

# NOZZLE & WRENCH

AN OFFICIAL PUBLICATION OF THE WASHINGTON DC, MARYLAND & DELAWARE SERVICE STATION & AUTOMOTIVE REPAIR ASSOCIATION



VOLUME 20/ISSUE 7  
JULY 2021

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## KIRK'S CORNER

# Maryland Gov. Hogan Terminates COVID-19 Emergency Orders



By Kirk Mccauley,  
Director Of Member  
Relations &  
Government Affairs

For entire order: <https://governor.maryland.gov/covid-19-pandemic-orders-and-guidance/>

**Maryland motor fuel tax rate dropped .0020** due to combination of lower Sales Use Tax Equivalent (SUTE RATE) and a rise in Consumer Price Index (CPI). Rate chart is below, and that rate took effect July 1st, 2021. Since MFT rate dropped there is No Floor tax. Do not look for a refund either, LOL. Motor Fuel Tax Rates 2021 ([marylandtaxes.gov](http://marylandtaxes.gov))

### Montgomery County Minimum Wage up

Montgomery County minimum wage law increase July 1, 2021 - MOCO poster on

minimum wage. Increase depends on size of business, read poster.

<https://www.dllr.state.md.us/labor/wages/minimumwagelawmont.pdf>

Maryland Minimum Wage Poster for All Counties Except Montgomery  
<https://www.dllr.state.md.us/labor/wages/wagehrfacts.shtml>

EMPLOYERS ARE REQUIRED BY LAW TO POST THIS INFORMATION.

PAY RECORDS MUST BE KEPT FOR 3 YEARS ON OR ABOUT THE PLACE OF WORK. PENALTIES ARE PRESCRIBED FOR VIOLATIONS OF THE LAW

### Delaware Passes Minimum Wage Law

DE governor Carney is expected to sign a minimum wage law that passed the house and senate. Starting out at \$10.50 January 1, 2022, and reaching \$15 an hour in January of 2025. Current minimum wage is \$9.25.

Employee Size	Effective 1/1/20	Scheduled 1/1/21	Scheduled 1/1/22
Employees with 15 or more employees	\$11.00	\$11.25	\$12.50
Employees with 10-14 employees	\$11.00	\$11.60	\$12.20
Employees with 5-9 employees	\$11.00	\$11.60	\$12.20
Employees with 1-4 employees	\$11.00	\$11.60	\$12.20

Continues on page 4



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...we are starting to see people going back to the office, buying gas, traffic in our stores and repair shops, while not back to normal but increasing.

Continued from page 1

### District of Columbia-Tobacco- Sugar- Minimum Wage- Kitchen Sink

Tobacco flavor ban, including menthol in all tobacco and ESD products. B24-20

This act shall take effect following approval by the mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review.

(1) A flavored tobacco product; or (2) An electronic smoking device within one quarter mile of any middle or high school in the District of Columbia

D.C. sugar bill or B24-166 - Nutrition Equity Amendment Act 2021 was pulled from agenda after heavy opposition from a coalition of businesses and concerned citizens. WMDA to provide written and oral testimony.

D.C. minimum wage is \$15.20 as of July 1st in accordance with the Fair Shot Minimum Wage Amendment of 2016, the minimum wage and living wage in the District of Columbia will increase to \$15.20 on July 1, 2021, for non-tipped employees and \$5.05 for tipped employees who work in the district. This increase is due to provisions of the amendment that tie DC's minimum wage to the Consumer Price Index.

Questions or concerns about wage theft, minimum wage, or compliance with other ordinances can reach the Office of Wage-Hour Compliance at [owh.ask@dc.gov](mailto:owh.ask@dc.gov) or call (202) 671-1880. <https://does.dc.gov/release/dc-minimum-wage-increase-1520-july-12021%C2%A0>

### Keeping An Eye on The Bottom Line

As we are starting to see people going back to the office, buying gas, traffic in our stores and repair shops, while not back to normal but increasing. There is one more item that is increasing, the cost of doing business. Our fuel retailers are used to looking at fuel prices every day (increase of RFG regular 10% ethanol by 78% in one year ) and adjusting accordingly. All products you sell should be looked at the same way, with the profit percentage in mind.

Labor costs, employee benefits, cleaning supplies, insurance, Wi-Fi, uniforms, security, personal protection equipment and environment fees should all be looked at and tracked regularly along with any rent, mortgage or building cost.

Shop labor fees need to be an item high on your list if you are a repair facility. I have found shops still in the \$80 to \$100 range and that is plain crazy. A plumber with limited tools required

charges \$130 to \$150 an hour and higher on certain items. You cannot keep quality technicians and have long term security for your business and family charging yesterday's prices. Do quality work and be honest with your customers but be fair to yourself and your employees and establish fees that are consistent with professional service providers.

### Talking about Bottom line

Maryland law states a retailer cannot sell cigarettes for less than 8% markup over wholesale cost. Wholesalers also have a minimum markup. As a retailer if you pay \$9.82 for a pack of cigarettes then  $8 \times 982 = .7856$ , round to 79 cents. Minimum price you can sell at that pack for is \$10.61. Below are more examples from the state website.

I would suggest that if you suspect any of these tobacco shops selling below minimum, send a buyer to purchase and get a receipt. If you think it is below the required markup price call field enforcement. Field enforcement is now under the direction of a commission and not comptroller's office. Tip hot line is below, and Jeff Kelly is still in charge, when procedures or contacts change (as they always do with a new boss) I will let you know.

### Retailer to Consumer Cigarette Minimum Price Calculation

1. Multiply the wholesaler to retailer purchase price from your invoice by the 8% retailer cost of doing business minimum markup.
2. A fractional part of a cent equal to one-tenth of a cent or more in the result of step 1 must be rounded off to the next highest cent.
3. Add the result from step 1 to the wholesaler to retailer purchase price.
4. The result of step 3 is the minimum price that you may sell to consumers.

Example:

\$ 34.15 Purchase price per carton  
 $\times .08$  Cost of Doing Business markup (8%)\*  
\$ 2.73

\$ 34.15 Purchase price per carton  
 $\pm 2.73$  Result from step 1  
\$ 36.88 Minimum retailer to consumer selling price per carton.

### Enforcement Tip Line

If you have any information regarding illegal cigarette sales, or businesses operating without

# WMDA/CAR ANNUAL EXPO & AWARDS DINNER 2021

Tuesday, October 26, 2021

MARTIN'S WEST, 6817 DOGWOOD ROAD, BALTIMORE, MD

Expo | 2 pm - 6 pm (Light lunch available 2:30 pm-4:30 pm)

Cocktail Reception | 5 pm-6 pm

Awards Presentation & Dinner | 6 pm-8 pm

All American buffet and Halal options will be available.

Social Hour & After Party | 8 pm-9 pm



### FREE EXPO ADMISSION (2:00 p.m. – 6:00 p.m.)

☐ I will attend the Expo. Please list names below:

(Expo is Open to anyone in the automotive, c-store, service station and repair industry)

Primary Contact: \_\_\_\_\_ Business Name: \_\_\_\_\_

Guest Name: \_\_\_\_\_ Guest Name: \_\_\_\_\_

Guest Name: \_\_\_\_\_ Guest Name: \_\_\_\_\_

### AWARDS DINNER TICKETS (6:00 p.m. – 9:00 p.m.)

☐ Individual Tickets ..... \$65 x # \_\_\_\_\_ = \$ \_\_\_\_\_

☐ Table of 10 ..... \$600 x # \_\_\_\_\_ = \$ \_\_\_\_\_

### CONTACT INFORMATION

Company: \_\_\_\_\_ Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

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a business license or transient vendors selling merchandise on the roadside without a license, e-mail the Field Enforcement Division at [fed@marylandtaxes.gov](mailto:fed@marylandtaxes.gov) or call us at 410-260-7388. [Tax Information for Tobacco Taxpayers \(marylandtaxes.gov\)](https://www.marylandtaxes.gov/tax-information-for-tobacco-taxpayers)

### Massachusetts Right to Repair - Telematics

The Alliance for Automotive Innovation, the trade group representing virtually all the nation's automakers, sued the state of Massachusetts over the "Right to Repair". Massachusetts voters approved an amendment to the bill last year by a wide margin. The amendment added "Telematics" to Right to Repair and the choice of who receives that information. Starting date was 2022.

U.S. Massachusetts District Court Judge Douglas Woodlock on Friday June 25th questioned whether halting OBD-II authorization and deactivating telematics represented acceptable solutions for automakers to temporarily comply with Massachusetts' expanded "Right to Repair" law.

The state asked for the suit to be dismissed and Judge Woodlock set a July 21st date on the motion to dismiss. I will keep you updated. This decision is especially important from a legal aspect of what states can require of new car manufactures and sellers. A ruling in Massachusetts favor would grease the wheels in other states to enact a similar law.

### Diesel Trucks and Emission Controls

WMDA/CAR attended a virtual meeting of Maryland's Air Quality Control Advisory Council that was about Diesel pickup trucks that had modified or disconnected emission controls and changes to Maryland's VEIP program. My takeaway from meeting:

- Tampering is removing, disconnecting, altering, bypassing, or rendering ineffective any air pollution control device, including applicable air pollution control software installed in a motor vehicle.
- Tampering with a vehicle's air pollution control device can negatively affect vehicle performance, void warranties, and contribute

to air pollution. One illegally modified heavy duty diesel pick-up truck can pollute as much as up to 300 diesel pick-ups with properly maintained controls.

- Both Maryland and Federal law prohibit the removal, alteration or otherwise tampering with a vehicle's pollution control equipment.
- Maryland is currently working to expand regulatory authority to prohibit the manufacture, sale, use, or installation of defeat devices, and to prohibit offering for sale or transfer of vehicles that have had the air pollution control equipment tampered or removed. Shops beware MDE is looking to make examples.
- Maryland will seek a 5 year first emission check on new vehicles and open more self-service emission sites. There are looking at having motorist assist centers where there will be someone to help with problems. Not much information on the assist centers but working on finding out more. I might be seeing ghosts but that last one bothers me. Are these centers going to diagnose a problem? Are they going to give cost estimates? Are they going to recommend shops to fix? What does the state have in mind? WMDA/CAR is going to find out. Keep in touch.

### TCI Comes Out - Releases Finished Model Rule

TCI finished model rule makes for good reading and truthfully you should read it and post your comments to TCI-P Public Input Portal. Those that do not participate at least in the public input portal have no complaint in the end. This is your chance to voice your opinion, good or bad. You have 45 days to submit - no excuses.

[Transportation & Climate Initiative jurisdictions release finished Model Rule and seek additional public feedback on plan to cut transportation pollution | Transportation and Climate Initiative](#)

The TCI-P jurisdictions request that interested people and organizations provide input on the Model Implementation Plan and the other draft documents by August 13 through the online [TCI-P Public Input Portal](#). ■



## CAR TALK

# Handling the “You Damaged My Car”



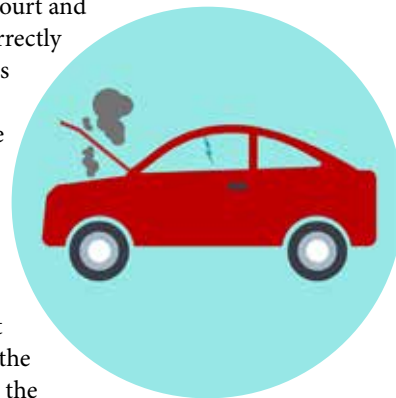
By Sandi Weaver  
BA Auto Care, Inc.

