

10-2847
MOTOR VEHICLE
TAX YEAR: 2010
SIGNED: 06-30-2011
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON
EXCUSED: M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 10-2847</p> <p>Account No. #####</p> <p>Tax Type: Advertisement Violation</p> <p>Audit Period: 08/24/10 to 10/12/10</p> <p>Judge: Jensen</p>
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Presiding:
Clinton Jensen, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REP., for the Taxpayer
For Respondent: RESPONDENT REP. 1, from the Motor Vehicle Enforcement Division
RESPONDENT REP. 2, from the Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on February 7, 2011 in accordance with Utah Code Ann. §59-1-502.5.

On October 13, 2010, The Motor Vehicle Enforcement Division of the Utah State Tax Commission (the "Division") assessed a \$\$\$\$ fine against the above-named Petitioner, (the "Taxpayer"), on the basis of actions allegedly in violation Utah Code Ann. Section 41-3-210. The Taxpayer filed this appeal, challenging the Division's fine. The Division claims that the Taxpayer displayed a motorcycle for sale at a location other than the Taxpayer's licensed place of business. This violation would be the Taxpayer's first offense in a 12-month period.

APPLICABLE LAW

The holder of any license issued under this chapter may not . . . sell, display for sale, or offer for sale motor vehicles at any location other than the principal place of business or additional places of business licensed under this chapter; this provision is construed to prevent dealers, salespersons, or any

other representative of a dealership from selling, displaying, or offering motor vehicles for sale from their homes or other unlicensed locations. Utah Code Ann. Sec. 41-3-210 (1)(n).

Utah Code Ann. Sec. 41-3-102(19) defines a motor vehicle as follows:

- (a) "Motor vehicle" means a vehicle that is:
 - (i) self-propelled;
 - (ii) a trailer, travel trailer, or semitrailer; or
 - (iii) an off-highway vehicle or small trailer.
- (b) "Motor vehicle" does not include:
 - (i) mobile homes as defined in Section 41-1a-102;
 - (ii) trailers of 750 pounds or less unladen weight; and
 - (iii) farm tractors and other machines and tools used in the production, harvesting, and care of farm products.

DISCUSSION

The Taxpayer's representative explained that he owns the dealership listed as the Taxpayer in addition to a partial ownership in a pawn shop close to the dealership's principal place of business. The pawn shop is at ADDRESS 1 in CITY 1, Utah. The licensed auto dealership is at ADDRESS 2 in CITY 1, Utah. The Taxpayer presented two arguments against the fine in this case. First, the Taxpayer argued that displaying a motorcycle at the pawn shop is close enough to the auto dealership that it is not really at a separate location. Second, the Taxpayer argued that the Division did not provide warning or ask him to move the motorcycle from the pawn shop before issuing a fine in this matter.

Responding to the Taxpayer's first argument, the Division explained that although the addresses at issue sound close to each other, the pawn shop is accessible from the front of a strip mall shopping area. The auto dealership is accessible from the back only. To travel from one to the other involves traveling around a lengthy building. Responding to the Taxpayer's second argument, the Division's representative indicated that he personally visited the Taxpayer approximately seven weeks before issuing a fine and informed the Taxpayer that displaying vehicles for sale off the dealership premises violated Utah law.

Considering the facts of this case, there is no dispute that a motorcycle is a "motor vehicle." *See* Utah Code Ann. Sec. 41-3-102(19). There is also no dispute that the Taxpayer offered a motorcycle for sale at a location near, but not at, the dealership's principal place of business. The law applicable in this case provides that a dealer may not display vehicles for sale "at *any* location other than the principal place of business." Utah Code Ann. Sec. 41-3-210 (1)(n) (emphasis added). There is no exception for a location close to the licensed place of business, even if it is next door. Under the plain language of this statute, the Taxpayer displayed a motor vehicle for sale at a place other than its principal place of business.

Appeal No. 10-2847

With regard to the Taxpayer's second argument, the Commission need not resolve a factual dispute about whether the Division gave warning to the Taxpayer before issuing a violation letter and fine. The Utah Court of Appeals has specifically ruled that "[o]ur jurisprudence does not contain [a requirement] that notice of a violation must be given before statutory penalties may be applied." *Brent Brown Dealerships v. Tax Comm'n* 2006 UT App. 261 ¶27. On that basis, whether the Division gave prior warning of a violation or not, the Division's action in issuing a letter and statutory penalty on October 13, 2010 was correct under Utah law.

The Taxpayer in this case displayed a motor vehicle for sale at a location other than its principal place of business. This violated Utah Code Ann. Sec. 41-3-210 (1)(n). On that basis, there is good cause to sustain the Division's issuance of a \$250 fine.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Commission sustains the \$\$\$\$ penalty assessed by the Division. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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

Appeal No. 10-2847

Commissioner

Commissioner