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Original Ballot Proposal

***R820 TAXABLE FUEL USE**

All motor fuel as defined in R239, which is acquired and which is normally subject to consumption tax, is taxable unless proof to the contrary is provided by the licensee. The licensee must report all fuel placed in the supply storage unit used to propel the qualified motor vehicle, as taxable on the tax return. The requirements contained in this section relative to the reporting and taxability of fuel placed into the supply storage unit would not apply to specific schedules included on the IFTA Tax Return for member jurisdictions that have elected to tax alternative fuels used in qualified motor vehicles based on distance.

Ballot language proposed for the ABM

***R820 TAXABLE FUEL USE**

All motor fuel as defined in R239, which is acquired and which is normally subject to consumption tax, is taxable unless proof to the contrary is provided by the licensee. The licensee must report all fuel placed in the supply storage unit used to propel the qualified motor vehicle, as taxable on the tax return. The requirements contained in this section relative to the reporting and taxability of fuel placed into the supply storage unit would not apply to the reporting of an identified alternative fuel type included on the IFTA tax return for member jurisdictions that have elected to tax specific alternative fuels used in qualified motor vehicles based on applying a consumption based tax rate to taxable distance.

Ballot language proposal for 2nd comment period

***R820 TAXABLE FUEL USE**

All motor fuel as defined in R239, which is acquired and which is normally subject to consumption tax, is taxable unless proof to the contrary is provided by the licensee. The licensee must report all fuel placed in the supply storage unit used to propel the qualified motor vehicle, as taxable on the tax return, excluding instances where the tax is imposed on the consumption of fuel by applying a tax rate to distance.

Original Ballot Proposal

***R1020 BULK FUEL PURCHASES**

- .200** A licensee may claim a tax-paid credit on the IFTA tax return for fuel withdrawn from bulk storage only when the fuel is placed into the fuel supply storage unit tank of a qualified motor vehicle; the bulk storage tank is owned, leased, or controlled by the licensee; and either the purchase price of the fuel includes fuel tax paid to the member jurisdiction where the bulk fuel storage tank is located or the licensee has paid fuel tax to the member jurisdiction where the bulk fuel storage tank is located.

Ballot language proposed for the ABM

***R1020 BULK FUEL PURCHASES**

- .200** A licensee may claim a tax-paid credit on the IFTA tax return for fuel withdrawn from bulk storage only when the fuel is placed into the fuel supply storage unit tank of a qualified motor vehicle; the bulk storage tank is owned, leased, or controlled by the licensee; and either the purchase price of the fuel includes fuel tax paid to the member jurisdiction where the bulk fuel storage tank is located or the licensee has paid fuel tax to the member jurisdiction where the bulk fuel storage tank is located.

Ballot language proposal for 2nd comment period

***R1020 BULK FUEL PURCHASES**

- .200** A licensee may claim a tax-paid credit on the IFTA tax return for fuel withdrawn from bulk storage only when the fuel is placed into the fuel supply storage unit tank of a qualified motor vehicle; the bulk storage tank is owned, leased, or controlled by the licensee; and either the purchase price of the fuel includes fuel tax paid to the member jurisdiction where the bulk fuel storage tank is located or the licensee has paid fuel tax to the member jurisdiction where the bulk fuel storage tank is located.

Original Ballot Proposal

***P550 FUEL RECORDS**

- .700** When alternative fuels are purchased or stored in bulk, these same requirements shall apply, in so far as they are practicable. In instances where, with respect to an alternative fuel, a licensee cannot practicably comply with these requirements, the licensee must maintain records that fully document its purchase, storage, and use of that alternative fuel. The requirements contained in this section would not apply to specific schedules included on the IFTA Tax Return for member jurisdictions that have elected to tax alternative fuels used in qualified motor vehicles based on distance.

Ballot language proposed for the ABM

***P550 FUEL RECORDS**

- .700** When alternative fuels are purchased or stored in bulk, these same requirements shall apply, in so far as they are practicable. In instances where, with respect to an alternative fuel, a licensee cannot practicably comply with these requirements, the licensee must maintain records that fully document its purchase, storage, and use of that alternative fuel. The requirements contained in this section would not apply to the reporting of an identified alternative fuel type included on the IFTA tax return for member jurisdictions that have elected to tax specific alternative fuels used in qualified motor vehicles based on applying a consumption based tax rate to taxable distance.

Ballot language proposal for 2nd comment period

***P550 FUEL RECORDS**

{All other sections remain unchanged}

- .900** The requirements contained in this section do not apply to instances where the tax is imposed on the consumption of fuel by applying a tax rate to distance.

Original Ballot Proposal

***P720 REQUIRED INFORMATION**

Each jurisdiction shall provide, at a minimum, the following elements to be present on a standard tax return. These elements may be preprinted, have a field or space for, or be automatically calculated:

- .350** Average fuel consumption factor (to two decimal places) for the tax reporting period (if the member jurisdiction is imposing tax based on fuel consumption);

Ballot language proposed for the ABM

***P720 REQUIRED INFORMATION**

Each jurisdiction shall provide, at a minimum, the following elements to be present on a standard tax return. These elements may be preprinted, have a field or space for, or be automatically calculated:

- .350** Average fuel consumption factor (to two decimal places) for the tax reporting period unless the member jurisdiction has elected to tax specific alternative fuels used in qualified motor vehicles based on applying a consumption based tax rate to taxable distance;

Ballot language proposal for 2nd comment period

***P720 REQUIRED INFORMATION**

Each jurisdiction shall provide, at a minimum, the following elements to be present on a standard tax return. These elements may be preprinted, have a field or space for, or be automatically calculated:

- .350** Average fuel consumption factor (to two decimal places) for the tax reporting period excluding instances where consumption is taxed by applying a tax rate to distance.

