



ADMINISTRATIVE RULES OF MONTANA

42.2.304 DEFINITIONS

The terms used by the department are, in great part, defined in Titles 15, 16, 39, and 72, MCA. In addition to these statutory definitions, the following definitions apply to ARM Title 42, unless context of a particular chapter or rule provides otherwise:

- (1) "Amended return" is a return that amends the original return defined in (36).
- (2) "Ancestor" means a lineal ancestor and a collateral ancestor if related by blood. Sections 72-11-102, 72-11-103, and 72-11-104, MCA, describe how kinship and degrees of kinship are determined.
- (3) "Annual accounting period" means the accounting period used for federal income tax purposes.
- (4) "Association" means an organization of people having a common interest.
- (5) "Business activity" refers to the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer.
- (6) "Calendar year" means a 12-month period beginning January 1 and ending December 31.
- (7) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services; provided, that such amounts constitute income to the recipient under the federal IRC. In the case of employees not subject to the federal IRC, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such employees were subject to the federal IRC.
- (8) "Contiguous parcels of land" means separate land acreage in the same ownership that are adjacent.
- (9) "Corporation" or "C corporation" means a corporation, limited liability company, or other entity treated as an association for federal income tax purposes. The term does not include an S corporation or a disregarded entity. The term includes a regulated investment company (RIC) as defined in IRC 851, a real estate investment trust (REIT) as defined in IRC 856, and a corporation that has elected to be treated as a real estate mortgage investment conduit (REMIC) as provided in IRC 860D.
- (10) "Deficiency assessment" means an amount greater than the amount disclosed on a return or report filed with the department.

- (11) "Department" means the Department of Revenue as defined in 2-15-1301, MCA.
- (12) "Dependent" means any individual listed in 15-30-2115, MCA, as amended, over one-half of whose support for the calendar year in which the taxable year of the taxpayer begins was received from the taxpayer. In determining whether or not an individual received for a given calendar year over one-half of his support from the taxpayer, there shall be taken into account the amount of support received from the taxpayer as compared to the entire amount of support the individual received from all sources, including support which the individual himself supplied.
- (13) "Descendant" means a lineal descendant and a collateral descendant related by blood. Sections 72-11-102, 72-11-103, and 72-11-104, MCA, describe how kinship and degrees of kinship are determined.
- (14) "Discretion" means the power to do or to refrain from doing a certain thing.
- (15) "Disregarded entity" means a business entity that is disregarded as an entity separate from its owner(s) for federal income tax purposes. The term includes a limited liability company with one owner, a qualified subchapter S subsidiary not treated as a separate corporation, and a partnership, syndicate, group, pool, joint venture, or other unincorporated organization electing under IRC 761 to be excluded from application of partnership tax rules. A corporation is not a disregarded entity by virtue of being included in a federal consolidated return.
- (16) "Domiciled" means having a residence in the state of Montana as stated in 1-1-215, MCA.
- (17) "Earned income" means:
 - (a) wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered; and
 - (b) the amount of the taxpayer's net earnings from a trade or business which is wholly or partially subject to the federal self-employment tax.
- (18) "Economic hardship" means the financial inability of the taxpayer to pay a tax when the tax is due as determined by the department through a review of various financial documents and inquiries.
- (19) "Employee" means:
 - (a) Any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed and as to the manner of performance. The power to control, rather than the actual exercise of control, is the important factor. Designation of an individual as, or determination by an appropriate authority that an individual is an employee for purposes of industrial accident insurance (workers' compensation), unemployment compensation, federal Social Security, or federal withholding tax will establish that person as an employee.
 - (b) All classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers, other supervisory personnel, and corporate officers are employees.
- (20) "Employer" means any person or organization for whom an individual performs any service as an employee. However, if the person or organization for whom an individual performs services does not have control of the compensation payments, the term employer means the person or organization having control of the payment of such compensation. State income tax withheld, or that should have been withheld, and will be collected from the person or organization having control of the payment of such compensation.

