

08-2024
MOTOR VEHICLE
TAX YEAR: 2008
SIGNED: 06-22-09
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, M. JOHNSON
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 08-2024 Tax Type: Miscellaneous Taxes Tax Year: 2008 Judge: Marshall
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Presiding:

R. Bruce Johnson, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP, *Pro Se*
For Respondent: RESPONDENT REP 1, Assistant Attorney General
 RESPONDENT REP 2, Chief Investigator for MVED
 RESPONDENT REP 3, Investigator for MVED
 RESPONDENT REP 4, Investigator for MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for Formal Hearing on April 16, 2009. PETITIONER (“PETITIONER”) is appealing fines in the amount of \$\$\$\$ assessed by the Motor Vehicle Enforcement Division (“Division”) for the dismantling of vehicles without permits. Based on the testimony and evidence presented at the Formal Hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Dealership is licensed as a used motor vehicle dealer, dismantler, and salvage buyer. (Exhibit P-1).
2. On or about June 17, 2008, officers from the Division were investigating an unrelated matter that led them to the Dealership. At the dealership, they observed numerous

vehicles in various states of dismantling and requested permission to conduct an on-site investigation.

3. EMPLOYEE, an employee of the Dealership, gave the officers permission to inspect the lot. EMPLOYEE indicated that to his knowledge, the Dealership did not have dismantling permits for any of the vehicles on the property.
4. EMPLOYEE was not able to provide copies of titles or permits for the vehicles on the property, but provided an “inventory list” that included the year, make, model, and VIN. (Exhibit R-10).
5. The Division’s investigator testified that there were in excess of (X) vehicles being dismantled at the dealership, but he only identified (X) vehicles in his report.
6. The Division issued a letter to the Dealership dated August 28, 2008 assessing penalties in the amount of \$\$\$\$\$. (Exhibit R-1).
7. At the hearing, the Division’s representative acknowledged that the fine had been miscalculated, and asked the Commission to sustain the fine in the amount of \$\$\$\$\$.
8. The Dealership’s representative sent a letter dated January 8, 2009 to the Division requesting the make, model, and VIN for the vehicles for which fines were assessed. (Exhibit P-3).
9. The Division assessed fines on the following vehicles (Exhibits P-4 and R-2):

Year	Make	Model	Color	VIN
1997	Chevrolet	Cavalier	White	VIN A
2000	Plymouth	Neon	White	VIN B
1995	Chrysler	Cirrus	Gray	VIN C
2002	Chevrolet	Cavalier	Tan	VIN D
1997	Oldsmobile	Achieva	Red	VIN E
1995	Acura	Integra	Green	VIN F
2000	Ford	Expedition		VIN G

10. The Division submitted a photograph of the 1997 Chevrolet Cavalier, VIN A, which shows several parts missing and records showing that the Dealership obtained a dismantling permit for the vehicle on March 18, 2009. (Exhibit R-3). The Dealership submitted a notarized statement from PERSON A. (Exhibit P-5). PERSON A asserted she was the owner of the 1997 Chevrolet Cavalier, VIN A. The vehicle was involved in an accident, and she and her husband sold parts off the vehicle. They moved from CITY to Utah County, and left the vehicle at the Dealership. A vehicle registration certificate for the vehicle was attached showing PERSON A or PERSON B as the owners of the vehicle.

11. The Division submitted two photographs of the 2000 Plymouth Neon, VIN B, which show several parts missing from the vehicle, as well as a record showing the Dealership obtained a dismantling permit for the vehicle on June 26, 2008. (Exhibit R-4). The Dealership submitted a copy of the dismantling permit for the vehicle, and information showing it was purchased for \$\$\$\$\$. In addition, the Dealership provided photographs of the vehicle in the condition of the vehicle at the time of purchase, which show the vehicle mostly intact, with damage to the rear. (Exhibit P-6).
12. The Division submitted a photograph of the 1995 Chrysler Cirrus, VIN C, which shows that the vehicle had been partially dismantled, as well as a record showing that the title had been cancelled on August 26, 2008. (Exhibit R-5). The Dealership submitted information showing the vehicle was purchased for \$\$\$\$\$. In addition, the Dealership provided a copy of the "Repossession Statement" dated February 3, 2005 and a copy of the certificate of title showing the Dealership's representative as the lienholder. (Exhibit P-7).
13. The Division submitted a photograph of the 2002 Chevrolet Cavalier, VIN D, which shows the vehicle has been partially dismantled, as well as a record showing that the title had been cancelled on August 21, 2008. (Exhibit R-6). The Dealership submitted information showing the vehicle was purchased for \$575; several photographs of the vehicle showing it intact, but with a lot of body damage; and a Dismantling Permit issued on March 18, 2009. (Exhibit P-8).
14. The Division submitted photographs of the 1997 Oldsmobile Achieva, VIN E, which show the front-end of the vehicle partially dismantled. In addition, the Division submitted copy of a record showing that a dismantling permit was applied for on September 10, 2008. (Exhibit R-7). The Dealership submitted a copy of the dismantling permit; the Application for Utah Title, Ownership Statement; Certificate of Inspection; and copies of the letters and certified mail receipt to the registered owner of the vehicle informing her that if the vehicle is not claimed, title would be obtained by the Dealership from the State of Utah. (Exhibit P-9).
15. The Division submitted photographs of the 1995 Acura Integra, VIN F, which shows that the vehicle has been partially dismantled, as well as a record showing the title was cancelled on August 25, 2008. (Exhibit R-8). The Dealership provided a copy of the certificate of title for the vehicle identifying him as the "buyer" of the vehicle, with the date of sale being December 23, 2005. (Exhibit P-10).

16. The Division submitted a photograph of the 2000 Ford Expedition, VIN G, showing the front end of the vehicle had been dismantled. In addition, the Division submitted a record showing that a dismantling permit had been issued for the vehicle on June 26, 2008. (Exhibit R-9). The dealership submitted a copy of the dismantling permit; salvage certificate; information showing the vehicle was purchased on May 16, 2008 for \$\$\$\$; and several photographs showing the vehicle intact, with damage on the driver's side. (Exhibit P-11).
17. The Dealership's representative testified that the Dealership had held a dealer's license for 15 years, a salvage license for over 10 years, and a dismantler's license for 4-5 years. He further testified that a dismantler's license fee is \$\$\$\$ per year, and argued that it was not required because Dealership was a licensed used motor vehicle dealer.
18. The Dealership's representative testified that he would pick up abandoned vehicles and submit an affidavit, which the Division would sign, certifying that the vehicle could not be rebuilt or reconstructed. He submitted Exhibit P-2, a list of vehicles and one of the affidavits, as an example of how he had operated the dismantling business.
19. The Division's investigator testified that a dismantling permit is required for each vehicle being dismantled, regardless of whether the dismantler has a license. He explained that the permit is required for each vehicle so that the Division can run a check on the vehicle to verify that there are no lienholders and that the vehicle was not stolen.
20. There is no charge for a dismantler permit if the applicant has title to the vehicle.
21. The Dealership's representative testified that he believed he did not need to obtain dismantler permits because the Dealership had a dismantler license. In addition, he noted that no one from the Division ever questioned why he had obtained a dismantler's license every year but never obtained dismantling permits.

APPLICABLE LAW

Utah Code Ann. §41-3-202 governs the scope of licenses issued by the Division, as set forth below in pertinent part:

- (2) A used motor vehicle dealer's license permits the licensee to:
 - (a) offer for sale, sell, or exchange used motor vehicles;
 - (b) operate as a body shop; and
 - (c) dismantle motor vehicles...
- (8) A dismantler's license permits the licensee to dismantle motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, for the purpose of reselling parts or for salvage, or selling dismantled or salvage vehicles to a crusher or other dismantler...

- (15) (a) A salvage vehicle buyer license permits the licensee to bid on or purchase a vehicle with a salvage certificate as defined in Section 41-1a-1001 at any motor vehicle auction.
- (b) A salvage vehicle buyer license may only be issued to a motor vehicle dealer, dismantler, or body shop who qualifies under rules made by the division and is licensed in any state as a motor vehicle dealer, dismantler, or body shop.
- (c) The division may not issue more than two salvage vehicle buyer licenses to any one dealer, dismantler, or body shop.
- (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the administrator shall make rules establishing qualifications of an applicant for a salvage vehicle buyer license. The criteria shall include:
- (i) business history;
 - (ii) salvage vehicle qualifications;
 - (iii) ability to properly handle and dispose of environmental hazardous materials associated with salvage vehicles; and
 - (iv) record in demonstrating compliance with the provisions of this chapter.

Utah Code Ann. §41-3-202 (2008).

Under Utah Code Ann. §41-3-210, a dealership is prohibited from dismantling a vehicle without a permit, as follows in pertinent part:

- (1) The holder of any license issued under this chapter may not:
- (h) dismantle or transport to a crusher for crushing or other disposition any motor vehicle without obtaining a dismantling or junk permit under Section 41-1a-1009, 41-1a-1010, or 41-1a-1011.

Utah Code Ann. §41-3-210 (2008).

The determination as to whether a vehicle has been abandoned and inoperable is governed by Utah Code Ann. §41-1a-1009, set forth below:

- (1) A vehicle, vessel, or outboard motor is abandoned and inoperable when:
- (a) the vehicle, vessel, or outboard motor has been inspected by an authorized investigator or agent appointed by the commission; and
 - (b) the authorized investigator or agent has made a written determination that the vehicle, vessel, or outboard motor cannot be rebuilt or reconstructed in a

- manner that allows its use as designed by the manufacturer.
- (2) (a) Before issuing a written determination under Subsection (1),
a signed statement is required from the purchaser of the vehicle, vessel, or outboard motor for salvage, identifying the vehicle, vessel, or outboard motor by identification number and certifying that the inoperable vehicle, vessel, or outboard motor will not be rebuilt, reconstructed, or in any manner allowed to operate as designed by the manufacturer.
 - (b) The operator of the junk or salvage yard disposing of an inoperable vehicle, vessel, or outboard motor is required to keep copies of the signed statements and other written records required by the commission.
 - (3) Upon a determination that a vehicle, vessel, or outboard motor is inoperable and cannot be rebuilt or reconstructed, the vehicle, vessel, or outboard motor may be converted to scrap or otherwise disposed of without necessity of compliance with the requirements of Sections 41-1a-1010 and 41-1a-1011.

Utah Code Ann. §41-1a-1009 (2008).

Utah Code Ann. §41-1a-1010 requires a permit to dismantle a vehicle, as set forth below:

- (1) (a) A person may not scrap, dismantle, destroy, or otherwise change
any vehicle so that it loses its character until the person submits
to the division:
 - (i) the certificate of title for the vehicle for cancellation; and
 - (ii) an application for a permit to dismantle the vehicle.
- (b) Upon approval of the application, the division shall issue a permit to dismantle the vehicle.
- (2) Except as provided in Subsection (3), if a permit to dismantle is issued under this section, the vehicle shall be destroyed and may not be rebuilt or reconstructed and may not be retitled or registered.
- (3) A vehicle for which a permit to dismantle has been issued by the division may be retitled and the permit to dismantle rescinded if:
 - (a) prior to receiving a dismantling permit the vehicle had a Utah certificate of title;
 - (b) the vehicle has not been dismantled;
 - (c) an investigator for the Motor Vehicle Enforcement Division of the commission determines after a physical inspection of the vehicle that it is the same vehicle for which the permit to dismantle was issued; and
 - (d) the applicant pays the fee under Subsection (4).

- (4) The commission may collect a fee established in accordance with Section 63J-1-202 to cover the expenses of an inspection under Subsection (3).

Utah Code Ann. §41-1a-1010 (2008).

The use of a dismantling permit is set forth in Utah Code Ann. §41-1a-1011, below:

The permit to dismantle issued under Section 41-1a-1010:

- (1) requires the owner to dismantle the vehicle described in the permit unless the vehicle is retitled as provided in Subsection 41-1a-1010(3); and
- (2) entitles the owner of the vehicle to transport the vehicle to the place of business of a dismantler, crusher, or salvage dealer licensed under the provisions of Title 41, Chapter 3, Part 2, Licensing.

Utah Code Ann. §41-1a-1011 (2008).

A penalty is imposed for a civil violation of the Utah Motor Vehicle Business Regulation Act in accordance with Utah Code Ann. §41-3-702, as follows in pertinent part:

- (1) The following are civil violations under this chapter and are in addition to criminal violations under this chapter: ...
 - (b) Level II: . . .
 - (ii) dismantling without a permit...
- (2) (a) The schedule of civil penalties for violations of Subsection (1) is: ...
 - (ii) Level II: \$100for the first offense, \$250 for the second offense, and \$1,000 for the third and subsequent offenses.
- (b) When determining under this section if an offense is a second or subsequent offense, only prior offenses committed within the 12 months prior to the commission of the current offense may be considered...

Utah Code Ann. §41-3-702 (2008).

Utah Code Ann. §59-1-303 authorizes the Commission to apply an overpayment of tax or fee against a Taxpayer's liability for any tax or fee, as set forth below:

- (1) For purposes of this section:
 - (a) "Overpayment" means an amount equal to the sum of:

- (i) the amount by which a tax or fee a taxpayer paid exceeds the taxpayer's liability for the tax or fee; and
 - (ii) interest accruing to the amount described in Subsection (1)(a)(i).
- (b) "Tax" or "fee" means any tax or fee administered by the commission.
- (2) The commission may apply an overpayment of any tax or fee against a taxpayer's liability for any tax or fee.
 - (3) If the commission applies an overpayment of a tax or fee against a taxpayer's liability for a tax or fee, the commission shall notify the taxpayer in writing.

