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About SSDA-AT

About SSDA-AT Service Station Dealers of America and Allied Trades (SSDA-AT) is a national association composed of individual and state affiliate associations representing service station dealers, repair facilities, car washes, and convenience stores. For over 58 years, SSDA-AT has worked for the betterment of its members as a voice on Capitol Hill, with federal regulators, with the media, in the courts, and with suppliers.

LIFO
SSDA-AT POSITION PAPER

SSDA-AT continues to actively lobby Congressional members to save LIFO. We are very active in the LIFO coalition and have been conducting visits on the Hill to express to members the importance of keeping this accounting system alive for tax purposes. LIFO repeal continues to be looked at as an option in tax reform discussions and it is important that we let our elected officials know how important this issue is for many businesses in the tire industry.

Repeal of LIFO would hurt SSDA-AT members and other American businesses. It would significantly hinder the competitiveness of U.S. businesses in the worldwide marketplace by placing a significantly increased tax liability on those companies that use LIFO.

The majority of the businesses using the LIFO inventory method are organized in the form of pass-through entities, such as partnerships or S corporations. The real owners of these entities are taxed at individual tax rates. Any reduction in corporate income tax rates that might accompany a repeal of LIFO would not provide any offsetting relief for pass-through entities. Should this proposal be enacted, the consequences for LIFO taxpayers would be more devastating than any other change to the tax rules.

The “new revenue” that is touted by supporters of LIFO repeal comes in the way of retroactive taxes. Businesses using LIFO would have to pay retroactive income taxes on deferments they took while using LIFO in the past. Unlike ANY other tax expenditures that have been discussed for elimination, repealing LIFO is the only proposal that would require a business owner to pay taxes retroactively.

Any proposed tax rate reductions would not compensate LIFO taxpayers for the damaging effects to their businesses. Taking LIFO reserves and turning them into taxable income, even spaced out over time, would wreak havoc on cash flows, capital reserves, expansion opportunities and job creation for American businesses using this method of accounting.

Saving LIFO remains a top priority for SSDA-AT.

ESTATE TAX
SSDA-AT POSITION PAPER

SSDA-AT is a member of the Family Business Estate Tax Coalition (FBETC). This Coalition is dedicated to the full and permanent repeal of the estate tax. In working with Rep. Kevin Brady and the Coalition we were able to pass the Death Tax Repeal Act of 2015 (H.R. 1105) on a 240-179 vote.

With the 115th Congress, the opportunity for Estate Tax Repeal is greater than ever. HR 63 and S 205 amends the Internal Revenue Code to: (1) repeal the estate and generation-skipping transfer taxes, and (2) make permanent the maximum 35% gift tax rate and the lifetime gift tax exemption. The bill provides for an inflation adjustment to such exemption amount.

SSDA-AT supports the Death Tax Repeal Act of 2017 for the following reasons:

Repealing the death tax would spur job creation and grow the economy.

Many studies have quantified the job losses caused by the death tax. Last year the Tax Foundation and Heritage Foundation both found that the US could create over 100,000 jobs by repealing the death tax. A 2012 study by the House Joint Economic Committee found that the death tax has destroyed over $1.1 trillion of capital in the US economy -- loss of small business capital means fewer jobs and lower wages. Lawrence Summers, former Secretary of the Treasury under President Clinton; Alicia Munell, member of President Clinton's Council of Economic Advisors; Joseph Stiglitz, a Nobel laureate for economics; and Douglas Holtz-Eakin, former CBO Director have all published work on the death tax's stifling effect on job growth and the economy as a whole.

The death tax contributes a very small portion of federal revenues.

The death tax currently accounts for less than half of one percent of federal revenue. There is a good argument that not collecting the death tax would create more economic growth and lead to an increase in federal revenue from other taxes. A 2014 Tax Foundation analysis found repeal of the death tax would increase federal revenues by $3.3 billion per year using a more realistic, “dynamic” economic analysis.

A super-majority of likely voters support eliminating the death tax.

Poll after poll has indicated that a super-majority of likely voters support repealing the death tax. Typically, two thirds of likely voters support full and permanent repeal of the death tax. People instinctively feel that the death tax is not fair.

The death tax is unfair.

It makes no sense to require grieving families to pay a confiscatory tax on their loved one’s nest egg. Often this tax is paid by selling family assets like farms and businesses. Other times, employees of the family business must be laid off and payrolls slashed.

For many family-owned businesses to keep operation after the death of the owner, they must plan for the estate tax. Planning costs associated with the estate tax are a drain on business resources, taking money away from the day to day operations and business investment. These additional costs make it more difficult for the business owner to expand and create new jobs. Protecting family business from the estate tax is important in order to keep these businesses operating for future generations.

