

07-0375  
Salesperson License  
Signed 10/11/2007

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,  Petitioner,  v.  MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION,  Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</b></p> <p>Appeal No. 07-0375</p> <p>Tax Type: Salesperson License</p> <p>Judge: Phan</p>
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**Presiding:**

D'Arcy Dixon Pignanelli, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE, Attorney at Law  
PETITIONER  
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General  
RESPONDENT REPRESENTATIVE 2, Assistant Director, Motor Vehicle  
Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on September 17, 2007. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing Respondent's decision to suspend his Motor Vehicle Salesperson license.
2. Petitioner's Motor Vehicle Salesperson Application was dated October 23, 2006. On

the application form Petitioner checked the box that indicated he had been convicted of misdemeanors or felonies in Utah during the past 10 years. Where the form asked to list each conviction, Petitioner had stated, "Please see attached." Then he attached a complete copy of his criminal history report.

3. Despite the disclosure on the part of Petitioner, Respondent issued to Petitioner a Salesperson License shortly after he filed the application. Respondent indicates that the issuance resulted from an inadvertent error on the part of division employees. It was not until after the Bureau of Criminal Identification report came back, and was reviewed by RESPONDENT REPRESENTATIVE 2, Assistant Director of Motor Vehicle, that it was determined the license should not have been issued. RESPONDENT REPRESENTATIVE 2 issued a letter suspending the license on March 2, 2007. The basis indicated in the letter for suspension was a discrepancy in Petitioner's application regarding criminal convictions during the last 10 years.

4. At the hearing, Respondent acknowledged that Petitioner had submitted his complete Criminal History Report with the application. Respondent was no longer arguing that there was a discrepancy with Petitioner's application. It was Respondent's contention that Petitioner's criminal convictions were cause for denial or suspension.

5. Petitioner timely appealed the suspension and the suspension was held in abeyance through the appeal process.

6. Petitioner acknowledged that he had been convicted of the following:

	Date of Arrest	Date of Conviction
DUI	February 9, 1999	July 15, 1999
Open Container	February 9, 1999	July 15, 1999
Alcohol-Related Reckless Driving	March 29, 1999	July 22, 1999
Criminal Trespass	October 2, 1999	August 24, 1999
DUI	November 7, 1999	October 12, 2001
DUI	January 16, 2000	September 10, 2001
Automobile Homicide	February 24, 2000	April 23, 2001

DUI

February 24, 2000

April 23, 2001

7. For the Automobile Homicide conviction Petitioner was sentenced to prison and was incarcerated for nearly six years. On January 10, 2006 he was released from prison onto parole. He remained on parole until June 19, 2007.

8. Petitioner contends his DUI convictions all related to alcohol. While incarcerated he attended substance abuse courses, then taught substance abuse courses and was a counselor or mentor to other inmates. While on parole he was subject to some drug testing which always was negative. At the hearing he testified that he continues to attend Alcoholic Anonymous meetings on a regular basis and has a support group. Petitioner indicated that he needed the salesperson license because he was working with his father to open a small used car dealership. He wanted to be able to work and earn a living so he could be a productive member of the community. Petitioner's Parole Officer, ( X ), submitted a letter of support indicating that he had recommended Petitioner be released early from parole because, "I am in no doubt that he will continue to do what is expected of him without the state's supervision."

9. Although at the hearing Petitioner appeared sincere in his determination to commit no further crimes, he was arrested after the hearing and prior to the time the Commission issued its decision in this matter. By letter dated October 2, 2007, both parties' attorneys in this matter jointly indicated the arrest was material to the matter and included a copy of the Utah County Sheriff's "Arrest Detail." The report noted that Petitioner was arrested on September 25, 2007. Two charges stemming from the arrest are pending: the first driving under the influence; and the second an alcohol restricted driver violation.

APPLICABLE LAW

(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 . . . (vi) making a false statement on any application for a license under this chapter or for special license plates; (vii) a violation of any state or federal law involving motor vehicles; (viii) a violation of any state or federal law regarding controlled substances; (ix) charges filed with any county attorney, district attorney, or U.S. attorney in any court of competent jurisdiction for a violation of any state or federal law involving motor vehicles; (x) a violation of any state or federal law involving fraud; or (xi) a violation of any state or federal law involving a registerable sex offense under Section 77-27-21.5. . . (Utah Code Sec. 41-3-209(2)).

#### CONCLUSIONS OF LAW

At the hearing in this matter Respondent had argued that the DUI and Automobile Homicide convictions were convictions relating to controlled substances and motor vehicles, and therefore Respondent was required to suspend or deny Petitioner's motor vehicle license pursuant to Utah Code Sec. 41-3-209(2)(b).

In a post hearing submission Respondent acknowledged that alcohol was not a 'controlled substance' pursuant to the definition of that term at Utah Code Sec. 58-37-2. Respondent does point out that it is a substance that is subject to control under the Alcoholic Beverage Control Act at Utah Code Sec. 32A-1 et seq. Although the Division raised this argument at the hearing, the facts in this matter are not that of a single alcohol related DUI, but of an ongoing pattern of illegal activity on the part of Petitioner. Whether or not the convictions and charges related directly to controlled substances, motor vehicles or any of the specific criminal activities listed at Utah Code Sec. 41-3-209(2)(b), Subsection (2)(b) is not an all inclusive list and Petitioner's pattern of behavior is significant enough to provided reasonable cause for revocation under subsection (2)(a).

#### DECISION AND ORDER

Due to the nature of Petitioner's Automobile Homicide conviction, the numerous DUI convictions in the past ten years, and DUI arrest shortly following the hearing, there is a pattern of illegal

Appeal No. 07-0375

behavior that is clearly cause for revocation of Petitioner's motor vehicle salesperson license. The Commission does acknowledged that Petitioner has not yet been convicted in the latest incident. Should he be acquitted or the charges stemming from this latest arrest be dismissed, Petitioner could reapply for the license and the Commission would make a determination based on the facts and circumstances at that time.

Based upon the foregoing, the Tax Commission revokes Petitioner's Motor Vehicle Salesperson License. It is so ordered.

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

\_\_\_\_\_  
Jane Phan  
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

**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 Sec. 59-1-601 et seq. and 63-46b-13 et seq.

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