

06-0224
Refund Request
Signed 05/05/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	
v.)	Appeal No. 06-0224
)	Impound No. #####
MOTOR VEHICLE DIVISION,)	
UTAH STATE TAX COMMISSION,)	Tax Type: DUI Admin. Fee
STATE OF UTAH,)	Tax Period: 2005
)	
Respondent.)	Judge: Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

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

STATEMENT OF THE CASE

The parties participated in an Initial Hearing on April 6, 2006. Petitioner is requesting a return of the administrative impound fee assessed when the vehicle owned by his nephew, NEPHEW, was impounded following NEPHEW arrest for driving under the influence.

On July 4, 2005, the Utah Highway Patrol arrested NEPHEW for DUI and expired registration. Petitioner paid the impound fee and registration fee in order to have his nephew's vehicle released.

On August 2, 2005, (X), the Director of the Driver License Division, sent a letter to NEPHEW informing him the Department of Public Safety was not taking action against

his driving privilege. Thus, he was eligible to seek a refund or waiver of the DUI administrative impound fee within thirty days of the date of the letter. The letter included instructions on how to make the request.

On September 28, 2005, Petitioner signed and submitted a Request for Refund of DUI Impound Fee. In a Statutory Notice dated November 3, 2005, Respondent declined the request because it was filed more than thirty days after the August 2, 2005 letter from the Driver License Division of the Department of Public Safety, stating no action would be taken against NEPHEW driver's license. Respondent's Statutory Notice also informed Petitioner of the right to file a Petition for Redetermination within thirty days of the Statutory Notice.

On November 8, 2005, NEPHEW signed a notarized statement that he had no interest in receiving the refund, and that Petitioner (PETITIONER) could receive it. This is sufficient to allow Petitioner to act as an agent for NEPHEW. On November 18, 2005, Petitioner signed a Petition for Redetermination, requesting a refund of the fee. The Petition for Redetermination was timely filed.

Respondent denied the Petition for Redetermination. It did so on the basis that the Request for Refund of DUI Impound Fee was not timely filed.

Petitioner acknowledged the Request for Refund of DUI Impound Fee was not timely filed. He said NEPHEW did not care about the request, as NEPHEW had not paid the fees necessary to obtain the release of his vehicle. Petitioner said it is difficult to baby-sit a 62-year-old man and that NEPHEW did not provide to Petitioner the documents necessary to seek

the refund before the time for requesting it had expired. He asked this be taken into account as a basis for granting his request.

APPLICABLE LAW

41-6a-1406 (6)(c) The administrative impound fee assessed under Subsection (6)(a)(iv) shall be waived or refunded by the State Tax Commission if the registered owner, lien holder, or owner's agent presents written evidence to the State Tax Commission that:

(i) the Driver License Division determined that the arrested person's driver license should not be suspended or revoked under Section 53-3-223 or 41-6a-521 as shown by a letter or other report from the Driver License Division presented within 30 days of the final notification from the Driver License Division; or

(ii) the vehicle was stolen at the time of the impoundment as shown by a copy of the stolen vehicle report presented within 30 days of the impoundment.

ORDER

Based upon a review of the evidence, the Request for Refund of DUI Impound Fee was not filed within thirty days after final notification from the Driver License Division, dated August 2, 2005. The Commission denies Petitioner's request for a refund of his nephew's impound fee. 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

Appeal No. 06-0224

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

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

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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