

07-0689  
Motor Vehicle Dealer Violation  
Signed 07/23/2007

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BEFORE THE UTAH STATE TAX COMMISSION

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| <p>PETITIONER,<br/><br/>    Petitioner,<br/><br/>v.<br/><br/>MOTOR VEHICLE ENFORCEMENT<br/>DIVISION OF THE UTAH STATE<br/>TAX COMMISSION,<br/><br/>    Respondent.</p> | <p><b>ORDER</b></p> <p>Appeal No.   07-0689</p> <p>Tax Type:    Motor Vehicle<br/>              Dealer Violation</p> <p>Judge:       Chapman</p> |
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**Presiding:**  
    Kerry R. Chapman, Administrative Law Judge

**Appearances:**  
    For Petitioner:    PETITIONER REPRESENTATIVE, President and CEO  
    For Respondent:   RESPONDENT REPRESENTATIVE 1, from MVED  
                          RESPONDENT REPRESENTATIVE 2, from MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5, on July 12, 2007.

On May 1, 2007, Motor Vehicle Enforcement Division (“MVED”) imposed a \$\$\$\$ penalty on the Petitioner for displaying for sale a vehicle from an unlicensed location. The Petitioner has appealed the Division’s action.

APPLICABLE LAW

Utah Code Ann. §41-3-105(4)(c)(iv) provides that an application for a motor vehicle dealer’s license must include “a complete description of the principal place of business, including . . . any other places of business operated and maintained by the applicant in conjunction with the principal place of business[.]”

UCA §41-3-201(4) provides that “[a] supplemental license shall be secured by a dealer . . . for each additional place of business maintained by him.”

UCA §41-3-210 prohibits a motor vehicle dealer from conducting certain acts, as follows in pertinent part:

(1) The holder of any license issued under this chapter may not:

....

n) sell, display for sale, or offer for sale motor vehicles at any location other than the principal place of business or additional places of business licensed under this chapter; this provision is construed to prevent dealers, salespersons, or any other representative of a dealership from selling, displaying, or offering motor vehicles for sale from their homes or other unlicensed locations;

....

A penalty is imposed for a civil violation of the Utah Motor Vehicle Business Regulation Act in accordance with UCA §41-3-702, as follows in pertinent part:

(1) The following are civil violations under this chapter and are in addition to criminal violations under this chapter:

....

(c) Level III: . . . .

(iv) selling from an unlicensed location; . . . .

(2) (a) The schedule of civil penalties for violations of Subsection (1) is:

....

(i) Level III: \$250 for the first offense, \$1,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(b) When determining under this section if an offense is a second or subsequent offense, only prior offenses committed within the 12 months prior to the commission of the current offense may be considered.

....

#### DISCUSSION

On May 1, 2007, MVED imposed the \$\$\$\$ penalty after determining that the Petitioner was displaying for sale a 1991 Oldsmobile Cutlass at ADDRESS in CITY, Utah, which is not the dealership’s principal place of business or an additional place of business. MVED also determined that the \$\$\$\$ penalty

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was appropriate under Section 41-3-702 because the offense of selling from an unlicensed location is a Level III violation and because it is the Petitioner's first offense.

MVED investigated the matter after ( X ) filed a complaint with MVED concerning the contract she signed with the Petitioner to purchase the 1991 Cutlass. In the complaint, ( X ) indicated that the Petitioner had her go to the unlicensed location to look at the vehicle after she had called the dealership on March 14<sup>th</sup>, 2007, to inquire about vehicles for sell.

PETITIONER REPRESENTATIVE does not contend that the dealership is licensed to sell vehicles at the location at issue. PETITIONER REPRESENTATIVE proffers, however, that the location at issue is the "overflow" parking lot for COMPANY A, a repair shop where he had had the 1991 Cutlass towed for repairs around March 1<sup>st</sup>, 2007. PETITIONER REPRESENTATIVE also states that the repairs were made and that the 1991 Cutlass passed its state inspection on March 14<sup>th</sup>, 2007, but he has not had an opportunity to remove the vehicle to the dealership's principal place of business because he has had health issues and has not been able to get anyone to move the vehicle for him.

RESPONDENT REPRESENTATIVE 2, an investigator with MVED, took photographs of the 1991 Cutlass at the unlicensed location on May 25, 2007. The vehicle has "for sale" signs on its side window that faces the street and on its windshield that inform interested buyers to contact the dealership and provide a number to call. Large markings on the windshield also show that the vehicle is for sale and describe the sales terms, which are shown to be \$\$\$\$ down and \$\$\$\$ a month. RESPONDENT REPRESENTATIVE2 indicates that the parking lot where the vehicle is parked is not fenced and has no signage to indicate that it is a repair shop's parking lot. She states that the parking lot is closest in proximity to the offices of the COMPANY B.

The Commission finds that the Petitioner has displayed and is continuing to display the 1991 Cutlass for sale at the parking lot located at ADDRESS in CITY, Utah. For more than four months, the vehicle

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has been located in an unmarked, unfenced parking lot in the parking space closest to the road, where signage on the vehicle can be seen by passersby and indicates that the vehicle may be purchased from the Petitioner. There is no dispute that the Petitioner is not licensed to sell vehicles from this location. Given these circumstances, the Commission finds that the Petitioner has displayed for sale a motor vehicle at a location for which it is not licensed to do so. The Commission also finds that such an action qualifies as “selling from an unlicensed location” and, as such, is a Level III violation pursuant to Section 41-3-702. As this is the Petitioner’s first offense, the Commission finds that the \$\$\$\$ penalty imposed by the Division is appropriate.

DECISION AND ORDER

Based on the foregoing, the Commission sustains MVED’s imposition of the \$\$\$\$ penalty at issue. Accordingly, the Petitioner’s appeal is denied. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission  
Appeals Division  
210 North 1950 West  
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Kerry Chapman  
Administrative Law Judge

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BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

*KRC/07-0689.int.*