

furnishing information to a shareholder, the S corporation must determine:

- (i) The character of the amount transferred to a shareholder (for example, whether it is a dividend, compensation, loan, or repayment of a loan);
- (ii) The amount of money distributed to a shareholder;
- (iii) The fair market value of property distributed to a shareholder;
- (iv) The adjusted basis to the corporation of distributed property; and
- (v) The character of corporation property (for example, whether an item is inventory or a capital asset).

To the extent that a determination of an item relating to a distribution can be made from these and similar determinations that the corporation is required to make, that item is a subchapter S item. To the extent that the determination requires other information, however, that item is not a subchapter S item. Such other information would include the determination of a shareholder's basis in the shareholder's stock or in the indebtedness of the S corporation to the shareholder.

(d) *Cross reference.* For the definition of subchapter S item for purposes of the windfall profit tax, see § 51.6245-1T.

(e) *Effective date.* This section shall apply to taxable years beginning after December 31, 1982.

[T.D. 8122, 52 FR 3003, Jan. 30, 1987]

COLLECTION

GENERAL PROVISIONS

§ 301.6301-1 Collection authority.

The taxes imposed by the internal revenue laws shall be collected by district directors of internal revenue. See, however, section 6304, relating to the collection of certain taxes under the provisions of the Tariff Act of 1930 (19 U.S.C. ch. 4).

§ 301.6302-1 Mode or time of collection of taxes.

(a) *Employment and excise taxes.* For provisions relating to the mode or time of collection of certain employment and excise taxes and the use of Federal Reserve banks and authorized commercial banks in connection with the pay-

ment thereof, see the regulations relating to the particular tax.

(b) *Income taxes.* (1) For provisions relating to the use of Federal Reserve banks or authorized commercial banks in depositing income and estimated income taxes of certain corporations, see § 1.6302-1 of this chapter (Income Tax Regulations).

(2) For provisions relating to the use of Federal Reserve banks or authorized commercial banks in depositing the tax required to be withheld under chapter 3 of the Code on nonresident aliens and foreign corporations and tax-free covenant bonds, see § 1.6302-2 of this chapter.

§ 301.6302-1T Use of Federal Reserve banks after December 31, 2000

Federal Reserve banks are not authorized depositories for Federal tax deposits made after December 31, 2000.

[T.D. 8918, 65 FR 81357, Dec. 26, 2000]

§ 301.6303-1 Notice and demand for tax.

(a) *General rule.* Where it is not otherwise provided by the Code, the district director or the director of the regional service center shall, after the making of an assessment of a tax pursuant to section 6203, give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. Such notice shall be given as soon as possible and within 60 days. However, the failure to give notice within 60 days does not invalidate the notice. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address. For further guidance regarding the definition of last known address, see § 301.6212-2.

(b) *Assessment prior to last date for payment.* If any tax is assessed prior to the last date prescribed for payment of such tax, demand that such tax be paid will not be made before such last date, except where it is believed collection would be jeopardized by delay.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 8939, 66 FR 2820, Jan. 12, 2001]

§ 301.6305-1 Assessment and collection of certain liability.

(a) *Scope.* Section 6305(a) requires the Secretary of the Treasury or his delegate to assess and collect amounts which have been certified by the Secretary of Health and Human Services as the amount of a delinquency determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child or of a child and the parent with whom the child is living. These amounts, referred to as “child and spousal support”, are to be collected in the same manner and with the same powers exercised by the Secretary of the Treasury or his delegate in the collection of an employment tax which would be jeopardized by delay. However, where the assessment is the first assessment against an individual for a delinquency described in this paragraph for a particular individual or individuals, the collection is to be stayed for a period of 60 days following notice and demand. In addition, no interest or penalties (with the exception of the penalties imposed by sections 6332(c)(2) and 6657) shall be assessed or collected on the amounts, paragraphs (4), (6) and (8) of section 6334(a) (relating to property exempt from levy) shall not apply; and, there shall be exempt from levy so much of the salary, wages, or other income of the individual which is subject to garnishment pursuant to a judgment entered by a court for the support of his or her minor children. Section 6305(b) provides that sole jurisdiction for any action brought to restrain or review assessment and collection of the certified amounts shall be in a State court or a State administrative agency.

(b) *Assessment and collection—(1) General rule.* Upon receipt of a certification or recertification from the Secretary of Health and Human Services or his delegate under section 452(b) of title IV of the Social Security Act as amended (relating to collection of child and spousal support obligations with respect to an individual), the district director or his delegate shall assess and collect the certified amount (or recertified amount). Except as provided in paragraph (c) of this section, the amount so certified shall be assessed

and collected in the same manner, with the same powers, and subject to the same limitations as if the amount were an employment tax the collection of which would be jeopardized by delay. However, the provisions of subtitle F with respect to assessment and collection of taxes shall not apply with respect to assessment and collection of a certified amount where such provisions are clearly inappropriate to, and incompatible with, the collection of certified amounts generally. For example, section 6861(g) which allows the Secretary or his delegate to abate a jeopardy assessment if he finds a jeopardy does not exist will not apply.

(2) *Method of assessment.* An assessment officer appointed by the district director pursuant to §301.6203-1 to make assessments of tax shall also make assessments of certified amounts. The assessment of a certified amount shall be made by the assessment officer signing the summary record of assessment. The date of assessment is the date the summary record is signed by the assessment officer. The summary record, through supporting records as necessary, shall provide—

- (i) The assessed amount;
- (ii) The name, social security number, and last known address of the individual owing the assessed amount. For further guidance regarding the definition of last known address, see §301.6212-2;
- (iii) A designation of the assessed amount as a certified amount, together with the date on which the amount was certified and the name, position, and governmental address of the officer of the Department of Health and Human Services who certified the amount;
- (iv) The period to which the child and spousal support obligation represented by the certified amount relates;
- (v) The State in which was entered the court or administrative order giving rise to the child and spousal support obligation represented by the certified amount;
- (vi) The name of the person or persons to whom the child and spousal support obligation represented by the certified amount is owed; and

(vii) The name of the child or children or the parent of the child or children for whose benefit the child and spousal support obligation exists.

Upon request, the individual assessed shall be furnished a copy of pertinent parts of this assessment which set forth the information listed in subdivision (i) through (vii) of this paragraph (b)(2).

(3) *Supplemental assessments and abatements.* If any assessment is incomplete or incorrect in any material respect, the district director or his delegate may make a supplemental assessment or abatement but only for the purpose of completing or correcting the original assessment. A supplemental assessment will not be used as a substitute for an additional assessment against an individual.

(4) *Method of collection.* (i) The district director or his delegate shall make notice and demand for immediate payment of certified amounts. Upon failure or refusal to pay such amounts, collection by levy shall be lawful without regard to the 10-day waiting period provided in section 6331(a). However, in the case of certain first assessments, paragraph (c)(4) of this section provides a rule for a stay of collection for 60 days. For purposes of collection, refunds of any internal revenue tax owed to the individual may be offset against a certified amount.

(ii) The district director or his delegate shall make diligent and reasonable efforts to collect certified amounts as if such amounts were taxes. He shall have no authority to compromise a proceeding by collection of only part of a certified amount in satisfaction of the full certified amount owing. However, he may arrange for payment of a certified amount by installments where advisable.

(iii) The district director or his delegate may offset the amount of any overpayment of any internal revenue tax (as described in section 301.6401-1) to be refunded to the person making the overpayment by the amount of any past-due support (as defined in the regulations under section 6402) owed by the person making the overpayment. The amounts offset under section 6402(c) may be amounts of child and

spousal support certified (or recertified) for collection under section 6305 and this section or they may be amounts of past-due support of which the Secretary of the Treasury has been notified under section 6402(c) and the regulations under that section.

