

March 24, 2020

Signature Requirements

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Issue

What will the Nebraska Department of Revenue (DOR) accept as a valid taxpayer or authorized representative (taxpayer) signature on various forms, or other documents?

Conclusion

Unless fraud is indicated, for most forms and filings, for which there is no separate DOR filing system, DOR will accept as a taxpayer signature, any mark, handwritten or digitally rendered that is, applied with actual or apparent intention to authenticate the filing as being approved and made by the signer. However, a [Power of Attorney \(Form 33\)](#) or otherwise, the [Nebraska Extension of Statute of Limitations Agreements Forms 872N](#) or [872N-ME](#), and [Nebraska Tax Return Copy Request \(Form 23\)](#) must have a handwritten taxpayer signature. Such signatures will be accepted on forms and filings properly submitted to DOR whether the documents are mailed, faxed, or transmitted to DOR by secure electronic means. DOR will not require the original document if transmitted by fax or electronic means.

Analysis

With regard to taxes collected by the Tax Commissioner, except property taxes, unless specific refund provisions have not been enacted, [Neb. Rev. Stat. § 77-1779\(1\)-\(2\) \(Reissue 2018\)](#) indicates that a claim for a refund must be in writing and that the Tax Commissioner may prescribe the necessary forms for the filing of a claim for refund. More specifically, [Neb. Rev. Stat. § 77-2708\(1\)\(b\)\(i\) \(Reissue 2018\)](#) indicates that a sales and use tax return “shall be filed with the Tax Commissioner in such form and content as the Tax Commissioner may prescribe and containing such information as the Tax Commissioner deems necessary for the proper administration of the Nebraska Revenue Act of 1967. [Nebraska Revised Statute § 77-2708\(1\)\(b\)\(iii\) \(Reissue 2018\)](#) indicates that the Tax Commissioner may require that returns be signed by the person required to file the return or by his or her duly authorized agent, but need not be verified by oath. [Neb. Rev. Stat. § 77-2771\(1\) \(Reissue 2018\)](#) indicates that returns, declarations, statements or other documents filed pursuant to income tax provisions “shall be signed in accordance with regulations or instructions prescribed by the Tax Commissioner.” See also [2019 Nebraska Individual Income Tax Booklet, Pg.13](#). The section continues by indicating that the fact that an individual’s name is signed on these documents is prima facie evidence that the documents were actually signed by the individual and that the individual was authorized to sign the documents. Various other statutes regarding tax programs administered by the Tax Commissioner indicate that an application for a refund of taxes paid as part of those programs may be filed “in such manner and in such form as may be prescribed by the Tax Commissioner.”

There is no statute that expressly indicates how a signature must be executed. The statutory authority leaves the issue to the regulations and instructions of the Tax Commissioner.

Like the statutes, multiple regulations adopted by DOR require certain documents to be signed. While these DOR regulations indicate that certain returns should be properly signed, no clear guidance is given about the nature or execution of the signature itself. Relevant legal authorities indicate that a signature is a mark intending to authenticate that the document was being presented by the person indicated by the mark. See Restatement (Second) of Contracts § 134 (1979) (“The signature to a memorandum may be any symbol made or adopted with an intention, actual or apparent, to authenticate the writing as that of the signer”), SIGNATURE, Black’s Law Dictionary (11th ed. 2019) (“Any name, mark, or writing used with the intention of authenticating a document. — Also termed legal signature”).

DOR will accept any mark, handwritten or electronic that is applied by the taxpayer to be bound by the document with the apparent intention to authenticate the filing as being approved and made by the signer when affixed, as a sufficient “signing.”

The following are exceptions to this rule:

1. Power of Attorney, Form 33;
2. Statute of Limitations Extensions, Form 872N or 872N-MF; and
3. Nebraska Tax Return Copy Requests, Form 23.

Power of Attorney designations allow a taxpayer to authorize third-parties to receive otherwise confidential information from DOR. Given the severe civil and criminal penalties associated with unauthorized disclosure of confidential tax information, DOR requires a handwritten taxpayer signature to authenticate the document. This practice is in line with the practice of the IRS regarding its [Form 2848, Power of Attorney and Declaration of Representative](#). The Internal Revenue Manual (“IRM”) Subsection [4.11.55.2.7.1](#) indicates that on the Form 2848 “[f]axed signatures are permissible; however, electronically signed, printed or stamped signatures are not acceptable” with the exception that “[e]lectronic signatures by representatives filed through e-Services are acceptable.” Further clarification of the exception is found in Subsection [4.11.55.2.7.2](#) which explains that “[t]he representative’s signature cannot be electronic or stamped, unless submitted via e-Services.”

Nebraska Tax Return Copy Requests (Form 23) similarly authorize disclosure of confidential taxpayer information. Therefore, DOR also requires a handwritten taxpayer signature to authenticate this document.

Extension of Statute of Limitations Agreements create an agreement between DOR and a taxpayer for the extension of time for issuing a notice of deficiency or filing of a claim for overpayment beyond the statutorily authorized periods. Given the nature of the documents and the consequences stemming from its execution, DOR requires a handwritten taxpayer signature to authenticate this document.

DOR does not require the taxpayer or representative to provide the original signed documents to authenticate the signature. However, like similar filings with the IRS, the Power of Attorney and Extension of Statute of Limitations Agreements must bear an actual signature to authenticate the consent of those to be bound. The documents, once signed, may be mailed, faxed, or electronically transmitted to DOR using its secure file transfer system or emailed using DOR’s initiated secure email system to ensure the proper safeguarding of confidential taxpayer information.

APPROVED:



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Tax Commissioner
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