

15-906  
TAX TYPE: IMPOUND FEE  
TAX YEAR: 2015  
DATE SIGNED: 9-21-15  
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO  
EXCUSED: R. ROCKWELL  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,  Petitioner,  vs.  MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 15-906</p> <p>Tax Type: Impound Fee</p> <p>Judge: Phan</p>
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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, Accounting Supervisor, Division of Motor Vehicles

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on August 3, 2015, for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner is appealing the decision of Respondent (“Division”) to deny refund of the \$350 administrative impound fee. This fee was charged to Petitioner after his son was cited for exhibition driving and his vehicle was impounded.

APPLICABLE LAW

The law provides that peace officers impound a vehicle under the situations as follows 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 Sections 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), Subsection 53-3-227(3)(a)(ix), or a local ordinance similar to Section 41-6a-502 which complies with Subsection 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). (Emphasis added)

. . .

The Petitioner was cited under Utah Code Sec. 41-6a-606 which provides:

- (1) A person may not engage in any motor vehicle speed contest or exhibition of speed on a highway.
- (2) A person may not, in any manner, obstruct or place any barricade or obstruction or assist or participate in placing any barricade or obstruction upon any highway for any purpose prohibited under Subsection (1).
- (3) A person who violates Subsection (1) is guilty of a class B misdemeanor.
- (4) (a) In addition to the penalty provided under this section or any other section, a person who violates Subsection (1) shall have the person's driver license suspended under Subsection 53-3-220(1)(a)(xvi) for a period of:
  - (i) 60 days for the first offense; and
  - (ii) 90 days for a second offense within three years of a prior offense.(b) The court shall forward the report of the conviction to the Driver License Division in accordance with Section 53-3-218.

Once a person is found in violation of Utah Code Sec. 41-6a-606 the court is to report the conviction to the Driver License Division pursuant to Utah Code Sec. 53-3-218 and then the Driver License Division would suspend the license. Utah Code Sec. 53-3-218 provides in pertinent part:

(2)(a) Except as provided in Subsection (2)(c), a court having jurisdiction over offenses committed under this chapter or any other law of this state, or under any municipal ordinance regulating driving motor vehicles on highways or driving motorboats on the water, shall forward to the division within five days, an abstract of the court record of the conviction or plea held in abeyance of any person in the court for a reportable traffic or motor boating violation of any laws or ordinances, and may recommend the suspension of the license of the person convicted.

The administrative impound fee is charged and may be waived under 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.

. . .

(c) 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's son was cited on January 23, 2015, for "Speed Contest or Exhibition of Speed" and the vehicle which he had been driving was impounded. Petitioner was the owner of the vehicle. Petitioner stated that there had been another driver who was speeding past his son and the other driver crashed. He states that his son was not racing the other vehicle and was not involved in the crash, however, he was speeding. Because the Police Officer cited the son for Speed Contest or Exhibition of Speed, instead of merely speeding, Petitioner's vehicle was impounded. Petitioner pointed out that this occurred on a Friday night so he was not able to get his car from the impound lot until Monday. Petitioner stated that in order to get his car back he had to pay the \$350 administrative impound fee, as well as towing and storage fees to the tow company which were an additional \$\$\$\$ to \$\$\$\$ dollars.

The Police Officer did not confiscate the son's driver license and the Driver License Division did not revoke or suspend his driving privileges. Petitioner provided a copy of the case history from CITY Justice Court which indicated that the son plead guilty to an amended charge of "Speeding ### Over." He was fined \$\$. It was Petitioner's argument that the Police Officer's arbitrary action at the scene to cite his son with "Speed Contest or Exhibition of Speed" cost him roughly \$. It was his position that it was unfair to not have a provision in the law that would allow refund of at least the \$350 administrative impound fee when his son was not convicted of Speed Contest or Exhibition of Speed.

It was the Division's position that despite charges being amended to "Speeding ### Over" and that no action was taken against the son's driver license, the Division could not refund the \$350 administrative impound fee because of the limited grounds for refund under Utah Code 41-6a-1406(6)(c). Under that subsection, there are only two grounds for refund of the fee. The

first is if 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. This provision does not apply to exhibition of speed cases, but is instead a basis for waiver of DUI related impounds. The second is if 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. It was the Division's position that the only time it could issue a refund for an exhibition of speed related impound was if the vehicle was stolen at the time of the impound. The Division noted that drivers cited for tampering with or operation without Ignition Interlock System would also result in the vehicle being impounded and like the exhibition of speed impounds, the \$350 could not be refunded unless the vehicle had been reported as stolen to the police.

As noted by the Division, the Tax Commission has previously considered refund of the \$350 administrative impound fee in an exhibition of speed impound in *Initial Hearing Order, Appeal No. 13-736*. In that case the Commission held:

Upon review of the facts and the law, the statutory section providing for refund, Utah Code 41-6a-1406(6)(a)(iv), was written in a very specific manner to apply only to DUI related impounds, except for the very limited situation where the vehicle had been reported stolen as indicated by a police report. The statute was not written in a manner to give the Tax Commission discretion to refund the impound fee for reasonable cause, hardship or for other considerations not specifically listed in the statute. Most of the impounds under Utah Code Sec. 41-6a-527(1) relate to DUI citations and arrests. There have been numerous situations where the Driver License Division issued the "no action" letter stating they were not suspending or revoking a driver license and the refund was still denied because the driver failed to meet the thirty-day deadline for filing the request. The Tax Commission has strictly imposed the requirements of the statute in the DUI situations that have come before the Commission on appeal. The Division indicates that there are only two grounds for impound under Utah Code Sec. 41-6a-527(1) that do not relate to DUI. They are the exhibition of speed or an ignition interlock violation. The majority of the impound cases are DUI related. It is possible that the exhibition of speed driving or ignition interlock cases were overlooked by the legislature, but the Tax Commission does not have authority to expand the basis for issuing the refund under the statute.

After reviewing the statutory provisions, it is clear in cases of exhibition driving the legislation allowing for a refund of the \$350 administrative impound fee is not tied to the Driver License Division issuing a no action letter. When someone is arrested for DUI, if the arrestee's chemical test were over the legal limit for alcohol or drugs it would generally result in the police officer seizing the Driver License at that time, notifying the arrestee of the process to have an

expedited hearing with the Driver License Division and notify the Driver License Division. See Utah Code 59-3-223. Under that section, the Driver License Division must grant a hearing within 29 days on whether or not the license will be suspended or revoked. This means that the Driver License decision on whether to suspend or revoke the license is generally made prior to any criminal court proceeding. In fact, if Driver License took action against the license, but the charges were later dismissed in the criminal court proceeding, the Commission could still not issue a refund of the \$350 administrative fee under Section 41-6a-1406(6)(c). If the Driver License Division took no action and issued the no action letter, the refund could be issued and the arrestee would not be required to pay it back in the event they were actually convicted in the criminal court proceeding. In the exhibition of speed cases, the license is not immediately confiscated by the police at the time of the citation. The Driver License Division does not take action unless the arrestee is convicted. Utah Code 41-6a-606 provides that if convicted of the charge it would be a Class B misdemeanor and the driver's license would be suspended 60 days for a first offense and 90 days for a second offense. The citation for exhibition speeding is not referred to the Driver License Division unless there is a criminal conviction by the court. The Driver License Division would never issue a no action letter in these cases if there was not a criminal conviction. The legislature could have made refund of the impound fee contingent on dismissal of charges in the court proceeding for both or either of the DUI impound cases or the exhibition speed case but chose not to do so. Under the current law and the circumstances of the case before the Commission, the Commission may not issue a refund to Petitioner.

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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, 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

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
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.**