

12-1028
MOTOR VEHICLE
SIGNED: 06-01-2012
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN
EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

MOTOR VEHICLE ENFORCEMENT
DIVISION OF THE UTAH STATE
TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 12-1028

Tax Type: Level I Violation

Judge: Phan

Presiding:

Jane Phan, Administrative Judge

Appearances:

For Petitioner: PETITIONER REP., Owner, PETITIONER

For Respondent: RESPONDENT REP., Assistant Director, Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing in accordance with Utah Code §59-1-502.5, on May 22, 2012. Petitioner (“Dealership”) is appealing a \$25 penalty imposed by Respondent (Division) for a violation under Utah Code §41-3-302 and Utah Admin. Rule R877-23V-5.

APPLICABLE LAW

Utah Code §41-3-702 provides civil penalties for violations:

(1) The following are civil violations under this chapter and are in addition to criminal violations under this chapter: (a) Level I: . . . (iv) issuing a temporary permit improperly . . .

(2) (a) The schedule of civil penalties for violations of Subsection (1) is: (i) Level I: \$25 for the first offense, \$100 for the second offense, and \$250 for the third and subsequent offenses.

Administrative Rule R877-23V-5(9) provides for the process of obtaining an extension for

temporary permits:

In exceptional circumstances a dealer as agent for the division may issue an additional temporary permit for a vehicle by following the procedures outlined below:

(a) The dealer must contact the division and request an extension permit for a particular vehicle. If the request is denied, no extension permit will be issued.

(b) If the extension permit is approved, the division shall issue the dealer an approval number. This number must be recorded by the dealer in its temporary permit record and on the permit and stub in the space provided for the license number. The space provided on the permit and stub for the dealer name must be completed with the words "State Tax Commission" and the dealer's license number. The remainder of the permit and stub will be completed as usual.

(c) The dealer must return the permit stub to the division within 45 days from the date it is issued.

(d) A dealer may not issue an extension permit if it is determined that he dealer has been granted extensions for more than 2% of the permits issued to the dealership during the past here months. This percentage is calculated by dividing the number of extensions granted the dealer during the past three months by the permits issued by the dealer during the past three months.

DISCUSSION

The Division imposed the \$25 penalty against the Dealership for the improper issuance of a temporary permit because of an extension violation and applied the penalty under Utah Code §41-3-702. This is a Level I offense under that section and was the first offense by the Dealership in a twelve month period. Utah Admin. Rule R877-23V-5(9) sets out the process for obtaining an extension permit.

The owner of the Dealership explained that in her business it is difficult to obtain title for a vehicle during the 45 day period allowed for a temporary permit as there are several entities the payment has to transfer through before the title is released. She stated that in this case a temporary permit would have expired that day and an employee of her dealership issued a new permit without calling the Division for an extension first. After she realized the employee's mistake she tried to correct it by coming into the Tax Commission right away to obtain an extension. At that time she was told that she could not get an extension number on the new permit. She explained that she has now trained her staff and handles the temporary permits herself. This is a new business and since it was the first mistake she asked that the \$25 fine be waived.

The representative for the Division explained that they had treated this as a Level I offense under Utah Code Code §41-3-702 as issuing a permit improperly, and because it was the first offense for the Dealership, the penalty was only \$25. For any additional offense the amount of the penalty increased. He also indicated that the Division could have looked at this as an expired permit violation and assessed a penalty of \$43. This would have been under Utah Code §41-3-302(1)(d). Additionally, he noted that dealerships needed to comply with the temporary permit provisions because if it were out of compliance for a period of 45 days it would

become a criminal violation.

Based on the information presented at the hearing, this is a new business and a first offense for the business. The business owner did try to correct the error made by an employee, but it could not be corrected at that point in the sequence of events. However, a first offense is not basis for abatement of the penalty and the owner is responsible for the actions of the employees. The penalties are structured in such a manner that the amount of the first time penalty is significantly lower than a second or third violation. From this it appears that the law takes into account that a first time offender might not have understood his or her action to be a violation and to encourage compliance with the statutory provisions. In this case assessing the penalty appears to have gotten the attention of the business owner who states that she has now trained employees and made changes so that this error will not occur in the future. The \$25 penalty for first Level I violation should be upheld.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the forgoing, the Dealership's appeal in this matter 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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner