

04-0752
Motor Vehicle
Signed 11/01/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioner,)	AND FINAL DECISION
)	
v.)	Appeal No. 04-0752
)	Account No. #####
MOTOR VEHICLE ENFORCEMENT)	
DIVISION, UTAH STATE TAX)	Tax Type: Misc.
COMMISSION,)	
)	Judge: Phan
Respondent.)	

Presiding:

Palmer DePualis, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Owner

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, Director, Motor Vehicle Enforcement
 RESPONDENT REPRESENTATIVE 3, Sgt.
 RESPONDENT REPRESENTATIVE 4, Sgt.

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on September 29, 2005. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing a penalty of \$\$\$\$ assessed for selling new motor vehicles without a franchise in violation of Utah Code Sec. 41-3-210(10).
2. The Notice of Assessment was issued on April 25, 2004.
3. Sales of new motor vehicles without holding a franchise is a Level III violation

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pursuant to Utah Code Sec. 41-3-702-(1). The penalty for this level of violation is \$250 for the first offense, \$1,000 for a second offense and \$5,000 for the third and each subsequent offense. Respondent calculated the penalty under this statute for three offenses.

4. Petitioner is a used car dealer. Petitioner does not hold a franchise to sell new cars.

5. Petitioner's representative stipulated that he had purchased at least three vehicles from a new car dealer and received MSO's from the dealer. These vehicles were new and had never been titled or registered. Petitioner took the MSO's to the Department of Motor Vehicles and obtained titles to the vehicles. Then Petitioner offered the vehicles for sale and sold them to the general public.

6. Additionally, Petitioner purchased a number of other vehicles that were essentially new from at least two new car dealers but the dealers had the vehicle titled and title transferred to Petitioner at the time of purchase. Although titled, these vehicles had never been registered. Petitioner offered these vehicles for sale and sold them to the general public.

7. Respondent had received information from the Davis County Department of Motor Vehicles regarding Petitioner obtaining titles relating to new vehicles. Sergeant RESPONDENT REPRESENTATIVE 4 investigated the allegation and the Division determined to impose the civil fine that is at issue in this matter, rather than pursue the matter criminally.

8. Petitioner asserts that he was not intentionally trying to evade the law, he merely did not understand what he was doing was a violation. Respondent did not refute this assertion.

9. Petitioner did not represent to his customers that the vehicles were new vehicles.

APPLICABLE LAW

A used motor vehicle dealer is permitted to do the following as set out at Utah Code Ann. Sec. 41-3-202(2):

A used motor vehicle dealer's license permits the licensee to: (a)

offer for sale, sell, or exchange used motor vehicles; (b) operate as a body shop; and (c) dismantle motor vehicles.

The law places the following prohibitions on a used motor vehicle dealers at Utah Code Sec.

41-3-210(10) as follows:

A used motor vehicle dealer licensed under this chapter may not advertise, offer for sale, or sell a new motor vehicle that has been driven less than 7,500 miles by obtaining a title only to the vehicle and representing it as a used motor vehicle.

Civil penalties for violation are set out at Utah Code Sec.41-3-702, which states in pertinent

part:

(1) The following are civil violations under this chapter and are in addition to criminal violation under this chapter: . . . (c) Level III: . . . (ii) selling a new motor vehicle without holding the franchise;

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

For purposes of the Chapter 3, Motor Vehicle Business Regulation, the statute defines “new motor vehicle” and “used motor vehicle” at Utah Code Sec. 41-3-102 as follows:

(20) “New motor vehicle” means a motor vehicle that has never been titled or registered and has been driven less than 7,500 miles, unless the motor vehicle is a trailer, travel trailer or semi trailer, in which case the mileage limit does not apply.

(33) “Used motor vehicle” means a vehicle that has been titled and registered to a purchaser other than a dealer or has been driven 7,500 or more miles, unless the vehicle is a trailer, or semi trailer, in which case the mileage limit does not apply.

CONCLUSIONS OF LAW

1. As a ‘used motor vehicle dealer’ Petitioner may sell only ‘used vehicles.’ See Utah

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Code Sec. 41-3-202(2). The vehicles at issue are not ‘used vehicles’ because they had not been titled and registered prior to Petitioner’s offering them for sale. Utah Code Sec. 41-3-102(33). This means that Petitioner clearly and directly acted outside the scope of permitted activity that may be performed by a ‘used motor vehicle dealer’ and was in violation of the Motor Vehicle Laws.

2. Petitioner is clearly and directly in violation of Utah Code Sec. 41-3-210(10) because the business offered for sale and sold new motor vehicles by obtaining a title only to the vehicles and representing them to be used.

3. The real issue in this matter is not the fact that Petitioner is in violation, but what is the appropriate sanction or penalty. Respondent determined that it would apply civil penalties, rather than proceed criminally. The code section providing the civil penalties does not, however, mirror the language of the provisions at Utah Code Sec. 41-3-202(2) or 41-3-210(10). Respondent argues that this falls under Utah Code Sec. 41-3-702(1)(c) as a Level III violation for “selling a new motor vehicle without holding the franchise.” Petitioner does not hold the franchise. Petitioner argues that the vehicles were not “new motor vehicles” under the statutory definition at Utah Code Sec. 41-3-102(2) because Petitioner had titled them prior to the sale. The statute defines a “new motor vehicle” as one that “has never been titled or registered.” (Id. Emphasis added.) Upon review of the relevant statutes the Commission disagrees with Petitioner. Utah Code Sec. 41-3-210(10), which is directly on point and prohibits the specific activities at issue, clarifies that the vehicles are considered to be “new vehicles” and the used motor vehicle dealer may not sell them when the used vehicle dealer has obtained “title only” to the vehicle. Rules of Statutory Construction require an interpretation in this manner.¹

4. Additionally the question arises regarding whether the violation should be treated

¹ “We read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters.” Mountain Ranch Estates v. Utah State Tax Comm’n, 2004 UT 86, 2004 LEXIS 193,p11. (Utah 2004). Citation Omitted.

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as one violation for the amount of the penalty as Petitioner requests, or three offenses with the higher penalty as established by Respondent. Utah Code Sec. 41-3-702(2)(a)(iii) provides for Level III, the fine for the first offense is \$250, the second offense \$1,000 and the third and subsequent offenses \$5,000. Petitioner argues that the matter should be treated as one offense because he was notified of the offenses at one time, and had he been notified prior he would have stopped immediately. The Commission would note that Respondent's approach is consistent with how it has applied penalties in other matters. The Commission does not find that merely because multiple violations were caught together at one time the amount of the fine should be the same as if there had been only one violation.

5. The Commission has not been given express or implied authority to waive or reduce for cause these penalties assessed under the Motor Vehicle Act. The legislature has granted the Tax Commission discretion in other areas of law regarding waiver or reduction of penalties, but has not done so with the penalties assessed under Utah Code 41-3-702. Therefore the Commission limits its review to whether or not the penalties were properly imposed under the law.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the penalties in the amount of \$\$\$\$\$ assessed against Petitioner on April 25, 2004. It is so ordered.

DATED this _____ day of _____, 2005.

Jane Phan
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 _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Notice of Appeal Rights and Payment Requirement: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. 63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. 59-1-601 and 63-46b-13 et. seq. Failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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