

08-1860  
MOTOR VEHICLE  
SIGNED 1-21-09

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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. 08-1860</p> <p>Tax Type: Salesperson License Tax Year: 2008</p> <p>Judge: Marshall</p>
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**Presiding:**

Pam Hendrickson, Commission Chair  
Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner:     PETITIONER, *Pro Se*  
For Respondent:    RESPONDENT REP 1, Assistant Attorney General  
                          RESPONDENT REP 2, Assistant Director of MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for Formal Hearing on January 6, 2009. The Applicant is appealing the Division's denial of his application for a motor vehicle salesperson license. Based on the testimony and evidence presented at the Formal Hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. On or about August 1, 2008, the Applicant submitted a Motor Vehicle Salesperson Application to the Motor Vehicle Enforcement Division ("MVED"). (Exhibit R-1).
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?" Applicant checked the "Yes" box, and in the space provided, wrote, "Conspiracy to Distribute."
3. On August 27, 2008 the Motor Vehicle Enforcement Division sent a letter to the Applicant denying his salesperson license application due to the nature of the Applicant's criminal conviction. (Exhibit R-4).

4. Applicant's Utah Criminal History Report (Exhibit R-2) was subsequently obtained and showed the following convictions in the last 10 years:

<u>DATE</u>	<u>CONVICTION</u>
8/19/08	Criminal Mischief (Class B Misdemeanor)
8/19/08	Domestic Violence in Presence of Child (Class C Misdemeanor)

5. Applicant's Federal Criminal History Report (Exhibit R-3) was obtained and showed the following convictions in the last 10 years:

<u>DATE</u>	<u>CONVICTION</u>
6/27/00	Conspiracy to Distribute Controlled Substance

6. Applicant submitted documents from the Ogden City Justice Court (Exhibit P-1) which show that the August 2008 convictions were vacated and the case dismissed.
7. The Applicant was sentenced to 24 months in prison. He testified that he chose to participate in a drug treatment program. Applicant testified that from 2000-2005 he participated in a military-style boot camp. Applicant stated that he met all expectations in the boot camp, and received the highest honor. He testified that he has been clean since 2000, and has not been in trouble since that time.
8. He returned to Utah in 2005, and worked various jobs including construction, auto mechanics, and auto body work.
9. The Applicant works at his current employer doing "lining." He explained that he meets and greets customers, and then introduces them to a salesperson. He testified that he has not sold any vehicles since working for his employer.
10. For the Division, RESPONDENT REP 2 testified that MVED is required by Utah Code Ann. §41-3-209 to deny the Applicant a salesperson license because the Applicant had been convicted of a violation of state or federal law involving a controlled substance within the last 10 years.

#### 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 (2008).

#### CONCLUSIONS OF LAW

The Division had reasonable cause to deny the Applicant's salesperson license under Utah Code Ann. §41-3-209. The Applicant has been convicted of crimes involving controlled substances, which constitutes "reasonable cause" for the denial of a salesperson license. Although the Division had reasonable cause to suspend the Applicant's license, the Commission may consider other factors, such as the passage of time since the most recent conviction, the payment of restitution, and termination of probation or parole. It has been more than eight years since the Applicant's most recent conviction, the applicant is not on parole, and has remained off drugs since his conviction in 2000. The Applicant provided documentation to show that the

August 2008 convictions shown on his criminal history report had been vacated and the case dismissed. Under the circumstances, the Commission finds that the Applicant should be granted a motor vehicle salesperson license.

DECISION AND ORDER

Based on the foregoing the Commission abates the Division's action and grants the Applicant his motor vehicle salesperson license. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
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 \_\_\_\_\_, 2009.

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 Ann. §59-1-601 and §63-46b-13 et. seq.

*JM/08-1860.fof*