

**New Jersey
Motor Vehicle Commission**

P.O. Box 162
Trenton, New Jersey 08666-0162

STATE OF NEW JERSEY
RECEIVED

NOV 30 2012

BY IFTA, INC.

**FAX
Communication**

To: Lonette L. Turner, CEO/CFO of IFTA, Inc.
FAX # (480) 839-8821

Location: IFTA, CHANDLER, AZ

From: Regulatory & Legislative Affairs Office

Phone Number: 609-777-1407

Number of Pages (including this page)

9

Comments:

=====

TRANSMITTAL

The information contained in this facsimile transmission is privileged and confidential information from the New Jersey Motor Vehicle Commission and is intended for the sole use of the persons or entities named on this transmittal cover sheet. If you are not an intended recipient of this transmission, the dissemination, distribution, copying, or use of the information it contains is strictly prohibited. If you have received this transmission in error, please ring the sender immediately to arrange for the return of this information.

*On the Part of the Employer
Employer's Name and Address
New Jersey Department of Transportation*



John G. Donnelly, Esq.
Office of Regulatory and Legislative Affairs
New Jersey Motor Vehicle Commission
225 E. State Street
P.O. Box 162
Trenton, New Jersey 08666-0162
(609) 777-1407
Representative of Respondent

IN THE MATTER OF THE)	MOTION TO THE BOARD OF
"FINDINGS ON REFERRAL")	TRUSTEES OF IFTA, INC.
DATED NOVEMBER 15, 2012)	
BY A MAJORITY OF THE)	
DISPUTE RESOLUTION COMMITTEE)	<u>APPEAL OF FINDINGS</u>

JAMES S. WALKER, of full age, being duly sworn upon his oath, says:

I am the International Fuel Tax Association ("IFTA"), Inc.'s Commissioner for the State of New Jersey, and the Director of Business and Government Operations for the New Jersey Motor Vehicle Commission ("MVC") at 225 E. State Street, Trenton, New Jersey 08666 and (609) 633-2194. MVC is the Respondent in this matter and hereby submits this "Appeal of Findings." Respondent strongly emphasizes that the shortfall of audits occurring during the calendar years prior to 2010 were prior to the arrival of the current State administration and the MVC Chairman and Chief Administrator Raymond P. Martinez, New Jersey, and the Chief Administrator, takes this matter seriously and the MVC is committed to meeting its obligations and requirements as outlined in the IFTA, Inc. agreement.

Reference is made to the November 15, 2012 "Findings on Referral" of IFTA's Dispute Resolution Committee ("DRC"), which was served upon the Respondent on November 15, 2012.

The following is Respondent's "Appeal of Findings:"

1. The State of New Jersey deeply appreciates the sentiment expressed by DRC Chairman Richard P. LaRose on behalf of himself and the DRC that New Jersey recover from the effects of Hurricane Sandy. As you know, beginning on October 28, 2012, and continuing through October 30, 2012, Hurricane Sandy struck the State of New Jersey, destroying entire communities across New Jersey and leaving much of the State badly damaged and inaccessible. This unprecedented storm caused substantial damage throughout the State to homes and commercial and industrial structures, along with interrupted economic output. New Jersey's current estimate as of November 30 of \$36.9 billion in damages may yet exceed the State of New York's \$42 billion in losses, because New Jersey as the site of actual landfall suffered similar if not more severe destruction in urban and suburban areas along with a vast array of transportation and other infrastructure. The ultimate total dollar value of damage will not be known for many months as reconstruction will continue long into the foreseeable future.

2. As the Board of Trustees of IFTA, Inc. ("Board"), in reviewing this Appeal of Findings, is rightly guided by IFTA Dispute Resolution Process ("DRP") Section V.4 to review the original record, the Respondent respectfully requests that Hurricane Sandy as having occurred prior to the Findings on Referral, be considered a part of this record in weighing the Board's decision as to its course of action;

3. Respondent understands DRC General Comment at page 3 of the Findings on Referral that the Respondent may not be in compliance "...in the very near future" particularly now

because of the devastation of Hurricane Sandy and despite Respondent's overriding concern and efforts to not face expulsion.

4. Respondent has realigned resources in order to dedicate audit staff in the MVC Office of Motor Carrier (IFTA/IRP) to solely conduct IFTA audits, yet as a result of Hurricane Sandy the Respondent did not have access to its offices for three days, lost many additional fully productive days as staff dealt with their individual suffering and challenges in response to Hurricane Sandy, did not have full communications capability for over a week in terms of underperforming telephones and computers and mail service including our "Mail In" effort noted in paragraph 6 of the "Amended Protest of Referral" submitted September 10, 2012, and did not have access to the records of some companies to be audited due to the destruction of company files and due to companies' offices being closed in areas without utilities, among a myriad of other operational complications.

5. The Order in Issue #1 of the Findings on Referral removes Respondent's Voting Power, Board and Standing Committee seats, and doubles the fiscal year 2012-13 dues, all of which Respondent immediately complies with, and those penalties are *not* a matter per DRP V.3 that it herein appeals to the Board.

6. The Order in Issue #2 of the Findings on Referral mandates Respondent comply with Sections A310 and A320 of the IFTA Audit Manual for calendar year 2012 by December 31, 2012, and similar for 2013, or else be billed for triple dues, failure of which to pay may lead to expulsion. If per DRP V.3 there is an error of fact resulting from Hurricane Sandy, it is that the Respondent's 294 required IFTA Audits for Calendar Year 2012 (CY12) can be met, as there are 239 audits that it is believed will be completed as of December 31, 2012 and 55 that will not be

completed by that date. Respondent implores the Board to accept Respondent's plight that but for Hurricane Sandy it would have met CY12 requirements; in fact, the hiring accomplished pursuant to the September 10, 2012 submittal to DRC has resulted in an increase from 37 completed audits in the 2nd quarter 2012 to 65 completed audits in the 3rd quarter 2012, a 76% improvement between those quarters that demonstrates the progress toward attaining the 3% IFTA Audit Manual Section A310 requirements on an annualized basis. The Respondent pleads for relief to complete CY12 audits in 2013, and relief from the assessment of triple dues. Significant staffing additions being made beyond those presented in Respondent's August 10, 2012 and September 10, 2012 submittals to the DRC will result in meeting CY12 and CY13 audit requirements by December 31, 2013.

7. The Order in Issue #3 of the Findings on Referral mandates Respondent comply with Sections A310 and A320 of the IFTA Audit Manual for CY09 through CY13 by December 31, 2013, failure of which may lead to expulsion. Respondent understands DRC General Comment at page 3 of the Findings on Referral that the Respondent's request to address all previous shortfalls by 2018 is "...rather lengthy." If per DRP V.3 there is an error of fact, as a consequence of Hurricane Sandy, it is that the Respondent's shortfalls from CY09 through CY11 can be met by December 31, 2013; Respondent currently is doubling to 16 the number of auditors, yet those shortfalls cannot be completed by December 31, 2013 in addition to CY12 and CY13 audits that Respondent commits to complete by December 31, 2013 as it pleads in Paragraph 6, *supra*. The Respondent would not be able to complete approximately 900 audits during the next 13 months while completing the process of increasing the staff. The Respondent pleads for relief to complete CY09 through CY11 audits by December 31, 2015, along with its

CY14 required audits by December 31, 2014, and its CY15 required audits by December 31, 2015. The Respondent in its September 10, 2012 submittal to the DRC acknowledged IFTA Audit Manual Section A310's annual requirement of 3%, and committed to 5%. The doubling of auditors to 16 now as committed here is a significant staffing addition beyond those presented in Respondent's August 10, 2012 and September 10, 2012 submittals to the DRC and will result in meeting CY09 through CY11 audits by December 31, 2015, along with its CY14 required audits by December 31, 2014, and its CY15 required audits by December 31, 2015. Respondent wishes to reemphasize the overwhelming majority of shortfalls leading to our not meeting the audit requirements occurred not under the supervision or leadership of our current administration and without the current administration's knowledge, and is requesting realistic time to become compliant.

8. The Additional Order in Issue #3 of the Findings on Referral subjects Respondent to a Program Compliance Review in early 2014, with which Respondent will fully comply, and that requirement is *not* a matter per DRP V.3 that it herein appeals to the Board.

