

## FEBRUARY 2018

### TAX REFORM AND THE SCRAP RECYCLING INDUSTRY

#### Tax Reform Law Will Help Recycling

**Many important reforms and incentives contained in the recently passed federal tax bill** will help scrap recyclers upgrade and improve their operations.

- The law reduces the marginal tax rates on pass-through companies.
- ISRI successfully fought to retain the important IC-DISC provision for exporters.
  - ...this helps scrap recyclers export to more than 150 countries
- ISRI fought to have the expensing allowance expanded to 100 percent.
  - ...this includes all capital equipment
  - ...but expires in 5 years
- ISRI successfully fought to retain the RISE Act, (which it helped get enacted in 2008).
  - ...it provides for an expensing allowance of 50 percent for 'qualified recycling equipment'
  - ...should the 100% expensing allowance expire after 5 years the Rise Act with its 50 percent expensing allowance will remain available.

#### Federal Tax Reform and the States

**Enactment of federal tax reform** late last year has states scrambling to figure out what it would mean for them.

**What this means:** A number of jurisdictions are considering bills to allow taxpayers to convert newly nondeductible tax payments into deductible charitable contributions made to certain state-sponsored charities.

**Projected windfall revenues** are in store for some states while others face an *unexpected decline* in federal support. It is the states' reaction to the new federal limitation of state and local tax (SALT) deductions that has captured most of the media attention.

- Examples of these kinds of bills can be found in [California](#), [Maryland](#), and the [District of Columbia](#)
  - ...this idea is also catching on in states that do not have a state-level income tax
- The most extreme legislative proposal so far comes from [California](#)
  - ...a proposed constitutional amendment would levy a 10 percent surtax on corporations with annual revenues of more than \$1 million
  - ...the bill's sponsors say that the proposed constitutional amendment is necessary in order to ensure that the state's big businesses are paying their fair share
- The proposal would also apply to S corporations, not all of which benefit from the new federal tax regime

- ...under this proposal, small business owners with sufficient California income could be subject to combined state and federal marginal tax rates as high as 60.3 percent.

### **Race to the Courts – A Constitutional Issue?**

Some states are also pursuing judicial remedies in addition to their legislative efforts. A coalition of three northeastern Democratic governors have announced their plans to file suit alleging that Congress' decision to cap the SALT deduction violates the Constitution.

- The general legal consensus suggests that this is a spurious argument
  - ...the federal government, it is argued, has authority to define what constitutes the federal tax base
  - ...these suits are better thought of as a political action than a serious policy challenge.

**Wait and See:** These are just the first reactions to what will ultimately prove to be a multi-year effort to reshape state tax systems in light of the challenges — and opportunities — associated with federal tax reform.

### **The Trump Administration Is Asking ISRI ...**

... **for examples of how scrap processors and equipment providers have, or will,** take advantage of the recently enacted tax reforms. If you have awarded bonuses to employees, purchased new equipment or are planning to purchase equipment, please contact ISRI to let us know. The more evidence of our contribution to the economy we can demonstrate, the better we can help advance your issues and concerns with the Trump Administration and Congress. This is especially important as trade issues are being discussed. Please contact Billy Johnson at [billyjohnson@isri.org](mailto:billyjohnson@isri.org) or (202) 662-8548 with any examples of increased investment, bonuses, or other activities as a result of the tax reform law.

### **CSG ADOPTS CRUMB RUBBER RESOLUTION**

**The Council of State Governments (CSG) unanimously passed a resolution** in December 2017 supporting the use of science-based evidence when considering crumb rubber products such as synthetic turf. The resolution also called on the federal government to prioritize completing its pending federal study.

**Why this matters:** Reactions from some state and local governments to the debate surrounding the use of crumb rubber include passed and proposed bans on synthetic turf and other recycled rubber products.

#### **Science-Based Evidence Is Key**

Minnesota State Senator – and ISRI Member - Jeremy Miller (R-Winona) offered the resolution to bring attention to the debate and the reports alleging a connection to cancer in young athletes. Supported by ISRI, Senator Miller presented his resolution before the CSG Energy and Environment Committee with remarks highlighting that

- **More than 90 peer-reviewed scientific studies** demonstrating there is no increased health risk to athletes playing on artificial turf, and
- **Completing the federal study is imperative** so that fellow state and local lawmakers can review the science and consider facts before jumping to conclusions.

