

# NOZZLE & WRENCH

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*On February 10, we will host an online zoom meeting to go over legislative bills that mean something to our members.*

## KIRK'S CORNER

# Legislative Mayhem



By Kirk McCauley,  
Director Of Member  
Relations &  
Government Affairs

**On February 10, Swapna and I will host** an online zoom meeting to go over legislative bills that mean something to our members. Join us on zoom and ask questions, starting 9am. We will stay until no more questions, but normally done in 30-45 minutes. Here are samples of the bills, links are hot so you can check language.

**HB17** – Requires retail employers with 20 or more employees for each workday to provide suitable seating for employees if the nature of the work can be performed while seated. Further, an employer must ensure workspace design can allow for seated employees in new construction or major renovations done to work locations. Penalties include a \$100 fine per pay period for the initial violation and a \$200 fine per pay period for subsequent violations.

Employees may ask the attorney general to bring action against the employer.

**HB147/SB250** – Requiring each county to prepare a “climate crisis plan” to address the effects of climate change. Plans must include increasing the use of renewable energy; reducing and eliminating the use of fossil fuels in the design of new buildings; retrofitting existing buildings to become 100% electric; transitioning all vehicles owned or operated by the county to zero-emission vehicles; and encouraging the use of non-fossil fuel vehicles. Having each county enact regulations would set up a very confusing and potentially costly business environment.

**HB349** – The “Maryland Fair Scheduling Act” requires retail and food service employers to pay non-exempt employees for at least four hours at the employee’s regular pay rate for each shift the employee reports to work but is required to work less than four hours. If the employee is scheduled for less than four hours, then the employer will pay the employee for the full four hours if the employee reports to work but is given less than the scheduled hours of work. Additionally, an employee may refuse any work during the 11 hours following the end of a shift. If the employee agrees in writing to work, then an employer must pay that employee time and a half. Employees may bring a private right of action against an employer for alleged violation in addition to filing a complaint with the Commissioner of Labor and Industry.



*Continues on page 4*

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[SB81](#) – Accelerates the phase-in of the state's \$15 minimum wage to July 1, 2023, for employers with 15 or more employees. Those with 14 or fewer employees have until July 1, 2024. Current law does not reach \$15 until January 1, 2025, and July 1, 2026, respectively. No hearing date in the Finance Committee has been scheduled. I do believe this bill will be withdrawn in favor of the governor's bill below.

[HB0549](#) – Governors bill on Minimum Wage – Wages will stay as they are until October 1, 2023 \$12.80 for small employer and \$13.25 for employer with 15 and over. On October 1, 2023 both will go to \$15.00 small and large employer. Starting July 1, 2025 Minimum wage will be increased by Consumer Price Index (CPI). CPI from March 1, 2024 first to March 1, 2025, Same for each year after 2025. No date on hearing yet

[SB0178](#) "Gas Price Gouging Act" - would require business post credit or debit along with cash price if the two were different.

[SB259](#) – Bans the sale of flavored tobacco products in Maryland. Flavored tobacco products include Electronic Smoking Devices (ESD) and any flavored liquid or accessories.

### **Action Alert – Banning Flavor in All Tobacco Product Which Includes Electronic Smoking Devices (ESD)**

SB259 – Flavored Tobacco Products Prohibition – will be heard in the Finance Committee on Thursday February 16th. This bill would totally ban flavor in tobacco products, including ESD. All accessory products would also be illegal to sell, Blunt wraps, filters, rolling paper, hemp wraps, pipe, and liquids used in ESD. Flavored tobacco products are

50-70% of in store sales, and I have heard higher depending on location. A good percentage of in store profit margin.

### **Action Required**

1. The most effective action would be to sign up and testify, along with a phone call or email to your state Senator.
2. Sign up to turn in written in a PDF form.
3. Next would be email or phone call to senators office (most likely will have to leave message with legislative aid)
4. All the above would obviously be the best,
5. Even if you are not testifying, showing up in support in large numbers would be great.

When in phone conversation, email or testifying say what's in your heart, but do not be confrontational and be polite.

- How can you embrace cannabis at same time bills like SB 259 ban flavor. Taking away retail customers and stores profits.
- This bill will not accomplish anything except drive business down tobacco road leading to VA., DE, neighboring states, Marylanders can bring 5 cartons back to Maryland tax free and legal.
- Maryland retailers check ID and age requirement, by banning flavors you are not

only hurting honest retailers, but enhancing an already robust illegal market that Checks No ID and Collect No Maryland Tax. These illicit outlets are not licensed, taxed, or regulated in any way. Tax money from these products is an enormous loss and big plus for illicit sales.

To find your state representative go to, [Home Page \(maryland.gov\)](#). Top bar says members, drop down to find my representative, click on look-up and put in your business address and zip. Click on their name and contact information pops up.

