

14-130  
TAX TYPE: ADVERTISEMENT VIOLATION  
TAX YEAR: 2013  
DATE SIGNED: 2-21-2014  
COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO  
EXCUSED: B. JOHNSON

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BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No.     14-130</p> <p>Tax Type:        Advertisement Violation</p> <p>Judge:            Jensen</p>
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**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner:        REPRESENTATIVE FOR TAXPAYER, for the Taxpayer  
For Respondent:        RESPONDENT, for the Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on January 30, 2014 in accordance with Utah Code Ann. §59-1-502.5.

On December 17, 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 advertisements allegedly published in violation Utah Code Ann. Section 41-3-210 and Utah Admin. Rule. R877-23V-7(7). The Taxpayer filed this appeal, challenging the Division's fine. This advertising violation would be the Taxpayer's first offense in a twelve month period.

Although the Division levied one fine in this matter, there are five advertisements at issue with potential violations of Utah statutes or rules. The first advertisement, published December 10, 2013 on WEBSITE, listed a Kelly Blue Book price for a MAKE AND MODEL OF CAR and did not list the Taxpayer's dealer name or dealer number.

The second advertisement, published on December 10, 2013 on WEBSITE, listed a MAKE AND MODEL OF CAR with a rebuilt title. The advertisement disclosed a rebuilt title, but did so after listing

other information in the advertisement. The advertisement did not list the Taxpayer's dealer name or dealer number.

A third advertisement, published December 10, 2013 on WEBSITE, listed a MAKE AND MODEL OF CAR as a "used car for sale by owner" and did not list the Taxpayer's dealer name or dealer number.

A fourth advertisement, published December 10, 2013 on WEBSITE, listed a MAKE AND MODEL with a rebuilt/reconstructed title. The advertisement disclosed a rebuilt/reconstructed title, but did so after listing other information in the advertisement. The advertisement did not list the Taxpayer's dealer name or dealer number.

A fifth advertisement, published December 10, 2013 on WEBSITE, listed a MAKE AND MODEL with a rebuilt title. The advertisement disclosed a rebuilt title, but did so after listing other information in the advertisement. The advertisement did not list the Taxpayer's dealer name or dealer number.

#### 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.

Rule R877-23V-7 ("Rule 7") of the Utah Administrative Rules provides further requirements regarding dealer advertising. Utah Code Ann. §41-3-210(1)(c) provides that violations of administrative rules such as Rule 7 become violations of Utah Code Ann. §41-3-210. Subpart (2)(d) of Rule 7 provides as follows:

Savings and Discount Claims. Because the intrinsic value of a used vehicle is difficult to establish, specific claims of savings may not be used in an advertisement. This includes statements such as, "Was priced at \$....., now priced at \$....."

Subpart (2)(bb) of Rule 7 provides as follows:

An advertisement must disclose a salvage or branded title as prominently as the description of the advertised vehicle.

#### DISCUSSION

The Taxpayer's representative explained that no one at his dealership placed the first advertisement. The car was his son's car, which was not for sale. The Taxpayer's representative indicated that the selling price listed was approximately double the value of the car. He was of the opinion that the

photographs came from his son's purchase of the car several years ago and that the advertisement was part of fraudulent activity by an unknown party. The representative for the Division found the statements from the Taxpayer's representative credible and agreed to withdraw any claimed violation for this advertisement.

With regard to the other four advertisements, the Taxpayer's representative explained that he had hired a new person to place advertisements. The new person was unfamiliar with advertising rules. The Taxpayer characterized the actions of this and one other employee as, at most, honest mistakes in listing vehicles for sale. While there may have been technical violations of advertising rules, the Taxpayer's representative strongly asserted that the Taxpayer had no intent to mislead customers or the auto buying public. The Taxpayer's representative explained that the \$\$\$\$ fine levied in this case means something entirely different to a small dealer than it does to a large auto dealership.

The Division did not dispute that the Taxpayer had no intent to mislead anyone. However, intent to mislead is not a required element of a violation of Utah Code Ann. 41-3-210 or Utah Admin. Rule R877-23V-7. The actions listed in the Division's letter either took place or they did not. In this case, there appear to be multiple advertisements that violate Utah law. While the Commission has the authority to reduce fines, it notes that the Taxpayer had multiple violations in this case but received only one fine. There is not good cause to reduce the fine in this case, particularly given the multiple offenses noted in the evidence in this case. 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.

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. 14-130

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

R. Bruce Johnson  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner