

15-1490
TAX TYPE: Misc.
TAX YEAR: 2015
DATE SIGNED: M. CRAGUN, R. PERO, R. ROCKWELL
EXCUSED: J. VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	ORDER ON RESPONDENT'S MOTION TO DISMISS Appeal No. 15-1490 Appeal Type: Misc. Judge: Phan
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT, Account Manager, Motor Vehicle Division

STATEMENT OF THE CASE

An Initial Hearing had been scheduled in this matter before the Utah State Tax Commission on December 3, 2015. At the Initial Hearing, after discussion on what it was Petitioner was requesting with the appeal form, and learning Petitioner was requesting a refund of the towing and storage charges made by the tow company and impound yard, the representatives for Respondent ("Division") asked that Petitioner's appeal be dismissed because the Division and the Utah State Tax Commission lacked jurisdiction over the request.

APPLICABLE LAW

Utah Code §41-12a-806(6)(a) does provide a format to recover towing and storage charges if a vehicle has been impounded in error for no insurance. However, the law specifically provides that the claim needs to be filed with the Driver License Division, which is a Division of the Utah Department of Public Safety. Utah Code §41-12a-806(6) provides as follows:

(a) By following the procedures in Title 63G, Chapter 4, Administrative Procedures Act, the department shall hold a hearing to determine whether a person's vehicle was wrongfully impounded under Subsection 41-1a-1101(2).

(b) In Accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the [Driver License Division]¹ shall make rules establishing procedures for a person to apply for a reimbursement under Subsection (4)(d).

(c) A person is not eligible for a reimbursement under Subsection (4)(d) unless the person applies for the reimbursement within six months from the date that the motor vehicle was impounded.

Utah Code §41-12a-806(4)(d) provides a reimbursement as follows:

(4) The Legislature shall appropriate money from the account to:

....

(d) the department to reimburse a person for the costs of towing and storing the person's vehicle if: (i) the person's vehicle was impounded in accordance with Subsection 41-1a-1101(2); (ii) the impounded vehicle had owner's or operator's security in effect for the vehicle at the time of the impoundment; (iii) the database indicated that owner's or operator's security was not in effect for the impounded vehicle; and (iv) the department determines that the person's vehicle was wrongfully impounded.

DISCUSSION

Petitioner's vehicle had been impounded by a CITY-1 PD police officer for no insurance. Petitioner states that he had proof of insurance in the car with him, but the vehicle was impounded regardless. Petitioner went to the Division of Motor Vehicle Office to obtain the impound release. He explained that the vehicle was insured. The employee at that office verified that the vehicle was insured, so waived the \$\$\$\$ fee that would have otherwise been charged for an Impound Release on a 'no insurance' impound. Therefore, there was no \$\$\$\$ impound fee charged by the Division. Petitioner then took the impound release to the towing and storage yard, which charged him \$\$\$\$ for the towing and storage of the vehicle. It appears that the vehicle was impounded on September 2, 2015, and Petitioner paid to have it released on September 3, 2015.

At the hearing, the Division explained that it did not have any jurisdiction to issue a refund of the towing and storage charges and requested that this appeal be dismissed based on lack of jurisdiction. The Division did explain, however, that there were statutory provisions in place for Petitioner to request refund of the towing and storage charges at Utah Code §41-12a-806, but those are administered through the Driver License Division of the Department of Public Safety. The Division offered to mail to Petitioner the correct form to request this reimbursement and pointed out Petitioner had six months from the date of impound to file the request.

¹ For purposes of this section this reference is to the Driver License Division. See Utah Code §41-12a-802(4).

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Petitioner did not provide a statutory basis under which the Commission could adjudicate his claim for reimbursement of the towing and storage fees.

Upon review of the law, the Division is correct and this appeal should be dismissed for lack of subject matter jurisdiction. This decision does not preclude Petitioner from filing a request for reimbursement of the towing and storage charges with the Driver License Division pursuant to Utah Code §41-12a-806.

Jane Phan
Administrative Law Judge

ORDER

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

DATED this _____ day of _____, 2015.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice of Appeal Rights: If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. 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.