Utah Code Ann. §59-1-303 (2008).

CONCLUSIONS OF LAW

I. Meaning Of The Term "Offense":

The Dealership contends that the Division incorrectly interpreted the term "offense." The Dealership's representative argued that the dismantling should be treated as one continuing offense, rather than each vehicle being treated as a separate offense. Utah Code Ann. §41-3-210(1)(h) prohibits "[t]he holder of any license issued under this chapter" from dismantling or transporting to a crusher for crushing or otherwise disposing of any motor vehicle without first obtaining a dismantling or junk permit under Section 41-1a-1009, 41-1a-1010, or 41-1a-1011.

The Commission first looks to the plain language of the relevant provision.¹ The statute prohibits the holder of any license issued under this chapter from dismantling, transporting to a crusher, or other disposition of *any* motor vehicle without first obtaining *a* dismantling or junk permit. The emphasized language in the statute is singular. The Commission interprets this to mean that a dismantling or junk permit is required for each vehicle to be dismantled, and that each vehicle dismantled without such a permit is a separate offense.

II. When A Dismantler Permit Is Required:

Utah Code Ann. §41-3-210 prohibits a dealership from dismantling a vehicle without first obtaining a dismantling or junk permit. Utah Code Ann. §41-1a-1009 provides that when an authorized investigator or agent has made a written determination that a vehicle cannot be rebuilt or reconstructed in a manner that allows its use as designed by the manufacturer, the vehicle

¹ "When interpreting statutes, our primary goal is to evince the true intent and purpose of the Legislature." The first step of statutory interpretation is to evaluate the best evidence of legislative intent: "the plain language of the statute itself." *Id.* "When examining the statutory language we assume the legislature used each term advisedly and in accordance with its ordinary meaning." *Id.* *In the Interest of Z.C., a person under eighteen years of age*, 165 P.3d 1206 (Utah 2007) quoting *State v. Martinez*, 2002 UT 80, P 8, 52 P.3d 1276.

“may be converted to scrap, *or otherwise disposed of* without necessity of compliance with the requirements of 41-1a-1010 and §41-1a-1011.” The plain language indicates that Section 41-1a-1009 provides for an exception to the requirements of Sections 41-1a-1010 and 41-1a-1011, if an authorized investigator has made the determination that a vehicle cannot be rebuilt or reconstructed.

The Dealership’s representative testified that he had operated his business by obtaining the written determination from the Division that a vehicle could not be rebuilt or reconstructed on the vehicles being dismantled. The Dealership provided a list of vehicles and an Affidavit of Abandoned and Inoperable Vehicle, as an example of how records were kept of the vehicles being dismantled. However, the Dealership did not provide the written determination from the Division that any of the vehicles at issue could not be rebuilt or reconstructed. Without such written determinations, the Dealership was required to obtain a permit for each vehicle being dismantled.

III. Amount Of The Fine

Utah Code Ann. §41-3-702 imposes a fine for violations of the Utah Motor Vehicle Business Regulation Act. Dismantling without a permit is a Level II violation that is subject to a fine of \$100 for the first offense, \$250 for the second offense, and \$1,000 for the third and subsequent offenses.

The Division identified seven vehicles that were being dismantled without a permit, and asked the Commission to sustain the fine in the amount of \$\$\$\$\$. Based on the notarized statement of PERSON A, which the Division did not refute, the Commission finds that the 1997 Chevrolet Cavalier, VIN A, was not being dismantled by the Dealership, and no fine should be assessed for this vehicle. The Dealership has not provided evidence with regard to the other six vehicles that would indicate a dismantling permit was not required. The Commission sustains the fine imposed on the remaining six vehicles, with each being a separate “offense,” for a total fine of \$\$\$\$\$.

Dismantler’s License:

The Dealership was not required to have a separate dismantler’s license, as Utah Code Ann. §41-3-202 provides that a used motor vehicle dealer’s license permits the licensee to dismantle motor vehicles. The Dealership had been a licensed used motor vehicle dealership for at least fifteen years, and obtained a dismantler’s license for the past four or five years. Dealership was not required to obtain a separate dismantler’s license, but did so at a cost of \$\$\$\$\$ per year. The Commission finds this to be an overpayment of fees within the meaning of Utah

Code Ann. §59-1-303, and will allow for three years of this overpayment to be applied to the fine assessed under Utah Code Ann. §41-3-702.²

DECISION AND ORDER

Based on the foregoing the Commission sustains the fine in the amount of \$\$\$\$\$. 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.

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² The Commission limits the application of the overpayment to three years because the statute of limitations for liabilities created under the statute of this state is limited to a three-year period under Utah Code Ann. §73B-2-305.