

11-2461
INCOME
TAX YEAR: 2008
SIGNED: 03-26-2012
COMMISSIONERS: M. JOHNSON, M. CRAGUN
EXCUSED: R. JOHNSON
DISSENT: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 AND PETITIONER 2, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 11-2461 Account No. ##### Tax Type: Income Tax Tax Years: 2008 Judge: Nielson-Larios
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Presiding:

Aimee Nielson-Larios, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1 and PETITIONER 2, by telephone
For Respondent: RESPONDENT REP. 1, Assistant Attorney General, in person
 RESPONDENT REP. 2, Auditing Division, in person

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 February 21, 2012. On July 12, 2011, Respondent (the “Division”) issued a Notice of Deficiency and Audit Change (“Statutory Notice”) to Petitioner (the “Taxpayers”), in which the Division imposed additional tax and interest as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2008	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

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 the adoptions of ##### children.

The parties disagree on the meaning of “a claimant who **adopts in this state** . . . may claim . . . [the Credit]” (emphasis added) found in Utah Code § 59-10-1104(2) (2008). The Taxpayers adopted ##### children from COUNTRY, with a COUNTRY court issuing the adoption decree on June 24, 2008. The parties

agree that each of the ##### adopted children meet the definition found in § 59-10-1104(1) as a child who has a special need. The only area at issue is whether the Taxpayers are claimants who adopted in this state, as required in Utah Code § 59-10-1104(2). If the Taxpayers' interpretation of § 59-10-1104(2) is correct, then the Taxpayers would be entitled to the Credit for 2008. However, if the Division's interpretation is correct, then the Taxpayers would not be entitled to the Credit for 2008.

APPLICABLE LAW

Utah Code § 59-10-1104 (2008)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) (2008) 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.

Utah Code § 78B-6-142 (2008) (prior version at 78-30-8.6(1)-(2)) 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 78B-6-137; and

¹ This Order cites to and applies the Utah Individual Income Tax Act that was in effect for the 2008 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

The Taxpayers explained that they were residents of Utah when the adoptions were finalized. Based on this residency, they assert that they qualify as claimants who adopted in this state for purposes of the Credit. The Taxpayers referred to § 78-30-8.6 (2007) (current version at § 78B-6-142) and explained that § 78-30-8.6 requires Utah courts to recognize adoption orders from courts of foreign countries the same way as Utah courts recognize the adoption orders issued by Utah courts.

The Taxpayers assert that for § 78-30-8.6 the Legislature intended to do more than just prevent parents who adopt children outside of the state from going through the red tape twice to get Utah birth certificates. Likewise, the Taxpayers believe that the Division's interpretation of the Legislative intent is too narrow.

At the hearing, the Division agreed that the Legislative intent for the enactment of § 78-30-8.6 was more than just to save people from red tape, but the Division asserted the second reason was to follow the logic of the full faith and credit clause found in Article IV, § 1 of the U.S. Constitution, which states:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

The Division essentially argues that, for the Credit, a Utah court issuing an adoption order is not the same as Utah recognizing another state's or country's adoption order under § 78-30-8.6 or the full faith and credit clause. The Division contends that taxpayers adopt in Utah only when a Utah court issues an adoption order finalizing the adoption and not when Utah recognizes an adoption order issued by another state's or country's court, even if the taxpayers were residents of Utah at the time of the adoption.

The Taxpayers and the Division also disagreed on the Legislative intent behind the enactment and subsequent amendment of the Credit, found in § 59-10-1104. The Taxpayers assert that, based on the Legislative history, the Legislature intended to meet more policies than just to save the state money by getting children off the state rolls, the policy emphasized by the Division. The Taxpayers argued that the Division's interpretation, which emphasized this policy, is too narrow. The Taxpayers explained that the Legislature also wanted to get children into better homes and assist families with the significant financial burdens they incur when they support these children. The Taxpayers stated that no Legislative intent showed the Legislature wanted to exclude Utah families from receiving the Credit for foreign adoptions. Instead, the Legislature did not specifically discuss foreign adoptions when they enacted and later amended the Credit. The Taxpayers

contend that allowing families to receive the Credit for foreign adoptions would further to Legislative purposes of getting special needs children into better homes and supporting the families who adopt these children.

