

12-2258
TAX TYPE: DEALER LICENSE
TAX YEAR: 2012
DATE SIGNED: 9-28-2012
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: M. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 12-2258</p> <p>Tax Type: Dealer License</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, By Telephone

For Respondent: RESPONDENT, Assistant Director Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on September 24, 2012 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner (“Applicant”) is appealing the 60 day suspension of his motor vehicle dealer license and no fee owner license.

APPLICABLE LAW

The denial, suspension, and revocation of a motor vehicle dealer license are governed by Utah Code §41-3-209(2), as follows in relevant part:

- (b) If the administrator finds that there is reasonable cause to deny, suspend, or revoke a license under this chapter, the administrator shall deny, suspend, or revoke the license.
- (c) Reasonable cause for denial, suspension, or revocation of a license includes, in relation to the applicant or license holder or any of its partners, officers, or directors:
 - (vi) making a false statement on any application of a license under this chapter or for special license plates;
 - (vii) a violation of any state or federal law involving motor vehicles;
 - (viii) a violation of any state or federal law involving controlled substances;

- (ix) charges filed with any county attorney, district attorney, or U.S. attorney in any court of competent jurisdiction for a violation of any state or federal law involving motor vehicles;
- (x) a violation of any state or federal law involving fraud; or
- (xi) a violation of any state or federal law involving a registerable sex offense under Section 77-27-21.5; or
- (xii) having had a license issued under this chapter revoked within five years from the date of application.

DISCUSSION

The Applicant submitted a Bonded Motor Vehicle Business Application to the Respondent (“Division”) on May 10, 2012. Question 2, on page three of the application asks each owner if they have “been charged with, found in violation of, or convicted of any misdemeanors or felonies in Utah or any other state,” in the past ten years. In response, the Applicant checked the box indicating NO. There was space provided for each owner to individually list any charge, violation or conviction and none was listed for any owner.

When the application is filed the Division obtains fingerprints and sends them to the Bureau of Criminal Identification which provides a Criminal History Record on the applicants. When that report came back, it indicated one criminal incident on the Applicant’s record. This was shown as having an arrest date of August 12, 2000 and the charges being Forgery: Warrant, Felony-Third Degree. The record then showed a disposition date of October 4, 2005, on which it listed that the Applicant had been convicted of Class A–Misdemeanor Forgery and had been sentenced to 5 years probation. There was only the single criminal incident listed on the report. Upon receipt of this report from BCI, the Division issued an order suspending the Applicant's license for a period of 60 days and the reason given was failure to disclose information requested in the Application form. The Division issued the suspension by letter dated August 9, 2012. According to the letter from the Division, the suspension period was to be from September 8, 2012 to November 7, 2012, but if the Applicant filed an appeal, the license would remain in effect until after the hearing and decision from the Tax Commission.

It was the Division’s position that when the information came back from the BCI, the Division was required to suspend the license under Utah Code §41-3-209. The Division noted that making a false statement on any application of a license would be basis for suspension or denial under that statute. Additionally, crimes involving fraud would be basis for denial or suspension and it was the Division’s position that a forgery conviction was a crime involving fraud.

The Applicant apologized about not disclosing the criminal incident on the application form. He explained that at the time he filled out the form he thought that the conviction had been

expunged. He also stated that this stemmed from an incident in 1997 when he had signed his name on his buddy's hunting license. He indicates he was not aware of any charges until 2000 when he was pulled over for speeding and he learned at that time that a warrant for his arrest had been issued. It was his contention that he had gone to court on the charge in 2000 and that he thought that he had been convicted then because he recalled pleading to something, and being sentenced to 5 years probation. He also lost any hunting privileges during this time. He indicated that at some point he had gone back to court. He was not sure on what the terminology meant, but he was thinking that he had gone to court to have the conviction expunged. However, at the hearing he acknowledged that it might have been that the charge was reduced rather than expunged.

The Division had no other information on the conviction than what had been indicated in the BCI report.

Utah Code §41-3-209(2) mandates that a license "shall" be denied, revoked, or suspended for reasonable cause, and has identified as "reasonable cause" making a false statement on an application form as well as violations of the law involving fraud. Between the Applicant's recollection and the BCI report the actual events are unclear. The Applicant states that the crime occurred in 1997, the conviction in 2000 and then sometime later he had the charges reduced. The BCI shows an arrest date in 2000 and a disposition date in 2005 with 5 years probation. Either way, the Applicant would no longer have been on probation when he applied for the Dealer License in 2012. Additionally, the BCI Report also supports the contention that the actual crime occurred and the Applicant had been charged with the crime more than ten years prior to the date the Applicant signed the application form, as the Applicant must have been charged with the crime in 2000 or prior.

Based on the fact that the crime had been committed and charged more than ten years prior to the date he filled out the application, and that there was only the single criminal incident on the Applicant's record, the suspension should be abated. A conviction entered in 2005 should have been disclosed on the Application form submitted May 10, 2012, which asks for charges, violations or conviction in the past ten years. However, in this case with only the single criminal incident, the 2005 disposition date must relate to a crime and charges which occurred more than ten years ago. It is possible that this disposition date had been the date the Applicant had gone back to court to have the original charge reduced. It would not be unreasonable for the Applicant to consider it unnecessary to include an incident occurring in 2000 or prior in answer to a question about charges or convictions occurring in the last ten years.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing the Commission abates the 60 day suspension issued against the Applicant's dealer license and orders the Division to reinstate the license. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. If either party requests a Formal Hearing this decision and order is stayed until the Commission issues its formal decision. However, this Decision and Order will become the Final Decision and Order of the Commission unless either party to this case files a written request within thirty (30) days of the date of this decision to proceed to a formal decision. Such 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