



December 19, 2022

The Honorable Kathy Hochul
 Governor of New York State
 New York State Capitol
 Albany, NY 12224

Re: Unemployment Insurance Trust Fund and Taxes

Dear Governor Hochul,

We, the undersigned organizations represent thousands of businesses across New York in all sectors and of all sizes, write to respectfully request that the State allocate resources in the Fiscal Year 2023 budget to address the state’s outstanding federal Unemployment Insurance advance that is leading to the highest possible state UI taxes, an Interest Assessment Surcharge, and increased federal UI taxes.

Nearly three years after the pandemic, employers, particularly small businesses, continue to face unprecedented challenges. According to NFIB’s Small Business Economic Trends (SBET) report, 30 percent of small business owners reported that inflation was the single

most important problem in operating their business, 62% are experiencing significant supply chain issues, and nearly half of small businesses report job openings that cannot be filled. NFIB's Small Business Optimism Index continues to decline and now stands at 10 consecutive months below the 49-year average¹. Every industry and type of business is struggling with labor shortages, 40-year high inflation, supply chain disruptions, and sky-rocketing energy prices, while also managing economic losses from the pandemic. New York's economy remains erratic and any progress towards recovery from the pandemic will only be further delayed until the state addresses Unemployment Insurance taxes, the solvency of the Trust Fund, and COVID-19 pandemic-related UI fraud.

Applications for unemployment benefits surged as non-essential businesses were shut down by New York State due to COVID, resulting in massive layoffs. The UI system became quickly overwhelmed by the unparalleled spike in claims and extraordinary amounts of money poured out of New York's UI Trust Fund, depleting it. To continue to satisfy claims, New York was driven to borrow funds from the federal government, like many other states; however, New York is now one of only four states that still owe money to the federal government and did not use any of the billions in federal COVID relief to help pay off its federal UI advance. In July, businesses were notified they would shoulder the state's interest debt payment in the form of an annual Interest Assessment Surcharge (IAS) of \$27.60 per employee. Businesses will pay the IAS until the interest and the multibillion-dollar debt has been satisfied. In 2023, employers in New York face a Federal Unemployment Tax Act (FUTA) tax offset credit reduction resulting in a FUTA tax increase of \$21 per employee. This is in addition to the highest possible UI tax rates, which averages an additional \$200 per employee per year. For many employers, unemployment insurance costs have risen by thousands of dollars each year.

These substantial added costs are being shouldered solely by businesses across New York even though state public policy positions and UI fund mismanagement led to this crisis. The New York State Comptroller's office released an audit in November revealing at least \$11 billion in fraudulent unemployment payments made between January 2020 and March 2022. The report claims NYSDOL ignored warnings in 2010 and 2015, that the system was outdated and lacked proper safeguards against fraud. During the pandemic NYSDOL abandoned controls designed to prevent improper payments, instead using "stop-gap measures" to mask issues related to the fast-tracking of UI benefit payments.

As a business community, we are eager to partner with the executive branch, division of budget, and legislative leaders to address the state's UI deficit, high employer tax levels,

¹ National Federation of Independent Business SBET, November 2022.
<https://assets.nfib.com/nfibcom/SBET-November-2021.pdf>

and reported fraud. This issue demands the State's immediate attention and New York's businesses need action now.

With the preparation of the Fiscal Year 2023 budget underway, the State should allocate two to three billion to the UI system to fund the following employer tax relief measures:

- Pay any interest payments due on New York State's federal UI program advance for calendar years 2023 and 2024
- Offset any increase in net FUTA taxes applicable to New York employers for calendar years 2023 and 2024,
- Make a substantial down payment towards the state's UI federal advance, and
- Recoup fraudulent UI payments and dedicate those funds to paying down New York's debt and providing much-needed UI tax relief to employers.

A large share of job loss in the past three years was driven by pandemic-based public policy mandates, not employer actions. New York State created these issues and therefore has the responsibility to address them. Businesses cannot and should not be compelled to bear the weight of replenishing the UI trust fund and repaying the federal government alone, nor should businesses be liable for the mismanagement of the state's UI system which resulted in \$11 billion of fraudulent payments. We must do more as a State to avert this looming crisis, our long-term economic recovery depends on bold action.

On behalf of businesses across New York, we look forward to working with you to provide relief to our state's businesses while restoring the UI system. These actions will help fully restore the economy and the growth of businesses, jobs, and public revenue.

Sincerely,

Associated Builders and Contractors Empire State Chapter

Associated General Contractors New York State

Big I NY

Bronx Chamber of Commerce

Brooklyn Chamber of Commerce

Buffalo Niagara Partnership

Capital Region Chamber

Corning Area Chamber of Commerce

Empire State Forest Products Association

Food Industry Alliance of New York

Greater Binghamton Chamber of Commerce

Greece Regional Chamber of Commerce

Lawsuit Reform Alliance of New York (LRANY)

Long Island Association

Manufacturers Association of Central New York (MACNY)

National Federation of Independent Business (NFIB)
New York Association of Convenience Stores
New York Construction Materials Association
New York Farm Bureau
New York State Builders Association
New York State Council of NECA Chapters
New York State Economic Development Council
New York State Electrical Contractors
New York State Hospitality & Tourism Association
New York State Restaurant Association
New York State Vegetable Growers Association
North Country Chamber of Commerce
Northeast Agribusiness and Feed Alliance
Northeast Dairy Producers Association
Northeastern Retail Lumber Association-New York (NRLA-NY)
Retail Council of New York State
Rochester Technology and Manufacturing Association (RTMA)
The Business Council of New York State
The Business Council of Westchester
The Chamber Alliance of NYS
Upstate United
Watkins Glen Area Chamber of Commerce

CC:

NYS Senate Majority Leader Andrea Stewart Cousins
NYS Assembly Speaker Carl Heastie
NYS Senate Minority Leader Rob Ortt
NYS Assembly Minority Leader Will Barclay
Karen Perischilli-Keogh, Secretary to the Governor
Robert Mujica, Director, Division of the Budget
Sandra Beattie, First Deputy Budget Director