

14-1105
TAX TYPE: IMPOUND FEE
TAX YEAR: 2014
DATE SIGNED: 10-17-2014
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
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. 14-1105

Account No. #####

Tax Type: Impound Fee

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, By Telephone

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney
General, By Telephone
RESPONDENT, Assistant Director, Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on September 15, 2014, pursuant to Utah Code §59-1-502.5. Petitioner is requesting a refund of the \$350 administrative impound fee assessed when his vehicle was impounded following an arrest for driving under the influence. The Division had denied the refund on the basis that Petitioner had not submitted the request within the 30 days as provided in Utah Code §41-6a-1406.

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 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 and the vehicle impounded on January 24, 2014. Petitioner explained that the charges were dismissed and no action was taken against his Driver License. The Driver License Division had mailed the “No Action” letter to the Petitioner on February 20, 2014. The letter was mailed to the address that Petitioner had on his Driver License, of ADDRESS, CITY, UT ZIP CODE. Petitioner explains that although this was a valid address for him, he was not often there and did not always pick up the mail or have it forwarded. He states that it was difficult to figure out where and how to obtain a refund of the administrative fee. He indicated in STATE the Driver License and Division of Motor Vehicles were combined. He states that when he first tried to obtain the refund he went to the office in RURAL COUNTY where he had paid the fee and was told it was not at that address. Eventually he figured out the request needed to be filed with the Utah Tax Commission, but he indicates by that time it was already too late to file the refund request. He filed the refund request April 10, 2014.

The “No Action” letter from the Driver License Division, issued on February 20, 2014, does explain that the recipient may be entitled to a refund of the \$350 DUI administrative impound fee and provides instructions for requesting the refund. The letter from Driver License Division contained the following instructions:

To obtain a refund or a waiver of the DUI administrative impound fee, submit a copy of this letter to the Division of Motor Vehicles within 30 days of the date of this letter. If the DUI administrative impound fee has already been paid, you must submit a refund request for the impound fee directly to the Division of Motor Vehicles. You must attach a copy of the Vehicle Impound Report, form TC-540, and your refund request from TC-542 (which can be obtained at www.tax.utah.gov) to this letter and mail directly to:

Utah State Tax Commission
Attn: DMV-Accounting
210 North 1950 West
Salt Lake City, UT 84134

It was Respondent’s position that the fee may only be refunded under the provisions of Utah Code Sec. 41-6a-1406(6)(c). These provisions allow a refund if the vehicle was 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. Petitioner had the requisite letter from the Driver License Division, but missed the thirty day deadline. Respondent's representatives also point out that this may have been more of an issue of Petitioner not picking up or having his mail forwarded more regularly.

Upon review of the information presented, Respondent is correct in that the criteria for issuing a refund is set out at Utah Code Sec. 41-6a-1406(6)(c) and is also correct that it may not issue the refund in this matter because Petitioner failed to meet the 30 day deadline. The "No Action" letter from the Driver License Division had been mailed to a valid address for Petitioner. It did contain written instructions for obtaining the refund as well as state that there was a 30 day limitation. Petitioner failed to meet the deadline. There is no basis under the facts and circumstances in this matter under which the Commission could extend the deadline and allow this refund request.

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

Appeal No. 14-1105

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2014.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.