

09-1544
MOTOR VEHICLE
TAX YEAR:2009
SIGNED 06-29-2009
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, M. JOHNSON, D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 09-1544</p> <p>Tax Type: Dealer License Tax Year: 2009</p> <p>Judge: Marshall</p>
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Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP 1, President of PETITIONER.
PETITIONER REP 2, Vice President of PETITIONER.
For Respondent: RESPONDENT REP 1, Assistant Attorney General
RESPONDENT REP 2, Assistant Director, 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 June 3, 2009. Petitioner (“Applicant”) is appealing the Respondent’s (“Division’s”) denial of a dealer’s license to sell new and used (WORDS REMOVED).

APPLICABLE LAW

Utah Code Ann. §41-3-202 sets forth the various license classes, and the scope of those licenses, as follows, in pertinent part:

- (3) A new motorcycle, off-highway vehicle, and small trailer dealer’s license permits the licenses to:
 - (a) offer for sale, sell, or exchange new motorcycles, off-highway vehicles, or small trailers if the licensee possesses a franchise from the manufacturer of the

- motorcycle, off-highway vehicle, or small trailer offered for sale, sold, or exchanged by the licensee;
- (b) offer for sale, sell, or exchange new motorcycles, off-highway vehicles, or small trailers; and dismantle motorcycles, off-highway vehicles, or small trailers.
- (4) A used motorcycle, off-highway vehicle, and small trailer dealer's license permits the licensee to:
 - (a) Offer for sale, sell, or exchange used motorcycles, off-highway vehicles, and small trailers; and
 - (b) Dismantle motorcycles, off-highway vehicles, or small trailers.

Utah Code Ann. §41-3-202 (2008).

Utah Code Ann. §41-3-204 requires a principal place of business for certain license holders, as set forth below:

- (1) (a) The following licensees must maintain a principal place of business:
 - (i) dealers;
 - (ii) special equipment dealers;
 - (iii) manufacturers;
 - (iv) transporters;
 - (v) remanufacturers;
 - (vi) dismantlers;
 - (vii) crushers;
 - (viii) body shops; and
 - (ix) distributors who:
 - (A) are located within the state; or
 - (B) have a branch office within the state.
 - (b) The administrator may not issue a license under Subsection (1)(a) to an applicant who does not have a principal place of business.
 - (c) If a licensee changes the location of his principal place of business, he shall immediately notify the administrator and a new license shall be granted for the unexpired portion of the term of the original license at no additional fee.
- (2) (a) If a licensee loses possession of a principal place of business, the license is automatically suspended and he shall immediately notify the administrator and upon demand by the administrator deliver the license, pocket cards, special plates, and temporary permits to the administrator.

- (b) The administrator shall hold the licenses, cards, plates, and permits until the licensee obtains a principal place of business.

Utah Code Ann. §41-3-204 (2008).

“Principal place of business” is defined in Utah Code Ann. §41-3-102(23), below:

“Principal place of business” means a site or location in this state:

- (a) devoted exclusively to the business for which the dealer, manufacturer, remanufacturer, transporter, dismantler, crusher, or body shop is licensed, and business incidental to them;
- (b) sufficiently bounded by fence, chain, posts, or otherwise marked to definitely indicate the boundary and to admit a definite description with space adequate to permit the display of three or more new, or new and used, or used motor vehicles; and
- (c) that includes a permanent enclosed building or structure large enough to accommodate the office of the establishment and to provide a safe place to keep the books and other records of the business, at which the principal portion of the business is conducted and the books and records kept and maintained.

Utah Code Ann. §41-3-102(23) (2008).

“Motor vehicle” is defined in Utah Code Ann. §41-3-102(19), below:

- (a) “Motor vehicle” means a vehicle that is:
 - (i) self-propelled;
 - (ii) a trailer, travel trailer, or semitrailer; or
 - (iii) an off-highway vehicle or small trailer.
- (b) “Motor vehicle” does not include:
 - (i) mobile homes as defined in Section 41-1a-102;
 - (ii) trailers of 750 pounds or less unladen weight; and
 - (iii) farm tractors and other machines and tools used in the production, harvesting, and care of farm products.

