Small Business Economic Recovery Recommendations

Re-Opening and Re-Invigorating Main Street after COVID-19

April 15, 2020

Precautions taken to contain and prevent the spread of COVID-19 resulted in unexpected and immediate economic dislocation for tens of thousands of Washington small businesses, including self-employed individuals.

Moreover, the classification as "essential" of large online retailers and big box stores offering any food or beverages for sale, while specialty retail was deemed "non-essential," placed many small businesses at a further competitive disadvantage likely to be felt for years to come.

Once Gov. Jay Inslee's "Stay Home – Stay Healthy" Proclamation ordering the closure of "non-essential" enterprises is lifted, small businesses will need tax and regulatory flexibility and assistance to restart operations and bring employees back to work. The need to get workers back on the job – and off state assistance programs – cannot be overstated. That should be the State's priority.

Accordingly, NFIB recommends the Governor and Legislature consider the following public policy proposals:

- **B&O, sales, and use tax-reporting and payment deferral**. The deadline for annual and (Q1) quarterly filers has been postponed until June 15 and June 30, 2020, respectively.
  - State B&O, sales, and use tax returns for the second quarter should be postponed until at least November 2, coinciding with the third quarter filing due date.
  - Small businesses requesting a deferral should be given until at least December 31 to bring tax payments current for the first three quarters of 2020, without the need for a formal payment plan approved by the Department of Revenue (DOR).
  - DOR should be authorized to enter into payment plans of up to 24 months for small businesses unable to pay 2020 taxes as a result of COVID-19 shutdowns or slowdowns. These deferrals and payment plans should be interest- and penalty-free.
  - ❖ These options **delay, but do not eliminate General Fund—State tax collections**.

- **Workers' compensation premium deferral and forgiveness**. The Department of Labor & Industries (L&I) has announced an Employer Assistance Program, allowing businesses experiencing financial difficulties to request either a 90-day deferral or 90-day payment plan for workers' compensation premiums owed for the first quarter of 2020.
  - L&I's Employer Assistance Program should be extended for small businesses to include all four quarters of 2020.
  - As part of its 2021 rate-setting process, L&I should determine whether sufficient funds are available in its "rainy day" reserve to forgive premium obligations (in part or in full) for small businesses with deferrals or payment plans in place due to COVID-19.
  - ❖ **No General Fund—State impact**.

- **Unemployment insurance social-tax holiday and state of emergency unemployment assistance**. The flood of unemployment claims arising from the Governor's "Stay Home – Stay Healthy" Proclamation may reduce the state's Unemployment Trust Fund reserve, despite backfill funding from the federal government. Depending on the size of the state's Trust Fund at the end of the third quarter of 2020, several options may be available.
  - If the Trust Fund balance shows at least 12 months' premium would remain in reserve for calendar year 2021, and projections show the balance remaining at or above 10 months' of premium under the proposals below, the Employment Security Department (ESD) should report to the Legislature options for reducing the social tax component of unemployment insurance premiums. At a minimum, these options should include a:
    - one-year social tax holiday,
    - one-year social tax reduction, and
    - multi-year approach eliminating or substantially reducing the social tax during the first year, with stepped increases that return the social tax to 100 percent of its 2020 level by year five (or earlier). *See endnote*.[i]
  - The "Stay Home – Stay Healthy" Proclamation forced thousands of self-employed individuals, including independent contractors and "gig workers," to suspend business operations, depriving them of income through no fault of their own. Traditional unemployment insurance is not available to these individuals. ESD should be directed to research and recommend to the Legislature whether a state-level program similar to the new federal Pandemic Unemployment Assistance or federal Disaster Unemployment Assistance program could be implemented in conformity with federal law. Such a program should consider limitations such as:
    - Applicable only to self-employed individuals, including independent contractors, whose operations are suspended for at least 30 days due to a state of emergency declared by the Governor, and not otherwise eligible for unemployment insurance.
    - Benefits should equal 75 percent of the individual's average weekly earnings for the prior calendar year, and include a cap (such as $3,000 per week). The earning replacement and weekly cap could later be adjusted by rule to account for inflation or other factors.
    - Business owners receiving these benefits should be given up to 36 months to repay them, if repayment would be necessary to maintain solvency of the Unemployment Trust Fund or other funding source.
    - The social tax component of unemployment insurance premiums should be evaluated as a potential source of funding. The funding mechanism might include establishing an unrestricted "set-aside" in the reserve, similar to how the annual allocation and roll-over of worker training benefits were treated during the Great Recession (HB 1906, 2009).
  - ❖ **No General Fund-State impact**.

