

17-1140
TAX TYPE: LICENSE PLATE
TAX YEAR: 2017
DATE SIGNED: 01/08/2018
COMMISSIONERS: J VALENTINE, M CRAGUN, R PERO, R ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

MOTOR VEHICLE DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 17-1140

Account No. #####

Tax Type: Personalized Plate

Tax Year: 2017

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney
General
RESPONDENT-1, Motor Vehicle Division
RESPONDENT-2, Motor Vehicle Division
RESPONDENT-3, Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on September 26, 2017 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner is appealing Respondent's ("Division's") denial of his request for the personalized license plate "4PLAY."

APPLICABLE LAW

Personalized license plates are allowed within the limitations 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) The division may refuse any combination of letters, numbers, or both that may carry connotations offensive to good taste and decency, or that would be misleading.

The Commission has promulgated Administrative Rule R873-22M-34 to provide further

guidance on when a combination of letters or numbers is considered offensive to good taste and decency, or would be misleading, as set forth below in pertinent part:

- (1) The personalized plate is a non-public forum...
- (2) Pursuant to Section 41-1a-411(2), the division may not issue personalized 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 . . . relate to sexual and eliminatory functions . . .
 - (c) Combination 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, religious, 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 . . .

The Utah Supreme Court held in *McBride v. Motor Vehicle Division of the Utah State Tax Commission*, 977 P.2d 467 (Utah 1999), that 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.” Rather, the “only reasonable standard that may be applied is the objective, reasonable person.”

DISCUSSION

Petitioner explained at the hearing that he was requesting the license plate “4PLAY” for his SUBJECT VEHICLE, a truck that he drives for fun about once a week. The truck has a custom paint job with VEHICLE DESCRIPTION. There is also a small custom painting on the back panel over the bumper with VEHICLE DESCRIPTION. He requested the license plate because for him this truck was for play and not what he would drive for work or other chores. He also points out that “4PLAY” is the name of a Jazz Album, a 2010 movie, a Novel and an on-line game.

Petitioner explained that he felt the denial of this license plate was a violation of his rights based on the fact that the Division has allowed a number of other license plates, which, in his opinion, were far more questionable considering the law than “4PLAY.” He said he had found that the Division had issued the following plates: “LICENSE PLATE-1,” “LICENSE PLATE-2,” “LICENSE PLATE-3,” “LICENSE PLATE-4,” “LICENSE PLATE-5,” “LICENSE PLATE-6” and “LICENSE PLATE-7.”

The representative for the Division explained that the test the Division uses is if an objective, reasonable person would conclude that the term carries a prohibited connotation, which is the test set by the Utah Supreme Court in *McBride*. Considering the McBride test, the Division had concluded that a reasonable person looking at the license plate might interpret it to be referring to “foreplay.” The Division provided the definition of “foreplay” from Merriam-Webster online dictionary, as follows: “1. erotic stimulation preceding sexual intercourse 2: action or behavior that precedes an event.” The Division’s representative stated that the Tax Commission had previously twice denied license plates with the phrase “4 PLAY” or “for play” and believes that one of those decisions was appealed to District Court and the denial was upheld. Based on this, he stated that the Division felt they had to deny the issuance of the requested license plate to Petitioner. He also explained that the Division had been allowing plates with the phrase “Sexy” because the Commission had issued a decision indicating that reasonable people would conclude that was meant as attractive. He indicated the LICENSE PLATE-1 appeared to be derogatory and insulting, but to the person with the plate, not directed to another group or person. He indicated the Division would look into “LICENSE PLATE-6” as that one might have just slipped past the employees who look at the personalized plate applications.

Utah Code §41-1a-411(2) provides that 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.” The Commission adopted Administrative Rule R873-22M-34, which clarifies that a personalized license plate is a non-public forum and prohibits the Division from issuing a plate that is vulgar, obscene or relates to sexual functions, along with a number of other prohibitions.

The Supreme Court has instructed the Commission when considering personalized license plates the standard to be applied is that of the objective reasonable person. The case before the Supreme Court was an appeal of an order in which the Tax Commission failed to revoke the license plates "REDSKIN" and "REDSKNS." In that case, *McBride v. Motor Vehicle Division of the Utah State Tax Commission*, 977 P.2d 467 (Utah 1999), the Court stated:

The only reasonable standard that may be applied is that of the objective, reasonable person. In other words, under rule 873-22M-34 the Commission had to determine, in light of all the evidence presented, whether an objective, reasonable person would conclude that the term "REDSKIN" contains any vulgar, derogatory, profane, or obscene connotation, or expresses contempt, ridicule, or superiority of race or ethnic heritage.

Given this consideration, the Commission has to determine whether an objective, reasonable person would conclude that “4PLAY” contains a connotation that would violate the law and rule. It appears that there is a connotation in violation of Utah Admin. Rule R873-22M-34(2)(b) because the plate relates to a sexual function. In a prior decision, *Utah State Tax Commission Order Appeal No. 03-1631* (March 2004) the Commission had 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 subject appeal, the custom paint on the truck supports that the truck is for play or for fun. However, given that the Tax Commission has previously denied license plates with various forms of “for play or foreplay” and a reasonable person would be aware that there is a connotation of the term that is prohibited,¹ this license plate should be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division’s denial of the Petitioner’s request for a personalized license plate bearing the phrase “4PLAY.” 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:

¹ The Administrative Law Judge is aware of at least one prior decision in which the Commission had denied the phrase “FORPLAY” or “4PLAY” and that was in an appeal filed in 2001, *Appeal No. 01-1231*. However, the Commission was not keeping electronic copies in 2001 and many files that old have been destroyed.

taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2017.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner