10-2068
INCOME TAX
TAX YEAR: 2007
SIGNED: 08-09-2011

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 10-2068 Account No. ##### Tax Type: Income Tax Tax Years: 2007 Judge: Nielson-Larios

Presiding:
Aimee Nielson-Larios, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
RESPONDENT REP. 2, 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 December 6, 2010. On June 10, 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
2007	$$$$$	$$$$$	$$$$$	$$$$$

Interest has continued to accrue. The audit tax is based on (1) the Division's denial of the special needs adoption credit (the "Credit") of $$$$$ for two children and (2) its denial of the one-half of federal tax deduction of $$$$$. The parties agree that the Division correctly denied the one-half of federal tax deduction. However, the parties disagree on the disallowance of the Credit, particularly 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) (2007). The parties provided 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

2007. However, if the Division's interpretation is correct, then the Taxpayers would not be entitled to the Credit for 2007.

APPLICABLE LAW

Utah Code § 59-10-1104 (2007)[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.)

Utah Code § 59-10-1102(1) (2007) defines claimant as follows:

(a) Except as provided in Subsection (1)(b) or Subsection 59-10-1103(1)(a), **"claimant" means a resident or nonresident person.**
(b) "Claimant" does not include an estate or trust.

(Emphasis added.)

Utah Code § 78-30-8.6(1)-(2) (2007) (current version at § 78B-6-142) states:

(1) Except as otherwise provided by federal law, **an adoption order rendered to a resident of this state that is made by a foreign country shall be recognized by the courts of this state and enforced as if the order were rendered by a court in this state.**
(2) A person who adopts a child in a foreign country may register the order in this state. A petition for registration of a foreign adoption order may be combined with a petition for a name change. If the court finds that the foreign adoption order meets the requirements of Subsection (1), the court shall order the state registrar to:
  (a) file the order pursuant to Section 78-30-9; and

[1] This Order cites to and applies the Utah Individual Income Tax Act that was in effect for the 2007 tax year, the year at issue in this appeal.

(b) file a certificate of birth for the child pursuant to Section 26-2-28.

(Emphasis added.)

DISCUSSION

In November 2007, the Taxpayer, who was a resident of Utah, adopted two siblings from COUNTRY, with a COUNTRY court issuing the adoption decree.[2]

The Taxpayer argues that under the plain language of Utah Code §§ 59-10-1104(2) and 78-30-8.6(1), he is a claimant who adopted the children "in this state" as required by § 59-10-1104(2). Thus, he asserts, the Commission should not review the legislative history of §§ 59-10-1104(2) and 78-30-8.6(1). He claims that § 78-30-8.6(1) is unambiguous when it states "an adoption order rendered to a resident of this state that is made by a foreign country shall be **recognized** by the courts of this state **and enforced** as if the order were rendered by a court **in this state**" (emphasis added). The Taxpayer stressed that both §§ 59-10-1104(2) and 78-30-8.6(1) use the same language of "in this state." Additionally, the Taxpayer contends that the adoption of his children meets the requirements of § 78-30-8.6(1) so the COUNTRY adoption order must be "recognized" and "enforced" just as if the order were rendered by a court in Utah; thus, he meets the requirement of § 59-10-1104(2) and is "a claimant who adopts in this state."

The Division responds that the language of §§ 59-10-1104(2) and 78-30-8.6(1) is ambiguous and the legislative history should be considered. The Division further contends that the legislative history does not support the Taxpayer's interpretation of "a claimant who adopts in this state."

The Commission issued on November 17, 2010 a decision in Appeal No. 10-0486 interpreting the language of "a claimant who adopts in this state."[3] For that appeal, the Commission ruled in a 3-1 decision that a taxpayer was not "a claimant who adopts in this state" when a foreign court issued an adoption order, granting the adoptions. For that decision, the Commission considered § 78-30-8.6 and the majority of the Commissioners found that the taxpayer was not "a claimant [who] adopts in this state" even when the taxpayer met the requirements of § 78-30-8.6 for a foreign adoption. However for this prior decision, the parties did not argue in detail the legislative intent of §§ 78-30-8.6(1)[4] and 59-10-1104(2)[5].

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[2] The Taxpayer recalled that the adoptions were registered in Utah through the Fourth District Court in 2008, which is after the year at issue. The possible effect of a 2008 registration order was not analyzed because the Taxpayer cannot qualify for a Credit in 2007 based on a court order issued in 2008. *See* § 59-10-1104(2)(b) (A Credit must be taken in the same tax year as the adoption order was issued).

[3] A redacted copy of Appeal No. 10-0486 is attached to this Order.