Original Ballot Proposal

***P1040 MONTHLY TRANSMITTALS**

The transmittal data listing shall contain, but not be limited to, the following information:

.300 The reported fleet fuel consumption factor for each licensee (if the member jurisdiction is imposing tax based on fuel consumption);

Ballot language proposed for the ABM

***P1040 MONTHLY TRANSMITTALS**

The transmittal data listing shall contain, but not be limited to, the following information:

.300 The reported fleet fuel consumption factor for each licensee unless the member jurisdiction has elected to tax specific alternative fuels used in qualified motor vehicles based on applying a consumption based tax rate to taxable distance.;

Ballot language proposal for 2nd comment period

***P1040 MONTHLY TRANSMITTALS**

The transmittal data listing shall contain, but not be limited to, the following information:

.300 The reported fleet fuel consumption factor for each licensee excluding instances where consumption is taxed by applying a tax rate to distance.



IFTA BALLOT PROPOSAL 03-2023

Sponsor

IFTA, Inc. Board of Trustees

Date Submitted

May 19, 2023

Proposed Effective Date

January 1, 2024

Manual Sections to be Amended

(January 1996 Version, Effective July 1, 1998, as revised)

IFTA Articles of Agreement

Sections: R820, R1020.200

IFTA Procedures Manual

Sections: P550.700, P720.350, P1040.300

Subject

Creating a mechanism for member jurisdictions to collect and report tax based on distance rather than fuel consumed.

History/Digest

Currently, there is a long-standing, well-established method for each jurisdiction to file mileage and fuel activity for the conventional motor and alternative fuel types; i.e. diesel, gasoline/gasohol, propane/liquid petroleum gas (LPG), compressed natural gas (CNG), and liquefied natural gas (LNG). Industry standard units of measurement, such as the liquid gallon, gasoline gallon equivalent (GGE), and diesel gallon equivalent (DGE) have been recognized by jurisdictions and tax rates have been established for these fuel types. However, with the more recent advent of electric vehicles (EVs) that are now reaching the IFTA-qualifying criteria, there are many jurisdictions that have not yet recognized electricity as a motor or alternative fuel type and, therefore, do not have the industry standard kilowatt hour (kWh) unit of measurement established or a tax rate to be applied to this volume. Additionally, jurisdictions are contemplating imposing tax for the consumption of alternative fuels used in qualified motor vehicles based on distance rather than on fuel consumed. One such jurisdiction (Indiana) has recently passed legislation that will require the reporting of the consumption of alternative fuels based on distance traveled by qualified motor vehicles operating on alternative fuels through IFTA as an instrument of tax administration.

Intent

The intent of this ballot is to establish a short-term solution in which a carrier has the ability to report and pay tax for the use of alternative fuels in qualified motor vehicles based on distance rather than fuel consumed. The further intent of this ballot is to also provide member jurisdictions with the ability to collect and report tax for the use of alternative fuels in qualified motor vehicles based on distance.

Commentary

This provision would not require a member jurisdiction to impose tax based on methods other than on fuel consumption by qualified motor vehicles. No jurisdiction will need to seek legislative action to implement this provision. Rather, this proposal will enable member jurisdictions to provide a method for collecting and reporting tax imposed by other member jurisdictions for alternative fuels used in qualified vehicles based on distance. Member jurisdictions would simply need to provide a tax return to accommodate this type of reporting methodology in accordance with Section P720 as proposed herein. This would be a consistent application of Article R140 of the Agreement which fosters the Cooperative Administration of IFTA.

Interlining Indicates Deletion; Underlining Indicates Addition

ARTICLES OF AGREEMENT

***R800**

TAXATION OF MOTOR FUELS

***R820 TAXABLE FUEL USE**

All motor fuel as defined in R239, which is acquired and which is normally subject to consumption tax, is taxable unless proof to the contrary is provided by the licensee. The licensee must report all fuel placed in the supply storage unit used to propel the qualified motor vehicle, as taxable on the tax return. The requirements contained in this section relative to the reporting and taxability of fuel placed into the supply storage unit would not apply to specific schedules included on the IFTA Tax Return for member jurisdictions that have elected to tax alternative fuels used in qualified motor vehicles based on distance.

***R1000 TAX PAID PURCHASES**

***R1020 BULK FUEL PURCHASES**

.200 A licensee may claim a tax-paid credit on the IFTA tax return for fuel withdrawn from bulk storage only when the fuel is placed into the fuel supply storage unit ~~tank~~ of a qualified motor vehicle; the bulk storage tank is owned, leased, or controlled by the licensee; and either the purchase price of the fuel includes fuel tax paid to the member jurisdiction where the bulk fuel storage tank is located or the licensee has paid fuel tax to the member jurisdiction where the bulk fuel storage tank is located.

PROCEDURES MANUAL

***P550 FUEL RECORDS**

.700 When alternative fuels are purchased or stored in bulk, these same requirements shall apply, in so far as they are practicable. In instances where, with respect to an alternative fuel, a licensee cannot practicably comply with these requirements, the licensee must maintain records that fully document its purchase, storage, and use of that alternative fuel. The requirements contained in this section would not apply to specific schedules included on the IFTA Tax Return for member jurisdictions that have elected to tax alternative fuels used in qualified motor vehicles based on distance.

P700 STANDARD TAX RETURNS

***P720 REQUIRED INFORMATION**

Each jurisdiction shall provide, at a minimum, the following elements to be present on a standard tax return. These elements may be preprinted, have a field or space for, or be automatically calculated:

.350 Average fuel consumption factor (to two decimal places) for the tax reporting period (if the member jurisdiction is imposing tax based on fuel consumption);

***P1040 MONTHLY TRANSMITTALS**

The transmittal data listing shall contain, but not be limited to, the following information:

.300 The reported fleet fuel consumption factor for each licensee (if the member jurisdiction is imposing tax based on fuel consumption);

Support: 27
Oppose: 2
Undecided: 4

ALBERTA

Support

Alberta supports this ballot as it will allow jurisdictions the flexibility to tax alternative fuels on a distance basis while maintaining the benefits of IFTA administration for carriers. Given the changes occurring with how vehicles are powered it will be important for jurisdictions to have that flexibility.

