

TITLE 316 - NEBRASKA DEPARTMENT OF REVENUE

Chapter 15 - MUSIC LICENSING AGENCIES

15-001 MUSIC LICENSING AGENCIES

001.01 TERMS

001.01(A) Gross receipts means the total amount of consideration received, valued in money, whether received in money or otherwise.

001.01(B) Nondramatic musical work means an original work of authorship consisting of music and any accompanying lyrics not created for use in musical theater or any other work that uses the music to tell a story or as part of the story or plot.

001.01(B)(1) Examples of nondramatic musical works include, but are not limited to, songs broadcast on the radio (other than recordings of dramatic musical works), songs or background music performed as part of a movie or other television program, or live or recorded performances of musical compositions in a bar, restaurant, hotel, sports or entertainment facility, store, or other place open to the public.

001.02 Beginning January 1, 2019, a music licensing agency must register annually, on or before February 15 each year, with the Nebraska Department of Revenue ("DOR") prior to licensing or attempting to license the use of, or collecting or attempting to collect any compensation with regard to, any sale, license, or other disposition of a performing right. The music licensing agency must register by filing a Music Licensing Agency Registration Application, Form 20M.

001.02(A) Music licensing agencies must submit, with the Form 20M, an electronic copy of each variation of the performing rights agreements, providing for the payment of royalties, made available from the music licensing agency to any proprietor within this state.

001.02(B) DOR will issue to the music licensing agency a letter evidencing receipt and acceptance of the Form 20M.

001.02(C) Music licensing agencies must make electronically available to proprietors the most current available list of members and affiliates represented by the music licensing agency and the most current available list of performed works that the music licensing agency licenses. This requirement can be satisfied by furnishing a copy of the lists to DOR to post on its website.

001.03 A music licensing agency is required to file a return and pay the tax specified in Neb. Rev. Stat. § 59-1403 annually on or before March 15 for each calendar year in which the music licensing agency has gross receipts from the sale, license, or other disposition of any performing rights in this state. The Music Licensing Agency Royalty Fees Tax Return, Form 65M, must

be filed even if there have been no gross receipts from the sale, license or other disposition of performing rights.

001.03(A) Remittance payable to DOR must accompany the Form 65M and be in the form of a check, draft, money order, or other payment method as approved by the Tax Commissioner.

001.03(B) A properly signed Form 65M that is accompanied by remittance will be considered timely filed if actually received or if mailed, postage prepaid, on or before the fifteenth day of March each year for gross receipts of the preceding calendar year.

001.03(B)(1) When March 15 falls on a Saturday, Sunday, or an approved holiday, the Form 65M is considered timely filed if actually received or mailed, postage prepaid, on the next succeeding day which is not a Saturday, Sunday or an approved holiday.

001.03(B)(2) A United States Postal Service postmark is conclusive evidence of the date of mailing for the purpose of timely filing a Form 65M.

001.03(B)(3) A private postage meter date or a date stamped by a private delivery service will be considered the date of mailing if the date of the stamp is no more than four days before the date the Form 65M is received by the Department, excluding Saturdays, Sundays, or approved holidays. If the date of the stamp is more than four days before the date the Form 65M is received by the Department, the return is considered filed on the date received.

001.03(C) Failure to remit the tax due by the due date will impose interest at the specified rate in Neb. Rev. Stat. § 45-104.02 from the due date to the date payment is received.

001.04 Every registered music licensing agency is required to keep records in order to determine the amount of tax due. These records must include the normal books of account ordinarily maintained by the average prudent businessperson engaged in a similar activity, together with all documents supporting entries in the books of account. Schedules and working papers used in preparing the tax returns must be retained.

001.04(A) The record created at the time of a payment for royalties must take the form of a written contract.

001.04(B) DOR may examine the books, papers, records, and equipment of any person to ascertain or verify the accuracy of any return filed, or, if no return is filed by the person, to ascertain and determine the amount to be paid. Records must be retained for a period of not less than three years after the return is filed, unless DOR, in writing, authorizes their destruction at an earlier date.