[4] Section 78-30-8.6 (current version at § 78B-6-142), part of the Judicial Code, was enacted in 2004 and renumbered

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in 2008. Legislative history for the enactment includes a House Floor Debate from the 2004 General Legislative Session that suggests the legislators wanted to ease the extra administrative burdens of adoptive parents who adopted children from a foreign country. (The House Floor Debate occurred on Day 16 (February 3, 2004) and is available at http://www.le.state.ut.us/asp/audio/index.asp?Sess=2004GS&Bill=HB0200S01&Day=0&House=H. Additionally, a Senate Floor Debate from the 2004 General Legislative Session, Day 31 (February 18, 2004), is also available and accessible at http://www.le.state.ut.us/asp/audio/index.asp?Sess=2004GS&Bill=HB0200S01&Day=0&House=S.) The House debate does not mention § 59-10-1104 (prior version at § 59-10-133), which did not have the "in this state" language at that time.

[5] Section 59-10-1104 (prior version at § 59-10-133), part of the Tax Code, was enacted in 2001 and amended in 2005. (Section 59-10-1104 was also renumbered and amended in 2006; however the 2006 amendment, changing "taxpayer" to "claimant," appears to have been part of many adjustments made to the Individual Income Tax Act for general clarification purposes. *See* the 2006 Floor Debates found at http://www.le.state.ut.us/asp/audio/index.asp?Sess=2006GS&Day=0&Bill=SB0037&House=S and http://www.le.state.ut.us/asp/audio/index.asp?Sess=2006GS&Bill=SB0037&Day=0&House=H.) The legislative history for the enactment includes a Senate Floor Debate from the 2001 General Legislative Session that suggests the legislators wanted the new law to serve multiple purposes including saving the state money, assisting adoptive parents, and getting special needs children into better homes. (The Senate Floor Debate occurred on Day 33 (February 16, 2001) and is available at http://le.utah.gov/asp/audio/index.asp?Sess=2001GS&Day=0&Bill=SB0071&House=S. Additionally, a House Floor Debate from the 2001 General Legislative Session, Day 39 (February 22, 2001) is also available and accessible at http://www.le.state.ut.us/asp/audio/index.asp?Sess=2001GS&Day=0&Bill=SB0071S01&House=H.) In 2001, the bill did not include the "in this state" language; instead, it required that a child to 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). Also, the Senate debate in 2001 does not, and had no reason to, mention § 78-30-8.6 (foreign adoptions) because § 78-30-8.6 was enacted in 2004, after the enactment of § 59-10-1104 in 2001.

The 2005 amendment to § 59-10-1104 (prior version at § 59-10-133) removed 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 . . ." 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, just as they had with the statute's original enactment in 2001; the legislators 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. Senate Floor debates for Days 16 and 17 (February 1-2, 2005) are also available at that site. Additionally, a House Floor Debate from the 2005 General Legislative Session, Day 31 (February 16, 2005) is available and accessible at http://le.utah.gov/asp/audio/index.asp?Sess=2005GS&Bill=SB0125&Day=0&House=H.) However, in the 2005 Senate debate, the legislators did not focus on saving the state money, although they were concerned about the possible costs of extending the Credit to more taxpayers. Also in the Senate debate, Senator Hellewell briefly explained that the "in this state" language was added while the bill was in committee, to address a Senator Hellewell's concerns about an out-of-state person claiming the Credit. (*See* Senate Floor Debate occurring on Day 15 (January 31, 2005) at 1:04-1:38. The clip is available at http://le.utah.gov/asp/audio/index.asp?Sess=2005GS&Day=0&Bill=SB0125 &House=S.) Senator Hellewell then explained that the bill was amended to require the adoptions to occur in Utah for a taxpayer to qualify for the Credit. Senator Hellewell did not state that the amended bill required a taxpayer to be in the state to qualify for the Credit. Furthermore, the Minutes of the Senate Revenue and Taxation Standing Committee from January 25, 2005 also do not indicate the amended bill prevented out-of-state claimants, instead the minutes only state the amended bill "requires that an adoption occur in this state for a taxpayer to be eligible for a tax credit." (The Minutes of the Senate Revenue and Taxation Standing Committee from January 25, 2005 are available at

The Taxpayer argues that "in this state" does not apply to the geographic location of the court but instead to a taxpayer's (adoptive parent's) residency status. He relies on a comment by Senator Hellewell during a discussion about the 2005 amendment to § 59-10-1104 (prior version at § 59-10-133) and also on Utah Code § 78B-6-105. Notably, though, while Senator Hellewell had stated that the 2005 bill was amended in committee because of concerns that an out-of-state person could claim the Credit, he also only stated that the amended bill added the requirement that the adoptions to occur in Utah, not that the taxpayer be a resident of Utah.[6]