### CSG Influences State Policymakers

Following its endorsement in December 2017, the CSG Executive Committee endorsed the Resolution on Utilizing Science-Based Evidence. It will remain in effect for three years and will be available to all policymakers seeking more information on what other states are doing on crumb rubber and synthetic turf.

**Go Deeper:** For more information visit [RecycledRubberFacts.org](http://RecycledRubberFacts.org) or contact [Danielle Waterfield](#) for the latest on state legislation impacting crumb rubber and synthetic turf.

### Synthetic Turf

States and local governments continue to send mixed signals on synthetic turf surfaces, despite studies that thus far indicate no significant health risks to athletes.

- The District of Columbia enacted a synthetic turf moratorium in their 2018 budget.
- New Hampshire, Maryland, and Virginia introduced moratoria legislation for the 2018 sessions
- The Council of State Governments (CSG) approved a resolution noting that scientific evidence should be paramount when assessing recycled rubber play surfaces (see CSG ADOPTS CRUMB RUBBER RESOLUTION).
- Hawaii and Maryland have both introduced legislation authorizing synthetic turf installations at public schools.
- New Jersey bills provide an exemption from the Highlands and Water Protection and Planning Act for synthetic turf fields.

**Bottom line:** ISRI members need to be involved with their policymakers on the federal, state, and local levels to ensure the industry can continue to operate without excessive statutory and regulatory burdens.

**Go deeper:** If you would like to find out what changes could impact your company, visit [ISRI's State Policy](#) page or contact [Danielle Waterfield](#) if you have any questions about the system or legislation impacting your state. ISRI has also added live legislative and regulatory reports to the [State Resources and Tracking](#) pages to make keeping up-to-date in your state easier, and will be adding more resources in the coming year.

### SEXUAL HARASSMENT DOMINATES STATE LEGISLATURES

## The *Me Too* movement has dominated headlines for months

Politicians have not been exempt from scrutiny as women have come forward and voiced their stories of harassment in Washington, DC and at state capitals.

State and federal lawmakers have introduced proposals to address the problem of sexual harassment in both public and private employment. To date, over 80 pieces of legislation in 21 states and the Congress related to sexual harassment have been introduced this year.



### Private Sector Beware: Employers

should carefully monitor how legislatures are approaching this issue. New mandated employee training and/or rule changes are on the horizon.

This year's proposed legislation aimed at addressing sexual harassment in the private sector includes:

- Banning the use of mandatory arbitration provisions in contracts relating to allegations of sexual harassment ([NY SB 6972](#));
- Banning the use of nondisclosure or confidentiality agreements that involve sexual assault, harassment, or discrimination ([IN HB 1237](#));
- Mandating that private sector employers provide employees with sexual harassment education and training programs ([VA HB 653](#));
- Creating a cause of action for sexual harassment in state court ([MS HB 1441](#));
- Requiring the state attorney general to establish and maintain a sexual harassment in the workplace hotline and website so state residents may report instances of sexual harassment in the workplace ([IL HB 4149](#)); and
- Allowing a person providing contracted services to bring a sexual harassment action against the entity for which the person is under contract ([TN HB 1984](#)).

**Be Smart:** Consider developing policies and training programs to protect against workplace sexual harassment.

## TEXAS UXO: REGULATION FIX IN THE WORKS

Texas recyclers have been working with the Texas Department of Public Safety (DPS) to modify regulations that did not reflect protections for recyclers who unknowingly acquire unexploded ordinance (UXO). Passed in [2017 Texas SB 202](#).

**Why this matters:** The initial regulations could leave a recycler open to penalties even if they complied with the statute.

**Once available,** ISRI will link to the notice on our [Texas Resources and Tracking](#) page (member login required).

**Bottom line:** Quick action by ISRI members ensures that recyclers who unknowingly acquire UXO are protected, but this situation also highlights the need to remain engaged in state policy at all levels.