- (a) An employer may be an individual, corporation, limited liability company, partnership, estate, trust, association, joint venture, or other unincorporated group or entity. The term employer also includes all religious, educational, charitable, and social organizations or societies and all governmental agencies at the federal, state, and local level, including school districts, towns, counties, and other political subdivisions.
- (21) "Final order" means an order entered by the department or a court of review which either has not been appealed on a timely basis or to which no appeal is available.
- (22) "Fiscal year" means any 12-month period ending on the last day of any month other than December.
- (23) "Household" means a family living together.
- (24) "Immediate family member" means any individual who is a lineal descendant of the taxpayer and also includes their spouse. Stepchildren are considered lineal descendants if that relationship was created before the child's eighteenth birthday.
- (25) "Incorporated city or town" means any municipality or county area in which the government body has complied with all incorporation provisions outlined in Title 7, MCA.
- (26) "Information return" means a pass-through entity information return described in ARM 42.9.301, 42.9.401, 42.9.501, 42.9.510, 42.9.520, 42.9.530, and 42.9.540.
- (27) "Internal Revenue Code" (IRC) means the Internal Revenue Code of 1986, as amended.
- (28) "Internal Revenue Service" (IRS), means the federal bureau of the Department of the Treasury of the United States of America with the duties set forth in 26 USCA 8022.
- (29) "Limited liability company" has the same meaning given it in the Montana Limited Liability Company Act, Title 35, chapter 8, MCA, and includes limited liability companies formed under the laws of Montana and the laws of other states and foreign countries.
- (30) "Lookback period," for purposes of the voluntary disclosure program, means the filing periods agreed upon for which returns must be filed and all taxes and statutory interest must be paid under a voluntary disclosure agreement.
- (31) "Manufacturer" means any person who produces a product for the purpose of resale.
- (32) "Montana source income" is defined in 15-30-2101, MCA, and the statute should be consulted to determine whether particular income is "Montana source income" obligating a nonresident to file a Montana individual income tax return, and a pass-through entity to file a Montana information return. In general, all income from work performed in the state, real or personal property located in the state, and business conducted in the state is Montana source income. Gain realized from transfer of real or personal property located in the state remains Montana source income notwithstanding that recognition of the gain is deferred and regardless of the deferral mechanism.
 - (a) Gain realized from an installment sale of Montana property retains its Montana source income character and must be reported as the payments are received.
 - (b) Gain realized on the transfer of Montana property in a like-kind exchange retains its Montana source income character and must be reported when the gain is recognized in a subsequent taxable transaction.

- (33) "Noncontiguous parcels of land" means land acreage in the same ownership that meets one of the two following standards:
- (a) acreages that do not touch, but are each an integral part of the operation of a bona fide agricultural operation; or
 - (b) acreages that would meet the definition of contiguous contained in (8) were the acreages not separated by one or more of the following features only:
 - (i) roads and highways;
 - (ii) navigable rivers and streams;
 - (iii) local taxing authority boundaries;
 - (iv) railroad lines; or
 - (v) federal or state land that is leased from the federal or state government by a taxpayer whose land ownership is contiguous to the federal or state land.
- (34) "Neglect" means the failure to exercise ordinary business care and prudence.
- (35) "Nonresident" means any individual, estate, trust, partnership, or other organization, excluding corporations, not a resident of Montana.
- (36) "Notice of Assessment (NOA)" means the first notice provided to the taxpayer of an amount owed to the department or of a violation. It may include, but is not limited to, a notice of refund reduction, net operating loss adjustment, tax debt, fine, or notice of a violation of the laws administered by the department. It does not include notices pertaining to inheritance taxes, estate taxes, or liquor licensing matters.
- (37) "Original return" means the return required to be filed on or before the due date.
- (38) "Ownership interest" means the involvement in the business operated by someone who owns some or all of the assets of the business, shares in the financial risks, is entitled to any portion of the profits, or any portion of the liabilities and losses of the business. Ownership interest includes the right to control the location or ownership of a business. Examples of ownership interests include the authority to participate in such business decisions as sale of the business, relocation of the business, change or creation of any financial arrangements for loan repayment or funding sources, or any other responsibilities regarding the management of the business. This definition applies to an ownership interest for purposes of rules contained in the ARM Title 42, unless otherwise specified by law.
- (39) "Paid" and "received" are construed in the context of an acceptable accounting method used to compute taxable income.
- (40) "Partnership" means any partnership, including a general partnership, a limited partnership, a limited liability partnership, a professional partnership, or any other entity, treated as a partnership for federal income tax purposes. The term includes an unincorporated entity that has elected to be treated as a real estate mortgage investment conduit (REMIC) as provided in IRC 860D.
- (41) "Pass-through entity" means a partnership, an S corporation, and a disregarded entity.
- (42) "Pass-through entity information return" means the same as (26).

- (43) "Payee" means a person to whom or to whose order a bill, note, check, or money order is made payable.
- (44) "Person" means an individual, estate, trust, receiver, firm, partnership, corporation, cooperative association, limited liability company, joint venture, syndicate, or other business entity, however formed.
 - (a) A person may not include:
 - (i) federal government entities or their subdivisions; or
 - (ii) enrolled Native American entities, including tribal offices or businesses owned by the tribe and operating on the tribal reservation.
- (45) "Qualified entity," for purposes of the voluntary disclosure program, is a corporation, trust, limited liability company, or partnership that meets the conditions in ARM 42.2.310.
- (46) "Qualified individual," for purposes of the voluntary disclosure program, is an individual who meets the conditions in ARM 42.2.310, or is a beneficiary of a trust that meets the conditions in 42.2.310.
- (47) "Qualified partner," for purposes of the voluntary disclosure program, is an individual or entity who is treated as a partner of a qualified entity for federal income tax purposes and who themselves meets the conditions of ARM 42.2.310.
- (48) "Qualified shareholder," for purposes of the voluntary disclosure program, is a shareholder in an S corporation that is a qualified entity as defined in (44), and who themselves meets the conditions of ARM 42.2.310.
- (49) "Quarter" means quarters that end:
 - (a) March 31;
 - (b) June 30;
 - (c) September 30; and
 - (d) December 31.
- (50) "Reasonable cause" means the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return, pay the tax within the prescribed time, or object to a department action as provided for in ARM 42.2.510. Examples of what does or does not constitute reasonable cause may be found in ARM 42.2.512.
- (51) "Reasonable time" means within five years or the normal statute of limitations, whichever is later.
- (52) "Residence" means the same as (16).
- (53) "Resident" means natural persons and includes, for the purpose of determining liability to the tax imposed by the state, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.
- (54) "Retail business" means individuals, firms, fiduciaries, partnerships, corporations, trusts, organizations, or associations engaged in the business of selling products to the consumer.

- (55) "Return information" includes a taxpayer's identity, the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over-assessments or tax payments, or any other data received by, recorded by, prepared by, furnished to, or collected by the department with respect to a return or with respect to the determination of the existence or possible existence of liability or the amount of liability of any person under Title 15, MCA, for any tax, penalty, interest, fine, forfeiture, or other imposition of any offense. The term does not include data in a form that cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer.
- (56) "S corporation" means an incorporated entity for which a valid federal S corporation election is in effect. "S corporation" and "subchapter S corporation" are synonymous. The term "small business corporation" is also synonymous with "S corporation," except that certain S corporations are allowed to continue to file Montana corporation license tax returns as provided in 15-30-3301, MCA.
- (57) "Settlement" means a compromise, agreement, or arrangement between parties which, in consideration of mutual concessions, terminates a dispute.
- (58) "Situs" means location.
- (59) "Statement of Account (SOA)" means a notice provided to the taxpayer summarizing amounts owed to the department.
- (60) "Support" includes food, shelter, clothing, medical and dental care, education, and the like. Generally, the amount of an item of support will be the amount of expense incurred by the one furnishing such item. However, if the item of support furnished is in the form of property or lodging, it will be necessary to measure the amount of such item in terms of its fair market value.
- (61) "Taxable year," as stated in section 441(b) of the IRC, means:
- (a) the taxpayer's annual accounting period, if it is a calendar year or a fiscal year;
 - (b) the calendar year if the taxpayer does not keep books or does not have an annual accounting period that qualifies as a fiscal year; or
 - (c) the period for which the return is made, if a return is made for a period of less than 12 months, the so-called "short period" defined under section 443 of the IRC. Generally, a taxable year cannot cover more than 12 calendar months.
- (62) "Taxpayer" means any person (which may include any corporation, partnership, firm, association, or person acting as a business entity) or fiduciary, resident or nonresident, subject but not limited to, a tax, license fee, royalty, or permit imposed by the state of Montana or a liability for payment of a debt collected by the department.
- (63) "Write-off of collection" means removal of an assessment from active department enforcement and monitoring procedures, and does not mean a tax assessment is forgiven.

Authorizing statute(s): 15-1-201, 15-30-2620, 15-31-501, 16-1-303, 16-10-104, 16-11-103, MCA

Implementing statute(s): 1-1-215, 15-1-102, 15-1-206, 15-1-601, 15-30-2101, 15-30-2104, 15-30-2111, 15-30-2602, 15-30-3301, 15-30-3302, 15-30-3311, 15-30-3312, 15-30-3313, 15-30-3321, 15-31-101, 15-31-111, MCA

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