

06-0225
Motor Vehicle
Signed 01/09/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
)	ORDER	
Petitioner,)		
)	Appeal No.	06-0225
v.)		
)		
MOTOR VEHICLE DIVISION)	Tax Type:	Personalized License Plate
OF THE UTAH STATE TAX)		
COMMISSION,)	Judge:	Jensen
)		
Respondent.)		

Presiding:
Clinton Jensen, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Appeals Specialist

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on April 11, 2006 in accordance with Utah Code Ann. §59-1-502.5. Petitioner is appealing Respondent’s decision to recall the personalized license plate with the combination of letters “(X).” The plate had been issued in 2003 and on December 12, 2005, Respondent had issued a Statutory Notice recalling the plate.

APPLICABLE LAW

Utah law provides for personalized license plates with the limitation set fourth in Utah Code Ann. §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:

(1) The personalized plate is a non-public forum . . .

(2) Pursuant to Section 41-1a-411(2), the division may not issue personalized license plates in the following formats:

(a) Combination of letters, words, or numbers with any connotation that is vulgar, derogatory, profane, or obscene.

(b) Combinations of letters, words, or numbers that connote breasts, genitalia, pubic area, buttocks, or relate to sexual and eliminatory functions. Additionally, "69" formats are prohibited unless used in a combination with the vehicle make, model, style, type, or commonly used or readily understood abbreviations of those terms, for example, "69 CHEV."

In *Mc Bride v. Motor Vehicle Division of Utah State Tax Commission*, 1999 UT 9, 977 P.2d 467, the Utah Supreme Court gave direction for the Tax Commission to follow regarding personalized license plates. The Commission should not rely “on the opinion of any one person or group in determining whether a term [on a license plate] carries a prohibited connotation.” 1999 UT 9, ¶15. Rather, the “only reasonable standard that may be applied is the objective, reasonable person.” 1999 UT 9, ¶18.

DISCUSSION

The narrow question before the Commission in this appeal is whether the personalized license plate “(X)” violates a rule that forbids “[c]ombination of letters, words, or numbers with any connotation that is vulgar, derogatory, profane, or obscene” or “[c]ombinations of letters, words, or numbers that connote breasts, genitalia, pubic area, buttocks, or relate to sexual and eliminatory functions.” Petitioner indicated he did not mean the reference to “(X)” on his plate to refer to “(X).” Rather, the Petitioner has a business selling (X). The Petitioner sells (X) or (X) as part of his business. Many of the

customers to whom the Petitioner sells (X) refer to him as the (X). The truck on which the Petitioner has placed the “(X)” plates has no business name or other markings to distinguish it as a vehicle owned by a (X) business.

The parties are in general agreement that the Petitioner’s subjective intent was to make reference to his (X) business and not to (X). However, there is similarly little or no dispute that another connotation of “(X)” is a vulgar slang term for (X). If Utah law indicated that the Tax Commission should issue plates on the sole basis of the meaning in the applicant’s mind, the Petitioner’s “(X)” plate would be allowable as a reference to the Petitioner’s trade or business. But however good the Petitioner’s subjective intent may be, Utah law requires that the Commission deny a license plate that has “any connotation that is vulgar, derogatory, profane, or obscene.” Utah Admin. Rule R873-22M-34 (with emphasis added). See *Mc Bride v. Motor Vehicle Division of Utah State Tax Commission*, 1999 UT 9, ¶18, 977 P.2d 467. Thus, under applicable law, the Petitioner’s license plate must be denied because it has at least one connotation that is vulgar.

DECISION AND ORDER

Based on the foregoing the Commission recalls the personalized license plate “(X).” 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

Appeal No 06-0225

Salt Lake City, Utah 84134

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

DATED this _____ day of _____, 2007.

Clinton Jensen
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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

CJ/06-0225.int.plp