

11-3086
TAX TYPE: DUI ADMINISTRATIVE IMPOUND FEE
TAX YEAR: 2011
DATE SIGNED: 9-3-13
COMMISSIONERS: B. JOHNSON, D. DIXON, R. PERO
EXCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION
Petitioner,	
v.	Appeal No. 11-3086
MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION,	Tax Type: DUI Administrative Impound Fee
Respondent.	Judge: Chapman

Presiding:

D'Arcy Dixon Pignanelli, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER, Taxpayer's Representative (by telephone)
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT-1, from the Driver License Division
RESPONDENT-2, from the Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 22, 2013 and on August 5, 2013. Between the two hearing dates, the Commission asked the Division to respond to written questions to clarify the issues discussed at the portion of the hearing held on April 22, 2013. On May 24, 2013, the Division submitted its answers to these questions. The Petitioner did not submit a written response to the Division's answers to these questions. Based upon the evidence and testimony presented by the parties, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. At issue is the request of PETITIONER (“Petitioner”) to the Division of Motor Vehicles (“Respondent” or the “DMV”) to receive a refund of the \$330 DUI administrative impound fee that he paid in order to have his vehicle released from impound.

2. On November 16, 2011, the DMV issued a Statutory Notice –Refund Request to PETITIONER, in which it denied his request to receive a refund of the \$330 fee. Respondent’s Exhibit R-1.

3. PETITIONER appealed the DMV’s denial of his refund request. The Commission issued an Initial Hearing Order in this matter on July 11, 2012. On August 8, 2012, the Division timely requested to proceed to a Formal Hearing.

4. On May 1, 2011, the Petitioner’s vehicle was impounded pursuant to a traffic stop during which the Petitioner was arrested for driving under the influence. The Petitioner retrieved his vehicle from impound after paying a \$330 administrative impound fee.

5. Because of the arrest for driving under the influence, the Petitioner was subject to both a civil administrative proceeding and a criminal proceeding. In accordance with Utah Code Ann. §53-3-223(6)(c), the Driver License Division of the Utah Department of Public Safety (“DLD”) held a civil administrative hearing to determine whether a peace officer had reasonable grounds to believe that the Petitioner was driving under the influence.

6. On May 25, 2011, the DLD issued a letter in which it informed the Petitioner that a DLD hearing officer concluded that an officer had reasonable grounds to believe that he was driving under the influence and, as a result, that his driver license was suspended for 120 days beginning on May 31, 2011, in accordance with Section 53-3-223(7)(a). Respondent’s Exhibit R-4. The letter also included the phrase: “Eligible to early reinstate 7/30/2011.” In addition, the Petitioner was informed that when he became eligible

to reinstate his driving privilege, he would be subject to the payment of a \$\$\$\$ reinstatement fee, a \$\$\$\$ administrative fee, and other fees that may apply.

7. The May 25, 2011 letter from DLD informed the Petitioner that he could request reconsideration of the evidence presented at the administrative hearing and that, if this request were denied, he could appeal to District Court. It does not appear that the Petitioner either asked for reconsideration of the DLD administrative decision or appealed the decision to District Court.

8. The Petitioner was also subject to a separate criminal proceeding before the (X) County Justice Court. On June 14, 2011, PETITIONER pleaded guilty to a class B misdemeanor for impaired driving under UCA §41-6a-502.5 and was placed on probation for 12 months. One of the conditions of probation was that the Petitioner was not to possess or consume any alcoholic beverages or illegal controlled substances.

9. The (X) County Justice Court subsequently delivered the outcome of the criminal proceeding to DLD electronically through CORS, the courts reporting system. See Attachment to Division's Response to Commission Questions and Brief. It would appear that DLD received this information prior to issuing its July 21, 2011 letter to the Petitioner (as described in the next paragraph).

10. On July 21, 2011, DLD sent a letter to the Petitioner, in which it informed him that "[a]s a result of a court conviction or abeyance for alcohol/drug-related reckless driving or impaired driving in a motor vehicle. . . , an alcohol restriction must be placed on your driving privilege. . . ." The letter also informed the Petitioner that the alcohol restriction is effective June 14, 2011 for two years. Respondent's Exhibit R-3.

11. Because the Petitioner pleaded guilty to impaired driving in the criminal proceeding before the (X) County Justice Court, DLD was required to reinstate the Petitioner's suspended driver license "no sooner than 60 days beginning on the 30th date after the date of arrest." UCA §53-3-223(7)(c)(i)(B). The 30th day after the Petitioner's May 1, 2011 arrest is May 31, 2011. Sixty days from May 31, 2011 is July 30, 2011.