BRITISH COLUMBIA

Support

CALIFORNIA

Support

“California supports this ballot as we think it is important step in allowing jurisdictions the flexibility to tax alternative fuels and implement different tax collection schemes. However, we are concerned that the ballot as written may exceed the Congressional grant of authority to the States under ISTEA, which could open up IFTA to legal challenges. We support changing the ballot language to address these concerns.”

CONNECTICUT

Support

Connecticut supports this ballot. With the passing of Ballot 8-2022 adding alternative fuels as a fuel type last year, IFTA needs to take the next step by being flexible in allowing a jurisdiction to collect the motor fuels use tax based on distance. The purpose of the agreement is to promote and encourage efficient administration of motor fuels use tax for both jurisdictions and carriers registered for IFTA and this ballot continues that premise.

DELAWARE

Support

IDAHO

Support

INDIANA

Support

This ballot provides the IFTA community the flexibility to collect fuel taxes based on distance when data for the traditional reporting is not available.

IOWA

Support

Iowa's IT systems can support this change for IFTA.

KANSAS

Support

KENTUCKY

Support

MANITOBA

Support

MARYLAND

Support

MICHIGAN

Support

Michigan supports this ballot. This ballot allows flexibility to all IFTA jurisdictions who want to implement a distance tax, but more importantly it gives EV carriers a mechanism to report and remit distance tax to those jurisdictions who have or are considering legislation to tax EVs that are registered under IFTA.

MISSOURI

Support

NEBRASKA

Oppose

Nebraska is opposed to this ballot in its current form. We agree with the concerns being raised by other jurisdictions, notably the issues raised by Newfoundland, Prince Edward Island and Saskatchewan and including the possible conflict with ISTEAs and Congress' grant of authority to the States raised by both California and Oklahoma. In addition to these issues, we would offer the following comments:

1. The ballot as written provides an option for IFTA reporting for jurisdictions that have elected to tax "alternative fuels" on distance rather than consumption. The history and digest section implies that this ballot is intended, at least for now, for vehicles that operate on electricity. What would happen, if a jurisdiction would choose to begin taxing other alternative fuels (E85 or ethanol for example) on distance rather than consumption. Would this ballot open the door to distance tax collection on "alternative fuels" that are currently taxed on consumption to distance tax besides electricity?
2. It is not clear in the ballot language how this would impact the tax return. If a carrier needs to report distance for an electric vehicle that operates in both a consumption-based jurisdiction (PA) and distance tax jurisdictions (IN) would you need two separate tax returns? This issue

would be even more convoluted if jurisdictions would begin to utilize a distance tax on more than just electric vehicles.

3. The intent section of the ballot states that this is a short-term solution. What exactly does that mean? Nebraska does understand that the ballot was drafted in response to Indiana's law change but feels that a ballot with the potential for such a significant change to the agreement should be fully vetted and all opinions allowed to be heard. We concur with Saskatchewan that the work of the Alternative Fuel Committee has not been completed. Some IFTA ballots can be proposed, discussed, and voted on in a few months but this ballot is not one of them. This will have significant impact for the long term, not the short term and sufficient time should be allowed for a full and complete analysis before jurisdictions should be asked to vote.

NEVADA

Support

NEW BRUNSWICK

Support

NEW HAMPSHIRE

Support

NEWFOUNDLAND

Undecided

Newfoundland and Labrador echoes the concerns of Saskatchewan and would recommend that further work be conducted to standardize the reporting methodology and the format of returns prior to approving this ballot and investing in system updates.

NORTH CAROLINA

Undecided

North Carolina shares the concerns raised by Oklahoma, California, and the AAC regarding whether the ballot exceeds the authority granted to States by Congress through the Intermodal Surface Transportation Efficiency Act (ISTEA). Although, North Carolina generally agrees with the analysis provided in the AAC comments, North Carolina is uncertain whether a VMT can serve as an indirect proxy for fuel consumption.

North Carolina is also concerned regarding other aspects of the ballot.

First, the proposed changes to P550 are unclear. The language makes a direct relationship between record keeping requirements and a schedule on a return. These are distinct concepts, and North Carolina is concerned about the potential of relieving the duty to maintain records for alternative fuel bulk withdrawals. If the licensee operates in member jurisdictions that tax the same product differently (consumption versus distance), the licensee cannot be relieved of maintaining these records.

Second, as noted by other member jurisdictions, despite reference to the contrary, there is nothing short-term about this solution. These are permanent amendments to the Articles of Agreement and Procedures Manual.

Third, North Carolina is generally concerned with the ballot's reference to "specific schedules." This language, as noted in the AAC comments, is imprecise and ambiguous.

NORTH DAKOTA

Support

NOVA SCOTIA

Support

OKLAHOMA

Oppose

Section 31701(2) of the Intermodal Surface Transportation Efficiency Act (ISTEA) defines "Fuel Use Tax" as a "tax imposed on or measured by the *consumption of fuel* in a motor vehicle" (emphasis added.) Oklahoma would note that the term "consumption" is a crucial factor in the implementation of the tax. It suggests that the tax should be imposed on the amount of fuel used, which inherently implies a direct relationship with the actual usage or burn of fuel. Switching to a distance-based approach would deviate significantly from this measure, instead levying tax based on miles travelled, regardless of the actual fuel consumed. It is hard to imagine a valid "Fuel Use Tax" where the amount of fuel used was irrelevant.

This ballot would likely violate the US Constitution's Compact Clause, by agreeing among the jurisdictions to collect and distribute taxes in a way not authorized by Congress. Beyond the ballot, this congressional language limited to 'fuel use tax' raises the question of whether states imposing VMT require additional congressional authorization to collect it via interjurisdictional cooperation (IFTA). Oklahoma has concerns that if this ballot were to pass it would fundamentally change the way IFTA functions in a *ultra vires* manner.

Oklahoma agrees with the *policy* goals of this ballot and would suggestion a redrafting of the proposal that would correct the legal authority issues.

PLEASE NOTE: It is Oklahoma's understanding that the Attorney Advisory Committee (AAC) has drafted advisory comments on this topic, however the AAC has not been permitted to post their comments. Oklahoma finds this act of gatekeeping concerning.

ONTARIO

Support

PENNSYLVANIA

Support

PRINCE EDWARD ISLAND

Undecided

The preamble suggests the use of schedules is based on how a jurisdiction treats specific fuels; however, it is written based on how a jurisdiction taxes, regardless of fuel type.

Indiana now meets the description of "member jurisdictions that have elected to tax alternative fuels

used in qualified motor vehicles based on distance” so as written R820 and P550 would not apply to Indiana, period.

It appears the intent of R820 and P550 is that it “would not apply to specific schedules included on the IFTA tax Return for alternative fuels which a member jurisdiction has elected to tax based on distance when used in qualified motor vehicles.”

As well, Indiana continues to meet the description of “member jurisdiction is imposing tax based on fuel consumption” so as written P720.350 and P1040.300 apply to Indiana.

It appears the intent of P720.350 and P1040.300 is limited to “if the tax imposed by the member jurisdiction on that fuel is based on consumption” or “if the member jurisdiction is imposing tax on that fuel, based on consumption.”

QUEBEC

Support

SASKATCHEWAN

Undecided

This ballot has Saskatchewan's support if / once the committee has studied the various reporting options for alternative fuels and determined that reporting *based on a consumption rate* or reporting *based on distance* are the only two methods IFTA will accommodate.

We do not want to prematurely invest in IT system changes only to have to make further changes to accommodate different reporting methods not yet identified or analyzed. We would prefer the committee to complete its work prior to a ballot being brought forward on this matter.

Saskatchewan recognizes the need to be supportive of other jurisdictions for whom this is a more urgent matter. We acknowledge the importance of acting quickly to accommodate jurisdictions that require reporting based on distance.

SOUTH DAKOTA

Support

In this spirit of the agreement and R140 we as members agree to administer IFTA taxes cooperatively. A member jurisdiction has legislated to tax alternative fuel vehicles on a per-mileage-based fee. This ballot is the first step of changes that may come as the taxation of "fuel" or "road" taxes evolves. This ballot supports our fellow jurisdiction's tax legislation.

Stakeholders

Support

Industry Advisory Committee
Chuck Ledig, Chair

Support

Comments: It is the position of the IFTA Industry Advisory Committee (IAC) that the frameworks and constructs that govern the future methods for collecting tax revenues and fees associated with alternatively fueled / propelled vehicles meet three core principles (i.e. “core-principle test”): they are 1) efficient, 2) clear and 3) fair to all stakeholders.

The current frameworks and methodologies employed for collecting distance associated with IFTA qualified vehicles and the resulting filing of tax returns through IFTA meet the core-principle test, in and of itself. The changes proposed to the Agreement by Ballot 3-2023, to allow the same distance and same architecture to be utilized to collect tax simply based on this distance, also meet the core-principle test.

Understanding that the effort of the IFTA chartered, Alternative Fuels Committee (AFC) will continue / be ongoing, with respect to enhancing and improving the IFTA in this regard, we support this ballot as a solution to the immediate need created by the passage of ballot 8-2022 last year.

TENNESSEE

Support

WASHINGTON

Support

WYOMING

Support

The Attorney Advisory Committee (AAC) writes to express legal considerations about IFTA BALLOT PROPOSAL 03-2023. The subject of Ballot 3 is “Creating a mechanism for member jurisdictions to collect and report tax based on distance rather than fuel consumed”.

As of 7/6/23 – updates to amended Ballot #3-2023:

The AAC is grateful to IFTA Inc. for discussing the AAC’s comments on Ballot #3 and look forward to reviewing further versions of the ballot.

- 1. The AAC is concerned that language used in the changes proposed in Ballot 3 and the commentary in the proposal document, may support an interpretation that IFTA is not in compliance with the *Intermodal Surface Transportation Efficiency Act (ISTEA)* and, therefore, the U.S. Constitution. Language used to enable the calculation of tax based on distance travelled should indicate that such methodology is being used as a method for measuring consumption rather than as an alternative to taxation based on or measured by consumption.**

The Compact Clause of the U.S. Constitution provides that “No State shall, without the Consent of Congress, ... enter into Any Agreement or Compact with another State, or with a foreign Power” (Article 1, Section 10, Clause 3). In 1991, through ISTEA, Congress authorized States to impose a “fuel use tax” reporting requirement and collection of a “fuel use tax” by a single base state for proportional sharing among the states, but only if it conformed with the “International Fuel Tax Agreement”. ISTEA defined “fuel use tax” as follows:

49 USC 31701 (2) “fuel use tax” means a tax imposed on or measured by the *consumption* of fuel in a motor vehicle. (emphasis added)

(3) “International Fuel Tax Agreement” means the interstate agreement on collecting and distributing *fuel use taxes* paid by motor carriers, developed under the auspices of the National Governors’ Association. (emphasis added)

Accordingly, any fuel use tax (and the IFTA itself) must be imposed on or measured by the consumption of fuel.

