

06-0410  
Motor Vehicle  
Signed 01/09/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>ORDER</b>	
	)		
Petitioner,	)	Appeal No	06-0410
	)	Account No.	#####
v.	)		
	)	Tax Type:	Advertisement Violation
MOTOR VEHICLE ENFORCEMENT	)		
DIVISION, UTAH STATE TAX	)		
COMMISSION	)		
	)	Judge:	Jensen
Respondent.	)		

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**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE 1, Owner – PETITIONER  
PETITIONER REPRESENTATIVE 2, PETITIONER General Manager  
For Respondent: RESPONDENT REPRESENTATIVE 1, Motor Vehicle Enforcement  
Division  
RESPONDENT REPRESENTATIVE 2, Motor Vehicle Enforcement  
Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on July 18, 2006 in accordance with Utah Code Ann. §59-1-502.5.

Petitioner is appealing a \$\$\$\$ fine assessed for publishing an advertisement in violation Utah Code Ann. Section 41-3-210 and Utah Admin. Rule. R877-23V-7(20). The advertisement, which was published on March 17, 2006, made reference to a lease and advertised a monthly lease payment. While the part of the advertisement making reference to the lease did use the word “lease,” it appeared in a typeface that was considerably smaller than vehicle descriptions and the monthly lease payment amount.

Petitioner's representative explained that Petitioner did disclose that the monthly payment advertised was a lease payment and not a purchase payment. The Petitioner testified that there was no intention to mislead the public and that it was simply an oversight that the advertisement in question used small print to identify and describe the lease. After the Division notified the Petitioner of the problem with the March 17, 2006 advertisement, the Petitioner immediately made changes to its advertisements and provided an example of its current advertising which lists "lease" in a size and color that is prominent and among the larger type sizes used in the advertisement.

#### APPLICABLE LAW

The holder of any license issued under this chapter may not: (a) intentionally publish, display, or circulate any advertising that is misleading or inaccurate in any material fact or that misrepresents any of the products sold, manufactured, remanufactured, handled, furnished by a licensee; [or] (c) violate this chapter or the rules made by the administration; . . . (Utah Code Ann. Sec. 41-3-210 (1).)

When an advertisement relates to a lease, the advertisement must make it readily apparent that the transaction advertised is a lease. The word "lease" must appear in a prominent position in the advertisement in a typeface and point size comparable to the largest text used to directly advertise the vehicle. Statements that do not use the term "lease" do not constitute adequate disclosure of a lease. Lease advertisements may not contain the phrase "no down payment" or words of similar import if an outlay of money is required to lease the vehicle. Lease terms that are not available to the general public may not be included in advertisements directed at the general public. Limitations and qualifications applicable to the lease terms advertised shall be clearly and conspicuously disclosed. (Utah Admin. Rule R877-23V-7(20).)

#### DECISION AND ORDER

Appeal No. 06-0410

The advertisement at issue is in violation of Utah Admin. Rule R877-23V-7 and Utah Code Ann. 41-3-210. The Commission finds no grounds for waiver. Based on the foregoing the \$\$\$\$ penalty is sustained. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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 \_\_\_\_\_, 2007.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

\_\_\_\_\_  
Clinton Jensen  
Administrative Law Judge

The agency 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

Appeal No. 06-0410

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