Comments regarding Draft Uniform Schedules dated Aug-13-2013
Comments from AWMA member companies
(Helen Hayes (Chair of AWMA's Uniformity Task Force; dated Sep-26-2013)

No comments regarding the format of any of the 3 uniformity schedules. All comments relate to clarification of information requested.

Please provide draft "electronic filing Table of Codes" for each schedule so that we may review and consider programming implications of these tables.

We stress yet again the request to exclude "little cigars" from these schedules. Either that or request all taxing jurisdictions adopt a uniform definition of "cigarette". Without this uniformity of definition it will be extremely difficult, if not impossible, to reconcile ending inventory across all taxing jurisdictions. This comment was echoed again and again by all AWMA distributors providing input to this response.

Please confirm that the intent of these uniformity schedules is to replace Cigarette, PACT and MSA/NPM filing requirements in each taxing jurisdiction in which these forms are adopted.

Please confirm that the purpose of these forms is to disclose the physical movement of cigarette inventory during the reporting period. That is, for the "Home" State the forms should disclose all cigarette inventory entering and leaving the distribution facility during the reporting period irrespective of when the related costs are posted through the Accounts Payable system. For an "out-of-State" filing, the reconciliation should be of that State's stamped product.

<u>Uniform Transaction Schedule – Schedule 1 Comments to Instruction wording –</u>

Untaxed Sales – We believe this should be defined as "exempt" sales (i.e., sales to customers for whom no tax is required – military, licensed distributor, etc.) and "out-of-state" sales (i.e., sales to customers located outside the reporting jurisdiction whether or not these products have a tax stamp of another reporting jurisdiction). Note: There is no uniformity in the definition of "exempt" sales across taxing jurisdictions.

FEIN – If a customer does not provide us with their FEIN (for example cash only customer) or they do not have an FEIN (for example sole proprietor) what information do we provide? Perhaps retail customers should be required to provide their distributor with their FEIN as a condition of renewing their tobacco license. Will sole proprietors be required to obtain a FTIN (Federal Tax Identification Number) so that their SSN is not disclosed on these forms?

Customer Name, Address – What do we put here if we know the ultimate destination of the product, but we physically delivered the product to a central location of the customer (which then distributes out to their individual retail locations) or via common carrier? Our preference is to provide the Name and Address of the ultimate Retail location that will receive the product rather than the intermediate customer warehouse location to which we physically deliver. Note: This is a vendor requirement as they need to know where their product will ultimately be sold to an end user.

Invoice Number – We need guidance to explain what "document number" we should disclose for transactions for which we have not yet received the official 3rd party document by the time we file the tax report - for example, product returned to vendor for which we have not yet received a vendor credit memo (should we use our internal bill of lading #?). As an example, Wisconsin has a pre-printed number on their return form. If other States used similar procedures, we could use this pre-printed number as the "invoice number" on Schedule 1 to report product returned to vendor (since we don't know the vendor credit memo number at the time we file the return).

Please consider adding examples to show how to use various schedules under certain fact patterns. For example -

Example 1 –

> *Product Returned to vendor -* As this is a transaction with a 3rd party, we believe this should be listed on Schedule 1 as an Untaxed Credit / Tax Paid Credit. Sometimes the credit issued by the supplier is less than the actual amount returned. The amount returned should be the number of units that physically left our warehouse and not the number for which we ultimately receive credit from the vendor. It is not feasible to argue with the supplier when the difference is small.
>
> Please note that States vary in their method of documenting returned product (some allow credit against future stamp purchases, some issue a refund check, some provide for an adjustment on the tax report). Perhaps there could be more uniformity in this too. There should not be a requirement to amend a previously filed tax report when the vendor credit memo document number is received. Similarly there should be nothing to disclose on the tax report for the month in which the credit memo is received. The credit memo should be retained, in the event of audit, to match with the original tax report for the month in which the product was physically returned.

Example 2 –

> *Vendor Short Ship -* Please confirm the procedure when a vendor short ships product. For example, we order 20 cases, but only 18 arrive. Our warehouse records can only show 18 received. We cannot artificially inflate our inventory to show 20. The vendor invoice will show 20 and a vendor credit note for 2 will be received at a later date to net to 18 cases (i.e., Untaxed Purchase / Tax Paid Purchase of 18 cases).

Example 3 -

> *Customer return -* Please confirm that a return of product from a customer will be shown as a negative Untaxed Sale / Tax Paid Sale on Schedule 1.