The “Subject” section of the Ballot Proposal indicates that it “*create[s] a mechanism for member jurisdictions to collect and report tax based on distance **rather than fuel consumed***”. (emphasis added)

The “Intent” section of the Ballot Proposal indicates that “*The intent of the ballot is to establish a short term solution in which a carrier has the ability to report and pay tax for the use of alternative fuels in qualified motor vehicles based on distance **rather than fuel consumed***”. (emphasis added)

Stating that the purpose and intent of the changes is to facilitate the imposition or measurement of tax on a basis other “than fuel consumed” appears contrary to the explicit wording of ISTEA. The argument that the proposed amendments are inconsistent with ISTEA could be supported by the proposed changes to P720.350 which require the average fuel consumption factor to two decimal places for the tax reporting period “(if the member jurisdiction is imposing tax based on fuel consumption)”. Similar language appears in proposed P1040.350. Again, ISTEA requires that tax be

imposed or based on fuel consumption. This language suggests that tax could be imposed or based on something other than fuel consumption.

The AAC believes that a finding that the changes proposed in Ballot 3 were found to be unconstitutional would not put the IFTA in jeopardy as a whole. However, the AAC believes that a motor carrier could challenge an assessment by one state of a distance-based fuel imposed by another jurisdiction if the provisions of the Agreement were interpreted as relating to tax that is imposed on or measured by something other than the consumption of fuel.

To minimize this risk, the AAC recommends amending the language of the proposed changes and the commentary to indicate that IFTA continues to adhere to a consumption-based tax as stipulated in federal law even where a distance-based calculation is used. The language of the revisions and the surrounding commentary might be revised to better align with federal law and the U.S. Constitution by clarifying that the ballot provides a means to 'estimate the taxable fuel consumed based on distance traveled', and to eliminate the appearance of collecting and reporting tax based on distance *rather than* fuel consumed.

2. **The AAC is concerned that the phrase "specific schedules included on the IFTA Tax Return for member jurisdictions that have elected to tax alternative fuels used in qualified motor vehicles" used in the revisions to R820 of the Agreement and P550.700 of the Procedures Manual is ambiguous and imprecise.** We understand that the unstated intention is that the specific schedules contemplated are those that relate to the consumption of alternative fuels where the tax is calculated with reference to distance travelled. However, this intention is not explicit and could be interpreted more broadly. The concern could be addressed by explicitly stating that the schedules in question are those that relate to the consumption of alternative fuels where the tax is calculated with reference to distance travelled.
3. **The changes to R820 and P550 are written as an exception to a duty imposed on licensees, which is less clear than stating an affirmative duty.** In other words, the changes say what is not required to be done but do not say what is required to be done. From a clarity and drafting perspective, it is clearer to state when the duty does apply as opposed to stating when the duty does not apply.
4. **The proposed amendments could be interpreted as exempting distance-based alternative fuel taxation from collection and dissemination under IFTA.** The changes to R820 are worded as an exception to both reporting *and* taxability and therefore, suggest an exception to the general rules establishing what is "taxable fuel use" under IFTA. If the intent is to include such tax within IFTA but allow variations in reporting of alternative fuel use based on distance, one would expect the amendments to have been made in the reporting sections at Article IX. However, inclusion of these provisions in Article VIII could be interpreted as creating an exemption not just with respect to reporting but with respect to taxability where a jurisdiction uses a distance-based tax. These exemptions appear to create a dichotomy between taxes on fuels calculated on distance travelled and those calculated on the traditional consumption calculations. That dichotomy appears to be furthered by the proposed amendments at P720 and P1040 that clarify those procedures' application to tax "based on fuel consumption."

(END)

The IFTA Team respectfully disagrees with the AAC's comments and position on this ballot. Here are our reasons and facts to support said dissent with the AAC's comments:

1. Ballot 3-2023 does not violate the Compact Clause of the United States Constitution. A violation of the Compact Clause would have to include an act that would enhance or increase the political power of a state and/or undermine the authority of the federal government. **Ballot 3-2023 does neither.** (*NCSL Report 1999 Chapter 2 IFTA Is A Unique Hybrid Agreement pgs. 6 through 9*)
2. Section 4008 of the ISTEAs only acknowledges IFTA, requires conformity to same on or before September 30, 1996, and specifically mentions the three core provisions of IFTA (base jurisdiction concept, definition of qualified motor vehicle, and retention of state sovereignty to establish tax rates and exercise tax authority). No other aspects of administering the Agreement exist within the ISTEAs legislation. **Ballot 3-2023 does not interfere with nor alter any of the core provisions already agreed to by the United States Congress by virtue of Section 4008 of ISTEAs.** (*NCSL Report 1999 Chapter 2 IFTA Is A Unique Hybrid Agreement, IFTA Is Not A Federal Mandate (pg. 10), Congressional Consent (pgs. 9-10), Reciprocity Characteristics (pgs. 11-12), Congressional Coercion (pgs. 13-14), Page 14 Specifically: "In short, ISTEAs recognizes three core IFTA provisions that were contemplated by the member jurisdictions as the essence of the agreement: the base jurisdiction concept, uniform definition of the taxpayer and state retention of substantive tax authority. Congressional coercion of state participation in the IFTA provides the consent necessary to elevate these core provisions to compact status. Other provisions that are not core provisions and are not specifically recognized in ISTEAs do not have compact status and should be legally recognized as interstate reciprocity."*)
3. The United States Supreme Court has ruled on numerous occasions that certain agreements do not rise to the level of meeting the test for application of the Compact Clause. The Supreme Court has adopted a functional interpretation in which only compacts that increase the political power of the states while undermining federal sovereignty require congressional consent. These cases include:
 - a. United States Steel Corp. vs. Multistate Tax Comm'n, 434 U.S. 452, 470 [1978]
 - b. Virginia vs. Tennessee, 148 U.S. 503, 519 [1893]

c. New York vs. United States, 505 U.S. 144, 182 [1992]

