

12-1991
TAX TYPE: DUI ADMINISTRATIVE FEE
TAX YEAR: 2012
DATE SIGNED: 6-25-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO
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. 12-1991</p> <p>Tax Type: DUI Administrative Fee</p> <p>Judge: Phan</p>
---	--

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, Attorney at Law, By Telephone
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT-1, Accounting Supervisor, MVD
RESPONDENT-2, MVD

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on April 1, 2013. Petitioner is requesting a refund of the \$\$\$\$ administrative impound fee assessed when his vehicle was impounded following the arrest of the driver for driving under the influence. Petitioner was not the driver of the vehicle. Respondent ("Division") had denied the refund request under Utah Code. Sec. 41-61-1406(6)(c). Petitioner timely appealed the denial and the matter came before the Tax Commission for the Initial hearing under Utah Code Sec 59-1-502.5.

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 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.

DISCUSSION

The facts in this case were unusual. Petitioner states that he had loaned his vehicle to an acquaintance. At the time of the arrest on March 26, 2012, the acquaintance was in the vehicle, but she was not driving the vehicle. The driver was NAME. Petitioner maintains that NAME was not someone with whom he was acquainted. NAME was arrested for driving under the influence and the vehicle was impounded. Petitioner had paid the administrative fee to obtain release of his vehicle from impound. Petitioner tried to obtain a letter or information from the Driver License Division regarding whether they had taken action against NAME' license, but they would not provide information to Petitioner regarding NAME. Petitioner even made a records request and went to a hearing before the State Records Committee. In the end the information he received was so redacted it was unhelpful. Petitioner did indicate that charges were never filed against NAME resulting from the arrest that led to Petitioner's vehicle being impounded. However, he was able to obtain a court record from the CITY Justice Court, in an unrelated case, that showed on April 7, 2012, NAME had been charged for having no valid license.

It was the Petitioner's position that as NAME had no driver license at the time Petitioner's vehicle was impounded, therefore the Driver License Division could not have taken any action against his license. The Driver License Division would not have been able to suspend or revoke the license if none had ever been issued.

The Division did not have information to refute any of these facts presented by the Petitioner, nor did it have information from the Driver License Division to confirm or deny that NAME did not have a license. It was the Division's position that the fee, which is collected under Utah Code Sec. 41-6a-527 may be refunded only under the circumstances outlined at Utah Code Sec. 41-6a-1406(6)(c) and that does preclude refund of the fee for many people. The Division had denied the refund because the Petitioner had not shown that it met either of the two provisions under Utah Code Sec. 41-6a-1406(6)(c) for refund. A refund may be issued under that section only if the vehicle was stolen at the time of the impound as shown by a copy of a stolen vehicle report or if the Driver License Division determined that the arrested person's driver license should not be suspended or revoked and the refund request is submitted within

thirty-days of the date of the Driver License Division letter or report. In this case Petitioner has not claimed the vehicle was stolen. The Division states that there are just these two narrow bases to allow the refund and the information does not fit within either basis.

Petitioner asks us to assume that the driver did not have a license at the time of the arrest. If he had no license, the argument goes, the Driver License Division would not have been able to issue an order to suspend or revoke the license, the two actions specifically noted in Utah Code 41-6a-1406(6)(c). However, Petitioner has not been able to provide a letter or report from the Driver License Division stating there was no revocation or suspension. Generally the driver of the vehicle would receive the letter or report, but also generally the owner would only allow someone that they knew well to drive his or her vehicle considering the risks of liability to the owner. All agree that the driver was arrested for driving under the influence. All agree that the arresting officer was required to impound the vehicle. Section 41-6a-527. All agree that the vehicle was actually impounded. Petitioner does not allege the officer acted improperly in impounding the vehicle.¹ If a vehicle is properly impounded, the statute imposes a fee. Our only role is to determine whether the fee should be waived or refunded. The statute provides two specific circumstances where the legislature has allowed the fee to be waived or refunded. One is where the vehicle is stolen. That did not occur. The other is where the Driver License Division provides the requisite letter and the request is filed timely. The Petitioner has not carried his burden of proof of showing that such a letter exists. Although he speculates that such a letter may have been unnecessary for Driver License purposes, the circumstances do not fit under the basis provided by Utah Code 41-6a-1406(6)(c) for refund and the 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.

¹ We understand Petitioner's frustration at his inability to verify the facts surrounding the impoundment and the subsequent treatment of the driver. It is an unfortunate result of his decision to allow an acquaintance to use his vehicle. The statute will relieve him of some consequences if the car is stolen-as indicated by a timely police report. It will not relieve him of those consequences when the impoundment results from his decision to entrust his vehicle to a second party who then entrusts it to a third.

Appeal No. 12-1991

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 _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner