

TITLE 316 NEBRASKA ADMINISTRATIVE CODE, CHAPTER 15

NEBRASKA DEPARTMENT OF REVENUE

MUSIC LICENSING AGENCY TAX REGULATIONS

EXPLANATORY STATEMENT

In general, this regulation follows Neb. Rev. Stat. §§ 59-1401 – 59-1406. These statutes were amended or enacted by LB 1120 (2018) and were to change the collection responsibility for the Music Licensing Agency Tax from the Secretary of State to the Nebraska Department of Revenue (“DOR”), impose registration requirements on music licensing agencies, and impose upon the music licensing agencies certain disclosure requirements prior to entering into a contract for payment of royalties by a proprietor. Beginning January 1, 2019, music licensing agencies must register with DOR and provide a copy of each variation of performing rights agreements for the payment of royalties on or before February 15 of each year. The agencies must also make available to proprietors, the most current available list of members and affiliates represented by the agency and the most current available list of performed works licensed by the agency. This regulation allows this requirement to be met by submitting copies of the lists to DOR to make available to proprietors. A tax of three percent of the gross receipts of all sales, licenses, or other disposition of performing rights is payable to DOR on or before March 15 of each year regarding the gross receipts of the previous year. A return disclosing the gross receipts of the previous year is also due annually, on or before March 15.

Proposed Reg-15-001 follows the Music Licensing Agency Act, Neb. Rev. Stat §§ 59-1401-59-1406, almost exactly.

001.01 defines nondramatic musical work as “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.” This is not defined in statute. It also includes examples of nondramatic musical works.

001.02 follows Neb. Rev. Stat. §§ 59-1403.01 and 59-1406 almost exactly. It requires music licensing agencies to register with DOR on or before February 15 of each year, 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.

001.02A The proposed regulation follows the statutory requirements that the agencies submit, with the registration form, 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 in Nebraska.

001.02B The proposed regulation also establishes that a letter from DOR will serve as confirmation of receipt of the music licensing agency’s registration.

001.02C The proposed regulation also follows the statutory requirements that the music licensing agencies make 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 available to proprietors electronically. The proposed regulations allow this requirement to be satisfied when the agency furnishes a copy of the lists to DOR to post on its website.

001.03 follows Neb. Rev. Stat. § 59-1403 to require music licensing agencies to file a return and pay the tax specified in Neb. Rev. Stat. §59-1403. The tax is payable on or before March 15 of each year regarding the gross receipts of the previous year. A return is required whether or not the agency has gross receipts from the sale, license, or other disposition of any performing rights in Nebraska.

001.03A requires that the tax remittance payable to DOR must accompany the tax return.

001.03B sets out the rules for when a properly signed tax return is considered timely filed.

001.03C imposes the statutory rate of interest for failure to timely remit the tax in Neb. Rev. Stat. §45-104.02.

001.04 requires music licensing agencies to keep adequate records to determine the amount of tax due. It also reiterates the Tax Commissioners general authority to examine books, papers, records and equipment for the purpose of verifying the accuracy of a return or determine the amount of tax to be paid pursuant to Neb. Rev. Stat. §§ 77-375 and 77-376.