

08-2680  
MOTOR VEHICLE  
TAX YEAR: 2008  
SIGNED 03-19-09  
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, M. JOHNSON, D. DIXON  
GUIDING DECISION

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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. 08-2680</p> <p>Tax Type: Dealer License Tax Year: 2008</p> <p>Judge: Marshall</p>
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**Presiding:**

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

**Appearances:**

For Petitioner: PETITIONER REP. 1, Esq.  
PETITIONER REP. 2  
For Respondent: RESPONDENT REP. 1, Assistant Attorney General  
RESPONDENT REP. 2, Chief Investigator for MVED  
RESPONDENT REP. 3, Investigator for MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for Formal Hearing on March 5, 2009. The Petitioner is appealing the suspension of its dealer license. Based on the testimony and evidence presented at the Formal Hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. PETITIONER REP 2 owns and operates PETITIONER (hereafter, "Dealership"). The Dealership has been issued motor vehicle dealer license no. #####.
2. The Dealership has been in operation since YEAR, and PETITIONER REP 2 is the only employee. The Dealership buys low-end vehicles, makes repairs, and then resells the vehicles for a profit. Historically, the dealership has sold between two and three cars per month.

3. In December of 2004 or January of 2005, PETITIONER REP 2 met EMPLOYEE. EMPLOYEE operated COMPANY, which was located near the Dealership.
4. PETITIONER REP 2 contracted with EMPLOYEE to perform some repairs on a 1997 Oldsmobile Achieva that the Dealership owned. After approximately a month, the Oldsmobile was returned to the Dealership, although it was still in poor running condition. The Dealership paid COMPANY \$\$\$\$ for the repairs. (Exhibit P-A).
5. About a month later, COMPANY took the Oldsmobile back to try and solve the problem. Several months later, PETITIONER REP 2 saw the Oldsmobile offered for sale at COMPANY.
6. On August 11, 2005, PETITIONER REP 2 contacted the police regarding the Oldsmobile. (Exhibit P-B). PETITIONER REP 2 took the Oldsmobile from COMPANY.
7. On or about September 17, 2007, the Dealership sold the Oldsmobile to ( X ). (Exhibit R-9).
8. When PETITIONER REP 2 attempted to register the vehicle for ( X ), he was informed that the title he held did not match the DMV records.
9. COMPANY had placed a mechanics lien on the Oldsmobile and received title to the vehicle. (Exhibit R-6). EMPLOYEE filed an "Ownership Statement" with the DMV on or about April 26, 2005 that stated the Dealership had not paid for repairs, and submitted a copy of an invoice for services. (Exhibit R-8).
10. PETITIONER REP 2 submitted an appeal to the DMV on November 26, 2007. (Exhibit P-F).
11. On or about December 17, 2007, PETITIONER REP 2 submitted an Application for Utah Title to transfer title to ( X ), an Application for Utah Duplicate Title, and a Bill of Sale. PETITIONER REP 2 acknowledged at the hearing that he had forged the signatures on the documents. (Exhibits R-3 through R-5).
12. RESPONDENT REP 3, an Investigator with MVED, conducted the criminal investigation. He indicated that the Oldsmobile was reported as stolen with the National Crime Information Center on November 21, 2005.
13. PETITIONER REP 2 testified that his criminal defense attorney, ATTORNEY A, had spoken with RESPONDENT REP 3, who told him that if PETITIONER REP 2 entered into a plea agreement, there would not be any further problems, and he would not lose his dealer license.

14. RESPONDENT REP 3 acknowledged that he had spoken to ATTORNEY A. RESPONDENT REP 3 testified that he does not get involved if the District Attorney wants to enter into a plea agreement with a defendant, and stated that he did not make any representations to ATTORNEY A as to whether the Dealership license would be revoked.
15. On or about November 19, 2008, the Division issued a letter to the Dealership suspending its license for PETITIONER REP 2's convictions involving forgery and theft by deception. (Exhibit R-1).
16. PETITIONER REP 2's Utah Criminal History Report (Exhibit R-2) was obtained and shows that on September 8, 2008 he was convicted of two counts of forgery and one count of theft by deception, all third degree felonies.

#### APPLICABLE LAW

Utah Code Ann. §4-3-209 provides statutory guidance concerning the issuance of motor vehicle dealer licenses, as follows in pertinent part:

- (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:
    - (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...

Utah Code Ann. §41-3-209 (2008).

#### CONCLUSIONS OF LAW

The Division had reasonable cause to suspend the Dealership's dealer license. Utah Code Ann. §41-3-209(2)(b)(ix) provides that having 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” is reasonable cause to suspend or revoke a license. All three of PETITIONER REP 2’s convictions involve motor vehicles, thus the Commission finds that there is reasonable cause to suspend or revoke the dealer license under Utah Code Ann. §41-3-209(2)(b)(ix). Further, Utah Code Ann. §41-3-209(2)(b)(x) provides that a violation of state or federal law involving fraud is reasonable cause to suspend or deny a license. The Commission considers PETITIONER REP 2’s convictions for forgery and theft by deception to involve fraud. Therefore, the Commission finds that reasonable cause also exists under Utah Code Ann. §41-3-209(2)(b)(x) to suspend or revoke the dealer license.

DECISION AND ORDER

Based on the foregoing, PETITIONER REP 2’s motor vehicle dealer license no. ##### for PETITIONER is hereby revoked. 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. §63G-4-201. 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 §63G-4-201 *et. seq.*

Appeal No. 08-2680

*JM/08-2680,fof*