

11-1293  
SALESPERSON LICENSE  
TAX YEAR: 2010  
SIGNED: 10-20-2011  
COMMISSIONERS: R. JOHNSON, D. DIXON, M. CRAGUN

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,  Petitioner,  v.  MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</b></p> <p>Appeal No. 11-1293</p> <p>Tax Type: Motor Vehicle Salesperson's License</p> <p>Judge: Chapman</p>
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**Presiding:**

R. Bruce Johnson, Commission Chair  
Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, Licensee  
PETITIONER REP. 1, Witness (by telephone)  
For Respondent: RESPONDENT REP. 1 Assistant Attorney General  
RESPONDENT REP. 2, from MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 29, 2011.

Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. PETITIONER ("Petitioner" or "licensee") has had a Utah motor vehicle salesperson's license since 2008. PETITIONER filed an application to renew his license on November 18, 2010.
2. On March 29, 2011, the Motor Vehicle Enforcement Division (the "Division") issued a letter in which it suspended PETITIONER's license because of a response PETITIONER made on his renewal

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application, specifically his “answer to question #2 on the salesperson application regarding criminal convictions within the last 10 years.”

3. PETITIONER has appealed the Division’s action to suspend his license. PETITIONER has been allowed to sell motor vehicles during the appeals process.

4. The Commission issued its Initial Hearing Order in this matter on June 21, 2011, and PETITIONER timely requested a Formal Hearing.

5. Question #2 of the motor vehicle salesperson application asks a person to answer “yes” or “no” to the following question: “During the past 10 years, have you been convicted of any misdemeanors or felonies in Utah or in any other state.” In addition, an applicant is asked to list each conviction on the application if he or she answered “yes” to question #2. On the November 18, 2010 renewal application, PETITIONER answered that he had not been convicted of any misdemeanors or felonies in the past 10 years, and he did not list any convictions.

6. The Division obtained information from the Bureau of Criminal Identification (“BCI”) indicating that PETITIONER has been convicted of three misdemeanors and felonies in STATE 1 within the past 10 years, specifically:

- a) a misdemeanor conviction on February 1, 2004 for driving on a suspended or revoked license. PETITIONER did not serve jail time and was not sentenced to probation for this crime;
- b) a felony conviction on July 1, 2004 concerning controlled substances (marijuana). For this crime, PETITIONER was sentenced to three months in jail and twelve months of probation, which he has completed; and
- c) a misdemeanor conviction on November 14, 2007 for vehicle prowling, due to PETITIONER’s actions involving a motor vehicle. PETITIONER was not sentenced to any jail time or probation for this crime.

7. The Division stated that once it became aware of PETITIONER's convictions, "reasonable cause" existed to suspend his license pursuant to Utah Code Ann. §41-3-209(2). The Division asserts that Section 41-3-209(2) requires it to deny, revoke, or suspend a license for reasonable cause. The Division asserts that reasonable cause exists because PETITIONER has been convicted of crimes involving controlled substances and motor vehicles and because he made a false statement on each application he has submitted for a Utah motor vehicle salesperson's license.

8. PETITIONER made a false statement on his November 18, 2010 transfer application when he answered that he had not been convicted of any felonies or misdemeanors within the past 10 years. In addition, the Division submitted evidence of four prior applications that PETITIONER had submitted between July 2008 and April 2010 not only to obtain a Utah license, but also to renew and transfer the license. On all of these applications, PETITIONER answered that he had not been convicted of any felonies or misdemeanors within the past 10 years. Accordingly, PETITIONER has submitted a total of five applications on which he made a false statement.

9. PETITIONER's July 1, 2004 felony conviction involves controlled substances, and his November 14, 2007 misdemeanor conviction involves motor vehicles.

10. The Division asks the Commission to sustain its action to suspend PETITIONER's license. However, the Division does not propose any specific period for which PETITIONER's license should be suspended.

11. PETITIONER explained that he moved to Utah from STATE 1 in 2008 to change his life. He also explained that he did not disclose his criminal background on any of his applications for a motor vehicle salesperson's license because he thought he would be more likely to get a job if he did not disclose this information. PETITIONER explained that he is the only person in his family who works and that his family includes a wife and daughter. PETITIONER asks the Commission to consider that he has not had any

problems since moving to Utah when it decides whether or not to suspend his license. PETITIONER stated that it would place a hardship on him and his family if the Commission were to suspend his license for more than 30 days.

12. PETITIONER is not currently on probation or under court supervision.

13. PETITIONER REP. 1, who works at the dealership at which PETITIONER is currently employed, testified on PETITIONER's behalf. PETITIONER REP. 1 testified that subsequent to the Division suspending PETITIONER's license, he completed a new application on which he listed his criminal convictions. PETITIONER REP. 1 also testified that she had forwarded this application to the Division.

14. PETITIONER stated that he had understood from PETITIONER REP. 1 that his license would not be suspended if he were to get an official copy of his criminal history report from STATE 1, which he obtained and submitted as evidence. PETITIONER REP. 1 stated, however, that she did not recall telling PETITIONER that his license would not be suspended if he obtained this report. Instead, PETITIONER REP. 1 stated that she spoke to RESPONDENT REP. 2 at the Division and found out that PETITIONER could continue to sell motor vehicles until a hearing was held concerning his suspension.

APPLICABLE LAW

1. Utah Code Ann. §41-3-209 provides statutory guidance concerning the issuance of motor vehicle salesperson's licenses, as follows in pertinent part:

(1) If the administrator finds that an applicant is not qualified to receive a license, a license may not be granted.

(2) . . . .

(b) If the administrator finds that there is a reasonable cause to deny, suspend, or revoke a license issued under this chapter, the administrator shall deny, suspend, or revoke the license.

(c) Reasonable cause for denial, suspension, or revocation of a license includes, in relation to the applicant or license holder or any of its partners, officers, or directors:

. . . .

- (vi) making a false statement on any application for a license under this chapter or for special license plates;
- (vii) a violation of any state or federal law involving motor vehicles;
- (viii) a violation of any state or federal law involving controlled substances;
- (ix) charges filed with any county attorney, district attorney, or U.S. attorney in any court of competent jurisdiction for a violation of any state or federal law involving motor vehicles;
- (x) a violation of any state or federal law involving fraud;
- (xi) a violation of any state or federal law involving a registerable sex offense under Section 77-27-21.5 ; or
- (xii) having had a license issued under this chapter revoked within five years from the date of application.

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#### CONCLUSIONS OF LAW

1. Reasonable cause exists to suspend PETITIONER's license. PETITIONER has been convicted of one crime involving controlled substances and a second crime involving motor vehicles. Either conviction is sufficient to constitute "reasonable cause" to suspend his license under Section 41-3-209(2). Accordingly, the Division properly suspended PETITIONER's license due to these convictions. Nevertheless, the Commission has generally allowed a person to keep his or her license if he or she is no longer on probation or parole. Because PETITIONER is no longer on probation or parole for any of his crimes, the Commission would not have suspended his license had he truthfully reported his convictions on all of his license applications.

2. However, PETITIONER made a false statement on all of the license applications he submitted prior to the Division suspending his license. Making a false statement on a motor vehicle salesperson's license application is also "reasonable cause" to suspend a license under Section 41-3-209(2). Accordingly, the Division properly suspended PETITIONER's license due to his false statements, as well. The Commission considers it a serious matter when an applicant submits an application with false information.<sup>1</sup> Furthermore,

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1 Utah Code Ann §76-8-504(2) provides that it is a class B misdemeanor to make any written false

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because PETITIONER did not disclose his convictions on his various applications, the dealerships that have hired him would likely have been unaware of his criminal history. Although PETITIONER has not had any problems since moving to Utah, his license should be suspended for a period of time on account of his making false statements on his license applications. PETITIONER's license should be suspended for 30 days.

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Kerry R. Chapman  
Administrative Law Judge

DECISION AND ORDER

Based upon the forgoing, the Commission suspends PETITIONER's motor vehicle salesperson's license for 30 days, after which it will be fully reinstated. If PETITIONER does not appeal this decision to court, the suspension will begin 30 days after the date on which this decision is issued. It is so ordered.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2011.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Sec. 63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Secs.

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statement, which one does not believe to be true, or knowingly create a false impression in a written application, with the intent to deceive a public servant in the performance of his or her official function.

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59-1-601 et seq. and 63G-4-401 et seq.

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