

16-1507

TAX TYPE: DUI IMPOUNDS

DATE SIGNED: 2-27-2017

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	<b>INITIAL HEARING ORDER</b>
Petitioner,	Appeal No. 16-1507
v.	Tax Type: DUI Impounds
MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION,	Judge: Phan
Respondent.	

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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney  
General  
RESPONDENT-1, Audit Manager, Motor Vehicle Division  
RESPONDENT-2, Accounting Supervisor, Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on January 17, 2017 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner is requesting a refund of the \$350<sup>1</sup> administrative impound fee assessed when her vehicle was impounded following her arrest for driving under the influence. The Division had denied the refund on the basis that Petitioner had not submitted her request for refund within the 30 days as provided in Utah Code §41-6a-1406.

APPLICABLE LAW

The law provides that peace officers impound a vehicle under the situations as follows at Utah Code § 41-6a-527(1):

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<sup>1</sup> The fee was increased in 2016 to \$400. However, based on the time of the arrest in this appeal, the amount charged had been the prior fee of \$350.

If a peace officer arrests, cites, or refers for administrative action the operator of a vehicle for violating Section 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 53-2-227(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).

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 a party described in Subsection (5)(a): (i) makes a claim for release of the vehicle, vessel, or outboard motor at any office of the State Tax Commission; (ii) presents identification sufficient to prove ownership of the impounded vehicle, vessel, or outboard motor; (iii) completes the registration, if needed, and pays the appropriate fees; (iv) if the impoundment was made under Section 41-6a-527, pays an administrative impound fee of \$400; 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 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.

### DISCUSSION

Petitioner explained that while driving her pick-up truck she had been involved in an accident with a semi-truck. She stated that she was stopped at a red light and the semi-truck was at fault, but the police had suspected her of a DUI, taken her into custody and had her pick-up truck impounded. She stated that she did hire an attorney to whom she had paid \$\$\$\$\$. She said she had personally filled out the request for a hearing with the Driver License Division and thought she provided her current address on the hearing request form.<sup>2</sup> She said her attorney

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<sup>2</sup> The Driver License Division is a division of the Department of Public Safety. The Motor Vehicle Division, which is the Respondent in this appeal, is a Division of the Utah State Tax Commission. The Utah State Tax Commission has no supervisory authority over the Driver License Division, nor does it review that division's internal practices. The Driver License Division is not a party in this appeal.

participated in that hearing. She states that the attorney did not tell her she could get the administrative impound fee refunded. The Driver License Division determined it would not suspend or revoke her license, and mailed the no action letter on March 25, 2016. That decision indicated that she could obtain a refund, but that she would have to request the refund within thirty-days of the date of the letter. Petitioner explained, however, that she never received the letter because it was mailed to an incorrect address.

The Division had been able to obtain from the Driver License Division copies of the no action letters they had sent, which have the addresses to which they were addressed on the letter. The Driver License Division had mailed a copy to Petitioner's attorney, NAME-1. They had also mailed two letters to the Petitioner. One letter was mailed to ADDRESS-1, CITY-1, UT, which was an old address for Petitioner, but was the address that was on her driver license record. The second letter was mailed to Petitioner at ADDRESS-2, CITY-2, UT. This address included a typographical error of the Petitioner's current address. The Petitioner explained that she resided in a mobile home park and her correct address was ADDRESS-3, CITY-2, UT. She stated that there was no ##### in the park where she resided and she never received the letter from the Driver License Division. She also said she never received the letter or notification from her attorney either that she could request a refund of this fee.

At the hearing, after questioning, Petitioner did not have a copy of the request for a hearing that she had filed with the Driver License Division. She said she had asked the Driver License Division for a copy of this request and they would not give it to her. She did provide her official Utah-Driver License History, which they had given to her. This record showed an address change had been made on April 12, 2016 to ADDRESS-2, CITY-2. This change was made after the letter from the Driver License Division had been mailed on March 25, 2016. This history also showed that ADDRESS-1, CITY-1 was the prior address of record with Driver License Division since September 2014. Petitioner was given time after the hearing to provide documentation that she had provided her correct address to the Driver License Division when she filed the request for a hearing, but she did not provide further documentation. The Division's

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Therefore, it is not known by this administrative body what the Driver License Division does when someone provides an address on the form to request a driver license hearing after arrest for DUI that is different from their address on their Utah Driver License Record. The Tax Commission does not know whether the Driver License Division would automatically use the new address to update its official Utah Driver License Record. However, as a point of reference, when someone files a form to the Appeals Unit of the Utah State Tax Commission to appeal an action of one of the Divisions of the Utah State Tax Commission, the Appeals Unit will use the address provided by the appellant on that form for all notices and orders related to the appeal, but does not automatically update the official address of record for that person for Utah tax purposes unless that person specifically requests.

representative stated that the Division may be able to obtain information from the Driver License Division regarding the address, but did not provide any information post hearing either.

The Division denied the refund request because it had been submitted after the thirty-day deadline. The Division's representative stated that the administrative fee may only be refunded if the provisions of Utah Code Ann. §41-6a-1406 have been complied with. Under that section, the Division may issue the refund only if: 1) the Driver License Division determined that the arrested person's driver license should not be suspended or revoked under Sections 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 2) 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. However, at the hearing the representatives for the Division stated that if the Driver License Division had taken some action that deprived the Petitioner of her due process rights, for example, mailed its no action letter to an incorrect address, then the administrative fee should be refunded to her. It is clear in this matter that the Driver License Division did determine that no action should be taken against Petitioner's Driver License and had mailed a letter to Petitioner, but not to the correct address for Petitioner.

Upon review of the facts, notwithstanding that the official Utah Driver License History did not show an address change until April 12, 2016, because the Driver License Division had mailed the no action letter to an incorrect version of Petitioner's current address, it is clear that Petitioner must have provided her current address to the Driver License Division for that administrative hearing process. This shows that the Driver License Division had been given Petitioner's current address for purposes of the administrative hearing. The Driver License Division had made a typographical error, sending its decision to ADDRESS-2 instead of the correct address of ADDRESS-3. Petitioner states that she did not receive the letter and did not find out that she could request a refund until after the thirty-day period had expired. This typographical error on the part of the Driver License Division regarding Petitioner's address did deny due process rights to Petitioner and on that basis, Petitioner should not be barred from the refund for which she is otherwise entitled because she had failed to file the request within thirty-days.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission orders the Division to issue a refund to Petitioner of the \$350 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 \_\_\_\_\_, 2017.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
Commissioner