

made separately from a deposit required by any other section.

(4) *Multiple remittances.* A withholding agent may make one, or more than one, remittance of the amount required to be deposited if each remittance is accompanied by the applicable deposit form.

(5) *Time deemed paid.* In general amounts deposited under this section shall be considered as paid on the last day prescribed for filing the return (Form 1042) in respect of such tax (determined without regard to any extension of time for filing such return), or at the time deposited, whichever is later. For purposes of section 6511 and the regulations thereunder, relating to period of limitation on credit or refund, if an amount is so deposited prior to April 15th of a calendar year immediately succeeding the calendar year in which occurs the period for which such amount was so deposited, such amount shall be considered as paid on such April 15th.

(c) *Procurement of Federal Tax Deposit form.* Copies of the Federal Tax Deposit form will so far as possible be furnished withholding agents. A withholding agent will not be excused from making a deposit, however, by the fact that no form has been furnished to it. A withholding agent not supplied with the form should make application therefor in ample time to make the required deposits within the time prescribed. The withholding agent may secure the form or additional forms by applying therefor and supplying its name, identification number, address, and the taxable period to which the deposit will relate. Copies of the Federal Tax Deposit form may be secured by application therefor to the district director or director of a service center.

(d) *Penalties for failure to make deposits.* For provisions relating to the penalty for failure to make a deposit within the time prescribed by this section, see § 301.6656-1 of this chapter (Procedure and Administration Regulations).

(e) *Saturday, Sunday, or legal holidays.* For provisions relating to the time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday, see § 301.7603-1 of

this chapter (Procedure and Administration Regulations).

(f) *Employer identification number.* For the definition of the term "employer identification number", see § 301.7701-12 of this chapter (Procedure and Administration Regulations). For provisions relating to the penalty for failure to include the employer identification number in a return, statement, or other document, see § 301.6076-1 of such chapter.

(g) *Effective date.* Except as otherwise provided, this section shall apply to tax required to be withheld under chapter 3 of the Code after 1966.

(Approved by the Office of Management and Budget under control number 1545-0287)

(T.D. 8922, 32 FR 8713, June 17, 1967, as amended by T.D. 8041, 32 FR 18040, Dec. 16, 1967; T.D. 7243, 36 FR 22, Jan. 3, 1973; T.D. 7953, 49 FR 19644, May 9, 1984)

§ 1.6302-3 Use of Government depositaries in connection with estimated taxes of certain trusts.

(a) *Requirement.* A bank or other financial institution described in paragraph (b) of this section shall deposit in its Treasury Tax, & Loan account (described in 31 CFR 203 or with a Federal Reserve Bank all payments of estimated tax required to be paid on or after September 15, 1988, under section 6654(l) with respect to trusts for which such institution acts as a fiduciary on or before the date otherwise prescribed for paying such tax.

(b) *Banks and financial institutions subject to this requirement.* The requirement of paragraph (a) of this section applies to banks and other financial institutions described in sections 581 and 591 that have been designated as authorized Federal tax depositaries described in section 6302(c) and that act as fiduciaries for at least 200 trusts to which section 6654(l) applies that during the calendar year are required to make installment payments of estimated tax with respect to such trusts. For purposes of this section, a fiduciary is the person responsible for filing the tax returns and paying the taxes with respect to a trust.

(c) *Cross-references.* For provisions relating to the procedures for deposit-

ing the estimated tax payments described in paragraph (a) of this section and for reporting such deposits on magnetic tape, see Revenue Procedure 87-64¹ or its successor. For provisions relating to the penalty for failure to make a deposit within the prescribed time, see § 301.6656-1 of this chapter (Regulations on Procedure and Administration).

(T.D. 8102, 53 FR 12008, Apr. 12, 1988; T.D. 8192, 53 FR 13464, Apr. 26, 1988)

§ 1.6361-1 Collection and administration of qualified State individual income taxes.

Except as otherwise provided in §§ 301.6361-1 to 301.6365-2, inclusive, of this chapter (Regulations on Procedure and Administration), the provisions of this part under subtitle F of the Internal Revenue Code of 1954 relating to the collection and administration of the taxes imposed by chapter 1 of such Code on the incomes of individuals (or relating to civil or criminal sanctions with respect to such collection and administration) shall apply to the collection and administration of qualified State individual income taxes (as defined in section 6302 of such Code and the regulations thereunder) as if such taxes were imposed by chapter 1.

(T.D. 7577, 43 FR 60358, Dec. 20, 1978)

ABATEMENTS, CREDITS, AND REFUNDS

§ 1.6411-1 Tentative carryback adjustments.

