



The Leaf Sheet

Volume 27

August 2024

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Upcoming Meetings:

August Uniformity
August 16-17, 2024
Mobile, AL

Tobacco Annual
August 18-21, 2024
Mobile, AL

Tobacco Basic Training
October 20-24, 2024
TBD

Message from the National Chair

A big HOWDY from Texas! This past year has flown by while serving as your national chair! It has been very rewarding for me to work with both industry and government leading the FTA tobacco tax section in this capacity. I would be amiss if I did not mention my colleagues on the executive board, **Florence Sam** (vice-chair), **Marci Rosencutter** (secretary) and past chairs, **Al Milak** and **Gerald Robinson**. Our team spent many hours together in TEAMS meetings planning for the annual conference and putting our heads together to find presenters for the topics of interest. Thank you for being a great team of leaders and all your support you have given me throughout this role.

Cindy Anders-Robb retired at the end of December 2023, and is enjoying her retirement with family and friends. I am so thankful for all that she did in preparing me for the chair position while serving in other capacities over my past several years on the national board (the never-ending pandemic years). Thank you, Cindy, for

your friendship and mentorship which helped me to stay organized and focused on promoting FTA!

Welcome to Kevin Richard, Director of Business Tax Audit and Excise Tax Administration for FTA's tax sections. He has been involved with FTA for a long time and retired last year as the secretary of the Louisiana Department of Revenue. Kevin joined FTA as the business director for both the motor fuels and tobacco tax sections in February 2024. I literally did not let the dust settle after his arrival to get him introduced to the team and working with us on planning the agenda for the annual meeting. I apologize Kevin since I really did not give you any time to even set up your laptop before pulling you in multiple different directions. You handled the challenges before you with great stride and as a great team player! I appreciate all of your help and your willingness to learn and grow from these experiences. Again, thank you, Kevin and welcome aboard!

We hope everyone can be

active in FTA! There are so many opportunities to get involved on both the national and regional levels. Please participate in our important Uniformity meetings and ask how you can get involved with our subcommittee activities. Your time and efforts will further enhance your career and role as a subject matter expert and provide you with countless and rewarding networking opportunities.

Again, thank you for allowing me to serve as your national chair and as a co-chair on the Uniformity's compliance subcommittee. I have been blessed in my 21-year-career with the Texas Comptroller's office and my 31 years as a law enforcement officer getting to know so many of you both past and present, and not only call you my colleagues but my friends!

Respectfully yours,

Justin A. Scott



Message from Uniformity Committee Co-Chairs

Tim and I are looking forward to seeing everyone in Mobile, AL for the Tobacco Uniformity meeting that meets prior to the 2024 Tobacco Annual Meeting. At the May meeting in Green Bay, WI Tim and I gave a presentation on what is Tobacco Uniformity, and how this can help the states and industry. We are looking forward to continuing our discussion on the benefits of Tobacco Uniformity at the upcoming meeting in Mobile, AL. The topics discussed at the last meeting in Green Bay, WI were flavor bans, vapor directories, forms updates and the XML Schema. In addition, we had a very informative presentation by the cannabis sub-committee on the cannabis industry. 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!

Jason and Tim

Compliance Subcommittee Update

We had a great uniformity meeting in Green Bay, WI in May! We covered a lot of interesting topics from all the sub-committees presenting.

The compliance sub-committee update included:

- Provided an overview on proposed flavor ban legislation through May 2024.

- An overview on ANP's, (alternative nicotine tobacco products) such as ENDS, (electronic nicotine devices), Dissolvable, Illicit Disposable e-Vapor, Hookah, Nicotine Pouches, including the proliferation of synthetic nicotine and analogs

- State Vapor directory update.

- Recent enforcement activity and press releases from the FDA.

- Pre-Market Tobacco Application (PMTA) process with the FDA and where those applications stand.

- Confiscation or Seizure in Place, Storage, and the High Costs for Destruction of illicit disposable e-Vapor & Vape Liquids

- Compliance Issues reviewed TX case studies on untaxed hookah and counterfeit cigarettes and tax stamps.