(5) *Credits or refunds.* In the case of any overpayment of a certified amount, the Secretary of the Treasury or his delegate, within the period of limitations for credit or refund of employment taxes, may credit the amount of the overpayment against any liability in respect of an internal revenue tax on the part of the individual who made the overpayment and shall refund any balance to the individual. However, the full amount of any overpayment collected by levy upon property described in paragraph (c)(2) (i), (ii), or (iii) of this section shall be refunded to the individual. For purposes of applying this subparagraph, the rules of §301.6402-2 apply where appropriate.

(6) *Disposition of certified amounts collected.* Any certified amount collected shall be deposited in the general fund of the United States, and the officer of the Department of Health and Human Services who certified the amount shall be promptly notified of its collection. There shall be established in the Treasury, pursuant to section 452 of title IV of the Social Security Act as amended, a revolving fund which shall be available to the Secretary of Health and Human Services or his delegate, without fiscal year limitation, for distribution to the States in accordance with the provisions of section 457 of the Act. Section 452(c)(2) of the Act appropriates to this revolving fund out of any monies not otherwise appropriated, amounts equal to the certified amounts collected under this paragraph reduced by the amounts credited or refunded as overpayments of the certified amounts so collected. The certified amounts deposited shall be transferred at least quarterly from the general fund of the Treasury to the revolving fund on the basis of estimates made by the Secretary of the Treasury or his delegate. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the

amounts required to be transferred. See, however, paragraph (c)(1) of this section for the special rule requiring retention in the general fund of certain penalties which may be collected.

(c) *Additional limitations and conditions*—(1) *Interest and penalties.* No interest, penalties or additional amounts, other than normal and reasonable collection costs, may be assessed or collected in addition to the certified amount, other than the penalty imposed by section 6332(c)(2) for failure to surrender property subject to levy and the penalty imposed by section 6657 for the tender of bad checks. Any such penalties and collection costs, if collected, will not be treated as part of the certified amount and will be retained by the United States as a part of its general fund. No interest shall be allowed or paid on any overpayment of a certified amount.

(2) *Property not exempt from levy.* In addition to property not exempt from levy under section 6334(c) and the regulations thereunder, the following property shall not be exempt from a levy to collect a certified amount:

(i) Unemployment benefits described in section 6334(a)(4);

(ii) Certain annuities and pension payments described in section 6334(a)(6); or

(iii) Salary, wages, or other income described in section 6334(a)(8).

(3) *Property exempt from levy.* In addition to property exempt from levy under section 6334(a) and the regulations thereunder, other than property described in paragraph (c)(2) (i), (ii), or (iii) of this section, there shall be exempt from levy to collect a certified amount so much of the salary, wages, or other income of an individual as is withheld therefrom in garnishment pursuant to judgment entered by a court of competent jurisdiction for the support of minor children of the individual.

(4) *First assessment.* In the case of a first assessment against an individual for a certified amount in whole or part for the benefit of a particular child or children or the child or children and their parent, the collection of the certified amount shall be stayed for the period of 60 days immediately following notice and demand as described

in section 6303. However, no other stay of the collection of a certified amount may be granted. Thus, the provisions of section 6863(a), relating to bonds to stay collection of jeopardy assessments, shall not apply to the collection of certified amounts.

(5) *Priority of liens.* A lien for a certified amount shall be valid as against a lien for taxes imposed by section 6321 only if the date of assessment of the certified amount precedes the date of assessment of the taxes. However, no amount collected by levy upon property described in paragraph (c)(2) (i), (ii), or (iii) of this section may be applied other than in whole or partial satisfaction of certified amounts. In the case of two liens for certified amounts, the lien for the certified amount which is first assessed shall be valid as against the lien for the certified amount which is later assessed.

(6) *Statute of limitations on collections.* The periods of limitation on collection of taxes after assessment prescribed by section 6502 shall apply to the collection of certified (or recertified) amounts. Such periods of limitation with respect to a certified amount shall terminate upon recertification of the amount, and the period of limitation prescribed by section 6502 shall then apply and commence to run with respect to the recertified amount.

