



TAX BULLETIN 19-2
Virginia Department of Taxation
February 25, 2019

**IMPORTANT INFORMATION REGARDING
SPOUSES OF UNITED STATES MILITARY
SERVICEMEMBERS**

**THE EFFECT OF THE VETERANS BENEFITS AND TRANSITION ACT
OF 2018 ON INDIVIDUAL VIRGINIA INCOME TAX RETURNS**

On December 31, 2018, Congress enacted the Veterans Benefits and Transition Act of 2018. This federal legislation amends the Servicemember Civil Relief Act ("SCRA") to provide that the spouse of a servicemember may elect to use the same residence for state tax purposes as that of the servicemember. This tax bulletin summarizes this recent change and explains its effect on spouses of servicemembers for Virginia income tax purposes.

As previously explained in [Tax Bulletin 10-1](#), a spouse of a servicemember does not lose or acquire state residency or domicile for state tax purposes solely due to their presence in a particular state in compliance with military orders. However, under prior law, this protection was afforded only in cases where the domicile was the same for both spouses. In order to claim residency or domicile in another state, the spouse was required to have (i) resided in the other state with the intent to make a permanent home there, and (ii) not abandoned that domicile when moving to reside with the servicemember or for any other reason.

The Veterans Benefits and Transition Act allows qualifying spouses to elect the same residency as the servicemember for state tax purposes, even if the spouse has a different residency or domicile from that of the servicemember. This election can be made annually beginning with Taxable Year 2018 for any taxable year of the marriage, regardless of the date on which the marriage of the spouse and the servicemember occurred. This election does not affect taxes imposed or paid for 2017 and earlier.

All other principles set forth in Tax Bulletin 10-1 continue to apply to a qualifying spouse who makes an election under the Veterans Benefits and Transition Act. As a result, such spouse is

exempt from Virginia income tax only on income for services performed by the spouse, including wages received as an employee. Income from self-employment is exempt from Virginia income tax if the predominant source of the business's income is from the spouse's performance of services. However, such spouse generally remains subject to Virginia income tax on all other income received from Virginia sources, including rental income from property located in Virginia.

Instructions for Taxpayers

Taxpayers eligible to make this election may file Form 763-S in order to receive a refund of any income taxes withheld. Qualifying taxpayers who have already filed a 2018 Virginia income tax return may make this election by filing an amended return.

A spouse whose wages are exempt from Virginia income tax under the SCRA may claim an exemption from Virginia withholding on Form VA-4, Personal Exemption Worksheet, which can be found on the Department's website at <https://www.tax.virginia.gov>. Spouses wishing to claim this exemption from income tax may file a revised Form VA-4 with their employer.

If you have additional questions, please visit <https://www.tax.virginia.gov>, or contact the Department at 804.367.8031.