12. The DLD's May 25, 2011 letter to the Petitioner included the phrase: "Eligible to early reinstate 7/30/2011." That this statement was included in the May 25, 2011 letter is confusing because the May 25, 2011 letter that was mailed before the Petitioner pleaded guilty to impaired driving in the criminal proceeding and, thus, before the Petitioner was eligible for early reinstatement of his license under Section 53-3-223(7)(c)(i)(B).

13. The Petitioner had his driver license reinstated on August 30, 2011, after he paid all necessary fees to do so, as required under Section 53-3-223(7)(c)(iii).

14. DLD sometimes sends out what it describes as a "no action" letter after the administrative hearing in which it determines whether an officer had reasonable grounds to arrest a person for driving under the influence. Respondent's Exhibit R-5. DLD claims that it only sends out the "no action" letter when it takes no action in administrative proceeding; i.e., when it does not "deny, suspend, revoke or disqualify" a person's driving privilege in the administrative proceeding. In the "no action" letter, DLD informs a person that "the registered owner, lien holder, or the owner's agent may be entitled to a refund of the DUI administrative impound fee if the Driver License Division did **not** take action against the driver. . . ."

15. DLD did not issue a "no action" letter to the Petitioner after his May 24, 2011 administrative hearing. Instead, DLD issued the May 25, 2011 letter to the Petitioner, in which it suspended his driver license for 120 days.

16. Once DLD suspends a license in its administrative proceeding, it considers the license to have been suspended even if the license is later reinstated after the criminal proceeding in accordance with Section 53-3-223(7)(c). DLD does not consider the suspension to be "negated" by the fact that the license was reinstated after the criminal proceeding in accordance with Section 53-3-223(7)(c).

17. The Division contends in its post-hearing Response to Commission Questions and Brief that even if a criminal court dismisses a person's DUI charge, that person is still not eligible for a refund of the DUI administrative impound fee if DLD suspended that person's license for 120 days in the separate administrative hearing. Upon receiving notice from the criminal court that a person's DUI charge was dismissed, DLD would immediately reinstate that person's suspended license in accordance with Section 53-3-223(7)(c)(i)(A). However, DLD would not issue a "no action" letter to that person because it *did* suspend the person's license and because that person is still required to pay reinstatement fees pursuant to Section 53-3-223(7)(c)(iii). Under such circumstances, the Division also indicates that the administrative suspension would remain on the person's record for 10 years and could be used as a prior conviction for enhancement of penalties in subsequent convictions. See Division's Response to Commission Questions and Brief, pp. 7-8, 11.

18. The Petitioner asks the Commission to refund the DUI administrative impound fee because he did not "lose" his license after pleading guilty to a reduced charge of impaired driving and because the Commission determined in its Initial Hearing Order that DLD did not revoke or suspend his license.

19. In the Initial Hearing Order (July 11, 2012) in this matter at p. 3, the Commission found that:

Upon review of the information provided by the parties and the applicable law in this matter, the Division's interpretation that the refund may be issued only when the Driver License Division takes "no action" against the licensee is a narrower interpretation than what is actually provided in Utah Code §41-6a-1406(6)(c). Utah Code §41-6a-1406(6)(c) does not state the refund is allowed only if Driver License Division takes "no action." Under that statute the fee is refunded if "Driver License Division determined that the arrested person's driver license should not be suspended or revoked" and the refund request is filed within thirty days of "the final notification from the Driver License Division." In this case the final action as noted in the final letter from the Driver License Division was to allow Petitioner to retain his license, but added the alcohol restriction. **Under the plain reading of the statutory provisions this is neither a revocation nor suspension of the license** (emphasis added).

20. The Division contends that the Commission did not have all of the necessary information when it reached its decision in the Initial Hearing Order. Specifically, the Division indicates that the

Commission did not have a copy of the May 25, 2011 letter showing that DLD first suspended the Petitioner's driver license effective May 31, 2011 before DLD later issued the July 21, 2013 letter.

21. Furthermore, the Division argues that the Commission's authority to grant a waiver or refund of the administrative impound fee is dependent on the decision of DLD on whether to suspend or revoke a license, an action over which the Commission has no authority. For these reasons, the Division asks the Commission to sustain its action denying the Petitioner's request for a refund of the DUI administrative impound fee.

