

10-0879  
MOTOR VEHICLE TOWING AND STORAGE  
SIGNED 07-08-2010

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,      Petitioner,  v.  MOTOR VEHICLE 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.    10-0879</p> <p>Impound No.  #####</p> <p>Case Type:    Motor Vehicle – Towing and                   Storage</p> <p>Judge:        Chapman</p>
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**Presiding:**

R. Bruce Johnson, Commission Chair  
Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER REP., Taxpayer  
For Respondent:    RESPONDENT REP. 1, Assistant Attorney General  
                      RESPONDENT REP. 2, from the Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 1, 2010. Based upon the evidence and testimony presented by the parties, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. At issue are towing and storage fees.
2. The towing and storage fees are associated with a 1993 Nissan truck (“truck” or “vehicle”) owned by PETITIONER (“PETITIONER” or “Petitioner”), an entity of which PETITIONER REP. is a partner.
3. On June 26, 2009, PETITIONER purchased the vehicle at issue.

4. On July 13, 2009, PETITIONER submitted an application to title the vehicle, which was signed by PETITIONER REP.. On the application, PETITIONER REP. identified the truck's "primary owner" as PETITIONER and the primary owner's permanent address to be ADDRESS 1, CITY 1, UT ZIPCODE 1("PETITIONER's street address"). He also identified PETITIONER as the vehicle's "lien holder" and the lien holder's address to be ADDRESS 2, CITY 2, UT ZIPCODE 2 ("PETITIONER's post office box address"). Exhibit R-2.

5. On January 14, 2010, COMPANY A, an entity contracted to establish and maintain an Uninsured Motorist Identification Database ("database"), mailed a letter to PETITIONER to give it notice that COMPANY A's database showed that the truck was uninsured. This letter was mailed to PETITIONER's street address.

6. COMPANY A did not receive a reply from PETITIONER or PETITIONER REP. concerning its January 14, 2010 letter.

7. On February 5, 2010, COMPANY A mailed a second letter to PETITIONER again to give notice that COMPANY A's database showed that the truck was uninsured. This letter was also mailed to PETITIONER's street address.

8. COMPANY A did not receive a reply from PETITIONER or PETITIONER REP. concerning its February 5, 2010 letter.

9. RESPONDENT REP 2, Deputy Director of Motor Vehicle Division ("Division"), testified that COMPANY A mailed the two letters described above to PETITIONER's street address, because this is the "first" address that PETITIONER REP. included on the application to title the truck. RESPONDENT REP 2 also explained that the two letters from COMPANY A were not sent by certified mail.

10. On February 26, 2010, COMPANY A notified the Division that PETITIONER had failed to provide COMPANY A proof that its truck was insured.

11. On March 1, 2010, the Division revoked the truck's registration and mailed PETITIONER a Notice of Revocation of Vehicle Registration ("Notice of Revocation"). The Division mailed the Notice of Revocation to PETITIONER's street address. In the Notice of Revocation, the Division informed PETITIONER that the truck's registration had been revoked because PETITIONER had not provided proper insurance verification. PETITIONER was also informed of the procedures to have the truck's registration reinstated. The Notice of Revocation was not mailed by certified mail.

12. On March 8, 2010, PETITIONER REP. was driving the truck when he was stopped by the CITY 2 Police Department. The truck was seized and impounded on the basis that its registration had been revoked.

13. On March 16, 2010, PETITIONER REP. brought the Division proof that the truck was insured, at which time the Division issued an impound release to PETITIONER and reinstated the truck's registration.

14. As of the date of the Formal Hearing, PETITIONER REP. has not paid the towing and storage fees required for the truck to be released from impound.

15. PETITIONER REP. states that he moves frequently. He stated that by the time COMPANY A mailed the two letters described earlier, he had moved from the street address he provided in the primary owner's section of the application to title the truck. As a result, he contends that he did not receive either the two letters that COMPANY A mailed or the Notice of Revocation that the Division mailed.

16. PETITIONER REP. admits that he did not notify the Division when PETITIONER's street address changed subsequent to him titling and registering the truck. He argues that the notices should have been sent to the address shown for the "new lienholder."

17. Given these circumstances, PETITIONER REP. asks the Commission to either award him the amount of towing and storage fees necessary to have the truck released from impound or the amount of \$\$\$\$\$, which he contends is the book value of the truck.

18. PETITIONER REP. asserts that he should be awarded one of these amounts for several reasons. He claims that he would have received the letters from COMPANY A or the Notice of Revocation from the Division had the documents been mailed by certified mail or mailed to the post office box address he provided in the lien holder section of the application to title the truck.

