10-1311
INCOME TAX
TAX YEAR: 2006
SIGNED: 04-06-2011
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN
DISSENT: D. DIXON
GUIDING DECISIONS

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 10-1311 Account No. ##### Tax Type: Income Tax Tax Years: 2006 Judge: Nielson-Larios

Presiding:
Aimee Nielson-Larios, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER 2
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
RESPONDENT REP. 2, Auditing Division
RESPONDENT REP. 3, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. § 59-1-502.5, on January 13, 2011. On April 5, 2010, Respondent (the "Division") issued a Notice of Deficiency and Audit Change ("Statutory Notice") to Petitioner (the "Taxpayer"), in which the Division imposed additional tax and interest as follows:

Year	Tax	Penalties	Interest	Total
2006	$$$$$	$$$$$	$$$$$	$$$$$

Interest has continued to accrue. The audit tax is based on the Division's denial of the special needs adoption credit (the "Credit") of $$$$$ for three children. The parties agree that the Division correctly denied the Credit for two of the children adopted before 2006. However the parties disagree on the disallowance of the Credit for the third child, CHILD. The parties particularly disagree with the meaning of "a claimant who **adopts in**

this state . . . may claim . . . [the Credit]" (emphasis added), found in Utah Code § 59-10-1104(2) (2006). The Division provided a pre-hearing memoranda citing and discussing legislative intent. If the Taxpayer's interpretation of § 59-10-1104(2) is correct, then the Taxpayer would be entitled to the $$$$$ Credit for CHILD for 2006. However, if the Division's interpretation is correct, then the Taxpayer would not be entitled to the Credit for CHILD for 2006.

APPLICABLE LAW

Utah Code § 59-10-1104 (2006)[1] (prior version at § 59-10-133) states in part:

(1) As used in this section, a "child who has a special need" means a child who meets at least one of the following conditions:
   (a) the child is five years of age or older;
   (b) the child:
      (i) is under the age of 18; and
      (ii) has a physical, emotional, or mental disability; or
   (c) the child is a member of a sibling group placed together for adoption.
(2) For taxable years beginning on or after January 1, 2005, **a claimant who adopts in this state** a child who has a special need may claim on the claimant's individual income tax return for the taxable year a refundable tax credit of $1,000 against taxes otherwise due under this chapter for:
   (a) adoptions for which a court issues an order granting the adoption on or after January 1, 2005;
   (b) the taxable year during which a court issues an order granting the adoption; and
   (c) each child who has a special need whom the claimant adopts.

. . . .

(Emphasis added.)

DISCUSSION

The Taxpayer explained that on October 26, 2006, she adopted CHILD, effective January 18, 2006. She and CHILD were residents of Utah during 2006. She explained that a judge in CITY, STATE issued the adoption decree.

The Taxpayer explained how she was "a claimant who adopt[ed] in this state." She and CHILD were residents of Utah for all of 2006. On April 21, 2005, she received CHILD permanently when she was in STATE. During August 2005, the family moved to Utah and she and CHILD became residents of Utah. The family has remained in Utah since that time.

[1] This Order cites to and applies the Utah Individual Income Tax Act that was in effect for the 2006 tax year, the year at issue in this appeal.

The Taxpayer explained that under multiple reciprocity agreements between Utah and STATE, CHILD has been entitled to the same benefits in Utah as he was entitled to in STATE for foster care, adoption, and subsidies. She explained that because of these reciprocity agreements, Utah grants, without contest, the items she would have been awarded in STATE. Additionally, she explained that she and CHILD receive the same benefits as other Utah residents, as well. She explained that because of the reciprocity agreements, she did not need to transfer from the STATE to the Utah foster care system and she was able to complete the adoption on October 26, 2006 through a short phone call with the STATE judge, while she and CHILD were in Utah. Furthermore, she explained some of the other benefits awarded by Utah under the reciprocity agreement, as follows: She and CHILD were provided with a Utah case worker when the family moved to Utah, CHILD qualified for state-funded Utah Medicare (Petitioner's Ex. 1) effective February 1, 2006 to present; CHILD was placed in a special-education preschool subsidized by the State of Utah (Petitioner's Ex. 2); and CHILD was provided with an Individualized Education Program ("IEP"), signed on April 17, 2006 by employees of the State of Utah (Petitioner's Ex. 3). She explained how having the benefits of a Utah case worker, Utah Medicare, a Utah subsidized preschool, and an IEP prepared by Utah employees shows that she and CHILD were residents of Utah at the time of the adoption because such benefits are available only to Utah residents.