(a) *In general.* Any taxpayer who has a net operating loss under section 172, a net capital loss under section 1211(a) which is a carryback under section 1212, an unused investment credit under section 46, or an unused work incentive program (WIN) credit under section 50A, may file an application under section 6411 for a tentative carryback adjustment of the taxes for taxable years prior to the taxable year of the net operating or capital loss or the unused credit, whichever is appli-

¹ This information is available from the Internal Revenue Service, Department of the Treasury, 1111 Constitution Ave., NW., Room 8300, Washington, DC 20224.

cable, which are affected by the net operating loss carryback, the capital loss carryback, the unused investment credit carryback, or the unused WIN credit carryback, resulting from such loss or unused credit. The regulations under section 6411 shall apply with respect to investment credit carrybacks for taxable years ending after December 31, 1961, but only with respect to applications for tentative carryback adjustments for investment credit carrybacks filed after November 2, 1966. The regulations under section 6411 shall apply with respect to WIN credit carrybacks for taxable years beginning after December 31, 1971. The right to file an application for a tentative carryback adjustment is not limited to corporations, but is available to any taxpayer otherwise entitled to carryback a loss or unused credit. A corporation may file an application for a tentative carryback adjustment even though it has not extended the time for payment of tax under section 6104. In determining any decrease in tax under §§ 1.6411-1 through 1.6411-4, the decrease in tax is determined net of any increase in the tax imposed by section 56 (relating to the minimum tax for tax preferences).

(b) *Contents of application.* (1) The application for a tentative carryback adjustment shall be filed, in the case of a corporation, on Form 1139, and in the case of taxpayers other than corporations, on Form 1045. The application shall be filled out in accordance with the instructions accompanying the form, and all information required by the form and the instructions must be furnished by the taxpayer.

(2) An application for a tentative carryback adjustment does not constitute a claim for credit or refund. If such application is disallowed by the district director or director of a service center in whole or in part, no suit may be maintained in any court for the recovery of any tax based on such application. The filing of an application for a tentative carryback adjustment will not constitute the filing of a claim for credit or refund within the meaning of section 6511 for purposes of determining whether a claim for credit or refund was filed prior to the expiration of the applicable period of limita-

No Sections in Part 1 from 6303 thru 6360

the payment 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.

§ 301.6303-1 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.

(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.

§ 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, re-

ferred 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

As you can see 301.6301 has NO authority. How then can they comply with the requirement of Notice + Demand? They can't and Don't.

? ? ?

Internal Revenue Service, Treasury

§ 301.6323(a)-1

(b) *Credits.* Unless otherwise in the best interest of the Internal Revenue Service, no credit of any overpayment of tax which has been paid under section 6316 in foreign currency shall be allowed against any outstanding liability of the person making the overpayment except in respect of that portion or the liability which, in accordance with § 301.6316-1 or § 301.6316-7, would otherwise be permitted to be paid in the same foreign currency.

§ 301.6316-9 Interest, additions to tax, etc.

Any reference in §§ 301.6316-1 to 301.6316-8, inclusive, to "tax" shall be deemed also to refer to the interest, additions to the tax, additional amounts, and penalties attributable to the tax.

LIEN FOR TAXES

§ 301.6321-1 Lien for taxes.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, tangible or intangible, belonging to such person. For purposes of section 6321 and this section, the term "any tax" shall include a State individual income tax which is a "qualified tax", as defined in paragraph (b) of § 301.6361-4. The lien attaches to all property and rights to property belonging to such person at any time during the period of the lien, including any property or rights to property acquired by such person after the lien arises. Solely for purposes of sections 6321 and 6331, any interest in restricted land held in trust by the United States for an individual noncompetent Indian (and not for a tribe) shall not be deemed to be property, or a right to property, belonging to such Indian. For the method of allocating amounts collected pursuant to a lien between the Federal Government and a State or States imposing a qualified tax with respect to which the lien attached, see paragraph (f) of § 301.6361-1. For the special lien for

estate and gift taxes, see section 6324 and § 301.6324-1

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

§ 301.6323(a)-1 Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors.

(a) *Invalidity of lien without notice.* The lien imposed by section 6321 is not valid against any purchaser (as defined in paragraph (f) of § 301.6323(h)-1), holder of a security interest (as defined in paragraph (a) of § 301.6323(h)-1), mechanic's lienor (as defined in paragraph (b) of § 301.6323(h)-1), or judgment lien creditor (as defined in paragraph (g) of § 301.6323(h)-1) until a notice of lien is filed in accordance with § 301.6323(f)-1. Except as provided by section 6323, if a person becomes a purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor after a notice of lien is filed in accordance with § 301.6323(f)-1, the interest acquired by such person is subject to the lien imposed by section 6321.

(b) *Cross references.* For provisions relating to the protection afforded a security interest arising after tax lien filing, which interest is covered by a commercial transactions financing agreement, real property construction or improvement financing agreement, or an obligatory disbursement agreement, see §§ 301.6323(c)-1, 301.6323(c)-2, and 301.6323(c)-3, respectively. For provisions relating to the protection afforded to a security interest coming into existence by virtue of disbursements, made before the 46th day after the date of tax lien filing, see § 301.6323(d)-1. For provisions relating to priority afforded to interest and certain other expenses with respect to a lien or security interest having priority over the lien imposed by section 6321, see § 301.6323(e)-1. For provisions relating to certain other interests arising after tax lien filing, see § 301.6323(b)-1.

[T.D. 7429, 41 FR 35498, Aug. 23, 1976]

Authority shown for lien is not a statute but merely a treasury decision, Read the text carefully for definition of "any tax"

property owned by the taxpayer and not otherwise exempt from levy.

Section 6332 of the Code, with exceptions not here relevant, requires any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made, to surrender such property or rights (or discharge such obligation) to the Secretary or the Secretary's delegate.

Both federal and state courts look to state law to determine whether there is property or a right to property to which a tax levy may attach.

In many situations, the depository bank acts merely as a collecting agent or sub-agent of the taxpayer-customer with regard to uncollected funds and does not credit the funds to the taxpayer-customer's account or permit the taxpayer-customer to draw against the uncollected funds until final settlement. In such cases, the levy is satisfied by a surrender of the balance in the account at the time of the levy not including uncollected items. See section 301.6331-1(a)(1) of the Regulations on Procedure and Administration and Rev. Rul. 73-310, 1973-2 C.B. 408.

An exception exists, however, when, by agreement or custom, the taxpayer-customer's account is credited by the bank with the amount of the uncollected items and the taxpayer-customer has the legal, fixed right to draw against the entire balance of the account. In such cases, the taxpayer has a property right in the entire balance in the account (including the uncollected funds) at the time of levy. Since the Government's levy attaches to rights to property possessed by the taxpayer, such levy reaches the entire balance in the account, whether or not the uncollected items later reach final settlement. See *United States v. Euclid National Bank*, 510 F. 2d 461 (6th Cir. 1975).

HOLDING

Accordingly, a bank is required to treat the funds in a customer's account

as subject to levy if, by custom or agreement between the bank and the customer, the customer has a legal, fixed right to draw against uncollected funds.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 73-310 is amplified.

Section 6334.—Property Exempt from Levy

26 CFR 301.6334-1: *Property exempt from levy.*

Exemption for certain amounts payable or received as wages, salary, or other income. See T.D. 7620, page 401.

Subchapter E.—Collection of State Individual Income Taxes

Section 6361.—General Rules

26 CFR 301.6361-1: *Collection and administration of qualified taxes.*
(Also Sections 3402, 6001, 6011, 6015, 6212, 6302, 6321, 6362, 6363, 6365, 6405, 6654; 31.3402(f)(2)-1, 32.1, 1.6001-1, 31.6011(a)-4, 1.6015(c)-1, 301.6212-1, 301.6302(c)-1, 301.6321-1, 301.6362-1, 301.6363-1, 301.6365-1, 301.6405-1, 1.6654-1.)

T.D. 7577

TITLE 26.—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 1.—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953; SUBCHAPTER C, PART 31.—EMPLOYMENT TAXES; APPLICABLE ON OR AFTER JANUARY 1, 1955; PART 32.—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1969; SUBCHAPTER F, PART 301.—PROCEDURE AND ADMINISTRATION

Federal collection and administration of qualified State individual income taxes; reports to Joint Committee on Taxation.

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to Federal collection and administration of qualified State individual income taxes. Changes to the applicable tax law were made by the Federal-State Tax Collection Act of 1972 [Pub. L. 92-512, 1972-2 C.B. 684, 694] as amended by the Tax Reform Act of 1976 [Pub. L. 94-455, 1976-3 C.B. (Vol. 1) 1]. These regulations provide the States with guidance needed in determining whether to elect Federal collection and administration of their individual income taxes.

EFFECTIVE DATE: Federal collection and administration of qualified State individual income taxes will go into effect on the first January 1 which is more than one year after the first date on which at least one State has filed a notice of its election with the Secretary of the Treasury or his delegate.

FOR FURTHER INFORMATION CONTACT: William E. Mantle of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3829.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On September 29, 1977, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1), the Employment Tax Regulations (26 CFR Part 31), The Temporary Employment Tax Regulations Under the Tax Reform Act of 1969 (26 CFR Part 32), and the Regulations on Procedure and Administration (26 CFR Part 301). The amendments were proposed to conform the regulations to

