

08-1372  
Motor Vehicle  
Signed 08/05/2008

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,

Petitioner,

v.

MOTOR VEHICLE ENFORCEMENT  
DIVISION OF THE UTAH STATE TAX  
COMMISSION,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 08-1372

Tax Type: Salesperson License  
Tax Year: 2008

Judge: Marshall

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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 an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5 on July 15, 2008. The Applicant is appealing the denial of a salesperson license to sell motor vehicles.

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 Ann. §41-3-209 (2007).

#### DISCUSSION

The Applicant had previously been granted a salesperson license. This license was revoked by the Commission in the Findings of Fact, Conclusions of Law, and Final Decision dated February 29, 2008 from Appeal No. 07-1314. The Applicant then filed a Request for Reconsideration asking that he be allowed to reapply for a salesperson license and stated that he had been released from probation. On April 15, 2008, the Commission issued its Order Denying Reconsideration, stating that the Application was denied not only because the Applicant was on probation, but because he had intentionally misrepresented his criminal history on his application.

On or about April 18, 2008, the Applicant submitted a Motor Vehicle Salesperson Application to the Division. On the application, the Applicant indicated that he had previously

been granted a salesperson license, and that the license had been suspended or revoked because he failed to list all of his criminal background information. In response to the question number three on the application, asking if the Applicant had “been convicted of any misdemeanors or felonies in Utah or any other state” in the past ten years, he checked the box indicating “Yes.” In the space provided, the Applicant wrote,

- 01/05/98 Misdemenor [*sic*] Poss. of marijuana (Past 10 years)
- 01/21/98 3<sup>rd</sup> Degree Felony Receipt of Stolen Vehicle (Past 10 years)
- 10/05/99 Misdemenor [*sic*] criminal mischief  
Misdemenor [*sic*] solicitation of Dangerous Drugs
- 2/10/00 – Misdemenor [*sic*] Fraud 1 ct  
Misdemenor [*sic*] Fraud 2<sup>nd</sup> ct.
- 8/14/06 3<sup>rd</sup> Degree Poss of Controlled Substance  
(Federal indictment in 2001 Firearm Restriction)

The Applicant’s criminal history report was reviewed, and he has been convicted of the following violations within the past ten years:

<u>DATE</u>	<u>CONVICTION</u>
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

In the Applicant’s appeal request, he indicates that he is asking to be allowed to reapply for a salesperson license on the basis that his criminal convictions have exceeded ten years, that he is no longer on probation, and that his April 18, 2008 application did not exclude any of his criminal convictions. At the hearing, the Applicant stated that the company has offered him a substantial promotion that he has been unable to accept at this time because he does not have a salesperson license. The Applicant also stated that he has been rehabilitated, and has made changes to his life. He noted that he was sentenced to three years probation for his most recent offense, and was released after twelve months. Finally, the Applicant stated that based on the salary he was earning as a salesperson he has been able to get into a house, and pay child support. He stated that if he were denied a salesperson license, the only employment he could obtain that would provide a sufficient living would be working as a contractor out of state.

The Taxpayer submitted a letter from WITNESS 1, the store manager, and WINTESS 2, the owner of COMPANY. The letter indicated that the Applicant was one of the finest employees, and that he has become “the leader of our pack.” The letter states that the Applicant

has grown away from his background, is very responsible, helpful, and on time. The letter asks for the Applicant to be allowed to continue with his salesperson license.

The Division's representative indicated that the Applicant was denied a license because of his criminal history as well as the Commission's decision in the April 15, 2008 Order Denying Reconsideration. He stated that the Division was required under Utah Code Ann. §41-3-209 to deny the application, as the Applicant was convicted of a violation involving a controlled substance within the last 10 years.

Utah Code Ann. §41-3-209 mandates that a license "shall" be denied, revoked, or suspended for reasonable cause, and has identified violations of state or federal law involving a controlled substance as "reasonable cause". While there is no doubt the Division acted as required by the law, the Commission is able to consider other factors, such as the passage of time since the most recent conviction, the payment of restitution, and termination of probation. The Commission notes that the Applicant's most recent conviction was more than a year ago, he has been released from probation, and made representations that he no longer uses drugs and has changed his life for the better.

The Applicant was forthcoming with his criminal history on the April 18, 2008 application. However, he reapplied for a salesperson license only three days after the Commission issued its Order Denying Reconsideration, based on the Applicant's intentionally misleading application. The Commission is not willing to disregard the prior false statement. Because of that false statement, the Applicant was granted a salesperson license when he otherwise would not have been. However, the Commission does not believe that the Applicant should forever be precluded from obtaining a salesperson license. Under the circumstances, the Commission finds that the Applicant may not be issued a salesperson license for a period of six months from the date of the Order Denying Reconsideration.

#### DECISION AND ORDER

Based on the foregoing, the Commission upholds the Division's denial of the Applicant's salesperson license application. The Applicant may reapply for a salesperson license after October 15, 2008. Upon receipt of such application, the Division is ordered to obtain the Applicant's updated criminal history report, and if there are no additional violations of law or other reasonable cause shown, a salesperson license may be issued to the Applicant. 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 either party to this case files a written request within thirty (30) days of the date of this decision to proceed to a

Appeal No. 08-1372

formal decision. Such 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 \_\_\_\_\_, 2008.

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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