The Uniformity Compliance Sub-Committee provided the most recent FDA activity and Industry updates that included compliance case studies. The FDA proposed rule on menthol cigarettes and characterizing flavor in cigars was pushed out further by OMB citing additional time needed to determine impact. It will likely not be looked at until after the election in November. On June 10th, the FDA announced additional stepped-up enforcement on combatting illegal e-cigarettes with the creation of a multi-agency task force that includes the FDA, Justice Department, ATF, US Marshal's office, FTC & US Postal Inspection Service. The FDA also stated more agencies may join the task force in the future, see link below for press release from the FDA. We will provide a more robust update on these federal enforcement actions at our Uniformity meeting on August 16th and 17th in Mobile, AL prior to the FTA annual tobacco meeting. We will also provide a legislative update on state vapor directories that have either failed or passed since our May Uniformity meeting.

Link: [Justice Department and FDA Announce Federal Multi-Agency Task Force to Curb the Distribution and Sale of Illegal E-Cigarettes | FDA](#)

We will also review an interesting case study or two!

Justin & Jim

Forms Subcommittee Update

Hello and welcome to Alabama! In Wisconsin, the Forms Sub-Committee presented updates to several of the Uniformity forms, including the PA-1 and PA-2. The meeting attendees voted on and approved the changes. The updated forms have been added to the Uniformity Guide and are available on the FTA's website.

In Alabama, we will be discussing the cover / reconciliation pages, Schedule Codes and Adjustment Code definitions. If you have any suggestions, please bring them with you or contact Marci or Casey ahead of time.

The Forms Sub-Committee will continue to review the forms for any needed changes. If you find that a change is needed, you have suggestions, or something on a form needs clarification, please reach out to Marci or Casey or any of the other committee chairs. Enjoy your time in Alabama!

Casey & Marci



House of Cannabis

THE SECTION 280E CONUNDRUM

On May 16, 2024, the Biden Administration proposed to reclassify cannabis from a schedule 1 controlled substance to a schedule 3 controlled substance by filing the proposed change in the Federal Register.¹ Section 280E of the Internal Revenue Code of 1986, as amended (the "Code") does not apply to schedule 3 controlled substances. The Department of Justice is soliciting public comment on this change. The markets are pricing in the fact there will be a significant amount of time before the change becomes effective.² Once cannabis has been rescheduled, however, cannabis businesses will no longer be required to adopt the extraordinary measures required to segregate businesses or pursue capitalization strategies to obtain a tax benefit for the costs of operating their businesses. By way of background, Code § 280E is a tax rule that supplements criminal tax laws against drug dealing. Specifically, Code § 280E disallows credits and deductions with respect to any trade or business expense incurred in "trafficking in controlled substances (within the meaning of schedule I and II of the [federal] Controlled Substances Act) . . ."³ The federal Drug Enforcement Agency (the "DEA") has designated cannabis as a schedule I controlled substance.⁴ The Internal Revenue Service (the "IRS") has successfully asserted that Code § 280E applies to cannabis businesses even when operating in states that have legalized cannabis usage.

The cost of goods sold is not a deduction, and, therefore, is not subject to Code § 280E.⁶ Thus, amounts properly added to inventory in a cannabis business are effectively deductible as such amounts reduce gross income. This dichotomy between expenses categorized as trade or business expenses (which are non-deductible) and the cost of goods sold (which is effectively deductible) creates a strong incentive on the part of cannabis businesses to expansively apply the inventory capitalization rule contained in Code § 263A. One significant challenge to this approach is that Code § 263A(a)(2) does not permit the capitalization of nondeductible costs. Code § 263A, however, does not apply to businesses with annual average gross receipts of less than \$25 million.⁷ Thus, smaller cannabis businesses can benefit from cost capitalization without the restrictions imposed by Code § 263A.

THE CANNABIS ADMINISTRATION AND OPPORTUNITY ACT

On May 1, 2024, Senator Corey Booker introduced proposed legislation to impose a new excise tax on cannabis. The excise tax would be imposed at a 10% rate for the two years following enactment. The excise tax would scale up to 25% beginning in the fifth year after enactment. The excise tax would not be imposed on the actual sales price of the cannabis. Instead, the excise tax would be imposed on 25% of the "prevailing sales price of cannabis flowers sold . . . during the 12-month period ending one calendar quarter before such calendar year." The excise tax would be capped. Specifically, in the first two years after enactment, the maximum excise tax would be \$2 million. The cap scales up to \$5 million beginning in the fifth year after enactment. The cap would not apply to both legally imported cannabis and cannabis that is smuggled into the United States. The excise tax would not apply to an individual who cultivates cannabis for their personal use, provided that such individual is not otherwise engaged in a cannabis business. Cannabis produced for export outside of the United States would be exempt from the proposed excise tax.