To send in written or register to testify you must have an MGA account which is easy to set up, go to <https://mga-leg.maryland.gov/mgaweb-site/Information/VideoTutorials>. SB259 will be held on Thursday February 16th at 1pm in Senate Finance. You have to send in a testimony or register to testify on SB 259, Wednesday February 15th between 8am–3pm. I have also attached bill and senate witness guide lines to this email. Please let me know if you are testifying.

Any questions, need help registering, call me 301-775-021 or text. ■



## 2023 WEEKLY LEGISLATIVE HOUR

WITH KIRK MCCAULEY (ONLINE)

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EVERY FRIDAY,  
FEB. 10TH–APRIL 14TH  
9AM VIA ZOOM





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**DETAILS TO COME – BE ON THE LOOKOUT**

# Electrician



**Sandi Weaver**  
BA Auto Care, Inc.

**A few years ago I contacted a local electrician** to find out why all the lights in our kitchen, half bath and the bedroom above lost power. They quoted for them to come out and have a look. After checking some basic things they said they would need to spend more time to diagnose the problem. I was quoted \$425 including the initial fee. I said ok because what else was I going to do. The mistake they made was the one guy mentioned the kitchen light and had we replaced it. I said yes, we did it ourselves a year or so ago. He said I bet that's it. The other guy said well we have to diagnose it and

gave the first guy a look. Turns out it was that light but not until they spent time in the upstairs bedroom and the half bath. This took all of about 15 minutes. Having the basic knowledge of how diagnostics work on cars, I get why they checked all the areas affected. What bothered me was the flat fee no matter how long it took them to find the problem. After thinking on it for some time, I realized it wasn't the flat fee that bothered me but they could so easily get me to agree. We spend much more time with some of our customers discussing the prices we charge and charging for the time we spend. So in a sense, I was mad at myself. Accentually, why do we only charge for the time we spent (with a little cushion) and other trades give a fixed price?

Fast forward to last week when our usual electrician wasn't available and an employee called this company out to repair/replace the cable reel to a hanging outlet that was damaged. This time they didn't provide a fee to come out, an estimate to fix, nothing. No communication at all on pricing to anyone. This time I question how they can get away with that? Yes, the employee to was handling should have asked, I get that but seriously, how can you not quote a price to provide a service?

So you're probably reading this and wondering why I would bother writing about it. That's because it frustrates me how other trades can charge the same if not more for one type of service. An electrician knows electrical work, a plumber know about plumbing and while some learn more than one trade, there is no way they have to learn as much as an automotive technician who has to know electrical, plumbing, heating and cooling and mechanical repairs on hundreds of types of vehicles. Experiencing the lack of customer service from this company reminds me how far auto repair has come with customer service and I am proud to be a shop owner. ■



## WMDA/CAR General Membership Meeting

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# Why Do You Care About My Hair?



Christine V. Walters, J.D.,  
MAS, SHRM-SCP, SPHR  
[www.FiveL.net](http://www.FiveL.net)  
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**Hair discrimination has popped up** in the news with increasing frequency in the last few years. On December 27, 2022, the U.S. EEOC filed a lawsuit against an employer claiming it refused to hire a job applicant because of his Spiritualist Rastafarian dreadlocks hairstyle. The lawsuit alleges the employer told the applicant in an interview that he would need to cut his dreadlocks to work there. The applicant replied that his dreadlocks were worn for his religious beliefs, and he would not cut them. The applicant alleges the interview immediately concluded, and the employer refused to hire him.

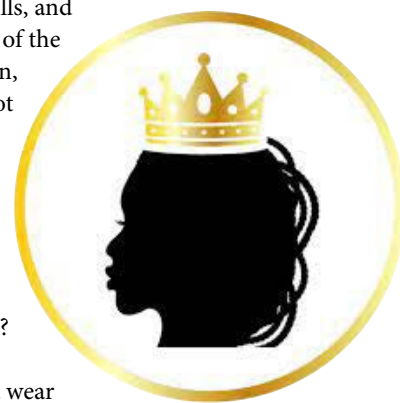
Title VII of the Civil Rights Act of 1964, requires employers to attempt to make a reasonable accommodation for sincerely held religious beliefs and practices.

In addition, many states (at least 18) and local jurisdictions (at least 40) have enacted laws referred to as “CROWN” Acts – Creating A Respectful and Open World for Natural Hair. While the definition of hairstyles and textures that are protected vary, they generally prohibit discrimination in employment based on hair traits associated with race. Many of these cover small employers, including and not limited to those with at least four employees.