The provisions of Ballot 3-2023 fall within the Supreme Court's adoption of a functional interpretation of what constitutes a violation of the Compact Clause as there is no increase in the political power of the states nor has federal sovereignty been undermined. (NCSL Report 1999 Chapter 2 *IFTA Is A Unique Hybrid Agreement, The Compact Clause Threshold* (pgs. 7-9))

4. The NCSL Report of 1999 included extensive research by several attorneys from IFTA jurisdictions, IFTA, Inc. executives, independent attorneys, the American Trucking Associations, a United States Congressman, and the NCSL staff which authored the report. This report identified several areas where IFTA is a unique hybrid agreement, is not subject to the Compact Clause (citing several court cases and **excepting** what has been expressly accepted by Congress), validated that ISTEA required conformity with the Agreement, only identified and embraced the three core provisions of IFTA, and remanded (by its silence) all other regulatory authority to the members of the Agreement. **The NCSL Report illustrates that amendments to IFTA fall outside of the provisions of the Compact Clause provided the three core provisions are not altered as they have been approved by Congress. Nothing in Ballot 3-2023 interferes with what the U.S. Congress has already approved. (NCSL Report 1999 Chapter 2 *IFTA Is A Unique Hybrid Agreement, Congressional Coercion* (pgs. 13-14))**
5. The legislation in question, Indiana House Bill 1050, amended Indiana's Motor Carrier Fuel Tax law. A new tax was **not** created; rather, the fuel use tax law of Indiana was amended to account for the use of alternative fuels, established the rules for determining an applicable tax rate, and acknowledged the continuance of IFTA as the instrument through which Indiana's motor carrier fuel tax shall be paid. Moreover, Indiana's calculation method is based on consumption. The prevailing Indiana diesel tax rate is divided by the average MPG for diesel vehicles computed by Indiana to arrive at an effective use tax rate. That rate is applied to distance in Indiana. **Since this imposition of tax is clearly in the Indiana Motor Carrier Fuel Tax code and is based on consumption, it is being imposed consistent with existing motor carrier fuel taxes in Indiana and therefore still within the confines of IFTA.**

Commentary:

We believe that the extensive research and conclusions embodied in the NCSL Report of 1999 are as valid in 2023 as they were in 1999. We encourage every voting commissioner to read the full NCSL report which includes the support of their research including references to supreme court cases, congressional law, and other extensive supporting facts and examples -vs- the opinions stated by the AAC which are not supported by any facts or research yet attempt to present a concern without referencing any support for their comments. In addition to the NCSL report, common sense analysis also supports the NCLS conclusions that Congress never intended for every amendment in the IFTA to require congressional approval. If the AAC comments were true, then anytime there is a proposed ballot that seeks to amend the IFTA, it would require congressional approval. As the NCSL clearly concludes, this is not true and the hybrid IFTA has only three core provisions which relate to the Compact Clause. All other provisions of our IFTA represent either a reciprocal jurisdiction agreement or an administrative agreement between jurisdictions, neither of which falls under the Compact Clause. Ballot 3-2023 does nothing more than make a small change to the return requirements (administrative) and clearly, does not run afoul of the Compact Clause or ISTEAA. Please do not accept the AAC comments as fact and take the time to read through the NCSL report. The full NCSL report is available on our website, or you can e-mail dmeise@iftach.org and she will e-mail you a copy.

This Ballot does not interfere with the Core Provisions, nor does it pose a violation of the Compact Clause of the United States Constitution. Therefore, Ballot 3-2023 is well within the membership's authority, if desired, to ratify Ballot 3-2023 as it has hundreds of ballots before within the authority of being recognized as a reciprocal administrative agreement.



IFTA BALLOT PROPOSAL 03-2023

Sponsor

IFTA, Inc. Board of Trustees

Date Submitted

May 19, 2023

Proposed Effective Date

January 1, 2024

Manual Sections to be Amended (January 1996 Version, Effective July 1, 1998, as revised)

IFTA Articles of Agreement Sections: R820, R1020.200

IFTA Procedures Manual Sections: P550.700, P720.350, P1040.300

Subject

Creating a mechanism for member jurisdictions to collect and report tax based on distance rather than fuel consumed.

History/Digest

Currently, there is a long-standing, well-established method for each jurisdiction to file mileage and fuel activity for the conventional motor and alternative fuel types; i.e. diesel, gasoline/gasohol, propane/liquid petroleum gas (LPG), compressed natural gas (CNG), and liquefied natural gas (LNG). Industry standard units of measurement, such as the liquid gallon, gasoline gallon equivalent (GGE), and diesel gallon equivalent (DGE) have been recognized by jurisdictions and tax rates have been established for these fuel types. However, with the more recent advent of electric vehicles (EVs) and those vehicles powered by other alternative fuels that are now reaching the IFTA-qualifying criteria, there are many jurisdictions that have not yet recognized these alternative fuels being consumed in qualified motor vehicles. For example, there are several jurisdictions that do not yet recognize electricity as a motor or alternative fuel type and, therefore, do not have the industry standard kilowatt hour (kWh) unit of measurement established or a tax rate to be applied to this volume. Additionally, jurisdictions are

contemplating imposing tax through other methods of determining fuel consumption. One such jurisdiction (Indiana) has recently passed legislation that will require the reporting of the consumption of alternative fuels using a tax rate based on the current diesel tax rate divided by the average miles per gallon factor for diesel powered vehicles for the preceding quarterly period. This computed tax rate is applied to the distance traveled by qualified motor vehicles operating in Indiana on alternative fuels. The legislation further states that tax shall be paid through IFTA as an instrument of tax administration.

