

11-1656  
MOTOR VEHICLE  
SIGNED: 08-01-2011  
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,</p> <p>    Petitioner,</p> <p>v.</p> <p>MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>    Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No.    11-1656</p> <p>Tax Type:    Motor Vehicle               Salesperson’s License</p> <p>Judge:        Chapman</p>
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**Presiding:**  
    Kerry R. Chapman, Administrative Law Judge

**Appearances:**  
    For Petitioner:    PETITIONER, Licensee  
    For Respondent:    RESPONDENT REP., from MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on July 11, 2011.

On May 23, 2011, the Motor Vehicle Enforcement Division (the “Division”) issued a letter in which it suspended the motor vehicle salesperson’s license of PETITIONER (“Petitioner” or “licensee”). In the letter, the Division indicated that it suspended PETITIONER’s license because his “response to application question #2 regarding criminal convictions was not accurate.” PETITIONER explains that he has been a motor vehicle salesperson in Utah for 22 years and has submitted applications whenever he has changed dealerships. He states that it may be possible that he could have “missed” one of his convictions when he filled out an application and, if this is the situation, asks the Commission to allow him to “fix” it and retain his license.

APPLICABLE LAW

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 . . . ;
    - (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.
    - . . . .

DISCUSSION

At the hearing, the Division proffered a motor vehicle salesperson's application that PETITIONER submitted on or around July 14, 2010. On the application, PETITIONER responded to question #2 by disclosing that he had been convicted of the following crimes within the past 10 years: DUI, assault, domestic violence, theft, disorderly conduct, and public intoxication.

The Division stated that once PETITIONER submitted his fingerprints in late 2010, it obtained a copy of Criminal History Report, which shows that he has been convicted of the following crimes within the past 10 years:

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February 2007	Felony DUI Alcohol/Drugs
June 2009	Misdemeanor Unlawful Consumption in Public Place
	Misdemeanor Disorderly Conduct
November 2010	Misdemeanor Possession or Use of a Controlled Substance

PETITIONER appears to have listed all of his convictions within the past 10 years that existed at the time he filled out the July 14, 2010 application, in addition to some convictions that occurred more than 10 years ago. It is noted that PETITIONER had not been convicted of the crime concerning the possession or use of a controlled substance until November 2010. As a result, he was not required to list this crime on the July 14, 2010 application.

Subsequent to the hearing, the Division proffered another application that PETITIONER submitted on or around February 14, 2011 when he transferred to another dealership. On this application, PETITIONER listed all crimes for which he had been convicted within the past 10 years (including the November 2010 conviction) and disclosed that he was on probation for the November 2010 conviction. From this information, it appears that PETITIONER properly listed all convictions not only on his July 14, 2010 application, but also on his February 14, 2011 application. Accordingly, there does not appear to be any reason to suspend PETITIONER's license because his "response to application question #2 regarding criminal convictions was not accurate," the reason stated in the Division's May 23, 2011 letter.

PETITIONER was convicted of a misdemeanor for possession or use of a controlled substance in November 2010 and is currently on probation for this crime. Section 41-3-209(2)(c)(viii) provides that a violation of a state or federal law involving controlled substances is reasonable cause to suspend, deny, or revoke a salesperson's license. Furthermore, the Commission's general policy is to deny or revoke a salesperson's license if the applicant or license holder is someone who is still on probation or parole. PETITIONER is currently on probation. Ordinarily, the Commission would revoke PETITIONER's license due to his being on probation, unless he proffered sufficient evidence to convince the Commission otherwise.

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Nevertheless, at the Initial Hearing, PETITIONER stated that he was not aware that he needed to present evidence to persuade the Commission not to apply its general policy concerning probation or parole. He was only prepared to present evidence to show that he filled out his applications correctly, which is the reason the Division stated in its letter as to why it was suspending his license. PETITIONER also stated that he would have had persons testify on his behalf or write letters of recommendation had he known that his license could be revoked due to his being on probation. Because PETITIONER was not made aware of the correct reason why his license was being suspended and because he indicated that he would have proffered different evidence had he known of the probation and parole issue, the Commission finds there are insufficient grounds to sustain the Division's position. For these reasons, PETITIONER should be allowed to retain his salesperson's license.

DECISION AND ORDER

Based on the foregoing, the Commission reverses the Division's May 23, 2011, decision to suspend Petitioner's license. 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.

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

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

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