

06-0135
Miscellaneous
Signed 04/07/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	ORDER	
)		
Petitioner,)	Appeal No.	06-0135
)		
v.)	Tax Type:	Motor Vehicle Dealer Violation / Temporary Permits
)		
MOTOR VEHICLE ENFORCEMENT)		
DIVISION OF THE UTAH)	License Nos.	Dealer's License #####
STATE TAX COMMISSION,)		
)	Judge:	Chapman
Respondent.)		

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1, Owner
 PETITIONER REPRESENTATIVE 2, Attorney for Petitioner
For Respondent: RESPONDENT REPRESENTATIVE, from Motor Vehicle Enforcement
 Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5 on March 30, 2006.

On November 3, 2005, the Motor Vehicle Enforcement Division ("Division") notified the Petitioner that it was suspending its authority to issue temporary permits for a period of 20 calendar days beginning November 8, 2005, and imposing a fine of \$\$\$\$\$ for improperly issuing at least seven temporary permits for a vehicle sold by the dealership.

The vehicle at issue is a 1992 (X) that the Petitioner sold to (X). The Division explains that the Petitioner was unable to register the vehicle at issue because it was listed as stolen by the COUNTY County Sheriff's Office. After issuing the original temporary permit for this vehicle, the Petitioner issued at least seven additional temporary permits ("extension permits") for the vehicle. The Division claims that the

Appeal No.06-0135

issuance of these seven extension permits is in violation of Utah statutes and rules that authorize a dealer to issue temporary permits.

The Division states that Utah Admin. Rule R877-23V-5(I)(5) (“Rule 5”) provides that a dealer may not issue an extension permit if the dealer has been granted extensions on more than 2% of its permits during the past three months. The Division reviewed the Petitioner’s temporary permit log and determined that the seven extension permits at issue exceeded the Petitioner’s 2% quota as set forth in the rule.

On November 9, 2005, the Petitioner appealed both the fine of \$\$\$\$\$ and the 20-day suspension. The Petitioner explains that it purchased the 1992 (X) from a person named (X) who presented a title at the time of purchase. Prior to purchasing the vehicle from (X), the Petitioner checked the Division’s “integrate” records, which showed the vehicle belonging to (X). The Petitioner subsequently sold the vehicle to (X), but was unable to obtain registration for it because (X) had reported it stolen.

The Petitioner explains that it tried to negotiate a settlement between the parties, but was unsuccessful. During this period, the Petitioner contacted the Division and requested extension permits for the vehicle, but was denied authorization to issue them because the Division determined that it had exceeded its 2% quota. The Petitioner states that he issued the extension permits anyway because the Division never discussed an alternative method to receive an extension permit and because it was stuck in what it deemed to be an impossible situation. Eventually, (X) was arrested for driving a “stolen” vehicle, after which the Petitioner refunded (X) his purchase price.

The Division states that it is undisputed that the Petitioner sold the vehicle at issue to (X) and issued at least seven extension permits for the vehicle that were in excess of the 2% quota and which were issued without authorization from the Division. For the Division, RESPONDENT REPRESENTATIVE explains that there are circumstances where the Division will authorize extension permits even though the 2% quota has been exceeded, but to receive this authorization, the Petitioner would have needed to file a claim

with the Division. RESPONDENT REPRESENTATIVE explains that it would have authorized the temporary permits under the circumstances in this matter if the Petitioner had filed such a claim.

The Petitioner states that when he telephoned the Division and explained the circumstances to the women with whom he spoke, he was never told that he could file a claim to receive authorization for extensions that exceeded the 2% quota. RESPONDENT REPRESENTATIVE explains that the seven women in the Division who answer such telephone calls would not have known to tell the Petitioner about the alternative claim process.

APPLICABLE LAW

Utah Code Ann. §41-3-302 provides that a motor vehicle dealer may issue temporary permits to motor vehicle purchasers, as follows in pertinent part:

- (1) (a) Under rules made by the administrator, dealers and the division may issue temporary permits, the forms for which are furnished by the division to dealers.
- (b) Dealers may issue temporary permits to bona fide purchasers of motor vehicles for use for a period not to exceed 30 days on a motor vehicle sold to the purchaser by the dealer.

....

As authorized in Section 41-3-302(1)(a), the Commission has adopted Utah Admin. Rule R877-23V-5 to determine when a motor vehicle dealer may issue a temporary permit, as follows in pertinent part:

....

- B. If a vehicle purchaser requests a temporary permit, the dealer shall issue no more than one temporary registration permit, in numerical sequence, for each motor vehicle sold.

....

- I. In exceptional circumstances a dealer as agent for the division may issue an additional temporary permit for a vehicle by following the procedures outlined below:

- 1. The dealer must contact the division and request an extension permit for a particular vehicle. If the request is denied, no extension permit will be issued.
- 2. If the extension permit is approved, the division shall issue the dealer an approval number. This number must be recorded by the dealer in its temporary

permit record and on the permit and stub in the space provided for the license number. The space provided on the permit and stub for the dealer name must be completed with the words "State Tax Commission" and the dealer's license number. The remainder of the permit and stub will be completed as usual.

....

5. A dealer may not issue an extension permit if it is determined that the dealer has been granted extensions for more than 2% of the permits issued to the dealership during the past three months. This percentage is calculated by dividing the number of extensions granted the dealer during the past three months by the permits issued by the dealer during the past three months.

....

UCA §41-3-304 provides that the Division may suspend or revoke a motor vehicle dealer's authority to issue temporary permits, as follows in pertinent part:

(1) The division may suspend or revoke a dealer's authority to issue a temporary permit or a temporary sports event registration certificate under this part if the division determines the dealer has failed to comply with this chapter or with any rules made by the commission under this part.

(2) (a) Suspension or revocation of authority to issue a temporary permit or a temporary sports event registration certificate takes effect immediately upon written notification to the dealer by the division.

...

(4) (a) A dealer may appeal the division's suspension or revocation by filing a written appeal with the administrator within ten days of the suspension or revocation.

(b) Upon receiving the dealer's written appeal, the administrator shall set a hearing for not more than 20 days from the date the written appeal is received.

(c) A hearing or appeal under this section shall be conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

A penalty is imposed for a civil violation of the Motor Vehicle Business Regulation Act in accordance with UCA §41-3-702, as follows in pertinent part:

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

(a) Level I:

(iv) issuing a temporary permit improperly;

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

(i) Level I: \$25 for the first offense, \$100 for the second offense, and \$250 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.

....

DISCUSSION

Subsection (B) of Rule 5 provides that a dealer will issue no more than one temporary permit for each vehicle it sells. However, Subsection (I) of the rule provides that “in exceptional circumstances,” a dealer may issue extension permits by following the procedures listed therein. Subsection (I)(1) provides that these procedures consist of the dealer contacting the Division and requesting authorization to issue the extension permit. It also provides that if the request is denied, the dealer may not issue the extension permit.

The Petitioner does not deny that it telephoned the Division to receive permission to issue the seven extension permits at issue and was denied authorization by the employees with whom he spoke. In addition, the Petitioner does not deny that it issued the seven extension permits and that there they were in excess of the 2% quota allowed under Subsection (I)(5) of Rule 5. Although the Petitioner issued the extension permits after being denied authorization to do so, it asks the Commission to waive the suspension and penalties imposed on it because of the exceptional circumstances in this matter.

The Commission notes that a dealer who sells a small number of vehicles may rarely qualify under the “2% quota” rule for authorization to issue an extension permit. Furthermore, the Division’s practice to consider a “claim” for authorization to issue extended permits under circumstances such as those as described in this matter is neither disclosed in the rule or even known by the Division employees who routinely answer dealer’s authorization requests for extension permits. Although the Commission does not condone a dealer issuing extension permits when it has been denied authorization to do so, the Commission is concerned that the Division has another authorization process in practice that is neither in rule or known by its employees who interact with dealers making extension permit requests. The

Appeal No.06-0135

Petitioner could not have reasonably known, given these circumstances, how to file the “claim” that could have led to the Division authorizing it to issue the seven extension permits at issue. For these reasons and because the Division stated that the circumstances in this matter are ones for which it would have authorized the issuance of the extension permits had the Petitioner filed such a claim, the Commission abates the penalties that were imposed.

Furthermore, because the 20-day suspension concerning the Petitioner’s temporary permits began on November 8, 2005, it appears that the suspension ended on November 28, 2005. If so, the suspension is a moot issue. However, it was not disclosed at the hearing whether the suspension was held in abeyance until the Commission issued its decision or if the suspension would have other consequences that were not disclosed at the Initial Hearing. For these reasons, the Commission overturns the suspension.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission grants the Petitioner’s appeal. As a result, it abates the Division’s imposition of penalties in the amount of \$\$\$\$ and overturns the Division’s 20-day suspension of the Petitioner’s temporary permits. 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.

Appeal No.06-0135

DATED this _____ day of _____, 2006.

Kerry R. Chapman
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

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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