Intent

The intent of this ballot is to establish a short-term solution in which a carrier has the ability to report and pay tax for the use of alternative fuels in qualified motor vehicles based on a consumption based tax rate applied to distance rather than fuel consumed. The further intent of this ballot is to also provide member jurisdictions with the ability to collect and report tax for the use of alternative fuels in qualified motor vehicles based on an alternative method of addressing consumption.

Commentary

This provision would not require a member jurisdiction to impose tax based on methods other than on fuel consumption by qualified motor vehicles. No jurisdiction will need to seek legislative action to implement this provision. Rather, this proposal will enable member jurisdictions to provide a method for collecting and reporting tax imposed by other member jurisdictions for alternative fuels used in qualified vehicles based on an alternative method of determining fuel consumption. Member jurisdictions would simply need to provide a tax return to accommodate this type of reporting methodology in accordance with Section P720 as proposed herein. This would be a consistent application of Article R140 of the Agreement which fosters the Cooperative Administration of IFTA. The legislation enacted in the jurisdiction of Indiana did not create a separate vehicle mileage tax. Rather, it embraced a methodology to conform to a consumption based model for alternative fuels by establishing the tax rate based on a traditional use of a diesel tax rate divided by an average miles per gallon factor (consumption). This tax rate is applied to the distance in Indiana to arrive at the tax due Indiana on the consumption of alternative fuels in that jurisdiction. The legislation is embodied in the Indiana motor carrier fuel tax statutes.

The sponsor wishes to offer three additional comments.

- First, commentary offered during the Comment Period ended June 30, 2023, centering on a potential conflict with the ISTEAs legislation is flawed. The legislation passed by Indiana and the process embodied in their statute provides for a tax computation that is based on a tax rate that is directly the result of using the prevailing diesel tax rate divided by an average MPG for diesel powered vehicles, applied to distance in Indiana by qualified vehicles operating on alternative fuels. In short, this is still a consumption based application of tax (e.g. fuel use tax) and not a new and separate tax (e.g. vehicle mileage tax). Moreover, ISTEAs did not mandate how the fuel use tax is to be calculated; rather, the federal legislation only addressed and approved of the three core provisions of IFTA (base jurisdiction, a uniform definition of qualified motor vehicle, and a state's right to sovereignty over establishing tax rates and determining exemptions from tax in addition to other substantive tax authority). This proposal does not run contrary to anything within ISTEAs as the Indiana legislation is based on consumption and the three

core provisions of IFTA have remained intact.

- Second, the commentary that this proposal may exceed the authority of a state and therefore be in conflict with the Compact Clause of the U.S. Constitution, is also flawed. To be in conflict with the Compact Clause there must be an enhancement or increase to a state's political power and/or undermine the federal government's authority. This proposal neither increases a state's political power nor undermines the federal government's authority.
- Lastly, a significant and landmark study was conducted by the National Conference of State Legislatures (NCSL) in 1999 with assistance from several IFTA jurisdictional attorneys (CT, AZ, ID, UT, NC, MA, WI, and PA), IFTA, Inc. executive staff, a U.S. Congressman from North Dakota, and an attorney from the American Trucking Associations. The research resulted in a comprehensive report that outlined what IFTA is, how ISTEA affected the Agreement, and what constituted remaining in compliance with the Compact Clause. IFTA was viewed as a unique hybrid agreement. ISTEA was viewed as embracing conformity to IFTA with the three core provisions being the focal point. It was the consensus of the NCSL Report that IFTA's administrative processes remained under the domain of the membership as long as the three core provisions were not altered. In continued observance of the three core provisions, IFTA would remain, as it does, within compliance with the provisions of the Compact Clause. The NCSL Report cited several U.S. Supreme Court cases that defined what did or did not constitute a breach of the Compact Clause; including the opinion that the U.S. Supreme Court has adopted a functional interpretation in which only compacts that increase the political power of the states while undermining federal sovereignty require congressional consent. Thus, the administration of IFTA through the amendment process was viewed as being within compliance with the Compact Clause.

Interlining Indicates Deletion; Underlining Indicates Addition

ARTICLES OF AGREEMENT

***R800 TAXATION OF MOTOR FUELS**

***R820 TAXABLE FUEL USE**

All motor fuel as defined in R239, which is acquired and which is normally subject to consumption tax, is taxable unless proof to the contrary is provided by the licensee. The licensee must report all fuel placed in the supply storage unit used to propel the qualified motor vehicle, as taxable on the tax return. The requirements contained in this section relative to the reporting and taxability of fuel placed into the supply storage unit would not apply to the reporting of an identified alternative fuel type included on the IFTA tax return for member jurisdictions that have elected to tax specific alternative fuels used in qualified motor vehicles based on applying a consumption based tax rate to taxable distance.

***R1000 TAX PAID PURCHASES**

***R1020 BULK FUEL PURCHASES**

.200 A licensee may claim a tax-paid credit on the IFTA tax return for fuel withdrawn from bulk storage only when the fuel is placed into the fuel supply storage unit tank of a qualified motor vehicle; the bulk storage tank is owned, leased, or controlled by the licensee; and either the purchase price of the fuel includes fuel tax paid to the member jurisdiction where the bulk fuel storage tank is located or the licensee has paid fuel tax to the member jurisdiction where the bulk fuel storage tank is located.

PROCEDURES MANUAL

***P550 FUEL RECORDS**

.700 When alternative fuels are purchased or stored in bulk, these same requirements shall apply, in so far as they are practicable. In instances where, with respect to an alternative fuel, a licensee cannot practicably comply with these requirements, the licensee must maintain records that fully document its purchase, storage, and use of that alternative fuel. The requirements contained in this section would not apply to the reporting of an identified alternative fuel type included on the IFTA tax return for member jurisdictions that have elected to tax specific alternative fuels used in qualified motor vehicles based on applying a consumption based tax rate to taxable distance.

P700 STANDARD TAX RETURNS

***P720 REQUIRED INFORMATION**

Each jurisdiction shall provide, at a minimum, the following elements to be present on a standard tax return. These elements may be preprinted, have a field or space for, or be automatically calculated:

51
52 **.350** Average fuel consumption factor (to two decimal places) for the tax reporting period
53 unless the member jurisdiction has elected to tax specific alternative fuels used in
54 qualified motor vehicles based on applying a consumption based tax rate to
55 taxable distance.;

56
57 ***P1040 MONTHLY TRANSMITTALS**

58
59 The transmittal data listing shall contain, but not be limited to, the following information:

60
61 **.300** The reported fleet fuel consumption factor for each licensee unless the member
62 jurisdiction has elected to tax specific alternative fuels used in qualified motor
63 vehicles based on applying a consumption based tax rate to taxable distance.;

Revisions Following the Comment Period Ending June 30, 2023

Updates to History/Digest, Intent, and Commentary were added to bring further clarity to what this ballot is proposing.

Proposed Language Changes:

Line 14 - removed specific schedules

Line 14 - added the reporting of an identified alternative fuel type

Line 14/15 - uncapitalized Tax Returns

Line 15 - added elected to tax specific

Line 16 - added applying a consumption based tax rate to taxable

Line 40 - removed specific schedules

Line 40 - added the reporting of an identified alternative fuel type

Line 40 - uncapitalized Tax Returns

Line 41 - added specific

Line 42 - added applying a consumption based tax rate to taxable

Line 53-55 - added clarifying language

Line 61-63 - added clarifying language



**IFTA BALLOT PROPOSAL
03-2023**

Sponsor

IFTA, Inc. Board of Trustees

Date Submitted

May 19, 2023

Proposed Effective Date

January 1, 2024

Manual Sections to be Amended (January 1996 Version, Effective July 1, 1998, as revised)

IFTA Articles of Agreement Sections: R820, R1020.200

IFTA Procedures Manual Sections: P550.700, P720.350, P1040.300

Subject

Provide exclusions for some record keeping and reporting requirements in those instances where the consumption of fuel by a qualified motor vehicle is taxed by applying a tax rate to distance (taxable miles).

History/Digest

Starting in the first quarter of 2024, the state of Indiana will be submitting a new fuel type to be included on the IFTA return which will utilize a methodology of taxing consumption based on applying a tax rate to distance (taxable miles) on the IFTA return.

For specific instances where a jurisdiction chooses to tax consumption based on applying a tax rate to distance, the requirements to report total gallons, report MPG, or maintain fuel receipts, is not necessary and will have no effect on the amount of fuel tax owed.

The requirements mentioned above and the subject matter of the proposed changes to the IFTA governing documents will only apply in those specific instances where the consumption of fuel is taxed based on applying a tax rate to distance. For other instances where the consumption of fuel used in the same vehicle is taxed differently in a jurisdiction using the traditional method of applying the tax rate to the taxable gallons (volume), the record keeping and reporting requirements will remain as is and the exclusions proposed here would not apply to that

calculation of fuel use tax.

Intent

The intent of this ballot is to make clear that for those instances, and only in those instances, where a jurisdiction is taxing the consumption of fuel by applying a tax rate to distance (taxable miles), certain record keeping and reporting requirements are not necessary and can be excluded as a requirement. As noted above, if the same vehicle using the same fuel type, also travels through another jurisdiction that applies their fuel use tax in the traditional way by applying a tax rate to the taxable gallons (volume) or using a different method besides applying the tax rate to distance, then the requirements to maintain records and report total fuel consumed and report the MPG, are not affected by these proposed changes and there is no exclusion from the requirements in those instances. The exclusions only apply to the specific instance where the consumption of a particular fuel type by a jurisdiction is taxed by applying a tax rate to the distance (taxable miles).

Interlining Indicates Deletion; Underlining Indicates Addition

ARTICLES OF AGREEMENT

***R800 TAXATION OF MOTOR FUELS**

***R820 TAXABLE FUEL USE**

All motor fuel as defined in R239, which is acquired and which is normally subject to consumption tax, is taxable unless proof to the contrary is provided by the licensee. The licensee must report all fuel placed in the supply storage unit used to propel the qualified motor vehicle, as taxable on the tax return, excluding instances where the tax is imposed on the consumption of fuel by applying a tax rate to distance.

***R1000 TAX PAID PURCHASES**

***R1020 BULK FUEL PURCHASES**

.200 A licensee may claim a tax-paid credit on the IFTA tax return for fuel withdrawn from bulk storage only when the fuel is placed into the fuel supply storage unit tank of a qualified motor vehicle; the bulk storage tank is owned, leased, or controlled by the licensee; and either the purchase price of the fuel includes fuel tax paid to the member jurisdiction where the bulk fuel storage tank is located or the licensee has paid fuel tax to the member jurisdiction where the bulk fuel storage tank is located.

PROCEDURES MANUAL

***P550 FUEL RECORDS**

{All other sections remain unchanged}

.900 The requirements contained in this section do not apply to instances where the tax is imposed on the consumption of fuel by applying a tax rate to distance.

P700 STANDARD TAX RETURNS

***P720 REQUIRED INFORMATION**

Each jurisdiction shall provide, at a minimum, the following elements to be present on a standard tax return. These elements may be preprinted, have a field or space for, or be automatically calculated:

.350 Average fuel consumption factor (to two decimal places) for the tax reporting period excluding instances where consumption is taxed by applying a tax rate to distance.

***P1040 MONTHLY TRANSMITTALS**

The transmittal data listing shall contain, but not be limited to, the following information:

.300 The reported fleet fuel consumption factor for each licensee excluding instances where consumption is taxed by applying a tax rate to distance.