

particular type, of an individual, estate, or trust holding a beneficial interest in such conduit entity.

(h) *Members of armed forces.* The relief provided to any member of the Armed Forces by section 514 of the Soldiers' and Sailors' Civil Relief Act (50 U.S.C. App. section 574) is in no way diminished. Accordingly, for purposes of such State tax, an individual shall not be considered to have become a resident of a State solely because of his absence from his original State of residence under military order. Moreover, compensation for military service shall not be considered as income derived from a source within a State of which the individual earning such compensation is not a resident, within the meaning of paragraph (d) of §301.6362-5. The preceding sentence shall not apply to non-military compensation. Thus, for example, if an individual who is serving in State X as a member of the Armed Forces, and who is regarded as a resident of State Y under the Soldiers' and Sailors' Civil Relief Act, earns non-military income in State X from a part-time job, such nonmilitary income may be subject to a qualified nonresident tax imposed by State X.

(i) *Withholding on compensation of employees of railroads, motor carriers, airlines, and water carriers.* There is no contravention of the provisions of section 26, 226A, or 324 of the Interstate Commerce Act, or of section 1112 of the Federal Aviation Act of 1958, with respect to the withholding of compensation to which such sections apply for purposes of the nonresident tax.

(j) *Income derived from interstate commerce.* There is no contravention of the provisions of the Act of September 14, 1959 (73 Stat. 555), with respect to the taxation of income derived from interstate commerce to which such statute applies.

[T.D. 7577, 43 FR 59372, Dec. 20, 1978]

#### § 301.6363-1 State agreements.

(a) *Notice of election.* If a State elects to enter into a State agreement it shall file notice of such election with the Secretary or his delegate. The notice of election shall include the following:

(1) *Statement by the Governor.* A written statement by the Governor of the electing State:

(i) Requesting that the Secretary enter into a State agreement, and

(ii) Binding the Governor and his successors in office to notify the Secretary or his delegate immediately of the enactment, between the time of the filing of the notice of election and the time of the execution of the State agreement, of any law of that State which meets the description given in any of the subdivisions of subparagraph (2) of this paragraph (a), whether or not such law is intended to be administered by the United States pursuant to subchapter E.

(2) *Copy of State laws.* Certified copies of all laws of that State described in any of the following subdivisions of this subparagraph, and a specification of laws described in subdivision (i) of this subparagraph as "subchapter E laws", of laws described in subdivision (ii) as "other tax laws", of laws described in subdivision (iii) as "non-tax laws", and of laws described in subdivision (iv) as "interstate cooperation laws":

(i) All of the State individual income tax laws (including laws relating to the collection or administration of such taxes or to the prosecution of alleged civil or criminal violations with respect to such taxes) which the State would expect the United States to administer pursuant to subchapter E if the State agreement is executed as requested. In order to have a valid notice, the State must have a tax which would meet the requirements for qualification specified in section 6362 and the regulations thereunder if a State agreement were in effect with respect thereto, with no conditions attached to the effectiveness of such tax other than the execution of a State agreement. Such tax must be effective no later than the January 1 specified in the State's notice of election as the date as of which subchapter E is desired to become applicable to the electing State, except that such effective date shall be deferred to the date provided in the State agreement for the beginning of applicability of subchapter E to the State, if the latter date is different from the date specified in the notice of election.

(ii) All of the State income tax laws applicable to individuals (including

laws relating to the collection or administration of such taxes or to the prosecution of alleged civil or criminal violations with respect to such taxes) which the State would not expect the United States to administer but which may be in effect simultaneously (for any period of time) with the State agreement.

(iii) All of the State laws other than individual income tax laws which provide for the making of any payments by the State based on one or more criteria which the State may desire to verify by reference to information contained in returns of qualified taxes.

(iv) All of the State laws which may be in effect simultaneously (for any period of time) with the State agreement and which provide for cooperation or reciprocal agreement between the electing State and another State with respect to income taxes applicable to individuals.

(3) *Approval by legislature or authorization by constitutional amendment.* A certified copy of an Act or Resolution of the legislature of the electing State in which the legislature affirmatively expresses its approval of the State's entry into a State agreement, or a certified copy of an amendment to the constitution of such State by which the voters of the State affirmatively authorize such entry.

(4) *Opinion by State Attorney General or judgment of highest court.* A written statement by the State Attorney General to the effect that, in his opinion, no provision of the State's Constitution would be violated by the State law's incorporation by reference of the Federal individual income tax laws and regulations, as amended from time to time, by the Federal prosecution and trial of individuals who are alleged to have committed crimes with respect to the State's qualified tax (when it goes into effect as such), or by any other provision relating to such tax, considered as of the time it is being collected and administered by the Federal Government pursuant to subchapter E. However, if such a statement is not included in the notice of election, a judgment of the highest court of the State to the same effect may be submitted in its place.

(5) *Effective date.* A written specification of the January as of which subchapter E is desired to become applicable to the electing State.

