

APPEAL # 20-761

TAX TYPE: PERSONALIZED PLATE

TAX YEAR: NOT APPLICABLE

DATE SIGNED: 11/03/2020

COMMISSIONERS: J. VALENTINE, R. ROCKWELL, M. CRAGUN AND L. WALTERS

BEFORE THE UTAH STATE TAX COMMISSION	
TAXPAYER, Petitioner, v. MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 20-761 Account No. ##### Tax Type: Personalized Plate Tax Year: Not Applicable Judge: Marshall

Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER, *Pro Se*

For Respondent: RESPONDENT'S REP-1, Assistant Attorney General
RESPONDENT'S REP-2, Miscellaneous Services Supervisor
RESPONDENT'S REP-3, Motor Vehicle Division
RESPONDENT'S REP-4, Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on July 9, 2020 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner ("Applicant") is appealing the Respondent's ("Division") DATE denial of a personalized license plate.

APPLICABLE LAW

As of the DATE date of the Division's denial of the Applicant's requested license plate, Utah law provided for personalized license plates with the limitation set forth in Utah Code Ann. §41-1a-411 as follows:

- (1) An applicant for personalized license plates or renewal of the plates shall file an application for the plates in the form and by the date the division requires,

indicating the combination of letters, numbers, or both requested as a registration number.

(2) (a) Except as provided in Subsection (3), the division may refuse to issue any combination of letters, numbers, or both that may carry connotations offensive to good taste and decency or that would be misleading.

(b) The division may refuse to issue a combination of letters, numbers, or both as a registration number if that same combination is already in use as a registration number on an existing license plate.

(3) (a) Except as provided in Subsection (2)(b) or (3)(b), the division may not refuse a combination of letters, numbers, or both as a registration number if:

(i) the license plate is an honor special group license plate as described in Section 41-1a-421; and

(ii) the combination of letters, numbers, or both refers to:

(A) a year related to military service;

(B) a military branch; or

(C) an official achievement, badge, or honor received for military service.

(b) If an applicant requests a combination containing only numbers, the division may refuse the combination if the combination includes less than four numerical digits.

Utah Code Ann. §41-1a-411 was amended effective May 12, 2020, to read as follows:

(1) An applicant for personalized license plates or renewal of the plates shall file an application for the plates in the form and by the date the division requires, indicating the combination of letters, numbers, or both requested as a registration number.

(2) (a) Except as provided in Subsection (3), the division may refuse to issue any combination of letters, numbers, or both that:

(i) may carry connotations offensive to good taste and decency or that would be misleading; or

(ii) disparages a group based on:

(A) race;

(B) color;

(C) national origin;

(D) religion;

(E) age;

(F) sex;

(G) gender identity;

(H) sexual orientation;

(I) citizenship status; or

(J) physical or mental disability.

(b) The division may refuse to issue a combination of letters, numbers, or both as a registration number if that same combination is already in use as a registration number on an existing license plate.

(3) (a) Except as provided in Subsection (2) or (3)(b), the division may not refuse a combination of letters, numbers, or both as a registration number if:

- (i) the license plate is an honor special group license plate as described in Section 41-1a-421, and the combination of letters, numbers, or both refers to:
 - (A) a year related to military service;
 - (B) a military branch; or
 - (C) an official achievement, badge, or honor received for military service; or
- (ii) the combination of letters, numbers, or both as a registration number refers to an official state symbol described in Section 63G-1-601.
- (b) If an applicant requests a combination containing only numbers, the division may refuse the combination if the combination includes less than four numerical digits.

Utah Administrative Rule R873-22M-34 provides additional guidance regarding the issuance of personalized license plates as follows:

- (1) The personalized plate is a non-public forum. Nothing in the issuance of a personalized plate creates a designated or limited public forum. The presence of a personalized plate on a vehicle does not make the plate a traditional public forum.
- (2) Pursuant to Subsection 41-1a-411(2), the division may not issue personalized license plates in the following formats:
 - (a) Combination of letters, words, or numbers with any connotation that is vulgar, derogatory, profane, or obscene.
 - (b) Combinations of letters, words, or numbers that connote breasts, genitalia, pubic area, buttocks, or relate to sexual and eliminatory functions. Additionally, except as provided in Subsection 41-1a-411(3), "69" formats are prohibited unless used in a combination with the vehicle make, model, style, type, or commonly used or readily understood abbreviations of those terms, for example, "69 CHEV."
 - (c) Combinations of letters, words, or numbers that connote:
 - (i) any intoxicant or any illicit narcotic or drug;
 - (ii) the sale, use, seller, purveyor, or user of any intoxicant or any illicit narcotic or drug; or
 - (iii) the physiological or mental state produced by any intoxicant or any illicit narcotic or drug.
 - (d) Combinations of letters, words, or numbers that express contempt, ridicule, or superiority of a race, religion, deity, ethnic heritage, gender, or political affiliation.
 - (e) (i) Combinations of letters, words, or numbers that express affiliations or actions that may be construed to suggest endangerment to the public welfare.
 - (ii) Examples of letters, words, or numbers described in Subsection (2)(e)(i) include words, signs, or symbols that represent:
 - (A) illegal activity;
 - (B) organized crime associations; or
 - (C) gang or gang terminology.