Example 4 -

Customer Short Ship - Please confirm the procedure when a customer claims to receive a different amount than we believe we delivered. Customer orders 10 cartons. According to our warehouse records we shipped 10 cartons; however, customer claims to have only received 9 cartons. After a search of our warehouse we cannot locate the missing carton. However, for good customer relations or for whatever reason, we decide to give the customer a 1 carton credit. We believe this should be recorded as a Tax Paid Sale on Schedule 1 for 10 cartons, plus a negative Tax Paid Sale of 1 carton on Schedule 1 for the short ship, plus an adjustment of 1 carton shortage on Schedule 3 (assuming we are unable to locate the carton in our warehouse).

Example 5 -

Customer Product Return transaction crossing month-end - Generally when a customer returns product during the month we issue them a credit memo (a negative “untaxed sale / taxpaid sale”) in the same month the product is returned to us. However, for customers who return product to us at the end of the month, we may not have processed the return (i.e., issued them a credit note) by month-end (we need time to review the returned product to determine whether it is product we will accept as a return). In this case, in Month 1 we will have an increase to inventory (say 2 cartons), and in Month 2 we have a customer credit memo (for 2 cartons). We cannot treat the customer credit memo as a Month 1 transaction because the credit note has not been issued yet. We suggest this type of transaction be reported in Month 1 as an Adjustment for “plus 2” cartons (we call this an “unbilled credit” adjustment) to increase our tax paid inventory. In Month 2, the customer credit memo will be reflected as a “negative 2” cartons “tax-paid sale” on Schedule 1 plus an Adjustment of “negative 2” cartons on Schedule 3. Note that the Adjustment entries cancel across the 2 monthly tax reports.

Example 6 -

Drop Shipments - Sometimes (not often) our trade vendors drop product directly to our customer locations and/or pick-up product directly from our customer locations. We are then notified by our trade vendor of this “drop” transaction for which we must issue an invoice or a credit memo to our customer (and for which we receive an invoice or credit memo from our trade vendor). We are then responsible for the tax due (or refundable) on this “drop” transaction. In a “drop” transaction, there is no physical movement of inventory in our warehouse (as we were never in possession of the inventory). However, we would have a transaction with both our customer and our trade vendor that we think should be recorded on Schedule 1. We aren’t sure how this transaction should be recorded on the new uniformity schedules. Note – this is more likely to occur for OTP than for stamped cigarette products.

<u>Uniform Stamp Schedule – Schedule 2 Comments to Instruction wording –</u>

We look forward to reviewing the "electronic filing Table of Codes" to better understand the meaning of "Type of Stamp" and "Attribute". We believe "Type of Stamp" should be synonymous with Tax Jurisdiction.

Are multiple copies of this schedule to be completed based on the unique combination of "Type of Stamp" and "Attribute"? If not, the "count" won't work. It doesn't make sense to add up a column of 20s with a column of 25s or a column of Blue stamps with a column of Red stamps. Please explain.

Physical Ending Inventory – Please confirm that this amount includes only unaffixed stamps located in the warehouse. I.e., this should not include unaffixed stamps that have been ordered at month-end and not yet received at the warehouse.

Uniform Cigarette Pack Schedule – Schedule 3 Comments to Form and Instruction wording –

Physical ending inventory - Please confirm that this includes ALL inventory in the warehouse plus ALL inventory in-transit to customers (where title will not pass to the customer until the following month), but does not include inventory in-transit to the warehouse from vendors (whether or not title has passed). Please confirm that ALL inventory in the warehouse includes damaged (unsalable) product that has not yet been returned to the vendor (we believe these products must be included as this product is still in our physical possession). Please confirm that this total does not include inventory returned to the vendor for which we have not yet received vendor credit (this inventory is no longer in our possession and should not be considered part of our physical ending inventory).

We understand that some distributors may have difficulty running month-end reports to include in-transit inventory or to exclude product returned to the vendor for which a credit memo has not been received. Please carefully consider what information should be included in physical ending inventory and allow sufficient time for any system programming changes that may be required.

Given that physical ending inventory must now be reported down to the UPC code level, on audit will auditors be counting all our cigarette inventory down to the UPC code level? If so, this would be an overly burdensome requirement for both the auditor and the distributor. If not, then why must ending inventory be provided at the detailed UPC code level on monthly Schedule 3 reports?

Adjustments – We believe it will be a common occurrence to record adjustments on these monthly uniformity schedules to properly reconcile all inventory movement during the month to a physical ending inventory count. These adjustments will need to be provided on a UPC-by-UPC number basis to reconcile. If we count our inventory several times during the month and have "physical inventory" adjustments up and down throughout the month, should we record only the net "physical inventory" adjustment for the month or are we to show every physical up and down transaction during the month? Some distributors may want to report only the net adjustments and others may need to report each adjustment – will either presentation method be acceptable? Do the States really want this level of detail (since this information is really only needed on a cumulative basis across the entire audit cycle)?

