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## **Testimony Submitted to the NYS Department of Labor Regarding a Proposal to End the Minimum Wage Tip Credit in New York State**

*May 18, 2018*

*Testimony attributed to Greg Biryła, executive director, Unshackle Upstate*

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Dear Commissioner Reardon,

The contents contained within this written testimony are submitted on behalf of Unshackle Upstate.

Unshackle Upstate is a non-partisan, pro-taxpayer, pro-economic growth and pro-Upstate education and advocacy coalition made up of business and trade organizations from across Upstate New York. Its leadership team is comprised of the Buffalo Niagara Partnership, the Greater Rochester Chamber of Commerce, the North Country Chamber of Commerce, the Greater Binghamton Chamber of Commerce and Associated Builders and Contractors – Empire State Chapter.

Our goal is to achieve changes in state policy to improve the Upstate economy by making Upstate New York a stronger place to do business through controlled spending, reduced taxes, and reforming burdensome mandates and regulations.

In some cases, we work to educate decision makers about proposals that would inarguably harm Upstate businesses and workers. This is one of those issues.

I want to start by noting that that the Department of Labor's web site refers to this proposal and the hearings dedicated to it as 'Subminimum Wage Hearings.'

This characterization of what should be referred to as the "tipped wage credit" appears to reflect a bias on the part of the Department of Labor – one that indicates that a decision to repeal the tipped wage credit has already been made.

As you know, any tipped worker who earns less than the minimum wage must have the difference made up by their employer. So it is simply inaccurate to use the term 'subminimum wage' in this context. In fact, the vast majority of tipped workers earn more than the minimum wage – and many hard-working employees far exceed it.

The state's existing tip credit guarantees that servers and bartenders receive the minimum wage. And in cases where they do not and their employer fails to make up the difference so that they earn at least the minimum wage, your agency has the investigative and enforcement authority to address the situation.

We urge you to exercise that power to address the bad actors in the bar and restaurant industries, rather than forcing significant changes in these economically vital industries through short-sighted regulatory action.

Which leads to our next point: the Legislature is the appropriate forum for policy matters such as the tipped wage credit to be discussed and, if action is required, to take action. Far reaching policy decision that would impact employers and employees in every corner of the state should be made by the Legislature – the people's duly elected representatives – not by the Department of Labor.

On the merits, our concern is that if minimum wage tip credits are eliminated in New York State, restaurant and bar owners will face only bad options – raising prices, cutting their staff or reducing their business hours to manage the higher labor costs that the state is mandating. In some cases, restaurants will be unable to do so and will have to close. For employees, eliminating minimum wage tip credits may mean a loss in their income. And consumers will experience higher prices and see their household budgets stretched thinner.

Employers across New York State continue to face an assault on their livelihood, their ability to succeed and their ability to provide opportunities for others. The onerous impact New York's high taxes, punitive regulatory structure and stream of mandates are well documented annually by independent research organizations. The negative effects of which are felt far more Upstate than Downstate.

According to June 2017 U.S. Bureau of Labor Statistics' Quarterly Census of Employment and Wages, since the end of the Great Recession, 98 percent of jobs created in New York have been created in Downstate New York.

In conclusion, I submit that the Department of Labor's proposal to eliminate the tipped wage credit is an effort to address a problem that simply does not exist. It is a solution that no one asked for. Based on the feedback our organization and we imagine the Department has received, this proposal is overwhelmingly opposed by those it purports to be helping – tipped workers.

This is classic Albany regulatory overreach – a solution in search of a problem. But this solution will create its own problems and exacerbate the single biggest problem we face in Upstate – a struggling economy.

On behalf of Unshackle Upstate and its thousands of partner employers, I urge you not to eliminate minimum wage tip credit in New York State. Doing so will hurt businesses, hurt our economy and hurt employees.

Thank you for the opportunity to submit this testimony. Your time and attention is much appreciated.

Greg Biryla

Executive Director, Unshackle Upstate