

13-559  
TAX TYPE: AD VIOLATION  
TAX YEAR: 2013  
DATE SIGNED: 9-19-2013  
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,  Petitioner,  vs.  MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No.     13-559</p> <p>Account No.    #####</p> <p>Case Type:     Advertising Violation</p> <p>Tax Year:       2013</p> <p>Judge:           Jensen</p>
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**Presiding:**

R. Bruce Johnson, Commissioner  
Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER, Taxpayer, appearing by telephone  
Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General  
RESPONDENT, for the Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 24, 2013. On the basis of the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. On February 4, 2013, The Motor Vehicle Enforcement Division of the Utah State Tax Commission (the "Division") assessed a \$\$\$\$ fine against the above-named Petitioner, (the "Taxpayer"), on the basis of three advertisements allegedly published in violation Utah Code Ann. Section 41-3-210.
2. The Taxpayer filed this appeal, challenging the Division's fine. The advertisements, which the Taxpayer published on February 4, 2013, listed vehicles for sale but did not provide the Taxpayer's full name or license number.
3. This advertising violation would be the Taxpayer's first offense in a twelve month period.
4. The Taxpayer's representative testified that the Taxpayer places some ##### advertisements each week and has placed ##### advertisements on WEBSITE in the past three years.

5. The Taxpayer's representative acknowledged that none of the advertisements at issue in this case list the Taxpayer's license number and that one of the three ads has no part of the Taxpayer's full name. The Taxpayer's representative noted that one, two or three advertisements with alleged problems out of over ##### ads shows that the Taxpayer has no intent to mislead customers.

6. The Taxpayer pointed out that two of the advertisements at issue list TAXPAYER WEB ADDRESS as a web address for the Taxpayer and that the full name of the Taxpayer, TAXPAYER is thus contained in two of the ads.

7. The Division's representative explained that although the Taxpayer technically had three advertisements that violated Utah law, the Division charged the Taxpayer with one violation and imposed only one fine.

#### APPLICABLE LAW

Utah Code Ann. §41-3-210(1) governs automobile advertising and provides, in pertinent part, as follows:

(1) The holder of any license issued under this chapter may not:

\* \* \*

(b) intentionally publish, display, or circulate any advertising without identifying the seller as the licensee by including in the advertisement the full name under which the licensee is licensed or the licensee's number assigned by the division;

#### CONCLUSIONS OF LAW

At least one of the three advertisements at issue does not identify the Taxpayer by listing the full name of the dealership or the dealer's license number. Because that one advertisement provides good cause to sustain the single fine imposed by the Division, the Commission need not reach the issue of whether the Taxpayer's listing of TAXPAYER WEB ADDRESS is a listing of the full name of the dealer, TAXPAYER. The Division did not dispute that the Taxpayer had no intent to mislead customers. Likewise, the Division did not dispute that the Taxpayer published over ##### ads with no identified problems. However, intent to mislead customers or showing a pattern of ad violations are not required elements to show a violation of Utah Code Ann. 41-3-210. Rather, it is sufficient that a dealer publish an ad that lacks disclosure as required by Utah law. There is no dispute that one of the advertisements at issue is in violation of Utah Code Ann. 41-3-210. On the basis of the evidence presented, there is good cause to uphold the fine imposed by the Division.

Clinton Jensen  
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing the Commission sustains the \$250 penalty assessed by the Division.  
It is so ordered.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2013.

R. Bruce Johnson  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit in accordance with Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63G-4-401 et. seq.