The Division asserts that the Utah statute, § 59-10-1104, is ambiguous, and asks that the Commission focus on the statute's legislative intent. The Division contends that the Utah Legislature wanted to provide an incentive for taxpayers to adopt children from the Utah foster care system. The Division asserts that an adoption order must be issued by a court in the state of Utah for a taxpayer to "adopt[] in this state." The Division believes that "adopts," as a verb, refers to the action of a court. It is undisputed that a STATE court finalized the adoption in this case. The Division agreed that the Taxpayer and CHILD were residents of the state of Utah for 2006; however, it contended that proof of Utah residency does not show the Taxpayer adopted CHILD in this state. Furthermore, the Division indicated that it was unaware of any reciprocity agreement with STATE that would provide reciprocity for the Credit at issue. The Division asserted that statutory language for tax credits must be narrowly interpreted.[2]

The plain language of Utah Code § 59-10-1104(2) is not ambiguous. The statute allows the Credit for an adoption "in this state." The adoption in question occurred in STATE because the adoption decree was issued by a STATE court. The STATE adoption order was given effect for Utah purposes under our law, as

[2] *See Parson Asphalt v. Utah State Tax Commission*, 617 P.2d 397 (Utah 1980).

required by the full faith and credit clause of the U.S. Constitution. Under this clause, Utah must give other states' public acts, records, and judicial proceedings "full faith and credit." Thus, a marriage in California is effective in Utah. However, that does not mean the marriage occurred "in this state." For this appeal, the adoption was an adoption in STATE. While the full faith and credit clause requires Utah courts to recognize and enforce the STATE order as if it were rendered by a court in this state, this direction falls short of directing that the STATE adoption should be treated as a Utah adoption for tax purposes.

Tax credits are to be narrowly construed. To the extent the legislative or statutory history is instructive, it is noteworthy that the Credit was originally limited to adoptions of children from the permanent custody of the Utah Division of Child and Family Services and was later expanded to include adoptions of other children not in Utah custody.[3] Based on this legislative history, a reasonable interpretation is that the Legislature recognized there were Utah children with special needs who were not in Utah custody and the Legislature wanted these children adopted, too. However, there is no legislative history suggesting that the Utah Legislature intended to provide assistance to parents who adopted children of STATE or of any other state of the United States, even if the parents were or would become Utah residents. Thus, a narrow interpretation of the Credit, limiting it to adoptions occurring in Utah, still puts in full effect the apparent legislative intent of encouraging the adoption of Utah children with special needs.

At the hearing, no party presented a Utah reciprocity agreement with STATE that would cover the Credit. Utah entered into the Interstate Compact on Placement of Children, to cooperate with other states in the interstate placement of children. *See* Utah Code § 62A-4a-701, Article I. However, nothing in that Interstate Compact addresses tax credits. *See* Utah Code § 62A-4a-701 to -709. Likewise, Utah Code § 62A-4a-907, titled "Interstate compact adoption assistance agreements," provides another Utah agreement, but that

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[3] In 2001, the bill enacting the Credit did not include the "in this state" language; instead, it required that a child be in the permanent custody of the Utah Division of Child and Family Services for the child to qualify as "a child who has a special need." *See* § 59-10-133(1)(a) (2004).

In 2005, the statute for the Credit was amended to remove the requirements that a child be in the permanent custody of the Utah Division of Child and Family Services and that a child could not or should not be returned to the home of his or her biological parents for the child to qualify as "a child who has a special need." The amendment also added the "in this state" language so the Credit was limited to a "taxpayer who adopts in this state a child who has a special need . . ." *See* § 59-10-1104 (prior version at § 59-10-133). The legislative history for the amendment includes a Senate Floor Debate from the 2005 General Legislative Session that suggests the legislators supported the amendment for multiple purposes; they wanted to assist adoptive parents and get children into better homes, etc. (The Senate Floor Debate occurred on Day 15 (January 31, 2005) and is available at http://le.utah.gov/asp/audio/index.asp?Sess=2005GS&Day=0&Bill=SB0125&House=S.)

statute for that agreement also does not address tax credits. No statute was found for an interstate agreement granting reciprocity for the Credit at issue.

In conclusion, the Taxpayer has not shown that she adopted CHILD in this state, so she also has not shown that the Division's assessment is incorrect. Therefore, the assessment should be sustained.

Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's assessment in its entirety. The Taxpayers' appeal is denied. 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 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

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

DATED this _____ day of _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

Michael J. Cragun
Commissioner

DISSENT

I respectfully dissent. My colleagues are arguing semantics.

The foster child in question was born DATE. Sometime between six and nine months the child was removed from his birth mother and placed with the taxpayer. The child weighed only (#) pounds[4]. The taxpayer testified the child had SYNDROME[5.] The taxpayer testified the child was placed with her because of her unique skills. After the taxpayer had helped the baby start to gain weight, the court ruled the birthmother deserved another chance; however the birthmother continued not to feed the child properly and the child was again removed from the birthmother and placed in (X) other foster homes, before CHILD was placed back in the taxpayer's home for final placement in DATE.

The taxpayer moved with her family and the foster child to Utah in late 2005. The taxpayer testified that at that time she asked if her foster son should be transferred to the Utah Foster Care system (located in the Division of Family and Child Services (DCFS) in the Utah Department of Human Services). The taxpayer testified she was told that was not necessary because anything the STATE Courts determined would be recognized in Utah. The taxpayer testified she had two social workers, one in STATE and one in Utah. The STATE social worker was her contact 80% of the time, but the taxpayer still had contact with the Utah DCFS social worker 20% of the time for which STATE paid.

The birthmother's rights were terminated DATE. The adoption of the child by the taxpayer was made final on a telephone conference call with and by the STATE Court on DATE. The taxpayer testified the Utah social worker was on the telephone call with the STATE judge when the adoption was finalized.

The STATE Department of Family Services could have transferred its custody and supervision of the child to its Utah counterpart agency, the Utah Division of Child and Family Services so the Utah agency could oversee an adoption in a Utah Court. Apparently, that would have satisfied the majority in awarding this tax credit, yet that demand would have burdened two additional State of Utah entities with financial expenditures to cover staff time and paperwork. The interpretation of the law by the Majority encourages residents of Utah to transfer foster care cases to Utah from other State's thus increasing the caseload on Utah agencies.

The actions taken by the STATE Court were an admission by the Court that the adoptive parents and child were in reality residents of Utah. By conducting a telephone conference call to finalize the adoption, the STATE court was acknowledging it would be wrong and inconvenient to drag the family back to STATE to conclude the three-year long foster home and adoption process. The Judge applied a practical analysis

[4] Many babies weigh (#) pounds at birth.
[5] I take administrative notice of the National Institutes of Health website for a description of SYNDROME. "SYNDROME is a genetic disorder that causes (WORDS REMOVED). (PORTION REMOVED).

concluding it was in the best interests of the adoptive parents and child to finalize the adoption as soon as possible so the family could continue its lives together in Utah.

If the taxpayer had insisted on her case being transferred in full to the Utah Foster Care system so that the child was a Utah Foster Care Child and insisted it be done by a Utah Court, there would be no question to her claiming the credit. As it is, the taxpayer is being unduly punished for being advised Utah would recognize any action of a STATE Court.

It is a legislative policy of this state to promote the adoption of special needs children by families willing to provide the additional care and comfort these children often need. This wisdom is grounded in the substantiated rationale that a permanent loving family environment is much better than passing a child from foster home to foster home, which is unfortunately what happened to this foster child. This one-time $$$$$ tax credit will cover only a fraction of the costs this family will incur over the life-time of the child, but it is at least recognition of the generosity and assistance this adoptive family is providing society.

This adoptive family should not be punished because the STATE Court did not insist the adoption process be moved to Utah, an action, which often times happens. The STATE Court took a practical viewpoint that did not demand and require more time and paperwork. This adoptive family should not be punished because the STATE Court considered what was in the best interests of the child that being a quick and finalized adoption to bring closure to a (#)-year long foster process.

It is not clear from the legislative record that the Legislature intended to exclude the adoption of special needs children from other states. It is possible the question was never raised during the legislative debate. If the Legislature did intend to deny a credit for adoption of special needs children from other states, it would be better for this to be clarified in law.

It is an often-cited principle to be cautious when interpreting tax statutes against taxpayers. As the Utah Supreme Court wrote in *County Board of Equalization of Wasatch County v. Utah State Tax Commission*, 944 P.2d 370, 373-74 (Utah 1997):

> It is an established rule in the construction of tax statutes that if any doubt exists as to the meaning of the statute, "our practice is construe taxation statutes liberally in favor of the taxpayer, leaving it to the legislature to clarify an intent to be more restrictive if such intent exists." *Salt Lake County v. State Tax Comm'n*, 779 P.2d 1131, 1132 (Utah 1989).

In this case, I would apply that principle.

It is undisputed the taxpayers were residents of this state when the adoption of their child was finalized. It is undisputed the taxpayers adopted a special needs child. Utah Code Annotated section 59-10-

1104 (2006) allows a credit for "(a) adoptions for which a court issues an order granting the adoption and (b) the taxable year during which a court issues an order granting the adoption." Both Utah and STATE recognized the family's residency in Utah at the time of the adoption. Therefore the Tax Commission should recognize the taxpayers as claimants whose adoption qualifies for the refundable tax credit against taxes otherwise due.

D'Arcy Dixon Pignanelli
Commissioner

Notice: If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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