For example, Maryland, Delaware, and Montgomery County, Maryland each has its own Crown Act. The definitions of protected hairstyles vary. The District of Columbia prohibits discrimination based on “personal appearance” that includes hair style and beards. There are also CROWN Acts pending in the U.S. House and Senate that are supported by the White House

## Practical Tips

- **Interviewing.** Focus on the individual’s knowledge, skills, and abilities (KSAs) as they relate to the essential functions of the job, not the person’s hair. Sure, if their hair is blue, green, or purple, maybe that’s not your cup of tea and that’s not legally protected (today). But, judging an applicant by the individual’s hair style that is associated with sex, race or national origin, might not only result in your losing a well-qualified candidate, but it could land you in legal hot water, too.
- **Dress Code or Appearance Policy.** Review yours if you have one. Do you define “professional” appearance? Are there distinctions based on sex, race, age, or any other legally protected status, such as what men should wear as compared to women? Talk to your company’s legal counsel to ensure your policy meets your business needs *and* passes legal muster. ■



*This article does not constitute the rendering of legal advice. Talk to your company’s legal counsel for guidance on specific issues.*

*...judging an applicant by the individual’s hair style that is associated with sex, race or national origin, might not only result in your losing a well-qualified candidate...*





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# Maryland Court Rules That a Tenant Will Not Be Relieved of Its Obligation to Pay Rent

Brought to you by James L. Parsons, Jr., Lynott, Lynott & Parsons, P.A.

**In my article in the November 2021** *Nozzle & Wrench*, I wrote about whether commercial tenants may be able to justify the nonpayment of rent due to the downturn in business activity resulting from the pandemic and related government shutdowns, relying upon the legal defenses of “frustration of purpose” and “impossibility of performance.” In that article, I referred to a recent case out of New York (*A/R Retail LLC v. Hugo Boss Retail, Inc.*, 72 Misc.3d 627 (Sup.Ct., New York County 2021)), which found those defenses to be unavailing, based upon the language of the tenant’s lease, and the factual circumstances of the case. When that article was written, there was no reported appellate case in Maryland addressing this topic.

In its decision dated January 3, 2023, Maryland’s second highest court ruled that the owners of a restaurant could not rely on the defenses of frustration of purpose and legal impossibility to justify their nonpayment of rent during the period that the executive orders issued in response to the pandemic were in effect. *Critzos v. Marquis*, 2023 WL 18357 (Jan. 3, 2023). In that case, the owners of a brewery/restaurant in Annapolis asked their landlord to abate their rent after Governor Larry Hogan issued his executive order requiring that bars and restaurants close by 5:00 p.m. on March 16, 2020. However, restaurants and bars were still permitted to sell food and beverages for carry out, drive-through, or delivery. On May 29, 2020, the statewide restrictions were relaxed to allow restaurants to serve customers in outdoor seating areas, and on June 12, 2020, they were relaxed further to allow food service indoors at fifty percent of capacity.

In April of 2020, the tenants in the *Critzos* case asked their landlord to abate the rent for that month based upon the pandemic related restrictions that were in place. The parties attempted to negotiate a rent abatement, but they were unable to reach an agreement. The tenants then notified their landlord that they wished to terminate the lease, and vacated the premises in May of 2020, about seven months before the lease was scheduled to expire.

The landlord then sued the tenants, seeking unpaid rent of approximately \$80,000, plus attorney’s fees. After a bench trial before the Circuit Court of Anne Arundel County, the trial judge entered judgment in favor of the tenants. The trial court found that the pandemic and the resulting shutdowns were “unforeseen circumstances,” and that tenants had made a reasonable decision to terminate the







lease based upon the doctrines of frustration of purpose and legal impossibility. After the landlord's motion for reconsideration was denied, the landlord appealed the case to the Appellate Court of Maryland (formerly known as the Court of Special Appeals of Maryland).

On appeal, the Appellate Court of Maryland reversed the decision of the circuit court. Relying on prior case law in Maryland unrelated to the pandemic, the court began by stating that, with respect to the doctrine of frustration of purpose, where "the purpose of a contract is completely frustrated and rendered impossible of performance by a supervening event or circumstance, the contract will be discharged." *Critzos* at \*3 (citations omitted). The court recited three factors to consider in deciding whether frustration of purpose applies: "(1) whether the intervening act was reasonably foreseeable; (2) whether the act was an exercise of sovereign power; and (3) whether the parties were instrumental in bringing about the intervening event." *Id.* The court added that the doc-

trine of legal impossibility applies where the "law itself . . . forbids or prevents the performance" of the contract. *Id.* at n. 3. However, the fact that performance under the contract may be more difficult than was expected does not excuse performance. *Id.* at \*4.

With those legal principles in mind, the court in *Critzos* agreed with the circuit court that the pandemic and the resulting restrictions were not "reasonably foreseeable," and that all three of the factors recited above were present.<sup>1</sup> After finding that there were no Maryland cases specifically addressing the non-payment of rent in the context of the pandemic and the associated government restrictions, the court reviewed cases from other jurisdictions, and found that the primary focus must be on what is permitted by the terms of the lease itself. Since the lease in question did not prohibit take out dining, and the restaurant was permitted to open at 50 percent capacity about three months after the restrictions were imposed, the court found that the doctrines of frustration of purpose and legal impossibility were not

available as defenses to landlord's suit for unpaid rent. The court recognized the difficulties that the tenants faced due to the challenges of the pandemic, but the bottom line was that the restrictions did not order a complete shutdown of the tenants' business. The holding supports the principle that parties will be required to comply with the terms of their written agreement.

While COVID-19 appears to be here to stay, hopefully the government shutdowns that occurred at the outset of the pandemic are behind us. That said, many retailers are still experiencing the adverse effects of the downturn in business, and many are still struggling to keep current with rent payments. The holding in the *Critzos* case emphasizes the importance of carefully reviewing language in a lease prior to signing it. Depending upon the language in the lease, it is likely that, absent a complete government shutdown of businesses, tenants will still be responsible for full payment of the rent required by the lease, even in economically challenging times. ■

<sup>1</sup> The court in the *Hugo Boss* case out of New York (referenced in my November 2021 article) found that the language in the *force majeure* provision of the lease in that case, which specifically referenced government restrictions, meant that those restrictions were foreseeable, barring the application of the impossibility defense.

# Government Affairs Update



By Roy Littlefield IV

Recently, SSDA-AT attended a program with Senate Republican Whip John Thune to discuss Republican legislative priorities and the state of the U.S. economy. Thune is a champion for SSDA-AT on small business issues such as estate tax repeal.

SSDA-AT fought to keep the estate and gift tax exemption at its current level rather than the significantly reduced level proposed this year which would have cost successful small business and privately owned business owners and their key employees millions of dollars in taxes. SSDA-AT will be fighting in 2023 to make the current estate tax exemption permanent so that it doesn't automatically get cut in half as of January 1, 2026.

In 2022, SSDA-AT led the charge to fight the proposed elimination of the step-up in basis for assets going through an estate. This single proposal would have resulted in major new income taxes for the heirs of the owners of small and privately owned businesses.

SSDA-AT was able to help a number of key Congressional members understand that the impact of this bill would fall on millions of Americans – many of them middle or upper middle-income taxpayers and certainly not only the very rich.

Nearing the end of the 117th Congress, SSDA-AT called attention to the last-minute proposal advanced to tax all income in a pass-through entity not subject to payroll taxes, with a new 3.8% Net Investment Income Tax (NIIT). Bringing together a strong coalition, SSDA-AT played an important role in this new tax being excluded from the Inflation Reduction Act of 2022.

Recently, SSDA-AT educated the Department of Labor (DOL) on how its proposed rules, most recently the various iterations of the overtime rules and independent contractor rules, would impact small and privately-owned businesses, and successfully opposed proposals that would have been unduly burdensome or unwieldy for small businesses.

SSDA-AT educated members of Congress about the negative impact the various Social Security proposals would have on small and privately-owned businesses. These proposals would dramatically increase payroll taxes paid by the owners of small and privately owned employers because not only would the owners have to pay payroll taxes on their own income above a certain threshold (say \$400,000), but the company would also have to match the extra payroll taxes for all employees over the income threshold. SSDA-AT will continue to monitor the fixes to shore up the Social Security system to make sure small and privately owned businesses are treated fairly.

Right to Repair remains a top concern for our members and we have been supporting efforts on both the state and federal levels.

In Massachusetts, the lawsuit against the right to repair law is still pending. The most recent development occurred on January 11<sup>th</sup> when the parties agreed to a joint stipulation and proposed scheduling order for “(a) conducting the additional





# GOVERNMENT AFFAIRS

document discovery ordered by the Court and (b) briefing that motion for a protective order.” The law has been held up by a federal judge for three years citing numerous reasons for delay.

We joined efforts with the Maine Right to Repair Coalition who has collected more than 70,000 signatures on a petition that supports the right for independent repairers to access the vehicle diagnostic data they need to complete repairs. The goal is to get a right to repair referendum in front of voters on the November ballot.

On January 11th, Maryland opened their 90-day legislative session. I attended and connected with a variety of state Delegates and Senators. I was able to meet newly elected Maryland Governor Wes Moore.

In January, SSDA-AT attended the U.S. Chamber State of American Business that explored the challenges and opportunities that lie ahead in 2023, and beyond. U.S. Chamber President and CEO Suzanne Clark discussed the role of government in advancing smart policy. Other presenters included: Nasdaq, Inc. Chair and CEO Adena T. Friedman, Marriott International,

Inc. CEO Anthony Capuano, Rep. Dave Joyce (OH-14) and Rep. Abigail Spanberger (VA-O7).

Recently, SSDA-AT took part in a Small Business Labor Safety (OSHA/MSHA) roundtable. The agenda included a discussion of OSHA’s priorities and enforcement

techniques for the year. OSHA inspections and fines remain a top issue for SSD-AT members, and we continue to express our concerns to the agency.

