

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 42.26.601, 42.26.602,)	PROPOSED AMENDMENT AND
42.26.606 and the repeal of ARM)	REPEAL
42.26.603, 42.26.604, and 42.26.605)	
pertaining to revisions to railroad)	
income apportionment factors)	

TO: All Concerned Persons

1. On November 28, 2022, at 10:30 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 11, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The department proposes to amend ARM 42.26.601, 42.26.602, and 42.26.606, which is necessary to represent the extent of this industry's business activity in the state more fairly. After meeting with industry representatives, the department agreed that the methodology set forth in the existing rules is outdated and in need of revision. Under the proposed changes, the department will apply only the receipts factor provided in ARM 42.26.606 and the numerator and denominator for railroads will be based on data that is verifiable and annually reported to the federal Surface Transportation Board and the Montana Public Service Commission. Moreover, this updated methodology (which is based on revenue ton miles) serves as a better reflection of how railroads conduct business activity in Montana. The department also proposes to repeal ARM 42.26.603, 42.26.604, and 42.26.605 because the apportionment factors listed in those rules will be obsolete with the proposed amendment to ARM 42.26.606. The department proposes that these changes become effective January 1, 2023.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.26.601 DEFINITIONS The following definitions apply to this subchapter:

(1) A "car-mile" is a movement of a unit of car equipment a distance of one mile. "Total revenue ton-miles occurring everywhere" means the figure a railroad includes on Schedule 755, line 110, that is associated with the Class 1 Annual Railroad Report (R-1) which it files with the federal Surface Transportation Board.

(2) A "locomotive-mile" is the movement of a locomotive (a self-propelled unit of equipment designed solely for moving other equipment) a distance of one mile under its own power. "Total revenue ton-miles occurring within this state" means the figure a railroad annually reports to the Montana Public Service Commission on Schedule-931, line 36.

(3) ~~"Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.~~

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA

IMP: 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

42.26.602 GENERAL RULES FOR RAILROADS (1) Where a railroad has income from sources both within and without this state, the amount of apportionable income from sources within this state shall be determined pursuant to Title 15, chapter 31, part 3, MCA, except as modified by regulation ARM 42.26.606.

~~(2) For definitions, rules, and examples for determining apportionable and nonapportionable income, see ARM 42.26.206.~~

~~(3) Except as modified in this regulation, the apportionment factors shall be determined as follows:~~

~~(a) the property factor in accordance with ARM 42.26.231 through 42.26.237, inclusive;~~

~~(b) the payroll factor in accordance with ARM 42.26.241 through 42.26.244, inclusive; and~~

~~(c) the receipts factor in accordance with ARM 42.26.251 through 42.26.259, inclusive.~~

(2) The requirements of this rule are effective for tax years beginning after December 31, 2022.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA

IMP: 15-1-601, 15-31-312, MCA

42.26.606 THE RECEIPTS FACTOR (1) ~~All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer which produces apportionable income, except per diem and mileage charges which are collected by the taxpayer, is included in the denominator of the receipts factor as provided in ARM 42.26.253. The numerator of the receipts factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with ARM 42.26.254 through 42.26.259. The numerator of the~~

receipts factor is the taxpayer's total revenue ton-miles occurring within this state during the year.

~~(2) The total revenue of the taxpayer in this state during the income year for the numerator of the receipts factor from hauling freight, mail, and express shall be attributable to this state as follows:~~

~~(a) all receipts from shipments which both originate and terminate within this state; and~~

~~(b) that portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio which the miles traveled by such movement or shipment in this state bears to the total miles traveled by such movement or shipment from point of origin to destination. The denominator of the receipts factor is the taxpayer's total revenue ton-miles occurring everywhere during the year.~~

~~(3) The numerator of the receipts factor shall include:~~

~~(a) all receipts from the transportation of passengers (including mail and express handled in passenger service) which both originate and terminate within this state; and~~

~~(b) that portion of the receipts from the transportation of interstate passengers (including mail and express handled in passenger service) determined by the ratio which revenue passenger miles in this state bear to the total everywhere.~~

(3) The requirements of this rule are effective for tax years beginning after December 31, 2022.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA

IMP: 15-1-601, 15-31-305, 15-31-310, 15-31-311, 15-31-312, MCA

5. The department proposes to repeal the following rules:

42.26.603 THE PROPERTY FACTOR

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA

IMP: 15-1-601, 15-31-305, 15-31-306, 15-31-307, 15-31-312, MCA

42.26.604 THE DENOMINATOR AND NUMERATOR OF THE PROPERTY FACTOR

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA

IMP: 15-1-601, 15-31-305, 15-31-306, 15-31-307, 15-31-312, MCA

42.26.605 THE PAYROLL FACTOR

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA

IMP: 15-1-601, 15-31-305, 15-31-308, 15-31-309, 15-31-312, MCA

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be

submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m. December 5, 2022.

7. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State October 25, 2022.