

12-228
TAX TYPE: DUI ADMINISTRATIVE FEE
TAX YEAR: 2012
DATE SIGNED: 6-26-2012
COMMISSIONERS: B. JOHNSON, M. JOHNSON, M. CRAGUN
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, vs. MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 12-228</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, By Telephone
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General, By Telephone
RESPONDENT-1, Accounting Supervisor, Motor Vehicle Division
RESPONDENT-2, Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on June 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 §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.

DISCUSSION

Petitioner explained that he had been arrested by a police officer for driving under the influence and his vehicle was impounded. However, when the blood test came back negative for alcohol or drugs the charges against him were dropped. He had gone to the Driver License Division who made the determination to take no action against his driver license. The Driver License Division mailed the no action letter to Petitioner on September 22, 2011. The letter from the Driver License Division stated that he could request a refund of the \$\$\$\$ DUI Impound fee and provided instructions on how to do so. The instructions included the 30-day deadline.

Petitioner stated that because of his work he is always traveling. He acknowledged receipt of the no action letter from the Driver License Division. While between trips for work he had gathered information to file the request for refund of the \$\$\$\$ impound fee. He states he thought he had it mailed at that time, but apparently found it when he returned a week or so later. He indicated that he did call the Tax Commission at that point and that he had received instructions to send in the refund request even though it was late at that time. He also states that he has already had to pay the towing and impound charges in order to obtain his vehicle and felt it was harsh to deny the refund considering that he had not been driving under the influence and all charges were dismissed.

It was the Division's position that the 30-day deadline is set by Utah Code §41-6a-1406(6)(c) and is a "drop dead" deadline. There are no provisions that allow a refund on a request filed after that date. The Division representatives pointed out that the no action letter had been mailed on September 20, 2011, and the refund request was not received until November 3, 2011.

The process for issuing refund of the \$\$\$\$ is set by statute and the Division is correct in its application of the 30-day deadline under Utah Code §41-6a-1406(6)(c). The Tax Commission does not have authority to issue a refund filed after the expiration of the deadline. The Division's position should be upheld.

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

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