There are serious issues before us in the 118th Congress. SSDA-AT stands ready. ■



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# National Taxpayer Advocate Delivers Annual Report to Congress

*Focuses on Taxpayer Impact of Processing and Refund Delays*



By Roy Littlefield III

**National Taxpayer Advocate Erin M. Collins** recently released her [2022 Annual Report to Congress](#), saying taxpayers and tax professionals “experienced more misery in 2022” due to paper processing delays and poor customer service. But the report also says the Internal Revenue Service made considerable progress in reducing the volume of unprocessed tax returns and correspondence and is poised to start the 2023 filing season in a stronger position.

The Advocate’s report assesses taxpayer service during 2022, identifies the ten most serious problems taxpayers are experiencing in their dealings with the IRS, and makes administrative and legislative recommendations to address those problems. This year’s report recommends specific initiatives that Collins is urging the IRS to include in its plan showing how the additional funding it received in the Inflation Reduction Act will be spent. It also contains two research studies – one on ways to restructure the Earned Income Tax Credit to increase participation among eligible taxpayers while reducing improper payments, and the other designed to help the IRS improve its online operations by studying the functionality of online operations offered by over 40 states and several foreign countries.

## Taxpayer service challenges

**Return processing and refund delays.** For most taxpayers, the most important function the IRS performs each year is issuing timely tax refunds. In 2022, about two-thirds of individual taxpayers were entitled to refunds, and the average refund amount was nearly \$3,200. The report says the IRS failed to meet its responsibility to pay timely refunds to millions of taxpayers for the third year in a row. About 13 million individual taxpayers filed paper returns. Because of paper processing delays, refunds for these taxpayers were delayed, generally by six months or longer. Millions of e-filed individual returns were “suspended” because they tripped IRS processing filters and required manual review by IRS employees before refunds could be released. Hundreds of thousands of business returns claiming the Employee Retention Tax Credit were delayed.

However, the report says the IRS will be starting the 2023 filing season in much better shape than the last two years. The IRS began 2022 with an unprocessed paper backlog of 4.7 million original individual returns (Forms 1040), 3.2 million original business returns, and 3.6 million amended returns (individual and business





## Internal Revenue Service Building



combined). When the Advocate's report went to press in mid-December 2022, the IRS had reduced those backlogs to 1 million original individual returns, 1.5 million original business returns, and 1.5 million amended returns. By Dec. 23, the IRS had further reduced its unprocessed paper backlog of original individual returns to about 400,000 and original business returns to about 1 million. This significant reduction in the paper return inventory will enable the IRS to begin processing paper-filed tax year 2022 returns during the upcoming filing season. That contrasts with the previous two years, when the IRS was not able to process current-year returns until months after the filing season had ended.

The number of returns suspended during processing is the only significant return category in which inventories increased. The IRS entered 2022 with an inventory of 4.2 million suspended returns. The inventory grew to 5.9 million suspended returns by mid-December.

Cases involving suspected identity theft account for about half the inventory of suspended returns. In mid-December, the IRS reported 2.9 million identity theft cases in its inventory. While some will turn out to be fraudulent claims, the IRS website

as of January 9 states: "[D]ue to extenuating circumstances caused by the pandemic, our identity theft inventories have increased and on average it is taking about 360 days to resolve identity theft cases."

The report calls a year-long delay "unacceptable" and urges the IRS

to assign additional employees to process these cases.

**Delays in processing taxpayer correspondence and other cases in the Accounts Management function.** The IRS sent millions of notices to taxpayers during 2022. These included 17 million



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math error notices, Automated Underreporter notices (where an amount reported on a tax return did not match the corresponding amount reported to the IRS on a Form 1099 or other information reporting document), notices requesting a taxpayer authenticate identity where IRS filters flagged a return as potentially fraudulent, correspondence examination notices, and some collection notices. Notices often require written taxpayer responses. If the IRS did not process a taxpayer response, it may have taken adverse action against the taxpayer or not released the refund claimed on the tax return. During fiscal year (FY) 2022, it took the IRS an average of 193 days to process taxpayer responses to proposed tax adjustments – about six months. That compares with 89 days in FY 2019, the most recent pre-pandemic year. The report also calls the delays in resolving these cases unacceptable.

**Difficulty reaching the IRS on its toll-free telephone lines.** The IRS received 173 million calls during FY 2022. Only 22 million (13%, or roughly one out of eight calls) got through to an IRS employee. As a result, most callers could not get answers to their tax-law questions, receive help with their account problems, or speak with an employee about compliance notices. Those who got through waited an average of 29 minutes on hold before the call began.

Telephone service for tax professionals was worse than the prior year and hit an all-time low. Because tax professionals prepare the majority of tax returns and often call with complex account-specific questions, the IRS has established a Practitioner Priority Service (PPS) telephone line to handle their calls. In FY 2022, IRS employees answered only 16% of PPS calls (fewer than one out of six), and the average hold

time for those who got through was 25 minutes. Telephone delays place tax professionals in the difficult position of billing clients for the time spent trying to reach the IRS or writing off that time. “Tax professionals are key to a successful tax administration,” Collins wrote. “The challenges of the past three filing seasons have pushed tax professionals to their limits, raising client doubts in their abilities and creating a loss of trust in the system.”


