

11-1086
REFUND REQUEST
TAX YEAR: 2011
SIGNED: 11-18-2011
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON
EXUCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 11-1086 Tax Type: DUI Administrative Fee Tax Year: 2011 Judge: Phan
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
RESPONDENT REP. 2, Assistant Director, Division of Motor Vehicles
RESPONDENT REP. 3, Accounting Supervisor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on August 29, 2011. Petitioner is requesting a refund of the administrative impound fee that he had paid to obtain an impound release on behalf of his brother when his brother's vehicle was impounded following an arrest of the driver for driving under the influence.

APPLICABLE LAW

A refund of the DUI administrative fee shall be granted under Utah Code §41-6a-1406(6)(c), as follows:

The administrative impound fee assessed under Subsection (6)(a)(iv) shall be waived or refunded by the State Tax Commission if the registered owner, lien holder, or owner's agent presents written evidence to the State Tax Commission that:

- (i) the Driver License Division determined that the arrested person's driver license should not be suspended or revoked under Section 53-3-223 or 41-6a-521 as

- shown by a letter or other report from the Driver License Division presented within 30 days of the final notification from the Driver License Division; or
- (ii) the vehicle was stolen at the time of the impoundment as shown by a copy of the stolen vehicle report presented within 30 days of the impoundment.

Utah Code Ann. §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

DISCUSSION

Petitioner requests the refund on the basis that the vehicle was stolen at the time of the impound. He explained that the vehicle belonged to his brother, PETITIONER’S SIBLING. The vehicle was not being used, it was not insured and it was locked and tarped down at his brother’s business inside a gated and locked area. PETITIONER had kept the keys to the vehicle somewhere at the business which provided equipment rentals. The vehicle was kept with other (EQUIPMENT) inside the locked gate. PETITIONER’S SIBLING had left Utah in September 2010 to work in STATE 1 for a period of time.

EMPLOYEE occasionally worked for PETITIONER and PETITIONER had left keys for the gate to the locked yard with EMPLOYEE so that he could water plants on the property. Petitioner represented that he never gave EMPLOYEE keys to the vehicle, they were just to the gate. While PETITIONER was in STATE 1 he received a telephone call from a customer who was returning (EQUIPMENT) to the yard and had noticed that the tarped car was missing. After learning of this, PETITIONER made a telephone call to the police to report a stolen vehicle. The CITY 1 Police Department Crime Report, which was submitted in this matter shows the first call to the police was made on October 20, 2010. The Crime Report indicates that the Officer first asked PETITIONER if “he had any idea who might have taken his vehicle and he said he thought it was EMPLOYEE.” Then, according to the report, the Police Officer told PETITIONER that the vehicle had been impounded on October 4, 2010, upon the arrest of the driver, EMPLOYEE, for a DUI. However, apparently on the same day as he had filed the report, PETITIONER called the Police Officer back and stated that he no longer wanted to pursue charges. The report states, “he no longer wanted to pursue charges, I made sure PETITIONER’S SIBLING did not want to pursue charges, PETITIONER’S SIBLING said he did not.” The disposition listed on the report was “prosecution declined.”

Once PETITIONER learned that the vehicle was impounded he asked Petitioner to obtain the release and get the vehicle out of impound because he was still in STATE 1 and charges increased every

day it was left in the impound lot. Petitioner was the one who paid the impound fee to obtain the release for the vehicle.

Petitioner provided at the hearing a copy of a "CITY 1 City Police Department Witness Statement, dated August 26, 2011, which indicated that it was an addendum to the earlier Crime Report. This statement, which was signed by PETITIONER, stated, "After filing a valid stolen vehicle report, PETITIONER was informed by CITY 1 police of the suspect's identity. Since the suspect was known to PETITIONER, he asked the police to postpone its pursuit of criminal charges while he pursued a reimbursement of vehicle recovery expense from the suspect."

At the hearing, the Division explained that it denied the refund of the impound fee because the stolen vehicle report was withdrawn as the owner chose not to press charges. It was the Division's contention that even though the theft was initially reported, because he did not pursue charges against the driver the report did not support that it was a stolen vehicle under Utah Code §41-6a-1406(6)(c)(ii). The Division indicated that if the Commission issued refunds in situations where a report is filed but then charges are not pursued it might encourage more people to file theft reports with the police to obtain the refund, when they had no intent to pursue the charges.

Utah Code §41-6a-1406(6)(c)(ii) provides that the Division issue a refund of the \$\$\$\$ administrative impound fee if "the vehicle was stolen at the time of the impoundment as shown by a copy of the stolen vehicle report." The issue in this matter is really whether the Crime Report shows that the vehicle was stolen at the time of the impound. The vehicle was actually impounded on October 4, 2010 and not reported missing until October 20, 2010. However, the Crime Report does show that PETITIONER had originally contacted the police to report a vehicle theft and had stated that the vehicle was stolen from his place of business. It also indicated in the report that PETITIONER suspected that it was EMPLOYEE who had taken the vehicle and regardless reported it as a theft. Upon review of the Crime Report, it does on its face support that the vehicle was stolen at the time of the impoundment. There is nothing in Utah Code §41-6a-1406(6)(c)(ii) that requires the victim to pursue charges. The refund should be issued to Petitioner.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Appeal No. 11-1086

Based on the foregoing, the Commission grants Taxpayer's request for a refund of the \$\$\$\$ administrative impound fee. 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 _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner