

APPEAL # 22-166

TAX TYPE: REGISTRATION FEES

TAX YEAR: 2021-2022

DATE SIGNED: 07/11/2022

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

BEFORE THE UTAH STATE TAX COMMISSION

<p>OWNER-1,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MOTOR VEHICLE DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 22-166</p> <p>Account No: #####</p> <p>Tax Type: Registration Fees</p> <p>Tax Year: July 2021-June 2022</p> <p>Judge: Nielson-Larios</p>
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Presiding:

Aimee Nielson-Larios, Administrative Law Judge

Appearances:

For Petitioner: OWNER-1

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

I. STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on April 26, 2022, for an Initial Hearing in accordance with Utah Code Ann. § 59-1-502.5. Petitioner (“Owner”) challenges the correctness of a Notice of Revocation of Vehicle Registration, dated DATE, issued by Respondent, Motor Vehicle Division (“Division” or “DMV”).

II. APPLICABLE LAW

Utah Code Ann. § 41-12a-301 requires certain vehicle owners to have insurance, with § 41-12a-301(2)(a) stating the following:

[E]very resident owner of a motor vehicle shall maintain owner's or operator's security in effect at any time that the motor vehicle is operated on a highway or on a quasi-public road or parking area within the state . . .

Utah Code Ann. § 41-12a-801 through § 41-12a-806 establishes the Uninsured Motorist Identification Database Program (“Program”) to verify compliance with § 41-12a-301. For purposes of § 41-12a-801 through § 41-12a-806, “department” means the Department of Public Safety (§ 41-12a-103(1)) and “designated agent” means the third party the Department of Public Safety contracts with (§ 41-12a-802(3)). The designated agent is COMPANY-1.

For the Program, Utah Code Ann. § 41-12a-803 states the following in part:

- (1) There is created the Uninsured Motorist Identification Database Program to:
 - (a) establish an Uninsured Motorist Identification Database to verify compliance with motor vehicle owner's or operator's security requirements under Section 41-12a-301 and other provisions under this part;
.....
- (2) The program shall be administered by the department with the assistance of the designated agent and the Motor Vehicle Division.
.....

Thus, § 41-12a-803(2) provides that the Program is administered by the Department of Public Safety with the assistance of COMPANY-1 and the Motor Vehicle Division.

As explained below, the Program involves COMPANY-1 and the Motor Vehicle Division giving notice(s) to a vehicle owner in certain situations where proof of insurance is lacking. Utah Code Ann. § 41-12a-804 states the following in part:

- (1) If the comparison under Section 41-12a-803 shows that a motor vehicle is not insured for three consecutive months, the Motor Vehicle Division shall direct that the designated agent provide notice to the owner of the motor vehicle that the owner has 15 days to provide:
 - (a) proof of owner's or operator's security in a form allowed under Subsection 41-12a-303.2(2); or
 - (b) proof of exemption from the owner's or operator's security requirements.
- (2) If an owner of a motor vehicle fails to provide satisfactory proof of owner's or operator's security to the designated agent, the designated agent shall:
 - (a) provide a second notice to the owner of the motor vehicle that the owner now has 15 days to provide:
 - (i) proof of owner's or operator's security in a form allowed under Subsection 41-12a-303.2(2); or
 - (ii) proof of exemption from the owner's or operator's security requirements;
 - (b) for each notice provided, indicate information relating to the owner's failure to provide proof of owner's or operator's security in the database; and
 - (c) provide this information to state and local law enforcement agencies as requested in accordance with the provisions under Section 41-12a-805.
- (3) The Motor Vehicle Division:
 - (a) shall revoke the registration upon receiving notification under Subsection 41-1a-110(2);
 - (b) shall provide appropriate notices of the revocation, the legal consequences of operating a vehicle with revoked registration and without owner's or operator's security, and instructions on how to get the registration reinstated; . . .
.....

Thus for certain situations where proof of insurance is lacking, Utah Code Ann. § 41-12a-804 requires that the Motor Vehicle Division direct the designated agent, which is COMPANY-1, to provide first and second notices to a vehicle owner (§ 41-12a-804(1) and (2)) and requires that the Motor Vehicle Division revoke the registration of the vehicle (§ 41-12a-804(3)).

Subsection 41-12a-804(3)(a), quoted above, references Utah Code Ann. § 41-1a-110(2), which is quoted below this explanation. The Utah State Tax Commission administers Utah Code, Title 41, Chapter 1a, which includes § 41-1a-110(2).¹ In § 41-1a-110(2), along with the rest of Title 41, Chapter 1a, “division” means the Motor Vehicle Division of the Tax Commission (*see* § 41-1a-102(19)).

Utah Code Ann. § **41-1a-110(2)(a)** states the following, in part:

The division shall revoke the registration of a vehicle if the division receives notification by the:

.....

- (ii) designated agent that the owner of a motor vehicle:
 - (A) has failed to provide satisfactory proof of owner's or operator's security to the designated agent after the second notice provided under Section 41-12a-804 . . .

Thus, COMPANY-1 will notify the Motor Vehicle Division when a motor vehicle owner has failed to provide proof of insurance to COMPANY-1 after the second notice from COMPANY-1 to the owner. Furthermore under § 41-1a-110(2), the Motor Vehicle Division must revoke the vehicle registration when the Motor Vehicle Division receives that notice from COMPANY-1.

Utah Code Ann. § **41-1a-114** instructs how the Motor Vehicle Division must give notice, as follows:

- (1) If the division is required to give any notice under this chapter or other law regulating the operation of vehicles, vessels, and outboard motors, 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.
- (3) Proof of the giving of notice in either manner specified in Subsection (1) may be made by the certificate of any officer or employee of the division or affidavit of any person over 18 years of age, naming the person to whom the notice was given and specifying the time, place, and manner of giving the notice.

(Emphasis added.)

¹ *See* § 41-1a-103 and § 41-1a-102(15) (showing that the Utah State Tax Commission administers Utah Code, Title 41, Chapter 1a).

The Utah Code does not directly address how the Division may or must *reinstate* a registration that the Division has revoked in accordance with § 41-1a-110(2)(a)(ii)(A).² However, § 41-12a-804(3), quoted previously, states in part that for revocations under § 41-1a-110(2), the Division would provide “instructions on how to get the registration *reinstated*” (emphasis added).

Utah Code Ann. § **41-1a-109(4)** provides the following for when the Motor Vehicle Division may *register* a vehicle that had its registration revoked under § 41-1a-110(2)(a)(ii)(A), with § 41-1a-109(4) stating the following in part:

The division may not register a vehicle if the registration of the vehicle is revoked under Subsection 41-1a-110(2) until the applicant provides proof:

- (a) of owner's or operator's security in a form allowed under Subsection 41-12a-303.2(2); [or]
- (b) of exemption from the owner's or operator's security requirements . . .

Utah Code Ann. § 59-1-1417(1) provides, "In a proceeding before the commission, the burden of proof is on the petitioner . . ."

III. DISCUSSION

This Section III. Discussion includes the following subsections:

- A. Facts
- B. Owner’s information and arguments
- C. Division’s information and arguments
- D. Order’s analysis and conclusions

A. Facts

On DATE, the Division revoked a vehicle registration for a VEHICLE. The information below explains events that happened starting about a year before that revocation.

Based on emails submitted by the Owner, in MONTH YEAR COMPANY-1, the designated agent of the Department of Public Safety, issued to the Owner a notice, in accordance with § 41-12a-804, about the lack of proof of insurance for the Owner’s vehicle. On DATE, the Owner responded to COMPANY-1 that the vehicle was not being operated and the Owner requested that COMPANY-1 send him his future notices by email, especially since COMPANY-1’s letter had stated, “HELP US GO GREEN!” On DATE, COMPANY-1 replied by email to the Owner that the future notices would be sent by regular mail, unless something changes. COMPANY-1 explained that if something changed, the Owner would receive a letter giving the Owner an option to choose email. COMPANY-1 also added a note into the Utah Insurance

² In contrast, the Utah Code *does* address in § 41-1a-110(5) the reinstatement of a registration revoked under § 41-1a-110(1)(f), a subsection different from § 41-1a-110(2)(a)(ii)(A), the subsection at issue in this appeal.

Verification Database at that time that the vehicle was not currently being used. The Division did not revoke the vehicle registration in MONTH YEAR.

During the hearing, the Division explained that about a year later on DATE, in accordance with § 41-12a-804(1), COMPANY-1 issued a first notice by regular mail to the Owner about the lack of proof of insurance for the Owner's vehicle. The Owner did not respond to that notice. On DATE, in accordance with § 41-12a-804(2), COMPANY-1 sent a second notice by regular mail to the Owner about the lack of proof of insurance for the Owner's vehicle. The Owner did not respond to that notice. During the hearing, the Taxpayer contended that he received only one of the two notices from COMPANY-1.

According to the Division, COMPANY-1 notified the Division on DATE, in accordance with § 41-1a-110(2)(a)(ii)(A). Based on that notification from COMPANY-1, the Division revoked the Owner's vehicle registration on DATE, in accordance with § 41-12a-804(3)(a) and issued to the Owner a Notice of Revocation of Vehicle Registration, in accordance with § 41-12a-804(3)(b).

The Owner submitted emails for consideration in this appeal. Based on those emails, on DATE, the Owner emailed COMPANY-1, expressing in part his disappointment that COMPANY-1 had not emailed the notice in MONTH YEAR. The Owner wrote that he had just received a notice from COMPANY-1 in the regular mail and responded immediately.

On or about January 23, 2022, the Owner appealed the Division's Notice of Revocation of Vehicle Registration. The Owner's appeal created this Appeal No. 22-166.

On DATE, COMPANY-1 emailed the Owner, explaining that COMPANY-1 updated the Utah Insurance Verification Database at that time to indicate that the vehicle was not currently being driven on public roads. In the email, COMPANY-1 also explained the following:³

Please note that because your response was received after the Final Notice date of 12/13/2021, the DMV has revoked the vehicle registration. Reinstatement of the registration is not mandatory at this time because the vehicle is not in use, but before the vehicle is driven again, you will need to take your proof of insurance and registration documents to a local DMV office, where they will assist you in reinstating the registration.