- **Limited sales tax holiday**. If a special session of the Legislature is called, lawmakers should enact a limited sales tax holiday to spur consumer spending and jump-start business activity statewide. Long weekends coinciding with traditional Labor Day "back-to-school" or Black Friday (plus Small Business Saturday and/or Cyber Monday) promotional periods offer natural opportunities for a short sales tax holiday of three to five days, which would be easy for business owners to comply with, and the public to understand. Moreover, lower income individuals and working families hard hit by layoffs or reduced hours would find this limited sales tax holiday a welcome relief, thanks to increased buying power from a 6.5% discount if only the state-share of sales tax is waived temporarily, or nearly 10% greater purchasing capacity if state and local sales taxes are both suspended for a few days.

- General Fund—State **sales tax collections** would be **reduced**, but **B&O tax collections** should **increase**.

- **B&O tax-rate review**. DOR should be directed to report to the Legislature what rate increase or surcharge would be necessary, in each standard B&O classification, to increase the Small Business Tax Credit to exempt from the B&O tax those firms with annual gross receipts of $250,000; $350,000; and $500,000. The report should include an analysis of the rate change necessary if firms qualifying for any other tax preference were excluded from Small Business Tax Credit eligibility. The department should also recommend whether replacing the current Small Business Tax Credit with a deduction or exclusion would make it easier for DOR to administer, and small businesses to understand, with the goal of there being no B&O tax liability whatsoever on any portion of a firm's gross receipts below the threshold – $250,000; $350,000; or $500,000 – so that the B&O tax would only apply beginning with the first dollar above the threshold amount. For example, a business with taxable gross receipts of $1 million would subtract the threshold amount, say $250,000, and pay tax on the remaining $750,000 of its gross receipts. To help reduce the rate increase or surcharge needed, consideration could be given to a structure assessing the B&O tax on all gross receipts for firms with annual earnings exceeding $5 million, for instance.
  - The intent would be a **revenue-neutral** shift in General Fund—State tax collections.

- **Waive state minimum-wage increase for 2021**. There has already been speculation that the current economic dislocation may result in a decrease to the Consumer Price Index. Whether or not that proves true, it is likely small businesses will lack financial resources to quickly repay recently incurred debt, such as lines of credit or federal loans; federal, state, and local taxes; and unemployment insurance and workers' compensation premiums. Even with deferrals and payment plans, cashflow is certain to be difficult for small businesses for the remainder of 2020, and likely well into 2021. The added strain of increases in the state minimum wage, overtime-exempt salaries, and corresponding wage compression may well slow the rate at which employees are returned to work, or new jobs are added, particularly among small employers shuttered six weeks or more by government order. That could unnecessarily extend unemployment for thousands of workers, further slowing economic recovery and harming working families and small businesses alike.
  - Any inflationary increase to the state minimum wage should be waived for 2021.
  - If the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) decreases, future inflationary adjustments to the state minimum wage should not occur until that index exceeds its January 2020 level.
  - **No General Fund—State impact**.

- **Delay state "overtime rule" implementation**. L&I's new rule updating the Executive, Administrative, and Professional exemptions to the state's Minimum Wage Act is set to take effect later this year. Unless delayed, employers struggling to recover from COVID-related shutdowns and slow downs will simultaneously be required to undertake difficult workforce restructuring efforts if they are unable to increase salaried workers' pay above $43,000 for small employers, or nearly $50,200 for larger employers, as of January 1, 2021. A twelve-month delay in rule implementation, at least for smaller employers, would provide some relief and certainty for both business owners and salaried employees. Without delayed implementation, employers already forced to lay-off workers due to the Governor's Proclamation may choose not to rehire salaried workers, opting instead to hire new hourly workers.
  - **No General Fund—State impact**.

- **Working Washington Small Business Emergency Grants**. NFIB joins the Washington Trust for Historic Preservation in requesting that Governor Inslee designate eligible federal assistance, provided to Washington State through the federal CARES Act or other federal sources, to increase funding for the Working Washington Small Business Emergency Grant program administered by the state Department of Commerce. If federal funds are inadequate, our organizations urge the Legislature, in a special session, to consider additional state appropriations to bring the total funds available through this program to $50 million. We urge the Governor and Legislature to:
  - Maintain criteria that eligible businesses are defined as those with 10 or fewer employees.
  - Ensure a minimum of 30% of grants are set aside for small businesses located in rural counties, where city- and county-wide financial resources are less common.
  - Provide quick and easy access to funds meeting the needs of small businesses facing imminent, permanent closure.
  - ❖ Probable **General Fund—State** and/or **General Fund—Federal impact**.

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[i] For example: the 2021 social tax is set at zero, 2022 social tax is 25 percent of 2020, 2023 social tax is 50 percent of 2020, 2024 social tax is 75 percent of 2020, 2025 social tax is 100 percent of 2020; or, 2021 social tax is zero, 2022 social tax is 33 percent of 2020, 2023 social tax is 66 percent of 2020; 2024 social tax is 100 percent of 2020.