



ADMINISTRATIVE RULES OF MONTANA

42.9.107 MULTI-TIERED PASS-THROUGH ENTITY STRUCTURES WITH MONTANA SOURCE INCOME – REPORTING REQUIREMENTS

- (1) A pass-through entity may have, in addition to income from its own operations or activities, income from one or more other pass-through entities. This rule describes how the pass-through entity must classify its income from its own operations or activities as apportionable or nonapportionable income and how it must report its income from other pass-through entities. For purposes of this rule, "operations income" means the income of a pass-through entity from its own operations or activities and "flow-through income" means its separately and nonseparately stated distributable share of income from other pass-through entities.
- (2) Except as provided in (5), each pass-through entity has to separately determine whether its operations income is apportionable or nonapportionable income as those terms are defined in ARM 42.26.206. Once a pass-through entity determines the apportionable or nonapportionable character of its operations income, the entity must then determine what part of this apportionable and/or nonapportionable income is Montana source income. Except as provided in (5) and (6), the operations income retains its character as apportionable or nonapportionable income and as Montana source income regardless of how many other tiers of pass-through entities through which the income is passed.
- (3) Except as provided in (5) and (6), flow-through income of a pass-through entity, determined as provided in (1), retains its character as apportionable and/or nonapportionable income and its character as Montana source income.
- (4) An entity in a multi-tiered pass-through entity structure may have flow-through income sourced to Montana under the subsections of the definition of "Montana source income" in 15-30-2101, MCA, that address partnership or S corporation income derived from Montana activity or property, reportable on Montana Schedule K-1, and also operations income sourced to Montana as a result of its own business activity under other subsections of that definition of "Montana source income," such as net income from a business, profession, or farming activities carried on in the state. If this occurs the entity must allocate to Montana the flow-through income sourced to Montana and the entity must determine the portion of its operations income that is sourced to Montana as provided in (1) and allocate or apportion that Montana source income under the provisions of ARM 42.9.112.
- (5) This rule does not apply to a partnership or disregarded entity whose operations are unitary with the business operations of a corporate partner or disregarded entity owner that is a C corporation whose apportionment factors are included in the computation of the C corporation's apportionment factors as provided in ARM 42.26.228.

- (6) Nothing in this rule prevents the department from determining the apportionable or nonapportionable character of an entity's operations income or the Montana source character of its Montana flow-through income sourced to Montana.

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

Implementing statute(s): 15-1-601, 15-30-3302, 15-30-3311, 15-31-301, MCA

History: NEW, 2011 MAR p. 2679, Eff. 12/9/11; AMD, 2018 MAR p. 854, Eff. 4/28/18.