**Go deeper:** If you have any questions or concerns about pending legislation or regulations or the existing scrap metal requirements in your state, you can always access the tracking tools and state metals theft law summaries on the [State Resources and Tracking](#) pages or contact [Danielle Waterfield](#)

## NEW STATE RESOURCES: TRACKING, POLICY POSITIONS, & THE STATE ROUNDUP

[ISRI's State Policy](#) pages have been revamped for the 2018 legislative session with new public and member resources, including summaries of how ISRI's Positions impact state policy, new tracking options, and expanded information for each state.

**Why this matters:** The web of statutes, regulations, and new legislation impacting the recycling industry can make compliance difficult. ISRI's various [Policy and Regulations](#) resources help members keep up-to-date and involved with key policies, regulations, and issues, both domestic and international.

The screenshot shows the ISRI's State Policy page with several key sections and annotations:

- Commodity and Issue Reports:** A section with a search bar and sorting options. A red box highlights the text: "Reports open in a new tab; search, sort, and link to text".
- All Active Legislation and Regulations:** A section listing various legislative and regulatory topics.
- Commodities:** A list of commodity categories including Aux Containers, Bottles, Electronics, Glass, Mercury, Paper, Plastic, Scrap Metal, Synth Turf, Tires/Rubber, and Vehicles.
- Issues:** A list of issue categories including EPR, Flow Control, Licensing, Materials Theft, Municipal Reporting, Right to Repair, Stormwater, Superfund, Taxes, Waste Definition, and Weighmaster.
- State Specific Information:** A grid of state names (Alabama, Alaska, Arizona, Illinois, Indiana, Iowa, Missouri, Montana, Nebraska, Pennsylvania, Rhode Island, South Carolina) with a red box highlighting the text: "Resources for each state, including statute links and tracking".

### How ISRI's Positions Impact State Policy

Sometimes it can be hard to know what resources ISRI has, especially if you are facing state policy changes that need quick action to ensure the voice of the recycling industry is heard. We have added summaries of ISRI's Positions impacting state policy issues on [ISRI's State Policy](#) page.

Each position statement has a short summary and a link to the full text. The positions have also been sorted by the issue or commodity they impact. These summaries are publically accessible. Members

engaged in advocacy efforts can send policymakers here for more information. All ISRI positions are also publically accessible on [ISRI's White Papers, Reports, and Analysis](#) page.

**New Live Tracking Reports**

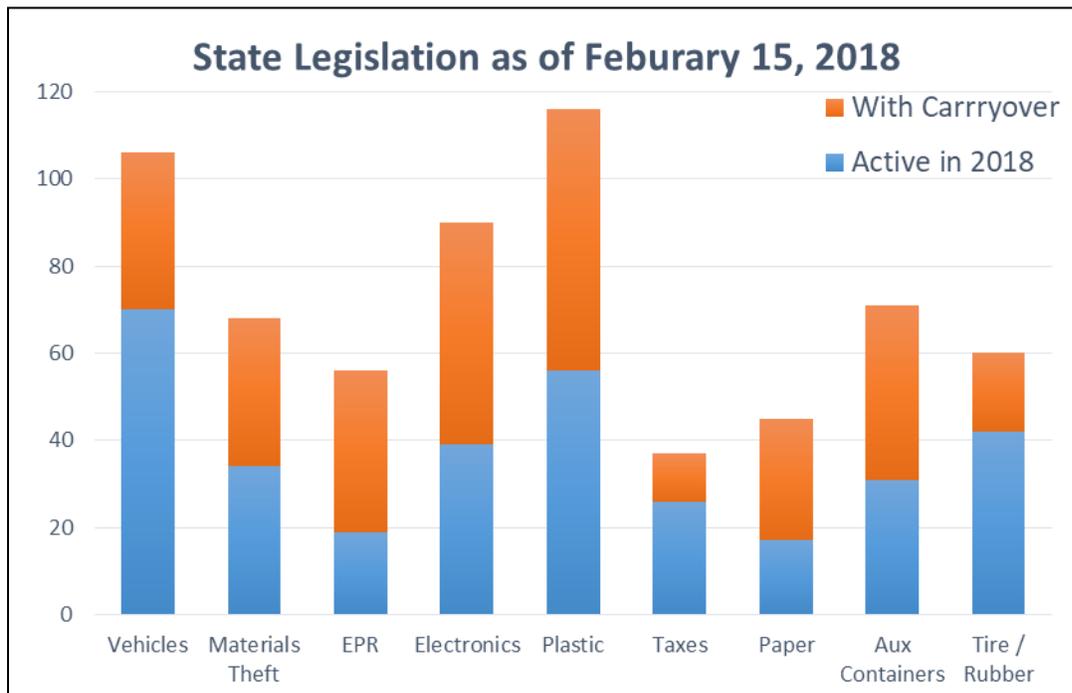
ISRI has compiled information on the laws affecting the industry in each state page, and we have added live reports of all active legislation and regulations for the 2018 session. You can also access reports impacting particular commodities, issues, and chapters from the main [State Resources and Tracking](#) page.