**Things happen and people make mistakes.** Part of owning a business is handling the difficult things, like informing a customer when something unexpected happened to their vehicle whether it's your fault or not. What's the best way to handle these difficult conversations?

A few years ago we had a first time customer come in with their Jaguar for the check engine light being on. The technician brings the Jaguar in and does a full body scan. Over 60 codes are found, some more serious such as the misfire codes. Others, not worth worrying about like the speaker circuits. After pulling the codes, the technician took the car on a test drive. One mile into the test drive and there was a bang, a coolant hose had burst. Long story short, the customer hadn't had their oil changed for over 37,000 miles and the car ran out of oil causing the engine to seize up. As most you know, on this type of vehicle you can't just check the oil level. The vehicle has to run for 10 minutes then sit for ten minutes and use the computer to check the oil level, hence the test drive. We called the customer and have him come to the shop so we can show and explain what happened. The customer is extremely mad and doesn't want to listen to anything we had to say. Had our shop been just a mile or two farther away, this would have happened while the customer was driving but of course, it became our problem after the customer handed over the keys.

Our procedure, when the need arises is to call our insurance company who then sends out an independent adjuster who will review all the details and determine who is responsible. This is the only time someone has refused this procedure and taken the car to another shop that couldn't confirm or deny how it happened. Just under three years later a court summons arrives and we head to court and the judge ruled in our favor. Whether we do everything correctly or make a mistake, things still go wrong. Here are some tips on how to handle these difficult situations:

- Create a policy that works for your company. Make sure to include who to contact for different scenarios.
- Use your resources, especially your insurance company. Not only do they offer an independent assessment, they also hire an attorney to represent you in court and your rates shouldn't be affected.
- Gather all the information including a time line of what happened from when the vehicle was dropped off until the incident and beyond if needed. Had we not done this at the time, we would have had to scramble and remember what happened 3 years later for court.
- Review any video footage or audio recordings you have
- Listen. Take the time to truly listen to the customer. They have a right to be upset even if it wasn't your fault. Listening and being empathetic can go a long way.
- Do the initial walk around the vehicle and report any noticeable damage. ■



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# Workers' Comp Insights

## Subrogation Explained

Brought to you by AmeriTrust CONNECT

**As an employer, you do everything you can** to promote a safe organization and protect employees from occupational illnesses and injuries, thus minimizing potential workers' compensation claims. Nevertheless, the risk of an employee experiencing a work-related illness or injury due to the fault of a third party – whether it's another organization, a contractor or a member of the public – remains.

In this scenario, your organization and insurance carrier may have a right to recover any expenses related to the employee's resulting workers' compensation claim from the third party. This practice is also known as subrogation. Essentially, subrogation can help hold the third party responsible for their actions (or lack thereof), protect your organization from being penalized for these wrongdoings and ensure the ill or injured employee receives accurate benefits for their ailment.

Review the following guidance to learn more about subrogation in the scope of workers' compensation and its associated considerations.

### What Is Subrogation?

While most workers' compensation claims consist of just two parties – namely, your organization and an ill or injured employee – subrogation can be necessary when these claims stem from a third party.

Claims that typically support subrogation include those caused by:

- An employee becoming ill or injured while on the property of another organization or contractor (e.g., a slip and trip incident)
- An employee becoming ill or injured due to another person's carelessness (e.g., a motor vehicle accident)
- An employee becoming ill or injured while operating workplace equipment owned by a third party (e.g., a machine-related incident)

The subrogation potential for a workers' compensation claim is generally determined at the beginning of the claim process. Once subrogation is proposed, your insurance carrier will conduct an investigation to determine who is at fault for the employee's illness or injury, as well as analyze overall claim compensability. This investigation usually includes a thorough review of the following incident information:

- Incident reports
- Supporting medical records
- Witness statements
- Photo or video footage
- Equipment maintenance and repair schedules (if applicable)
- Contracts or agreements regarding liability and compensation

From there, your insurance carrier will inform the third party (or the third party's insurance carrier) of the subrogation and how they will be expected



to cover the claim expenses. Subrogation is often a slow process, as the final amount that the third party will owe for the claim depends on when (and how) the employee heals from their illness or injury.

In other words, the associated workers' compensation claim must be closed and resolved for a subrogation amount to be reached.

Further, it's important to keep in mind that the employee may also file their own lawsuit against the third party for causing their illness or injury. When doing so, the employee must clearly communicate the details of the lawsuit with your organization and insurance carrier.

If such legal action results in the employee being awarded money, this total would need to be subtracted from the subrogation amount determined by your insurance carrier. Otherwise, the third party would be overpaying for the claim expenses, and the employee would be receiving extra workers' compensation benefits in addition to their separate settlement.

### Waivers of Subrogation

In some circumstances, certain third parties – specifically, other organizations or contractors – may ask your organization to sign a waiver of subrogation. This document essentially relinquishes your organization's right to subrogate the other party in the event that they are found responsible for an employee's illness or injury.

Waivers of subrogation are often included as part of initial

business contracts or agreements to reduce the risk of future conflicts. For example, another organization may require your organization to sign a waiver of subrogation before allowing your employees to work on their job site in an effort to minimize liability concerns and cut insurance costs.

While your insurance carrier may permit your organization to sign a waiver of subrogation if a business contract requires it, doing so could result in elevated premium expenses. After all, relinquishing your right to subrogate makes your organization riskier to insure,

seeing as you will have to handle any workers' compensation claims caused by the third party.

What's more, an ill or injured employee could take advantage of the waiver by receiving extra benefits from filing both a workers' compensation claim with your organization as well as a separate liability lawsuit against the third party. Without subrogation to disperse benefits between the claim and the lawsuit adequately, the employee could receive as much as double the benefits for their illness or injury.

However, some states have laws against this practice. In any case, be sure to consult your

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state's specific workers' compensation regulations and appropriate legal counsel before signing a waiver of subrogation.

### Subrogation Considerations

Subrogation can offer both advantages and disadvantages to your organization. In terms of benefits, subrogation can help ensure your organization isn't penalized for workers' compensation claims you didn't cause. By allowing claim costs to be recovered from a third party rather than your own insurance carrier, subrogation can also reduce your organization's experience modification factor and – in turn – your workers' compensation premium costs.

On the other hand, subrogation can have consequences. In particular, if your organization has a business relationship with the third party that causes an employee's injury or illness, engaging in subrogation could damage that relationship. Despite this, it's still important to utilize subrogation to hold the third party responsible for their wrongdoings.

Overall, remember that every workers' compensation claim is different. Make sure to reach out to your insurance carrier and adequate legal counsel to determine whether a claim requires subrogation. Contact us today for additional workers' compensation resources. ■

Contact your AmeriTrust CONNECT team today for additional workers' compensation resources at (800) 726.9006 or get a quote at [www.ameritrustconnect.com/association/wmda](http://www.ameritrustconnect.com/association/wmda).

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# WMDA/CAR 3rd Annual Charity Golf Outing

The WMDA's 3rd Annual Charity Golf Outing was held on June 8th at Renditions Golf Course in Maryland. We had an excellent turn out this year with 100 golfers participating – now that's a record. Also, we had an all-women's foursome!

I want to thank everyone who participated and sponsored this event, your generous support helped us raise \$9,000 for the Alzheimer's Association. I also want to thank all those who brought a non-perishable donation for the Maryland Food Bank – Much appreciated!

Thank you to all the volunteers who helped run the contest holes: Nasir Cheema, Sham Zia, JR & JoAnne, Josh & Buch from Ace Environmental, Kirk the Mulligans Man and Sandi Weaver.

### Congratulations to the all the Winners!

**Best Score Team, First place** - Tim Watkins, Kevin Eisenacher, Rick Eisenacher and Art Robinson

**Best Score Team, Second place** – Jeff Weaver, Ryan Carmody, Schuyler Matthai & Eric Bailey

**Longest Drive (Men's)** – Rob Choisser

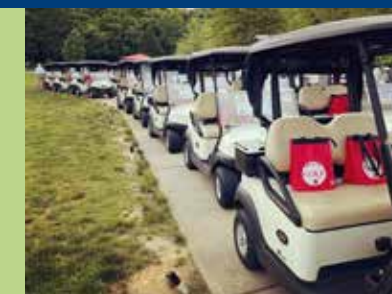
**Longest Drive (Women's)** – Adrienne Myers

**Closest to Pin (Men's)** – Kevin Eisenacher

**Closest to Pin (Women's)** - Lori Rodman

I look forward to seeing all our members at our **Annual Expo & Awards Dinner** at Martins West, Baltimore on Tuesday October 26th. If you haven't already, please register today – the Expo is FREE to attend and we would love to connect with you in person! It's been a challenging year and a half for everyone but things are starting to look so much better, so come re-connect & celebrate with us. Go to [www.wmda.net/events](http://www.wmda.net/events) for more details. Cheers! Swapna

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*A related question is whether a store owner has a duty or responsibility to provide aid to an injured customer, or to call for police or other assistance if a customer is injured or in danger.*

# Don't Wait to Call For Help

By James L. Parsons, Jr., Lynott & Parsons, P.A.

In last month's *Nozzle & Wrench*, I wrote about the potential liability of a store owner for injuries sustained by a customer during a robbery that occurs on the store property. A related question is whether a store owner has a duty or responsibility to provide aid to an injured customer, or to call for police or other assistance if a customer is injured or in danger. The Maryland Court of Appeals addressed this question in the case of *Southland Corporation v. Griffith*, 332 Md. 704 (1993).

The *Griffith* case arose from an incident where an off duty and out of uniform police officer (Griffith) drove a pickup truck accompanied by his son and several friends to a 7-Eleven store in Ferndale, Maryland owned by Southland Corporation ("Southland"). After he purchased food in the store, Griffith returned to the pickup truck parked in the 7-Eleven parking lot. As the occupants of Griffith's vehicle were eating their food, another vehicle carrying three teenagers (Takovich, Palmer and Haynie) entered the parking lot. The teenagers began acting in a rowdy manner, yelling obscenities at a young female in Griffith's vehicle and then throwing a beer can that hit Griffith's son on the shoulder. Officer Griffith then exited his vehicle to confront the teenagers, and Takovich threw a beer can at him, striking him in the face. Griffith then accosted and struggled with Takovich, identifying himself as a police officer, and telling Takovich that he was under arrest. Palmer and Haynie then began helping Takovich, and Griffith was hit with a tire iron in the face and collar bone.

Griffith told his son to enter the store and have the clerk call the police, and then fled to a nearby gas station to seek help. The gas station attendant also called the police, but was also attacked by one of the teenagers. At the gas station, Griffith was punched and kicked by the three teenagers, and was seriously injured in the attack.

