

16-132
TAX TYPE: ADMINISTRATIVE IMPOUND FEE
TAX YEAR: NON APPLICABLE
DATE SIGNED: 5-27-2016
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL
EXCUSED: R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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| <p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p> | <p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 16-132</p> <p>Tax Type: Administrative 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
RESPONDENT-1, Accounting Supervisor, Division of Motor
Vehicles
RESPONDENT-2, Division of Motor Vehicles

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on April 12, 2016 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner is requesting a refund of the \$350 administrative impound fee assessed when his vehicle was impounded following a citation for driving under the influence of alcohol or drugs. The Division had denied the refund on the basis that he did not meet the requirements for refund under Utah Code §41-6a-1406.

APPLICABLE LAW

Utah law requires a peace officer to impound a vehicle 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)

. . .

Based on the Summons and Citation Petitioner provided with this appeal, along with other violations, Petitioner was cited under Utah Code Sec. 41-6a-502 which provides:

- (1) A person may not operate or be in actual physical control of a vehicle within this state if the person: (a) has sufficient alcohol in the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the time of the test; (b) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or (c) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation or actual physical control.

The administrative impound fee is charged and may be refunded 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: (i) makes a claim for release of the vehicle, vessel, or outboard motor; . . .(iv) if the impoundment was made under Section 41-6a-527, pays an administrative impound fee of \$350;¹ and (v) pays all towing and storage fees to the place where the vehicle, vessel, or outboard motor is stored.

The 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.

¹ At the time of the citation in this matter the amount of the administrative impound fee was \$350. The amount of the fee was raised to \$\$\$\$ in the 2016 Utah Legislative Session.

DISCUSSION

The Petitioner expressed concerns that he was assessed this fee prior to the matter going to trial, so there has been no conviction. It was his contention that he was not guilty and did not even drink alcohol. The criminal trial is scheduled in the Salt Lake City Justice Court in June 2016. He also explained that he had recently moved to Utah prior to this incident and was not familiar with the process regarding the Driver License Division. He states that he was arrested on November 7, 2015, his Driver License taken from him, and he was taken to jail. He states that he did not receive the Summons and Citation at that time.² It does state on the DUI Summons and Citation the right to a hearing at the Driver License Division regarding the return of the Driver License, and that the request for hearing needed to be made within 10 days of the arrest. Petitioner states that he did not know this process and failed to request a hearing with the Driver License Division. The Driver License Division then suspended his license for 120 days by letter dated December 1, 2015. After receiving this letter, Petitioner tried to obtain a hearing with the Driver License Division, filing a request with that Division on December 4, 2015, but was denied. Petitioner argues his constitutional rights have been violated and questioned how he could be charged this fee prior to being convicted of the charges.

Under the provisions of Utah law this administrative impound fee is charged when a vehicle is impounded under certain fact situations, it is not based on a criminal conviction. Utah Code Sec. 41-6a-527 provides that if a peace officer arrests or cites the operator of vehicle for violations of certain codes, including Section 41-6a-502, the peace officer is required to impound the vehicle in accordance with Section 41-6a-1406. If it was a Section 41-6a-502 citation, Section 41-6a-1406 imposes the administrative impound fee before the vehicle may be released from the impound lot. In this case Petitioner was cited under Section 41-6a-502, his vehicle was impounded and he was charged the administrative impound fee prior to being able to obtain his car from impound pursuant to these statutory provisions. The fact that Petitioner has not yet gone to trial or been convicted, was not refuted by Respondent, but this is not a factor relevant to the imposition of the administrative impound fee.

The administrative impound fee may be refunded only if provisions set out at Utah Code Sec. 41-6a-1406(6)(c) have been met. 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

² At some point Petitioner must have received the DUI Summons and Citations, as he had provided copies with his appeal to the Utah State Tax Commission Appeals Unit. There were two DUI Summons and Citations with issue dates listed as November 7, 2015. One summons listed two charges, including a DUI under 41-6a-502 and the second summons listed the DUI under 41-6a-502 and additional charges.

Driver License Division as long as the refund request is made within 30 days of the final notification from the Driver License Division. There is no other statutory basis provided under which the Respondent may issue a refund of this fee. In this matter, the car was not stolen and the Driver License Division suspended Petitioner's license.

Upon review of the information presented, Respondent was correct in denying refund of the administrative impound fee to Petitioner.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies Petitioner's request for a refund of the administrative 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 _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