WORK OPPORTUNITY TAX CREDIT
SSDA-AT POSITION PAPER

SSDA-AT is a member of the Work Opportunity Tax Credit Coalition. This coalition seeks legislative action to increase the effectiveness of the Work Opportunity Tax Credit.

Every independent evaluation of the Work Opportunity Tax Credit and its predecessor, the Targeted Jobs Tax Credit, by the Department of Labor and Government Accountability Office affirms that this tax incentive increases the employment of targeted workers, which is its goal.

Contrasted to direct Federal spending, a targeted tax credit for employers can be a powerful policy instrument to improve labor market efficiency and outcomes in workforce training, mobility, and adjustment to economic change.

SSDA-AT has outlined numerous ways in which the Administration can use the Work Opportunity Tax Credit more effectively to impact the national economy:

1) Support a long-term reauthorization of the recently expired HIRE tax credits
2) Assure Full Electronic Filing to save costs on certification eligibility
3) Assure Employers Receive the Promised Benefit so that they continue to use the WOTC
4) Require the Treasury Secretary to Promote WOTC
5) Allow Non-Profit Employers to Participate in WOTC and Take the Credit Against FICA
6) Expand Worker Eligibility for WOTC by extending benefits to Disabled Workers who are receiving SSA disability payments, workers above the age of 18 who are receiving food stamps, decently discharged Veterans and the National Guard, cooperative education students, and displaced workers

As part of the tax reform efforts expected in 2017, SSDA-AT will work for the permanent extension of WOTC.

LAWSUIT ABUSE
SSDA-AT POSITION PAPER

STATUS

In 2017, Representative Lamar Smith (R-TX) introduced H.R. 720, Lawsuit Abuse Reduction Act of 2017 (LARA) which passed the House on a 241-185 vote, and Senator Charles Grassley (R-IA) introduced the companion bill S. 237 which we are awaiting a vote. SSDA-AT is working with sponsors to build support among other Congressional members.

ISSUE

To understand LARA, you have to be familiar with one of the Federal Rules of Civil Procedure, Rule 11. From 1983 until 1993, Rule 11 said in part:

> *If a pleading, motion, or other paper is singed in violation of this rule, the court, upon motion or upon its own initiative, **shall** impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee."*

In 1993 some key changes were made, and Rule 11 currently says:

An attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or lack of information.

*Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11 (b) has been violated, the court **may** impose an appropriate sanction on an attorney, law firm, or party that violated the rule or is responsible for the violation.*

LARA is all about the difference between "shall" and "may."

Proponents have civil justice reform have contended that change, along with a couple of other aspects of Rule 11, helped lead to the explosion of frivolous lawsuits. Therefore, the purpose of LARA is to put some starch back into Rule 11 and hit the lawyers where it hurts- in their wallets and pocketbooks.

LARA reverses the 1993 amendments to Rule 11 that made sanctions discretionary rather than mandatory.

In addition, LARA requires that judges impose monetary sanctions against lawyers who file frivolous lawsuits. Those monetary sanctions will include the attorney's fees and costs incurred by the victim of the frivolous lawsuit.

LARA reverses another 1993 amendment to Rule 11 that allow parties and their attorneys to avoid sanctions for making frivolous claims by withdrawing them within 21 days after a motion for sanctions has been served.

This version of LARA has one difference from its predecessors; this LARA would only amend Rule 11 of the Federal Rules of Civil Procedure. It does not attempt to force the states to use Rule 11. The hope is that states would amend their rules for governing frivolous lawsuits to reflect the changes implemented by LARA, just as they did when Rule 11 was last changed in 1993. Earlier versions of the bill included specific requirements for state use. Dropping the states provision should remove the states' rights opposition that surrounded the earlier debates.

It is hard to say where in the pantheon of small business concerns with the civil justice system the anemic Rule 11 falls. It surely has risen over time, as lawyers have become more effective at using the frivolous suit template du jour against more and more small business.
There is no specific data on this problem. The last general data generated by our good friends at the U.S. Chamber' Institute for Legal Reform in a study of the tort liability costs of small businesses from NERA Economic Consulting (NERA) found that:

*the tort liability price tag for small businesses in America in 2008 was $105.4 billion.
*Small businesses bore 81% of business torn liability costs but took in only 22% of revenue.
*Small businesses paid $35.6 billion of their tort costs out of pocket as opposed to though insurance.

Opponents of tort reform believe that the current laws are justified, because they compensate people who have been injured or harmed at the hands of negligent actors. Furthermore, opponents of tort reform argue that the current civil justice system imposes upon businesses and doctors the appropriate disincentives to avoid irresponsible actions.

