

13-740
TAX TYPE: DUI ADMINISTRATIVE FEE
TAX YEAR: 2013
DATE SIGNED: 9-16-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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| PETITIONER, Petitioner, vs. MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent. | INITIAL HEARING ORDER Appeal No. 13-740 Tax Type: DUI Administrative Fee Judge: Phan |
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on August 22, 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 §41-6a-1406(6)(c), as follows:

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 although he had been pulled over and cited for a DUI in Utah, at which time his vehicle had been impounded, the criminal charges were dropped and no action was taken against his license by the Utah Driver License Division. Petitioner was not a resident of Utah, but instead of STATE and had a STATE Driver License at the time of the arrest and impoundment of the vehicle in Utah. However, Petitioner stated that the letter from the Utah Driver License Division indicating it was taking no action had been mailed to an old address, at ADDRESS, CITY, STATE. This letter had been mailed on October 15, 2012. Petitioner did not mail his refund request to the Respondent until January 15, 2013.

During the hearing Respondent pointed out that under Utah Code Sec. 41-6a-1406(6)(c) it was limited in issuing the refund to the criteria in that subsection. Utah Code Sec. 41-6a-1406(6)(c) provides that the refund may be issued only if “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 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.” In this case, the Driver License Division had issued a letter indicating no action taken, but the refund request had not been received within the thirty-days. The Division, however, did indicate during the hearing that if Petitioner were able to provide some documentation that showed the Driver License Division mailed the notice to the wrong address, and had been notified of the current address, the refund could then be issued.¹

After the hearing, Petitioner provided a letter from the Driver License Division notifying him of the Driver License hearing date, which was mailed both to his old and current address and a fax from his attorney providing his current address to the Driver License Division. The subsequent no action letter was mailed to the old address and not the current address. Upon receipt of this information, Respondent reported in an email submitted in this matter on August 28, 2013, that it would be refunding the administrative impound fee.

¹ This is consistent with the Tax Commission’s decision in *Initial Hearing Order, Appeal No. 13-478*, in which the Commission concluded mailing to a wrong address denied due process rights to the person requesting the refund and ordered the refund issued. Many Tax Commission decisions are posted in a redacted format at tax.utah.gov/commission-office/decisions.

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Based on the Driver License Division's denial of due process to Petitioner by failing to mail the no action letter to Petitioner's current address, after having been notified of that address, this appeal 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