- (iii) The division shall consult with local, state, and national law enforcement agencies to establish criteria to determine whether a combination of letters, words, or numbers express affiliations or actions that may be construed to suggest endangerment to the public welfare.
- (3) If the division denies a requested combination, the applicant may request a review of the denial, in writing, within 15 days from the date of notification. The request must be directed to the Director of the Motor Vehicle Division and should include a detailed statement of the reasons why the applicant believes the requested license plates are not offensive or misleading.
- (4) The director shall review the format for connotations that may reasonably be detected through linguistic, numerical, or phonetic modes of communication. The review may include:
 - (a) translation from foreign languages;
 - (b) an upside down or reverse reading of the requested format; and
 - (c) the use of references such as dictionaries or glossaries of slang, foreign language, or drug terms.
- (5) The director shall consider the applicant's declared definition of the format, if provided.
- (6) If the requested format is rejected by the director, the division shall notify the applicant in writing of the right to appeal the decision through the appeals process outlined in Tax Commission rule R861-1A-22.
- (7) If, after issuance of a personalized license plate, the commission becomes aware through written complaint that the format may be prohibited under Subsection (2), the division shall again review the format.
- (8) If the division determines pursuant to Subsection (2) that the issued format is prohibited, the holder of the plates shall be notified in writing and directed to surrender the plates. This determination is subject to the review and appeal procedures outlined in Subsections (3) through (7).
- (9) A holder required to surrender license plates shall be issued a refund for the amount of the personalized license plate application fee and for the prorated amount of the personalized license plate annual renewal fee, or shall be allowed to apply for replacement personalized license plates at no additional cost.
- (10) If the holder of plates found to be prohibited fails to voluntarily surrender the plates within 30 days after the mailing of the notice of the division's final decision that the format is prohibited, the division shall cancel the personalized license plates and suspend the vehicle registration.

In *Mc Bride v. Motor Vehicle Division of Utah State Tax Commission*, 1999 UT 9, 977 P.2d 467 (Utah 1999), the Utah Supreme Court gave direction for the Tax Commission to follow regarding personalized license plates. The Commission should not rely “on the opinion of any one person or group in determining whether a term [on a license plate] carries a prohibited connotation.” 1999 UT 9, ¶15. Rather, the “only reasonable standard that may be applied is that of the objective, reasonable person.” 1999 UT 9, ¶18.

DISCUSSION

The Applicant applied for a personalized license plate “LICENSE PLATE-1” or alternatively either “LICENSE PLATE-2” or “LICENSE PLATE-3.” The Division issued a Preliminary Notice dated DATE denying the request. The Division indicated that it “[m]ay not issue any combination of letters, words, or numbers that express affiliations or actions that may be construed to suggest endangerment to the public welfare...” The Preliminary Notice indicated the Applicant could present additional information regarding the personalized plate request. On DATE, the Division issued a Statutory Notice denying the requested personalized plates. The Applicant timely appealed the denial of the personalized plate.

The Applicant stated that he is the owner of a knife business. He stated that he has owned and operated the company since YEAR, with the bulk of his business in STATE-1. The Applicant stated that when he was in STATE-1, he applied for, and received a license plate that read “LICENSE PLATE-1” and a second license plate for a motorcycle that read “LICENSE PLATE-4”. He provided photographs of the STATE-1 license plates. The Applicant stated that three years ago, he moved to southern Utah, and opened the business in southern Utah. He stated that his is the only knife business in southern Utah. The Applicant stated that he sells cutlery and provides sharpening services. He requested the same license plate in Utah that he had in STATE-1. The Applicant stated that the license plate is for his truck. He stated that his truck has the URL of his business, as well as stickers of several well-known knife brands. The Applicant provided a photograph of the truck. The photo does show a large sticker that reads, “STICKER-1” as well as a number of other stickers on the tailgate.

The Applicant stated that the Division denied the plate because the words could be “threatening”. He argued the plate is not threatening, and that the letters he has chosen are subjective. The Applicant stated that he took an informal poll on Facebook where he superimposed his STATE-1 license plate onto the “BUSINESS-1 Truck.” He stated that the majority of the responses to his informal poll were that the license plate was related to the business. The Applicant stated that knives are used to create, not destroy. He stated that taken in context of being on the truck, it is obvious that the license plate is suggesting a service to the public.

