



ADMINISTRATIVE RULES OF MONTANA



42.26.1301 DEFINITIONS

The following definitions apply to terms used in this subchapter.

- (1) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on such later date in the taxable year when the customer relationship began, as the address where any notice, statement, and/or bill relating to a customer's account is mailed.
- (2) "Borrower or credit card holder located in this state" means:
 - (a) a borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in Montana; or
 - (b) a borrower that is not engaged in a trade or business or a credit card holder whose billing address is in Montana.
- (3) "Card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit, debit, or similar type of card has charged merchandise or services to the card.
- (4) "Commercial domicile" means:
 - (a) the headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or
 - (b) if a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile shall be deemed for the purposes of the rules in ARM Title 42, chapter 26, subchapter 13 to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable year.
- (5) "Credit card" means a card, or other means of providing information, that entitles the holder to charge the cost of purchases, or a cash advance, against a line of credit.
- (6) "Debit card" means a card, or other means of providing information, that enables the holder to charge the cost of purchases, or a cash withdrawal, against the holder's bank account or a remaining balance on the card.

- (7) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.
- (8) "Financial institution" means:
- (a) any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;
 - (b) a national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. sections 21 et seq.;
 - (c) a savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. section 1813(b)(1);
 - (d) any bank or thrift institution incorporated or organized under the laws of any state;
 - (e) any corporation organized under the provisions of 12 U.S.C. sections 611 through 631;
 - (f) any agency or branch of a foreign depository as defined in 12 U.S.C. section 3101;
 - (g) any corporation whose voting stock is more than fifty percent owned, directly or indirectly, by any person or business entity described in (a) through (f) above other than an insurance company;
 - (h) a corporation or other business entity that derives more than fifty percent of its total gross income for financial accounting purposes from finance leases. For purposes of the rules in ARM Title 42, chapter 26, subchapter 13, a "finance lease" shall mean any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any "direct financing lease" or "leverage lease" that meets the criteria of Financial Accounting Standards Board Statement No. 13, "Accounting for Leases," or any other lease that is accounted for as a financing by a lessor under generally accepted accounting principles. For this classification to apply:
 - (i) the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than fifty percent requirement; and
 - (ii) gross income from incidental or occasional transactions shall be disregarded; or
 - (i) any other person or business entity, other than an insurance company, a real estate broker, or a securities dealer which derives more than fifty percent of its gross income from activities that a person described in (b), (g), or (h) above.
- (9) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customers, and/or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans shall not include: futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage backed or asset backed security; and other similar items.

- (10) "Loan secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.
- (11) "Merchant discount" means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit, debit, or similar type of card is accepted in payment for merchandise or services sold to the card holder, net of any card holder charge-back and unreduced by any interchange transaction or issuer reimbursement fee paid to another for charges or purchases made by its card holder.
- (12) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.
- (13) "Person" means an individual, estate, trust, partnership, corporation, or any other business entity.
- (14) "Principal base of operation" with respect to transportation property means the place of more or less permanent nature from which said property is regularly directed or controlled. With respect to an employee, the "principal base of operations" means the place of more or less permanent nature from which the employee regularly starts his or her work and to which he or she customarily returns in order to receive instructions from his or her employer; or communicates with his or her customers or other persons; or performs any other functions necessary to the exercise of his or her trade or profession at some other point or points.
- (15) "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied, and used by employees of the taxpayer.
- (16) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country.
- (17) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.
- (18) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers, or the like.

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

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