



ADMINISTRATIVE RULES OF MONTANA

42.26.250 NUMERATOR OF RECEIPTS FACTOR - SALE OF INTANGIBLE PROPERTY

- (1) Assignment of receipts. The assignment of receipts to a state or states in the instance of a sale or exchange of intangible property depends upon the nature of the intangible property sold. For purposes of this rule, a sale or exchange of intangible property includes a license of that property where the transaction is treated for tax purposes as a sale of all substantial rights in the property and the receipts from transaction are not contingent on the productivity, use or disposition of the property. For the provisions that apply where the consideration for the transfer of rights is contingent on the productivity, use or disposition of property, see ARM 42.26.249(1).
 - (a) Contract right or government license that authorizes business activity in specific geographic area. In the case of a sale or exchange of intangible property where the property sold or exchanged is a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, the receipts from the sale are assigned to a state if and to the extent that the intangible property is used or is authorized to be used within the state. If the intangible property is used or may be used only in this state the taxpayer shall assign the sale to Montana. If the intangible property is used or is authorized to be used in Montana and one or more other states, the taxpayer shall assign the receipts from the sale to Montana to the extent that the intangible property is used in or authorized for use in Montana, through the means of a reasonable approximation.
 - (b) Sale that resembles a license; receipts are contingent on productivity, use, or disposition of the intangible property. In the case of a sale or exchange of intangible property where the receipts from the sale or exchange are contingent on the productivity, use, or disposition of the property, the receipts from the sale are assigned by applying the provisions set forth in ARM 42.26.249, pertaining to the license or lease of intangible property.
 - (c) Sale that resembles a sale of goods or services. In the case of a sale or exchange of intangible property where the substance of the transaction resembles a sale of goods or services and where the receipts from the sale or exchange do not derive from payments contingent on the productivity, use, or disposition of the property, the receipts from the sale are assigned by applying the provisions set forth in ARM 42.26.249(5), relating to licenses of intangible property that resemble sales of goods and services). Examples of these transactions include those that are analogous to the license transactions cited as examples in ARM 42.26.249(5).
 - (d) Excluded receipts. Receipts from the sale of intangible property are not included in the receipts factor in any case in which the sale does not give rise to gross receipts within the meaning of ARM 42.26.202. In addition, in any case in which the sale of intangible property does result in gross receipts within the meaning of ARM 42.26.202, those receipts are excluded from the numerator and denominator of the taxpayer's receipts factor if the

receipts are not referenced in ARM 42.26.245. The sale of intangible property that is excluded from the numerator and denominator of the taxpayer's receipts factor under this provision includes, without limitation, the sale of a partnership interest, the sale of business "goodwill," the sale of an agreement not to compete, or similar intangible value. Also, in any instance in which the state to which the receipts from a sale is to be assigned can be determined or reasonably approximated, but where the taxpayer is not taxable in such state, the receipts that would otherwise be assigned to such state shall be excluded from the numerator and denominator of the taxpayer's receipts factor.

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

History: NEW, 2017 MAR p. 2328, Eff. 1/1/18.