The Division’s representative stated that this is a close case, and because the Division had some concerns, the personalized plate was denied, and the Division is seeking guidance from the Commission. He stated that in Appeal No. 07-0606¹, the Commission upheld the Division’s recall of a license plate that involved a gun. The Division’s representative stated that he could not

¹ Prior Commission decisions are available online at tax.utah.gov/commission-office/decisions.

remember the brand of the gun involved, but noted the Commission had concerns that having a type of gun on the license plate suggests endangerment to the public welfare because of its association with crime and violence.

The Division's representative stated that while they recognize it is the name of the Applicant's business, a knife is also a weapon. He stated that because of the precedent of Appeal No. 07-0606, the Division felt denial of the personalized plate was appropriate.

RESPONDENT'S REP-2 stated that in the past, the Division would have considered issuing the license plate on "conditional approval" that the plate remain on the truck, with the company logo, where it is very clear what the license plate means. However, in light of other issues this year involving personalized plates, the Division was reluctant to move forward in that direction without input from the Commission.

In closing, the Applicant stated that he understands there were some changes in law with regard to transferring the plate to other vehicles. He stated that he would be willing to sign something that the personalized plate would only ever be placed on a company vehicle. He stated that he is not making a statement, but is advertising his business through his vehicle. The Applicant stated that he is frustrated that knives are being compared to guns. He stated that part of his business is educating the public on the safe use of knives. The Applicant stated that a knife is a tool, noting it was the first tool. He stated there is nothing satirical or threatening, or suggesting the use of knives in a violent nature.

At issue before the Commission is whether the Division properly denied the issuance of personalized license plate "LICENSE PLATE-1" or alternatively either "LICENSE PLATE-2" or "LICENSE PLATE-3." The Division denied the personalized plate on the basis that it "may be construed to suggest endangerment to the public welfare pursuant to UCA 41-1a-411(2) and Administrative Rule R873-22M-34."

Under Utah law, courts reviewing license plate requests should not rely "on the opinion of any one person or group in determining whether a term [on a license plate] carries a prohibited connotation." *Mc Bride v. Motor Vehicle Division of Utah State Tax Commission*, 1999 UT 9 ¶15. Rather, the "only reasonable standard that may be applied is that of the objective, reasonable person." 1999 UT 9, ¶18. The court in *Mc Bride* was hearing a case based on actions in December 1995, and thus was interpreting a 1995 Utah statute when it applied the objective reasonable person standard. *See* 1999 UT 9, ¶2. In 1995, Utah Code Ann. §41-1a-411 provided as follows:

- (1) An applicant for personalized license plates or renewal of the plates shall file an application for the plates in the form and by the date the division requires,

indicating the combination of letters, numbers, or both requested as a registration number.

(2) The division may refuse to issue any combination of letters, numbers, or both that may carry connotations offensive to good taste and decency or that would be misleading.

Although Utah Code Ann. §41-1a-411 has been amended to provide additional language as of the DATE date of the Division's denial in the instant case, as well as more additional language as of DATE, the Commission finds no reason to abandon the "the objective, reasonable person" standard under the changed law. For that reason, the commission finds good cause to apply the standards of *Mc Bride* to the DATE date that the Division denied the Applicant's license plate application. The commission also notes that it would apply the *Mc Bride* "objective, reasonable person" standard under the facts of this case if it applied the most recent version of Utah Code Ann. §41-1a-411, which went into effect on DATE.

In Appeal No. 03-1631², the Commission considered the description of the vehicles in addition to just the license plates. In that case, the plates were requested by and used for a business and the plates themselves represented the name of the business. The name of the business and telephone number was printed on the door of the trucks for which the license plates were being requested, and the truck beds were custom made for the purposes of the business. In the instant case, the Applicant has requested a license plate that represents the name of his business. While the Applicant's truck was not custom made for the purpose of the business, it does have the business name, URL, and stickers advertising various brands of knives the business sells. While a knife may be used as a weapon and in other contexts could be construed to suggest endangerment to the public welfare, the Commission finds in this case a reasonable person would associate the license plate with the business advertised on the truck.



Jan Marshall
Administrative Law Judge

DECISION AND ORDER

² Prior Commission decisions are available online at tax.utah.gov/commission-office/decisions.

Based on the foregoing, the Commission finds there is good cause to reverse the decision of the Division to deny the license plate "LICENSE PLATE-1" to the Applicant. 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 _____, 2020.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner

Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.