



**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**

FINDINGS ON REFERRAL

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).

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 Order.

Statement of the Case and Finding

The Jurisdiction of New Jersey (Respondent) was the subject of a Program Compliance Review for the period of January 1, 2005 through December 31, 2008. New Jersey was cited in that review for failing to comply with Sections A310 and A320 of the IFTA Audit Manual. The average (of completed audits) over the review period was 1.91%. IFTA requires an average of 3% for the subject review period. Additionally, the so-called audit stratification requirements (A320) were not met. New Jersey was placed on a "Follow-Up Plan" which failed to achieve compliance. Subsequent to the follow-up efforts, New Jersey was subjected to a "Reassessment Plan"; that plan also failed to achieve compliance. The IFTA Program Compliance Review Committee issued a Final Determination Finding of Non-Compliance (Finding) to the Jurisdiction of New Jersey. The Finding was presented to the IFTA membership to determine whether the issue should be referred to the Dispute Resolution Committee. The IFTA membership voted to refer the issue. As to the issue of non-compliance with Sections A310 and A320 of the International Fuel Tax Agreement by the Respondent, the IFTA Dispute Resolution Committee affirms and adopts the Final Determination Finding of Non-Compliance as

issued by the IFTA Program Compliance Review Committee. Therefore, the Respondent is found to be non-compliant with A310 and A320.

General Comments

The Program Compliance Enforcement Process section of the IFTA Dispute Resolution Process is used when a Final Determination Finding of Non-Compliance (for non-compliance with certain articles of the governing documents) is presented to the membership for possible referral to the Dispute Resolution Committee. It is important to recognize that this part of the process is implemented only after a lengthy pattern of non-compliance with certain critical articles of the governing documents has occurred. In this case, the Referral for Enforcement is based on an issue of non-compliance with Sections A310 (Number of Audits) and A320 (Selection of Audits). The Program Compliance Review Process provides for multiple opportunities for a jurisdiction to bring itself into compliance with IFTA. Initially, a jurisdiction has complete ownership of a "compliance plan". Simply put, a jurisdiction knows how many audits it must perform and what stratification requirements exist on an annual basis. A basic tenet of membership is to comply with the governing documents. Failure to do so will result in a citation during a program compliance review. From there, the Program Compliance Review Committee (PCRC) may require a Follow-Up plan to be implemented. If the subject jurisdiction complies with the follow-up plan, the issue is considered resolved. If the follow-up plan fails, the PCRC may recommend that a Reassessment Plan be established. If a Reassessment is issued, the subject jurisdiction has yet another opportunity to become compliant with the subject article(s). If the subject jurisdiction complies with the Reassessment Plan, the issue is considered resolved. Failure to become compliant while under Reassessment may result in the issuance of a Final Determination Finding of Non-Compliance (Finding). A Finding issued for certain articles of the governing documents per Article R1555.100.015) results in a referral to the IFTA membership for consideration to take the subject jurisdiction to dispute. Consideration by the membership takes the shape of a vote by the member jurisdictions and must result in an affirmative vote of at least two-thirds of the members casting a vote. Thus, the issuance of a Referral for Enforcement (Referral) only occurs after numerous attempts at bringing a jurisdiction into compliance have taken place and the membership at large has determined that the issue is worthy of examination and resolution by the Dispute Resolution Committee (DRC) pursuant to the Dispute Resolution Process (DRP). The timeline to get to the point of a Referral is rather lengthy and the steps involved in the process ensure that a subject jurisdiction is afforded every opportunity to become compliant with IFTA.

Member jurisdictions have agreed to abide by the governing documents. The Membership Charter of each member jurisdiction includes verbiage related to complying with the auditing requirements of IFTA and an assurance that sufficient staff and resources would be dedicated to the program to ensure compliance. Every jurisdiction agreed in writing to these (among other) conditions; there can be no mistake as to their intent or interpretation. Throughout this process, the Respondent has attributed its failure to comply to a variety of issues; most notably, its budget and the lack of resources available to comply with the cited sections of the Agreement. While the DRC can understand the restrictions a limited budget can create, all member jurisdictions are held

accountable for complying with the Articles of Agreement and all sections of the governing documents. The Respondent is no less responsible for complying with IFTA than any other member jurisdiction. Thus, the Respondent must be held accountable for its actions of non-compliance.

The record is clear as to the Respondent's pattern of non-compliance. This pattern goes back nearly eight (8) years. Perhaps most troubling is the evidence which shows that while under both Follow-Up and Reassessment the percentage of completed audits on an annual basis *decreased* from the numbers which prompted the citing in the first place (2005-2.22%, 2006-2.02%, 2007-1.88%, 2008-1.55%, 2009-1.70%, 2010-1.27%, 2011-.95%). Despite repeated opportunities to voluntarily comply, it was not until this became a matter for the DRC to address that the Respondent pursued any steps to become compliant with IFTA. Those steps have not yet demonstrated that the Respondent is either in compliance today or will be in the very near future.