Members can toggle between alphabetical and last action, sort by clicking the icon in the top right, view a summary of the potential impact on the industry, see how far a bill has gotten, and link directly to the state's bill profile page for the full text.

**Bottom Line:** ISRI is constantly working to expand and improve all of our member resources on [ISRI's Policy and Regulations](#) pages.

**Get Involved:** If you have questions about a particular policy issue in or resources for your state or are interested in helping facilitate a regional advocacy training workshop for your ISRI chapter, contact [Danielle Waterfield](#).

**STATE LEGISLATIVE ROUNDUP**



Aside from the 4 states with no regular 2018 session, all but Louisiana and North Carolina have already started the race to get legislation past committee and chamber deadlines before their sessions end. New Mexico finished its session and 13 states are following suit in March.

**Why this matters:** Bills and regulations targeting metals theft, vehicle de-titling and dismantling, product stewardship, and other commodities and issues can impact your business. In worst-case scenarios, legislation could make it impossible for recyclers to stay in business.

## Vehicle De-titling /Dismantling

**Legislation impacting vehicle recyclers and dismantlers** is the most active category by far this year. However, there is a wide variance between the states in measures being considered: bills such as Mississippi SB 2517 sought to repeal provisions allowing the purchase of older vehicles without a title; while, Arizona HB 2307 seeks to allow it. NMVTIS reporting and electronic title and registration systems continue to be key issues in the states.

**There is also increasing crossover between metals theft and vehicle provisions** in recent years.

- Some specifically include vehicle purchases in their metals theft laws
- Some require that scrap processors follow motor vehicle laws
- Some have a mix with more or less clarity for businesses trying to comply.

### By the numbers:

- 70 new bills and those that moved through Committee processes in 2018
- 36 carryover bills from the 2017 session
- 32 bills passed in 2017.

## Metals Theft

**Materials theft legislation has begun to taper in recent legislative sessions.** Recyclers should not get comfortable yet. A trend away from massive rewrites towards smaller tweaks does not mean your state will not throw you a curve ball.

- Wisconsin will likely be the first state to amend its metals theft laws this year
  - Wisconsin SB 246 clarifying divisions between the state's vehicle and metals theft laws
  - Wisconsin SB 488 adds tribal identification cards to the permissible forms of seller ID in the state's recordkeeping requirements.

### By the numbers:

- 17 bills passed last year with a wide range of impacts
- 34 bills introduced or moved through committee processes so far this year

- 34 carryover bills from the 2017 session
- Regulations could become the new ground to watch (see the Texas UXO article in this issue).

**To keep updated on the most recent versions** of the law, ISRI members are encouraged to visit ISRI's state metals theft law summaries available on [ISRI's State Resources and Tracking](#) pages and the [State Metals Theft Law Database](#).

## EPR/Product Stewardship

Recent years have seen a split in the states on Extended Producer Responsibility (EPR). Some legislators have repeatedly sought to expand such programs to cover tires, paper products and packaging, and even general frameworks that could pull in any product. However, others have found it difficult to ensure that producers fully reimburse local governments and recyclers for the expenses incurred in collecting and responsibly recycling products.