(d) *Review of assessments and collections*—(1) *Federal courts.* No court of the United States established under article I or article III of the Constitution has jurisdiction of any legal or equitable action to restrain or review the assessment or collection of certified amounts by the district director or his delegate. See, however, paragraph (d)(3) of this section for the rule that the prohibition of this paragraph (d)(1) does not preclude courts established for the District of Columbia from exercising jurisdiction over certain actions.

(2) *Secretary of the Treasury.* Neither the Secretary of the Treasury nor his delegate may subject to review the assessment or collection of certified amounts in any legal, equitable, or administrative proceeding.

(3) *State courts.* This paragraph (d) does not preclude a State court or appropriate State agency, as the case may be, from exercising jurisdiction

over a legal, equitable, or administrative action against the State by an individual to determine his liability for any certified amount assessed against him and collected, or to recover any such certified amount collected, under section 6305 and this section. For purposes of the preceding sentence, the term "State" includes the District of Columbia.

(e) *Internal Revenue regional service centers.* For purposes of this section, the terms "district director or his delegate" and "district director" include the director of the Internal Revenue service center or his delegate, as the case may be.

(Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805); sec. 2332(a) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 357), amending sec. 464(a) of the Social Security Act (88 Stat. 2351))

[T.D. 7576, 43 FR 59376, Dec. 20, 1978, as amended by T.D. 7808, 47 FR 5713, Feb. 8, 1982; T.D. 8939, 66 FR 2820, Jan. 12, 2001]

RECEIPT OF PAYMENT

§ 301.6311-1 Payment by check or money order.

(a) *Authority to receive—(1) In general.* (i) District directors, Service Center directors, and Compliance Center directors (director) may accept checks or drafts drawn on any financial institution incorporated under the laws of the United States or under the laws of any State, the District of Columbia, or any possession of the United States, or money orders in payment for internal revenue taxes, provided the checks, drafts, or money orders are collectible in United States currency at par, and subject to the further provisions contained in this section. The director may accept the checks, drafts, or money orders in payment for internal revenue stamps to the extent and under the conditions prescribed in paragraph (a)(2) of this section. A check or money order in payment for internal revenue taxes or internal revenue stamps should be made payable to the Internal Revenue Service. A check or money order is payable at par only if the full amount thereof is payable without any deduction for exchange or other charges. As used in this section, the term "money order" means: (a)

U.S. postal, bank, express, or telegraph money order; (b) money order issued by a domestic building and loan association (as defined in section 7701(a)(19)) or by a similar association incorporated under the laws of a possession of the United States; (c) a money order issued by such other organization as the Commissioner may designate; and (d) a money order described in subdivision (ii) of this subparagraph in cases therein described. However, the director may refuse to accept any personal check whenever he or she has good reason to believe that such check will not be honored upon presentment.

(ii) An American citizen residing in a country with which the United States maintains direct exchange of money orders on a domestic basis may pay his tax by postal money order of such country. For a list of such countries, see section 171.27 of the Postal Manual of the United States.

(iii) If one check or money order is remitted to cover two or more persons' taxes, the remittance should be accompanied by a letter of transmittal clearly identifying—

(a) Each person whose tax is to be paid by the remittance;

(b) The amount of the payment on account of each such person; and

(c) The kind of tax paid.

(2) *Payment for internal revenue stamps.* The director may accept checks, drafts, and money orders described in paragraph (a)(1) of this section in payment for internal revenue stamps. However, the director may refuse to accept any personal check whenever he or she has good reason to believe that such check will not be honored upon presentment.

(b) *Checks or money orders not paid—(1) Ultimate liability.* The person who tenders any check (whether certified or uncertified, cashier's, treasurer's, or other form of check or draft) or money order in payment for taxes or stamps is not released from his or her liability until the check, draft, or money order is paid; and, if the check, draft, or money order is not duly paid, the person shall also be liable for all legal penalties and additions, to the same extent as if such check, draft, or money order had not been tendered.