

09-0751
REFUND REQUEST
TAX YEAR: 2008
SIGNED: 05-11-2005
COMMISSIONERS: P. HENDRICKSON, M. JOHNSON, D. DIXON
EXCUSED: R. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 09-0751</p> <p>Impound No. #####</p> <p>Tax Type: DUI Administrative Fee</p> <p>Tax Year: 2008</p> <p>Judge: Marshall</p>
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Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *Pro Se*
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
RESPONDENT REP. 2, Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on April 22, 2009. Petitioner is requesting a refund of the administrative impound fee assessed when a vehicle owned by the Petitioner was impounded following an arrest of the driver for driving under the influence.

APPLICABLE LAW

A refund of the DUI administrative fee shall be refunded under Utah Code Ann. §41-6A-1406(6)(c), as follows:

The administrative impound fee assessed under Subsection (6)(a)(iv) shall be waived or refund by the State Tax Commission if the registered owner, lien holder, or owner's agent presents written evidence to the State Tax Commission that:

- (i) the Driver License division determined that the arrested person's driver license should not be suspended or revoked under Section 53-3-223 or 41-6a-521 as shown by a letter or other report from

the Driver License Division presented within 30 days of the final notification from the Driver License Division; or

- (ii) the vehicle was stolen at the time of the impoundment as shown by a copy of the stolen vehicle report presented within 30 days of the impoundment.

Utah Code Ann. §41-6a-1406(6)(c) (2008).

DISCUSSION

Petitioner is requesting a refund of the administrative impound fee after his vehicle was impounded. The Petitioner testified that he had hired temporary help for a few days to work on his home in CITY. His friend asked to borrow Petitioner's vehicle, and offered to drop off one of the temporary workers, but that the temporary worker ended up staying at the Petitioner's friend's house. Petitioner testified that his friend heard the vehicle start in the middle of the night, and ran out to find the temporary worker driving. The temporary worker was pulled over, and arrested for driving under the influence.

On or about October 12, 2008, the Petitioner contacted the COUNTY Sheriff to obtain several items that were in the car at the time it was impounded. The Petitioner provided a copy of the police report. The police report indicates that the Petitioner wanted to retrieve items in the vehicle, specifically his prescription medication, as well as reporting that approximately \$\$\$\$ of fuel had been stolen from his property. The police report does not indicate that the vehicle was stolen at the time it was impounded.

The Division's representative stated that under Utah Code Ann. §41-6a-1406(6)(c)(ii), the administrative impound fee can be refunded if the vehicle was stolen at the time of the impoundment, as shown by a copy of the stolen vehicle report. The Division's representative argued that the statute provided a bright-line test, and that the circumstances the Petitioner has not provided a stolen vehicle report. Further, he noted that the circumstances described by the Petitioner seem to be something less than "stolen", and stated that the Petitioner's recourse would be to get reimbursement from the driver.

Utah Code Ann. §41-6a-1406(6)(c) sets forth the circumstances under which a refund of the administrative impound fee can be refunded. The Petitioner has not provided a stolen vehicle report that would allow for a refund of the administrative refund fee. In addition, the Commission notes that under Utah Code Ann. §41-6a-1406(8), that the Petitioner has a cause of action against the driver of the vehicle for all fees and charges, as well as damages, court costs, and attorney fees.

DECISION AND ORDER

Appeal No. 09-0751

Based upon the foregoing, the Commission denies Petitioner's request for a refund of the impound fee. 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 any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a 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 _____ 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

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