13-1641
TAX TYPE: REFUND REQUEST
TAX YEAR: 2013
DATE SIGNED: 10-4-2013
COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO
EXCUSED: B. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 13-1641 Tax Type: Administrative Impound Fee Judge: Phan

Presiding:
> Jane Phan, Administrative Law Judge

Appearances:
> For Petitioner: PETITIONER
> For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
> RESPONDENT-1, Assistant Director, Division of Motor Vehicles
> RESPONDENT-2, Accounting Supervisor, Division of Motor Vehicles

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on September 23, 2013, under Utah Code §59-1-502.5. Petitioner is requesting a refund of the $$$$$ administrative impound fee assessed when her vehicle was impounded following the arrest of the driver for driving under the influence.

APPLICABLE LAW

The law provides that peace officers impound a vehicle under the situations as follows at Utah Code § 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), Subjection 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).

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 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 she was the owner of the vehicle, but was not driving the vehicle, nor was she a passenger in the vehicle at the time it was impounded. At the time of the impound it was her boyfriend who was driving and arrested for DUI. She stated that she had to take out a loan to obtain the money to pay the $$$$$ administrative impound fee and the towing and storage fees to get her vehicle back.

Petitioner explained that when her boyfriend went to his hearing at the Driver License Division, that Division took no action against his license because the police had never forwarded a copy of the DUI arrest report to the division. The Driver License Division issued its letter stating it was taking no action against the license on October 26, 2012.   This letter did explain that he could request a refund and gave the thirty-day deadline as well as instructions for getting the refund. Petitioner stated that she told her boyfriend he needed to take care of this. However, the refund request was not submitted until March 12, 2013, or based on the postmark date March 11, 2013.

The Division had denied the refund request because it had been submitted after the thirty-day deadline. The Division's representative stated that the administrative fee may only be refunded if the provisions of Utah Code §41-6a-1406 have been complied with. Under that section the Division may issue the refund only if the Driver License Division determined that the arrested person's driver license

should not be suspended or revoked under Sections 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 2) 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.

Although the Driver License Division took no action against the license, Petitioner or the driver failed to meet the 30 day requirement for requesting a refund. The statute does not provide discretion to the Commission to issue a refund for other cause and there is no provision that would extend the deadline. The Division properly denied the issuance of the refund.

_____
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 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

Appeal No. 13-1641

Michael J. Cragun   Robert P. Pero
Commissioner   Commissioner