

16-857
TAX TYPE: IMPOUND FEE
TAX YEAR: 2016
DATE SIGNED: 10-3-2016
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 16-857</p> <p>Account No. #####</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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on August 15, 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 her vehicle was impounded following a citation issued to her daughter for driving under the influence of alcohol or drugs. The Division had denied the refund on the basis that she 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 provided with this appeal, Petitioner's daughter 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.

Refund of 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 \$400 in the 2016 Utah Legislative Session.

DISCUSSION

Petitioner explained they were residents of STATE-1 and her daughter, NAME-1, held an STATE-1 Driver License but was in Utah attending college. Her daughter was arrested and cited for DUI while in Utah on February 7, 2016. NAME-1 did not attend the hearing so there was not a firsthand account of what occurred at the time of the arrest and citation. Petitioner stated that her daughter had told her the police officer who arrested her said there would be no action taken against her driver license. Petitioner stated that she tried to get information from the Utah Driver License Division to request a letter saying no action was taken on her daughter's license and they would not discuss it with her because her daughter is over 18 years old. She provided an uncertified copy of her daughter's STATE-1 Driver License Record, issued on May 18, 2016, which had indicated citations in October 2014 and November 2014, and that the license was suspended and reinstated in February 2015. It did not show anything on February 7, 2016 which was when NAME-1 was cited for the DUI in Utah. Petitioner stated that the 2014 citations had occurred in Utah and they were listed on her STATE-1 Driver License Report.

It was the Division's position that the administrative impound fee may be refunded only if provisions set out at Utah Code Subsection 41-6a-1406(6)(c) have been met. These provisions allow a refund if the vehicle was stolen at the time of impound 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 Utah 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. The Division's representative stated that Petitioner's daughter should request a letter indicating no action was taken on her license from the Driver License Division, if in fact that was the case.²

Petitioner offered that the statute did not specify which Driver License Division, so the report from the STATE-1 Driver License Division should be sufficient and it did not show any action on the DUI citation.

Upon review of the law and the process typically upon arrest and citation for DUI, under Utah Code Sec. 41-6a-502, the police officer is required to impound the vehicle and generally takes the driver's license at that time providing instructions to the driver about requesting a hearing with the Utah Driver License Division. If the driver requests the hearing, the Driver License Division issues a decision which may be that they take no action and return the license to

² In its Answer to Petition for Redetermination, the Division stated at page 1, "The Driver License Division did take action against the driver."

the driver, or they take some action like a suspension. If they take no action and return the license it is sent with a “No Action” letter that tells the driver they may request refund of the administrative impound fee and that they have only 30 days to do so. In this case, the Petitioner points out that the driver has a STATE-1 license and not a Utah license. The Utah State Tax Commission did previously have a hearing involving a driver that had a driver license from another state and the Utah Driver License Division did hold a hearing regarding that driver’s license and issued a “No Action” letter to that driver, who was then able to obtain refund of the fee. See *Utah State Tax Commission Initial Hearing Order, Appeal No. 13-740* (September 16, 2013).³ The Utah State Tax Commission is not an expert on what authority the Utah Driver License Division has over licenses issued by other states, but Petitioner’s argument that the statutes’ reference could apply to the STATE-1’s Driver License Division is misplaced. Utah Code §41-6a-1406(6)(c) refers to “the Driver License Division” not to “a” driver license division. Petitioner did not present a clear set of facts in this appeal because she was not present at the time of the arrest and citation and did not have information from the Utah Driver License Division, the driver of the vehicle was not present and the driver of the vehicle could have requested the information from the Utah Driver License Division, but had not done so. Further, there was a representation from the Division that the Utah Driver License Division had taken action against the driver. There is no basis to refund the fee to Petitioner.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, Petitioner’s appeal is hereby denied. 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:

³ This and many other decisions are available for review in a searchable format at tax.utah.gov/commission-office/decisions.

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