

06-1196
Audit
Signed 01/16/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
)	ORDER	
Petitioner,)		
)	Appeal No.	06-1196
v.)		
)		
MOTOR VEHICLE ENFORCEMENT)	Tax Type:	Temp. Permit Violation
DIVISION, UTAH STATE TAX)		
COMMISSION,)	Judge:	Robinson
)		
Respondent.)		

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Owner, PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE, Motor Vehicle Enforcement
Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on October 24, 2006.

Respondent alleged Petitioner improperly issued three temporary permits in violation of Utah Code Ann. §41-3-302 and Utah Admin. Rule R877-23V-5. Petitioner is appealing a \$\$\$\$ civil penalty assessed by Respondent.

Petitioner acquired a vehicle at auction. Petitioner sold that vehicle to a purchaser and issued a temporary permit. When the title to the vehicle was not forthcoming from the auction, Petitioner issued three additional temporary permits, the last on May 10, 2006. Petitioner did so without first obtaining authorization from the Motor Vehicle Enforcement Division (MVED).

Petitioner was not aware of the requirement to obtain authorization from MVED before issuing the additional temporary permits. Since learning of the requirement, Petitioner has sought permission when the need for additional temporary permits arose.

Petitioner is not disputing the law or the facts. Petitioner requests a waiver of the civil penalties on the grounds Petitioner did not know of the requirement to obtain permission before issuing additional temporary permits.

Respondent said it would not have authorized three additional temporary permits. Respondent said when a third temporary permit is requested, it usually contacts the purchaser of the vehicle. Respondent opposes the requested waiver.

APPLICABLE LAW

Utah Code Ann. §41-3-302 (1)(a) states, in relevant part:

- (i) A dealer or the division may issue a temporary permit.
- (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the administrator shall make rules for the issuance of a temporary permit under Subsection (1)(a)(i).

Utah Admin. Rule R877-23V-5 (in effect prior to Sept. 2006) states, in relevant part:

- (2) If a vehicle purchaser requests a temporary permit, the dealer shall issue no more than one temporary registration permit, in numerical sequence, for each motor vehicle sold.
- (9) In exceptional circumstances a dealer as agent for the division may issue an additional temporary permit for a vehicle by following the procedures outlined below:
 - (a) The dealer must contact the division and request an extension permit for a particular vehicle. If the request is denied, no extension permit will be issued.

Utah Code Ann. §41-3-702 states, in pertinent part,

(1) The following are civil violations under this chapter and are in addition to criminal violations under this chapter:

(a) Level I:

(iv) issuing a temporary permit improperly;

(2) (a) The schedule of civil penalties for violations of Subsection (1) is:

(i) Level I: \$25 for the first offense, \$100 for the second offense, and \$250 for the third and subsequent offenses;

(b) When determining under this section if an offense is a second or subsequent offense, only prior offenses committed within the 12 months prior to the commission of the current offense may be considered.

DECISION AND ORDER

Utah Admin. Rule R877-23V-5, authorized by Utah Code Ann. §41-3-302, prohibits the issuance of more than one temporary permit for each vehicle sold without authorization from MVED. Each additional temporary permit without authorization constitutes a violation. Under Utah Code Ann. §41-3-702, the first carries a civil penalty of \$\$\$\$\$. The second, within twelve months, carries a civil penalty of \$\$\$\$\$. The third, within twelve months, carries a civil penalty of \$\$\$\$\$.

Petitioner issued three additional temporary permits (dated 3/7/06, 4/7/06, and 5/10/06), after issuing the first following the sale of the vehicle, without authorization from MVED. Based on the foregoing, the Commission sustains the \$\$\$\$\$ civil penalty. 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

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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.

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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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