19. PETITIONER REP. further asserts that it is unconstitutional for the truck's registration to be revoked and for the truck to be seized and impounded when it was insured. He also cites to several criminal defenses and contends that it is improper for COMPANY A to be allowed to take steps to have a vehicle's registration revoked.

20. The Division asserts that COMPANY A properly sent the notices that are required by law to inform PETITIONER REP. that its database showed the truck to be uninsured. The Division also asserts that it properly sent its Notice of Revocation to PETITIONER. The Division asserts that neither it nor COMPANY A was required to send its notices by certified mail or to the address of the lien holder identified on the application for title. The Division asserts that Utah law does not allow for towing and storage fees to be waived under these circumstances. For these reasons, the Division asks the Commission to deny PETITIONER's appeal.

APPLICABLE LAW

1. Utah Code Ann. §§41-1a-209(2)(b) and 41-1a-512(1)(b) require that applications

to register and title a motor vehicle in Utah include the “name, bona fide residence and mailing address of the owner, or business address of the owner if the owner is a firm, association, or corporation.”

2. UCA §41-1a-218 provides that “[i]f a person after making application for or obtaining a vehicle registration moves from the address named in the application or shown upon a registration card the person shall within ten days of moving notify the division of his old and new addresses.”

3. UCA §41-12a-301(2)(a) requires that “every resident owner of a motor vehicle shall maintain owner’s or operator’s security in effect at any time that the motor vehicle is operated on a highway . . . within the state.”

4. UCA §41-12a-803 provides for the establishment of an Uninsured Motorist Identification Database to verify compliance with the security requirements of Section 41-12a-301, as follows in pertinent part:

- (1) There is created the Uninsured Motorist Identification Database Program to:
  - (a) establish an Uninsured Motorist Identification Database to verify compliance with motor vehicle owner's or operator's security requirements under Section 41-12a-301 and other provisions under this part;  
.....
- (3) (a) The [Department of Public Safety]<sup>1</sup> shall contract . . . with a third party to establish and maintain an Uninsured Motorist Identification Database for the purposes established under this part.  
.....
- (4) (a) The third party under contract under this section is the [Department of Public Safety's] designated agent, and shall develop and maintain a computer database from the information provided by:
  - (i) insurers under Section 31A-22-315;
  - (ii) the [Driver License Division] under Subsection (6); and
  - (iii) the Motor Vehicle Division under Section 41-1a-120.
- (5) With information provided by the [Department of Public Safety] and the Motor Vehicle Division, the designated agent shall . . . :
  - (a) update the database with the motor vehicle insurance information provided by the insurers in accordance with Section 31A-22-315; and
  - (b) compare all current motor vehicle registrations against the database.

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1 “Department” is defined in UCA §41-12a-103 to mean “the Department of Public Safety.”

....

5. UCA §41-1a-120(1) provides that the Motor Vehicle Division “shall provide the Department of Public Safety's designated agent . . . with a record of all current motor vehicle registrations before the seventh and twenty-first day of each calendar month.”

6. If the designated agent’s comparison of motor vehicle registrations against the database shows that a motor vehicle is uninsured, UCA §41-12a-804 provides as follows in pertinent part:

(1) If the comparison under Section 41-12a-803 shows that a motor vehicle is not insured for two consecutive months, the Motor Vehicle Division shall direct that the designated agent provide notice to the owner of the motor vehicle that the owner has 15 days to provide:

- (a) proof of owner's or operator's security . . . ; or
- (b) proof of exemption from the owner's or operator's security requirements.

(2) If an owner of a motor vehicle fails to provide satisfactory proof of owner's or operator's security to the designated agent, the designated agent shall:

(a) provide a second notice to the owner of the motor vehicle that the owner now has 15 days to provide:

- (i) proof of owner's or operator's security . . . ; or
- (ii) proof of exemption from the owner's or operator's security requirements;

(b) for each notice provided, indicate information relating to the owner's failure to provide proof of owner's or operator's security in the database; and

(c) provide this information to state and local law enforcement agencies as requested in accordance with the provisions under Section 41-12a-805.

(3) The Motor Vehicle Division:

(a) shall revoke the registration upon receiving notification under Subsection 41-1a-110(2);

(b) shall provide appropriate notices of the revocation, the legal consequences of operating a vehicle with revoked registration and without owner's or operator's security and instructions on how to get the registration reinstated; and

(c) may direct the designated agent to provide the notices under this Subsection (3).

....

7. UCA §41-1a-110 provides that the Motor Vehicle Division shall revoke a vehicle’s registration, as follows in pertinent part:

....

(2) (a) The division shall revoke the registration of a vehicle if the division

receives notification by the:

....

(ii) designated agent that the owner of a motor vehicle:

(A) has failed to provide satisfactory proof of owner's or operator's security to the designated agent after the second notice provided under Section 41-12a-804; . . .

....

8. UCA §41-1a-1101(1)(a)(vi) provides that “[the Motor Vehicle Division] or any peace officer, without a warrant, may seize and take possession of any vehicle . . . that is operated on a highway . . . with registration that is suspended or revoked.”

9. UCA §41-6a-1406 provides for the impoundment of motor vehicles, as follows in pertinent part:

(1) If a vehicle . . . is removed or impounded as provided under Section 41-1a-1101 . . . by an order of a peace officer or by an order of a person acting on behalf of a law enforcement agency or highway authority, the removal or impoundment of the vehicle . . . shall be at the expense of the owner.

....

(4) (a) Immediately after the removal of the vehicle . . . , a report of the removal shall be sent to the Motor Vehicle Division by:

- (i) the peace officer or agency by whom the peace officer is employed; and
- (ii) the tow truck operator or the tow truck motor carrier by whom the tow truck operator is employed.

....

(5) (a) . . . upon receipt of the report, the Motor Vehicle Division shall give notice to the registered owner of the vehicle . . . and any lien holder in the manner prescribed by Section 41-1a-114.

(b) The notice shall:

....

- (ii) state that the registered owner is responsible for payment of towing, impound, and storage fees charged against the vehicle . . . ;
- (iii) inform the registered owner of the vehicle . . . of the conditions that must be satisfied before the vehicle, vessel, or outboard motor is released; and
- (iv) inform the registered owner and lienholder of the division's intent to sell the vehicle . . . , if within 30 days from the date of the removal or impoundment under this section, the owner, lien holder, or the owner's agent fails to make a claim for release of the vehicle . . .

....  
(6) (a) The vehicle . . . shall be released after the registered owner, lien holder, or the owner's agent:

....  
(v) pays all towing and storage fees to the place where the vehicle, vessel, or outboard motor is stored.

....

10. UCA §41-1a-114 provides the method by which the Motor Vehicle Division shall give any notice required under Title 41, Chapter 1a of the Utah Code, as follows in pertinent part:

(1) If the division is required to give any notice under this chapter or other law regulating the operation of vehicles . . . , unless a different method of giving the notice is expressly prescribed, the notice shall be given either by:

- (a) personal delivery to the person to be notified; or
- (b) deposit in the United States mail of the notice in an envelope with postage prepaid, addressed to the person at the address shown by the records of the division.

(2) Notice by mail is complete upon the expiration of four days after deposit of the notice.

....

#### DISCUSSION

On the application to title PETITIONER's truck, PETITIONER REP. indicated that PETITIONER was the primary owner of the truck and that its address was a street address in CITY 1, Utah. After the truck was titled and registered, COMPANY A determined that the truck was uninsured and, in accordance with Subsections 41-12a-804(1),(2), mailed two letters to PETITIONER asking for proof of insurance. COMPANY A mailed the letters to PETITIONER's street address, which was the primary owner's address on the application for title. PETITIONER REP. claims that he would have received COMPANY A's two letters had it mailed them by certified mail or had it mailed them to the lien holder's post office box in CITY 3, which also appeared on the application for title.

COMPANY A properly mailed the two letters required under Subsections 41-12a-804(1),(2) to PETITIONER. First, COMPANY A properly mailed the letters to the address of the truck's principal owner, as shown on the application for title. PETITIONER REP. admitted that he had moved



prior to COMPANY A sending its two letters and that he had not provided the Division with a change of address, as required under Section 41-1a-218. As a result, the primary owner's address, as shown on the application of title, was the only known address of the truck's principal owner at the time COMPANY A mailed its letters. Subsections 41-12a-804(1),(2) specifically require COMPANY A to send its letters to the "owner of the motor vehicle" and does not require that notice be sent to a lien holder. Had the Legislature intended for COMPANY A to send notice to lien holders, it could have stated so, as it did in Section 41-6a-1406, which requires the Division to send notice of an impounded vehicle not only to the owner, but also to the lien holder.

Second, Section 41-12a-804 does not specifically require COMPANY A to send its letters by certified mail. Had the Legislature intended for the letters to be sent by certified mail, it could have specifically stated so, as it has in statutes requiring other notices. For example, UCA §§59-1-401(7)(b)(i)(B), 59-2-201(4), 59-2-1303(1)(b)(v) and 59-2-1351(2)(a) all specifically require that notice be sent by certified mail. For these reasons, COMPANY A properly sent the two letters required by law to PETITIONER.

