

04-1221
Motor Vehicle
Signed 02/01/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioner,)	AND FINAL DECISION
)	
v.)	Appeal No. 04-1221
)	
MOTOR VEHICLE ENFORCEMENT)	Tax Type: Salesperson License
DIVISION OF THE UTAH STATE)	
TAX COMMISSION,)	Tax Year: 2004
)	
Respondent.)	Judge: Davis

Presiding:

G. Blaine Davis, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
 PETITIONER REPRESENTATIVE

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, from the Motor Vehicle
 Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 11, 2005. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. On June 17, 2004, Petitioner filed an application for a motor vehicle salesperson license. Question 3 of that application states, "During the past 10 years, have you been convicted of any misdemeanors or felonies in Utah or any other state?" Petitioner responded "no". At that time,

Petitioner had been arrested and charged with certain charges, but the conviction had not yet occurred. The conviction occurred eight days later on June 25, 2004 when Petitioner plead guilty to possession with intent to distribute illegal substances, a third degree felony. Petitioner was issued a license, and commenced selling vehicles for COMPANY.

2. Respondent had a routine criminal check made, and on August 9, 2004, received an indication that Petitioner had been convicted of a felony. Respondent therefore, on August 19, 2004, sent Petitioner a letter informing him that his motor vehicle salesperson license no. ##### was suspended effective September 19, 2004 because of a discrepancy in the application regarding a criminal conviction. The letter required Petitioner to submit a new application on or before September 19, 2004.

3. Petitioner thereafter filed a new application and set forth his criminal conviction of a third degree felony for "possession with intent to distribute of a counterfeit substance".

4. Petitioner is presently on probation with the Third District Court, and it may last until August of 2007. However, his probation officer has filed a letter indicating that he may be released from probation early because of his good conduct and compliance with the court's requirements following the date of sentencing.

5. Petitioner represented that he has learned his lesson, loves his work, and has the support of his employer and co-workers. Petitioner filed a letter from his probation agent. That letter contains the following statement:

"PETITIONER began his sentence on 08/13/2004 and served 75 days in jail before reporting to Adult Probation and Parole. Since reporting, the

defendant has reported as required and has complied with all the terms of his probation. The defendant is randomly drug tested weekly and all the tests have been negative for controlled substances. The following is the result of PETITIONER'S substance abuse evaluation: 'PETITIONER has completed 6 substance abuse classes and had 6 negative urine tests. Given the lack of criminal record, this evaluator is recommending no further treatment, he can be considered successful. Thank you for your referral.' (X)

The defendant needs his Automobile Sales License restored to earn a living in his chosen field. This agency does not view his marketing motor vehicles as detrimental to his probation or a threat to the public. We support any efforts PETITIONER makes to have this license reinstated.

The defendant is making excellent progress on his probation and at the present rate, he will be released early from his supervised probation. Once he is released from probation, the defendant may apply for his felony conviction to be reduced to a misdemeanor."

6. Petitioner also presented a letter from the General Manager of COMPANY indicating Petitioner has above-average ability, a strong work ethic, and has never put himself in a situation where his integrity was questioned.

7. Petitioner presented another letter from the business manager of COMPANY also strongly supporting Petitioner. A further letter was presented from the Sales Manager at COMPANY also supporting Petitioner.

APPLICABLE LAW

Utah Code Ann. §41-3-209, provides as follows:

- (1) If the administrator finds that an applicant is not qualified to receive a license, a license may not be granted.
- (2)(a) If the administrator finds that there is reasonable cause to deny, suspend, or revoke a license issued under this chapter, the administrator shall deny, suspend, or revoke the license.

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(b) Reasonable cause for denial, suspension, or revocation of a license includes, in relation to the applicant or license holder or any of its partners, officers, or directors:

- (i) lack of a principal place of business;
- (ii) lack of a sales tax license . . .
- (iii) lack of a bond . . .
- (iv) a violation of any state or federal law regarding motor vehicles;
- (v) current revocation or suspension of a . . . license issued in another state;
- (vi) nonpayment of required fees;
- (vii) making a false statement on any application . . .
- (viii) a violation of any state or federal law regarding controlled substances; or
- (ix) charges filed with any county attorney, district attorney, or U.S. attorney in any court of competent jurisdiction for a violation of any state or federal law involving the use of a motor vehicle.

(c) Any action taken by the administrator under Subsection (2)(b)(ix) shall remain in effect until a final resolution is reached by the court involved or the charges are dropped.

(3) If the administrator finds that the license holder has been convicted by a court of competent jurisdiction of violating any of the provisions of this chapter or any rules made by the administrator or finds other reasonable cause, the administrator may, by complying with the emergency procedures of Title 63, Chapter 46b, Administrative Procedures Act:

- (a) suspend the license of terms and for a period of time he finds reasonable; or
- (b) revoke the license.

DISCUSSION

In this matter, Petitioner does not dispute the validity of the criminal conviction. Utah Code Ann. §41-3-209 specifically provides for revocation or suspension of motor vehicle salesperson licenses for a violation of any state or federal law regarding controlled substances, or charges for violations of state or federal law involving the use of motor vehicles. The license of Petitioner accordingly was appropriately denied and suspended.

In appeal nos. 02-0303 and 03-0266, the Commission stated:

"The Commission's primary responsibility is to protect the public from persons with a criminal history who have demonstrated difficulty in being law-abiding citizens. The concern is that if Petitioner has a motor vehicle salesperson license, he may come into substantial contact with the public and may be entrusted with their property and personal safety. All of the evidence indicates that Petitioner has been a law-abiding citizen since his release from prison

Although Petitioner has made serious mistakes in his life, those mistakes should not result in a lifetime ban from productive employment for which Petitioner may be well suited, provided that the public may also be reasonably protected. The primary concern is whether Petitioner has been a law-abiding citizen for a sufficient length of time for the Commission to believe the risk to the public is minimal if Petitioner's license as a motor vehicle salesperson is not revoked. The Commission is also concerned about denying an individual the opportunity of gainful employment when he is making reasonable efforts to rehabilitate himself.

Utah Code Ann. §41-3-209 does permit some latitude by giving the Commission the alternative of denying, suspending, or revoking the license of Petitioner. The statute further gives the Commission the latitude to "suspend the license on terms and for a period of time" found to be reasonable."

In this matter, it has been less than one year since the date of the offense committed, and it has been a fairly short time since the time of the conviction and from the service of the jail time. Although Petitioner represents that he is a changed person, there has not been a passage of sufficient time to determine if the change is permanent or temporary. Further, Petitioner has not completed payment of the fines imposed upon him by the court, nor has he been released from probation, although Petitioner did represent that the only thing preventing him from being released from probation is the payment of his fine.

The Commission determines that the actions taken by Respondent were appropriate

and in full compliance with the statute regulating this matter. The issue then becomes under what terms and circumstances may a motor vehicle salesperson license be issued to Petitioner.

At the present time, it has been only approximately one year from the date of the commission of the offense for which Petitioner was convicted, and a period of only approximately six months from the date of the conviction for that offense. Further, Petitioner is still on probation, so in the court's eyes Petitioner has not yet completed the matters required of him to be fully released by the court. In the eyes of the Commission, the court is in a much better position to determine when a convict has completed making sufficient restitution and payment for the consequences of their wrongful conduct and to determine when they are no longer a risk for society.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission determines that Petitioner may, upon further application, be granted a motor vehicle salesperson license upon presentation of written documentation from the Adult Probation and Parole Department that his probation has been completed and terminated by the court and that there have been no further violations of the law. It is so ordered.

DATED this ____ day of _____, 2005.

G. Blaine Davis
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: 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.

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