

16-953
TAX TYPE: IMPOUND FEE
DATE SIGNED: 8-28-2016
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>ORDER OF DISMISSAL</p> <p>Appeal No. 16-953</p> <p>Tax Type: Impound Fee</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER, By Telephone
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney
General
RESPONDENT, Miscellaneous Services Supervisor, Motor Vehicle
Division

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. At the Initial Hearing, after discussion that Petitioner was requesting a refund of the towing and storage charges made by the tow company and impound yard for a no insurance impound, it was concluded that Petitioner's appeal should be dismissed because Respondent 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.¹ Utah Code §41-12a-806(6) provides as follows:

¹ Petitioner had filed the request for refund with the Motor Vehicle Division, which is a Division of the Utah State Tax Commission.

(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]² 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) addresses 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.

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.

ORDER OF DISMISSAL

Based on the Tax Commission's lack of subject matter jurisdiction, this appeal is hereby dismissed. It is so ordered.

DATED this _____ day of _____, 2016.

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,

² For purposes of this section this reference is to the Driver License Division. See Utah Code §41-12a-802(4).

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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.