



## ADMINISTRATIVE RULES OF MONTANA

### 42.26.257 SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY - COSTS OF PERFORMANCE

- (1) Section 15-31-311, MCA, provides for the inclusion in the numerator of the receipts factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government). Under this section, gross receipts are attributed to this state if the income-producing activity, which gave rise to the receipts, is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income-producing activity is performed within and without this state but the greater proportion of the income-producing activity is performed in this state, based on costs of performance.
- (2) The mere holding of intangible personal property is not, of itself, an income-producing activity.
- (3) Receipts (other than from sales of tangible personal property) in respect to a particular income-producing activity are in this state if:
  - (a) the income-producing activity is performed wholly within this state; or
  - (b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.
- (4) The following are special procedures for determining when receipts from the income-producing activities described below are in this state:
  - (a) Gross receipts from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state.
  - (b) Gross receipts from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing, or other use of tangible personal property in this state is a separate income-producing activity from the rental, lease, licensing, or other use of the same property while located in another state. Consequently, if the property is within and without this state during the rental, lease, or licensing period, gross receipts attributable to this state shall be measured by the ratio which the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during such period.
  - (c) Gross receipts for the performance of personal services are attributable to this state to the extent such services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of such services shall be attributable to this state only if a greater portion of the services were performed in this state, based on costs of performance. Usually, where services are performed partly within and partly without this state, the services performed in

each state will constitute a separate income-producing activity. In such case, the gross receipts for the performance of services attributable to this state shall be measured by the ratio which the time spent in performing such services in this state bears to the total time spent in performing such services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations.

- (5) This rule is effective for tax years beginning before January 1, 2018. For tax years beginning after December 31, 2017, refer to ARM 42.26.245 through 42.26.250.

**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, MCA

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**History:** NEW, Eff. 1/2/77; AMD, 1979 MAR p. 1691, Eff. 12/28/79; AMD, 2001 MAR p. 2469, Eff. 12/21/01; AMD, 2017 MAR p. 2328, Eff. 1/1/18.