

07-0244  
Motor Vehicle Salesperson License  
04/03/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)		
	)	<b>ORDER</b>	
Petitioner,	)		
	)	Appeal No.	07-0244
v.	)		
	)	Tax Type:	Motor Vehicle
MOTOR VEHICLE ENFORCEMENT	)		Salesperson License
DIVISION, UTAH STATE TAX	)		
COMMISSION,	)	License No.:	#####
	)		
Respondent.	)	Judge:	Chapman

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**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER  
                    PETITIONER REPRESENTATIVE  
For Respondent:  RESPONDENT REPRESENTATIVE 1, from MVED  
                    RESPONDENT REPRESENTATIVE 2, from MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5, on March 20, 2007.

On February 16, 2007, the Petitioner filed an application for a motor vehicle salesperson license at the Tax Commission and was issued salesperson license #####. On the application, question #3 asks: “[d]uring the past 10 years, have you been convicted of any misdemeanors or felonies in Utah or any other state?” The Petitioner answered “yes” and listed the following convictions: 1) distribution of controlled substance; 2) false information to peace officer; and 3) contributing to the delinquency of a minor. These offenses occurred in 2004 and 2005 when the Petitioner, who is now 22 years old, was 19 and 20.

On February 22, 2007, the Division issued a letter to the Petitioner in which it suspended his salesperson license on the basis of his “criminal convictions within the last 10 years.” At the hearing, the

Division explained that because the Petitioner had been convicted of a felony in 2005, it had no choice but to suspend the Petitioner's license, pursuant to the provisions of Utah Code Ann. §41-3-209.

APPLICABLE LAW

Utah Code Ann. §41-3-209 provides statutory guidance concerning the issuance of motor vehicle salesperson licenses, as follows in pertinent part:

- (1) If the administrator finds that an applicant is not qualified to receive a license, a license may not be granted.
- (2) (a) If the administrator finds that there is a reasonable cause to deny, suspend, or revoke a license issued under this chapter, the administrator shall deny, suspend, or revoke the license.
- (b) Reasonable cause for denial, suspension, or revocation of a license includes
  - ...
  - (viii) a violation of any state or federal law regarding controlled substances; . . .
  - ....

DISCUSSION

First, the Commission will consider the circumstances and determine whether the Division was authorized to suspend the Petitioner's license under Section 41-3-209. If it determines that no reasonable cause exists, as provided in Section 41-3-209, to suspend or revoke the Petitioner's license, the Commission will reverse the Division's action. If the Commission determines that the Division was authorized to suspend the Petitioner's salesperson license, the Commission will consider all information proffered at the Initial Hearing concerning the Petitioner's circumstances before deciding whether to revoke the Petitioner's license.

Section 41-3-209 sets forth a list of circumstances that are considered reasonable cause to suspend or revoke the Petitioner's license. Subsection (xiii) specifically provides that a violation of a law regarding controlled substances is reasonable cause to suspend or revoke the Petitioner's license. In November 2005, the Petitioner was convicted of felony possession of controlled substances with intent to distribute.

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Accordingly, the Division had reasonable cause to suspend the Petitioner's salesperson license.

Nevertheless, the Commission is authorized to reconsider the Division's action, upon a review of the Petitioner's specific circumstances. The Commission notes that its primary responsibility is to protect the public from persons with a criminal history who have demonstrated difficulty in being law-abiding citizens. The concern is that if the Petitioner has a motor vehicle salesperson license, he may come into substantial contact with the public and may be entrusted with their property and personal safety.

The Commission acknowledges that the Petitioner's probation for his felony conviction has been terminated and that his felony conviction has been reduced to a misdemeanor. Furthermore, the Petitioner has worked and paid the approximately \$\$\$\$ in fines that were imposed with the sentence. The Petitioner explains that he has changed his life in the past two years, he does not associate with the same friends he did when he was arrested, and he wishes to take the vehicle salesperson job he has been offered should he be granted a license.

The Petitioner's father, PETITIONER REPRESENTATIVE, was also present and proffered that he is pleased with the progress his son has made in the past two years and believes that his son is now a law-abiding and responsible person of whom he is proud. He further stated that he would not be recommending his son if he did not believe that he had changed, as he was personally responsible for turning his son in to the police once he learned of his illegal activities.

Based on this information, the Commission finds that the Petitioner has taken significant steps to becoming a better citizen and may be granted a salesperson license under these circumstances.

DECISION AND ORDER

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Based on the foregoing and the evidence and testimony proffered at the Initial Hearing, the Commission reverses the Division's suspension and grants to the Petitioner salesperson license #####. 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

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

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

\_\_\_\_\_  
Kerry Chapman  
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

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Marc B. Johnson  
Commissioner

*KRC/07-0224.int.*

D'Arcy Dixon Pignanelli  
Commissioner