

16-96

TAX TYPE: IMPOUND FEE

TAX YEAR: 2015

DATE SIGNED: 8-26-2016

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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| <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. 16-96</p> <p>Account No. #####</p> <p>Tax Type: Impound Fee</p> <p>Tax Year: 2015</p> <p>Judge: Phan</p> |
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on May 24, 2016 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner is appealing the decision of Respondent (“Division”) to deny refund of the \$350 administrative impound fee. This fee was charged to Petitioner after he was cited for exhibition driving and his vehicle impounded.

APPLICABLE LAW

The law provides that peace officers impound a vehicle under the situations 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)

. . .

The Petitioner was cited under Utah Code Sec. 41-6a-606 which provides:

- (1) A person may not engage in any motor vehicle speed contest or exhibition of speed on a highway.
- (2) A person may not, in any manner, obstruct or place any barricade or obstruction or assist or participate in placing any barricade or obstruction upon any highway for any purpose prohibited under Subsection (1).
- (3) A person who violates Subsection (1) is guilty of a class B misdemeanor.
- (4) (a) In addition to the penalty provided under this section or any other section, a person who violates Subsection (1) shall have the person's driver license suspended under Subsection 53-3-220(1)(a)(xvi) for a period of:
 - (i) 60 days for the first offense; and
 - (ii) 90 days for a second offense within three years of a prior offense.(b) The court shall forward the report of the conviction to the Driver License Division in accordance with Section 53-3-218.

Once a person is found in violation of Utah Code Sec. 41-6a-606 the court is to report the conviction to the Driver License Division pursuant to Utah Code Sec. 53-3-218 and then the Driver License Division would suspend the license. Utah Code Sec. 53-3-218 provides in pertinent part:

(2)(a) Except as provided in Subsection (2)(c), a court having jurisdiction over offenses committed under this chapter or any other law of this state, or under any municipal ordinance regulating driving motor vehicles on highways or driving motorboats on the water, shall forward to the division within five days, an abstract of the court record of the conviction or plea held in abeyance of any person in the court for a reportable traffic or motor boating violation of any laws or ordinances, and may recommend the suspension of the license of the person convicted.

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 the registered owner, lien holder, or the owner's agent: . . .(iv) if the impoundment was made under Section 41-6a-527, pays an administrative impound fee of \$350; 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 refund 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 was cited on September 27, 2015, for "Speed Contest or Exhibition of Speed" and his vehicle was impounded. Petitioner explained that police officers at the scene told him if his driver's license was not suspended, he would be refunded the impound fee and his attorney had also told him he would be refunded the impound fee. He said prior to appearing at the hearing, he had called the Respondent ("DMV") and asked "if this was a lost cause" and was advised to attend the hearing. Petitioner explained that he was not convicted of Class B Misdemeanor Speed Contest or Exhibition of Speed Driving. The Utah County Justice Court Minutes indicate he was originally charged with reckless driving but had reached an agreement in which he plead to a Class C Misdemeanor Speeding 90/55 charge. No action was taken to suspend or revoke his driver's license due to this charge.

It was the Division's position that despite charges being amended to the Speeding 90/55 charge and that no action was taken against Petitioner's driver's license, the Division could not refund the \$350 administrative impound fee because of the limited grounds for refund under Utah Code 41-6a-1406(6)(c). Under that subsection, there are only two grounds for refund of the fee. The first is if the Driver License Division determined that the arrested person's driver's 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. This provision does not apply to exhibition of speed cases, but is instead a basis for waiver of DUI related impounds. The second is if 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. It was the Division's position that the only time it could issue a refund

for an exhibition of speed related impound was if the vehicle was stolen at the time of the impound.

The Tax Commission has previously considered refund of the \$350 administrative impound fee in an exhibition of speed impound in *Initial Hearing Order, Appeal No. 13-736*. In that case the Commission held:

Upon review of the facts and the law, the statutory section providing for refund, Utah Code 41-6a-1406(6)(a)(iv), was written in a very specific manner to apply only to DUI related impounds, except for the very limited situation where the vehicle had been reported stolen as indicated by a police report. The statute was not written in a manner to give the Tax Commission discretion to refund the impound fee for reasonable cause, hardship or for other considerations not specifically listed in the statute. Most of the impounds under Utah Code Sec. 41-6a-527(1) relate to DUI citations and arrests. There have been numerous situations where the Driver License Division issued the “no action” letter stating they were not suspending or revoking a driver license and the refund was still denied because the driver failed to meet the thirty-day deadline for filing the request. The Tax Commission has strictly imposed the requirements of the statute in the DUI situations that have come before the Commission on appeal. The Division indicates that there are only two grounds for impound under Utah Code Sec. 41-6a-527(1) that do not relate to DUI. They are the exhibition of speed or an ignition interlock violation. The majority of the impound cases are DUI related. It is possible that the exhibition of speed driving or ignition interlock cases were overlooked by the legislature, but the Tax Commission does not have authority to expand the basis for issuing the refund under the statute.

In the exhibition of speed cases, although the vehicle is also impounded under Utah Code Sec. §41-6a-527, the license is not immediately confiscated by the police at the time of the citation. Unless there was also DUI related charges, the Driver License Division is not going to make a decision about suspension or revocation of the driver’s license under Section §53-3-223 or §41-6a-521, because those sections apply only to DUI situations. However, the only provision under which the Commission may refund the fee is Utah Code §41-6a-1406(6)(c) which provides the fee shall be refunded if the owner presents written evidence that: “(i) the Driver License Division determined that the arrested person’s driver’s 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.”

The Utah Legislature could have made refund of the impound fee contingent on dismissal of charges in the court proceeding for both or either of the DUI impound cases or the exhibition of speed case but chose not to do so. Under the current law, the only way the fee may be refunded

for the exhibition speed impounds is if the vehicle was stolen at the time of impound or possibly if driver was also charged with DUI. The vehicle was not stolen in this case and there was no letter from the Driver License Division. Therefore, the Commission may not issue a refund to Petitioner.

When the Petitioner spoke to an employee of the Motor Vehicle Division about whether it would be a waste of time to attend the hearing, the Division employee should be hesitant to give advice that might discourage someone from appearing at a hearing because it might interfere with that person's due process rights. The Tax Commission does publish many of its prior decisions in a redacted format on a searchable website so that issues may be researched to see how they have been decided in the past. There are two cases published on that site dealing with refund requests of the administrative fee for impounds under the speed contest or exhibition driving section. Both denied the refund. See *Utah State Tax Commission Decisions in Appeal Nos. 13-736 and 15-906* at tax.utah.gov/commission-office/decisions.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies Petitioner's request for a refund of the 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