



ADMINISTRATIVE RULES OF MONTANA

42.26.263 SPECIAL COMPUTATIONS RELATED TO RECEIPTS FACTOR

- (1) The following special criteria are established in respect to the receipts factor of the apportionment formula:
 - (a) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the receipts factor unless such exclusion would materially affect the amount of income apportioned to this state.
 - (b) For tax periods beginning before January 1, 2018, where the income-producing activity in respect to apportionable income from intangible personal property can be readily identified, such income is included in the denominator of the receipts factor and, if the income-producing activity occurs in this state, in the numerator of the receipts factor as well. For example, usually the income-producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property (ARM 42.26.251) and income from sale, licensing, or other use of intangible personal property (ARM 42.26.257).
- (2) For tax periods beginning before January 1, 2018, where apportionable income from intangible property cannot readily be attributed to any particular income-producing activity of the taxpayer, such income cannot be assigned to the numerator of the receipts factor for any state and shall be excluded from the denominator of the receipts factor. For example, where apportionable income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures, or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the receipts factor.
- (3) Section 631 of the IRC (gains) which are attributable to internal transactions must be eliminated from the receipts factor. The ultimate sale to outsiders will be included in line 1 sales. IRC section 631(A) (log sales) and section 631(B) (gains) should be included in the factor at the gross sales price used to calculate the gain. IRC section 631(C) (gains) should be included to the extent of gross royalties received prior to the capital gains offset and prior to the netting of long-term capital gains and losses.
- (4) Software transactions. A license or sale of prewritten software for purposes other than commercial reproduction (or other exploitation of the intellectual property rights) transferred on a tangible medium is treated as the sale of tangible personal property, rather than as either the license or sale of intangible property or the performance of a service. In these cases, the receipts are in Montana as determined under the rules for the sale of tangible personal property set forth in ARM 42.26.255. In all other cases, the receipts from a license or sale of software are to be assigned to Montana as determined otherwise under ARM 42.26.245, ARM 42.26.248, 42.26.249,

or 42.26.250 (i.e., depending on the facts, as the development and sale of custom software, as a license of a marketing intangible, as a license of a production intangible, as a license of intangible property where the substance of the transaction resembles a sale of goods or services, or as a sale of intangible property).

- (5) Sales of licenses of digital goods or services.
- (a) In the case of a sale or license of digital goods or services, including among other things, the sale of various video, audio, and software products or similar transactions, the receipts from the sale or license are assigned by applying the same rules as are set forth in ARM 42.26.248, as if the transaction were a service delivered to an individual or business customer. For purposes of the analysis, it is not relevant what the terms of the contractual relationship are or whether the sale or license might be characterized, depending upon the particular facts, as, for example, the sale or license of intangible property or the performance of a service.
 - (b) Telecommunication companies. In the case of a taxpayer that provides telecommunication or ancillary services and that is thereby subject to ARM Title 42, chapter 26, subchapter 12, receipts from the sale or license of digital goods or services not otherwise assigned for apportionment purposes pursuant to that subchapter are assigned pursuant to this section, by applying the rules set forth in ARM 42.26.248 as if the transaction were a service delivered to an individual or business customer. However, in applying these rules, if the taxpayer cannot determine the state or states where a customer receives the purchased product, it may reasonably approximate this location using the customer's place of primary use of the purchased product.

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

Implementing statute(s): 15-1-601, 15-31-305, 15-31-310, 15-31-311, 15-31-312, MCA

History: NEW, Eff. 1/2/77; AMD, 1988 MAR p. 1816, Eff. 8/12/88; AMD, 2001 MAR p. 2469, Eff. 12/21/01; AMD, 2011 MAR p. 2053, Eff. 9/23/11; AMD, 2017 MAR p. 2328, Eff. 1/1/18.