Government Printing Office in a serial publication designated the "Federal Register." The Public Printer shall make available the facilities of the Government Printing Office for the prompt printing and distribution of the Federal Register in the manner and at the times required by this chapter and the regulations prescribed under it. The contents of the daily issues shall be indexed and shall comprise all documents, required or authorized to be published, filed with the Office of the Federal Register up to the time of the day immediately preceding the day of distribution fixed by regulations under this chapter. There shall be printed with each document a copy of the notation, required to be made by section 1503 of this title, of the day and hour when, upon filing with the Office, the document was made available for public inspection. Distribution shall be made by delivery or by deposit at a post office at a time in the morning of the day of distribution fixed by regulations prescribed under this chapter. The prices to be charged for the Federal Register may be fixed by the Administrative Committee of the Federal Register established by section 1506 of this title without reference to the restrictions placed upon and fixed for the sale of Government publications by sections 1705 and 1708 of this title. (Pub.L. 90-620, Oct. 22, 1968, 82 Stat. 1274.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports Senate Report No. 1621, see 1968 U.S.
1968 Act. Based on 44 U.S.Code, 1964 Code Cong. and Adm.News, p. 4438.
ed., § 303 (July 26, 1935, c. 417, § 3, 49
Stat. 500).

LIBRARY REFERENCES

Administrative Law

Publication, effective date, see Koch, Administrative Law and Practice § 4.96.

American Digest System

Custody and care of public funds and other property, see United States ⇨43.

Duties of officers and agents and performance thereof, see United States ⇨41.

Encyclopedias

Control, regulation, and use of public property, see C.J.S. United States § 74.

Duties of officers, agents, and employees, see C.J.S. United States § 41.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1505. Documents to be published in Federal Register

(a) Proclamations and Executive Orders; documents having general applicability and legal effect; documents required to be published by Congress. There shall be published in the Federal Register—

(1) Presidential proclamations and Executive orders, except those not having general applicability and legal effect or effective only against Federal agencies or persons in their capacity as officers, agents, or employees thereof;

(2) documents or classes of documents that the President may determine from time to time have general applicability and legal effect; and

(3) documents or classes of documents that may be required so to be published by Act of Congress.

For the purposes of this chapter every document or order which prescribes a penalty has general applicability and legal effect.

(b) **Documents authorized to be published by regulations; comments and news items excluded.** In addition to the foregoing there shall also be published in the Federal Register other documents or classes of documents authorized to be published by regulations prescribed under this chapter with the approval of the President, but comments or news items of any character may not be published in the Federal Register.

(c) **Suspension of requirements for filing of documents; alternate systems for promulgating, filing, or publishing documents; preservation of originals.** In the event of an attack or threatened attack upon the continental United States and a determination by the President that as a result of an attack or threatened attack—

(1) publication of the Federal Register or filing of documents with the Office of the Federal Register is impracticable, or

(2) under existing conditions publication in the Federal Register would not serve to give appropriate notice to the public of the contents of documents, the President may, without regard to any other provision of law, suspend all or part of the requirements of law or regulation for filing with the Office or publication in the Federal Register of documents or classes of documents.

The suspensions shall remain in effect until revoked by the President, or by concurrent resolution of the Congress. The President shall establish alternate systems for promulgating, filing, or publishing documents or classes of documents affected by such suspensions, including requirements relating to their effectiveness or validity, that may be considered under the then existing circumstances practicable to provide public notice of the issuance and of the contents of the documents. The alternate systems may, without limitation, provide for the use of regional or specialized publications or depositories for documents, or of the press, the radio, or similar mediums of general communication. Compliance with

made by subsection (a) [amending this section] shall take effect on October 1, 1977."

CROSS REFERENCES

Penalty mail privilege of executive departments of Government, see 39 USCA § 3201 et seq.

LIBRARY REFERENCES

American Digest System

Appropriations in general, see United States ⇐85.

Encyclopedias

Disbursement of funds; appropriations, see C.J.S. United States § 123.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Commencement of publication 1

1. Commencement of publication

Publication of the Federal Register is not required by this chapter to be commenced until appropriations to Govern-

ment Printing Office have been increased as provided for in this section, but publication should commence on the date such increased appropriations are made available. 1935, 38 Op.Atty.Gen. 276.

§ 1510. Code of Federal Regulations

(a) The Administrative Committee of the Federal Register, with the approval of the President, may require, from time to time as it considers necessary, the preparation and publication in special or supplemental editions of the Federal Register of complete codifications of the documents of each agency of the Government having general applicability and legal effect, issued or promulgated by the agency by publication in the Federal Register or by filing with the Administrative Committee, and are relied upon by the agency as authority for, or are invoked or used by it in the discharge of, its activities or functions, and are in effect as to facts arising on or after dates specified by the Administrative Committee.

(b) A codification published under subsection (a) of this section shall be printed and bound in permanent form and shall be designated as the "Code of Federal Regulations." The Administrative Committee shall regulate the binding of the printed codifications into separate books with a view to practical usefulness and economical manufacture. Each book shall contain an explanation of its coverage and other aids to users that the Administrative Committee may require. A general index to the entire Code of Federal Regulations shall be separately printed and bound.