

12-2917
TAX TYPE: ADMINISTRATIVE IMPOUND FEE
TAX YEAR: 2012
DATE SIGNED: 7-22-2013
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
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>DIVISION OF MOTOR VEHICLES, UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 12-2917</p> <p>Tax Type: Administrative Impound Fee</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General, by
Telephone
RESPONDENT, Accounting Supervisor, Division of Motor Vehicles

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on April 30, 2013. 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.

DISCUSSION

Petitioner explained that after the arrest for DUI where his vehicle had been impounded, the Driver License Division had made its determination that it was not going to suspend or revoke his license and had issued its no action letter dated July 5, 2012. In that letter it did explain that he may be entitled to a refund of the \$\$\$\$ DUI administrative impound fee and provided instructions for requesting the refund. The letter from Driver License Division contained the following instructions:

To obtain a refund or a waiver of the DUI administrative impound fee, submit a copy of this letter to the Division of Motor Vehicles within 30 days of the date of this letter. If the DUI administrative impound fee has already been paid, you must submit a refund request for the impound fee directly to the Division of Motor Vehicles. You must attach a copy of the Vehicle Impound Report, form TC-540, and your refund request from TC-542 (which can be obtained at www.tax.utah.gov) to this letter and mail directly to:

Utah State Tax Commission
Attn: DMV-Accounting
210 North 1950 West
Salt Lake City, UT 84134

Petitioner explained that after he had received the July 5, 2012 letter he was able to obtain the refund request form TC-542. He did not, however, know what a Form TC-540 was. He states that he went into the CITY-1 Motor Vehicle Division office and asked about the form TC-540 and they did not know what it was. He said the lady that he spoke to at that office said she assumed it would be something that he would get from the court. He also indicates that he called the courts and got no answer there. He indicates that as time was running out on the thirty-days he had tried six times to get a hold of people about what this form was and left messages. After the thirty-days had expired he went to the CITY-2 Police Station and one of the Police Officers looked up the form for him. At that point he discovered it was the citation issued by the CITY-2 Police Department that had been given to him at the time the vehicle was impounded. The TC-540 appears on its fact to be a ticket or citation, but it does say in the fine print at the bottom that it is the TC-540. It also indicates that the "Pink" copy goes to the driver of the vehicle. Petitioner then filed his refund request with the DMV on September 24, 2012, including both forms TC-540 and TC-542. He understood it was now after the thirty-day period.

It was the DMV's position that the fee may only be refunded under the provisions of Utah Code Sec. 41-6a-1406(6)(c). These provisions allows a refund if the vehicle was stolen, which is not an issue

here, or if the Driver License Division determined that the arrested person's driver license should not be suspended or revoked 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. Petitioner had the requisite letter from the Driver License Division, but missed the thirty day deadline. DMV representatives stated that Petitioner should have filed the request within the thirty-day deadline and because of his failure to comply with the deadline the refund could not be issued. They also said Petitioner could have filed the request without the Form TC-540.

Upon review of the information presented, the DMV is correct in that the criteria for issuing a refund is set out at Utah Code Sec. 41-6a-1406(6)(c) and is also correct that it may not issue the refund in this matter because Petitioner failed to meet the 30 day deadline. Petitioner had received the July 5, 2012 no action letter from the Driver License Division, he was aware of the thirty-day period. An address was provided where the refund request should be submitted and that it should be to the attention of DMV – Accounting. Petitioner did not mail in an inquiry or apparently attempt to find a telephone number for DMV-Accounting at that address. Therefore, based on the statutory provisions the refund claim must be denied. However, that being said, the instructions for obtaining a refund as provided by the Driver License Division in its letter were not particularly helpful. There is not a telephone number or email address provided if there are questions. Had there been a telephone number, Petitioner could have expeditiously received the information he needed instead of spending considerable time asking people who did not know the answer. Additionally, as the DMV pointed out, Petitioner could have filed his request within the deadline without the form TC-540. The DMV also receives a copy of this form at the time of the impound. But from the instructions provided it was reasonable for Petitioner to assume that including the form was mandatory.

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

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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