APPLICABLE LAW

1. UCA §41-6a-1406 (2011)¹ provides for the imposition of an administrative impound fee of \$330 as a condition for the release of certain impounded vehicles and for a refund of the administrative impound fee under certain circumstances, as follows in pertinent part:

....

(6) (a) The vehicle, vessel, or outboard motor shall be released after the registered owner, lien holder, or the owner's agent:

....

(iv) if the impoundment was made under Section 41-6a-527, pays an administrative impound fee of \$330; and

....

(c) The administrative impound fee assessed under Subsection (6)(a)(iv) shall be waived or refunded 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.

....

1 All citations are to the 2011 version of Utah law, unless otherwise indicated.

2. UCA §53-3-223 provides for the Driver License Division to hold an administrative hearing concerning a peace officer's intention to suspend a person's driver license and to reinstate suspended license under certain circumstances, as follows in pertinent part:

....

(6) (a) Upon request in a manner specified by the division, the division shall grant to the person an opportunity to be heard within 29 days after the date of arrest. The request to be heard shall be made within 10 calendar days of the day on which notice is provided under Subsection (5).

....

- (c) The hearing shall be documented and shall cover the issues of:
- (i) whether a peace officer had reasonable grounds to believe the person was driving a motor vehicle in violation of Section 41-6a-502 or 41-6a-517;
 - (ii) whether the person refused to submit to the test; and
 - (iii) the test results, if any.

....

- (7) (a) If, after a hearing, the division determines that a peace officer had reasonable grounds to believe that the person was driving a motor vehicle in violation of Section 41-6a-502 or 41-6a-517, if the person failed to appear before the division as required in the notice, or if a hearing is not requested under this section, the division shall:
- (i) if the person is 21 years of age or older at the time of arrest and the arrest was made on or after July 1, 2009, suspend the person's license or permit to operate a motor vehicle for a period of:
 - (A) 120 days beginning on the 30th day after the date of arrest for a first suspension; or

....

- (c) (i) Notwithstanding the provisions in Subsection (7)(a)(i)(A), the division shall reinstate a person's license prior to completion of the 120 day suspension period imposed under Subsection (7)(a)(i)(A):
- (A) immediately upon receiving written verification of the person's dismissal of a charge for a violation of Section 41-6a-502 or 41-6a-517, if the written verification is received prior to completion of the suspension period; or
 - (B) no sooner than 60 days beginning on the 30th day after the date of arrest upon receiving written verification of the person's reduction of a charge for a violation of Section 41-6a-502 or 41-6a-517, if the written verification is received prior to completion of the suspension period.
- (ii) Notwithstanding the provisions in Subsection (7)(a)(i)(A) or (7)(b), the division shall reinstate a person's license prior to completion of the 120-day suspension period imposed under Subsection (7)(a)(i)(A) immediately upon receiving written verification of the person's conviction of impaired driving under Section 41-6a-502.5 if:

(A) the written verification is received prior to completion of the suspension period; and

(B) the reporting court notifies the Driver License Division that the defendant is participating in or has successfully completed the program of a driving under the influence court as defined in Section 41-6a-501.

(iii) If a person's license is reinstated under this Subsection (7)(c), the person is required to pay the license reinstatement fees under Subsections 53-3-105(23) and (24).

(iv) The driver license reinstatements authorized under this Subsection (7)(c) only apply to a 120 day suspension period imposed under Subsection (7)(a)(i)(A).

(8)

(b) A person whose license has been suspended by the division under this section following an administrative hearing may file a petition within 30 days after the suspension for a hearing on the matter which, if held, is governed by Section 53-3-224.

3. UCA §41-6a-502.5 provides that a DUI violation may be entered as a conviction of impaired driving by a criminal court of law and that such court shall notify the Driver License Division when the violation has been reduced, as follows in pertinent part:

(1) With the agreement of the prosecutor, a plea to a class B misdemeanor violation of Section 41-6a-502 committed on or after July 1, 2008, may be entered as a conviction of impaired driving

(5) (a) The court shall notify the Driver License Division of each conviction entered under this section.

. . . .

4. UCA §41-6a-529 provides for an alcohol restriction to be placed on a person's driving privilege, as follows in pertinent part:

(1) As used in this section and Section 41-6a-530, "alcohol restricted driver" means a person who:

(a) within the last two years:
(i) has been convicted of:

. . . .

(C) impaired driving under Section 41-6a-502.5;

. . . .

