



The Leaf Sheet

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Message from the National Chair

Howdy from Texas and hope y'all are doing well! I am honored and humbled to have been elected as your national chair for the tobacco tax section at the August 2023 meeting. I am also looking forward to serving alongside with Vice Chair Florence Sam with Washington DC Office of Tax & Revenue and Secretary Marci Rosencutter with Kansas Department of Revenue.

I would be remiss if I did not give a big heartfelt thank you to Cindy Anders-Robb who retired at the end of December 2023 as the FTA's director for the tobacco tax and motor fuels tax sections. She is an amazingly talented lady who has poured her heart and soul into making these sections what they are today! I have been blessed to have known her for 20 years and consider her a dear friend. I have had numerous opportunities over the years to see Cindy at work behind the scenes in setting up the hotel venues, planning the meals, snacks, and after-hours activities. Most importantly, she would spend multiple months working with various FTA board members

both regionally and nationally to create and organize the agendas for all of these meetings. She is a true hero for the Federation of Tax Administrators membership, and we wish her & Mike the best in life and spending time with her loved ones!

The tobacco tax world is continuously evolving with the types of products and whether the states will implement laws regarding flavor bands, taxation of e-cigarettes and/or vape products and the synthetic nicotine products. All of these potential regulations and increases in tax can contribute to new evasion schemes and trends across the country. Strong enforcement and compliance laws will play a very important role in deterring tobacco tax evasion.

Your participation in FTA makes the difference! There are multiple opportunities for newcomers and old timers to be involved by attending regional meetings, training classes, uniformity meetings and the annual meeting. In the last few years, several of the old

timers have retired from either state or industry, so it is important for all of us to consider succession planning and encourage new people to attend one or all of the meetings and or training classes that are available and to get involved. It's incumbent on us to get others interested in participating and volunteering in this organization which is critical to its success.

Again, I appreciate all of the past and current leadership teams of FTA and to those that have mentored me and others over the years. If you see someone new at a meeting, get to know them and become a mentor to them to help them get involved and interested in volunteering.

Please plan to attend your upcoming regional meetings and any of the upcoming uniformity meetings as your continued participation is encouraged and needed. Our annual meeting will be held in Mobile, Alabama in August 2024, so put this on your calendar!

Respectfully yours,

Justin A. Scott

Upcoming Meetings:

January Uniformity
January 23-25, 2024
Columbia, SC

Central Region
March 27-28, 2024
St. Louis, MO

Western Region
April 17-18, 2024
Denver, CO

May Uniformity
May 7-8, 2024
Green Bay, WI

Northeast Region
May 22-23, 2024
Concord, NH

Southern Region
June 26-27, 2024
Greenville, SC



Message from Uniformity Committee Co-Chairs

Tim and I are looking forward to seeing everyone in Columbia, SC for the Uniformity meeting. At the August meeting in Tucson, AZ we had a great discussion from Tim and I on why uniformity is a benefit to states and industry. We look forward to continuing this discussion at the upcoming meeting. The topics discussed at the meeting were the different kinds of delta hemp products, flavor bans, alternative nicotine tobacco products, vapor products and FDA updates to many of the different vapor products. In addition, some exciting white paper proposals were discussed along with legislation updates. The forms and technology subcommittee had some very interesting discussions on the updated schema and updates to the electronic filing guide. We also heard an update from states that are in the process of moving to uniformity. We are looking forward to hearing more from the states moving to uniformity at the next meeting in Columbia, SC.

There has been a change to the technology subcommittee. Mike Hanson's time as the State Co-Chair for Technology Subcommittee has come to an end. We thank Mike for all his hard work and dedication as the state chair of the Technology Subcommittee! We would like to welcome Isa Momoh from the state of North Carolina as the new subcommittee State Co-Chair for Technology. We look forward to working with Isa in the future.

Jason and Tim

Compliance Subcommittee Update

We had a great uniformity meeting in Tucson, Arizona, last August with lots of interesting presentations and time for networking.

The compliance update included:

- Flavor Bans and the number of States where legislation failed in 2022 and 2023;
- Alternative Nicotine Tobacco Products such as IQOS, ENDS, Dissolvables, Hookah, ON! & Zyn;
- Confiscation or Seizure in Place, Storage and the High Costs for Destruction of Vape Liquids;
- Food & Drug Administration (FDA) updates;
- Pre-Market Tobacco Application (PMTA) process with the FDA and where those applications stand;
- Modified Risk Tobacco Products (MRTP) & proposed FDA rules;
- Compliance Issues reviewed TX case studies on untaxed hookah and counterfeit cigarettes and tax stamps.

