

*Example 2.* Assume the same facts as in example 1 except that the total amount collected from A is \$4,500. Since A's liabilities for the State X tax and the Federal tax are one-sixth and five-sixths, respectively, of the combined tax liability, the Federal Government shall pay over to State X one-sixth (\$750) of the amount actually collected from A, and the Federal Government shall retain five-sixths (\$3,750).

*Example 3.* The total amount of State X qualified tax, State Y qualified tax, and Federal income tax collected from B, a resident of State X who is employed in State Y, for the taxable year is \$5,500. The amounts of B's liabilities for such taxes for that year are: \$250 for the State X tax (after allowance of a credit for State Y's qualified tax), \$750 for the State Y tax, and \$4,000 for the Federal tax. Since B's liability for the State X tax (\$250) is 5 percent of the combined tax liability (\$5,000), his liability for the State Y tax (\$750) is 15 percent of such combined liability, and his liability for the Federal tax (\$4,000) is 80 percent of such combined liability, the total amount to be refunded to B (\$500) shall be chargeable in the following manner: 5 percent (\$25) against State X's account, 15 percent (\$75) against State Y's account, and 80 percent (\$400) against the Federal Government's account.

*Example 4.* C is liable for \$2,000 in Federal income tax and \$500 in State X qualified tax (a resident tax) for the taxable year. However, on his Federal income tax return for such year, C erroneously described himself as a resident of State Y (which does not have a qualified tax), and he filed with such return his declaration to the effect that he had no qualified tax liability for the year. Accordingly, C paid only \$2,000 for his Federal tax liability, and such amount was retained in the account of the Federal Government. Subsequently, C's error is discovered. The amount collected by the Federal Government from C for such year must be allocated between the Federal Government and State X in proportion to C's tax liability to both. Accordingly, the Federal Government must pay over to State X the amount of \$400 (which is  $\frac{1}{5}$  (\$500/\$2,500) of the \$2,000 collected). If the Federal Government collects from C the additional \$500 owed, it will retain \$400 of such amount and pay the remaining \$100 to State X. Similarly, if the Federal Government collects from C any interest, or any additions to tax or assessable penalties under chapter 68,  $\frac{1}{5}$  of the amount of such collections shall be retained by the Federal Government and  $\frac{1}{5}$  of such amount shall be paid over to State X. However, notwithstanding the allocation of the funds between the taxing jurisdictions, C's liability for the \$500 retains its character as a liability for State X tax. Therefore, any interest, additions to tax, or assessable penalties imposed with respect to the State X tax shall be im-

posed with respect to C's full \$500 liability for such tax, notwithstanding the fact that amounts collected with respect to such items shall be allocated  $\frac{1}{5}$  to the Federal Government.

*Example 5.* A criminal charge is brought against D pursuant to chapter 75, alleging that he willfully evaded the payment of Federal income tax by failing to report interest income derived from obligations of the United States. D enters a plea of *non contendere* to the charge and pays \$2,500 as a fine to the Federal Government. The act alleged in the criminal charge would not support the bringing of a criminal charge under a State law corresponding to chapter 75, or to title 18 of the United States Code, with respect to the qualified tax of any State; accordingly, the United States is the only affected jurisdiction, and no remittances shall be made to any State with respect to the amount collected by the Federal Government as a fine.

*Example 6.* A criminal charge is brought against E pursuant to chapter 75, alleging that he willfully attempted to evade the assessment of liability for both Federal income tax and the qualified tax of State X by filing false and fraudulent income tax returns. E's case is settled upon the condition that he pay a fine in the amount of \$5,000. As determined pursuant to subparagraph (2) of this paragraph, E's liabilities for the taxable year are in the amounts of \$7,200 to the Federal Government and \$800 to State X. Accordingly, after the Federal Government collects the fine, \$500 (\$5,000+\$800×\$8,000) is remitted to State X.

*Example 7.* Assume the same facts as in example 6, except that E is tried and convicted on both charges, and pursuant to court decree he pays to the United States a fine of \$6,000 with respect to each charge, or a total of \$12,000. Because a criminal charge was brought with respect to each affected jurisdiction, and the allocation of the total amount paid as a fine was specifically imposed by a court decree, the direction of the Court shall govern the allocation. Accordingly, after the Federal Government collects the fines it pays over \$6,000 to the account of State X.

[T.D. 7577, 43 FR 59361, Dec. 20, 1978]

**§ 301.6361-2 Judicial and administrative proceedings; Federal representation of State interests.**

(a) *Civil proceedings*—(1) *General rule.* Any person shall have the same right to bring or contest a civil action, and to obtain a review thereof, with respect to a qualified tax (including the current collection thereof) in the same court or courts which would be available to him, and pursuant to the same

requirements and procedures to which he would be subject, under chapter 76 (relating to judicial proceedings), and under title 28 of the United States Code (relating to the judiciary and judicial procedure), if the tax were imposed by section 1 or chapter 24 of the Internal Revenue Code. For purposes of this section, the term “person” includes the Federal Government. Except as provided in subparagraph (2) of this paragraph (a), to the extent that the preceding sentence provides judicial procedures (including review procedures) with respect to any matter, such procedures shall replace civil judicial procedures under State law.

(2) *Exception.* The right or power of the courts of any State to pass on matters involving the constitution of such State is unaffected by any provision of this paragraph; however, the jurisdiction of a State court in such matters shall not extend beyond the issue of constitutionality. Thus, if in a case involving the validity of a qualified tax statute under the State constitution, the State court holds such statute constitutional, such court shall not proceed to decide the amount of the tax liability.

(b) *Criminal proceedings.* Only the Federal Government shall have the right to bring a criminal action with respect to a qualified tax (including the current collection thereof). Such an action shall be brought in the same court or courts which would be available to the Federal Government, and pursuant to the same requirements and procedures to which the Federal Government would be subject, if the tax were imposed by section 1 or chapter 24 of the Internal Revenue Code.

(c) *Administrative proceedings.* Any person shall have the same rights in administrative proceedings of the Internal Revenue Service with respect to a qualified tax (including the current collection thereof) which would be available to him, and shall be subject to the same administrative requirements and procedures to which he would be subject, if the tax were imposed by section 1 or chapter 24 of the Internal Revenue Code.

(d) *United States representation of State interests*—(1) *General rule.* Except as provided in subparagraphs (2) and (3) of

this paragraph (d), the Federal Government shall appear on behalf of any State the qualified tax of which it collects (or did collect for the year in issue), and shall represent such State’s interests in any administrative or judicial proceeding, either civil or criminal in nature, which relates to the administration and collection of such qualified tax, in the same manner as it represents the interests of the United States in corresponding proceedings involving Federal income tax matters.

(2) *Exceptions.* The Federal Government shall not so represent a State’s interests either—

(i) In proceedings in a State court involving the constitution of such State, to the extent of such constitutional issue, or

(ii) In proceedings in any court involving the relationship between the United States and the State, to the extent of the issue pertaining to such relationship, if either:

(A) The proceeding is one which is initiated by the United States against the State, or by the State against the United States, and no individual (except in his official capacity as a governmental official) is an original party to the proceeding, or

(B) The proceeding is not one described in (A), but the State elects to represent its own interests to the extent permissible under this subdivision.

(3) *Finality of Federal administrative determinations.* State and local government officials and employees may not review Federal administrative determinations concerning tax liabilities of, refunds owed to, or criminal prosecutions of, individuals with respect to qualified taxes. See, however, § 301.6363-3 relating to State administration of a qualified tax with respect to transition years. If requested by an electing State, the Commissioner or his delegate may, under terms and conditions set forth in an agreement with such State, permit such State to carry on operations supplementary to the Federal administration of the State’s qualified tax (including supplemental audits or examinations of tax returns by State audit personnel), but all administrative determinations shall be made by the Federal Government without review by the State. An agreement

which permits supplemental audits or examinations of tax returns by State audit personnel shall provide that the audits and examinations shall be conducted under the supervision and control of the Commissioner or his delegate, who shall have the authority to determine which returns shall be audited and when the audits shall occur. Also, such agreements shall provide that the results of any such supplemental audit shall be referred to the Commissioner or his delegate for final administrative determination. The Commissioner or his delegate shall, to the extent permitted by law, allow an electing State reasonable access to tax returns and other appropriate records and information relating to its qualified tax for the purpose of conducting any such supplemental operations. In addition, the Secretary or his delegate shall permit an electing State to inspect the workpapers which are compiled in the course of verification by the Treasury Department of the correctness of the accounting by which the amounts of the actual net collections attributable to the electing State's qualified taxes are determined.

[T.D. 7577, 43 FR 59364, Dec. 20, 1978]

**§ 301.6361-3 Transfers to States.**

(a) *Periodic transfers.* In general, amounts collected by the Federal Government which are allocable to qualified taxes (including criminal fines which are required to be paid to a State, as determined under paragraph (f)(3) of § 301.6361-1) shall be promptly transferred to each State imposing such a tax. Transfers of such amounts, based on percentages of estimated Federal collections, shall be made not less frequently than every third business day unless the State agrees to accept transfers at less frequent intervals.

(b) *Determination of amounts of transfers.* The amounts allocable to the qualified taxes of each State for purposes of periodic transfer shall be determined as a percentage of the estimated aggregate net individual income tax collections made by the Federal Government. For purposes of this paragraph, the "aggregate net individual income tax collections" shall include amounts collected on account of the Federal individual income tax and all

qualified taxes by all means (including withholding, tax returns, and declarations of estimated tax), and shall be reduced to the extent of any liability to taxpayers for credits or refunds by reason of overpayments of such taxes. The percentage of the estimated amount of such collections which is allocated to each State shall be based on an estimate which is to be made by the Office of Tax Analysis prior to the beginning of each calendar year as to what portion of the estimated aggregate net individual income tax collections for the forthcoming year will be attributable to the qualified taxes of that State. Each State will be notified prior to the beginning of each calendar year of the amount which it is estimated that the State will receive by application of that percentage for the year. However, the Office of Tax Analysis shall, from time to time throughout the calendar year, revise the percentage estimates when such a revision is, in the opinion of that office necessary to conform such estimates to the actual receipts. When such a revision is made, the payments to the State will be adjusted accordingly.

(c) *Adjustment of difference between actual collections and periodic transfers.* At least once annually the Secretary or his delegate shall determine the difference between the aggregate amount of the actual net collections made (taking into account credits, refunds, and amounts received by withholding with respect to which a tax return is not filed) which is attributable to each State's qualified taxes during the preceding year and the aggregate amount actually transferred to such State based on estimates during such year. The amount of such difference, as so determined, shall be a charge against, or an addition to, the amounts otherwise determined to be payable to the State.

(d) *Recipient of transferred funds.* All funds transferred pursuant to section 6361(c) and paragraph (a) of this section shall be transferred by the Federal Government to the State official designated by the Governor to receive such funds in the State agreement pursuant to paragraph (d)(5) of § 301.6363-1, unless the Governor notifies the Secretary or his delegate in writing of the