The proposed legislation would prohibit the cultivation of cannabis outside of a "bonded premises of a cannabis production facility duly authorized to produce cannabis products according to law." The limitation would not apply to individuals who cultivate cannabis for their personal consumption. In order to spur domestic cultivation of cannabis, the tax rate would be reduced by one-half with respect to cannabis produced by a "qualified domestic manufacturer of cannabis products." The legislation leaves it to the Treasury Department to promulgate regulations specifying the requirements of a "cannabis production facility."

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...

June 21, 2024

Four menthol vaping products were authorized by the US Food and Drug Administration on Friday, the first non-tobacco-flavored e-cigarette products to get the agency's sign-off. The decision drew harsh criticism from pediatricians and anti-tobacco groups, which called it "a blow to public health" and warned of potential for "disastrous consequences" to children.

Friday's authorizations do "not mean these tobacco products are safe nor are they 'FDA approved,'" the agency said, but evidence submitted by the company showed that the products could be beneficial to adult smokers to help them make a switch from traditional cigarettes to e-cigarettes. The agency said there was sufficient evidence that the products would be "appropriate for the protection of public health."

"Based upon our rigorous scientific review, in this instance, the strength of evidence of benefits to adult smokers from completely switching to a less harmful product was sufficient to outweigh the risks to youth," [Dr. Matthew Farrelly](#), director of the Office of Science in the FDA's Center for Tobacco Products, said in a news release.

E-cigarettes were created to be a less-harmful alternative to cigarettes and were advertised by tobacco companies as a way to help people quit smoking, with flavored vapes being most popular. Massive advertising campaigns targeted children, helping lead to a vaping epidemic among young people — and eventually an FDA crackdown on flavors. Still, many flavored products remain available for purchase while the agency reviews marketing applications.

An FDA official told the US Senate Judiciary Committee last week that regulation of e-cigarettes was a "top priority." However, the agency missed a September 2021 deadline to complete its review of e-cigarette makers' applications to sell their products; a federal court had ruled that the FDA was violating the Tobacco Control Act by allowing e-cigarette products that did not have agency pre-authorization to stay on the market. The FDA has been making its way through 27 million applications from companies seeking marketing authorization for e-cigarette products. Only 27 have gotten the FDA's green light, and until now, tobacco was the only flavor to do so. About 10% of high school-age adolescents and nearly 5% of middle school students use e-cigarettes, according to the US Centers for Disease Control and Prevention. Over the past five years, there has been a 60% decline in the number of middle and high school students using e-cigarettes, according to the FDA. But when they do vape, teens and young adults are much more likely to use flavored e-cigarettes than adults.

According to the 2023 National Youth Tobacco Survey, more than 23% of high school e-cigarette users nationwide use menthol-flavored products.

The FDA said it has put "stringent marketing restrictions" on the newly authorized products in an effort to prevent youth access and exposure. The agency also said it will closely monitor how the products are marketed, and if the company fails to comply with regulatory requirements, the agency may suspend or withdraw authorization.

"All tobacco products are harmful and potentially addictive," the FDA said. "Those who do not use tobacco products shouldn't start."



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Secretary

Technology Subcommittee Update

The Tobacco Technology Subcommittee warmly welcome you to Mobile, Alabama. We are Raymond Chu, Senior Tax Manager at Core-Mark, and Isa Momoh, Information Systems Manager at the North Carolina Department of Revenue, Excise Tax Division. Ray, the industry co-chair, brings extensive knowledge of tobacco tax, while Isa complements this with her broad technical expertise. We are proud of the strong partnership we have developed in a short time, which is crucial for the effective and efficient work of the technology subcommittee. Although we cannot be there in person, we are with you in spirit. Our esteemed colleagues, Tim Harris and Jason Kraemer, will present on our behalf.

During this meeting, our subcommittee will explore the journey toward successful tobacco uniformity and discuss strategies to guide you along this path. Our presentation will cover various topics, including the process of requesting and obtaining schema approval, implementing subsequent actions, and learning from the overall journey toward uniformity.

This year, we successfully collaborated with Iowa and Illinois to review and approve their state schemas for transitioning to uniform tobacco electronic filing systems. For Illinois, we also worked with them and E-Standards to include a cover page in the master tobacco schema. We are pleased to report that FTA E-Standards approved the change and published a revised tobacco schema, TobaccoV2.0, in July 2024, available on the FTA Tobacco page. Additionally, we are excited to share that Utah, Arizona, Nebraska, and Pennsylvania have all expressed serious interest in tobacco uniformity. These conversations have begun, and we hope to provide more details at the next uniformity meeting.

Ray & Isa

Communications and Legislation Subcommittee Update

Welcome to Mobile, Alabama!

The Tobacco Tax Information by State (TTIbS) book has become a great resource for states, industry, and everyone in-between. The 2024 update is comprised of one new question regarding vapor directories. We have sent out the question and asked for any other updates needed. The latest and greatest will be published on the website after the August meeting in hopes of getting responses from some of the remaining states. To view the most recent version, please visit www.taxadmin.org/tobacco-tax-uniformity-project.

There are three white papers underway: Alternative Nicotine Products, Flavor Bans, and Vapor Directory. Our goal is to have these completed by the January 2025 meeting. This is great progress compared to recent years, and there are so many more that could be done. If anyone would like to volunteer for one or would like topic suggestions, please let us know.

As always, 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. This helps all attendees be aware of what's to come and better understand what works and problem areas.

We look forward to yet another great meeting!

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

Notable developments in Marijuana regulatory changes at federal level that may impact states cannabis programs. There are indications at the federal level to reschedule marijuana from Schedule I to Schedule III. On August 29, 2023, the Department of Health and Human Services recommended to the DEA the rescheduling of cannabis to Schedule III. The Congressional Research Service reported on September 13, 2023, that the DEA would likely follow this recommendation. The DEA confirmed on January 4, 2024, that it is reviewing the cannabis rescheduling recommendation, and on January 12, 2024, the U.S. government released documents confirming health officials' recommendation to reschedule cannabis to Schedule III of the Controlled Substances Act.

The reclassification of marijuana will have several implications: It will be medically recognized for its use and low abuse potential, legitimizing its prescription and dispensation. Tax benefits will arise for marijuana businesses, allowing them to deduct expenses on federal tax filings. However, federal enforcement will still consider interstate commerce of marijuana products illegal unless FDA-approved, and state dispensaries will operate under state laws. Research opportunities will expand, facilitating studies into marijuana's medical benefits. Lastly, this move will support criminal justice reform efforts, potentially reducing penalties for marijuana possession and use.

Alberto and Emily

FDA News

On July 25, FDA announced the issuance of warning letters to 80 brick and mortar retailers in 15 different states for selling unauthorized e-cigarette products popular with youth, including Elf Bar and Lost Mary. Additionally, FDA also announced the filing of complaints for civil money penalties (CMPs) against eight other retailers who failed to take action after being previously warned about selling unauthorized e-cigarettes. These warning letters and CMPs are a result of FDA's ongoing monitoring of multiple surveillance systems to identify products that are popular among youth or have youth appeal. The 2023 National Youth Tobacco Survey found that more than 50 percent of youth who use e-cigarettes reported using the brand Elf Bar. Additionally, the brand Lost Mary—which is manufactured by the same firm as Elf Bar—was identified as popular or youth-appealing following agency review of retail sales data and emerging internal data from a survey among youth.

FDA generally sends warning letters the first time an investigation or inspection reveals a violation. Warning letter recipients have 15 working days to respond with the steps they will take to correct current violations and prevent future violations. However, failure to promptly correct the violations may result in additional FDA action, including CMPs. For the retailers receiv-

ing the eight CMPs, FDA previously issued warning letters for their sale of unauthorized tobacco products. Follow-up inspections revealed that the retailers had failed to correct the violations, and the agency is now seeking \$20,678 from each retailer.

These actions are the latest in FDA's ongoing efforts to address the marketing and sale of unauthorized e-cigarettes that appeal to youth. Throughout the last year, the agency has conducted inspections of retailers to identify those selling unauthorized e-cigarettes—including in May, March, and February. As a result of these actions FDA has issued more than 690 warning letters and more than 140 civil money penalty actions to retailers for the sale of unauthorized e-cigarettes.

To date, FDA has authorized 34 e-cigarette products and devices. These are the only e-cigarette products that currently may be lawfully marketed and sold in the United States. Further information on tobacco products that may be legally marketed in the United States is available in FDA's Searchable Tobacco Products Database.

Training & Development Opportunities

More information regarding training coming soon.

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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.

