



ADMINISTRATIVE RULES OF MONTANA



42.4.3420 TRANSFER OF PRODUCTION TAX CREDIT

- (1) A taxpayer allowed to claim the production tax credit may elect to transfer any unused tax credit for a minimum of 85% of its value. The transferor must notify the department of the transfer and pay a transfer fee equal to two percent of the value of the tax credit no later than 30 days following the transfer of the tax credit. Time computation for deadlines falling on weekends or holidays shall conform to 1-1-307, MCA, which provides any acts required to be done may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.
- (2) The transfer notification must be made on a form provided by the department and include:
 - (a) All UCRNs associated with the tax credits transferred;
 - (b) The tax credit balances before and after the transfer for each tax credit associated with a UCRN;
 - (c) The tax identification numbers of the transferee and the transferor;
 - (d) The overall amount of tax credit transferred, and the price paid for each tax credit associated with a UCRN; and
 - (e) An acknowledgment by the transferee and the transferor that the transfer is valid, and that the transferee may claim the tax credit on a tax return only if the notification required in this rule is filed and the statutory fee is paid.
- (3) If a transferor fails to notify the department and pay the fee within the period provided in (1), or before the transferee claims the tax credit on an income tax return, whichever comes first, the transaction does not constitute a valid transfer, and the transferee may not claim the tax credit.
- (4) A production tax credit acquired by means of transfer may not be transferred by the transferee until the end of the tax year in which the tax credit was acquired.
- (5) The tax credit cannot be sold if the carryover period under ARM 42.4.3419 has expired.
- (6) A tax credit purchased in a tax year may be claimed by the transferee on a return pertaining to that tax year or the following years when permitted under ARM 42.4.3419. It may not be carried back to a preceding tax year unless the tax credit is purchased before the due date of the transferee's income or information tax return under Title 15, MCA, in which case the tax credit can be applied against the tax liability of that preceding tax year. For example, an individual may purchase a tax credit before April 15 of Year 2 and apply this tax credit against their individual income tax liability pertaining to Year 1.

- (7) The carryover period under ARM 42.4.3419 cannot be reset or suspended due to a transfer or sale of the tax credit. The transferee must determine the number of carryover years left for the tax credit as if it had the ability to claim the tax credit in the tax year beginning in the credit year for which the tax credit was issued and using the same period in which the tax credit was bought. For example, on March 1, 2024, a corporation with a fiscal year beginning June 1, buys a tax credit. The credit year of the tax credit is 2020 with the carry-over ending in 2025. The first tax year the corporation is able to use the tax credit on a return based on its current tax period is the tax year beginning June 1, 2024. The last tax year the corporation can claim the tax credit is the tax year beginning June 1, 2025.
- (8) A pass-through entity that is allowed a production tax credit for a tax year, either as a transferee or as a second-tier pass-through entity, must either claim and distribute part or all the tax credit as described in ARM 42.4.3418, or elect to transfer part or all the tax credit on behalf of its owners.
- (9) If an owner of a pass-through entity, who is a direct owner or an owner that is holding interest in the pass-through entity through the use of disregarded entities, sells their interest in the pass-through entity on or after the date the pass-through entity has legally received the right to claim a valid tax credit, the sale is deemed to include a transfer of the tax credit to the new owner of the pass-through interest. The transferor of the interest must notify the department and pay the two percent fee as provided in (1) and (2) within 30 days of the sale of the pass-through entity's interest or before the new owner of the pass-through interest claims the tax credit whichever comes first. If the department is not notified and the fee paid timely, the new owner of the pass-through entity's interest may not claim the tax credit. The requirement to sell the tax credit at a minimum of 85% of the tax credit sale value must be assessed using the capital account of the owner without regards to the effect of the tax credit being transferred.
- (10) Any capital gain that must be recognized for federal tax purposes resulting from the direct or disguised sale of the tax credit, whether the transfer was validated or not, must be included in Montana net income, including any gain resulting from the transfer occurring through the sale of a pass-through entity interest as described in (9).

Authorizing statute(s): 15-31-1012, MCA

Implementing statute(s): 15-1-201, 15-31-1012, MCA

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