RETROACTIVE LIABILITY PROVISIONS OF SUPERFUND
SSDA-AT POSITION PAPER

Service station dealers, repair facility operators, and tire dealers in over 30 states have been cited for the cleanup of Superfund sites after they followed the letter of the law in their disposal of used oil. This used oil many times ends up in what become Superfund sites, and the tire dealer who does automotive repair is cited as the generator of the oil.

As we have lobbied this issue, we see that Republicans have opposed a small business carve-out because they do not think that it would be fair if all of the clean-up costs were assessed to big businesses. The Democrats have opposed any carve-outs because they believe that if the generators of the waste (i.e. used oil, tires, used batteries, or used anti-freeze) are not ultimately responsible for the clean-ups then there would not be enough money available for the clean-ups without major tax increases.

Our small business members perform a service to the public by collecting the waste oil and disposing of it according to state and federal laws, thus protecting the environment.

Congress may consider raising the fees in the next Superfund reauthorization bill. SSDA-AT remains committed to repeal the retroactive liability provisions of Superfund.

SCRAP TIRES AND USED OIL
SSDA-AT POSITION PAPER

In a major victory for SSDA-AT, TIA, RMA, and the entire tire and automotive aftermarket industry, the Environmental Protection Agency (EPA) has ruled that scrap tires can continue to be utilized as an alternative fuel for cement kilns, paper mills, and other power generators. Had these tires been classified as a solid waste, some 50 million plus tires would have again entered the waste stream. This was a major victory for tire recyclers and the industry as a whole.

As long as tires removed from vehicles "are collected and managed under the oversight of an established tire collection program they are a non-waste when used as a fuel in combustion units."

The EPA did hold to its position that off-spec oil is a solid waste with one exception that is important for shops that utilize waste-oil burning space heaters. Said EPA in the rulemaking, "…we still consider off-spec used oil to be a solid waste, as off-spec used oil contains contaminants at levels that are not comparable to those in traditional fuels." Under the existing used oil regulations promulgated under RCRA, off-spec used oil can be used only in limited devices, including small oil-fired space heaters provided the burner meets the provisions of the Act.

Unfortunately, we believe that this could create numerous impediments to the recycling of waste oil as we know it. Who will be responsible for testing collected and stored used oil to see if it is on-spec? What will a hauler charge to remove used oil that is off-spec. The jury is still out on this ruling.

NATIONAL ENERGY BILL
SSDA-AT POSITION PAPER

An aggressive goal of SSDA-AT's Strategic Plan is to launch an all-industry public relations campaign to enhance the value of the tire industry products and services.

As part of the 2007 National Energy Bill, RMA lobbied for language—and SSDA-AT/TIA supported their efforts—calling for the National Highway Traffic Safety Administration (NHTSA) to oversee the development and implementation of a national consumer education program.

Unfortunately, there was nothing in the original language as to who would run the program, nor was there anything in the language about spending limits. Thus, as an industry, we now have a law on the books calling for a Federal agency to develop a national consumer education program without any spending limits and without any direction as to who should manage the program.

Will this turn out to be a much-needed and important public education campaign or is this a recipe for disaster? It could go either way.

NHTSA must determine whether this campaign should be run by the government or whether it should be outsourced to a consumer advocacy group or to an industry group with extensive experience in training like SSDA-AT. Obviously, many industry leaders have expressed legitimate concerns about how this could play out.

Let's look at a few examples of what would happen if NHTSA outsourced this program to SSDA-AT. And then let me give you a few examples of what could happen if this program was put in the wrong hands.

If we are entrusted with this program, SSDA-AT would certainly inform consumers that tires are technological marvels that must be properly maintained. We would build on the current NHTSA safety program and the RMA "Be Tire Smart—Play Your Part" campaign, addressing such issues as tire maintenance, tire rotation, and proper tire inflation.

We would instruct consumers on the importance of inspecting tires and on the safety value of periodic motor vehicle inspection programs, why programs should be strengthened in states that currently have inspection programs, and why states that do not have programs should create them. We could even develop a model bill with reasonable yet thorough inspection procedures, and we could testify in state legislatures nationwide.

The association was part of the effort in the early 1980s to move from a mandatory to a voluntary tire registration program. At the time, tire dealers were being fined up to $10,000 per tire for failure to register new tires sold. The purpose of the registration system is to notify customers in the case of a recall. If SSDA-AT is entrusted

to run this education program, we will stress to consumers the need for them to register the tires that they purchase.

