

17-645
TAX TYPE: IMPOUND FEE
TAX YEAR: 2017
DATE SIGNED: 5-30-2017
COMMISSIONERS: M. CRAGUN, R. PERO, R. ROCKWELL
EXCUSED: J. VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	ORDER OF DISMISSAL
Petitioner,	Appeal No. 17-645
v.	
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: REPRESENTATIVE FOR PETITIONER, Representative
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 May 8, 2017 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner's representative had filed a request on April 17, 2017, asking for refund of all impound and storage fees charged by Bailout Towing & Transportation, Inc. in regards to the YEAR MAKE AND MODEL OF VEHICLE owned by the Petitioner. At the hearing, the representatives for the Division confirmed that the Division had not charged any administrative impound fee in this matter and there was nothing charged that the Division had authority to refund. During the course of the discussion at the hearing, however, the Division reported that Bailout has now filed a request for title to the motor vehicle at issue and the Division was holding that request pending the outcome of this hearing.

APPLICABLE LAW

Utah Code §41-6a-1406 provides for the impoundment of vehicles by law enforcement and the notice requirements when a vehicle has been impounded by law enforcement. This section does not apply to private non-law enforcement impounds. It says in pertinent part:

- (1) If a vehicle, vessel, or outboard motor is removed or impounded as provided under Section 41-1a-1101, 41-6a-527, 41-6a-1405, 41-6a-1408, or 73-18-20.1 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.

. . . .

Utah Code §41-1a-108 provides that the Motor Vehicle Division has the following duties:

- (1) The Division shall examine and determine the genuineness, regularity, and legality of each application for: (a) registration of a vehicle; (b) a certificate of title for a vehicle, vessel, or outboard motor; (c) license plates; and (d) any other request lawfully made to the division.
- (2) The division may investigate or require additional information on any application or request necessary to implement this chapter.
- (3) When the division is satisfied as to the genuineness, regularity, and legality of an application and that the applicant is entitled to register the vehicle and to the issuance of a certificate of title, the division shall register the vehicle, issue a certificate of title and issue license plates.

Utah Admin. Rule R873-22M-2(J) provides the method through which the Motor Vehicle Division of the Utah State Tax Commission may issue title to a vehicle when evidence of ownership is lacking. It provides as follows:

The Tax Commission may issue a title or a dismantle permit upon receipt of a court order or upon receipt of an affidavit and surety bond when satisfactory documentary evidence of ownership is lacking and the applicant has exhausted all normal means of obtaining evidence of ownership.

1. The affidavit must contain each of the following:
 - (a) a complete recital of facts explaining the absence of a negotiable title or current registration for nontitle states;
 - (b) an explanation of how the vehicle was obtained and from whom;
 - (c) a statement indicating any outstanding liens or encumbrances on the vehicle;
 - (d) a statement indicating where the vehicle was last titled or registered;
 - (e) a description of the vehicle;

- (f) any other items pertinent to the acquisition or possession of the vehicle.
- 2. The Tax Commission may issue a title or a dismantle permit upon receipt of an affidavit and an indemnification agreement holding the Tax Commission and its employees harmless from any and all liability resulting from the issuance of the title or dismantle permit if the vehicle satisfies each of the following conditions:
 - (a) the vehicle is not a motor cycle;
 - (b) the vehicle has a value of \$1,000 or less at the time of application;
 - (c) the vehicle is six model years old or older.

....

DISCUSSION

REPRESENTATIVE FOR PETITIONER, the representative for Petitioner, filed an appeal asking that the Tax Commission order the towing and storage fees charged by COMPANY be waived so that she can retrieve the vehicle from COMPANY. She explained that she had filed a complaint online with the Utah Department of Transportation and she had received an email response back from that department in which her request was denied. REPRESENTATIVE FOR PETITIONER provided a copy of the online complaint and the emails sent back and forth between herself and NAME-1, of the Utah Department of Transportation Motor Carrier Division. In her complaint REPRESENTATIVE FOR PETITIONER had stated, "I am filing a complaint against COMPANY in regards to the Non-Consent/Non-Police Private Property Impound of PETITIONER's COLOR, MAKE AND MODEL OF VEHICLE on March 6, 2017. Based on the facts, this looks to be a Predatory, illegal tow. When PPI towing is initiated directly by the towing company as a way to generate revenues instead of in response to a problem identified by the property owner it is considered predatory." She does go on to provide some additional facts in the complaint and at the hearing. She stated that the vehicle had been stolen while Petitioner was out of town and then abandoned in the parking lot of the business BUSINESS-2. It was impounded from the business parking lot on March 6, 2017. Petitioner returned home on March 8, 2017, but was arrested before she could file a police report regarding the vehicle and has been incarcerated since that time.

Due to these issues, it was not until March 24, 2017 that Petitioner was able to provide an authorization to appoint REPRESENTATIVE FOR PETITIONER as her Attorney in Fact to retrieve the vehicle. REPRESENTATIVE FOR PETITIONER has been working to try to retrieve the vehicle, including going to COMPANY to try to negotiate an offer on the towing and storage fees and to try to retrieve personal items left in the vehicle. REPRESENTATIVE FOR

PETITIONER states that when she was finally allowed by COMPANY access to the vehicle to retrieve personal items, she found that the vehicle had been parked out in the rain with all of the windows open, causing damage to the interior. REPRESENTATIVE FOR PETITIONER stated at the hearing that Petitioner has now signed the title of the vehicle over to REPRESENTATIVE FOR PETITIONER

After REPRESENTATIVE FOR PETITIONER had filed a complaint with the Motor Carrier Division of UDOT, NAME-1 responded by email dated April 3, 2017. In that email he stated that he had concluded that the tow had been requested by the business at which the car had been parked, that the vehicle was entered into IVS and law enforcement notified, that a certified letter was sent to the lien holder and COMPANY had a valid Tow Truck Motor Carrier certification. He goes on to state, "Based on my findings, COMPANY did as they were required by law so I am unable to assist you in the specific relief you seek (Removal of any or all fees associated with the tow) in regards to this complaint." There is no indication in the letter if Petitioner had the right to appeal these findings through an administrative appeal process with UDOT or even to request review by a supervisor or director at UDOT.

At the hearing before the Utah State Tax Commission, Petitioner's representative states that she disagrees with these findings from UDOT and argued that a number of factual and legal points made by NAME-1 were in error. However, the Utah State Tax Commission is a separate department of the State of Utah and does not have authority to review actions of UDOT or UDOT employees. Based on state law, it is UDOT that reviews complaints against tow companies. The Tax Commission does not have authority to review these complaints, or UDOT's decisions regarding these complaints. The Tax Commission has no authority to require towing and storage fees charged by a tow company to be waived or abated. These issues are under UDOT's authority. If there are any further review or appeal rights of UDOT's decision, Petitioner needs to address these with UDOT. Petitioner also asserts that COMPANY damaged the vehicle by storing it with the windows open out in the rain. Again, if Petitioner has a cause of action against COMPANY it is not something that the Tax Commission has authority to address.

Petitioner's representative argued that the Motor Vehicle Division did have a responsibility under Utah Code Sec. 41-6a-1406 because of the notice requirements. However, as noted by the Division, Section 41-6a-1406 applies only to a state impounded vehicle which is an impound ordered by law enforcement or highway agency. The impound in this matter was a private, non-law enforcement generated tow.

A final issue did come up after discussion at the hearing, which was that COMPANY had applied to the Division to obtain title to the vehicle under Utah Admin. Rule R873-22M-2(J).

This provision allows the Division to issue title on receipt of an affidavit and surety bond where the applicant has “exhausted all normal means of obtaining evidence of ownership.” The Division’s representative explained that she put this request on hold pending the outcome of this hearing and has not fully reviewed the request. However, based on the evidence at the hearing, both the ownership of the vehicle is not in dispute and Petitioner has been actively trying to retrieve this vehicle from COMPANY through her representative.

After review of the facts and the law, the Division did not charge an administrative impound fee, so there is nothing over which the Utah State Tax Commission has the authority to refund in this matter. The Utah State Tax Commission has no authority to require a private towing and storage company to waive or accept a reduced amount for towing and storage fees. Nor does the Tax Commission have the authority to regulate the actions of a tow company and whether they complied with UDOT’s administrative rules, investigate complaints against a tow company or to determine civil damages against a tow company. At this point the Division has not made a decision under Utah Rule 873-22M-2 to issue a title to COMPANY, however, the Division is clearly on notice that the owner of the vehicle has been actively trying to retrieve the vehicle from COMPANY through her representative. 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.