

11-3310
REFUND REQUEST
SIGNED: 03-15-2012
COMMISSIONERS: R. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: M. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 11-3310</p> <p>Tax Type: Refund/DUI Administrative Fee</p> <p>Judge: Phan</p>
---	---

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REP. 1, Accounting Supervisor, 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 January 12, 2012. 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 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.

Utah Code Ann. §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

DISCUSSION

Petitioner is appealing Respondent’s (“Division’s”) action to deny his request for refund of a \$\$\$\$ DUI administrative impound fee. The Division had denied the refund request by Statutory Notice dated December 9, 2011. Petitioner filed this appeal on December 16, 2011.

At the hearing and in the letter submitted with his appeal, Petitioner explained that he was driving his 2001 CAR on DATE, when he started experiencing problems with the truck. He indicated that the rear end had started swerving so badly that he had pulled over and stopped the truck voluntarily. He indicates that he got out of the truck and noticed police officers approaching. He states that he waived down the police offer and tried to explain the problem with the vehicle, however, the police officers started investigating Petitioner for a DUI. Petitioner states that he has been on some medications for a number of years and has some physical and medical issues that made it so he could not perform the field sobriety test. He was arrested for DUI and his car was impounded. Petitioner also stated that he had been unaware when he waived over the police that someone called in to the police to report they suspected him for a DUI. He argued that it was illegal for persons to call on the cell phones while driving and yet people were encouraged with signs to call in and report suspected drunk drivers.

He then states he then thought that the charges were dismissed as he received a letter from CITY that they were dismissing the charges. But they had been filed in another jurisdiction. So when he went to the Driver License Division for the hearing regarding his license he was not prepared and had not requested the tapes for the arrest. He indicated that he had obtained information from the Internet indicating that many people were having similar problems with his make and model of vehicle. He also indicates that he had an attorney, but the attorney’s son was the one who showed up to the Driver License hearing and police who attended the hearing testified against Petitioner’s version of the facts. He lost the Driver License hearing and his license was suspended. He states that he did not realize he could be convicted at that hearing of an administrative DUI.

He indicates that his attorney told him that he could beat the criminal charges if he went to trial but recommended he take a plea in abeyance in the criminal court proceeding rather than go to trial because the trial would cost more than the fines and fees. So a plea in abeyance was entered against

Appeal No. 11-3310

Petitioner. Petitioner states now he realizes that he should not have plead, but he did based on the advice from his attorney. He also asks for refund because he is disabled and on a fixed income.

It was the Division's position that it could not issue the refund to Petitioner because it is limited to those provisions of Utah Code Sec. 41-6a-1406(6)(c). Utah Code Sec. 41-6a-1406(6)(c) limits the issuance of refunds to situations where the Drivers License Division does not suspend or revoke the license and the request is made within thirty days from the date of their final action or to situations where the vehicle was stolen and a police report filed. It is clear in this case that the Driver License Division had suspended Petitioner's license. This case does not involve a stolen vehicle. Therefore, the Division found no basis to refund the \$\$\$\$ DUI administrative impound fee to Petitioner. The Division's representatives noted that had the DUI criminal charges actually been dismissed, Petitioner could have gone back to the Driver License Division and request that it reverse its action against the license.

After reviewing the information provided by the parties, the issuance of the DUI impound refund is limited to circumstances under Utah Code Sec. 41-6a-1406(6)(c) and there is no basis to allow the refund in this case. Action was taken against the Petitioner's license by the Driver License Division. Petitioner did enter a plea in abeyance stemming from the arrest. The Driver License Division decision was not reversed. The other factors noted by Petitioner are not basis for a refund.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on 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

Appeal No. 11-3310

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner