



ADMINISTRATIVE RULES OF MONTANA

42.26.202 DEFINITIONS

The following definitions apply to terms used in this subchapter:

- (1) "Allocation" means the assignment of nonapportionable income to a particular state.
- (2) "Annual rent" means the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property.
 - (a) Annual rent includes:
 - (i) any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits, or otherwise;
 - (ii) any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs, or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.
 - (iii) any amount payable for a delay rental as defined by U.S. Treasury regulations Section 1.612-3 (1980), which defines delay rental as follows: A delay rental is an amount paid for the privilege of deferring development of the property and which could have been avoided by abandonment of the lease, or by commencement of development operations, or by obtaining production.
 - (b) "Annual rent" does not include:
 - (i) incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.
 - (ii) royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes an amount paid to a holder of an interest in real property which constitutes a sharing of current or future production of natural resources from such property, whether denominated as a royalty, advance royalty, rental, or otherwise.
- (3) "Annual rental rate" means the amount paid as rental for the property for a 12-month period (i.e., the amount of the annual rent). Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current

tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month-to-month basis.

- (4) "Apportionment" means the division of apportionable income between states by the use of a formula containing apportionment factors.
- (5) "Average value of property" means the amount determined by averaging the values at the beginning and ending of the income tax year, but the department may require the averaging of monthly values during the income year or such averaging as necessary to effect properly the average value of the property. See ARM 42.26.237.
- (6) "Base of operations" means the place of more or less permanent nature from which an employee starts their work and to which they customarily return in order to receive instructions from the taxpayer or communications from their customers or other persons, to replenish stock or other materials, repair equipment, or to perform any other function necessary to exercise their trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.
- (7) "Basis in the hands of the taxpayer" means the taxpayer's federal income tax basis in the asset at the time of sale.
- (8) "Billing address" means the location indicated in the books and records of the taxpayer as the primary mailing address relating to a customer's account as of the time of the transaction as kept in good faith in the normal course of business and not for tax avoidance purposes.
- (9) "Business activity" means the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer.
- (10) "Business customer" means a customer that is a business operating in any form, including a sole proprietorship. Sales to a nonprofit organization, to a trust, to the U.S. Government, to a foreign, state, or local government, or to an agency or instrumentality of that government are treated as sales to a business customer and must be assigned for receipts apportionment purposes consistent with the rules for those sales.
- (11) "Code" means the Internal Revenue Code as currently written and subsequently amended.
- (12) "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.
- (13) "Costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer to perform the income-producing activity which gives rise to the

particular item of income. Included in the taxpayer's cost of performance are taxpayer's payments to an agent or independent contractor for the performance of personal services and utilization of tangible and intangible property which give rise to the particular item of income.

- (14) "Employee" means any officer of the corporation; or any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act; except that, since certain individuals are included within the term "employees" in the Federal Insurance Contributions Act who would not be employees under the usual common law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule.
- (15) "Gross receipts" means the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest, and dividends) in a transaction which produces apportionable income, in which the income, gain, or loss is recognized (or would be recognized if the transaction were in the United States) under the federal IRC.
 - (a) Intercompany revenues between members of the unitary group are eliminated from gross receipts. Examples of intercompany revenues include, but are not limited to:
 - (i) sales;
 - (ii) dividends;
 - (iii) service fees;
 - (iv) rents;
 - (v) management fees;
 - (vi) royalties;
 - (vii) interest; and
 - (viii) administrative fees.
 - (b) Gross receipts, even if apportionable income, do not include, for example, such items as:
 - (i) repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument;
 - (ii) the principal amount received under a repurchase agreement or other transaction properly characterized as a loan;
 - (iii) proceeds from issuance of the taxpayer's own stock or from sale of treasury stock;
 - (iv) damages and other amounts received as the result of litigation;
 - (v) property acquired by an agent on behalf of another;
 - (vi) tax refunds and other tax benefits recoveries;
 - (vii) pension reversions;
 - (viii) contributions to capital (except for sales of securities by securities dealers);

- (ix) income from forgiveness or discharge of indebtedness;
 - (x) amounts realized from the exchange of inventory, except those amounts actually received by the taxpayer and that exceeded any corresponding amounts paid to the other party, and which were to account for excess deliveries under the exchange agreement, as calculated on an annual basis. Thus, the net amount of payments received in excess of the net payments made during the year may be included in the receipts factor; and
 - (xi) amounts received from hedging transactions involving intangible assets. For purposes of this subsection, a "hedging transaction" means a transaction related to the taxpayer's trading function involving futures and options transactions for the purpose of hedging price risk of the products or commodities consumed, produced, or sold by the taxpayer.
- (c) Exclusion of an item from the definition of "gross receipts" is not determinative of its character as apportionable or nonapportionable income.
- (16) "Income-producing activity" applies to each separate item of income and means the transactions and activity engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of producing that item of income. Such activity includes transactions and activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. Income-producing activity includes, but is not limited to:
- (a) the rendering of personal services by employees or by an agent or independent contractor acting on behalf of the taxpayer or the utilization of tangible and intangible property by the taxpayer or by an agent or independent contractor acting on behalf of the taxpayer in performing a service;
 - (b) the sale, rental, leasing, licensing, or other use of real property;
 - (c) the rental, leasing, licensing, or other use of tangible personal property; or
 - (d) the sale, licensing, or other use of intangible personal property.
- (17) "Individual customer" means a customer that is not a business customer.
- (18) "Intangible property" generally means property that is not physical or whose representation by physical means is merely incidental and includes, without limitation, copyrights; patents; trademarks; trade names; brand names; franchises; licenses; trade secrets; trade dress; information; know-how; methods; programs; procedures; systems; formulae; processes; technical data; designs; licenses; literary, musical or artistic compositions; ideas; contract rights including broadcast rights; agreements not to compete; goodwill and going concern value; securities; and except as otherwise provided, computer software.
- (19) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.
- (20) "Mobile property mile" means the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.
- (21) "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals.
- (22) "Net receipts" means gross receipts minus the basis of the asset in the hands of the taxpayer.

- (23) "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or, if the property has no such basis, the valuation of such property for interstate commerce commission purposes. If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factory at its fair market value as of the date of acquisition by the taxpayer. See ARM 42.26.235.
- (24) "Place of order" means the physical location from which a customer places an order for a sale other than a sale of tangible personal property from a taxpayer, resulting in a contract with the taxpayer.
- (25) "Population" means the most recent population data maintained by the U.S. Census Bureau for the year in question as of the close of the taxable period.
- (26) "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.
- (27) "Real and tangible personal property" includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property, but does not include coin or currency.
- (28) "Related party" means:
- (a) a stockholder who is an individual, or a member of the stockholder's family, set forth in section 318 of the Code if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, over 50 percent of the value of the taxpayer's outstanding stock;
 - (b) a stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trust, and corporations own directly, indirectly, beneficially, or constructively, in the aggregate, over 50 percent of the value of the taxpayer's outstanding stock; or
 - (c) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Code if the taxpayer owns directly, indirectly, beneficially, or constructively, over 50 percent of the value of the corporation's outstanding stock. The attribution rules of the Code shall apply for purposes of determining whether the ownership requirements of this definition have been met.
- (29) "State where a contract of sale is principally managed by the customer," means the primary location at which an employee or other representative of a customer serves as the primary contact person for the taxpayer with respect to the day-to-day execution and performance of a contract entered into by the taxpayer with the customer.
- (30) "Taxpayer" means any corporation, partnership, firm, association, disregarded entity, governmental unit or agency, or person acting as a business entity.
- (31) "Trade or business" means the unitary business of the taxpayer, part of which is conducted in this state.
- (32) "Transportation revenue" means revenue earned by transporting passengers, freight and mail as well as revenue earned from liquor sales, pet crate rentals, etc.

- (33) "Unitary relationship" means a relationship between members of a combined group sufficient to satisfy the definition of a "unitary business" pursuant to 15-31-301, MCA.
- (34) "Value of owned real and tangible personal property" means its original cost. See ARM 42.26.235.
- (35) "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate. See ARM 42.26.236.

Authorizing statute(s): 15-1-201, 15-31-313, 15-31-501, MCA

Implementing statute(s): 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, 15-31-321, 15-31-322, 15-31-323, 15-31-324, 15-31-325, 15-31-326, MCA

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