

08-1096
Motor Vehicle
Signed 08/19/2008

BEFORE THE UTAH STATE TAX COMMISSION

| | |
|--|---|
| <p>PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION, Respondent.</p> | <p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</p> <p>Appeal No. 08-1096</p> <p>Tax Type: Salesperson License</p> <p>Judge: Phan</p> |
|--|---|

Presiding:

Pam Hendrickson, Commission Chair
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Attorney at Law
PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, Assistant Director, Motor Vehicle
Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on July 28, 2008. 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 February 11, 2008. On the application form Petitioner had checked 'Yes' in response to the question that asked, "During the past 10

years, have you been convicted of any misdemeanors or felonies in Utah or any other state?" The form goes on to state, "Failure to disclose any of the requested information may result in suspension of this license. A criminal conviction for a motor vehicle or drug related crime, fraud or registerable sex offense can be grounds for a denial." Then the form asks that the applicant list each conviction. In the space provided to list each conviction, Petitioner had written, "2007-failure to file a proper tax return."

3. Based on this disclosure the license was issued to Petitioner. The Division, as a matter of practice, sent Petitioner's fingerprints to the Bureau of Criminal Identification for a criminal history report. When the Division received the report, it suspended the license based on the convictions indicated on the report. The Division issued a letter dated May 19, 2008, suspending Petitioner's license and citing Utah Code Sec. 41-3-209. Petitioner timely appealed the Division's decision to suspend the license and the matter proceeded to the Formal Hearing.

4. Petitioner's criminal history report indicated that he had two criminal convictions, both convictions stemmed from the same incident, were dated September 7, 2007 and are as follows:

Third Degree Felony: Theft by Deception Felony
Third Degree Felony: Tax Evasion

5. Petitioner testified at the hearing that the convictions stemmed from the same set of circumstances, and it dealt with Utah State tax returns he had filed when he was operating several fast food and restaurant businesses. While operating the business he had filed the returns, which resulted in the charges and eventually convictions. He testified that he considered the convictions to be a single incident or event involving tax returns.

6. Petitioner was sentenced to felony probation and is currently on probation. Petitioner indicated he thought the sentence was for three years but that he may be released early from probation.

7. In conjunction with the criminal proceedings, the Utah State Tax Commission

performed an audit of Petitioner's businesses and it was determined that Petitioner owed to the State of Utah approximately \$\$\$\$\$ in tax and \$\$\$\$\$ in penalties.

8. Petitioner states that a Tax Commission employee, TAX COMMISSION EMPLOYEE, was the restitution agent assigned to the collection of this deficiency. When he started thinking about applying to be a motor vehicle salesperson, and realized that it would require a license issued by the Tax Commission, he asked TAX COMMISSION EMPLOYEE if he could obtain a license despite the criminal convictions. He testified that she told him she would ask someone if it would be allowed. She did call him back later and told him he could obtain a license. He submitted the application, a license was issued based on his disclosure, and he began to sell motor vehicles at COMPANY. He indicates that later, after he had been notified by the Division of the suspension of the motor vehicle license, he did try to contact TAX COMMISSION EMPLOYEE and she had not returned his telephone calls.

9. Petitioner wishes to have the license reinstated so that he can pursue motor vehicle sales, as an occupation from which he could earn enough to support his family and pay the tax deficiency. Petitioner did pay a portion of the amount owed to the state on September 7, 2007, when he submitted a cashier's check in the amount of \$\$\$\$\$. However, no additional payments toward the deficiency have been made.

10. Petitioner submitted a letter from the general manager of COMPANY, who asked that Petitioner's license be reinstated. The letter also indicated that Petitioner does not handle cash, contracts, bank instruments, or have any fiduciary responsibilities.

APPLICABLE LAW

The denial, suspension, and revocation of a salesperson license are governed by Utah Code Ann. §41-3-209(2) as follows:

(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:

- (i) lack of a principal place of business;
- (ii) lack of a sales tax license required under Title 59, Chapter 12, Sales and use Tax Act;
- (iii) lack of a bond in effect as required by this chapter;
- (iv) current revocation or suspension of a dealer, dismantler, auction, or salesperson license issued in another state;
- (v) nonpayment of required fees;
- (vi) making a false statement on any application of 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;
- (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 §41-3-209(2) (2007).

CONCLUSIONS OF LAW

1. Petitioner's representative argues that the crimes for which Petitioner was convicted were not crimes involving fraud pursuant to Utah Code §41-3-209(2)(b)(x) and that the convictions could not be construed as any of the other specified items listed in that section. Therefore, he argues that Petitioner's license should be reinstated. The Commission would first point out that cause for suspension or denial of a license is not limited to the crimes specifically listed at 41-3-209(2)(b). If the administrator finds reasonable cause to suspend and revoke the license, the administrator may suspend or revoke for crimes that are not

specified on the list. For example murder is not one of the crimes specifically listed, but certainly a conviction would provide reasonable cause for denying the license. It is the Commission's conclusion that having both a felony theft by deception conviction and a felony tax evasion conviction is cause for denial of the license under Utah Code Sec. 41-3-209.

2. The Commission also concludes that Petitioner failed to fully disclose his convictions on the salesperson license application form. A false statement on the application alone is grounds for denial or suspension of the license under Utah Code Sec. 41-3-209(2)(b)(vi). Petitioner disclosed only "failure to file a proper tax return." This does not, in fact, fully disclose the two convictions on his record.

3. Petitioner's representative argues that Petitioner has a strong interest in being allowed to pursue his chosen occupation so that he could support himself and family. He also indicated that Petitioner needed the license so he could pay the tax deficiency. The Commission notes that Petitioner has not made any further payments toward the tax deficiency since the one \$\$\$\$ payment dated September 7, 2007, several months prior to his applying for the salesperson license. Although Petitioner does have an interest in pursuing an occupation, the Legislature has determined that it is necessary for public safety reasons to regulate who may sell motor vehicles. When Petitioner is released from probation, and assuming no further criminal incidents, the Tax Commission would consider an application from Petitioner at that time.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission revokes Petitioner's motor vehicle salesperson license. It is so ordered.

DATED this _____ day of _____, 2008.

Jane Phan
Administrative Law Judge

Appeal No. 08-1096

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

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 Sec. 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.

JKP/08-1096.fof