



ADMINISTRATIVE RULES OF MONTANA

42.26.1003 APPORTIONMENT OF APPORTIONABLE INCOME

- (1) For purposes of this subchapter, the property factor will be determined as outlined in (2) and (3).
- (2) All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, which is used in the business shall be included in the denominator of the property factor.
- (3) The property factor numerator will be established by following the requirements in (4) through (8).
- (4) All real and tangible personal property owned or rented by the taxpayer and used in Montana during the tax period shall be included in the numerator of the property factor.
- (5) Outer-jurisdictional property owned or rented by the taxpayer and used in Montana during the tax period shall be included in the numerator of the property factor in the ratio which the value of such property that is attributable to its use by the taxpayer in business activities in Montana bears to the total value of such property that is attributable to its use in the taxpayer's business activities everywhere.
- (6) The value of outer-jurisdictional property to be attributed to the numerator of the property factor of Montana shall be determined by the ratio that the number of uplinks and downlinks (sometimes referred to as "half-circuits") that were used during the tax period to transmit from Montana and to receive in Montana any data, voice, image, or other information bears to the total number of uplinks and downlinks or half-circuits that the taxpayer used for transmissions everywhere. Should information regarding such uplink and downlink or half-circuit usage not be available or should such measurement of activity not be applicable to the type of outer-jurisdictional property used by the taxpayer, the value of such property to be attributed to the numerator of the property factor of Montana shall be determined by the ratio that the amount of time (in terms of hours and minutes of use) or such other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from Montana and to receive in Montana any data, voice, image, or other information bears to the total amount of time or other measurement of use that was used for transmissions everywhere.
- (7) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within Montana when such property, wherever located, has been employed by the taxpayer in any manner in the publishing, selling, licensing, or other distribution of books, newspapers, magazines, or other printed material and any data, voice, image, or other information is transmitted to or from Montana either through an earth station or terrestrial facility located in Montana.
 - (a) One example of the use of outer-jurisdictional property is where the taxpayer either owns its own communications satellite or leases the use of uplinks, downlinks, or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing

facilities or employees in a state. The state or states in which any printing facility that receives the satellite communications is located and the state from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of the satellite to its total usage everywhere.

- (i) Assume that ABC newspaper co. owns a total of \$400,000,000 of property everywhere and that, in addition, it owns and operates a communication satellite for the purpose of sending news articles to its printing plant in Montana, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world.
- (ii) Assume also that the total value of its real and tangible personal property that was permanently located in Montana for the entire income year was valued at \$3,000,000.
- (iii) Assume further that the total original cost of the satellite is \$100,000,000 for the tax period and that of the 10,000 uplinks and downlinks of satellite transmissions used by the taxpayer during the tax period, 200 or 2 percent are attributable to its satellite communications received in and sent from Montana.
- (iv) Assume still further that the company's mobile property that was used partially within Montana, consisting of 40 delivery trucks, were determined to have an original cost of \$4,000,000 and such mobile property was used in Montana for 95 days. The total value of property to be attributed to Montana would be determined as follows:

Value of property permanently in state: \$3,000,000

Value of mobile property:

$95/365 \text{ or } (.260274) \times \$4,000,000: \$1,041,096$

Value of leased satellite property used in-state:

$(.02) \times \$100,000,000: \$2,000,000$

Total value of property attributable to state: \$6,041,096

Total property factor %: $\$6,041,096/(\$500,000,000): 1.2082\%$

- (8) The payroll factor shall be determined in accordance with 15-31-308, MCA, and the supporting administrative rules.

- (9) For purposes of this subchapter, the receipts factor will be determined as follows:
- (a) The denominator of the receipts factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under ARM 42.26.251, 42.26.252, 42.26.253, 42.26.254, 42.26.255, 42.26.256, 42.26.257, 42.26.259, 42.26.261, 42.26.262, and 42.26.263.
 - (b) The numerator of the receipts factor shall include all gross receipts of the taxpayer from sources within Montana including, but not limited to, the following:
 - (i) gross receipts derived from the sale of tangible personal property including printed materials, delivered or shipped to a purchaser or a subscriber in Montana;
 - (ii) except as provided in (9)(b)(iii), gross receipts derived from advertising and the sale, rental, or other use of the taxpayer's customer lists or any portion thereof shall be attributed to Montana as determined by the taxpayer's circulation factor during the tax period. The circulation factor shall be determined for each individual publication by the taxpayer of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere. The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor shall be determined from the taxpayer's books and records.
 - (iii) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which Montana is located, the taxpayer may petition, or the department may require, that a portion of such receipts be attributed to the receipts factor numerator of Montana on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by (9)(b)(ii). Such attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in Montana of the printed material containing such specific items of advertising bears to its total circulation of such printed material to purchasers and subscribers located within such regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that such receipts are not double-counted or otherwise included in the numerator of any other state.
 - (iv) In the event that the purchaser or subscriber is the United States government or that the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, advertising, and the sale, rental, or other use of the taxpayer's customer's lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the receipts factor for such state, shall be included in the numerator of the receipts factor of Montana if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in Montana.

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, MCA

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