The purpose of the registration system is to notify consumers in the case of a recall. Another group could put pressure on lawmakers to go back to a mandatory system with heavy fines.

And we would emphasize to consumers the need to have their tires cared for by reliable, well-trained, tire technicians. For both liability and safety concerns, a trained tech is important.

For your consideration, let me give you a few examples of what could happen if this consumer education campaign ended up in less industry knowledgeable hands.

We have all seen the unfair exposes and news stories on tire aging. What if we saw a series of government-financed ads on the fact that tires are not safe after a certain period of time? Think of the confusion we would have if 10 states enacted a six-year lifespan, and 10 other states prohibited tire use after 10 years? Think of the inventory nightmare!

What if we saw a series of government-sponsored ads on used tires? If sensationalized, we could end up with legislation on Capitol Hill and in state legislatures that outright bans the sale of used tires. How do you define a used tire? Is a tire that is taken off the vehicle and repaired considered a used tire? Do you think that's how untrained, unknowledgeable legislators would define it? And how would you enforce any such definition?

What would any type of tire aging or used tire legislation do to the tire repair or retread industries? Lawmakers could overnight challenge positive economic and environmentally friendly industries with some ill-conceived legislation.

When you have a knee-jerk reaction to consumer ads, would consumers and legislators respond to issues of handling characteristics, wheel-offs, tire matching (both the cases of rolling resistance versus safety, and the problem of marketing tires with different rolling resistance ratings) in a thoughtful, reasoned, and responsible manner?

The best organization to run this Federally-mandated consumer education program is SSDA-AT/TIA working with NHTSA, RMA, TRIB, the tire manufacturers, state associations, and industry related national associations. The stakes are potentially too high to go in any other direction.

URGE STRONG ENFORCEMENT OF THE MAGNUSON-MOSS WARRANTY ACT
SSDA-AT POSITION PAPER

With new car sales waning, the car companies and their franchised dealers have been pursuing an increasingly aggressive strategy aimed at growing the sales of their original equipment replacement parts and repair services. However, despite calls by SSDA-AT and other aftermarket trade groups, the Federal Trade Commission has taken little action to ensure consumers receive accurate information regarding their rights under new car warranties.

The Magnuson-Moss Warranty Act, which was enacted by Congress in 1975, prohibits the conditioning of consumer warranties by product manufacturers on the use of any original equipment part or service. Under the statute, a manufacturer can only deny warranty coverage if the manufacturer, not the consumer, can demonstrate that it was the use of a non-original equipment part or service that created the warranty related defect.

In 2010, Honda issued a release in which the Japanese automaker stated: "other parts – whether aftermarket, counterfeit or gray market – are not recommended. The quality, performance, and safety of these parts and whether they are compatible with a particular Honda vehicle are unknown." The release further states that "American Honda will not be responsible for any subsequent repair costs associated with vehicle or part failures caused by the use of parts other than Honda Genuine parts purchased from an authorized US Honda dealer."

One year later, Mazda issued a release which alleged: "aftermarket parts are generally made to a lower standard in order to cut costs and lack the testing required to determine their effectiveness in vehicle performance and safety… Mazda also recommends that car owners use original equipment replacement parts in repairs in order to ensure the validity of their warranty." The release goes on to emphasize that "only Genuine Mazda Parts purchased from an authorized Mazda dealer are specifically covered by the Mazda warranty. The original warranty could become invalid if aftermarket parts contribute to the damage of original parts."

SSDA-AT along with other aftermarket groups have filed complaints regarding both releases with the FTC, taking issue with the unsubstantiated claims made by car companies regarding the quality of aftermarket parts. SSDA-AT further contends that the releases violate the Magnuson-Moss Warranty Act since they clearly mislead consumers to believe that they must use dealer service and original equipment in order to ensure the integrity of their new car warranties.

While the FTC has failed to take formal action against car manufacturers, the Commission last year issued a "Consumer Alert" informing consumers of their right to have their vehicle serviced or maintained at a repair shop of their own choosing or

perform the service themselves without any concern that their warranty would be voided by their vehicle manufacturer. That alert can be viewed at the FTC web site at: http://ftc.gov/bcp/edu/pubs/consumer/alerts/alt192.shtm

On August 23, 2011, the FTC issued a Request for Comment on its warranty-related Interpretations, Rules, and Guides ("Interpretations") under the Magnuson-Moss Warranty Act (the "Act"). In submitting comments to the Commission, SSDA-AT along with other aftermarket groups, called on the Agency to provide for better consumer disclosure of their rights under the warranty and for requiring substantiation be provided with any claims made by the car companies that non-original equipment parts are substandard. The FTC has yet to respond to these comments.

SSDA-AT urges legislators to call on the FTC to protect consumers and the aftermarket by aggressively enforcing its rules governing unfair marketing practices and new car warranties as specified in the Magnuson-Moss Warranty Act.

Car companies are taking aggressive action to misinform consumers regarding their rights under the warranty and as to the quality of aftermarket parts.

Aftermarket parts are of a similar or even greater quality than the original equipment parts that they replace. In fact, many of these parts are made by the same company but may come in different packaging. Furthermore, aftermarket companies have the benefit of observing a part's performance and can then correct problems that are discovered only after the part has been in-use for some time.

The FTC must:

- Conduct greater oversight and enforcement on vehicle manufacturers who do not comply with the Magnuson-Moss Warranty Act and who seek to discredit aftermarket products;

- Aggressively enforce requirements that vehicle manufacturers must substantiate all claims that use of non-original equipment parts could jeopardize a vehicle warranty; and,

- Require better consumer disclosure by car companies regarding their rights under the warranty. This might entail compelling the car companies to:

    - Include in their warranty booklets a prominently places statement that, as a motor vehicle manufacturer, they are prohibited from conditioning the warranty on the use of any non-original equipment part or service; or,

    - Inform consumers of their rights with a written statement of reasons when a warranty is denied due to the use of a non-original equipment service or part.

HALT THE ACTIVIST NLRB'S EFFORTS TO EASE UNIONIZATION OF BUSINESSES
SSDA-AT POSITION PAPER

SSDA-AT pushed back hard against the "card check" legislation that would have made it far easier for workers belonging to any business to unionize. The legislation failed to pass in the 113th Congress, however, the National Labor Relations Board (NLRB) has been attempting to negate our success with several rulemaking changes to the governing regulations. SSDA-AT is an active member of the Coalition for a Democratic Workplace (CDW), which is coordinating responses to the NLRB's efforts.

Likely due to the failure of the card check legislation, a series of initiatives are being considered by both the NLRB and the Department of Labor (DOL). These initiatives include the following:

On December 22, 2010, the National Labor Relations Board issued a Final Rule that requires all employers subject to the National Labor Relations Act (NLRA), which is almost every private employer, to post a notice in the workplace about the right to organize a union under the National Labor Relations Act. The CDW believes that the notice is unnecessary, biased and beyond the Board's authority to require, and on September 26, 2011, filed a lawsuit in opposition.

On June 22, 2011, the NLRB published a Notice of Proposed Rulemaking (NPRM) setting forth new procedures for "conducting a secret ballot election to determine if employees wish to be represented for purposes of collective bargaining." According to most interpretations, these new procedures could result in union representation elections held within 10-21 days of a union petition. In 2010, the average time to election was 31 days, with a target median of 45 days. An immediate concern is that so-called 'snap' elections can prevent employees from making an informed decision about union representation by limiting information about the union trying to organize them and unions in general.

Almost simultaneously, the Department of Labor's (DOL) Office of Labor-Management Standards (OLMS) published an NPRM to reinterpret what constitutes "persuader" activity under the Labor-Management Reporting and Disclosure Act (LMRDA), by greatly expanding what exactly employers and consultants would need to report about communications with employees about unions. The proposal will make it more difficult for businesses, particularly small ones, to get advice on critical aspects of labor relations, including *legal* advice.

During an early January recess, President Obama appointed Democratic union lawyer Richard Griffin, Democratic Labor Department official Sharon Block, and Republican NLRB lawyer Terence Flynn to the NLRB. SSDA-AT and the CDW believe the recess appointments are unconstitutional and on January 13 filed a motion to amend our earlier lawsuit to ask the court to allow us to add a count

challenging the authority of the NLRB to implement or enforce the rule with only two members.

SSDA-AT is an active participant in the Coalition for a Democratic Workplace. We are signatories to numerous letters to members of Congress and have specifically requested support for the Workforce Democracy and Fairness Act, H.R. 1768, which would address the NLRB's radical campaign to use executive action to implement key portions of its agenda. We also sent out an Action Alert to all AAIA members to bolster our efforts with grassroots participation.

SSDA-AT urges legislators to oppose the actions of the NLRB because they would:

- Deny employees the time and information necessary to make fair and informed decisions;
- Make it more difficult for businesses to get advice on critical aspects of labor relations; and,
- Severely limit the ability of companies to make business decisions that could create needed jobs in communities around the country.

SUPPORT THE MOTOR VEHICLE OWNER'S RIGHT TO REPAIR ACT
SSDA-AT POSITION PAPER

Modern cars and trucks contain advanced technology that monitors or controls virtually every function of the vehicle including: brakes, steering, air bags, fuel delivery, ignition, lubrication, theft prevention, emission controls and soon, tire pressure. Car and truck owners, as well as the facilities that repair these vehicles need full access to the information, parts and tools necessary to accurately diagnose, repair or re-program these systems.

