



## Veterans Benefits and Transition Act of 2018

The federal Veterans Benefits and Transition Act of 2018 (VBTA)<sup>1</sup> provides civilian spouses of military servicemembers an election to use the same state of legal residence as the servicemember for state income tax purposes. For tax years 2018 and after, the election can be made in the tax year the couple marries and any subsequent tax year during the marriage. A civilian spouse may be subject to tax in New York State as a resident, nonresident, or part-year resident, regardless of how residency is determined.<sup>2</sup>

### How to make the election to use the same state of residence as the servicemember

If you are a civilian spouse of a military servicemember who is a New York State resident for income tax purposes, then for each year you are making the election:

- file Form IT-201, *Resident Income Tax Return*, and
- enter special condition code **M4** in the item G box.

If you are a civilian spouse of a military servicemember who is a resident of a state other than New York State for income tax purposes, and you have New York source income,<sup>3</sup> then for each year you are making the election:

- file Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*, and
- enter special condition code **M4** in the item F box.

If you are a civilian spouse of a military servicemember who is a resident of a state other than New York State for income tax purposes, and you do **not** have New York source income, then you do **not** need to file Form IT-203 to make the election.

### Special rules for nonresident civilian spouses

Prior to the VBTA, the Military Spouses Residency Relief Act<sup>4</sup> provided that any income earned in New York State will not be treated as New York source income and will therefore be exempt from any personal income tax if:

- you are a nonresident civilian spouse of a military servicemember,
- you are in New York State solely to be with the servicemember, and
- the servicemember is in New York State in compliance with his or her military orders.

If you are a nonresident as a result of the VBTA election, see [TSB-M-10\(1\)I](#), *Military Spouses Residency Relief Act*, for more information.

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<sup>1</sup> Public Law 115-407.

<sup>2</sup> See the [instructions for Form IT-201](#) or [IT-203](#) (as applicable) to determine if you are also subject to tax in New York City, Yonkers, or the Metropolitan Commuter Transportation District.

<sup>3</sup> See the [instructions for Form IT-203](#) for the definition of New York source income.

<sup>4</sup> Public Law 111-97.

### Special rules if you already filed a return for 2018

If you already filed a 2018 Form IT-201, *Resident Income Tax Return*, and you would like to elect a different state of residence due to the VBTA, file a 2018 Form IT-203-X, *Amended Nonresident and Part-Year Resident Income Tax Return*, and enter special condition code **M4** in the item F box.<sup>5</sup>

If you already filed a 2018 Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*, and you would like to elect New York State as your state of residence due to the VBTA, file a 2018 Form IT-201-X, *Amended Resident Income Tax Return*, and enter special condition code **M4** in the item G box.

**Note:** A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.

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<sup>5</sup> You may be subject to tax on New York source income. See [TSB-M-10\(1\)I](#) and the [instructions for Form IT-203](#) for more information.