The uniformity compliance subcommittee provided FDA and Industry updates and compliance case studies at the last meeting in August. The FDA has been recently stepping up enforcement on addressing illicit Vapor products in the marketplace. We will provide a more robust update on what some of those enforcement actions have been in our meeting in January. We can also take a deeper look at states that have Vapor Directories and State engagement from Industry to help increase enforcement against illicit products in the marketplace. Deeper dive on what we are seeing in Flavor Ban states and localities.

One case study involved a brief slide presentation with photos of a tobacco seizure. The untaxed tobacco which was being stored in a large storage unit and involved multiple licensed retailers purchasing untaxed OTP from this location to sell in their retail stores. A second case study also provided a brief slide presentation with photos of untaxed hookah and OTP being sold at an unlicensed retail location and their failure to keep records. Participants worked together in small groups to discuss ways to address these identified compliance issues between state and industry perspectives.

Justin & Jim

Forms Subcommittee Update

In Tucson, we discussed removing the sticks per pack column from the forms. The group voted and it was decided to leave the column on the forms for possible use in the future.

In Columbia, we will be discussing minimum pricing. Please let Marci (Kansas) or Casey (Associated Wholesale Grocers) know if you have any questions, suggestions, or possible changes to the forms.

Casey & Marci



House of Cannabis

Federal Reserve Bank Says States With Legal Marijuana See 'Broadly Distributed' Economic Boost But Also Bump In 'Social Costs'

States that legalize marijuana for adults see moderate economic gains after the policy change is implemented but also experience an increase in social costs including substance use disorders, chronic homelessness and arrests. Among the signs of economic improvement after cannabis legalization that were identified by the economists were a 3 percent increase in average state income, a 6 percent rise in housing prices and a 2 percent bump in population. In terms of social costs, however, substance use disorders climbed by 17 percent, chronic homelessness rose by 35 percent and arrests went up 13 percent in legal states. States that legalized earlier, authors noted, "experienced similar social costs but larger economic gains, implying a potential first-mover advantage" over states that jumped on the bandwagon by implementing cannabis reform later.

Between 2017 and 2022, the number of jobs directly in the marijuana industry has grown from less than 125,000 to more than 425,000, the Fed paper says, citing an industry report. "While this still makes up less than 0.3 percent of total U.S. employment," it notes, "the industry did make up more than 4 percent of total employment growth between 2017 and 2022."

New money from legal cannabis is often offset by decreases in other revenue sources. "Tax collections related directly to marijuana sales increased," it says, "but tax collections from alcohol and tobacco sales declined following legalization. On net, we do not find a significant effect on overall tax revenues or general sales tax revenues."

In Illinois, for example, total tax revenue in fiscal year 2023 was \$420.9 million, according to state data released earlier this month—more than alcohol, but lower than the \$435.1 million from cannabis sales in fiscal 2022. 3 or lower - not 1 or 2 - because if it was just rescheduled to 2, it wouldn't fix 280E." A 3 percent rise in average state income per capita was "driven mainly by increases in proprietors' income," the Federal Reserve Bank researchers found. Population growth and housing prices also ticked up more sharply in states with adult-use cannabis. Self-reported marijuana usage increased by 28 percent post-legalization, the Kansas City Fed report found, accompanied by a rise in substance use disorders. And chronic homelessness rose by 35 percent, "consistent with frequent anecdotes from residents and policymakers in states with legalized marijuana," although that finding was "just outside of statistical significance." "Although overall crime rates did not significantly change, arrests for both violent and property crimes rose," it says, "suggesting a potential increase in law enforcement activity." The increase in arrests "occurred without significant increases in crime possibly due to more funding to public safety from marijuana tax revenue."

The three-person team cautions that the report "does not provide a comprehensive cost-benefit analysis of recreational marijuana legalization," noting that "such an analysis would need to investigate a much larger set of potential benefits and social costs that are presently unobservable or unmeasurable, and take into account potential behavioral responses to legalization such as moral hazard and adverse selection." Still, the report says that its estimate of the size of the economic benefits from legalization "could be used to approximate the amount of funding that could be set aside for social programs that would help offset the costs." "Widely distributed benefits versus more concentrated costs indicate that policymakers should be cautious in discounting the existence of potential costs of recreational legalization," it continues. "In addition, states which recently legalized recreational use or are considering it may likely expect more muted potential benefits relative to the first-mover states (Colorado and Washington), but still have to deal with higher social costs of increased marijuana usage."

Speculating as to why states that legalized earlier saw greater economic benefits, authors write that it may be "due to it being less novel or less of a perceived amenity or actual demand shock from 'marijuana tourism' compared to the first states that legalized recreational use." A year ago, the same branch published a separate report that found marijuana legalization had a "significant" economic impact in states—generating jobs, boosting tax revenue and making real estate more valuable. It also acknowledged that federal prohibition has created unique "challenges," particularly as it concerns the current lack of access to traditional banking systems.

How Can You Become More Involved In Uniformity?

- ◆ Regularly check for updates at FTA's updated Tobacco Uniformity website at taxadmin.org.
- ◆ Talk to other states and industry members.
- ◆ Attend meetings!



Things to consider.....

If you don't currently require cigarette and/or tobacco returns, and/or PACT Act reports to be filed electronically, do you know when your state is expected to do so?

Has your revenue staff coordinated with your AG's staff to ensure the uniform schedules will also fulfill all of their filing requirements? If you're from the AGO, reach out to your Revenue Department.

Tobacco news you can use...

FDA Denies Marketing of myblu Menthol E-Cigarette Product

July 10, 2023, the U.S. Food and Drug Administration (FDA) issued a marketing denial order (MDO) for myblu Menthol 2.4%, an e-cigarette product made by Fontem US, LLC (myblu). As a result, the company must not market or distribute this product in the United States, or they risk enforcement action by FDA. The company may resubmit a new application to address the deficiencies for the product subject to this MDO.

Thorough scientific review of tobacco applications is a key pillar under FDA's role to protect the public from the dangers of tobacco use," said Matthew Farrelly, Ph.D., Director of the Office of Science within FDA's Center for Tobacco Products. "This application lacked the scientific evidence needed to demonstrate that the product provided a net benefit to the public health that outweigh the known risks."

FDA evaluates premarket tobacco product applications (PMTAs) based on a public health standard that considers the impact of the product on the population as a whole, including benefits (i.e., complete transitioning to the product or significant reduction in combustible cigarette use among adults who smoke) and risks (e.g., initiation among youth). After reviewing the company's PMTA, FDA determined that the application lacked sufficient evidence to demonstrate that permitting the marketing of the product would be appropriate for the protection of the public health, which is the applicable standard legally required by the 2009 Family Smoking Prevention and Tobacco Control Act. For example, among other deficiencies, the application did not present sufficient scientific evidence to show the menthol-flavored e-cigarette products provided an added benefit for adults who smoke relative to tobacco-flavored e-cigarettes. Tobacco products that receive a marketing denial order may not be offered for sale, distributed, or marketed in the U.S. Additionally, such products may not be introduced or delivered for introduction into interstate commerce, and if the product is already on the market, the product must be removed from the market – or risk FDA enforcement. In addition to ensuring that the manufacturer complies with this order, as with unauthorized products generally, FDA intends to ensure compliance by distributors and retailers.

Today's actions are just one of many FDA has taken to ensure any tobacco products that are marketed in the U.S. undergo science-based review and receive marketing authorizations by the agency. To date, the agency has received applications for more than 26 million deemed products and has made determinations on 99% of these applications.

"FDA has made considerable progress on the unprecedented volume of applications received," said Brian King, Ph.D., M.P.H., director of FDA's Center for Tobacco Products. "We're committed to making determinations on the remaining applications as expeditiously as possible, while ensuring the decisions are scientifically accurate, legally defensible, and aligned with the authorities granted by Congress."

To date, FDA has authorized 23 tobacco-flavored e-cigarette products and devices, which are the only e-cigarettes that currently may be lawfully sold or distributed in the United States. Last year, FDA issued MDOs to Fontem US for several other myblu products, which are the subject of ongoing litigation. Decisions on additional Fontem US e-cigarette products are pending. Retailers should contact Fontem US, LLC with any questions about products in their inventory.



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Montana
Secretary

Technology Subcommittee Update

We are delighted to welcome you to the January 2024 Tobacco Uniformity meeting, where the Technology Subcommittee plays a crucial role. I want to express my gratitude to Michael Hanson for serving as my mentor, albeit to brief. Fortunately, Isa Momoh has graciously accepted the role of Technology Chair, representing the state. Isa, currently serving as the Excise Tax Division/Information Systems Manager for the North Carolina Department of Revenue, brings a wealth of knowledge and expertise to our team. Please join me in extending a warm welcome to her.

During this meeting, the subcommittee will delve into the journey towards uniformity, examining strategies to guide you on this path. We will connect with individuals who have successfully achieved uniformity, gaining insights into the steps they took during the transition. Our discussions will encompass various topics, including obtaining approval and the subsequent actions they implemented.

We eagerly anticipate your participation in this meeting and look forward to collaborating with you to advance the goals of the Uniformity Committee. Your presence and contributions will undoubtedly enhance our collective efforts.

Isa and Ray

Communications and Legislation Subcommittee Update

Happy New Year to all! With a new year brings more exciting things to Uniformity and we are appreciative of all the participants and great discussions.

The Tobacco Tax Information by State (TTiBS) book has become a great resource for states, industry, and everyone in-between. At the January meeting, we will see if there are any new questions to add to the TTiBS booklet. If you have any suggestions or something you would like to see added, don't hesitate to send us some feedback! To view the most recent version, please visit www.taxadmin.org/tobacco-tax-uniformity-project.

We are always looking for volunteers to complete white papers, and the topics to choose from are endless with the ever-growing tobacco industry. If anyone would like to volunteer for one or would like topic suggestions, please let us know.

New year means new legislation, so we ask that States come prepared to talk about any known legislation changes that may occur, things likely to pass, or recent changes made effective.

Cheyenne and JD

Communications and Legislation Subcommittee Update

White Paper Discussed Topics:

- Flavor Bans
- Alternative Nicotine Products
- Delivery/Remote Sales



If you would be interested in participating in a white paper topic, please contact the chair.

Cannabis Subcommittee

Hello and welcome to the January Uniformity Meeting!! We'd like to challenge you to approach at least one meeting attendee that you do not know and introduce yourself. This is a great opportunity to not only meet someone new, but also an opportunity for networking and building relationships that can help your state navigate its participation with the cannabis industry.

If you have any questions, comments, or suggestions about cannabis, please feel free to reach out to either one of us. Have a great meeting!

Emily and Alberto

FDA News

The premium cigar industry recently declared victory in the fight against oversight by the U.S. Food and Drug Administration. Celebrations may have been premature.

The U.S. Department of Justice has filed an appeal on behalf of the FDA for a decision handed down from the United States District Court for the District of Columbia that fully vacated the Deeming Rule as it applied to premium cigars, according to media reports.

The lawsuit was filed by the Cigar Association of America, the Cigar Rights of America (CRA) and the Premium Cigar Association. The case focused in part on the rulemaking process, which requires the FDA to inform the public about upcoming regulations and solicit feedback on those proposed rules.

In last month's decision in *Cigar Association of America et al. v. United States Food and Drug Administration*, Judge Amit P. Mehta made a sweeping, albeit expected, ruling that granted relief to the three cigar industry trade groups that sued the regulatory agency in 2016 on behalf of the premium cigar industry.

The news confirms industry fears that warning labels, premarket tobacco product application (PMTA) review of cigars and other limitations that have impeded the ability of cigarmakers are still a possibility.

Recently, the FDA acknowledged the decision and one of its impacts, telling cigar companies that it did not plan to assess user fees for "premium cigars" sold during Q4 FY23.

The Department of Justice, which represents FDA on legal matters, had 60 days to appeal the ruling. It's unclear whether the agency will ask a court for a stay, which could reenact the deeming regulations for "premium cigars" as the appeal process works itself out.

Training & Development Opportunities

More information regarding training coming soon.

Tobacco Tax Section Officers

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Justin Scott, Texas

National Vice Chair

Florence Sam, DC

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www.taxadmin.org

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FTA Tobacco Tax Section Uniformity Committee Mission Statement

Provide an opportunity for government and industry to partner for the efficient and effective reporting and remittance of tobacco taxes, to minimize tobacco tax evasion, and to act as an information resource to stakeholders.

