



ADMINISTRATIVE RULES OF MONTANA

42.26.1103 APPORTIONMENT OF APPORTIONABLE INCOME

- (1) The property factor shall be determined in accordance with 15-31-306, MCA, the payroll factor in accordance with 15-31-308, MCA, and the receipts factor in accordance with 15-31-310, MCA, except as modified by this rule.
- (2) For purposes of this subchapter, the property factor will be determined as follows:
 - (a) In the case of rented studios, the net annual rental rate shall include only the amount of the basic or flat rental charge by the studio for the use of a stage or other permanent equipment such as sound recording equipment and the like, except that additional equipment rented from other sources or from the studio not covered in the basic or flat rental charge and used for one week or longer (even though rented on a day-to-day basis) shall be included. Lump-sum net rental payments for a period that encompasses more than a single income year shall be assigned ratably over the rental period.
 - (b) No value or cost attributable to any outer-jurisdictional, film, or radio programming property shall be included in the property factor at any time.
- (3) The property factor denominator will be determined as follows:
 - (a) All real property and tangible personal property (other than outer-jurisdictional and film or radio programming property), whether owned or rented, which is used in the business, shall be included in the denominator of the property factor.
 - (b) Audio or video cassettes, discs, or similar media containing film or radio programming and intended for sale or rental by the taxpayer for home viewing or listening, shall be included in the property factor at their original cost. To the extent that the taxpayer licenses or otherwise permits others to manufacture or distribute such cassettes, discs, or other media containing film or radio programming for home viewing or listening, the value of said cassettes, discs, or other media shall include the license, royalty, or other fees received by the taxpayer capitalized at a rate of eight times the gross receipts derived therefrom during the income year.
 - (c) Outer-jurisdictional film and radio programming property shall be excluded from the denominator of the property factor.
 - (d) With the exception of outer-jurisdictional film and radio programming property, all real and tangible personal property owned or rented by the taxpayer and used in Montana during the tax period shall be included in the numerator of the property factor as provided in 15-31-306, MCA.

- (e) Outer-jurisdictional film and radio programming property shall be excluded from the numerator of the property factor.
- (i) For example, XYZ television co. has a total value of all of its property everywhere of \$500,000,000, including a satellite valued at \$50,000,000 that was used to telecast programming into Montana and \$150,000,000 in film property of which \$1,000,000 was located in Montana the entire year. The total value of real and tangible personal property, other than film programming property, located in Montana for the entire income year was valued at \$2,000,000. The movable and mobile property described above was determined to be of a value of \$4,000,000 and was used in Montana for 100 days. The total value of property to be attributed to Montana would be determined as follows:

Value of property permanently in Montana: \$2,000,000

Value of mobile and movable property:

$(100/365 \text{ or } .2739 \times \$4,000,000)$: 1,095,600

Total value of property to be included in

Montana's property factor numerator

(outer-jurisdictional and film property

excluded): \$3,095,600

Total value of property to be used in the

denominator $(\$500,000,000 - \$200,000,000)$: \$300,000,000

Total property factor $(\$3,095,600 / \$300,000,000)$: 1.03%

- (4) For purposes of this subchapter, the payroll factor will be determined as follows:
- (a) The payroll factor denominator shall include all compensation, including residual and profit participation payments, paid to employees during the income year, including that paid to directors, actors, newscasters, and other talent in their status as employees.
- (b) The payroll factor numerator (compensation for all employees) shall be attributed to the state or states as may determined by the application of the provisions of 15-31-308, MCA.
- (5) For purposes of this subchapter, the receipts factor will be determined as follows:

- (a) The receipts factor denominator shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under ARM 42.26.263.
- (b) The numerator of the receipts factor shall include all gross receipts of the taxpayer from sources within Montana including, but not limited to, the following:
 - (i) gross receipts, including advertising revenue, from television film or radio programming in release to or by television and radio stations located in Montana;
 - (ii) gross receipts, including advertising revenue, from television film or radio programming in release to or by a television station (independent or unaffiliated) or network of stations for broadcast shall be attributed to Montana in the ratio ("audience factor") that the audience for such station (or owned and affiliated stations in the case of networks) located in Montana bears to the total audience for such station (or owned and affiliated stations in the case of networks). The audience factor for television or radio programming shall be determined by the ratio that the taxpayer's in-state viewing (listening) audience bears to its total viewing (listening) audience. Such audience factor shall be determined either by reference to the books and records of the taxpayer or by reference to published rating statistics, provided the method used by the taxpayer is consistently used from year to year for such purpose and fairly represents the taxpayer's activity in Montana;
 - (iii) gross receipts from film programming in release to or by a cable television system shall be attributed to Montana in the ratio ("audience factor") that the subscribers for such cable television system located in Montana bears to the total subscribers of such cable television system. If the number of subscribers cannot be accurately determined from the books and records maintained by the taxpayer, such audience factor shall be determined on the basis of the applicable year's subscription statistics located in published surveys, provided that the source selected is consistently used from year to year for that purpose; and
 - (iv) receipts from the sale, rental, licensing, or other disposition of audio or video cassettes, discs, or similar media intended for home viewing or listening shall be included in the receipts factor as provided in ARM 42.26.257.

Authorizing statute(s): 15-1-201, 15-31-313, 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

History: NEW, 2004 MAR p. 1035, Eff. 4/23/04; AMD, 2017 MAR p. 2328, Eff. 1/1/18.