Griffith filed a lawsuit against the three assailants for assault and battery, and a default judgment was entered against them. He also sued Southland for negligence, alleging that Southland, through its store clerk employee, had a legal duty to aid or attempt to aid him while he was being assaulted by the teenagers, and also had a legal duty to exercise reasonable care to protect him from the assault. There was a dispute in the lawsuit about the number of requests that were made to the 7-Eleven store clerk to call the police, and how long she waited until she made the call. Griffith alleged that Southland breached its legal duty because the store clerk initially refused to call the police after being requested to do so.

Southland's motion for summary judgment was granted by the trial court, and Griffith appealed. The Court of Special Appeals reversed the trial court's ruling, and the Court of Appeals of Maryland granted *certiorari* to review the case. In addressing the "duty to aid" question, the court first recited the common law principle that "a person has no legal duty to come to the aid of another in distress, even if the aid can be provided at no risk or cost to the other person." However, courts have recognized an exception to the common law rule where there is a "special relationship" between the parties, such as that between a shopkeeper and business visitor. The court noted that, as of



the time that the *Griffith* case was heard, no Maryland case had applied the shopkeeper-business visitor exception. Relying on legal authorities and cases from other jurisdictions, the court held that an employee of a business has a legal duty to take action to aid or protect a business invitee (i.e., a customer) who is in danger while on the business premises, if the employee has knowledge of the injured customer and the employee is not in the path of danger.

Applying the foregoing rule and the exception to the facts of the case, the court found that Griffith was a business visitor when he entered the store and purchased the food, when he sat in the truck in the parking lot and ate the food, and even when he responded to and confronted the teenagers. As a

business visitor, Griffith was owed a duty by Southland (through its store clerk employee) to aid by calling the police when he requested assistance. Since there was a dispute in the case as to whether the store clerk employee immediately called the police when she was requested to do so, the court found that it was error to grant summary judgment in favor of Southland.

The lesson from the *Griffith* case is that store clerks should be trained to call the police for assistance if they are aware that a customer is injured or in danger, unless doing so would place the employee in danger himself/herself. The law does not require a store employee to render assistance or aid if doing so would place the employee at risk of harm. For example, an employee is not required to fight off or physically

restrain an assailant that is causing harm to a customer, but if an employee is able to call for police assistance without creating a risk of harm to himself/herself, then the employee has a legal duty to do so. In addition to conducting proper training of employees, as mentioned in last month's article, store owners should also consult with their insurance brokers/carriers to make sure that there is adequate commercial general liability insurance in place to protect the store owner in the event of an injury to a customer or other store invitee. Criminal activity at a place of business is often unpredictable and rapidly evolving, but having proper training policies and adequate insurance in place will put a business owner in a better position if they are faced with such an unfortunate event. ■

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LEGISLATIVE UPDATE

# WOTC Bills Under Consideration



By Roy Littlefield IV

**Several bills that impact WOTC** (Work Opportunity Tax Credit) have now emerged in the 117th Congress.

Most of these bills won't be enacted singly, but now that WOTC is safe for five years, we're working to ensure enactment of a considerable list of desirable improvements that SSDA-AT has recommended in the past.

The most effective approach to the chairmen of the tax-writing committees is for our congressional supporters to consolidate and lay our proposals before the full committee in a bill and/or testimony. At the same time,

many congressional supporters have their own priorities for WOTC, and some have already proposed bills which, if enacted, would enhance WOTC significantly.

What follows is a description of some of the most significant bills that deserve our attention and support.

If you are pleased, thank congressional sponsors for their hard work shaping legislation to expand and enhance WOTC. If you see provisions you cannot support, or are problematic, let us know so we can act to resolve the issue.

The bills below don't reflect SSDA's full list of desired improvements to the WOTC program. In a future report, we'll discuss where we stand with those proposals.

We can interject here, regarding an important goal of the past four years, that the President's Budget calls for replacement of the BEAT tax (Base Erosion and Anti-Abuse Tax) that unfairly taxes some of the largest WOTC employers. Senate Finance Committee Chairman Wyden had already decided on a means to remedy the injustice of BEAT, but the President's approach would replace it entirely. The administration's approach is detailed in the Green Book accompanying the budget, and we'll soon learn Senator Wyden's reaction.

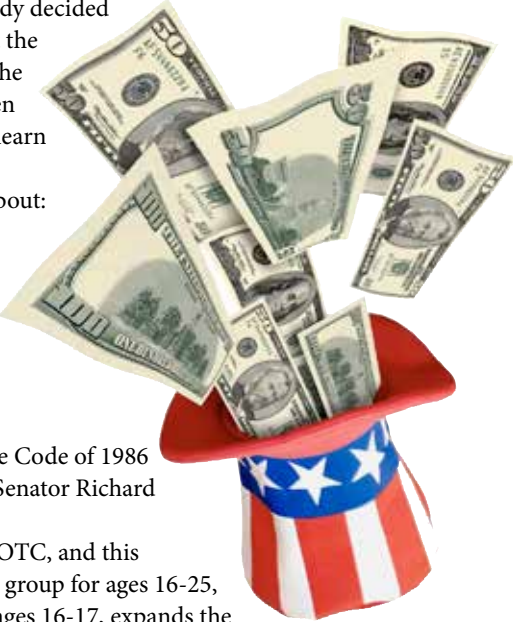
Here are the WOTC bills you should know about:

- **S. 269**, WOTC and Jobs Act, Senator Rob Portman (R-OH)

This bill would make WOTC a permanent part of the tax code. Our friend, Senator Portman, has introduced this measure in every Congress.