The Division disagrees with the Taxpayer's interpretation of the legislative history. The Division asserts that "adopts in this state" means adjudicated in Utah and that the legislative history shows § 59-10-1104 was enacted for fiscal reasons, to save the state money, and that interpreting "adopts in this state" to include foreign adoptions would not achieve this goal. Consistent with the Division's argument, § 59-10-1104 (prior version at § 59-10-133), as originally enacted, did limit the Credit to children who were in the permanent custody of the Utah Division of Child and Family Services ("Utah DCFS") before adoption.[7] However, while saving money was one of the goals of the enactment, the statutory and legislative histories indicate the legislators had other goals as well. In 2005, the Legislature amended the Credit, extending it to adoptions of children with special needs who are not in the permanent custody of the State of Utah. This action does not appear to support a goal of saving Utah money. Additionally, the Senate Floor debates for the enactment and amendment of § 59-10-1104 (prior version at § 59-10-133) suggest that the Legislature also had the goals of assisting adoptive parents and getting special needs children into better homes.[8]

The Division also emphasizes that §§ 78-30-8.6(1) and 59-10-1104 are located in different codes, namely the Judicial Code and the Tax Code, respectively. The Division argues that the legislative history of § 78-30-8.6 shows that statute was enacted to simplify the adoption process for families, not to extend to them the same benefits offered to families who adopt children in Utah. Lastly, the Division asserts that the general

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http://www.le.state.ut.us/~2005/htmdoc/sbillhtm/sb0125.htm.) Lastly, in the Senate debate, no one mentioned or discussed § 78-30-8.6 (foreign adoptions), enacted during the prior year, even though § 78-30-8.6(1) also contained the language of "in this state."

[6] *See* Senate Floor Debate occurring on Day 15 (January 31, 2005) at 1:04-1:38. The clip is available at http://le.utah.gov/asp/audio/index.asp?Sess=2005GS&Day=0&Bill=SB0125&House=S.

[7] *See* § 59-10-133 (2004)

[8] *See* Senate Floor Debate occurring on Day 33 (February 16, 2001), available at http://le.utah.gov/asp/audio/index.asp?Sess=2001GS&Day=0&Bill=SB0071&House=S and Senate Floor Debate occurring on Day 15 (January 31, 2005), available at http://le.utah.gov/asp/audio/index.asp?Sess=2005GS&Day=0&Bill=SB0125&House=S.

principles of statutory construction require statutes for tax credits and exemptions to be interpreted narrowly, against a taxpayer; and for this proposition, the Division cites *Parson Asphalt*.[9]

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 COUNTRY and was given effect for Utah purposes under our law, as required by § 78-30-8.6. Situations similar to foreign adoptions often occur. With other states, there is a constitutional requirement that Utah give other states' laws "full faith and credit." Thus, a marriage in STATE 1 is effective in Utah. However, that does not mean the marriage occurred "in this state." For this appeal, the adoption was an adoption in COUNTRY. While § 78-30-8.6 requires Utah courts to recognize and enforce the COUNTRY order as if it were rendered by a court in this state, this direction falls short of directing that the COUNTRY adoption should be treated as a Utah adoption for tax purposes.

Tax credits are to be narrowly construed. To the extent the legislative history is instructive, it is noteworthy that the Credit was originally limited to adoptions of children from the permanent custody of the Utah DCFS and was later expanded to include adoptions of other children not in Utah custody. 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 COUNTRY, of any other foreign country, 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.

Thus, there is no reason for the Commission to depart from its prior interpretation of "a claimant who adopts in this state," found in the initial hearing decision for Appeal No. 10-0486. A taxpayer who adopts children through an adoption order issued by a foreign court and meets § 78-30-8.6(1) has still not shown himself or herself to be "a claimant who adopts in this state" for purposes of the Credit found § 59-10-1104.

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

Aimee Nielson-Larios
Administrative Law Judge

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

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 from my colleagues.

It is not clear from the legislative record that the Legislature intended to exclude the adoption of special needs children from other states or from foreign countries. 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 and foreign countries, 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 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 adoptions of their two children were finalized. It is undisputed the Taxpayers adopted special needs children. Per UCA § 78-30-8.6(1) Utah courts must recognize and enforce the Taxpayers' foreign adoption orders as if a Utah court rendered the orders. Thus the Taxpayer's adoptions orders are the same as adoption orders rendered by a Utah court and as such the Taxpayer's adoptions are adoptions in this state. Therefore the Tax Commission should recognize the Taxpayers as claimants whose adoptions qualify for the refundable tax credit against taxes otherwise due.

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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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