by the number of audits New Jersey is still in arrears for the period of 2009 through 2018. The average amount per audit and the number of audits New Jersey is still in arrears shall be based on the period of 2009 through 2018 and shall be calculated by the Program Compliance Review Committee and reported to IFTA, Inc. not later than February 15, 2019. Payment of this relief (per subsection thirteen below, if applicable) returns New Jersey to full compliance with Sections A310 and A320.
9. The IFTA Program Compliance Review Committee (PCRC) shall determine the compliance goals for each year of this compliance plan. The stated goal or amended goal shall include statistics to result in compliance with Sections A310 and A320 of the IFTA Audit Manual. The goals shall be based on the information for the account base reported in the IFTA Annual Report which is due on March 1 of a given year plus any shortfall resulting from non-compliance in any given year(s) of this plan or less any overage from exceeding compliance in any given year(s) of this plan. The PCRC shall calculate the annual goals (stated or amended) and shall report the goal to the Jurisdiction of New Jersey, the IFTA Dispute Resolution Committee, and IFTA, Inc. on or before March 15 of each year of this compliance plan.
10. The Jurisdiction of New Jersey shall submit a report of its audits completed for each calendar quarter of this compliance plan. Such report shall include the number of audits completed and the strata classification (e.g. high distance, low distance) for such audits. The report shall be submitted to the Executive Director of IFTA, Inc. on or before the fifteenth (15th) day of the month following the close of the quarter for which the report is due. The Executive Director of IFTA, Inc. shall submit such report to the IFTA Program Compliance Review Committee.
11. The IFTA Program Compliance Review Committee shall examine the four quarterly reports submitted in each year of this compliance plan to determine whether the terms of the plan have been met. The PCRC shall report the results of their review to the Jurisdiction of New Jersey and the Executive Director of IFTA, Inc. not later than the 25th of January of each year of this plan (including 2019 for the results of 2018).
12. The IFTA Program Compliance Review Committee (PCRC) shall perform a review of the audits completed during the preceding calendar year for the purpose

of determining compliance with Article R209 (Definitions; Audit means). Failure to meet the definition under Article R209 results in a deduction to the statistics presented to measure compliance with Section A310, Section A320, or both. The scope of said review shall be within the purview of the PCRC and the review shall take place at a time and by any means convenient to the PCRC.

13. In the event this compliance plan is not met resulting in relief being assessed in favor of the aggrieved jurisdictions per subsection eight above, IFTA, Inc. shall bill New Jersey for such relief on or before February 25, 2019. New Jersey shall pay such relief within thirty (30) days of being billed by IFTA, Inc. Relief collected by IFTA, Inc. on behalf of the aggrieved jurisdictions per subsection eight above. Distribution of such relief shall be based on the proportion of taxes collected by New Jersey on behalf of each jurisdiction compared with all taxes collected by New Jersey and distributed through the Clearinghouse for the period of 2009 through 2018. The determination of the apportionment due each member jurisdiction shall be made by the IFTA Program Compliance Review Committee and submitted to IFTA, Inc. not later than February 15, 2019. The relief collected from New Jersey shall be distributed to the member jurisdictions by any means convenient to IFTA, Inc. within thirty (30) days of the receipt of such relief from New Jersey.
14. Failure to meet the stated goal or amended goal in any year of this Compliance Plan may result in the issuance of a Resolution for Expulsion by the IFTA, Inc. Board of Trustees in accordance with Article R1555.400 of the International Fuel Tax Agreement.
15. In the event New Jersey fails to meet the terms of this compliance plan and also fails to pay the relief defined in sections eight and thirteen above, the IFTA, Inc. Board of Trustees shall issue a resolution for expulsion in accordance with Article R1555.400 of the Agreement on the tenth day (10) after the due date of the payment required by sections eight and thirteen of this plan.

1. The Jurisdiction of New Jersey shall be subject to a Program Compliance Review for the period of January 1, 2009 through December 31, 2013 in accordance with Article R1510.200 and Section P1210 of the Agreement. Said review shall take place on site in Trenton, New Jersey not later than February 28, 2014. Said review shall include, as observers, the Chairs of the IFTA Program Compliance Review Committee and the IFTA Dispute Resolution Committee.
2. The Findings, Order, and Compliance Plan herein may be appealed by New Jersey in accordance with Section V of the IFTA Dispute Resolution Process.

ISSUED THIS 14th DAY OF January, 2014

FOR THE MAJORITY:



Mark Byrne
Chair

Gary Frohlick
Vice-Chair

Rodney Richard

Marc Levasseur

Bernie Meagher

Gregg DalPonte

Rick Taylor

Scott Bryer

Doug Miller


Dawn Lietz

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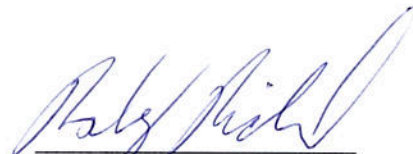
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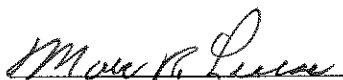
ISSUED THIS 13 DAY OF 5, 2014

FOR THE MAJORITY:

Mark Byrne
Chair

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Vice-Chair

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ISSUED THIS __ DAY OF ____, 2014

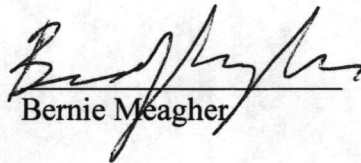
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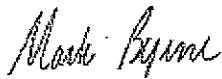
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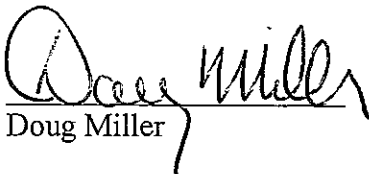
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ISSUED THIS 15 DAY OF Jan, 2014

FOR THE MAJORITY:

Mark Byrne
Chair

Gary Frohlick
Vice-Chair

Rodney Richard

Marc Levasseur

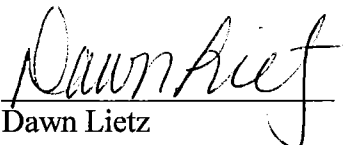
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