- **S. 1560**, A bill to amend the Internal Revenue Code of 1986 to modify WOTC for certain youth employees, Senator Richard Durbin (D-IL)

There is no "at-risk youth" target group in WOTC, and this important bill sets a "disconnected youth" target group for ages 16-25, doubles the maximum wage for summer youth ages 16-17, expands the summer youth program to include year-round employment, and requires youth, who are in school, to work no more than 20 hours a week. An identical bill has been introduced in the House by Congresswoman Robin Kelly (D-IL).



# GOVERNMENT AFFAIRS

- **S. 784**, Jobs for Economic Recovery Act, Senator Ron Wyden (D-OR)

Senator Wyden, chairman of the Senate Finance Committee, introduced this measure to grant a second-year credit, at 40 percent of a maximum \$6,000 qualified wages, for any employee who worked the prior year in a job subsidized by the government. The bill also directs the GAO to evaluate the effectiveness of the coronavirus Employee Retention Credit. An identical bill was introduced in the House by Congressman Danny Davis (D-IL), a subcommittee chairman of Ways and Means.

- **H.R. 3449**, To amend the Internal Revenue Code of 1986 to make certain adjustments to WOTC to modernize the credit and make it a more effective hiring incentive, Congressman Tom Suozzi (D-NY)

Congressman Suozzi, a Ways and Means Committee member has introduced a vehicle for improvements we are supporting. The text of the bill is not yet final.

- **S. 630**, Disability Employment Incentive Act, Senator Bob Casey (D-PA)

Senator Casey's bill extends WOTC eligibility to individuals receiving cash Social Security Disability Insurance (SSDI), increases the amount of the credit, provides a second-year credit, and extends these increased benefits

not only to SSDI recipients, but also to SSI and Vocational Rehabilitation recipients.

- **S. 1532**, A bill to provide a WOTC for military spouses and to provide for flexible spending arrangements for childcare services for uniformed services families, Senator Tim Kaine (D-VA).

With support of 27 major veterans organizations united in

The Military Coalition, we are working with Senator Kaine and others to ensure enactment of this goal, for which there is a strong case, too long deferred. There are other bills in the works, but in the meantime, we welcome your feedback on the foregoing bills, which are works in progress.

WOTC remains a top issue for WMDA/CAR and we will continue to update you with the latest developments. ■



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# Allow Small Businesses to Thrive



By Roy Littlefield III

EXECUTIVE SUMMARY

The Service Station Dealers of America and Allied Trades (SSDA-AT) urges Congress to oppose any proposals that would increase estate taxes and/or reduce or eliminate the step-up in basis. These proposals, if enacted, would prove to be extremely harmful to small businesses. They would impede the ability of small businesses to grow, create and maintain jobs and continue to contribute to the economy.

This is particularly true for older small business owners who, because of their age, will not be able to purchase life insurance or engage in other planning to save the business from a forced fire sale upon their deaths.

ANALYSIS

Recently President Biden proposed an extraordinary income tax increase on small business owners, while at the same time expanding estate taxes. The President’s proposal eliminates the step-up in basis for assets on death and imposes a new capital gains tax at death.

If enacted, these proposals would, for the first time in our nation’s history, tax the same asset twice at death – once by a death tax on capital gains and again by an estate tax. When assets are includable in a taxable estate, traditionally it has been considered appropriate to provide the assets with a step-up in basis so they are not subject to double taxation.

Even though often ignored in the debate on the estate tax – the elimination of the step-up in basis is plain and simple a new death tax. This new death tax will, without a doubt, hurt many more families than the actual estate tax. This proposed new tax would apply to almost all inherited assets – including businesses. As shown below, these proposals will disproportionately hurt small and mid-sized

CURRENT LAW		BIDEN PROPOSALS	APPLIES TO
Estate and Gift Tax			
Unified Credit	\$11.7 million per spouse	\$3.5 million per spouse	Those with estates over the threshold amounts
Tax Rate	40%	Graduated rates starting at 40%	Those with estates over the threshold amounts
Income Tax			
Basis Step-up at Death	Yes – heirs can sell inherited assets without paying capital gains tax	No –step-up repealed and heirs receive inherited assets with decedent’s basis (known as carry-over basis)	Anyone who inherits property through an estate
Gain Recognition at Death	No – heirs can hold inherited assets without capital gains tax until assets are sold	Dramatic new tax – heirs pay capital gains tax on inherited assets whether or not sold, except possibly inherited family businesses which will continue to be “run” by the family	Anyone who will have more than \$1m of gain on assets through the estate plus an extra \$250,000 for gains on a personal residence



businesses which are capital intensive. SSDA-AT opposes these proposals, which are both unfair and will impair the economic success of our nation’s small businesses. The imposition of the new death tax on capital gains by itself (let alone in addition to the estate tax) at or after the owners’ deaths will destroy many of these local businesses.

The step-up in basis is sometimes erroneously referred to as a major “tax loophole for the rich” and is being touted as a significant revenue raiser. It appears from the very brief description that has been published to date, that this tax would be imposed at the death of the small business owner unless the business will be continued by the family. In that event, the triggering event for the capital gains tax would be when the heirs sell the business. But, as described below, not all small and mid-sized business owners plan to pass on the business to their family members. Imposing this tax at the death of the owner may cause a fire sale of these businesses because, in many cases, there will be no other sources of funds available to pay this unexpected tax. Without advance warning, there will be little a business owner can do to prepare for this

tax, particularly if the owner is a senior with no family members capable or willing to run the business and with no other assets to pay the tax.

As mentioned above, businesses owned by seniors will bear the heaviest burden of this unanticipated new death tax on capital gains – this is because, unlike younger individuals, the cost of life insurance will be confiscatory if such insurance is, in fact, even available. Thus, it is highly unlikely that they will be able to use life insurance as a source of funds to pay this tax. In many cases there will be a forced sale of the business or other asset such as a family home. This is not to mention the technical compilations that will need to be addressed as it is also harder, if not impossible, to determine the

basis of assets held by seniors for a long period of time.

**Will the same assets be taxed twice by the new death tax on capital gains and the estate tax?**

While it is not clear that there will be double taxation under the proposal since we are not dealing with final legislative language, there does not appear to be a dollar for dollar offset of estate taxes against the new capital gains tax or vice versa. In fact, it is possible that the new death tax on capital gains will be treated in the same manner as retirement plan assets where there is by no means a dollar for dollar offset of income taxes against estate taxes. Plain and simple these new taxes could be confiscatory as well as represent double taxation on at least some of the same dollars.



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### **Consequences of Limiting or Eliminating the Step-Up in Basis at Death**

A simple example demonstrates just how harmful the elimination of the step-up in basis could be for a small businesses, particularly if combined with increased estate taxes. Consider a thriving small business started years ago by a couple. Assume the husband passed away in 2009 and the wife continued at the helm of the business until her later death. Due to many years of dedicated hard work and scrimping and saving by the owners, the business has a basis of \$500,000 and is worth \$12 million at the time of the wife's passing. Assume that the owners had decided it would be best for the business to have key employees purchase the business over 5 years upon the passing of the last surviving owner. Also imagine this small business employs 40 employees and provides a valuable service to the community. To simplify the example to its barebones, assume that the wife dies with no other valuable assets, no real estate and no deductions. Also assume there are no family members interested in or capable of running this business.

- **Under current law assuming the wife died in 2021, there would be no tax on the wife's \$11.5 million capital gains in the business and the current \$11.7 million estate tax exemption would cover most**



**of the estate. The total estate taxes due at death would be approximately \$120,000** (\$300,000 multiplied by the 40% estate tax rate). Under this scenario, it is likely that heirs would allow the key employees to purchase and continue the business as planned by the owners. The company would be able to continue to employ all its employees and continue to add to the community and our Country's economy.

- **Assuming the wife died in 2026 and there were no new changes to the law, there would be no tax on the wife's \$11.5 million capital gains in the business and approximately \$2,460,000 of estate taxes would be due.** Under the current law the \$11.7 million exemption plus COLA will be cut in half as of January 1, 2026. For this example, assume the estate tax exemption in 2026 will be \$5,850,000. Thus, \$6,150,000 of the business owner's estate would be taxable, which, at a 40% tax rate, would mean that the estate would pay a total of approximately \$2,460,000 in federal estate tax. At this level of taxation, it seems improbable that the planned purchase of the business by the key employees would take place, even though that would provide the company with its best chance of continued success. It is much more likely



that the business will be sold to outsiders or purchased by a much bigger company. **This is a huge increase in estate tax on a relatively small business that is a far cry from a truly large estate that is worth \$50, \$70, \$100 million or \$1, \$5 billion or more! As a policy matter, is this really the kind of business the country wants to destroy by cutting its worth so significantly at the precarious time of the passing of a trusted owner?**

- **If the death tax on capital gains was enacted but no other changes to the law were made and the wife passed away in 2026, there would be a new death tax on capital gains of \$2,499,000 and an estate tax of \$1,460,400. This would mean a total of \$3,959,400 of death taxes!** The death tax on \$10.5 million of capital gains in the business, at the current rate of 23.8%, would generate \$2,499,000 of a new tax due at death. (This example assumes that there will be a \$1 million exemption of capital gains and that if there is a family exception to defer taxation until a later sale, it will not apply because there are no family members who will continue to run the business.)
- **Some experts assume that if the law is changed the new death tax on capital gains will be a deduction from the**



estate so that now the estate is worth only \$9,501,000 which generates an estate tax equal to \$1,460,400. This may not prove to be the case which would make the estate tax \$2,460,000 or some amount in between these numbers.

If there is not a deduction for the new capital gains death tax, then this family could end up immediately owing a total of almost \$5 million of taxes due on death of the owner on this relatively small business. It seems hard to justify this result when few would argue that this is a super wealthy business. This type of situation is particularly common with small farmers who while often "income poor" are "land rich."

This example assumes that the death tax on capital gains reduces the value of the estate, but it would be fairer if the capital gains tax reduced the estate tax due dollar for dollar or perhaps vice versa.

Of course, it would be even more fair to introduce this new death capital gains tax the way Canada did by repealing estate taxes (at least say for every estate under \$100 million) and allowing for a one-time basis adjustment.

This amount of cash coming out of the small business would make it virtually impossible for it to continue operating at the same level prior to the payment of this tax and much more likely that the family would have to sell the business to outsiders or larger companies in order to pay the taxes. The anticipated sale to the key employees would not be able to go through because the family would have to sell the business to raise the cash to pay the taxes. For most small business farms, this kind of hit would force the farm to be sold unfortunately to some large conglomerate since as mentioned above, family farms are notorious for being "land rich" and "cash poor."

- **If the death tax on capital gains was enacted and the capital gains tax rate was increased to 43.4% per President Biden's proposal and the wife passed away in 2026, there would be a new death capital gains tax of \$4,557,000 and estate taxes of at least \$637,200. This would mean a total of \$5,194,200 of taxes due at death!** A death tax on \$10.5 million of capital gains taxed at a 43.4% tax rate would generate \$4,557,000 of capital gains tax. (Again this assumes that there will be a \$1 million exemption of capital gains and if there is a family business exception, it does not apply.) Assuming that this tax would reduce the taxable estate down to \$7,443,000, then after applying the estate tax exemption of \$5,850,000, a total estate tax of \$637,200 would be due. As mentioned above, this assumption may prove to

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not be valid and the estate taxes could be much higher. This amount of cash coming out of the small business would simply destroy it.

