

10-1850
MOTOR VEHICLE
10-04-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. DIVISION OF MOTOR VEHICLES OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 10-1850 Tax Type: DUI Administrative Fee Judge: Phan
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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
 RESPONDENT REP. 3, 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 9, 2010. Petitioner is requesting a refund of the \$\$\$\$ administrative impound fee charged when Petitioner's vehicle was impounded following his wife's arrest 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 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.

DISCUSSION

Petitioner is requesting a refund of the \$\$\$\$ administrative impound fee he was required to pay before his vehicle would be released from impound on the basis that the charges had been dismissed. His wife had been arrested for driving under the influence of alcohol or drugs and charged with a Class B Misdemeanor. However, she had suffered from a medical condition similar to a stroke at the time of the arrest and was not impaired due to alcohol or drugs. The charges were dismissed on January 25, 2010. Petitioner provided verification of the dismissal from the CITY Justice Court and letters from medical providers.

Secondly, Petitioner explained that at the time he paid the impound fee at the CITY Office of the Motor Vehicle Division he was told that the fee would be refunded if the charges were dismissed. Since the charges were dismissed he requested the refund only to learn that it was the Motor Vehicle Division's official position that it would not refund the fee until a letter was issued from the Drivers License Division stating that division takes no action against the driver of the vehicle. He stated that the CITY Office should not be giving out incorrect information. Petitioner pointed to prior Tax Commission decision, Appeal No. 04-0662, as precedent for waiving the fee based on a showing that the charges were dismissed. He explained that the action with the Drivers License Division was still pending, so as of the hearing his wife had not yet received a final determination.

It was the Division's position that it could not waive the fee based on the dismissal of the charges. The Division stated the only basis for waiving the fee were those at Utah Code Ann. §41-6a-1406(6)(c) which were limited to the Drivers License Division determining it would take no action or if the vehicle was stolen. It has no information regarding the prior Tax Commission decision issued in Appeal No. 04-0662.

Upon review of the evidence and express statutory provisions, the Commission is unable to issue the refund until the Drivers License Division issues the no action letter against the driver of the vehicle. The Commission's prior decision in Appeal No. 04-0662 may have come before the Commission on another basis. The Petitioner should keep in mind that he has only thirty-days to file a further request for

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refund from the date his wife is issued the letter from the Driver License Division stating it is taking no action.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

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 _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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