

05-0677
Motor Vehicle
Signed 07/06/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
)	FORMAL HEARING ORDER	
Petitioner,)		
)	Appeal No.	05-0677
v.)		
)		
MOTOR VEHICLE ENFORCEMENT)	Tax Type:	Unlicensed Salesperson Penalty
DIVISION, UTAH STATE TAX)		
COMMISSION,)	Judge:	Robinson
)		
Respondent.)		

Presiding:

Commissioner R. Bruce Johnson
R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Owner, PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Assistant Director, MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 23, 2006. Petitioner is appealing a fine of \$250 assessed upon a finding by Respondent that Petitioner had been in violation of Utah Code Sec. 41-3-702(1)(c)(vii).

FINDINGS OF FACT

1. Petitioner is appealing a fine assessed under Utah Code Ann. §41-3-702 for violations relating to unlicensed salespersons.
2. The alleged violation occurred on or about April 4, 2005, at (X).
3. AGENT was acting as an agent for Petitioner at the auction. AGENT was not licensed as a salesperson employed by Petitioner.

4. AGENT has been an agent at auctions since 1987. He is an authorized agent in STATE 1 and STATE 2. Petitioner authorized AGENT to act for it.

5. From February of 2005 through April of 2005, AGENT purchased or sold 23 vehicles at (X).

6. PETITIONER REPRESENTATIVE stated there was no intent to violate the law. However, he acknowledged the letter of the law was violated.

7. When notified of the violation, AGENT promptly obtained a salesperson license.

8. Petitioner has been in business for over nineteen years without a violation. PETITIONER REPRESENTATIVE has worked in the industry for nearly thirty years without a violation or tax problem.

APPLICABLE LAW

Utah Code Ann. §41-3-201 (2) states a person may not act as salespersons without having procured a license issued by the administrator.

Utah Code Ann. §41-3-202 provides, in pertinent part, as follows:

(5) A salesperson's license permits the licensee to act as a motor vehicle salesperson and is valid for employment with only one dealer at a time.

Utah Code Ann. §41-3-203 provides, in pertinent part, as follows:

(1) (b) The license of each salespersons shall be delivered or mailed to the dealer employing the salesperson and it shall be kept in the custody and control of the dealer and conspicuously displayed in the dealer's place of business.

(2) (a) The administrator shall prepare and deliver a pocket card, certifying that the person whose name is on the card is licensed under this chapter.

(b) Each salesperson's card shall also contain the name and address of the dealer employing him.

(c) Each salesperson shall on request display his pocket card.

Utah Code Ann. §41-3-210, provides, in pertinent part, as follows:

(1) The holder of any license issued under this chapter may not:

(m) as anyone other than a salesperson licensed under this chapter, be present on a dealer display space and contact prospective customers to promote the sale of the dealer's vehicles;

....

(6) A dealer may not assist an unlicensed dealer or salesperson in unlawful activity through active or passive participation in sales, or by allowing use of his facilities or dealer license number, or by any other means.

Utah Code Ann. 41-3-702 provides, in pertinent part, as follows:

(1) The following are civil violations under this chapter and are in addition to criminal violations under this chapter:

(c) Level III:

(vii) assisting an unlicensed dealer or sales person in sales of motor vehicles:

(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.

CONCLUSIONS OF LAW

1. The applicable statute, Utah Code Ann. §41-3-702 is a strict liability statute. It contains no intent element. That Petitioner did not set out to violate the law has no bearing on what the Commission is required to do. If the violation occurred, and the violation is not in dispute in this matter, the Commission must apply the statutory fine listed at Utah Code Ann. §41-3-702(2)(a)(iii). Notwithstanding Petitioner's lack of intent and long history of compliance, the Utah Legislature has not given the Tax Commission discretion to do otherwise.

2. Utah Code Ann. § 41-3-702(1)(c)(vii) states that the offense is the "assisting an unlicensed dealer or salesperson in sales of motor vehicle." Petitioner's actions, in authorizing the unlicensed AGENT to act as its agent in the buying and selling of vehicles at (X) establish a violation of the statute.

DECISION AND ORDER

Based on the foregoing, the Commission denies Petitioner's appeal in this matter. It is so ordered.

DATED this _____ day of _____, 2006.

R. Spencer Robinson
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 _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
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.