

14-1736
TAX TYPE: DUI IMPOUNDS
TAX YEAR: 2014
DATE SIGNED: 3-30-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
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. 14-1736</p> <p>Account No. #####</p> <p>Tax Type: DUI Impounds</p> <p>Tax Year: 2014</p> <p>Judge: Phan</p>
---	--

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, By Telephone
REPRESENTATIVE FOR PETITIONER, By Telephone
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney
General, By Telephone
RESPONDENT, Accounting Supervisor Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on February 5, 2015, pursuant to Utah Code §59-1-502.5. Petitioner is requesting a refund of the \$350 administrative impound fee assessed when her vehicle was impounded following the arrest of the driver 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. Both PETITIONER and REPRESENTATIVE FOR PETITIONER were on the telephone for this hearing and will be referred to collectively herein as Petitioners.

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

The Petitioners' son had been arrested and Petitioners' vehicle impounded on March 30, 2014. The Petitioners explained that the charges were changed to a "minor in consumption" on their Claim for Refund form. The Driver License Division did issue a letter on April 22, 2014, stating it was taking no action against their son's Driver License. However, it is their position that the letter was mailed to the wrong address so that they did not receive it in time to request the refund within the 30 day period allowed by statute. The letter was addressed to their son, NAME, as he was the driver. Petitioner explained that they did finally receive the letter as it had floated around in the mail because it was addressed to ADDRESS-1, CITY-1, Utah ZIP CODE. This was their street address for their property in CITY-1, but mail is not delivered there. The Petitioners have to get their mail from a post office box. Their mailing address is PO Box #####, CITY-1, UT ZIP CODE. Petitioners did not know when they had finally received the letter from the Driver License Division. They had filed their request for refund July 11, 2014.

They point out that they were the ones who had to pay the \$350 DUI Administrative Fee and that their son was not driving under the influence in the first place so it was their contention that their vehicle should not have been impounded.

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, and a police report is filed, 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. However, the law specifically states that the refund request must be made within 30 days of the final notification from the Driver License Division. Respondent also noted at the hearing that the Driver License Division had mailed two copies of its "No Action Letter" to Petitioners' son. One was mailed to Petitioners' son at his current address in CITY-2,

Utah. The second letter was also mailed to their son, but at the street address in CITY-1, Utah. The letter from the Driver License Division is mailed to the driver of the vehicle. It is not mailed to the owner of the vehicle unless they were the same person. In this matter Petitioners' owned the vehicle, but their son was driving it at the time of the impound. Driver License Division was required to send the letter to Petitioners' son, which they did to two different addresses. Both letters are addressed to NAME. Petitioners' son did not request the refund or provide his parents the letter within the thirty day deadline so they could file the request within the time period.

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 Petitioners failed to meet the 30 day deadline. The "No Action" letter from the Driver License Division had been mailed to a valid address for Petitioners' son. It was also mailed to their son at a second address which was not a good mailing address for him. Unfortunately, neither letter apparently was provided to Petitioners in time to request the refund. There is no basis under the law which authorizes the Tax Commission to extend this deadline for cause. The Commission notes that a 30 day deadline is a tight deadline in these circumstances. Under the law, however, the "No Action Letter" is mailed to the driver of the vehicle. In cases as occurred here, if the owner of the vehicle is not the driver, the "No Action Letter" is still mailed to the driver because it specifically relates to that person's license. Often it is the owner of the vehicle that ends up paying the fee to recover the car, but it is the driver that receives the "No Action Letter" which contains the instructions for claiming a refund and starts the time limit. However, under the law as currently written there is no basis 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

Appeal No. 14-1736

Formal Hearing. Such a request shall be mailed, or emailed, 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

or emailed to:

taxappeals@utah.gov

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

DATED this _____ day of _____, 2015.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner