

01-1319
TAX TYPE: MISCELLANEOUS TAXES
TAX YEAR: 2001

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
)	ORDER	
Petitioner,)		
)	Appeal No.	01-1319
v.)		
)		
MOTOR VEHICLE DIVISION OF)	Tax Type:	Miscellaneous Taxes
THE UTAH STATE TAX)		
COMMISSION,)	Judge:	Davis
)		
Respondent.)		

Presiding:

G. Blaine Davis, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER-1
PETITIONER-2

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT, from the Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on January 15, 2002.

Petitioner applied for a personalized Utah license plate to contain the letters "XXXXXX", "XXXXXX", or "XXXXXX". Respondent denied the use of any of those combinations of numbers and letters on the license plate because of the provisions of Utah Code Ann. §41-1a-411, and Utah Admin. Code Rule R873-22M-34.

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Petitioner desired to place the license plate on a MAKE AND MODLE pick-up truck. The engine in the truck is a 5.9L HO Cummins Turbo Diesel. The use of the term HO is for High Output and is well recognized in the industry and among persons familiar with Cummins Diesel engines and pick-up trucks.

Petitioner introduced several documents to establish that the use of "HO" with "Cummins Turbo Diesel" is common. Petitioner intended "XXXXXX" to be for "love our High Output", "XXXXXX" was intended to title his HO truck, and "XXXXXX" was for "WORDS REMOVED".

PARAGRAPH REMOVED

Based upon the above, Respondent found "XXXXXX", "XXXXXX", and "XXXXXX" to be vulgar, derogatory, or obscene.

APPLICABLE LAW

Utah law provides for personalized license plates with the limitation set out in Utah Code Ann. §41-1a-411:

- (1) An applicant for personalized license plates or renewal of the plates shall file an application for the plates in the form and by the date the division requires, indicating the combination of letters, numbers, or both requested as a registration number.
- (2) The division may refuse to issue any combination of letters, numbers, or both that may carry connotations offensive to good taste and decency or that would be misleading.

The Tax Commission has adopted a rule to determine when a combination of letters or numbers is offensive or misleading. Utah Admin. Rule R873-22M-34 states in pertinent part:

- A. The personalized plate is a non-public forum . . .
- B. Pursuant to Section 41-1a-411(2), the division may not issue personalized license plates in the following formats:
1. Combination of letters, words, or numbers with any connotation that is vulgar, derogatory, profane, or obscene.
 2. Combinations of letters, words, or numbers that connote breasts, genitalia, pubic area, buttocks, or relate to sexual and eliminatory functions. Additionally, "69" formats are prohibited unless used in a combination with the vehicle make, for example, "69 CHEV".
- . . .
4. Combinations of letters, words, or numbers that express contempt, ridicule, or superiority of a race, religious, deity, ethnic heritage, gender, or political affiliation.
- C. If the division denies a requested combination, the applicant may request a review of the denial, in writing, within 15 days from the date of notification. The request must be directed to the Director of the Motor Vehicle Division and should include a detailed statement of the reasons why the applicant believes the requested license plates are not offensive or misleading.
- D. The director shall review the format for connotations that may reasonably be detected through linguistic, numerical, or phonetic modes of communication. The review may include:
1. translation from foreign languages;
 2. an upside down or reverse reading of the requested format;
 3. the use of references such as dictionaries or glossaries of slang, foreign language, or drug terms.
- E. The director shall consider the applicant's declared definition of the format, if provided.
- F. If the requested format is rejected by the director, the division shall notify the applicant in writing of the right to appeal the decision through the appeals process outlined in Tax Commission rule R861-1-4A.
- G. If, after issuance of a personalized license plate, the commission becomes aware through written complaint that the format may be prohibited under B., the division shall again review the format.
- H. If the division determines pursuant to F. that the issued format is prohibited, the holder of the plates shall be notified in writing and directed to surrender the plates. This determination is subject to the review and appeal procedures outlined in B. through E.
- I. A holder required to surrender license plates shall be issued a refund for the amount of the personalized license plate application fee and for the prorated amount of the personalized license plate annual renewal fee, or shall be allowed to apply for replacement personalized license plates at no

additional cost.

J. If the holder of plates found to be prohibited fails to voluntarily surrender the plates within 30 days after the mailing of the notice of the division's final decision that the format is prohibited, the division shall cancel the personalized license plates and suspend the vehicle registration.

The only reasonable standard that may be applied is that of the objective, reasonable person. In other words, under rule 873-22M-34, the Commission must determine, in light of all the evidence presented, whether an objective, reasonable person would conclude that the term [on the license plate] contains any vulgar, derogatory, profane, or obscene connotation, or expresses contempt, ridicule, or superiority of race or ethnic heritage. Brummett v. Motor Vehicle Div. of Utah State Tax Comm'n., 361 Utah Adv Rep. 56 (1999).

DISCUSSION

In looking at the primary issue in this case, the Commission must determine whether the content of the license plate has "any connotation" that "an objective, reasonable person would conclude . . . contains any vulgar, derogatory, profane, or obscene connotation" Utah Administrative Rule R873-22M-34. (Emphasis added.)

The Utah Supreme Court has articulated a test to determine whether plates should be revoked pursuant to the Tax Commission's rule. The case before the Supreme Court was an appeal of a Tax Commission order in which the Tax Commission failed to revoke license plates with the combinations of "REDSKIN" and "REDSKINS". In Brummett v. Motor Vehicle Div. of Utah State Tax Comm'n., 361 Utah Adv Rep. 56 (1999), the Court stated:

"The only reasonable standard that may be applied is that of the objective, reasonable person. In other words, under rule 873-22M-34, the Commission must determine, in light of all the evidence presented, whether an objective,

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reasonable person would conclude that the term [on the license plate] contains any vulgar, derogatory, profane, or obscene connotation, or expresses contempt, ridicule, or superiority of race or ethnic heritage."

In addition, the Third Judicial District Court of Salt Lake County, in the case of Traci & Kenneth Dahle, Civil No. 000905078, sustained the Tax Commission's revocation of license plates which said "CPTNIP" and "MRSNIP", and further sustained the refusal to issue an additional license plate bearing "NIPBUS". The basis for the court's ruling was:

"The Court finds the word nip has among its meanings a derogatory reference to Japanese persons or persons of Japanese descent as well as a reference to the consumption of alcohol."

Judge Medley also said:

"As the Utah Supreme Court has instructed in McBride v. Motor Vehicle Div. of Utah State Tax Comm'n., 977 P.2d 467 (1999), the Division must determine whether a reasonable, objective person would conclude that the contents of the license plates at issue have "any connotation" that is derogatory. From the evidence presented, although it may not be the most common connotation, there is clearly a derogatory connotation for the word nip. From the evidence presented, an objective, reasonable person could conclude that the term nip contains a derogatory connotation, or expresses contempt or ridicule of a race or ethnic heritage.

"In fact, there are two definitions of the word nip that violate the statute and rule and give the Division grounds to revoke the plates at issue. First, as described above the word nip can have a derogatory connotation concerning Japanese persons prohibited under Rule R873-22M-34 in subsection (B)(4). Second, the word nip refers to the use of or consumption of alcohol which is also prohibited under Rule 873-22M-34 in subsection (B)(3)."

In looking at the license plate at issue in this proceeding, many persons may not associate the term "HO" with anything vulgar, derogatory, profane, or obscene. It is almost certain that Petitioner does not attribute any such connotation to the term. However,

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from the evidence presented, a reasonable person could conclude that the term has either a vulgar, derogatory, profane, or obscene connotation. In light of the Utah Supreme Court's decision in Brummett, the proposed content of the license plate is in violation of Utah Administrative Rule R873-22M-34.

DECISION AND ORDER

Based on the foregoing the Commission sustains the decision of Respondent in refusing to issue a license plate with "XXXXXX", "XXXXXX", or "XXXXXX" because HO is a combination of letters that may be deemed by a reasonable person to be vulgar, derogatory, profane or obscene. Accordingly, the Petitioner's request for agency action, and Petition for Redetermination are hereby denied. The denial of the license plate is sustained.

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

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

DATED this _____ day of _____, 2001.

G. Blaine Davis
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 _____, 2001.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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