



ADMINISTRATIVE RULES OF MONTANA

42.26.245 NUMERATOR OF RECEIPTS FACTOR - SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY - MARKET BASED SOURCING

- (1) In order to satisfy the requirements of this rule, a taxpayer's assignment of receipts from sales of other than tangible personal property must be consistent with the following principles:
 - (a) A taxpayer shall apply the principles set forth in this rule based on objective criteria and shall consider all sources of information reasonably available to the taxpayer at the time of its tax filing including, without limitation, the taxpayer's books and records kept in the normal course of business. A taxpayer shall determine its method of assigning receipts in good faith, and apply it consistently with respect to similar transactions and year to year. A taxpayer shall retain contemporaneous records that explain the determination and application of its method of assigning receipts, including the underlying assumptions, and shall provide those records to the department upon request.
 - (b) This rule provides various assignment methods that apply sequentially in a hierarchy. For each sale to which a hierarchical method applies, a taxpayer must make a reasonable effort to apply the primary method applicable to the sale before seeking to apply the next method in the hierarchy (and must continue to do so with each succeeding method in the hierarchy, where applicable). For example, in some cases, the applicable method first requires a taxpayer to determine the state or states of assignment, and if the taxpayer cannot do so, the method requires the taxpayer to reasonably approximate the state or states. In these cases, the taxpayer must attempt to determine the state or states of assignment (i.e., apply the primary method in the hierarchy) in good faith and with reasonable effort before it may reasonably approximate the state or states.
 - (c) A taxpayer's method of assigning its receipts, including the use of a method of approximation, where applicable, must reflect an attempt to obtain the most accurate assignment of receipts consistent with the regulatory standards set forth in this rule, rather than an attempt to lower the taxpayer's tax liability. A method of assignment that is reasonable for one taxpayer may not necessarily be reasonable for another taxpayer, depending upon the applicable facts.
- (2) Methods of reasonable approximation.
 - (a) In general, this rule establishes uniform principles for determining whether and to what extent the market for a sale other than the sale of tangible personal property is in Montana. This rule also sets forth methods of reasonable approximation, which apply if the state or states of assignment cannot be determined. In some instances, the reasonable approximation must be made in accordance with these specific methods of approximation. In other cases, this rule permits a taxpayer to reasonably approximate the state or states of

assignment, using a method that reflects an effort to approximate the results that would be obtained under the applicable methods.

- (b) Approximation based on known sales. In an instance where, applying the applicable principles set forth in ARM 42.26.248 (sale of a service), a taxpayer can ascertain the state or states of assignment of a substantial portion of its receipts from sales of substantially similar services ("assigned receipts"), but not all of those sales, and the taxpayer reasonably believes, based on all available information, that the geographic distribution of some or all of the remainder of those sales generally tracks that of the assigned receipts, it shall include receipts from those sales which it believes tracks the geographic distribution of the assigned receipts in its receipts factor in the same proportion as its assigned receipts. This principle also applies in the context of licenses and sales of intangible property where the substance of the transaction resembles a sale of goods or services.
 - (c) Where a taxpayer has receipts subject to this rule from transactions with a related-party customer, information that the customer has that is relevant to the sourcing of receipts from these transactions is imputed to the taxpayer.
- (3) Methods with respect to the exclusion of receipts from the receipts factor.
- (a) The receipts factor only includes those amounts defined as gross receipts under ARM 42.26.202.
 - (b) Certain receipts arising from the sale of intangibles are excluded from the numerator and denominator of the receipts factor pursuant to ARM 42.26.250(1)(d).
 - (c) If a taxpayer cannot ascertain the state or states to which receipts of a sale are to be assigned pursuant to this rule (including through the use of a method of reasonable approximation, where relevant) using a reasonable amount of effort undertaken in good faith, the receipts must be excluded from the denominator of the taxpayer's receipts factor.
 - (d) If a taxpayer can ascertain the state or states to which receipts from a sale are to be assigned pursuant to this rule, but the taxpayer is not taxable in one or more of those states, the receipts that would otherwise be assigned to those states where the taxpayer is not taxable must be excluded from the denominator of the taxpayer's receipts factor.
 - (e) Receipts of a taxpayer from hedging transactions, or from holding cash or securities, or from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities, shall be excluded from the receipts factor.
- (4) Changes in methodology and review by the department.
- (a) Nothing in this rule is intended to limit the application of 15-31-312, MCA, or the authority granted to the department under 15-31-312, MCA. To the extent that regulations adopted pursuant to 15-31-312, MCA, conflict with provision of this rule, the regulations adopted pursuant to 15-31-312, MCA, control. If the application of this rule results in the attribution of receipts to the taxpayer's receipts factor that does not fairly represent the extent of the taxpayer's business activity in Montana, the taxpayer may petition for or the department may require the use of a different method for attributing those receipts.
 - (b) In any case in which a taxpayer files an original return for a taxable year in which it properly assigns its receipts using a method of assignment including a method of reasonable approximation, in accordance with this rule, the application of such method of assignment shall be deemed to be a correct determination by the taxpayer of the state or states of

assignment to which the method is properly applied. In those cases, neither the department nor the taxpayer (through the form of an audit adjustment, amended return, abatement application, or otherwise) may modify the taxpayer's methodology as applied for assigning those receipts for the taxable year. However, the department and the taxpayer may each subsequently, through the applicable administrative process, correct factual errors or calculation errors with respect to the taxpayer's application of its filing methodology.

- (c) The department's ability to review and adjust a taxpayer's assignment of receipts on a return to more accurately assign receipts consistently with this rule includes, but is not limited to, each of the following potential actions:
- (i) If a taxpayer fails to properly assign receipts from a sale in accordance with this rule, including the failure to properly apply a hierarchy of methods consistent with the principles of (1)(b) above, the department may adjust the assignment of the receipts in accordance with this rule.
 - (ii) If a taxpayer uses a method of approximation to assign its receipts and the department determines that the method of approximation employed by the taxpayer is not reasonable, the department may substitute a method of approximation that the department determines is appropriate or may exclude the receipts from the taxpayer's numerator and denominator, as appropriate.
 - (iii) If the department determines that a taxpayer's method of approximation is reasonable, but has not been applied in a consistent manner with respect to similar transactions or year to year, the department may require that the taxpayer apply its method of approximation in a consistent manner.
 - (iv) If a taxpayer excludes receipts from the denominator of its receipts factor on the theory that the assignment of the receipts cannot be reasonably approximated, the department may determine that the exclusion of those receipts is not appropriate, and may instead substitute a method of approximation that the department determines is appropriate.
 - (v) If a taxpayer fails to retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying assumptions, or fails to provide those records to the department upon request, the department may treat the taxpayer's assignment of receipts as unsubstantiated, and may adjust the assignment of the receipts in a manner consistent with this rule.
 - (vi) If the department concludes that a customer's billing address was selected by the taxpayer for tax avoidance purposes, the department may adjust the assignment of receipts from sales to that customer in a manner consistent with this rule.
 - (vii) A taxpayer that seeks to change its method of assigning its receipts under this rule must disclose, in the original return filed for the year of the change, the fact that it has made the change. If a taxpayer fails to adequately disclose the change, the department may disregard the taxpayer's change and substitute an assignment method that the department determines is appropriate.
 - (viii) The department may direct a taxpayer to change its method of assigning its receipts in tax returns that have not yet been filed, including changing the taxpayer's method of approximation, if upon reviewing the taxpayer's filing methodology applied for a prior tax year, the department determines that the change is appropriate to reflect a more

accurate assignment of the taxpayer's receipts within the meaning of this rule, and determines that the change can be reasonably adopted by the taxpayer. The department will provide the taxpayer with a written explanation as to the reason for making the change. If a taxpayer fails to comply with the department's direction on subsequently filed returns, the department may deem the taxpayer's method of assigning its receipts on those returns to be unreasonable, and may substitute an assignment method that the department determines is appropriate.

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

Implementing statute(s): 15-1-601, 15-31-310, 15-31-311, 15-31-312, MCA

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