PETITIONER did not respond to either of COMPANY A's letters. As a result, COMPANY A properly informed the Division that PETITIONER had failed to provide proof of insurance. Section 41-1a-110(2)(a)(ii)(A). Upon the Division receiving such notification from COMPANY A, it was required to revoke the truck's registration and provide notice of the revocation. Sections 41-1a-110(2)(a), 41-12a-804(3)(a),(b). Although Section 41-12a-804(3)(b) does not specify to whom the Division's notice of revocation should be sent, it appears reasonable to assume that notice should be sent to last-known address of the primary owner. For the same reasons discussed earlier, the Legislature could have specified that the Division's notice of revocation be sent by certified mail or to a lien holder. Without such specific requirements in the law, the Division is found to have properly mailed

its notice of revocation to PETITIONER at its street address, the only known address of the truck's primary owner.

The truck's registration was revoked on March 1, 2010. As a result, the truck was legally seized and impounded on March 8, 2010. Section 41-1a-1101(1)(a)(vi). Furthermore, once a vehicle is seized and impounded, Section 41-6a-1406(6)(a)(v) provides for it to be released "after the registered owner, lien holder, or the owner's agent . . . pays all towing and storage fees[.]" The statute does not provide for a waiver of these fees under any circumstances. Had the Legislature intended for the fees to be waived or refunded when proof of insurance was provided, it could have done so, but it did not.<sup>2</sup> As a result, PETITIONER is not entitled to receive a waiver or refund of any towing or storage fees in this case. In addition, no statute authorizes the Commission to refund an amount equal to the value of the vehicle under these circumstances.

Lastly, PETITIONER REP. argues that it is unconstitutional for COMPANY A to operate its database and for it to determine whether or not a vehicle is insured. He also contends that it is unconstitutional for PETITIONER's truck to be seized and impounded when it was insured. Section 41-12a-803 requires that a third party, in this case COMPANY A, be contracted to establish and maintain the Uninsured Motorist Identification Database and to take the steps that it did. As explained above, the revocation of the truck's registration was required under Utah law. In addition, the truck was properly seized and impounded. Lastly, PETITIONER is required the pay towing and storage fees to have the truck released from impound. All these actions were statutorily required. The Commission does not have authority to declare these statutes to be unconstitutional. The Commission must apply the laws under the assumption that they are constitutional. For these reasons, PETITIONER's request for a waiver or refund

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<sup>2</sup> By comparison, the Legislature specifically provided in Subsections 41-6a-1406(6)(a)(iv),(c) for a waiver or refund of an administrative impound fee imposed when the impoundment was made under UCA §41-6a-527.

of impound and storage fees is denied. Its request for a refund equal to the amount of the truck's value is also denied.

CONCLUSIONS OF LAW

1. Section 41-12a-803 authorized COMPANY A to be contracted to establish and maintain the Uninsured Motorist Identification Database and to determine whether or not a motor vehicle is insured.

2. Once COMPANY A determined that PETITIONER's truck was uninsured, it sent two letters to PETITIONER. The two letters complied with the notice requirements of Section 41-12a-804.

3. When PETITIONER did not respond to COMPANY A's two letters, COMPANY A properly notified the Division, in accordance with Section 41-1a-110(2)(a)(ii)(A).

4. The Division was required to revoke the truck's registration and provide notice of the revocation. Sections 41-1a-110(2)(a), 41-12a-804(3)(a),(b).

5. The Division's Notice of Revocation to PETITIONER complied with the notice requirements of Section 41-12a-804.

6. The truck's registration was revoked on March 1, 2010. As a result, the truck was legally seized and impounded, in accordance with Section 41-1a-1101(1)(a)(vi).

7. For PETITIONER to have its truck released from impound, it must pay all towing and storage fees, in accordance with Section 41-6a-1406(6)(a)(v).

8. No section of Utah law authorizes the Commission to waive or refund the towing and storage fees at issue in this appeal. In addition, no section of Utah law authorizes the Commission to refund to PETITIONER an amount equal to the value of the truck.

9. Lastly, the Commission does not have the authority to find a statute to be unconstitutional. Accordingly, all applicable laws that pertain to this matter are assumed to be constitutional.

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Kerry R. Chapman  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies PETITIONER's request for a waiver or refund of the towing and storage charges at issue. The Commission also denies PETITIONER's request for a refund equal to the amount of the truck's value. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
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-4-302. 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. §§59-1-601et seq. and 63G-4-401 et seq.