

15-382
TAX TYPE: PERSONALIZED PLATE
TAX YEAR: 2014
DATE SIGNED: 10/30/2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL
EXCUSED: R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER-1 AND PETITIONER-2, Petitioner, vs. MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 15-382</p> <p>Account No. #####</p> <p>Tax Type: Personalized Plate</p> <p>Tax Year: 2014</p> <p>Judge: Marshall</p>
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Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER-1, *Pro Se*
PETITIONER-2, *Pro Se*
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney
General
RESPONDENT, Division of Motor Vehicles

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on May 7, 2015 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioners are appealing the Respondent's ("Division") denial of a request for the personalized license plate "LETTERS REMOVED."

APPLICABLE LAW

Personalized license plates are allowed within the limitations set forth in Utah Code Ann. §41-1a-411, as follows:

- (1) An applicant for personalized license plates or renewal of the plates shall file an application for the plates in the form and by the date the division requires, indicating the combination of letters, numbers, or both requested as a registration number.

- (2) The division may refuse any combination of letters, numbers, or both that may carry connotations offensive to good taste and decency, or that would be misleading.

The Commission has promulgated Administrative Rule R873-22M-34 to provide further guidance on when a combination of letters or numbers is considered offensive to good taste and decency, or would be misleading, as set forth below in pertinent part:

- (1) The personalized plate is a non-public forum...
- (2) Pursuant to Section 41-1a-411(2), the division may not issue personalized plates in the following formats...
 - (c) Combination of letters, words, or numbers that connote the substance, paraphernalia, sale, user, purveyor of, or physiological state produced by any illicit drug, narcotic, or intoxicant.

The Utah Supreme Court held in *McBride v. Motor Vehicle Division of the Utah State Tax Commission*, 977 P.2d 467 (Utah 1999), that the Commission should not rely, “on the opinion of any one person or group in determining whether a term [on a license plate] carries a prohibited connotation.” Rather, the “only reasonable standard that may be applied is the objective, reasonable person.”

DISCUSSION

The Petitioners performed their own introductory song, and provided a copy of their promotional photos. PETITIONER-1 explained that the song is not only an introduction, but tells the audience what they are about. The Petitioners formed the cowboy western band, *NAME OF BAND!*, in 1990. He stated that in 1990 they applied for personalized plates in the State of STATE-1, where they lived at the time, and were issued the plate “LETTERS REMOVED.” They moved to Utah for a period of four to five years in the late 1980s and early 1990s, and applied for, and were approved for, the personalized plate, “LETTERS REMOVED-2.” They moved back to the State of STATE-1, and again were issued the personalized plate, “LETTERS REMOVED-3.” PETITIONER-2 stated that when their personalized plate request was denied, they had to get a standard license plate, and the generated number on the plate they were given included “###.” She stated that regardless of whether they are granted the personalized plate, they are going to exchange the license plates with “###.”

PETITIONER-1 stated that they understand that things have changed, and that they are offended that certain groups have “hijacked” our language. He stated that it is not his fault that language is changing, he is older, and he lives by the old rules. He stated that when their band performs, other cowboys appreciate their name and that they are trying to promote a good life. He noted that NAME-1 sang a song, “NAME OF SONG in 1939, and provided the lyrics to that song. PETITIONER-1 also noted that the STATE-1 General Assembly presented him with a

commendation, recognizing the work they were doing performing as “NAME OF BAND.” He explained that many of their songs promote the beauty and history of STATE-1.

PETITIONER-1 stated that he joined the LDS church in 1957, and that the missionary who “traced” him was from CITY-1, Utah. He traveled to Utah and worked on that missionary’s family ranch, and fell in love with the area. He stated that he and his wife were able to retire to the area, and since living in Utah have started writing songs promoting the State, including the song, “My Utah Mountain Home.”

PETITIONER-1 stated that there seems to be a fight between freedom of speech, and governmental control of what is said. He noted that there have been several cases in the news recently; a confederate flag on a specialized license plate in Texas, and a personalized plate in Ohio that read “BTHCHNG” was allowed when it was explained that the owner wanted to say, “be the change.” PETITIONER-1 noted that in Ohio, the Bureau of Motor Vehicles looks at an individual’s vehicle, profession, or business, when trying to determine whether a personalized license plate should be allowed. He argued that they fit all three criteria that the State of Ohio looks at; “NAME OF BAND!” is the name of their band, it is their “business,” and because they drive a lifted VEHICLE that is all-wheel drive, it describes their vehicle.

The Division’s representative explained that they understand that “NAME OF BAND!” is the name of their band, and that the Petitioners do not intend for the license plate to be a drug reference. She stated that individuals who are not familiar with Petitioner’s band could believe it was a drug reference. She noted that Administrative Rule R873-22M-34 provides that personalized license plates are not a public forum, and specifically prohibits any combination of words or letters that connote a feeling of euphoria from drug use. The Division’s representative also referred to the *McBride* case, which determined that the standard for whether a personalized plate is “offensive to good taste and decency” is that of an objective reasonable person. She explained that if a person of ordinary intelligence, knowing the words in question, could conclude that the license plate is a drug reference, the plate should be denied.

In rebuttal, PETITIONER-2 stated that no one that they know has ever thought their name was a drug reference. PETITIONER-1 noted that with the lifted all-wheel drive vehicle, especially in Utah, that “PHRASE” is a common phrase for country folks.

The Commission recognizes that STATE-1 has issued personalized plates that display the Petitioner’s band name, or a variation thereof. However, the laws of STATE-1 are not binding on Utah. Likewise, though the Petitioners were issued a personalized plate with a variation of their band name previously in the State of Utah, that was prior to the Court’s decision in the *McBride* case. Utah Code Ann. §41-1a-411(2) provides that the Division “may refuse to issue any

combination of letters, numbers, or both that may carry connotations offensive to good taste and decency or that would be misleading.” The Commission adopted Administrative Rule R873-22M-34, which clarifies that a personalized license plate is a non-public forum and which prohibits the Division from issuing a personalized plate that displays a combination of letters that connote any illicit drug or use of any illicit drug, and particularly the “physiological state produced by any illicit drug, narcotic, or intoxicant. As a result, it is not the Petitioners’ intent upon which the Commission must rely in determining whether the phrase “LETTERS REMOVED” is prohibited from being displayed on a personalized plate. The Court in *McBride* determined that if an objective, reasonable person would conclude that the term carries a prohibited connotation, Rule 34 prohibits the Commission from issuing the personalized plate.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division’s denial of the Petitioners’ request for a personalized plate bearing the phrase “LETTERS REMOVED.” 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.