Vehicle manufacturers often make access to such vital information difficult to obtain for the independent aftermarket and its customers. Without access to critical information, parts and tools, vehicle owners are forced to patronize vehicle manufacturers' authorized repair facilities, which may not be convenient or easily accessible to a vehicle owner.

A nationwide survey of 1,000 independent repair shops conducted by Opinion Research, Inc. found that either much or some of the data needed to repair vehicles was not provided by the vehicle manufacturers. Further, the survey found that the manufacturers never or only sometimes provide capabilities in their tools needed to complete repairs. The difficulty in accessing the needed tools and information has caused a 5.6% loss in productivity per month for the independent repair shops, adding up to a whopping $5.8 billion loss of revenue per year for the industry.

Years ago, SSDA-AT worked to develop a coalition of aftermarket and consumer groups to urge support for the Motor Vehicle Owners Right to Repair Act (HR 1449) introduced by Reps. Edolphus Towns (D-NY) and Todd Platts (R-PA). The bill would have ensured that the independent vehicle aftermarket have access to the service information and tools necessary to repair today's computer-controlled vehicles.

SSDA-AT urged legislators to support "The Motor Vehicle Owners' Right to Repair Act" because it would have:

- Require vehicle manufacturers to provide the same service information and tools capabilities to independent shops that they offer to their authorized dealer network to repair and maintain late model computer controlled vehicle systems;
- Restore the right of vehicle owners to have their vehicle services and maintained at the repair facility of their choice; and,
- Authorize the Federal Trade Commission (FTC) to enforce requirements in order to protect consumers and to promote competition in auto maintenance and repair.

The Right to Repair Act would <u>not</u>:

- Affect warranty work that is normally performed by the vehicle manufacturer authorized repair facility; nor,
- Require manufacturers to disclose manufacturing processes or trade secrets unless that information is made available to the authorized repair facility.

MARKETPLACE FAIRNESS ACT
SSDA-AT POSITION PAPER

SSDA-AT supports the Marketplace Fairness Act of 2017 (S. 976) introduced by Senator Michael B. Enzi (R-WY). This Act restores State's sovereign rights to enforce State and local sales and use tax laws.

Can you imagine a public policy battle that has been going on for over 60 years? There is one. In the 1960's, it pitted "brick and mortar" main street retailers against mail order catalogue companies. Today, it pits "brick and mortar" retailers against online retailers. The debate is over the issue of whether out-of-state sellers should collect and remit use taxes from consumers for the state in which the customer resides. With forty-five states having sales and use tax regimes and with the need for revenue at the state level as important as ever, this may the last chapter in the book.

Let's wind the clock back to understand the issue.

Remote Seller Nexus

Under the structure of state taxation, sales and use taxes are actually imposed on the purchaser of goods and services. The obligation, if any, on the seller is to collect and remit the tax. A sales tax is the tax collected by a seller on a transaction which occurs in the state. The use tax is essentially a fiction created to capture the sales tax on sales made out of state. The purchaser is obligated to pay the use tax on any goods or services the purchaser buys out of state and "uses" in the state. Theoretically, the purchaser is always obligated to pay either the sales tax or the use tax. However, few purchasers voluntarily pay the use tax, and it is impossible to enforce compliance on a purchaser-by-purchaser basis.

The state can force the in-state seller to become a collector of the sales tax since it has jurisdiction over the seller and can use "leverage" such as the seizure of assets to force compliance. The word "nexus" is often used to describe the physical presence necessary for the state to assert jurisdiction over the seller. If the seller has a facility in the state, the question of jurisdiction is easily resolved. In the case of an out-of-state seller, determining whether the seller has sufficient contact with a state to warrant an obligation to collect and remit a state use tax on transactions with a purchaser residing in the state has been a source of disputes for several decades, long before the Internet.

In *National Bellas Hess v. Illinois Department of Revenue* (1967), the Supreme Court ruled that states could not collect a sales or use tax from a firm that did not maintain a retail outlet within the state's boundaries. In legal parlance, the company had to have "nexus," or a connection with the state, upon which the state could claim jurisdiction.

In 1992, the Supreme Court decided the *Quill Corp. v. North Dakota* case involving a North Dakota statute drafted to specifically circumvent the earlier National Bellas Hess case. The North Dakota statute was drafted to define nexus to include "regular or systematic solicitation of a consumer market." Regulations further defined this as three or more advertisements within a 12-month period. Justice Stevens, speaking for the Supreme Court, said: "We do not share [North Dakota's] conclusion that the ruling of Bellas Hess is no longer good law."

The Supreme Court, however, did make an observation that is essential to understanding the significance of the Streamlined Sales Tax Project (SSTP) agreement and possible federal legislation on nexus: "Our decision is made easier by the fact that the underlying issue is not only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve. No matter how we evaluate the burdens that use taxes impose on interstate commerce, Congress remains free to disagree with our conclusions."

Streamlined Sales Tax Project

On November 12, 2002, representatives of 33 states and the District of Columbia voted to approve a multi-state agreement to simplify the nation's sales tax laws by establishing one uniform system to administer and collect sales taxes on the trillions of dollars spent annually in out-of-state retail transactions. The effort is known as the Streamlined Sales Tax Project (SSTP). Under the agreement known as the Streamlined Sales and Use Tax Agreement (SSUTA), a certain number of states with a certain percentage of the population needed to be in compliance in order for the system to go into effect. That number was reached.

Twenty-four states have adopted the simplification measures in the Agreement (representing over 33 percent of the population). The following states have passed legislation to conform to the SSUTA: Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming.

The goal of the SSTP is to provide states with a Streamlined Sales Tax System (SSTS) that includes the following key features:

•Uniform definitions within states tax laws.
•States will be allowed one state rate and a second state rate in limited circumstances (the second rate would cover food and drugs).
•State level tax administration of all state and local sales and use taxes. Each local jurisdiction will be allowed one local rate.
•Uniform sourcing rules.
•Simplified exemption administration for use- and entity-based exemptions.
•Uniform audit procedures.

The Agreement went into effect when 10 states comprising at least 20 percent of the population of states imposing a sales tax came into compliance. However, collection by sellers of sales and use taxes on remote sales remains voluntary under the Agreement until either Congress or the Supreme Court acts to make this collection mandatory.

Federal Nexus Legislation

The Senate bill, S. 698, is constructed around acceptance of the SSUTA by states. Under the bill, states that voluntarily are already or become Member States of the SSUTA would be able to require remote sellers to collect and remit sales and use taxes after 90 days. States that do not wish to become members of SSUTA would be allowed to collect the taxes only if they adopt certain minimum simplification requirements and provide sellers with additional notices on the collection requirements. The requirements are similar to but not as comprehensive as the conditions SSUTA Members have accepted.

Since it seems like everybody wants to get into the internet selling business, to allay the concerns of businesses that might do some internet sales, the proponents included an exemption for those internet sales only (as opposed to total gross receipts) which means it is high exemption unless you are exclusively an internet-based seller. The legislation exempts sellers who make less than $1 million in total *remote* sales in the year preceding the sale to qualify for an exemption and not be required to collect the tax.

Some large internet sellers like Amazon have agreed to support the bill in part because of specific states' efforts to get jurisdiction over them and in part, because they have increased their physical presence in more states.

SSDA-AT will continue to push the Marketplace Fairness Act of 2017 (S. 976) so that local family owned businesses can compete fairly with large online corporations.

COMP TIME
SSDA-AT POSITION PAPER

Representative Martha Roby (R-AL) has introduced the Working Families Flexibility Act of 2017, H.R. 1180. The legislation would amend the Fair Labor Standards Act of 1938 to allow employers to offer private-sector employees the choice of paid time off in lieu of cash wages for overtime hours worked.

Specifically, the bill:

**Allows employers to offer employees a choice between cash wages and comp time for overtime hours worked. Employees who want to receive cash wages would continue to do so. No employee can be forced to take comp time instead of receiving overtime pay.*

**Protects employees by requiring the employer and the employee to complete a written agreement to use comp time, entered into knowingly and voluntarily by the employee. Where the employee is represented by a union, the agreement to take comp time must be part of the collective bargaining agreement negotiated between the union and the employer.*

**Retains all existing employee protections in current law, including the 40-hour workweek and how overtime compensation is accrued. The bill adds additional safeguards for workers to ensure the choice and use of comp time are truly voluntary.*

**Allows employees to accrue up to 160 hours of comp time each year. An employer would be required to pay cash wages for any unused time at the end of the year. Workers are free to 'cash out' their accrued comp time whenever they choose to do so.*

SSDA-AT has always thought this was a great idea. SSDA-AT began to support this in the mid 1990's with then Representative Cass Ballenger (R-NC). The bill passed the House but we failed to overcome a filibuster in the Senate. SSDA-AT gave it another good run in 2003 but came up short.

SSDA-AT thought then and still do now that in the modern workplace this should be an option. Granted, the recent economic times made it difficult for employees to forego any extra compensation, but families today have other demands and needs too.

SSDA-AT continues to look for bipartisan support on this issue.

INFRASTRUCTURE FUNDING
SSDA-AT POSITION PAPER

At the end of 2015, Congress passed a highway bill. But with a lack of funding and a new Presidential administration pushing for infrastructure and job creation, a long-term Federal-Aid Highway Bill is once again being considered. SSDA-AT believes this is a jobs bill that cuts across party lines.

But there will be much disagreement on some major issues: (1) motor fuel taxes—state governors are almost united in their support of a major motor fuel tax increase. The U.S. Chamber of Commerce and the powerful road builders lobby all support a major increase (and indexing the tax to inflation so that it goes up in future years without having to go through Congress). Proposals being considered range from increasing the motor fuel tax by 5 cents to 8 cents a gallon a year for 5 years (raising the tax in total by 25-40 cents a gallon) to increasing the tax to $1.00 per gallon; (2) privatization of highways—allowing states to continue the trend of turning over public roads to private companies. In these lease arrangements, the road is leased to a private company for 99 years. The private company gives the state a great amount of money up front (which is appealing to Governors who are facing severe shortfalls). What seems to then happen is that the roads get less maintenance, and to make this a good business move the private company either increases existing tolls or puts in new tolls. This has become a serious issue to truckers. Not only are they paying excise tax on tires, excise tax on the truck and parts, and a diesel tax (on both the federal and state levels for highway trust funds on both levels), they now have to pay new or additional tolls to ride on these important and popular roads. This becomes yet another financial challenge to the trucking industry; (3) weight-distance tax—the recent congressionally mandated study was positive on the equity of a national-weight distance tax or a vehicle-miles-driven tax. SSDA-AT strongly stands with the American Truckers Associations in opposition to a weight-distance act which would eliminate other taxes including the Federal Excise Tax on new truck tires. The elimination of the FET on new truck tires would have a significant negative impact on the retread industry. (4) Tax proposals if a motor fuel tax increase is not possible, including reinstating the FET on tread rubber, reinstating the FET on passenger tires, and increasing the FET on truck tires by 10%.

SSDA-AT will take the following positions:

(1) Five-year+ Federal Aid Highway Bill	Support
(2) Motor fuel tax increase	Oppose
(3) Privatization of highways	Oppose
(4) Weight-distance tax	Oppose
(5) Vehicle miles driven tax	Oppose
(6) FET on tread rubber	Oppose
(7) FET on passenger tires	Oppose
(8) Increase FET on truck tires	Oppose

RPM ACT
SSDA-AT POSITION PAPER

U.S. Representative Patrick McHenry (R-NC) and his colleagues reintroduced H.R. 350, the Recognizing the Protection of Motorsports Act of 2017 (RPM Act). The bipartisan bill, which was submitted for reintroduction on the first day of the new Congress, protects Americans' right to modify street cars and motorcycles into dedicated race vehicles and industry's right to sell the parts that enable racers to compete.

The RPM Act is cosponsored by 44 members of the U.S. House of Representatives. The bill ensures that transforming motor vehicles into racecars used exclusively in competition does not violate the Clean Air Act. For nearly 50 years, the practice was unquestioned until the EPA published proposed regulations in 2015 that deemed such conversions illegal and subject to severe penalties. While the EPA withdrew the problematic language from the final rule making last year, the agency still maintains the practice is unlawful.

SSDA-AT looks forward to working with Congress to enact the RPM Act and make permanent the Clean Air Act's original intention that race vehicle conversions are legal. We thank Representative McHenry and all the cosponsors for reintroducing a bill that will protect businesses that produce, install and sell the parts that enable racers to compete.

When the RPM Act was first introduced in 2016, racing enthusiasts and Americans working in the motorsports parts industry flooded Congress with nearly 200,000 letters in support of the bill. More than one-fourth of the U.S. House of Representatives joined as bill cosponsors as a result. However, the shortened election year schedule did not permit sufficient time for passage of the bill by the previous Congress.

"Last year I was proud to lead the fight against the misguided EPA regulation targeting racing, but our work is not done," said Rep. Patrick McHenry. "In the coming months, I look forward to working with my colleagues in Congress and the new Administration to ensure the RPM Act becomes law."

Motorsports competition involves tens of thousands of participants and vehicle owners each year, both amateur and professional. Retail sales of racing products make up a $1.4 billion market annually. There are an estimated 1,300 racetracks operating across the U.S., including oval, road, track and off-road racetracks, the majority of which feature converted race vehicles that the EPA now considers to be illegal.