5. UCA §59-1-1417 (2013) provides that the burden of proof is upon the petitioner in proceedings before the Commission, with limited exceptions as follows:

(1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:

- (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
- (b) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
- (c) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income:
 - (i) required to be reported; and
 - (ii) of which the commission has no notice at the time the commission mails the notice of deficiency.

....

CONCLUSIONS OF LAW

1. Section 41-6a-1406(6)(c) provides that the Commission *shall* waive or refund an administrative impound fee under two different circumstances. One of the circumstances, which concerns a stolen vehicle, is not at issue in this appeal. The other circumstance, however, is at issue. Section 41-6a-1406(6)(c)(i) provides for a waiver or refund of the fee if DLD “determined that the arrested person's driver license should not be suspended or revoked . . . as shown by a letter or other report from [DLD] presented within 30 days of the final notification from [DLD].” The Division contends that a person must receive a “no action” letter from DLD and present it for a waiver or refund within 30 days of receiving it before the Commission can grant a waiver or refund under Section 41-6a-1406(6)(c)(i). Because DLD did not issue a “no action” letter to the Petitioner, the Division contends that the Commission must deny the Petitioner’s request for a refund of the administrative impound fee. Under the Division’s argument, however, the Commission would be precluded from issuing a refund even if the evidence showed that DLD did not suspend or revoke a

person's license and that DLD failed to issue a "no action" letter. Accordingly, the Commission will review all of the facts to determine whether a person's driver license was suspended or revoked and whether it is appropriate to grant a waiver or refund.

2. The Petitioner has the burden of proof in this appeal. The Petitioner contends that he should receive a refund of the DUI administrative impound fee because he did not "lose" his license. It is clear that DLD suspended the taxpayer's license effective May 31, 2011 in its administrative proceeding. It is also clear that after the Petitioner pleaded guilty to a reduced charge for impaired driving, Section 53-3-223(7)(c)(i)(B) provided for his license to be reinstated on or after July 30, 2011. As a result, the Petitioner did not "lose" his license in the sense that it was revoked or in the sense that his driving privilege was suspended beyond July 30, 2011. However, to be eligible for the refund, Section 41-6a-1406(6)(c)(i) requires the Petitioner to submit evidence to show that DLD "determined that [his] driver license should not be suspended or revoked. . . ." For this requirement to be met, the Petitioner must show that the early reinstatement of his license pursuant to Section 53-3-223(7)(c)(i)(B) has the effect of "negating" or "overturning" DLD's May 25, 2011 determination that his license should be suspended. Otherwise, DLD *did* determine that the Petitioner's license should be suspended, which would disqualify the Petitioner from receiving the refund.

3. The Petitioner does not appear to have requested reconsideration of DLD's May 25, 2011 decision to suspend his license or to have appealed the DLD administrative decision to district court. Accordingly, DLD's decision to suspend the taxpayer's license for 120 days was a final decision. The fact that the license was reinstated before the end of the 120-day suspension does not appear to have negated or overturned the administrative suspension. In fact, even after the Petitioner pleaded guilty to impaired driving on June 14, 2011, his license remained suspended for a period of time as he was not eligible to have it reinstated until July 30, 2011 at the earliest. Furthermore, the Division contends that DLD's administrative

suspension of the Petitioner's driver license remains on his record for 10 years and may be used as a prior conviction for subsequent convictions, which the Petitioner did not refute. For these reasons, it does not appear the May 25, 2011 suspension was negated or overturned. Accordingly, the Commission should find that DLD did suspend the Petitioner's license, which makes him ineligible for a refund of the DUI administrative impound fee under Section 41-6a-1406(6)(c).

4. The fact that the Commission determined that there was neither a revocation or a suspension of the Petitioner's license in its Initial Hearing Order in this matter does not preclude the Commission from reaching the opposite result in its Formal Hearing decision. Once a party requests to proceed to a Formal Hearing, the Initial Hearing Order does not become final and does not become precedent. Furthermore, the Commission received additional information during the Formal Hearing process that allows it now to make a better informed and reasoned decision.

5. In conclusion, the Commission should sustain the Division's action and deny the Petitioner's request for a refund of the DUI administrative impound fee.

Kerry R. Chapman
Administrative Law Judge

Appeal No. 11-3086

DECISION AND ORDER

Based upon the foregoing, the Tax Commission denies the Petitioner's request for a refund of the DUI administrative impound fee. It is so ordered.

DATED this ____ day of _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
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 Ann. §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 Ann. §§59-1-601et seq. and 63G-4-401 et seq.