

06-0901
Motor Vehicle
Signed 08/29/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	
v.)	Appeal No. 06-0901
)	Impound No. #####
MOTOR VEHICLE DIVISION,)	
UTAH STATE TAX COMMISSION,)	Tax Type: DUI Admin. Fee
STATE OF UTAH,)	Tax Period: 2006
)	
Respondent.)	Judge: Robinson

Presiding:
Commissioner D'Arcy Dixon Pignanelli
R. Spencer Robinson, Administrative Law Judge

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 10, 2006. Petitioner is requesting a return of the \$\$\$\$ administrative impound fee assessed when the vehicle driven by her son, PETITIONER'S SON, was impounded following his arrest for driving under the influence. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. On February 24, 2006, the CITY Police Department arrested PETITIONER'S SON for driving under the influence. Petitioner, PETITIONER, PETITIONER SON'S mother, paid the impound fee in order to have the vehicle released.

2. On March 24, 2006, EMPLOYEE 1, the Director of the Driver License Division of the Utah

Department of Public Safety, sent a letter to PETITIONER'S SON, at PETITIONER'S address, 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, including the requirement to attach the Vehicle Impound Report (form TC-540) and the refund request form (TC-542). The forms were not included with the letter.

3. PETITIONER said her son is disabled and is receiving supplemental security income. She said he could not have read and acted on the letter. Because of his disabilities, she undertook responding to EMPLOYEE 1's letter.

4. The second paragraph of the letter states, "Effective May 5, 2003 the registered owner, lien holder, or the owner's agent may be entitled to a refund of the DUI administrative impound fee if the Driver's License Division did **not** take action against the driver under Utah Code Annotated 53-3-223 or Utah Code Annotated 41-6-44.10, renumbered to 41-6a-520." (emphasis in the original)

5. PETITIONER focused on the date of May 5. She did not notice the year 2003. She believed the letter required her to wait until May 5 before she could request a refund. She placed the letter on the bathroom mirror so she would not forget to request the refund.

6. The third paragraph of the letter states, "To obtain a refund or waiver of the DUI administrative impound fee, submit a copy of this letter to the Division of Motor Vehicles within thirty days of the date of this letter." The letter lists the address for DMV Accounting at the Utah State Tax Commission. In the upper right hand corner of the letter is, "Letter Date: 24 Mar 2006."

7. At the time EMPLOYEE 1's letter arrived, PETITIONER 1 was dealing with having to find a new facility for her son, and preparing to join her husband while he was back from his military assignment in (X) for a short period of time.

8. She and her husband were out of state from April 19 to April 29. When she returned, she again read the letter and realized she had missed the deadline for requesting a refund.

9. PETITIONER submitted a written request for a refund of the impound fee. It was postmarked May 4, 2006.

10. On May 10, 2006, EMPLOYEE 2, an Accounting Manager in the Motor Vehicle Division, sent a letter in response. EMPLOYEE 2's letter denied the request for the refund on the grounds it had not been filed within 30 days of the Driver's License letter.

11. On May 22, 2006, PETITIONER submitted a Petition for Redetermination. Included was a letter outlining her reasons for the request. She said her son was not guilty of the DUI, that pending administrative and judicial actions had been dismissed, the arresting officer was inexperienced, the forms mentioned in EMPLOYEE 1's letter that are to be submitted to obtain a refund were not attached, this issue arose during a time of "major transitional [sic] life situations," and the 30 day period in which one was required to request a refund was not adequate.

12. RESPONDENT REPRESENTATIVE 2, a Motor Vehicle Appeals Specialist in the Division of Motor Vehicles, responded in a letter dated June 14, 2006. RESPONDENT REPRESENTATIVE 2 apologized for the frustration of dealing with multiple agencies. She also said she had requested the Driver's License Division consider modifying its letter. She advised PETITIONER she could appeal, but pointed out earlier requests filed outside of the thirty day period had been denied.

13. On June 29, 2006, EMPLOYEE 3, Deputy Director of the Division of Motor Vehicles, submitted an Answer to Petition for Redetermination. In it, he outlined what had preceded the Answer, and cited the 30-day period for requesting refunds contained in Utah Code Annotated 41-6a-1406 (6)(c)(i). His Answer asked PETITIONER'S Petition for Redetermination be dismissed and that the Division's denial of the refund request be affirmed.

APPLICABLE LAW

Utah Code. Sec. 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.

CONCLUSIONS OF LAW

Petitioner provided the written evidence, in the form of EMPLOYEE 1's letter of March 24, 2006, that the Driver's License Division was not taking action to revoke PETITIONER'S SON driver's license. However, because she did not present that evidence within thirty days of the date of EMPLOYEE 1's letter, the Division properly denied her request for a refund of the \$\$\$\$ administrative impound fee.

Though the Driver's License Division's letter is not a model of clarity, it is sufficient, as a matter of due process, to provide notice to potential claimants of how to request a refund of the impound fee. While the circumstances outlined by PETITIONER are unfortunate, the Commission has no discretion that it can exercise in this case. Neither can the Commission alter the requirements of the statute. Changes to the statute must be made by the Legislature.

DECISION AND ORDER

Based upon a review of the evidence, the request for refund of \$\$\$\$ administrative impound fee was not filed within thirty days after final notification from the Driver License Division,

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dated March 24, 2006. The Tax Commission sustains the decision of the Respondent to deny PETITIONER'S Petition for Redetermination requesting a refund of the \$\$\$\$ administrative impound fee. It is so ordered.

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

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. 63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. 59-1-601 and 63-46b-13 et. seq.

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