

17-290
TAX TYPE: IMPOUND FEE
TAX YEAR: 2017
DATE SIGNED: 3/13/2017
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	ORDER OF DISMISSAL
Petitioner,	Appeal No. 17-290
v.	Account No. #####
MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION,	Tax Type: Impound Fee
Respondent.	Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney
General
RESPONDENT-1, Miscellaneous Services Supervisor, MVD
RESPONDENT-2, Account Supervisor, MVD

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on March 7, 2017 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner had filed a request dated February 21, 2017, asking for refund of impound fees charged when his vehicle was impounded, towed and stored following its theft. At the hearing, representatives for the Division explained that the Division had not charged any administrative fee in this matter and there was nothing charged that the Division had authority to refund. The money requested by the Petitioner appeared to be the towing and storage fees charged by the private towing and impound business, which had towed and stored his vehicle.

APPLICABLE LAW

Utah Code §41-6a-1406 provides for the impoundment of motor vehicles, as follows in pertinent part:

(1) If a vehicle . . . is removed or impounded as provided under Section 41-1a-1101 . . . by an order of a peace officer or by an order of a person acting on behalf of a law enforcement agency or highway authority, the removal or impoundment of the vehicle . . . shall be at the expense of the owner.

....

(4) (a) Immediately after the removal of the vehicle . . . , a report of the removal shall be sent to the Motor Vehicle Division by:
(i) the peace officer or agency by whom the peace officer is employed; and
(ii) the tow truck operator or the tow truck motor carrier by whom the tow truck operator is employed.

....

(5) (a) . . . upon receipt of the report, the Motor Vehicle Division shall give notice, in the manner prescribed by Section 41-1a-114, to the following parties with an interest in the vehicle, vessel, or outboard motor, as applicable:
(i) the registered owner;
(ii) any lien holder; or
(ii) a dealer . .

(b) The notice shall:

....

(ii) state that the registered owner is responsible for payment of towing, impound, and storage fees charged against the vehicle . . . ;
(iii) state the conditions that must be satisfied before the vehicle, vessel, or outboard motor is released; and
(iv) inform the parties described in Subsection (5)(a) of the division's intent to sell the vehicle . . . , if within 30 days from the date of the removal or impoundment under this section, one of the parties fails to make a claim for release of the vehicle

....

(6) (a) The vehicle . . . 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;

...

(v) pays all towing and storage fees to the place where the vehicle, vessel, or outboard motor is stored.

....

Utah Code §41-1a-114 provides the method by which the Motor Vehicle Division shall give any notice required under Title 41, Chapter 1a of the Utah Code, as follows in pertinent part:

- (1) If the division is required to give any notice under this chapter or other law regulating the operation of vehicles . . . , unless a different method of giving the notice is expressly prescribed, the notice shall be given either by:
 - (a) personal delivery to the person to be notified; or
 - (b) deposit in the United States mail of the notice in an envelope with postage prepaid, addressed to the person at the address shown by the records of the division.
- (2) Notice by mail is complete upon the expiration of four days after deposit of the notice.

DISCUSSION

The facts presented by the Petitioner were complicated. The vehicle, which he estimated to be worth about \$\$\$\$\$, had been parked at his brother's residence in 2015 while he was deployed with the Utah National Guard. Petitioner states that when he returned from deployment in August 2015, he found that the vehicle had been stolen and had reported it stolen by filing a police report. He estimated the theft would have occurred within about two months of his return because his brother was also absent from the residence over those months. However, prior to the vehicle being reported stolen, it was found abandoned in a private parking lot and had been towed and stored at that time. Shortly after returning from his deployment, Petitioner moved to STATE-1, so was no longer at the address last indicated on the vehicle registration.

It was not until the private impound and tow yard, which had been storing the vehicle, made a claim to obtain the title that it was discovered the vehicle was stolen. On December 1, 2016 it went into a state impound as a stolen vehicle. The Division issued notice to Petitioner, which notice did eventually reach Petitioner as he became aware that the vehicle had been found and was impounded. He states that he had called the private towing business that had his vehicle just prior to the Initial Hearing and had been told that the towing and storage fees would be thousands of dollars. The Division stated that based on the law, Petitioner would only be responsible for towing and storage fees from December 1, 2016, and the law limited the amount that the private towing and storage impound yard could charge. However, the amount the law allowed them to charge was \$147.00 for the towing and \$40.00 per day for the storage, so even based on these limits, fees from December 1, 2016 would be somewhere around \$3,700 at this time. The Division stated it had no authority or regulation over what the private towing and storage yards charge and those types of charges were regulated under the Utah Department of Transportation.

After review of the law in this matter, the Utah State Tax Commission has no authority to refund, or require a private towing and storage yard under state contract to waive or accept a

reduced amount for towing and storage fees. The law does provide for peace officers to take possession of vehicles believed to be stolen under Utah Code Sec. 41-1a-1101. This may be done by having a private towing and storage yard take possession of the vehicle. When this occurs, Utah Law makes the owner of the vehicle responsible for the towing and storage fees. See Utah Code §41-6a-1406. The Tax Commission simply has no legal authority to grant the request that Petitioner is seeking in this matter and this appeal should be dismissed.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Utah State Tax Commission hereby dismisses Petitioner's appeal. It is so ordered.

DATED this _____ day of _____, 2017.

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, 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.