



ADMINISTRATIVE RULES OF MONTANA

42.2.308 NONRESIDENT CALCULATION OF MONTANA SOURCE INCOME REALIZED AND RECOGNIZED WHEN MONTANA PROPERTY IS RELINQUISHED AS PART OF A SECTION 1031 EXCHANGE

- (1) Gain realized on the transfer of Montana real or tangible personal property retains its Montana source income character and must be reported if and when the gain is recognized for federal income tax purposes.
- (2) When the Montana property is relinquished in a section 1031 exchange for like-kind property, the gain realized as shown on the taxpayer's U.S. Treasury Form 8824 is generally the amount of Montana source income. If, however, the Montana property was itself acquired in a prior like-kind exchange as replacement property for property located outside the state, Montana source income does not include the gain attributable to the out-of-state property that has been deferred from the prior exchange as shown on the taxpayer's U.S. Treasury Form 8824 for that exchange. The following examples illustrate how the Montana source income may be calculated in different situations:
 - (a) Example 1 - A nonresident relinquishes unimproved Montana land with a fair market value of \$100,000 and an adjusted tax basis of \$10,000 in exchange for Wyoming property with a fair market value of \$90,000 and \$10,000 cash, and incurs exchange expenses of \$2,000. The \$88,000 realized gain reported on the taxpayer's Form 8824 is Montana source income, of which \$8,000 is recognized and reportable in the year of sale and \$80,000 is deferred and must be reported if and when the gain is recognized for federal income tax purposes:

Form 8824 filed with respect to Montana property relinquished

15	Cash received, FMV of other property received, plus net liabilities assumed by other party, reduced (but not below zero) by any exchange expenses	8,000
16	FMV of like-kind property you received	90,000
17	Add lines 15 and 16	98,000
18	Adjusted basis of like-kind property you gave up, net amounts paid to other party, plus any exchange expenses not used on line 15	10,000
19	Realized gain (or loss) . Subtract line 18 from line 17	88,000
20	Enter the smaller of line 15 or line 19, but not less than zero	8,000
21	Ordinary income under recapture rules	0
22	Subtract line 21 from line 20. If zero or less, enter -0-. If more than zero, enter here and on Schedule D or Form 4797, unless the	8,000

	installment method applies	
23	Recognized gain. Add lines 21 and 22	8,000
24	Deferred gain (or loss) . Subtract line 23 from line 19	80,000
25	Basis of like-kind property received. Subtract line 15 from the sum of lines 18 and 23	10,000

- (b) Example 2 - Same facts as in (2) (a) except the Montana property included improvements with a fair market value of \$12,000 and \$1,000 is reportable as ordinary income under the recapture rules because of depreciation deductions taken with respect to those improvements. The result is the same as the result in (2) (a) , except that \$1,000 of the \$8,000 Montana source income recognized and reportable in the year of sale is ordinary income.

Form 8824 filed with respect to Montana property relinquished

15	Cash received, FMV of other property received, plus net liabilities assumed by other party, reduced (but not below zero) by any exchange expenses	8,000
16	FMV of like-kind property you received	90,000
17	Add lines 15 and 16	98,000
18	Adjusted basis of like-kind property you gave up, net amounts paid to other party, plus any exchange expenses not used on line 15	10,000
19	Realized gain (or loss) . Subtract line 18 from line 17	88,000
20	Enter the smaller of line 15 or line 19, but not less than zero	8,000

21	Ordinary income under recapture rules	1,000
22	Subtract line 21 from line 20. If zero or less, enter -0-. If more than zero, enter here and on Schedule D or Form 4797, unless the installment method applies	7,000
23	Recognized gain. Add lines 21 and 22	8,000
24	Deferred gain (or loss) . Subtract line 23 from line 19	80,000
25	Basis of like-kind property received. Subtract line 15 from the sum of lines 18 and 23	10,000

- (c) Example 3 - Same facts as in (2) (a) except the Montana property relinquished was replacement property exchanged for Oregon property in a prior like-kind exchange. In the prior like-kind exchange, the deferred gain or loss, as shown on the nonresident's Form 8824 was \$50,000. The nonresident's Montana source income is \$38,000, the \$88,000 gain realized shown on the Form 8824 filed with respect to relinquishment of the Montana property, less the \$50,000 deferred gain as reported on the Form 8824 filed with respect to relinquishment of the Oregon property. Of the \$38,000 Montana source income realized, the \$8,000 recognized for federal income tax purposes in the year of sale is currently reportable

and \$30,000 is deferred and must be reported if and when the gain is recognized for federal income tax purposes.

Form 8824 filed with respect to Oregon property relinquished

24	Deferred gain (or loss). Subtract line 23 from line 19	50,000
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Form 8824 filed with respect to Montana property relinquished

15	Cash received, FMV of other property received, plus net liabilities assumed by other party, reduced (but not below zero) by any exchange expenses	8,000
16	FMV of like-kind property you received	90,000
17	Add lines 15 and 16	98,000
18	Adjusted basis of like-kind property you gave up, net amounts paid to other party, plus any exchange expenses not used on line 15	10,000
19	Realized gain (or loss). Subtract line 18 from line 17	88,000
20	Enter the smaller of line 15 or line 19, but not less than zero	8,000
21	Ordinary income under recapture rules	0
22	Subtract line 21 from line 20. If zero or less, enter -0-. If more than zero, enter here and on Schedule D or Form 4797, unless the installment method applies	8,000
23	Recognized gain. Add lines 21 and 22	8,000
24	Deferred gain (or loss). Subtract line 23 from line 19	80,000
25	Basis of like-kind property received. Subtract line 15 from the sum of lines 18 and 23	10,000

(3) The nonresident must report the deferred Montana source income realized on the relinquishment of the Montana property if and when the gain is recognized for federal income tax purposes. The amount of Montana source income recognized will never exceed the gain recognized for federal income tax purposes. The following examples illustrate how the Montana source income may be calculated in different situations:

- (a) Example 1 - Same facts as in (2)(a). In a later tax year, the Wyoming replacement property is sold for \$150,000, the taxpayer reporting taxable gain of \$140,000 on their federal income tax return. The nonresident's \$80,000 of Montana source income realized on the Montana property exchange that was deferred has been recognized for federal income tax purposes and must be reported as Montana source income when the nonresident files the Montana individual income tax return required in 15-30-2104, MCA.
- (b) Example 2 - Same facts as in (3)(a), except the Wyoming replacement property is sold for \$60,000 and \$50,000 of taxable gain is reported on the taxpayer's federal income tax return. While \$80,000 of Montana source income was realized but deferred on relinquishment of the Montana property, only \$50,000 was recognized for federal income tax purposes. The nonresident must report the \$50,000 of Montana source income recognized when the nonresident files the Montana individual income tax return required in 15-30-2104, MCA.

- (c) Example 3 - Same facts as in (3)(a), except improvements with a cost of \$75,000 are erected on the Wyoming property and depreciation deductions of \$15,000 are claimed with respect to those improvements before the improved Wyoming property is sold for \$150,000. On the date of sale the fair market value of the improvements, which have an adjusted basis of \$60,000, is \$70,000, and the fair market value of the Wyoming property acquired in the exchange, which has an adjusted basis of \$10,000, is \$80,000. Of the \$80,000 of deferred Montana source income realized on relinquishment of the Montana property, \$70,000 has been recognized for federal income tax purposes and must be reported when the nonresident files the Montana individual income tax required in 15-30-2104, MCA.
- (d) Example 4 - Same facts as in (2)(c). The Wyoming replacement property is sold for \$150,000. The \$30,000 deferred Montana source income realized on relinquishment of the Montana property has been recognized for federal income tax purposes and must be reported when the nonresident files the Montana individual income tax return required in 15-30-2104, MCA.

Authorizing statute(s): 15-1-201, 15-30-2620, MCA

Implementing statute(s): 15-30-2101, 15-30-2103, 15-30-2104, 15-30-2111, 15-30-2112, 15-30-3302, 15-30-3311, 15-30-3312, MCA

History: NEW, 2006 MAR p. 921, Eff. 4/7/06; AMD, 2014 MAR p. 1527, Eff. 7/11/14.