

10-2184
REFUND REQUEST
TAX YEAR: 2010
SIGNED: 05-11-2011
COMMISSIONERS: R. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: M. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 10-2184 Impound No. ##### Tax Type: DUI Administrative Fee Tax Year: 2010 Judge: Marshall
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Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, Pro Se
For Respondent: RESONDENT REP. 1, Assistant Attorney General
RESONDENT REP. 2, Motor Vehicle Division
RESONDENT REP. 3, Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on December 1, 2010. Petitioner ("Taxpayer") is requesting a refund of the administrative impound fee assessed when his vehicle was impounded following an arrest for driving under the influence.

APPLICABLE LAW

A refund of the DUI administrative fee shall be granted 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. §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

DISCUSSION

The Taxpayer is requesting a refund of the \$\$\$\$ administrative impound fee. He stated that he had a tire blow-out and was arrested for a DUI when the police found an empty prescription bottle in the back seat of his vehicle. Taxpayer stated he submitted to a blood test, which came back negative. The Taxpayer provided a copy of a letter dated May 27, 2010 from the Juab County Attorney to the Department of Public Safety indicating that the toxicology report for the Taxpayer came back negative, he was not being charged with driving under the influence, and the only charge was a failure to maintain lane of travel.

The Division’s representative stated that under Utah Code Ann. §41-61-1406(6)(c)(i), the administrative impound fee can be refunded if the arrested person’s driver license was not suspended or revoked, and a copy of the letter from the Driver License Division was submitted within 30 days; or in the event the vehicle was stolen at the time of impound, a stolen vehicle report is provided. The Division’s representative stated that the Taxpayer has not provided any of the documentation required under the statute to obtain a refund. For the Division, RESONDENT REP. 2 stated that the administrative impound fee is separate from the criminal matter. She noted that even though the Taxpayer was not charged with a DUI, the Driver License Division took action on the Taxpayer’s license. She provided a copy of an email from PERSON 1 showing that the Applicant was arrested on March 16, 2010, and the license was suspended from April 15, 2010 through August 13, 2010. RESONDENT REP. 2 noted that as of September 2010, the Taxpayer’s license was still suspended because a reinstatement fee had not been paid.

Under Utah Code Ann. §41-61-1406(6)(c)(i), the administrative impound fee can be refunded if the arrested person’s driver license was not suspended or revoked, and a copy of the letter from the Driver License Division indicating action was not taken on the license is submitted within 30 days. The Driver License Division in this case did take action on the Taxpayer’s license. It was suspended from April 15, 2010 through August 13, 2010. Because action was taken on the license, Taxpayer is not entitled to a refund of the administrative impound fee, and his refund request should be denied.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies Taxpayer's request for a refund of the 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 _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner