

13-478
ADMINISTRATIVE IMPOUND FEE
TAX YEAR: 2012
SIGNED: 07-22-2013
COMMISSIONERS: R. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

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| <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. 13-478</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: RESPONDENT REP. 1, Assistant Attorney General, by Telephone
RESPONDENT REP. 2, Accounting Supervisor, Division of Motor Vehicles
RESPONDENT REP. 3, Division of Motor Vehicles

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on June 24, 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 had been arrested for DUI and his vehicle impounded. He explained that he had an attorney help him with the hearing at the Driver License Division. He states the charges were dropped and he was told during the telephone hearing with Driver License that Driver License would be sending him a letter indicating there would be no action taken against his license and also discussed that he could wait for the letter and then request a refund of the \$\$\$\$ impound fee. Petitioner states that he gave his mailing address to the Driver License Division and they took it down. He indicates that based on this he expected that the letter would be mailed to him at his own address and so he was waiting for the letter. In December he underwent surgery on (WORDS REMOVED). In January he called his attorney because he still had not received the letter. At that time he found out that the letter had been mailed to his attorney on November 23, 2012, and the thirty-days to request a refund had already expired. There was no indication that Driver License had mailed the letter to Petitioner as Petitioner had expected. Petitioner also states that he had not received the letter from his attorney before the telephone call he made to his attorney in January. After the telephone call with the attorney, Petitioner obtained the letter from his attorney and filed his request for refund with Respondent (“DMV”) on January 12, 2013.

At the hearing Petitioner also requested the refund based on financial hardship reasons and indicated the \$\$\$\$ was a lot of money for him as he was on disability and had ##### school age children.

It was Respondent’s (“DMV”) position that the fee may only be refunded under the provisions of Utah Code Sec. 41-6a-1406(6)(c). This would be if the vehicle were 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. The representative for the DMV, however, did state that there may be some equitable reasons that the Commission could consider in this matter.

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). However, in this case it appears that action on the part of the Driver License Division contributed to Petitioner’s inability to file his request within the 30 day period. Based on his conversation with that division and providing that division his mailing address,

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Petitioner had the expectation that the letter would be mailed to the address he had provided. Driver License did not mail the letter to the address he had provided and because of this, Petitioner did not receive the letter within the thirty-day period he had to file the refund. Therefore, the action or failure to act by changing the address, on the part of the Driver License Division, denied due process to Petitioner. Petitioner's request should be granted.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission grants 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 _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner