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February 12, 2021

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles Schumer
Majority Leader
United States Senate
Washington, DC 20515

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20515

Dear Speaker Pelosi, Leader Schumer, Minority Leader McConnell, and Minority Leader McCarthy:

Over the past several weeks, Members of Congress have received a deluge of calls from their constituents regarding the taxation of unemployment benefits. In my experience, these issues can be categorized into three broad groups: constituents who were unaware that unemployment benefits were Federally taxed as income, constituents whose State Workforce Agency did not fully withhold Federal income tax on their unemployment insurance (UI) benefits, and, most concerning, a large group of constituents who are being alerted that they have outstanding tax liabilities on unemployment benefits they did not request or receive, due to identity theft. All three of these groups are under threat of being held liable for a tax burden they did not expect. However, the looming tax deadline has also presented an opportunity to target aid towards those that need it most.

When Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act in late March 2020, it made clear that States should be disbursing the enhanced unemployment insurance programs as rapidly as possible. Many States, understandably, struggled to implement these programs quickly and effectively with additional requirements the Federal government placed upon this funding.

Over the course of 2020, nearly 44 million Americans filed for unemployment – many for the first time in their lives. While State Workforce Agencies and the Internal Revenue Service (IRS) did make attempts to communicate that UI benefits were considered taxable income, many Americans are unlikely to have seen those messages. In California, for example, the Employment

Development Department did not always withhold projected Federal income taxes of both the State base benefit and Federal supplemental benefit. Determining fault and how to bolster our employment systems in the future will be the subject of several hearings this Congress, but constituents need assistance this tax season.

In addition to legitimate unemployment claims and understandable mistakes, I have seen reports of tremendous fraud in the unemployment system throughout the country. The Office of the Inspector General (OIG) of the Department of Labor “conservatively” estimated that, as of November 7, 2020, \$36 billion of the \$360 billion, or 10%, of Federal appropriations expended under the CARES Act to supplement State UI benefits could have been paid improperly or fraudulently.¹ Some Americans are receiving 1099-G tax forms for benefits they did not apply for or receive. The receipt of the 1099-G form is often the first notice that they have been victims of identity theft. Many more Americans may discover additional tax liabilities when they file their 2020 tax returns and are told that State Workforce Agency records indicate they had been collecting UI benefits throughout the year.

After the swift passage of the CARES Act, the U.S. Department of Labor (DOL) issued supplemental guidance to States regarding proper administration of the temporary UI benefits and ways to increase program integrity and address fraud in the unemployment system.² Additionally, DOL provided funding to prevent and detect fraud and identity theft, as well as recover fraud overpayments.³ We applaud this effort, but more should be done directly for unemployed and underemployed Americans.

To solve the issue of unexpected tax liabilities, I am proposing two separate policy fixes. First, Congress could direct the IRS to proactively waive any failure-to-pay penalties or interest on outstanding tax debts in 2020 on income levied from UI benefits. This waiver could defer full payment to the end of 2022, similar to the payroll tax cut deferral provisions found in Section 274 of the Consolidated Appropriations Act and Notice 2021-11 from the IRS.

Secondly, Congress could create a new refundable tax credit equal to the value of an individual’s tax liability from UI benefits collected in 2020. This tax credit would directly and proportionately assist constituents who legitimately collected UI benefits due to COVID-related job losses and underemployment, while also alleviating this burden from victims of unemployment fraud.

In addition, to redress the damage done through identity theft and unemployment fraud, this refundable tax credit should be paired with an enhanced effort to recuperate improperly expended taxpayer dollars and prosecute international actors who perpetrated these offenses. In October, the Department of Justice established the National Unemployment Insurance Fraud

¹ https://www.oig.dol.gov/significant_concerns.htm

² https://wdr.doleta.gov/directives/attach/UIPL/UIPL_23-20.pdf

³ https://wdr.doleta.gov/directives/attach/UIPL/UIPL_28-20.pdf

Task Force.⁴ The Task Force brings together the Department of Labor, Secret Service, FBI, Homeland Security Investigations, IRS, Postal Inspection Service, SSA OIG, and DHS OIG under the direction of the Department of Justice to identify, investigate, and recover fraudulent payments. We call on Congress to officially codify and extend resources to this crucial Task Force.

Congress has taken major legislative action four times, with broad bipartisan support, to relieve our constituents of the unexpected financial burden that COVID-19 has placed on them, and negotiations are once again underway for a fifth disaster relief measure. As this relief measure continues to evolve and take shape, I hope you will consider these proposed solutions to the very real threat of a surprise tax burden and recuperation of taxpayer dollars fraudulently or improperly expended to international criminals or bad actors.

Sincerely,



Doug LaMalfa
Member of Congress

CC:

House Committee on Ways and Means
House Committee on Budget
Senate Committee on Finance
Senate Committee on the Judiciary

⁴ <https://www.justice.gov/file/1319301/download>