

11-3451
DUI IMPOUNDS
SIGNED: 06-26-2012
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 11-3451</p> <p>Tax Type: DUI Administrative Fee</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REP. 1, Assistant Attorney General, By Telephone
RESPONDENT REP. 2, Accounting Supervisor, Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on June 4, 2012. Petitioner is requesting a refund of the administrative impound fee assessed when his motorcycle 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 §41-6a-1406(6)(c), as follows:

The administrative impound fee assessed under Subsection (6)(a)(iv) shall be waived or refund 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 §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

DISCUSSION

Petitioner explained that he had been in a motorcycle wreck on July 16, 2011. He states that he was pulling out onto the road and did not see who or what hit him. The next thing he knew he was in the hospital trauma unit. He indicated that he had suffered a brain injury in the wreck. The Police had impounded his vehicle and told him they were going to charge him with a DUI. Eventually charges were dismissed because his blood test came back negative. He stated that it cost him \$\$\$\$ to get his motorcycle out of impound. He has had a lot of additional expenses and financial issues because of the accident and he said it would be helpful to get a refund of the impound fee. He understands that he did go to the Driver License Hearing and he got his Driver License back. He said his niece had started helping him with some of the paperwork and had told him he needed to go to the hearing. He said he just was not good with paperwork generally and was under doctor’s care for the injury he suffered in the wreck. He states that he was not aware that there was a deadline to file the request for refund until after the deadline had expired.

The Division noted that the Driver License Division had issued its “No Action Letter” to Petitioner on September 1, 2011. The letter indicates a hearing date of August 31, 2011. The letter does explain the process for obtaining a refund of the DUI impound fee and also that the request for refund must be submitted within 30 days. The refund request was sent in on October 6, 2011, after the thirty-day period had expired. It was the Division’s position that the thirty-day period was set by statute and strictly construed. There was no discretion to extend the deadline.

As noted by the Division, the deadline is set by statute and the Tax Commission was not given discretion to extend the deadline even if good cause is shown. Therefore, the request for refund was properly denied.

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.

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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.

DATED this _____ day of _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner