

§ 301.6362-7

State imposing the tax, and if it is reasonable to expect him to receive wage or other business income derived from sources within the State imposing the tax (as defined in paragraph (d) of § 301.6362-5) for services performed on 30 days or more of the taxable year.

For additional rules relating to withholding see paragraph (d) of § 301.6361-1.

[T.D. 7577, 43 FR 59369, Dec. 20, 1978]

§ 301.6362-7 Additional requirements.

A State tax meets the additional requirements of section 6362(f) and this section only if:

(a) *State agreement must be in effect for period concerned.* A State agreement, as defined in paragraph (a) of § 301.6361-4, is in effect with respect to such tax for the taxable period in question.

(b) *State laws must contain certain provisions.* Under the laws of such State, the provisions of subchapter E and the regulations thereunder, as in effect from time to time, are applicable for the entire period for which the State agreement is in effect. Any change made by the State in such tax (other than an adjustment in the State law which is made solely in order to comply with a change in the Federal Law or regulations) shall not apply to taxable years beginning in any calendar year for which the State agreement is in effect unless the change is enacted before November 1 of such year.

(c) *State individual income tax laws can be only of certain kinds.* Such State does not impose any tax on the income of individuals other than (1) a qualified resident tax, and (2) either or both a qualified nonresident tax and a separate tax on income which is not wage and other business income as defined in paragraph (c) of § 301.6362-5 and which is received or accrued by individuals who are domiciled in the State, but who are not residents of the State (as defined in paragraph (b) of § 301.6362-6). For purposes of this paragraph, a tax imposed on the amount taxed under section 56 (as permitted under § 301.6362-2(b)(2)) shall be treated as an adjustment to and a part of the qualified resident tax. Also, tax laws which were in effect prior to the effective date of a State agreement and which are not repealed, but which are made inapplicable for the period during

which the State agreement is in effect, shall be disregarded.

(d) *Taxable years must coincide.* The taxable years of all individuals, estates, and trusts under such tax are required to coincide with their taxable years used for purposes of the taxes imposed by chapter 1. Accordingly, when subchapter E begins to apply to a State, a taxpayer whose taxable year for purposes of the Federal income tax is different from his taxable year for purposes of the State income tax which precedes the qualified tax may have one short taxable year for purposes of such State income tax, so that thereafter his taxable years for purposes of the qualified tax will coincide with the Federal taxable year.

(e) *Married individuals.* Individuals who are married within the meaning of section 143 of the Code are prohibited from filing (1) a joint return for purposes of such State tax if they file separate Federal income tax returns, or (2) separate returns for purposes for such State tax if they file a joint Federal income tax return.

(f) *Penalties; no double jeopardy.* Under the laws of such State:

(1) Civil and criminal sanctions identical to those provided by subtitle F, and by title 18 of the United States Code (relating to crimes and criminal procedures), with respect to the taxes imposed on the income of individuals by chapter 1 and on the wages of individuals by chapter 24, apply to individuals and their employers who are subject to such State tax (and the collection and administration thereof, including the corresponding withholding tax imposed to implement the current collection of such State tax) as if such tax were imposed by chapter 1 or chapter 24, in the case of the withholding tax), except to the extent that the application of such sanctions is modified by regulations issued under subchapter E; and

(2) No other sanctions or penalties apply with respect to any act or omission to act in respect of such State tax. See also paragraph (e) of § 301.6361-1 with respect to criminal penalties.

(g) *Partnerships, trusts, subchapter S corporations, and other conduit entities.* Under the laws of such State, the State tax treatment of—

(1) Partnerships and partners,
 (2) Trusts and their beneficiaries,
 (3) Estate and their beneficiaries,
 (4) Electing small business corporations (within the meaning of section 1371(a) and their shareholders, and
 (5) Any other entity and the individuals having beneficial interests therein (such as a cooperative corporation and its shareholders), to the extent that such entity is treated as a conduit for purposes of the taxes imposed by chapter 1, corresponds to the tax treatment provided therefor with respect to the taxes imposed by chapter 1. For example, a subchapter S corporation shall not be subject to the State's corporate income tax on amounts which are includible in shareholders incomes which are subject to that State's individual income tax, except to the extent that the subchapter S corporation is subject to tax under Federal law. Similarly, a partnership shall not be subject to the State's unincorporated business income tax on amounts which are includible in partners' incomes which are subject to that State's individual income tax. However, the laws of the State which set forth the provisions of such State individual income tax shall authorize the Commissioner of Internal Revenue to require that the conduit entities described in this paragraph (or some of them) supply information to the Federal Government with respect to the source of income, the State of residence, or the amount of income of a 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 nonmilitary 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