

10-1676  
REFUND REQUEST  
09-27-2010

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>vs.</p> <p>MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="padding-left: 40px;">Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 10-1676</p> <p>Tax Type: DUI Administrative Fee</p> <p>Judge: Phan</p>
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER  
For Respondent: RESPONDENT REP. 1, Assistant Attorney General  
RESPONDENT REP. 2, Division of Motor Vehicles

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to Utah Code Sec. 59-1-502.5 on August 10, 2010. Petitioner is requesting a refund of the \$\$\$\$ administrative impound fee charged when Petitioner's vehicle was impounded following the arrest of this son for driving under the influence of alcohol or drugs.

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 refunded 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.

#### DISCUSSION

Petitioner is requesting a refund of the \$\$\$\$ administrative impound fee he was required to pay before his vehicle would be released from impound. He argued for the refund on the basis that the charges had not been adjudicated against his son. His son had plead not guilty in court and the case was still pending. He stated if his son was convicted of driving under the influence of alcohol or drugs then he would not contest the penalty, but argued the refund should not be based on the actions of the Driver License Division. He explained that the Driver License Division hearing had already been held, even though the criminal charges were still pending. He had attended the hearing with his son at the Driver License Division, but had not been allowed to assist his son in presenting the case or questioning witnesses. He felt his son was not able to represent himself adequately during the hearing. Despite that the criminal charges were still pending in court, the Driver License Division suspended the license for a period of four months. Because the suspension period has already expired, if the charges are dismissed in Court, the Taxpayer's concern was there would be no way to go back to the Driver License Division for a no action letter.

It was the Division's position that the statute provides only two grounds for allowing a refund of the fee to be issued. The first was if the Driver License Division did not suspend or revoke the driver license of the operator of the vehicle. The second was if the vehicle had been stolen and the owner had filed a police report to that affect. The Division pointed out that Petitioner's situation did not meet either of these criteria. The statute did not provide for a refund based on the criminal charges being dismissed.

After reviewing the facts in this matter and the express statutory language, the Division was correct in denying the refund. Although the Petitioner argued issuance of the refund should be based on whether charges are dismissed in court, it is unknown at this time whether the charges will be dismissed against the driver of the vehicle.

Jane Phan  
Administrative Law Judge

Appeal No. 10-1676

DECISION AND ORDER

Based upon the foregoing, the Commission denies Petitioner's request for refund of the \$\$\$\$  
DUI administrative 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 \_\_\_\_\_, 2010.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

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