

14-1885
TAX TYPE: IMPOUND FEE
TAX YEAR: 2014
DATE SIGNED: 12-17-2015
COMMISSIONERS: M. CRAGUN, R. PERO, R. ROCKWELL
CONCURRENCE: J. VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 14-1885</p> <p>Account No. ##### Tax Type: Impound Fee Tax Year: 2014</p> <p>Judge: Phan</p>
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Presiding:

Michael Cragun, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT, Accounting Supervisor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 10, 2015, in accordance with Utah Code §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner filed an appeal of the decision issued by Respondent (“DMV”) to deny a refund of the \$350 Administrative Impound Fee. The appeal proceeded to this Formal Hearing.

2. The basis provided by the DMV for denial of the refund was that Petitioner had not submitted his refund request within 30 days from the date that the Driver License Division issued its “no action” letter, citing Utah Code Sec. 41-6a-1406(6)(c).

3. Petitioner testified that after his vehicle was impounded based on a DUI arrest, he went to a hearing at the Driver License Division on June 6, 2014. At the hearing he was told that the decision would be mailed to him in about six days. If the Driver License Division decided to take no action against his license, than the license would be returned to him with the decision. He had not received the decision or his license by June 25, 2014, so he testified that he had called the Driver License Division and was told it would be three or four more days. As he still had not received the decision on July 2, 2014, he called again and was told he might need to go in and get another license. He called on July 6, 2014, and was told that it had been mailed to him. He testified that he did not receive the decision or his license until July 30, 2014.

4. Petitioner also states that he was unaware until he received the decision from the Driver License Division that he could have applied for a refund of the \$350 fee, but by the time he actually received the letter, it was past the thirty-day period for filing a request.

5. The Letter from the Driver License Division was dated June 12, 2014. Petitioner did not refute that it had been mailed to him at his address on or around that date. He did not have the envelope with the postmark, but did not argue it was mailed later. Instead it was his position and testimony that he did not receive the letter until July 30, 2014. Petitioner also testified that he had resided at that address for many years, that he personally picked up the mail from his mailbox and that he was actively looking for the letter from the Driver License Division because he needed his Driver License for work.

6. The representatives for DMV provided two copies of the “No Action” letter issued by the Driver License Division on June 12, 2014. One of the copies was addressed to Petitioner¹ and the second was addressed to NAME, Attorney at an address in City-1.² The copies had a Certificate of Mailing stamped on the top which certify the letters were mailed on June 13, 2014.

7. The “No Action” letter stated, “[T]his is to advise you that it is the decision of this department to take no action and not deny, suspend, revoke or disqualify your driving privilege. If your Utah driver license or driving privilege card was surrendered to this department as a result of your arrest, it is enclosed with this letter, unless for some other reason it cannot be returned.” It goes on to explain the recipient may be entitled to a refund of the DUI administrative impound fee and states, “To obtain a refund or a waiver of the DUI administrative impound fee, submit a copy of this letter to the Division of

¹ Respondent’s Exhibit 1.

² Respondent’s Exhibit 2.

Motor Vehicles within 30 days of the date of this letter.” It goes on to state further instructions on how to file a request for refund.

8. Petitioner filed his request for refund with the DMV on August 1, 2014.

9. The representatives for DMV stated that it is their understanding that the Driver License Division³ does not mail the “No Action” letters by certified or registered mail. They are sent regular mail. Further, it was the DMV’s understanding that the Driver License Division does not track returned mail or document telephone calls, like the ones Petitioner states he made about when he would receive the decision and the return of his Driver License.

10. DMV had denied the refund because Petitioner had not filed his request for refund within thirty days from the date listed on the “No Action” letter.

11. DMV provided an additional letter from Driver License Division which indicated additional action on Petitioner’s Driver License File Number. This letter was mailed to Petitioner with a date of September 19, 2014.⁴ The letter states, “This is to advise you that upon receipt of corrected or updated information from the court, the order of denial, revocation, suspension or disqualification dated 08/27/2014 has been retracted. We have purged the entry from your driving record, and your current Utah driver license or driving privilege card is valid until 12/27/2016.”

APPLICABLE LAW

The law provides that peace officers impound a vehicle under the following situations at Utah Code Sec. 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 the Traffic Code at 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.

³ To clarify, the DMV or the Respondent in this matter is the Motor Vehicle Division, which is a division of the Utah State Tax Commission. The Driver License Division is a completely separate entity and is a division of the Department of Public Safety.

⁴ Respondent’s Exhibit 3.

. . .

(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.

CONCLUSIONS OF LAW

1. Utah law requires police officers to impound a motor vehicle when a person is arrested or cited for driving under the influence at Utah Code Sec. 41-6a-527(1).