Utah Code Ann. §41-3-102(19) (2008).

DISCUSSION

The Applicant currently sells (WORDS REMOVED) from an enclosed trailer at EVENTS and on the internet. The Applicant currently attends 10-15 EVENTS a year. The Applicant maintains a dedicated office space in the home of its representatives. There are three dedicated computers, and storage space. The enclosed trailer is stored at the home of the

Applicant's representatives. The Applicant would like to add (WORDS REMOVED) to its line of products.

The Applicant's representative researched the requirements to become a licensed dealer. They contacted the Division, and were told that it was not "common practice" to license a mobile store, but that if CITY issued a business license, the Division likely would approve the dealer's license. The Applicant intended the dealership location to be a shed in back of the representative's home, with the required signage. The Applicant completed the requirements necessary for a license; including bonding insurance, online training, fingerprinting, photographs, dealer contracts, signage, tax identification numbers, and a business license from CITY. The Applicant submitted a Bonded Motor Vehicle Business Application to the Division on or about December 23, 2008.

The Division issued a letter dated March 24, 2009 denying the dealer license because the dealership did not have a "principal place of business." The Division determined that the shed would be a prop, and not the true place of business. In addition, the business license issued by CITY had a restriction that no customers were to come to the home. The Division found that this would conflict with a dealer license that would allow the Applicant to display and sell vehicles from a dealership location at the representative's home.

The Applicant has sold three (WORDS REMOVED) this year, all outside of Utah; one was drop-shipped from the manufacturer and the others the Applicant's representative delivered out of state. The Applicant's representative testified that the Applicant anticipates selling 10 (WORDS REMOVED) per year, with a profit of \$\$\$\$ each. He stated that with that little profit, the Applicant can neither justify nor afford to rent retail space. He stated that he has made arrangements with a friend who owns a REPAIR SHOP to serve as a pick-up and drop-off spot for repairs on the (WORDS REMOVED).

The Division's representative argued that the Division may not issue a dealer license to an applicant who does not have a principal place of business under Utah Code Ann. §41-3-204(1)(a) and (b). In addition, the Division's representative stated that "principal place of business" is defined in Utah Code Ann. §41-3-102(23) as a site or location devoted exclusively to the business; sufficiently bounded by fence or chain with adequate space to display three vehicles; and a permanent enclosed building or structure large enough to accommodate the office and provide a safe place to keep the books and other records. The Division argued that the enclosed trailer is not a "principal place of business", that the statute contemplated a parcel of real property. The Division's representative stated that the Division has never granted a dealer license

to a residential location, and pointed out that the CITY business license restricted customers from coming to the home.

The Division is prevented from issuing a license to a dealer who does not have a “principal place of business” under Utah Code Ann. §41-3-204. The Commission first looks to the plain language of the relevant provision.¹ The legislature has defined “principal place of business” in Utah Code Ann. §41-3-102(23) as a “site or location” that is devoted exclusively to the business for which the dealer is licensed; that is sufficiently bounded and with space adequate to allow for the display of three or more vehicles; and includes a permanent enclosed building or structure large enough to accommodate the office and provide a safe place to keep the books and records of the business. As described by the Applicant’s representatives, the dealership’s books and records would be stored in a designated office space within their home, the (WORDS REMOVED) would be displayed and sold from an enclosed trailer at EVENTS, as well as online. The legislature has specifically defined a “principal place of business” as a site or location that is sufficiently bounded, allows for space to display at least three vehicles, and including a permanent enclosed building or structure to accommodate the office and records of the business. The Commission finds that the business arrangements, as described by the Applicant’s representatives do not meet these requirements. The statute does not grant the Commission discretion to issue a license to Applicant if it does not meet the requirements for a principal place of business.

DECISION AND ORDER

Based on the foregoing, the Commission upholds the Division’s denial of the motor vehicle dealer license. 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 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

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.

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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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