You may call the main DMV number if you have further questions regarding reinstatement of the registration . . .

Also on DATE, the Owner responded to COMPANY-1, explaining the various reasons why he thinks COMPANY-1 should email its notices.

³ The DATE date found in the quoted email is inconsistent with the other information presented for this appeal. According to the Division, COMPANY-1 issued its notices on DATE, and DATE. The Division issued its notice on DATE.

B. Owner's information and arguments

The Owner asked the Commission to reinstate his registration, which would normally continue through DATE. The Owner requested the time during which the registration was revoked to be restored.

The Owner explained that the vehicle had not been used for an extended period of time because of the COVID-19 pandemic. The Owner explained that the vehicle was not insured because he was not using the vehicle, but he would insure the vehicle when he used it again. For the hearing, he challenged the sufficiency of the notices COMPANY-1 mailed to him in MONTH YEAR, because COMPANY-1 did not email the notices to him as he had requested in MONTH YEAR. He explained that COMPANY-1 said it supported going green and, in response, the Owner requested that COMPANY-1 email the notices.

The Owner also explained why he did not timely receive the notices that COMPANY-1 mailed in MONTH YEAR. He asserted that one of the two notices was misdelivered. For the correctly delivered notice, he explained that he picked up that notice in MONTH YEAR, after the time period for a timely response to COMPANY-1 had passed. He did not pick up that notice until MONTH YEAR because he did not frequently retrieve his physical mail. He further explained that he arranged for important items of mail to be sent to his email. He also explained that he picked up his physical mail between a couple of times per month to once every couple of months. In MONTH YEAR, the weather was cold, unpleasant, and icy, so he did not frequently walk across the sprawling apartment complex to get his physical mail.

C. Division's information and arguments

The Division asked that the Commission sustain the revocation and deny the Owner's request. The Division explained that the vehicle was not insured when the registration was revoked and was not insured at the time of the hearing, and that the Owner did not intend to insure it until he started using it. The Division asserted that when the Division received the notice from COMPANY-1 on DATE, the Division was required by § 41-1a-110(2) to revoke the registration; and the Division also asserted that the Division did not have discretion under the law to not revoke the registration for that situation.

The Division explained that when the Owner is ready to use the vehicle again, he could reinstate the registration for no fee, by providing proof of insurance and a written statement that the vehicle had not been in use. If he were to have provided that information as of the hearing date, the registration could have been reinstated for the remaining registration period which ends on DATE. The Division explained that if the Taxpayer registers the vehicle after DATE, the Owner will be renewing his registration and not reinstating it. The Division explained that the Division cannot add time to the end of a registration.

D. Order's analysis and conclusions

The Taxpayer's primary challenge is that COMPANY-1 did not email the notices to him on DATE, and on DATE, as he had requested the previous year, in MONTH YEAR. For the notices mailed by COMPANY-1, Utah Code Ann. § 41-12a-804(1) provides that "the Motor Vehicle Division shall direct that [COMPANY-1,] the designated agent[,] provide notice to the owner of the motor vehicle . . ." For the mailing of the notice, Utah Code Ann. § 41-1a-114(1) provides that "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." Section 41-1a-114 requires the Division or COMPANY-1 to issue the notices by United States mail, even if a vehicle owner requests the notices by email. Furthermore, COMPANY-1 explained to the Taxpayer in MONTH YEAR that the future notices would be issued by mail and not by email and that if email became an option, the Owner would be notified through a letter and then would be given the option of opting into notification by email. The Taxpayer has shown no incorrect communications from COMPANY-1 or Division employees; they did not say he could receive future notices from COMPANY-1 by email. The Taxpayer has not shown that COMPANY-1 improperly issued the notices.

The Owner did not timely respond to the notices from COMPANY-1, which were dated in MONTH YEAR. On DATE, COMPANY-1 correctly notified the Division of the lack of insurance on the vehicle, in accordance with § 41-1a-110(2)(a). Also on December 18, 2021, the Division correctly revoked the registration and notified the Owner, in accordance with § 41-12a-804(3) and § 41-1a-110(2)(a).

After the Division correctly revokes a registration in accordance with § 41-12a-804(3) and § 41-1a-110(2)(a), the Utah Code does not clearly authorize the Division to reinstate a registration when a vehicle owner later only shows that the vehicle was not being used while it was not insured. Under § 41-1a-109(4), a showing of proof of insurance is generally required.

When a registration is correctly revoked, the Utah Code does not provide for a refund of registration fees or for an extension of time for a registration to be active.

Thus, the Division's Notice of Revocation of Vehicle Registration dated DATE, should be sustained.

Aimee Nielson-Larios
Administrative Law Judge

IV. DECISION AND ORDER

The Commission sustains the Division’s Notice of Revocation of Vehicle Registration dated DATE. The Commission denies the Taxpayer’s requests for reinstatement of the registration, for an extension of the registration time-period, and for a refund or credit of registration fees. 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 **11th** day of **July**, 2022.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner