

05-0945
TAX TYPE: LICENSE PLATE
TAX YEAR: NOT APPLICABLE
DATE SIGNED: NOT AVAILABLE
COMMISSIONERS: NOT AVAILABLE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONERS,)		
)	ORDER	
Petitioners,)		
)	Appeal No.	05-0945
v.)		
)		
MOTOR VEHICLE DIVISION OF)	Tax Type:	Personalized License Plate
THE UTAH STATE TAX)		
COMMISSION,)	Judge:	Phan
)		
Respondent.)		

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONERS
For Respondent: REPRESENTATIVE FOR RESPONDENT-1, Assistant Attorney General
REPRESENTATIVE FOR RESPONDENT-2, Appeals Specialist

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5, on July 20, 2005. Petitioner is appealing Respondent's decision to recall the personalized license plate with the combination of letters "69-HULK". The plate had been issued in 1999 and on June 15, 2005, Respondent had issued a Statutory Notice recalling the plate.

APPLICABLE LAW

Utah law provides for personalized license plates with the limitation set out in Utah Code Sec.

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 . . . relate to sexual and eliminatory functions. Additionally, “69” formats are prohibited unless used in a combination with the vehicle make, for example, “69 CHEV.”

. . .

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.

DISCUSSION

The issue presented to the Commission in this appeal is whether the personalized license plate has connotations offensive to good taste and decency or that would be misleading in violation of the Utah Code Sec. 41-1a-411(2) or the applicable rule. Petitioner indicates that he obtained the license plate for his 1969 TRUCK. The truck is a VEHICLE DESCRIPTION show truck that is generally driven only to car shows. He obtained the license plate so that everyone would know it was a 1969 truck. Hulk referred to the green comic book character and he chose the name because the truck was VEHICLE DESCRIPTION.

The Tax Commission adopted Utah Administrative Rule R873-22M-34 regarding personalized license, which specified a number of prohibited connotations. The rule specifically prohibits “69” formats unless used in combination with the make of the vehicle. The license plate at issue is clearly

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prohibited by the rule and the rule on this issue is not inconsistent with the statute. The specific provisions of the rule on the "69" format was adopted several years prior to when the license plate was issued in 1999, so the license plate was issued in violation of the rule.

DECISION AND ORDER

Based on the foregoing the Commission recalls the personalized license plate "69-Hulk." 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 _____, 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