9. The Order in Issue #4 of the Findings on Referral requires Respondent to submit quarterly reports of all audits completed in CY12 and CY13, or else be billed for triple dues upon the first failure to submit a quarterly report, and the possibility of expulsion upon a subsequent failure to submit a quarterly report. Respondent commits to fully comply with this requirement, and it notes that this requirement is *not* a matter per DRP V.3 that it herein appeals to the Board.


10. IFTA Audit Manual Section A320.100's requirement is that 25% of the annual audit requirement shall be audits of High Distance ("HD") accounts, and IFTA Audit Manual Section A320.100's requirement is that 15% of the annual audit requirement shall be audits of Low

Distance ("LD") accounts. The July 2, 2012 "Final Determination Finding of Non-Compliance" incorrectly states on page 4 that HD and LD for 2009 were zero (0) in each category, while it was actually 41 HD audits and 26 LD audits. Respondent pleads for credit for those audits. Respondent noted in Paragraph 17 of its September 10, 2012 submittal to DRC that IFTA's Debora Meise emailed MVC's Brian Walsh on August 15, 2012 that "since a Referral and a Protest of Referral is in place, I would recommend to New Jersey that you wait for the process to move forward and provide the correct audit numbers working through the DRC." Respondent has followed that advice and is now submitting this factual information and pleads for appropriate counting of those audits.

WHEREFORE, the Respondent respectfully requests the following relief of the Board of Trustees of IFTA, Inc.:

1. Vote to accept this Appeal, pursuant to Dispute Resolution Process at Section V.2.
2. Consideration of Respondent's unequivocal, renewed commitment to its IFTA audit obligations as presented in its August 10, 2012 and September 10, 2012 submittals to the DRC, and as presented in this November 30, 2012 motion to the Board;
3. Allow MVC to complete CY12 audits in 2013 along with all CY13 required audits, and relief from the assessment of triple dues (as pleaded in Paragraph 6, *supra*);
4. Allows MVC to complete CY09 through CY11 audits by December 31, 2015, along with its CY14 required audits by December 31, 2014, and its CY15 required audits by December 31, 2015 (as pleaded in Paragraph 7, *supra*);

5. Apply credit for 41 HD audits and 26 LD audits in CY09 (as pleaded in Paragraph 10, *supra*);
6. Such other relief that the Board of Trustees of IFTA, Inc. may deem appropriate and just.



JAMES S. WALKER

Sworn and subscribed before me,
an Attorney-at-Law of the
State of New Jersey,
this day of November, 2012

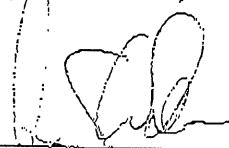


John G. Donnelly, Esq.

CERTIFICATE OF SERVICE

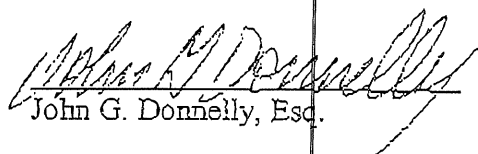
1. That pursuant to the International Fuel Tax Agreement's Dispute Resolution Process at Section V.1, the New Jersey Motor Vehicle Commission submits this motion to the Board of Trustees of IFTA, Inc.

2. That in order to meet the obligation noted in paragraph 1 above, the Respondent has submitted this motion to Lonette L. Turner, CEO/CFO of IFTA, Inc. via IFTA's facsimile machine at (480) 839-8821 on Friday, November 30, 2012 and, in addition, via the United States Postal Service to 912 W. Chandler Blvd., #B-7, Chandler, AZ 85225 with a postmark of Friday, November 30, 2012 for first class delivery anticipated on Monday, December 3, 2012, and overnight via the United Parcel Service to 912 W. Chandler Blvd., #B-7, Chandler, AZ 85225 on Friday, November 30, 2012 for delivery on Saturday, December 1, 2012.



JAMES S. WALKER
IFTA Commissioner for the State of New Jersey
and
Director, Business & Government Operations,
New Jersey Motor Vehicle Commission

Sworn and subscribed before me,
an Attorney-at-Law of the
State of New Jersey,
this day of November, 2012



John G. Donnelly, Esq.