

10-2675
REFUND REQUEST
TAX YEAR: 2010
SIGNED: 03-21-2011
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN
EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 10-2675</p> <p>Impound No. #####</p> <p>Tax Type: DUI Administrative Fee</p> <p>Tax Year: 2010</p> <p>Judge: Marshall</p>
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Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *Pro Se*
PETITIONER REP., Representative

For Respondent: RESPONDENT REP. 1, Motor Vehicle Division
RESPONDENT REP. 2, Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on March 8, 2011. Petitioner 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.

DISCUSSION

Taxpayer's representative is his mother, and also serves as his conservator. She explained that in 2007 the Taxpayer suffered a brain injury as a result of a stroke and heart attack. She stated that he also suffers from short-term memory loss, anxiety, and is on disability. She sent a letter dated October 18, 2010 that outlined the Taxpayer's refund request.

The Driver License Division issued a letter dated April 1, 2010 to the Taxpayer, which stated they were not taking any action on his driver license. The letter included instructions on how to apply for a refund. The Taxpayer did not receive the letter. He testified that he telephoned the Driver License Division in mid-May to inquire about the letter and obtaining a refund, and was told the letter was returned to the Driver License Division and that he could come in and get a copy of the letter for a fee. The letter was addressed to the Taxpayer, and was mailed to an address of ADDRESS in CITY. The Taxpayer and his representative explained this address was actually a post office box at a UPS Store, and the owners/operators declared bankruptcy and the store was closed without any notice to the holders of post office boxes. The Taxpayer stated that he did not receive the letter from the Driver License Division until the thirty day period had expired.

For the Division, RESPONDENT REP. 1 stated the request was denied under Utah Code Ann. §41-6a-1406(6)(c), which provides the administrative impound fee will be refunded if the Driver License Division takes no action on the license and the refund request is submitted within 30 days. She stated that they first received a copy of the Driver License Division letter from the Taxpayer in early July, and on July 14, 2010 received his refund request. RESPONDENT REP. 1 argued the Taxpayer had an opportunity to update his address with the Driver License Division at his hearing; that holders of driver licenses are required to update their address with Driver License Division within ten days if there is a change in their address; and that a copy of the letter was also sent to ATTORNEY, the Taxpayer's attorney. When questioned, RESPONDENT REP. 1 stated the Division does not receive any information from the Driver License Division on whether there was returned mail.

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. The Petitioner's refund request was not received until July, but the letter from the Driver License Division was issued on April 1, 2010, more than 30 days prior.

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The Petitioner did not submit his refund request within the 30 day period after the final notification from the Driver License Division that his driver license was not being suspended or revoked. The statute does not allow the Commission discretion to grant a refund if a request is submitted beyond the 30 day period. While there are unique circumstances in this case because of the returned mail, the Taxpayer contacted the Driver License Division in May, but did not request a refund until July. Even if the Commission were to consider the Driver License Division letter to be sent in May when the Taxpayer received it, the refund request would have been untimely because it was not submitted until July. Taxpayer's refund request should be denied.

Jan Marshall
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 _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli

Michael J. Cragun

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Commissioner

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Commissioner