

06-0900  
Motor Vehicle  
Signed 01/26/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)		
	)	<b>ORDER</b>	
Petitioner,	)		
	)	Appeal No.	06-0900
v.	)		
	)		
MOTOR VEHICLE DIVISION OF	)	Tax Type:	Personalized License Plate
THE UTAH STATE TAX	)		
COMMISSION,	)	Judge:	Jensen
	)		
Respondent.	)		

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**Presiding:**  
Clinton Jensen, Administrative Law Judge

**Appearances:**  
For Petitioner: PETITIONER  
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General  
RESPONDENT REPRESENTATIVE 2, from the Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on October 2, 2006 in accordance with Utah Code Ann. §59-1-502.5. Petitioner is appealing Respondent’s decision to deny the Petitioner’s application for a personalized license plate with the combination of letters ( X ), ( X ), or ( X ).

The Petitioner requested license plates with the requested combination of letters to go on his 2005 Jeep Liberty. The Jeep has ( X ) that simulate to look of vehicles with ( X ) or “( X )” which were in production in from the 1930s and popular in the 1950s. The Division denied the requested plates because “( X )” was a slang term for an ( X ) and thus a reference to genitalia or to sexual functions.

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 requested personalized license plates violate 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.”

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The Petitioner argued that his only intent was to make reference to his ( X ) car. As proof of his intent regarding these license plates, the Petitioner testified that he was willing to agree to only display these plates on his ( X ) Jeep. The Division did not dispute the Petitioner's stated intent and indicated that it has allowed letter combinations with the word "( X )" in the plate when other letters or numbers on the license plate itself made clear that the word "( X )" was part of a business name or phone number.

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. The requested plates are susceptible to at least one interpretation that is vulgar, derogatory, profane, or obscene. Thus, under applicable law, the Commission must deny the Petitioner's requested license plates.

#### DECISION AND ORDER

Based on the foregoing the Commission sustains the Division's actions in denying the personalized license plate ( X ), ( X ), or ( 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  
Salt Lake City, Utah 84134

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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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/06-0900.plp.int*