Most States ignore monthly "adjustments" and only look to the net "adjustments" across the entire audit period. We are concerned that reporting these monthly adjustments on our reports may cause

States to request tax payment for those months when there are shortages without offsetting benefit in those months when there is an overage. That is, we should not be penalized for timing differences or minor fluctuations in our inventory from month-to-month (for example, because someone miscounted in Month 1 and the error was caught and corrected in Month 2).

Additional comments received from AWMA members -

We received many comments indicating that the level of detail required to be provided on these new uniformity schedules is much more extensive than is required on any returns they currently file. This will cause a significant increase in man-hours and IT programming to comply – especially for those companies operating in only a few States. As an example, a distributor operating only in PA commented that these forms require over 5 times the amount of detail currently required by PA. There was also a concern about the need for new software to comply.

Distributor 1 commented – Rather than reporting detail at the UPC code level, can we just show totals by Manufacturer Brand Family? This would reduce data volume and strain on computer systems.

Distributor 2 commented - We are already electronically reporting AL, MS, GA, FL OTP and TN PACT Act, TN Retail Accountability reports monthly and an annual FL sales report. The States already have their online "tax centers" and processes in place. This has all been in the last year or so. The MSA reporting has long been settled. It is a nightmare to upload and check, correct and deal with these massive files every month, as it is. I can't imagine re-doing what we've already conquered. The non-participating MSA taxes in MS, the local taxes that are State administered in AL and the filtered big cigars and little cigars that have to be stamped as cigarettes in TN, would all possibly need to be addressed. I guess these could be left with the other tobacco taxes to file as usual, adding yet another monthly report. If the State tax laws were uniform, a uniform reporting process might make sense.

Distributor 3 commented - We like the idea of having uniform reporting. In GA we have been doing electronic tax filing for the past year. There have been a lot of issues with the forms and the calculations that they should be doing which are not working correctly. After meeting with the GA DOR and being promised that the issues would be resolved, we have now filed 12 months of reports that have errors due to credits that can't be taken. These GA forms are basically excel but will not do all excel functions. Hopefully, if these uniformity forms are adopted by GA the issues we've encountered will be resolved.

Distributor 4 commented - We reviewed the forms in comparison to the existing forms we complete monthly. An issue that we have seen come up is not having a uniform Manufacturer and Brand Family Code. Arkansas was the first State that required us to list purchases and sales by Manufacturer and Brand Family Code. Texas started requiring this information this month but they have their own Manufacturer ID and Brand Codes, which of course are different from those used by Arkansas. This requires us to keep up with two sets of codes by specific State.

An example is:

State	Manufacturer	Code	Brand	Code
AR	Philip Morris USA	2200	Basic	2202
TX	Philip Morris USA	008	Basic	0007

Also, we do not report stamped and unstamped product when we send the physical inventory of cigarettes. In our computer inventory system (Retalix) we do not separate stamped and unstamped product. The forms attached would require counting inventory and separating out the product by brand and if it was stamped, list the tax jurisdiction. At the end of the month, we list stamped cartons on our stamp inventory report, but do not break it out by manufacturer or brand.

Helen's additional comment regarding Distributor 4's comment – Note that Michigan also has their own set of codes for Brand and Manufacturer. It appears this distributor is suggesting that the uniformity forms use uniform Manufacturer/Brand specific codes rather than UPC codes. That is, rather than requiring information to be provided at the detail UPC level (which is voluminous and more detail than States require) perhaps we could provide detail only down to the Manufacturer/Brand level. This idea will only work if there is a uniform schedule of Manufacturer/Brand specific codes which is shared by all States, manufacturers, distributors and retailers (I'm certain Manufacturers could provide such a code for each of their brands).

Distributor 5 commented - I would like to suggest creation of a website so everyone could review and attempt to complete the forms before the implementation date. I would also like a hotline to call or email someone and receive the correct answer to a question before implementation. I do not want to complete the forms for months then find out they have been submitted incorrectly. The website could also have a frequently asked questions section for guidance. I believe workshops held by the State before implementation would be helpful. [As an example, Minnesota held conference calls open to the public when they introduced significant tax law changes]. I would also like to suggest the ability to input our data from an excel spreadsheet when completing the online forms.

We look forward to continuing this dialogue regarding uniform cigarette tax schedules and hope that uniform forms will eventually be adopted by a majority (if not all) of the States. We agree uniform forms will be beneficial to both the distributors preparing these forms and the States administering them.

Thank you for the opportunity to provide feedback.

Kind Regards,

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