

05-1632
Motor Vehicle
Signed 06/20/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioner,)	AND FINAL DECISION
)	
v.)	Appeal No. 05-1632
)	
MOTOR VEHICLE ENFORCEMENT)	Tax Type: Motor Vehicle
DIVISION OF THE UTAH STATE TAX)	Sales Person License
COMMISSION,)	
)	Judge: Robinson
Respondent.)	

Presiding:

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

Appearances:

For Petitioner: PETITIONER, *pro se*
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, Assistant Director, Motor Vehicle
 Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 13, 2006. Based upon the evidence and testimony presented at the hearing and the post-hearing evidence submitted by the parties at the Tax Commission's request, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing Respondent's decision to deny him a Motor Vehicle Salesperson License.
2. Petitioner's Motor Vehicle Salesperson Application was dated July 6, 2005. Question #3 on the application form asked, "During the past ten years, have you been convicted of any misdemeanors or felonies in Utah or any other state?" Petitioner marked the box next to "No." The form

also states that simple traffic violations need not be disclosed. It goes on to state that failure to disclose the requested information is a basis for suspending the license.

3. On May 19, 2003, Petitioner pled guilty to an amended charge of attempting to commit theft by receiving stolen property. He has paid all fines, fees, and restitution associated with the case and has been released from probation.

4. Petitioner was originally charged with a felony. Petitioner did not read question 3 carefully. He assumed it was like other applications he had filled out that asked about felony convictions. He acknowledged his answer to question 3 was not accurate.

5. Respondent accepted Petitioner's application and issued him a license. Submission of his fingerprint card to the Bureau of Criminal Identification revealed his conviction. Based on that information, Respondent sent a letter, dated October 12, 2005, notifying Petitioner of its intent to suspend his license to sell motor vehicles.

6. Petitioner filed a timely appeal and participated in an Initial Hearing.

7. Based on the information provided at the Initial Hearing, in an Order dated April 10, 2006, the Commission suspended Petitioner's license for a period of sixty days. The basis of the suspension was Petitioner's false statement in response to question 3 on his application.

8. Following issuance of that decision, RESPONDENT REPRESENTATIVE 2 sent a letter dated April 11, 2006, to Petitioner using the COMPANY address, informing Petitioner his license would be suspended per the Initial Hearing Order unless Petitioner appealed. Petitioner testified he ceased selling motor vehicles for a period of seven to ten days. Petitioner said he then resumed selling motor vehicles.

9. During the Formal Hearing, RESPONDENT REPRESENTATIVE 2 acknowledged a conversation with Petitioner in which he stated his intention to appeal. Based on that conversation,

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Respondent stayed suspension of Petitioner's license. The Appeals Unit sent a Notice of Formal Hearing to the parties on April 18, 2006.

10. Petitioner submitted letters from the sales manager and two other employees at COMPANY in support of Petitioner. The sales manager, (X), said, "We certainly would like him to remain here at our dealership."

APPLICABLE LAW

(2)(a) If the administrator finds that there is a reasonable cause to deny, suspend, or revoke a license issued under this chapter, the administrator shall deny, suspend, or revoke the license. (b) Reasonable cause for denial, suspension, or revocation of a license includes . . . (vi) making a false statement on any application for a license under this chapter or for special license plates; . . . (Utah Code Sec. 41-3-209(2)).

CONCLUSIONS OF LAW

Petitioner's false statement in response to question 3 of the application establishes reasonable cause for suspending or revoking Petitioner's motor vehicle sales license. Respondent, on receipt of information establishing reasonable cause, had a legal obligation to suspend or revoke Petitioner's license. The Commission has discretion to suspend Petitioner's license for a period of time.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission orders Petitioner's license suspended for a period of sixty days. This period of suspension shall be reduced by seven days, the period during which Petitioner voluntarily ceased selling vehicles. It is so ordered.

DATED this ____ day of _____, 2006.

R. Spencer Robinson
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 _____, 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 Sec.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 Sec. 59-1-601 and 63-46b-13 et. seq.

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