Legislators in Illinois, North Carolina, West Virginia, and other states have all sought to loosen landfill bans on electronics rather than hold manufacturers liable for the full cost. Signs from North Carolina point to a renewed effort for the 2018 session.

In contrast, New England legislators - particularly in Connecticut, Massachusetts, and Vermont - have perennially introduced legislation to pull all products into EPR model systems. Connecticut HB 5128 is the first of these in this year's session, requiring the Commissioner of Energy and Environmental Protection to examine beneficial end uses for tires other than tire-derived energy, as well as the viability of a tire stewardship program.

## International Trade

### **Department of Commerce Releases Steel and Aluminum Section 232 Reports**

On February 16, 2018, Secretary of Commerce Wilbur Ross released the Steel and Aluminum Reports undertaken under section 232 of the Trade Expansion Act of 1962, as amended. The Secretary previously sent these reports to the President.

The Recommendation of the Steel Report follows:

1. A global tariff of at least 24 percent on all steel imports from all countries, or
2. A tariff of at least 53 percent on all steel imports from 12 countries (Brazil, China, Costa Rica, Egypt, India, Malaysia, Republic of Korea, Russia, South Africa, Thailand, Turkey and Vietnam) with a quota by product on steel imports from all other countries equal to 100% of their 2017 exports to the United States, or
3. A quota on all steel products from all countries equal to 63 percent of each country's 2017 exports to the United States.

The Recommendations of the Aluminum Report follows:

1. A tariff of at least 7.7 percent on all aluminum exports from all countries, or
2. A tariff of 23.6 percent on all products from China, Hong Kong, Russia, Venezuela and Vietnam. All the other countries would be subject to quotas equal to 100 percent of their 2017 exports to the United States, or
3. A quota on all imports from all countries equal to a maximum of 86.7 percent of their 2017 exports to the United States

## **Trump Administration's "Section 232" National Security Review -- A Case Study in Modern Trade Policy**

**The basic tenets of trade have existed for centuries:** two parties with differing competitive advantages exchange for what they lack and need.

**In the late 18<sup>th</sup> century, it was our first Treasury Secretary, Alexander Hamilton,** who laid the foundations of international trade in terms of the:

- revenue generating advantage of border tariffs
- playing trading partners off each other to gain advantage, and
- overseeing one of the first preferential trade arrangements with Britain.

**As economies grew and transportation modernized,** the business of trade became more complex

- systems for resolving disputes evolved as appropriate methods of protecting industries and economies
  - ...efforts to raise duties had the opposite effect of their intentions (think post-WWI Smoot-Hawley).

Today, U.S. trade policy is guided by the Trade Expansion Act of 1962 and the Trade Act of 1974

- These decades old laws delegate the authority of trade to the President and his Cabinet
  - ...they serve as the basis for the US to engage in international trade while affording needed protections for the American economy
    - as long as actions are in compliance with the post-WWII General Agreement on Trade and Tariffs (GATT)
    - later the World Trade Organization (WTO), which was formed in 1995 as the adjudicator of the world trading system.
- In 2017, the Trump Administration dusted off the little used "Section 232" of the Trade Expansion Act
  - ...it allows the President to impose trade restrictions in the name of national security
  - ...President Trump announced parallel reviews of the impacts that imports of steel and aluminum are having on the American steel and aluminum producing industries and
  - ...their ability to effectively supply to the U.S. military
  - ...The reviews were expected to be completed within six months

- but enough of a chorus of concern and opposition by the commercial metal consuming industries led the Administration to take a longer and more deliberative approach to the reviews
- President Trump has received the reports and has until April to decide whether or not to impose restrictions which could come in the form of higher import tariffs, quotas or a combination of both.

The steel and aluminum industries have learned over the decades how to work closely with the U.S. government.

- Various trade enforcement rules within the 1962 and 1974 laws are a case in point
  - ...they are used to counteract surging imports of primary and semi-finished metal products
    - from countries that use unfair advantages to undercut market conditions
    - the use of these tools have been very successful
      - the volume of primary steel and aluminum from China – not the only target country, but the primary supplier of concern – is less than 1 percent
      - while the “Section 232” review is another avenue for potential market relief, potential import restrictions that arise will have a greater effect on trade with Canada, Mexico, and Europe than it will with China.

ISRI is supportive of the process, finding it a useful exercise to examine market conditions and understand the dynamics of trade in these important materials. Whatever the President decides could have some down-stream effect on the recycling industry in terms of prices and supply and demand. In comments we submitted last year to the Administration for these reviews, we cautioned about the use of export controls as a response, citing past problems when materials are artificially removed from the global marketplace. Nevertheless, we are tracking this process very closely and will advise membership as to the implications of the President’s final decision.

## LAW ENFORCEMENT

### Law Enforcement Outreach –

**To date, ISRI is scheduled to exhibit at three major law enforcement conferences** in 2018.

- June 17 – 19, ISRI will exhibit at the National Sheriffs Association Annual Conference to be held in New Orleans
- ISRI will exhibit at the FBI National Academy Associates Annual Conference held in Quebec City, Canada
- International Association of Chiefs of Police Conference being held October 7 – 9, in Orlando.

Additional dates may be added throughout the year depending on scheduling opportunities.

**Why it's important:** These conferences are attended by thousands of law enforcement executives from across the country and Canada and represent all sizes of police departments and sheriffs' offices.

- Many are interested in finding low cost/no cost crime prevention tools and solutions to crimes in their communities, including metals theft
- ISRI promotes the willingness of members to work with law enforcement in combatting metals theft, and
  - ...will provide attendees with information on resources made available by members such as ScrapTheftAlert.com, StopMetalsTheft.org, and other educational materials.

**Be Aware:** ISRI will be contacting the chapters that cover the above locations to secure volunteers to assist in the exhibit booth. Past experience indicates officers like hearing direct from recyclers on efforts to reduce metals theft.

## **Mutilated Coin Redemption Program Gets Underway**

**The U.S. Mint finalized its regulations and resumed their Mutilated Coin Redemption Program** in mid-January spelling out the new process for redeeming mutilated coins including the guidelines for the new certification process for large quantity submitters.

- The regulations detail
  - ...how coins are to be submitted, and
  - ...what types of coins it will no longer accept.
- The guidelines include a list of vital recycling industry facility contacts and other information
- The regulations also provide the U.S. Mint
  - ...the right to inspect a facility before accepting coin submissions
  - ...the right to refer cases to the Department of Justice for criminal prosecution if the Mint suspects fraudulent activity
- To date, the U.S. Mint has accepted certification submissions
  - ...but it has not formally noticed any submitter of acceptance
- The Mint has indicated that certification submissions will begin to be completed soon and submitters should be notified by March 1, or soon thereafter
- The U.S. Mint's certification form can be found at <https://www.usmint.gov/news/consumer-alerts/mutilated-coin-program>.

## **MERCURY SWITCH PROGRAM EXTENDED**

ISRI joined with other stakeholders in signing an extension to the National Vehicle Mercury Switch Recovery Program (NVMSRP) that will keep the voluntary collection program operating through December 31, 2021. The NVMSRP provides for the transportation and recycling of mercury convenience switches from end-of-life vehicles in order to reduce mercury releases to the environment.

**Why this matters:** Participation by dismantlers and recyclers is voluntary and absolves them of liability once the switches are collected.

**The program was set to expire at the end of 2017** but events since suggest that a significant number of mercury switches have yet to be captured.

**Bottom Line:** The extension fulfills both these requirements and will continue to protect participating recyclers and dismantlers through the end of 2021.

**Go deeper:** For more information contact [Mark Reiter](#). A final version of the extension will be posted to [ISRI's White Papers, Reports, and Analysis](#) page when available.

#### **ISRI Joins with Other Associations Calling for Administration Nominees**

- **At the beginning of Year 2 of The Trump Administration nominating political officials** to sub-Cabinet level positions, Boards and Commissions remain very slow.
- The Surface Transportation Board (STB) has only 2 Acting Board Members
- Significant STB decisions have to await appointed and confirmed Board members
- However, to date, none have been nominated by the President
- Therefore, a rule before the STB removing the steel exemption to the benefit of recyclers cannot be voted on at this time.