- **Now assume all of the current proposals are enacted: the death tax on capital gains, the capital gains tax rate is increased to 43.4% and the estate tax exemption is reduced to \$3.5 million (let's leave the estate tax rate at 40% for this example but that may prove to be too optimistic an assumption) – at the time the wife passed away, there would be a new death tax on capital gains of \$4,557,000 and estate taxes of \$1,577,200. This would mean a total of \$6,134,200 of taxes at death! If we were instead to assume that the payment of the death income tax is not a deduction from the value of the estate – this would raise the estate taxes to \$3,400,000 for a total of \$7,957,000 of taxes due at death. Under this possible scenario, approximately 66% of this estate would go to taxes.**

*How do we protect our successful small businesses from these excessive taxes at the death of the owner?*

The best way to protect our small businesses from being destroyed by taxes upon death is to leave the law as it stands today and make the current estate tax exemption rate permanent. This is also the best way to protect the legacy of our seniors.

If the new death tax on capital gains is to be enacted, then estate taxes should be repealed (perhaps there should be an exception for the super rich – say those with over \$100 million of assets) and all individuals should have a step-up in basis as of the effective date of the legislation.

If the new death tax on capital gains is to be enacted, there should also be a much higher exemption of capital gains – at least \$10 million so that upper middle-income taxpayers are largely exempted from the



reach of this new draconian death tax. There should be a longer period of time to pay the death tax on capital gains, particularly for the estates of seniors who will not be able to purchase life insurance to pay this new death tax.

If estate taxes are not repealed for upper middle-income taxpayers, by maintaining the current level of the estate tax exemption, any tax paid for the new death tax on capital gains should be offset dollar for dollar against any estate taxes owed.

If the capital gains rate goes up to the 43.4% level for income over \$1 million, the \$1 million income level should be determined absent the gain triggered by the deemed distribution forced by the death of the owner of the asset.

Finally, if a new death capital gains tax is enacted then at a minimum the capital gains being taxed should be indexed by inflation. When capital gains are taxed on their inflation, the true tax rate is obviously much higher.

SSDA-AT urges Congress to

oppose any proposals that would increase estate taxes and/or would reduce or eliminate the step-up in basis. A rejection of these harmful proposals will allow our country's small businesses, to continue to grow, maintain and create jobs and contribute to our economy. This is particularly true for older small business owners who, if some or all of these proposals become law, will not be able to purchase life insurance to save the business from a forced fire sale upon their deaths. ■

[illegible]



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Lori Rodman  
301-212-9100  
[lrodman@centurydist.com](mailto:lrodman@centurydist.com)



### OIL BUYING PROGRAM

**REIT Lubricants Company**  
**Chevron/Havoline**  
Jamie Atkinson  
800-423-3624 | 443-309-9929 cell  
[jatkinson@reitlube.com](mailto:jatkinson@reitlube.com)



### WORKERS COMP INSURANCE

**AmeriTrust**  
Nicholas DiCarlo  
800.825.9489  
[nicholas.dicarlo@ameritrustgroup.com](mailto:nicholas.dicarlo@ameritrustgroup.com)



### CREDIT CARD PROCESSING

**First Merchant Services**  
Dan Cohen  
1-866-511-4367, ext. 105  
[dcohen@firstmerchant.us](mailto:dcohen@firstmerchant.us)



## LET YOUR MEMBERSHIP WORK FOR YOU!

Simply participate in all of the programs for which you are eligible and you will save or make enough to pay for your membership in WMDA/CAR!





# Having a Voice – Representing Our Members

## Our Industry is facing not only the overwhelming effects of COVID-19 but issues that affect the core of our business.

- Maryland, Delaware, and District of Columbia belong to the Transportation Climate Initiative (TCI) with a goal of reducing carbon fuel use up to 30% by 2030.
- New cars manufactured are installing telematics in vehicles that only send information to their dealerships – no option to the car buyer.
- Ban on menthol cigarettes (already a law in Massachusetts)
- California bans gas powered cars by 2035.
- Baltimore council member wants to ban new service stations in the city.

This sounds like a Steven Spielberg horror movie, but these are real issues that face our industry!

These issues will be or already are in the legislative process and will affect every business WMDA/CAR represents. Outside and inside sales, and car count in our shops. Legislators are looking to raising funds for their next election. They are also looking at supporters who provide those funds and support their efforts.

We are working hard to protect our members and associates and your contributions are essential to that process. The devastating effects of COVID -19 and combining that with real legislative issues that affect all our members is difficult to absorb but they are a real danger to our businesses.

### Now is the time to support the WMDA PAC and protect your business.

We suggest \$150 per location however, any amount is welcome. Please send contributions to:  
WMDA PAC  
1532 Pointer Ridge Place, Suite F  
Bowie, MD 20716

You may direct any questions about legislation to Kirk McCauley at [kmccauley@wmda.net](mailto:kmccauley@wmda.net).

Your fellow business owners and PAC officers,  
Rick Agoris, PAC Chairman  
Riaz Ahmad, PAC Treasurer



#### CONTRIBUTION RULES:

1. Maryland currently is in a 4-year election cycle which began January 1, 2019 through December 31, 2022.
2. No individual or corporation can contribute more than \$6,000 to any single candidate or a state PAC over the 4-year election cycle. (The maximum contribution to the WMDA PAC cannot exceed \$6,000 in total during this cycle.)
3. Your contribution to WMDA PAC can be a personal or corporate check. Political contributions are not considered a business expense or tax deductible.