

BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,  Petitioner,  v.  MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 07-1314</p> <p>Tax Type: Salesperson License Tax Year: 2007</p> <p>Judge: Marshall</p>
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**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, *Pro Se*

For Respondent: RESPONDENT REPRESENTATIVE, Motor Vehicle Enforcement  
Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for Formal Hearing on January 29, 2008. Petitioner is appealing the Commission's Order from the Initial Hearing in this matter revoking his salesperson license to sell motor vehicles. Based on the testimony and evidence presented at the Formal Hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. On June 26, 2007, the Petitioner submitted a Motor Vehicle Salesperson Application ("application") to the Motor Vehicle Enforcement Division ("MVED").
2. Question number three of the application asks, "During the past 10 years, have you been convicted of any misdemeanors or felonies in Utah or any other state?" Petitioner checked the box indicating "Yes," and in the space provided, wrote the following:  

Federal Indictment, Possession Of A Restricted Firearm
3. Petitioner was granted a salesperson license, and began working for COMPANY.
4. Petitioner's Utah Criminal History Report, dated September 6, 2007, was subsequently obtained and showed the following convictions within the last 10 years:

<u>DATE</u>	<u>CONVICTION</u>
9/16/97	Criminal Mischief
3/9/98	Possession of Marijuana
4/22/98	Receiving Stolen Vehicle
4/22/98	Theft by Receiving Stolen Property
4/22/98	Use or Possession of Drug Paraphernalia
4/22/98	Illegal Possession/Use of Controlled Substance
2/18/00	Dangerous Drugs – Solicitation with Intent To Have Another Commit Offense
12/3/01	Fraud – Unlawful Acquisition/Possession/Transfer
12/3/01	Fraud – Falsely Make/Code/Sign Financial Trans
2/12/07	Illegal Possession/Use of Controlled Substance

5. Based on the number and nature of the convictions, and on Petitioner's failure to disclose his criminal history on the application, MVED issued a letter dated October 16, 2007 suspending Petitioner's salesperson license.
6. At the Formal Hearing, Petitioner testified that he did not intentionally mislead MVED by failing to disclose his criminal history. Petitioner stated that he was unsure of the dates of the convictions because they occurred several years ago. Further, he testified that he believed that because he listed what he considered to be his most severe conviction and provided a copy of his fingerprints with his application, that would be sufficient for the Division to determine his criminal history.
7. Petitioner's employer is aware of Petitioner's criminal past, and previously submitted a letter on Petitioner's behalf that states that Petitioner "is by far one of the finest employees we have experienced in our work place...[and] is by far the best employee we could have."
8. Petitioner remains on probation for the 2007 Illegal Possession/Use of a Controlled Substance conviction. Petitioner testified that the conviction stems from a controlled substance belonging to another person being found in his vehicle. Further, Petitioner stated that he has paid all fines, complied with all other terms of his probation, and anticipates being released from probation within the next month. Petitioner did not provide any documentation from his probation officer to verify these assertions.
9. For the division, RESPONDENT REPRESENTATIVE testified that the Division is required by Utah Code Ann. §41-3-209 to suspend Petitioner's license because within the past 10 years, Petitioner has been convicted of crimes involving fraud, receiving a stolen

vehicle, and controlled substances. In addition, he failed to disclose his criminal history on the application. It is the Division's position that Petitioner's license should either be revoked or the suspension upheld.

#### APPLICABLE LAW

The denial, suspension, and revocation of a salesperson license are governed by Utah Code Ann. §41-3-209 as follows:

- (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 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, in relation to the applicant or license holder or any of its partners, officers, or directors:
  - (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 involving controlled substances;
  - (x) a violation of any state or federal law involving fraud...

Utah Code Ann. §41-3-209 (2007).

#### CONCLUSIONS OF LAW

The Commission finds that the Motor Vehicle Enforcement Division had reasonable cause to suspend Petitioner's salesperson license. Utah Code Ann. §41-3-209 mandates that a license "shall" be denied, revoked, or suspended for "reasonable cause" and provides that making a false statement on the application, a violation of state or federal law involving motor vehicles, a violation of state or federal law involving controlled substances, and a violation of state or federal law involving fraud all constitute "reasonable cause." Petitioner has been convicted of a crime involving a motor vehicle, crimes involving controlled substances, and crimes involving fraud. In addition, Petitioner failed to disclose his criminal history on his application.

DISCUSSION

Although the Motor Vehicle Enforcement Division had reasonable cause to suspend Petitioner's salesperson license, the Commission may consider other factors, such as the passage of time since the most recent conviction, the payment of restitution, and the release from probation or parole. In the past the Commission has consistently used clearing probation or parole as a general guideline to allow salesperson licenses to individuals who have been convicted of the crimes set forth in Utah Code Ann. §41-3-209. Petitioner remains on probation for his February 2007 conviction involving a controlled substance. Further, it is the Commission's position that an applicant is required to disclose *all* felonies and misdemeanors for which the applicant was convicted within the past 10 years. The Commission finds the Petitioner intentionally misrepresented his criminal history on his application, which facilitated the Division issuing a license to him when it may not have done so had the convictions been disclosed.

DECISION AND ORDER

Based on the foregoing the Commission revokes the Petitioner's salesperson license. Once Petitioner is released from probation, he may reapply for a salesperson license. The Commission will then make a determination based on the facts and circumstances that exist at that time. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Jan Marshall  
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 \_\_\_\_\_, 2008.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Appeal No. 07-1314

**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.

JM/07-1314..fof