The Respondent has asked for a rather lengthy path to compliance (by calendar year 2018). Respectfully, this is not an appropriate request. Member jurisdictions are held accountable for the auditing requirements based on the subject program compliance review period. The DRC cannot, in good faith, grant the Respondent an extension of time that no other jurisdiction has been afforded. The Respondent has also identified various intended procedures designed to effect compliance. The DRC does not believe it is within its purview to determine the propriety of utilizing various procedures; rather, the DRC has been charged with addressing the issue(s) of non-compliance and prescribing an order to result in compliance. Lastly, the Respondent specifically requested certain measures of relief. The DRC examined each request and has determined that the requested measures of relief shall be denied.

A Referral for Enforcement is vastly different than other types of issues brought before the DRC. The issues of non-compliance which would result in a Referral are those which are viewed as critical to the continued success of IFTA. The IFTA membership has identified such articles as being worthy of bringing a fellow member before the DRC. The membership does not enter into this decision lightly; primarily because the members understand that such referrals could result in the ultimate penalty being imposed upon a fellow member (a Resolution for Expulsion). This is why the path to the dispute process (as it relates to a Referral for Enforcement) is necessarily lengthy. This is also why jurisdictions are given numerous opportunities to become compliant with the governing documents. The potential expulsion of an IFTA member jurisdiction would result in what can only be described as "grave consequences" not only for the subject jurisdiction, but all other affected member jurisdictions and perhaps most important of all, the motor carrier industry. Nevertheless, the DRC is charged with resolving the Referral by enforcing compliance upon the subject jurisdiction. Failure to bring the subject jurisdiction into compliance could result in penalties being imposed; up to and including the issuance of a Resolution for Expulsion. The DRC takes this obligation very seriously and must be resolute in its defense of the governing documents even though it may result in a very difficult decision. Ultimately, it will be up to the IFTA membership to decide the fate of a fellow member if a Resolution for Expulsion is issued.

After careful consideration of the evidence presented by the IFTA Program Compliance Review Committee, the Protest of Referral, and the Amended Protest of Referral presented by the Respondent, the IFTA Dispute Resolution Committee hereby addresses the following issues and presents its Order as follows:

ISSUE #1: Program Compliance Review Period 2005-2008

General Discussion

The Respondent failed to comply with Sections A310 and A320 for the years 2005 through 2008 as cited in the Program Compliance Review conducted on December 9 and 10, 2009. The Respondent also failed to comply with both the Follow-Up and Reassessment Plans issued by the IFTA Program Compliance Review Committee. There has been discussion by both the Respondent and the DRC as to whether the audit count and stratification shortfall for the review period of 2005-2008 should be made up. This shortfall approaches 530 audits. The DRC conducted multiple discussions as to what, if anything, should be done about the non-compliance in the period of 2005 through 2008. It is important to note and recognize that until the passage of IFTA Full Track Ballot 1-2009, there was no instrument available to the PCRC to enforce a Final Determination Finding of Non-Compliance for a failure to comply with Sections A310 and A320. Prior to the implementation of Ballot 1-2009 (January 2010), only a member jurisdiction could bring a fellow member to dispute. The DRC examined multiple possibilities to address the issue of non-compliance in the years 2005 through 2008. In several different venues, the Respondent has urged the DRC to be "reasonable" and not "unduly burdensome". While the shortfall in 2005-2008 is substantial, we believe an Order which would include a requirement to make up the shortfall (for 2005-2008) would be unduly burdensome. The DRC concludes that the use of resources to makeup what is an admittedly significant shortfall (for 2005-2008) would be counterproductive; the DRC has sought a reasonable approach to dealing with the shortfall while bringing the Respondent into compliance with IFTA for the current and future periods. Accordingly, the DRC issues the following order as it relates to the years 2005-2008:

Order

In accordance with Section III.B.21 of the IFTA Dispute Resolution Process, the IFTA Dispute Resolution Committee hereby immediately removes New Jersey's right to participate in any voting process of the membership (Voting Power), rescinds any and all Board and Standing Committee seats held by individuals representing New Jersey, and orders that the membership dues paid by New Jersey for the fiscal year 2012-2013 shall be doubled. IFTA, Inc. shall bill New Jersey for the additional dues within fifteen (15) days of this Order. The additional dues shall be paid within thirty (30) days of receipt of the bill from IFTA, Inc. Membership dues shall remain doubled for each succeeding fiscal year until either the Respondent is in compliance or the dues are further increased. Failure to timely pay the bill for the additional dues may result in the issuance of a Resolution for Expulsion by the IFTA, Inc. Board of Trustees. Said penalties shall be stayed until the appeal period is exhausted in accordance with Section IV.6 of the IFTA Dispute Resolution Process. Upon compliance with the affected Articles and Sections of the Agreement, voting privileges and committee seats shall be restored and the

membership dues for the next fiscal year will reduce to the amount assessed all jurisdictions in good standing.