2. Utah Code §41-6a-1406 imposes a \$350 administrative impound fee once a vehicle has been impounded pursuant to Utah Code §41-6a-527. The law then provides the limited grounds under which the fee may be refunded at Utah Code §41-6a-1406(6)(c). First, a refund could be issued if the car was reported stolen at the time of the impoundment, which is not applicable in this matter. Second, the refund could be issued if the Driver License Division determined that the arrested person's driver license should not be suspended or revoked under §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. DMV agrees that the Driver License Division made a determination that Petitioner's license should not be suspended or revoked, but argues it cannot issue the refund because the Petitioner missed the thirty-day deadline.

3. The Driver License Division decision that the license would not be suspended or revoked under §53-2-223 or §41-6a-521 was mailed on June 13, 2014, to both Petitioner and Petitioner's attorney. Petitioner testifies that he called the Driver License Division to ask where the decision was and he did not receive it until July 30, 2014. As long as the Driver License Division has mailed this letter to the correct address, the assertion that the notice was not received has not been accepted as a basis under the law to allow a late filed appeal.

4. The DMV did produce at the hearing a subsequent letter from Driver License Division dated September 19, 2014. The September 19, 2014, letter indicated an order of denial, revocation, suspension or disqualification dated August 27, 2014 had been retracted. It appears that this was something that occurred in the criminal proceeding. This letter does not state that Petitioner was eligible for a refund of the \$350 DUI administrative impound fee, as had been stated in the June 13, 2014 letter. However, the criminal proceeding is not the same process that is before the Driver License Division under

Utah Code §53-3-223 or §41-6a-521. Utah Code 41-6a-1406(6)(c) specifically limits a refund to a letter or report issued by Driver License Division under Utah Code § 53-3-223 or § 41-6a-521.

Petitioner's appeal should be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, Petitioner's appeal is hereby denied. It is so ordered.

DATED this _____ day of _____, 2015.

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

CONCURRENCE

Although I concur in the decision above because it follows the law as currently written in Utah Code §41-6a-1406(6)(c), I am concerned that the facts in this case demonstrate the unfairness of limiting the refund to those who apply within a thirty-day deadline in a situation where the legislature has divided responsibilities between two separate government agencies.

The Driver License Division of the Department of Public Safety is required to hold a hearing and make a decision regarding the driver's license of a driver after a DUI arrest. The law provides that if that decision is to take no action against the license the recipient of the letter is entitled to a refund of the \$350 fee, but only if the recipient files a request for refund to the Motor Vehicle Division of the Utah State Tax Commission within thirty-days from the date the Driver License Division of the Department of Public Safety mails its "no action" letter. So rather than having the Department of Public Safety process and issue the refund after a "no action" decision, the recipient of the "no action" letter then must file a request for refund with the Motor Vehicle Division of the Utah State Tax Commission.

The Utah State Tax Commission has to rely on the Department of Public Safety to mail the “no action” letter to the appropriate address and provide sufficient information to the recipient of the letter so that the recipient knows where and how to request the refund. When the Utah State Tax Commission has a hearing on a refund of this fee it does not have before it an employee of the Department of Public Safety to verify this has occurred. Based on his own testimony, the Petitioner in this case took reasonable and prudent steps when he did not receive the decision from the Driver License Division.

At his June 6, 2014 hearing with the Driver License Division of the Department of Public Safety the Petitioner was told the decision would be mailed in about six days. The testimony from the Petitioner was that he was actively looking for the decision because he needed his driver license for work. He testified that he called the Driver License Division of the Department of Public Safety on June 25, 2014, and asked about the decision. He further testified that he was told erroneous information, that it would be three or four more days. In fact, the Driver License Division’s decision had already been mailed on June 13, 2014. Petitioner testified he called two additional times and was not provided the correct or complete information in either call. The Utah State Tax Commission does not know why on June 25, 2014, some employee of the Driver License Division of the Department of Public Safety could not or did not look up the account on the computer and tell Petitioner over the phone that the decision had been mailed on June 13, 2014. In fact, the Utah State Tax Commission does not know what the processes, systems or job duties are at the Driver License Division of the Department of Public Safety. Perhaps the Driver License Division would refute that it was ever called by Petitioner, or state that it had been called and had told Petitioner the correct information, but the Tax Commission lacks jurisdiction under the statute to even consider such facts.

In this matter the Petitioner testified when he finally received his “no action” letter from the Driver License Division of the Department of Public Safety it was beyond the 30 day period to file a request for refund of the \$350 administrative impound fee. Having a longer period to request a refund⁵ would facilitate those who the Driver License Division determine should have “no action” taken, allowing taxpayers to actually obtain a refund of the \$350 fee on the merits of the claim.

John L. Valentine
Commission Chair

⁵ Other statutes providing refunds or reimbursements of costs or fees on motor vehicles have a six month limitations period. See Utah Code Sec. 41-1a-1203 for fees issued by the Division of Motor Vehicles under the Motor Vehicle Act. See also Utah Code Sec. 41-12a-806(6)(c) for filing with the Driver License Division for reimbursement of towing and storage fees on a “No Insurance” impound.

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.