



**State of Vermont**  
**Department of Taxes**  
133 State Street  
Montpelier, VT 05633-1401

*Agency of Administration*

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**MEMORANDUM, TAX YEAR 2020 INTERNAL REVENUE CODE LINK UP**

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**TO:** Honorable Janet Ancel, Chair, Ways and Means Committee  
Honorable Ann Cummings, Chair, Senate Finance Committee

**FROM:** Craig Bolio, Commissioner, Department of Taxes

**SUBJECT:** Tax Year 2020 Internal Revenue Code Link Up

**DATE:** March 22, 2021

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This memorandum outlines impacts of a recent retroactive federal tax law change from the American Rescue Plan. The Administration requests that the Legislature act to conform Vermont's tax law to the federal tax law change and provide an exclusion for the first \$10,200 of unemployment insurance compensation as outlined below. If Vermont does not link to the federal change and pass it on to Vermont taxpayers, there will be costly consequences for both the State and some taxpayers.

The American Rescue Plan Act, signed into law by President Biden on March 11, 2021, excludes the first \$10,200 of unemployment insurance (UI) compensation received by an individual from federal income tax, so long as the taxpayer had less than \$150,000 in income in 2020. This change does not automatically become part of Vermont law because of how Vermont law addresses conforming with federal tax law. This is a very valuable exclusion for a group of Vermonters who have already experienced significant economic hardship through job loss due to COVID-19, thousands of whom have still not been able to return to work.

We need the Legislature to act because Vermont has what is known as static conformity with federal tax laws – current law specifies a date certain when Vermont law conforms with the Internal Revenue Code and laws of the United States, and specifies the tax year for which the law conforms. The Legislature updates this reference each year with retroactive effective dates by passing a law that we call the “annual link up.” In other words, the Legislature is currently discussing the link up for tax year 2020, which is the tax year that Vermonters are filing returns for today. The Administration is requesting the Legislature link up for tax year 2020 through March 31, 2021. This will allow Vermonters to take the same UI exclusion on their Vermont taxes as they will receive on their federal taxes.





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The existing link up language in H.315 will not extend the UI exclusion to Vermonters. There are two parts to the link up language. The first part is the date through which Vermont law conforms with the laws of the United States. The second part is the tax year for which the link up applies. As drafted in H.315, the link up would apply to tax year 2020, but only links up to the laws of the United States through December 31, 2020. The language would need to be amended to link up through March 2021 to include the UI provision in the American Rescue Plan.

There is a one-time cost to this link up because doing so will lower the tax liabilities for those unemployed in 2020 who are eligible for the UI exclusion. The Tax Department and Legislative Joint Fiscal Office (JFO) have established a consensus estimate of \$12.6 million of reduced revenue in FY21. The Legislature could consider applying one-time surplus revenue above and beyond the \$160 million that was available in January. There also may be an opportunity to use the revenue replacement provisions of the American Rescue Plan to cover some or all the foregone revenue.

The UI exclusion in the American Rescue Plan, for better or worse, is retroactive. On March 15, the IRS released guidance that confirmed the expectation that this UI exclusion would be calculated before Adjusted Gross Income (AGI), which is the starting point for Vermont personal income taxes. Because of this treatment, and because of the retroactive nature, we do not have the option of easily decoupling from this provision. While conforming also has an operational impact, decoupling is more challenging.

For the Tax Department to decouple from the UI exclusion at this point will take an unprecedented effort. At a minimum, the Department will need to repurpose a significant amount of personnel to rewrite and reissue tax filing forms and instructions, work with software vendors to change their software, and re-program VTax, all in the middle of tax season. This work would not be as straightforward as a single addback on the form. Other credits that interplay with AGI, such as the Earned Income Tax Credit, would also need to be adjusted. Usually, the work to prepare for a new year's tax season begins in the prior August due to the complexity and detail-oriented nature of the work. Taking on this job now will delay the processing and issuance of refunds to Vermonters. Additionally, the Department would need to bill thousands of taxpayers back who believed they were filing correctly, another costly and unanticipated process.

This is not the first time this year we have had this conversation. I testified in both the House and Senate a few weeks ago that these same issues would arise by decoupling with treatment on the Paycheck Protection Program taxability. The Legislature was not willing to put taxpayers or the Department in the position of decoupling for tax year 2020 and committed to passing link up language. We are asking the Legislature to make that same commitment with this new provision for individuals who have been knocked down due to the economic effects of the COVID-19 pandemic and pass a link up for tax year 2020 through March 31, 2021 as soon as possible.