ISSUE #2: Calendar Years 2012 and 2013

General Discussion

The Respondent has presented statistics for the calendar year 2012 for audits completed through August 2012. These statistics do not result in a high level of confidence that compliance for 2012 will be achieved. Nevertheless, the Respondent has proposed that it will comply with the auditing requirements for 2012 by the end of calendar year 2012. The DRC concurs that this will be a significant and necessary step toward compliance. The DRC also believes that compliance for calendar year 2013 is imperative. The path to compliance must be complete, but it should not be an extended process. The Respondent, despite its belief, has not taken any significant steps toward compliance. Thus, the DRC must enforce compliance upon the Respondent by setting a clear and definitive plan to either achieve the goal of compliance or risk the implementation of penalties pursuant to Section IV of the DRP. Accordingly, the DRC issues the following Order as it relates to calendar years 2012 and 2013:

Order

In accordance with Section III.B.22 of the IFTA Dispute Resolution Process, the IFTA Dispute Resolution committee hereby orders New Jersey to be in compliance with Sections A310 and A320 of the IFTA Audit Manual for calendar year 2012 by December 31, 2012 and for calendar year 2013 by December 31, 2013. Failure to be in compliance with Sections A310 and A320 for calendar year 2012 by December 31, 2012 shall result in New Jersey's membership dues for fiscal year 2012-2013 being tripled. Failure to be in compliance with Sections A310 and A320 for calendar year 2013 by December 31, 2013 shall result in New Jersey's membership dues for fiscal year 2013-2014 being tripled. In the event that New Jersey is not compliant per this Order and membership dues are tripled, IFTA, Inc. shall bill New Jersey for the additional dues within fifteen (15) days of the implementation of said penalty; said penalty shall be implemented not later than ten (10) days after a Finding of Non-Compliance with the stated goal(s) has been determined. The additional dues shall be paid within thirty (30) days of receipt of the bill from IFTA, Inc. If the membership dues for any fiscal year are tripled, they shall remain tripled until the Respondent is in compliance. Failure to timely pay the bill for the additional dues may result in the issuance of a Resolution for Expulsion by the IFTA, Inc. Board of Trustees. Said penalties shall be stayed until the appeal period is exhausted in accordance with Section IV.6 of the IFTA Dispute Resolution Process. Upon compliance with the affected Articles and Sections of the Agreement, the membership dues for the next fiscal year will reduce to the amount assessed all jurisdictions in good standing.

ISSUE #3: Program Compliance Review Period 2009-2013

General Discussion

The Respondent will be subject to a five-year program compliance review for the period of January 1, 2009 through December 31, 2013. Said review is scheduled to take place during 2014 per the program compliance review regional rotation calendar. As a member jurisdiction in the Northeast Region, New Jersey is one of sixteen jurisdictions to be reviewed during 2014. The DRC believes this review is critical and must show that New Jersey is in compliance with both Sections A310 and A320. The DRC cannot endorse allowing a jurisdiction to be non-compliant for two consecutive review periods. The DRC further disagrees with New Jersey's proposal that any "shortfall" for the first three years of the review period (2009 through 2011) should be made up by the end of calendar year 2018. Permitting this type of timeline would be unfair to all other member jurisdictions; specifically those in the Northeast Region. All other member jurisdictions are expected to be in compliance at the time of the review for the review period being examined; the DRC cannot, in good faith, grant New Jersey an extension that no other jurisdiction has been or will be afforded. Accordingly, the DRC issues the following Order as it relates to program compliance review period of 2009 through 2013:

Order

In accordance with Section III.B.22 of the IFTA Dispute Resolution Process, the IFTA Dispute Resolution Committee hereby orders New Jersey to be in compliance with Sections A310 and A320 of the IFTA Audit Manual for the program compliance review period of January 1, 2009 through December 31, 2013 by December 31, 2013. Failure to be in compliance with Sections A310 and A320 for the program compliance review period of January 1, 2009 through December 31, 2013 by December 31, 2013 shall result in the issuance of a Resolution for Expulsion by the IFTA, Inc. Board of Trustees to the IFTA membership for consideration in accordance with Article R1555.400 of the International Fuel Tax Agreement. If a Finding of Non-Compliance is issued, said penalty shall be implemented not later than ten (10) days after the Finding of Non-Compliance is issued. Said penalty shall be stayed until the appeal period is exhausted in accordance with Section IV.6 of the IFTA Dispute Resolution Process.

Additional Order

In accordance with Article R1510.200 and Section P1210 of the Agreement, the Respondent shall, in addition to the reporting requirements, immediate penalties levied, and compliance requirements stated in this Order, be subject to a Program Compliance Review for the period of January 1, 2009 through December 31, 2013. Said review shall take place on site in Trenton, New Jersey at date in early 2014 determined by the IFTA Program Compliance Administrator. Said review shall be conducted not earlier than January 2, 2014, but 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.

ISSUE #4: Reporting Requirements

General Discussion

The Respondent has known about this issue of non-compliance for a significant number of years. To effect a timely and complete return to compliance by the Respondent, the DRC must monitor such progress. The DRC will monitor the progress toward compliance for calendar years 2012 and 2013. Monitoring shall take the shape of periodic reporting to the DRC. Accordingly, the DRC issues the following Order as it relates to the reporting requirements for calendar years 2012 and 2013:

Order

In accordance with Section III.B.22 of the IFTA Dispute Resolution Process, the IFTA Dispute Resolution Committee hereby orders New Jersey to submit a report containing all audits completed by calendar quarter for calendar years 2012 and 2013. For calendar quarters in calendar year 2012 already completed, the report shall be due within fifteen (15) days of the issuance of this Order. The reports shall reconcile with the data to be submitted by the Respondent in the IFTA Annual Report for calendar years 2012 and 2013. The report is due within fifteen (15) days after the close of the calendar quarter for which the report is due. Each report shall contain at least the following: Licensee Name, IFTA ID Number, Stratification Category (High, Low, Medium), the Audit Result, the Audit Completion Date, and the IFTA Transmittal said audit has been posted to. The aforementioned reports shall be submitted to the Executive Director of IFTA, Inc. by the due date stated. The first such failure to meet any reporting requirement or deadline will result in an immediate tripling of the Respondent's membership dues for the current fiscal year. Any subsequent failure to meet any reporting requirement or deadline 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 in addition to the current fiscal year's membership dues being tripled. In the event that New Jersey is not compliant per this Order and membership dues are tripled, IFTA, Inc. shall bill New Jersey for the additional dues within fifteen (15) days of the implementation of said penalty; said penalty shall be implemented not later than ten (10) days after a Finding of Non-Compliance with the stated goal(s) has been determined. The additional dues shall be paid within thirty (30) days of receipt of the bill from IFTA, Inc. If the membership dues are tripled for any fiscal year for failure to comply with the Reporting Requirements of this Order, they shall remain tripled until the Respondent is in compliance. Failure to timely pay the bill for the additional dues may result in the issuance of a Resolution for Expulsion by the IFTA, Inc. Board of Trustees. In the event the Respondent fails to comply with the Reporting Requirements of this Order and the membership dues for a fiscal year have already been tripled for failure to comply with other requirements of this Order by stated dates certain, the membership dues shall remain tripled and a Resolution for Expulsion may be issued by the IFTA, Inc. Board of Trustees. Said penalties shall be stayed until the appeal period is exhausted in accordance with Section IV.6 of the IFTA Dispute Resolution Process. Upon compliance

with the Reporting Requirements of this Order, the membership dues for the next fiscal year will reduce to the amount assessed all jurisdictions in good standing.

ISSUED THIS 22nd DAY OF OCTOBER, 2012

FOR THE MAJORITY:

SEE ATTACHED SIGNATURE PAGES

Rick LaRose
Chair

Gary Frohlick
Vice-Chair

Rodney Richard

Mark Byrne

Marc Levasseur

Bernie Meagher

Gregg DalPonte

Rick Taylor

Scott Bryer

Doug Miller

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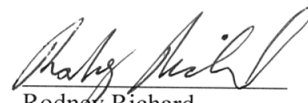
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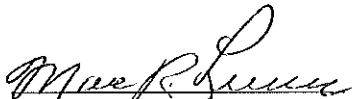
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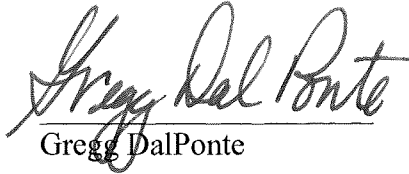
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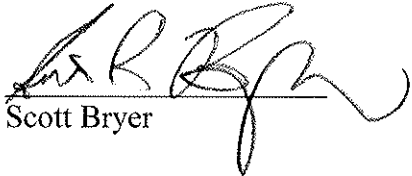
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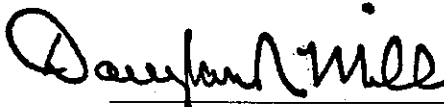
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