

13-736
TAX TYPE: ADMINISTRATIVE IMPOUND FEE
TAX YEAR: 2013
DATE SIGNED: 10-4-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, R. PERO
EXCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, vs. MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 13-736</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 PETITIONER, Assistant Attorney General by
Telephone
RESPONDENT-1, Accounting Supervisor, DMV
RESPONDENT-2, DMV

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on September 10, 2013, under Utah Code Sec. 59-1-502.5. Petitioner is requesting a refund of the \$\$\$\$ administrative impound fee assessed when her vehicle was impounded as the result of a citation for “exhibition driving.”

APPLICABLE LAW

The law provides that peace officers impound a vehicle under the situations as follows at Utah Code Sec. 41-6a-527(1):

If a peace officer arrests, cites, or refers for administrative action the operator of a vehicle for violating Section 41-6a-502, 41-6a-517, 41-6a-518.2, 41-6a-520, 41-6a-530, **41-6a-606**, 53-3-231, 53-3-232, Subsections 53-3-227(3)(a)(i) through (vi), Subsection 53-2-227(3)(a)(ix), or a local ordinance similar to Section 41-6a-510(1), the peace officer shall seize and impound the vehicle in accordance with Section 41-6a-1406, except as provided under Subsection (2). (Emphasis added)

. . .

The Petitioner was cited under Utah Code Sec. 41-6a-606 which provides:

- (1) A person may not engage in any motor vehicle speed contest or exhibition of speed on a highway.
- (2) A person may not, in any manner, obstruct or place any barricade or obstruction or assist or participate in placing any barricade or obstruction upon any highway for any purpose prohibited under Subsection (1).
- (3) A person who violates Subsection (1) is guilty of a class B misdemeanor.
- (4) (a) In addition to the penalty provided under this section or any other section, a person who violates Subsection (1) shall have the person's driver license suspended under Subsection 53-3-220(1)(a)(xvi) for a period of:
 - (i) 60 days for the first offense; and
 - (ii) 90 days for a second offense within three years of a prior offense.(b) The court shall forward the report of the conviction to the Driver License Division in accordance with Section 53-3-218.

Once a person is found in violation of Utah Code Sec. 41-6a-606 the court is to report the conviction to the Driver License Division pursuant to Utah Code Sec. 53-3-218 and then the Driver License Division would suspend the license. Utah Code Sec. 53-3-218 provides in pertinent part:

(2)(a) Except as provided in Subsection (2)(c), a court having jurisdiction over offenses committed under this chapter or any other law of this state, or under any municipal ordinance regulating driving motor vehicles on highways or driving motorboats on the water, shall forward to the division within five days, an abstract of the court record of the conviction or plea held in abeyance of any person in the court for a reportable traffic or motor boating violation of any laws or ordinances, and may recommend the suspension of the license of the person convicted.

The administrative impound fee is charged and may be waived under Utah Code §41-6a-1406(6) as follows:

(a) the vehicle, vessel, or outboard motor shall be released after the registered owner, lien holder, or the owner's agent: . . .(iv) if the impoundment was made under Section 41-6a-527, pays an administrative impound fee of \$350; and (v) pays all towing and storage fees to the place where the vehicle, vessel, or outboard motor is stored.

. . .

- (c) The administrative impound fee assessed under Subsection (6)(a)(iv) shall be waived or refund 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 she was cited on November 16, 2012, for “Speed contest or exhibition of speed” and her motor vehicle was impounded. In order to obtain the release of the vehicle she paid the \$\$\$\$ administrative impound fee, as well as towing and storage fees to the tow company. The administrative impound fee and towing and storage fees totaled \$\$\$\$\$. Petitioner was not arrested at that time of the impound; she was issued a citation. The police officer did not take her driver license at that time and no action was ever taken against her driver license. She was charged for speed contest or exhibition driving under Utah Code 41-6a-606 and a court date was set and then continued. Finally, on May 13, 2013, the charge against her was dismissed by the judge.

In fact, Utah Code 41-6a-606 provides that if she had been convicted of the charge it would have been a Class B misdemeanor and her driver license would have been suspended 60 days for a first offense, 90 days for a second offense. The statute provides that if she had been convicted, the court “shall forward the report of the conviction to the Driver License Division.” The citation is not referred to the Driver License Division unless there is a criminal conviction by the court.

The process for a citation of “exhibition of speed” is different from a citation and arrest for driving under the influence, because for exhibition of speed there is no action taken against the driver license unless the driver is convicted by the court in the criminal proceeding. Typically most administrative impounds result from a DUI citation. With a DUI related arrest, if the arrestee’s chemical test were over the legal limit for alcohol or drugs it would generally result in the police officer seizing the Driver License at that time, notifying the arrestee of the process to have an expedited hearing with the Driver License Division and notify the Driver License Division. See Utah Code 59-3-223. Under that section the Driver License Division must grant a hearing within in 29 days on whether or not the license will be suspended or revoked. This means that the Driver License decision on whether to suspend or revoke the license is generally made prior to any criminal court proceeding. Under the DUI scenario, the Driver License Division issues a written decision. If the Driver License Division decides not to suspend or revoke the license they issue a letter to the driver saying they are taking no action. This letter would have instructions on obtaining a refund of the administrative impound fee. If the driver requested a refund within thirty days of the issuance of the “no action letter” the fee would be refunded.

Under the exhibition of speed citation, Driver License would not even be notified of the citation or take any action against the license unless there was a conviction. So in cases like the Petitioner's where the charges were dismissed by the court, the matter is not even forwarded to Driver License for review and no letter would be issued from the Driver License Division.

It was Respondent ("Division's") position that despite charges being dismissed against Petitioner and no action taken against her license, the Division could not refund the \$\$\$\$ administrative impound fee because the facts did not come within the limited grounds for refund under Utah Code 41-6a-1406(6)(c). Under that subsection there are only two grounds for waiver of the fee provided. The first is if 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. The Division acknowledges that this does not even apply to exhibition of speed cases, but is instead a basis for waiver of DUI related impounds. The second is if 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. It was the Division's position that the only time it could issue a refund for an exhibition of speed related impound was if the vehicle was stolen at the time of the impound.

The Petitioner argued in this case that it was unfair to not refund her the fee because the charges were dismissed and no action was taken against her driver license and if there was no statutory basis to allow refund for the impound in situations of "exhibition of speed" the law should be adjusted to allow the refund for people in her situation.

Upon review of the facts and the law, the statutory section providing for refund, Utah Code 41-6a-1406(6)(a)(iv), was written in a very specific manner to apply only to DUI related impounds, except for the very limited situation where the vehicle had been reported stolen as indicated by a police report. The statute was not written in a manner to give the Tax Commission discretion to refund the impound fee for reasonable cause, hardship or for other considerations not specifically listed in the statute. Most of the impounds under Utah Code Sec. 41-6a-527(1) relate to DUI citations and arrests. There have been numerous situations where the Driver License Division issued the "no action" letter stating they were not suspending or revoking a driver license and the refund was still denied because the driver failed to meet the thirty-day deadline for filing the request. The Tax Commission has strictly imposed the requirements of the statute in the DUI situations that have come before the Commission on appeal. The Division indicates that there are only two grounds for impound under Utah Code Sec. 41-6a-527(1) that do not

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relate to DUI. They are the exhibition of speed or an ignition interlock violation. The majority of the impound cases are DUI related. It is possible that the exhibition of speed driving or ignition interlock cases were overlooked by the legislature, but the Tax Commission does not have authority to expand the basis for issuing the refund under the statute.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies Taxpayer'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

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