## Outlook for 2023

In the report’s preface, Collins predicted that taxpayer service will improve in 2023. “We have begun to see the light at the end of the tunnel,” she wrote. “I am just not sure how much further we have to travel before we see sunlight.”

The report cites three reasons for optimism: (1) the IRS has largely worked through its backlog of unprocessed tax returns, even though it remains challenged with a high volume of suspended returns and correspondence; (2) Congress has provided the IRS with significant additional funding to increase its customer service staffing; and (3) with the benefit of Direct Hire Authority, the IRS has recently hired 4,000 new customer service representatives, and it is seeking to hire 700 additional employees to provide in-person help at its Taxpayer Assistance Centers. Direct Hire Authority has enabled the IRS to reduce the number of days from the time it posts an announcement on USAJobs.gov until it onboards a new employee by more than half.

But Collins warned the improvements will not be immediate. “Staff increases come with growing pains,” she wrote. “As new employees are added, they must be trained. For most jobs, the IRS does not maintain a separate cadre of instructors. Instead, experienced employees





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must be pulled off their regular caseloads to provide the initial training and act as on-the-job instructors. In the short run, that may mean that fewer employees are assisting taxpayers, particularly experienced employees who are likely to be the most effective trainers.”

She also pointed out that until additional fully-trained employees are on board, taxpayer service will continue to be a zero-sum game. For example, customer service representatives in the Accounts Management function split their time between answering the phones and processing taxpayer correspondence. If the IRS assigns more employees to answer the phones, correspondence processing will be slower. If the IRS assigns more employees to process correspondence, phone service will decline.

“The IRS will have to perform a difficult balancing act with its current resources and will need to ensure it does not create a new paper backlog in 2023 by reassigning too many Accounts Management employees from processing case inventories to answering the phones,” Collins wrote. “The IRS needs to end the vicious cycle of paper backlogs. As employees are trained and report for duty, I expect we will start to see improvements in service, probably by the middle of 2023.”

### **Taxpayer Advocate Service administrative recommendations to the IRS**

In August 2022, Congress enacted the Inflation Reduction Act (IRA),

which provided the IRS with funding of nearly \$80 billion over the next ten years to supplement its annual appropriations. While the funding earmarked for tax law enforcement has been controversial, the legislation included supplemental funding of \$3.2 billion for taxpayer services, including pre-filing assistance and education, filing and account services, and taxpayer advocacy services; \$4.8 billion to enable the IRS to continue modernizing its information technology (IT) systems, including advancement of customer callback and other technology to provide a more personalized customer experience; and \$25.3 billion to support taxpayer services and other operations. The report said that this additional funding could be a gamechanger for taxpayers and tax professionals.

“If spent wisely, this funding will give IRS management the tools it needs to bring U.S. tax administration into the 21st century by enabling it to hire and train the workforce of the future, replace antiquated IT systems, and generally revamp the taxpayer experience based on principles of fair and equitable tax administration,” Collins wrote.

In an August 17, 2022 memorandum, the Secretary of the Treasury directed the IRS Commissioner to produce an operational plan within six months that details how the additional IRA funding will be spent. In the report’s preface and in discussing the 10 most serious taxpayer problems, Collins

recommends numerous initiatives for inclusion in the plan, including the following:

**1. Hire and train more human resources employees to manage hiring all IRS employees.** The report says that staffing shortages in the IRS’s Human Capital Office (HCO) are, ironically, one of the biggest obstacles to hiring and onboarding more employees. HCO, which coordinates all IRS hiring, does not have enough staff to review and approve new position descriptions, post job announcements, and screen incoming applications and can become a bottleneck. Without HCO involvement, other IRS divisions cannot hire employees even when they have funding. TAS recommends the IRS use some of its IRA funding to quickly bolster its HCO staff and, in the interim, provide creative alternatives, including enabling the business units to do their own hiring so new employees can be selected, while also working to expedite security checks and the onboarding of new employees.

**2. Ensure all IRS employees – particularly customer-facing employees – are well-trained to do their jobs.** From a taxpayer perspective, getting through to a live IRS telephone assistor or having taxpayer correspondence processed quickly are important, the report says, but it is even more important that the responding IRS employee have enough knowledge to handle the question or issue properly. The combination of budget cuts beginning in FY 2011 and continuing until the

last few years and the COVID-19 pandemic has limited the IRS's ability to provide adequate training to new employees and to provide regular updates and refresher training to its existing workforce. "Training must go hand-in-hand with hiring, and it must continue throughout employees' careers with the IRS, with a continuing focus on taxpayer rights," the report says. "Doing work incorrectly can be worse than not doing it at all."

**3. Create robust and accessible online accounts with functionality comparable to that of private financial institutions and through which taxpayers and practitioners can access, download, and upload material information.** Of all the steps the IRS can take to improve the taxpayer experience, the report says that creating robust online accounts should be the highest priority and will be the most transformational. Most Americans have been conducting business with financial institutions digitally for two decades or more – paying bills, transferring funds, depositing checks, applying for loans, trading stocks and mutual funds, etc. TAS recommends that the IRS prioritize developing online accounts with comparable functionality – the ability to file tax returns, make payments, view transactions, receive or view tax adjustments or other notices, respond to tax adjustments or other notices, upload and download documents, and submit questions or live chat with an IRS employee – which often will eliminate the need for visiting, calling, or sending correspondence.

**4. Temporarily expand uses of the Documentation Upload Tool (DUT) or similar technology.** The IRS has made it possible for taxpayers in some circumstances to provide requested information online rather than by snail mail. For

example, an auditor requesting documentation to support a taxpayer's business deductions or charitable contributions may provide the taxpayer with a link and passcode so the taxpayer can upload the documentation and not have to mail it in. Eventually, this functionality should be rolled into IRS online accounts. Until that happens, TAS recommends broader use of the DUT to reduce the burden on taxpayers and allow the IRS to resolve issues more quickly.

**5. Improve the readability of tax transcripts.** The IRS utilizes codes for various transactions, and these codes are included on the transcripts provided to taxpayers and their representatives. However, the codes are incomprehensible to the non-tax professional, and even tax professionals often struggle to decipher them. TAS recommends the IRS revamp the presentation of tax transcripts to substitute descriptions for the codes or at least include a glossary on a separate piece of paper that explains – in plain language – what each code on the transcript means.

**6. Enable all taxpayers to e-file their tax returns.** Over 90% of individual taxpayers now e-file their income tax returns, but the IRS still receives millions of paper tax returns each year (about 13 million individual returns and millions of additional business returns last year). Some taxpayers would prefer to e-file but cannot do so. This can happen if the taxpayer must file a form or schedule that IRS systems are not yet programmed to accept electronically, if a return is rejected by IRS's systems for violating a programming rule, or if a taxpayer must attach documentation to the return (e.g., an appraisal or disclosure) and the tax return software the taxpayer is using does not allow for the transmission of attachments.


There are steps the IRS can take to address all three of these limitations. It can modernize its e-filing platform to accept all IRS forms and schedules and taxpayer attachments. It can accept and review returns that violate some IRS systems' programming rules; otherwise, the taxpayer whose return is rejected must file it on paper, requiring the IRS to transcribe it. And if some software packages allow taxpayers to submit attachments and others do not, the IRS can post a list of software packages that allow attachments online. That way, taxpayers with attachments will know which packages they can use to e-file their returns. "If the IRS makes it possible for all taxpayers to e-file their returns," the report says, "the number of paper-filed returns is likely to drop dramatically."

### **National Taxpayer Advocate "Purple Book": Legislative recommendations to strengthen taxpayer rights and improve tax administration**

The National Taxpayer Advocate's 2023 Purple Book proposes 65 legislative recommendations for consideration by Congress. Among them are the following:

**1. Amend the "Lookback Period" to allow tax refunds for certain taxpayers who took advantage of the postponed filing deadlines due to COVID-19.** To be eligible to receive a tax refund, any tax payments at issue must have been paid within a "lookback period" of three years, plus the period of any extension of time to file. Absent an extension, refunds generally may not be paid more than three years beyond the tax return filing due date of April 15. Because of the pandemic, the IRS postponed the tax return filing deadline to July 15 in 2020 and to May 17 in 2021. Unlike an extension, a postponement





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does not extend the lookback period. Therefore, some taxpayers who took advantage of the postponement and filed their returns up to July 15, 2020, may assume that they have three years – up to July 15, 2023 – to file refund claims. But if they do not file their claims by April 18 (extended three days because of a weekend and holiday), the claims generally cannot be paid. A similar issue will arise in 2024 because the IRS postponed the 2021 filing deadline to May 17. This result was not anticipated and will prevent some taxpayers from receiving the full refunds to which they are otherwise entitled. TAS recommends Congress extend the lookback period for receiving refunds to align with any postponements of the filing deadline.

**2. Authorize the IRS to establish minimum standards for paid tax return preparers.** Most taxpayers hire tax return preparers to complete their returns, and visits to preparers by Government Accountability Office and Treasury Inspector General for Tax Administration auditors posing as taxpayers, as well as IRS compliance studies, have found paid preparers make significant errors that both harm taxpayers and reduce tax compliance. Ten years ago, the IRS sought to implement minimum preparer standards, including requiring otherwise non-credentialed preparers to pass a basic competency test, but a federal court concluded the IRS could not do so without statutory authorization. TAS recommends Congress provide that authorization.

**3. Expand the U.S. Tax Court's jurisdiction to adjudicate refund cases and assessable penalties.** Under current law, taxpayers who owe tax and wish to litigate a dispute with the IRS must go to the U.S. Tax Court, while taxpayers who have paid their tax liability and are seeking a refund must sue in a U.S. district court or the U.S. Court of Federal Claims. Although this dichotomy between deficiency cases and refund cases has existed for decades, TAS recommends Congress give taxpayers the option to litigate both deficiency and refund disputes in the U.S. Tax Court. Due to the tax expertise of its judges, the Tax Court is often better equipped to consider tax controversies than other courts. It is also more accessible to unsophisticated and unrepresented taxpayers than other courts because it uses informal procedures, particularly in disputes that do not exceed \$50,000 for one tax year or period.

**4. Modify the requirement that written receipts acknowledging charitable contributions must pre-date the filing of a tax return.** To claim a charitable contribution, a taxpayer must receive a written acknowledgment from the donee organization before filing a tax return. For example, if a taxpayer contributes \$5,000 to a church, synagogue, or mosque, files a tax return claiming the deduction on February 1, and receives a written acknowledgment on February 2, the deduction is not allowed – even if the taxpayer had credit card receipts and other documentation that fully substantiates the deduction.

This requirement is inconsistent with congressional policy to encourage charitable giving. TAS recommends that Congress modify the substantiation rules to require reliable – but not necessarily advance – acknowledgment from the donee organization.

**5. Restructure the Earned Income Tax Credit (EITC) to make it simpler for taxpayers and reduce improper payments.** TAS has long advocated for dividing the EITC into two credits: (i) a refundable worker credit based on each individual worker's earned income unrelated to the presence of qualifying children and (ii) a refundable child credit. For wage earners, claims for the worker credit could be verified with nearly 100% accuracy by matching claims on tax returns against Forms W-2, reducing the improper payments rate on those claims to nearly zero. The portion of the EITC that currently varies based on family size would be combined with a child credit into a larger family credit. The National Taxpayer Advocate published a report making this recommendation in 2019, and TAS continues to advocate for it. This report contains a research study assessing alternative structures for implementing TAS's recommendation.

**6. Expand the protection of taxpayer rights by strengthening the Low Income Taxpayer Clinic (LITC) program.** The LITC program effectively assists low-income taxpayers and taxpayers who speak English as a second language. When the LITC grant program was established in 1998, the law limited annual grants to

no more than \$100,000 per clinic. The law also imposed a 100% “match” requirement (meaning a clinic cannot receive more in LITC grant funds than it is able to match on its own). The nature and scope of the LITC program has evolved considerably since 1998, and those requirements are preventing the program from providing high quality assistance to eligible taxpayers. While the recently enacted Consolidated Appropriations Act, 2023, raised the per-clinic cap to \$200,000 for the current year, TAS recommends that Congress remove or substantially increase the per-clinic cap permanently and allow the IRS to reduce the match requirement to 25% where doing so would facilitate coverage for additional taxpayers.

### Other sections in the report

The report contains a taxpayer rights assessment that presents performance measures and other relevant data, a description of TAS’s case advocacy operations during FY 2022, a summary of key TAS systemic advocacy accomplishments, and a

discussion of the 10 federal tax issues most frequently litigated during the preceding year. For the second year, the section on most litigated tax issues contains an analysis of substantially all cases petitioned in the Tax Court rather than simply decided cases, providing a much broader view of issues taxpayers bring to court. Also, for the second time, the report includes a section titled “At a Glance,” which provides concise summaries of the 10 “most serious problems.” It is intended to give readers a quick overview of each issue so they can decide which ones they want to read about in depth.

Please visit <https://www.taxpayeradvocate.irs.gov/AnnualReport2022> for more information.

### Related items:

1. [Complete Report: 2022 Annual Report to Congress](#)
2. [Executive Summary](#)
3. [Purple Book](#)

The National Taxpayer Advocate blogs about key issues in tax administration. Click [here](#) to subscribe. Past blogs from the National Taxpayer Advocate

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### About the Taxpayer Advocate Service

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that helps taxpayers and protects taxpayer rights. The local taxpayer advocate’s number is in local directories and at [www.taxpayeradvocate.irs.gov/contact-us](http://www.taxpayeradvocate.irs.gov/contact-us). Taxpayers can also call TAS toll-free at 877-777-4778. TAS can help those who need assistance in resolving an IRS problem, if the problem is causing financial difficulty, or those who believe an IRS system or procedure isn’t working as it should. This service is free. For more information about TAS and taxpayer rights under the Taxpayer Bill of Rights, go to [www.taxpayeradvocate.irs.gov](http://www.taxpayeradvocate.irs.gov). Get updates on tax topics at [facebook.com/YourVoiceAtIRS](https://facebook.com/YourVoiceAtIRS), [Twitter.com/YourVoiceatIRS](https://Twitter.com/YourVoiceatIRS), and [YouTube.com/TASNTA](https://YouTube.com/TASNTA). ■

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