

09-1079
TAX TYPE: REFUND REQUEST
TAX YEAR: 2009
DATE SIGNED: 6-8-2009
COMMISSIONERS: B. JOHNSON, M. JOHNSON, D. DIXON
EXCUSED: P. HENDRICKSON

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 09-1079</p> <p>Account No. N/A</p> <p>Tax Type: Refund Request</p> <p>Tax Year: 2009</p> <p>Judge: Marshall</p>
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Presiding:

Jan Marshall, Administrative Law Judge

Appearing:

For Petitioner: PETITIONER, *Pro Se*
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney
General
RESPONDENT, Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5 on April 29, 2009. The Taxpayer requested a partial refund of the registration fees in the amount of \$\$\$\$ he incurred on the registration of a dump truck.

APPLICABLE LAW

Utah Code Ann. §41-1a-201 prohibits the operation of a motor vehicle in the State of Utah unless it has first been registered, as set forth below:

Unless exempted, a person may not operate and an owner may not give another person permission to operate a motor vehicle, combination of vehicles, trailer, semitrailer, vintage vehicle, off-highway vehicle, or vessel in this state unless it has been registered in accordance with this chapter, Title 41, Chapter 22, Off-Highway Vehicles, or Title 73, Chapter 18, State Boating Act.

Utah Code Ann. §41-1a-201 (2008).

Registration of a vehicle is for a period of 12 months, as set forth in Utah Code Ann. §41-1a-215, below in pertinent part:

- (1) (a) Except as provided under Subsection (2) and (3), every vehicle registration, every registration card, and every registration plate issued under this chapter for the first registration of the vehicle in this state, continues in effect for a period of 12 months beginning with the first day of the calendar month of registration and does not expire until the last day of the same month in the following year.

Utah Code Ann. §41-1a-215 (2008).

Temporary permits for the operation of a motor vehicle may be issued in accordance with Utah Code Ann. §41-1a-211, as follows:

- (1) (a) The division may grant a temporary permit to operate a vehicle for which:
 - (i) application for registration has been made, or in the case of a newly purchased vehicle, will be made;
 - (ii) evidence of ownership is provided; and
 - (iii) the proper fees have been paid.
- (b) The temporary permit allows the vehicle to be operated pending complete registration by displaying:
 - (i) the temporary permit; or
 - (ii) other evidence of the application under rules made by the commission.
- (2) If a vehicle is operated on a temporary permit issued under this section or Section 41-3-302, that vehicle is subject to all other statutes, rules, and regulations intended to control the use and operation of vehicles on the highways.

Utah Code Ann. §41-1a-211 (2008).

An application for a refund may be made to the Division under Utah Code Ann. §41-1a-1203, set forth below:

If the division through error collects any fee not required to be paid, the fee shall be refunded to the person paying the fee upon written application for a refund made within six months after date of the payment.

Utah Code Ann. §41-1a-1203 (2008).

DISCUSSION

Taxpayer has requested a refund of \$\$\$\$\$ for a portion of the registration fees on a dump truck. Taxpayer characterized it as a “prepayment” made prior to finalizing the annual registration. He testified that he obtained a temporary permit in order to get the emissions testing done on the vehicle so that he could register it. He stated that the weight class of the vehicle was too high, and that the amounts paid to obtain the temporary permit was based on the wrong weight. It is the Taxpayer’s position that the law that prohibits registration refunds does not apply because he is asking for a refund of the prepayment to get a temporary permit. The Taxpayer believes the Division is arguing that there are different “layers” of registration, but that law enforcement would not consider the vehicle registered with a temporary permit.

The Division’s representative stated that the once the annual registration process has been started, it cannot be changed until the next time it is due. The Division issued three temporary permits to the Taxpayer, and the Taxpayer operated the vehicle using those permits for 63 days. It is the Division’s position that a change in vehicle type or weight does not entitle the Taxpayer to a refund. The Division’s representative argued the refund should be denied under Utah Code Ann. §41-1a-215 because the registration period for a vehicle is 12 months.

Taxpayer was required under Utah Code Ann. §41-1a-201 to register the vehicle prior to operating it within the State of Utah. It is undisputed that the Taxpayer operated the vehicle in the State of Utah, under the temporary permits. Under §41-1a-211, if a vehicle is operated under a temporary permit, the vehicle is “subject to all other statutes, rules, and regulations intended to control the use and operation of vehicles on the highway.” The Commission finds that this includes the statutes and rules regarding registration and payment or refunds of fees.

Utah Code Ann. §41-1a-1203 allows for a fee to be refunded if the Division erroneously collects a fee that was not required to be paid, and the request is made within six months of payment. The Taxpayer argued that he was overcharged \$\$\$\$\$ due to the incorrect weight classification of the dump truck. The Division did not dispute that the Taxpayer overpaid by \$\$\$\$\$, or that the weight classification was incorrect.¹ Under the circumstances, the Commission finds that the Division erroneously collected a fee that was not required to be paid. In addition, the Commission notes that the Taxpayer made the refund request within six months from the date of payment, as the registration was completed on October 16, 2008 and the refund request was made December 31, 2008.

¹ We understand that the \$\$\$\$\$ overpayment is the difference between the fee that should have been paid (if the truck had been correctly classified) and the fee that was actually paid. The record does not disclose either the correct amount that should have been paid or the amount that was actually paid.

DECISION AND ORDER

Based on the foregoing, the Commission grants the Taxpayer's request for a partial refund of registration fees in the amount of \$\$\$\$\$. 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 _____, 2009.

Jan Marshall
Administrative Law Judge

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 _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

NOTICE: Failure to pay the balance due as a result of this order within thirty days from the date hereon may result in an additional penalty.