

**§ 301.6363-2**

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).

[T.D. 7577, 43 FR 59373, Dec. 20, 1978]

**§ 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 of the legislature of the State in which the legislature affirmatively expresses its approval of the State's withdrawal from the State agreement.

(3) *Identification of State official.* A written identification of the State official or officials with whom the Secretary or his delegate should coordinate in connection with the State's withdrawal from the State agreement.

(b) *By change in State law.* If any law of a State which has entered into a State agreement is enacted pertaining to individual income taxes (including the collection or administration of such taxes, and the prosecution of alleged civil or criminal violations with respect to such taxes), and if the Secretary or his delegate determines that as a result of such law the State no longer has a qualified tax, then such change in the State law shall be treat-

ed as a notification of withdrawal from the agreement. The Secretary shall notify the Governor in writing when a change is to be so treated. Such notification shall have the same effect as if, on the effective date of the disqualifying change in the law, the Governor had filed with the Secretary or his delegate a valid and sufficient notice of withdrawal requesting that the State agreement cease to be effective with respect to taxable years beginning on or after the first January 1 which is more than 6 months thereafter, subject to the exception with respect to withholding in the case of fiscal-year taxpayers. However, the cessation of effectiveness may be deferred to a subsequent January 1 if the Governor so requests and if the Secretary or his delegate in his discretion determines that the date of cessation provided in the preceding sentence would subject the State or its taxpayers to undue hardship. In addition, the Governor may request the Secretary or his delegate to permit the State's early withdrawal from the agreement, pursuant to paragraph (c)(2) of this section. Until the date of cessation of effectiveness of the State agreement, the change in State law which was treated as a notification of withdrawal, and any other such subsequent change that would be similarly treated, shall not be given effect for purposes of the Federal collection and administration of the State taxes. Similarly, such changes shall not be given effect for such purposes during the period of litigation if the State seeks judicial review of the action of the Secretary or his delegate pursuant to section 6363(d) or § 301.6363-4, even if such changes are ultimately found by the court not to disqualify the State's qualified tax. However, a change in State law which would be treated as a notice of withdrawal in the absence of this sentence shall not be so treated if, prior to the last November 1 preceding the January 1 on which the cessation of effectiveness of the State agreement is to occur, either such change in State law is retroactively repealed, or the State law is retroactively modified and the Secretary or his delegate determines that with such modification the State has a qualified tax.

(c) *Rules relating to time of withdrawal*—(1) *General rule.* Except as provided in subparagraph (2) of this paragraph (c), a notice of withdrawal shall not be valid unless the January 1 specified therein is not earlier than the first January 1 which is more than 6 months subsequent to the date on which the notice is received by the Secretary or his delegate. Thus, for example, if the notice specifies January 1, 1980, for withdrawal, the notice must be received no later than June 30, 1979.

(2) *Early withdrawal.* The Secretary or his delegate may, in his discretion and upon written request by a Governor of a State who has filed a notice of withdrawal, waive the 6-months requirement of section 6363(b)(1) and subparagraph (1) of this paragraph (c), if the Secretary determines that:

- (i) The State will suffer a hardship if required to meet such requirement, and
- (ii) The early withdrawal requested by the Governor would be practicable from the standpoint of orderly collection of the qualified tax and administration of the State law by the Federal Government.

[T.D. 7577, 43 FR 59374, Dec. 20, 1978]

#### § 301.6363-3 Transition years.

The State may by law provide for the transition to or from a qualified tax to the extent necessary to prevent double taxation or other unintended hardships, or to prevent unintended benefits, under State law. Generally, such provisions shall be administered by the State; but, if requested to do so by the Governor of the State, the Secretary or his delegate may in his discretion, agree to administer such provisions either solely or jointly with the State.

[T.D. 7577, 43 FR 59375, Dec. 20, 1978]

#### § 301.6363-4 Judicial review.

(a) *General rule.* If the Secretary or his delegate determines pursuant to paragraph (c) of § 301.6363-1 that a State did not file a valid notice of election or does not 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, or if he determines pursuant to paragraph (b) of § 301.6363-2 that a participating

State has enacted a law as a result of which the State no longer has a qualified tax, such State may, within 60 days after its Governor has received notification of such determination, file a petition for the review of such determination with either the United States Court of Appeals for the circuit in which the State is located or the United States Court of Appeals for the District of Columbia. If a State files such a petition, the clerk of the court shall forthwith transmit a copy of the petition to the Secretary or his delegate, who in turn shall thereupon file in the court the record of proceedings on which the determination adverse to the State was based, as provided in section 2112 of title 28, United States Code.

(b) *Court of Appeals' jurisdiction.* The court of Appeals may affirm or set aside, in whole or in part, the action of the Secretary or his delegate; and (subject to the rules delaying the effectiveness of the change in State law provided in paragraph (b) of § 301.6363-2) the court may issue such other orders as may be appropriate with respect to taxable years which include any part of the period of litigation.

(c) *Review of Court of Appeals' judgment.* The judgment of the Court of Appeals shall be subject to review by the Supreme Court of the United States upon certiorari or certification sought by either party as provided in section 1254 of title 28, United States Code.

(d) *Effect of final judgment.* If a final judgment, rendered with respect to litigation involving a State's petition to review a determination of the Secretary or his delegate to the effect that the State's individual income tax laws included in its notice of election would not meet the requirements for qualification specified in section 6362 and the regulations thereunder if a State agreement were in effect with respect thereto, includes a determination that the State's tax would in fact meet such requirements, then the provisions of subchapter E shall apply to the State with respect to taxable years beginning on or after the first January 1 which is more than 6 months after the date of