(b) *Rules relating to time for filing notice of election.* An electing State must file its notice of election more than 6 months prior to the January 1 as of which the notice specifies that the provisions of subchapter E are desired to become applicable to such State. Thus, for example, if the date specified in the notice is January 1, 1979, the notice must be filed no later than June 30, 1978. However, because under the provisions of section 204(b) of the Federal-State Tax Collection Act of 1972 (86 Stat. 945), as amended by section 2116(a) of the Tax Reform Act of 1976 (90 Stat. 1910), the provisions of subchapter E will initially take effect on the first January 1 which is more than 1 year after the first date on which at least one State has filed a notice of its election (see § 301.6361-5), the notice of an election which causes subchapter E to initially take effect must be filed with the Secretary or his delegate more than 1 year prior to the January 1 as of which such notice specifies that the provisions of subchapter E are desired to become applicable to such State. Thus, for example, if such an initially electing State desires to elect subchapter E as of January 1, 1979, its notice must be filed no later than December 31, 1977. For purposes of this section, if the notice of election is sent by either registered or certified mail to the Secretary of the Treasury, Washington, D.C. 20220, then it shall be deemed to be filed on the date of mailing; otherwise, the notice of election shall be deemed to be filed when it is received by the Secretary or his delegate.

(c) *Procedures relating to defects in notice or tax laws.* If a State has filed a notice of election, then the Secretary shall, within 90 days after the notice is filed, notify the Governor of such State in writing of any defect in the notice of election which prevents it from being valid, and of any defect in the State's tax laws which causes the tax submitted to fail to meet the requirements for qualification specified in section 6362 and the regulations thereunder, other than the fact that no

State agreement is in effect with respect thereto. Any such defect of which the Secretary does not notify the Governor within such 90-day period is waived. The Secretary or his delegate may, in his discretion, permit any of such defects of which the Governor is timely notified to be cured retroactively to the date of the filing of the notice of election, by amendment of the notice or the State law. Judicial review of the Secretary's determination that the notice of election or the tax laws, or both, contain defects, may be obtained as set forth in section 6363(d) and §301.6363-4.

(d) *Execution and contents of State agreement.* If the Secretary does not timely notify the Governor of a defect in the notice of election or in the State's tax laws, as provided in paragraph (c) of this section, or if, as provided in such paragraph, all such defects have been cured retroactively, then the Secretary shall enter into a State agreement. The agreement shall include the following elements:

(1) *Effective date.* The agreement shall specify the January 1 as of which subchapter E will commence to be applicable to the State. Such date shall be the same as that specified in the notice of election pursuant to paragraph (a)(5) of this section, unless the parties agree to a different January 1, except that in no event shall a State agreement executed after November 1 specify the next January 1.

(2) *Obligation of Governor to notify the United States of changes in pertinent State laws.* The agreement shall require the Governor of the State, and his successors in office, to notify the Secretary or his delegate within 30 days of the enactment of any law of the State, after the execution of the agreement, of a type described in paragraph (a)(2) of this section.

(3) *Obligation of Governor to furnish to the United States information needed to administer State tax laws.* The agreement shall require the Governor and his successors to furnish to the Secretary or his delegate any information needed by the Federal Government to administer the State tax laws. Such information shall include, for example, a list (which shall be maintained on a current basis) of those obligations of

the State or its political subdivisions described in section 103(a)(1) from which the interest is not subject to the qualified taxes of the State.

(4) *Identification of State official to act as liaison with Federal Government.* The agreement shall include a designation by the Governor of the State official or officials with whom the Secretary or his delegate should coordinate in connection with any questions or problems which may arise during the period for which the State agreement is effective, including those which may result from changes or contemplated changes in pertinent State laws.

(5) *Identification of State official to receive transferred funds.* The agreement shall include a designation by the Governor of the State official who shall initially receive the funds on behalf of the State when they are transferred pursuant to section 6361(c) and §301.6361-3.

(6) *Other obligations.* If the Secretary and the Governor both so agree, the agreement shall provide for additional obligations.

(e) *State agreement superseding certain other agreements.* For the period of its effectiveness, a State agreement shall supersede an otherwise effective agreement entered into by the State and the Secretary for the withholding of State income taxes from the compensation of Federal employees pursuant to 5 U.S.C. 5517 (or pursuant to 5 U.S.C. 5516, in the case of the District of Columbia).

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#### § 301.6363-2 Withdrawal from State agreements.

(a) *By notification.* If a State which has entered into a State agreement desires to withdraw from the agreement, its Governor shall file a notice of withdrawal with the Secretary or his delegate. A notice of withdrawal shall include the following documents:

(1) *Request by the Governor.* A request by the Governor of the State that the State agreement cease to be effective with respect to taxable years beginning on or after a specified January 1, except as provided in paragraph (b)(2) of §301.6365-2 with respect to withholding in the case of fiscal year taxpayers.

(2) *Legislative approval of withdrawal.* A certified copy of an act or Resolution