The Taxpayers assert that because the statutory language and the Legislative history of the Credit are unclear, the Commission should broadly interpret “a claimant who adopts in this state” in favor of allowing the Credit. They believe a broad interpretation is appropriate based on the Dissent in the Initial Hearing Order for Appeal No. 10-2068, which states:

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).

The Division, on the other hand, believes that the Credit should be interpreted narrowly and limited to children whose adoptions are finalized by a court in this state because such adoptions further the Legislative goal of saving the state money.

Lastly, the Taxpayers stated that they relied on COMPANY 1 when they took the Credit and they believe COMPANY 1’s interpretation of “adopts in this state” matches their interpretation since COMPANY 1 calculated the Credit for the Taxpayers’ return. In response, the Division noted that only interest was assessed in this case, not penalties.

Through prior decisions, the Commission has already interpreted the Credit’s statutory language, finding that “a claimant adopts in this state” is met only when a Utah court issues the order finalizing the adoption. In Appeal No. 10-0486, through a 3-1 decision, the Commission denied the Credit for taxpayers who adopted children from a foreign country because the adoptions were finalized in the foreign country, not in Utah.² In Appeal No. 10-1311, through a 3-1 decision, the Commission denied the Credit for taxpayers who adopted a child from another state because the adoption was finalized by an order issued by a court in the other state, even though the taxpayers and the child were residing in Utah at the time the adoption was finalized.³ In Appeal No. 10-2068, the Commission considered the Legislative history of §§ 78-30-8.6 and 59-10-1104 in detail and again, in a 3-1 decision, denied the Credit for taxpayers who adopted children from another country.⁴ In the majority decision for Appeal No. 10-2068, the Commission stated:

² The Commission’s decision for Appeal No. 10-0486 is available at <http://tax.utah.gov/commission/decision/10-0486.intsanqc.pdf>.

³ The Commission’s decision for Appeal No. 10-1311 is available at <http://tax.utah.gov/commission/decision/10-1311.intsanqc.pdf>.

⁴ The Commission’s decision for Appeal No. 10-2068 is available at <http://tax.utah.gov/commission/decision/10-2068.intsanqc.pdf>.

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.

For the current appeal, the arguments presented by the parties have already been heard and considered by the Commission through the prior appeals discussed above. The prior decisions show that, for purposes of the Credit, to adopt in this state the adoption order must be issued by a Utah court. For this appeal, because the adoptions were finalized in COUNTRY by a COUNTRY court, the adoptions were not in this state for purposes of the Credit and the taxpayers do not qualify for the Credit.

The Taxpayer’s use of COMPANY 1 software does not change this conclusion. If penalties had been assessed, the use of the software might have been a reason supporting the waiver of such penalties; however, no penalties were assessed in this case and reliance on tax software is not a reasonable cause for waiving interest under Tax Commission Publication 17.⁵

In conclusion, the Taxpayers have not shown that they adopted the children in this state because the adoptions were finalized in COUNTRY. Therefore, the Division’s assessment should be sustained.

[2068.intsanqc.pdf](#).

⁵ Tax Commission Publication 17 is available at <http://tax.utah.gov/forms/pubs/pub-17.pdf>.

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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

Michael J. Cragun
Commissioner

COMMISSIONER DIXON DISSENTS

I respectfully dissent from my colleagues. My writings on this special needs adoption tax credit are not new. As I wrote in Appeal 10-0486, I would find in favor of the Petitioner because I hold the Taxpayer is "a claimant who adopt[ed] **in** this state" based on the language found in the Judicial Code, Utah Code Annotated (UCA) **78-30-8.6(1)-(2) Adoption order from foreign country**, which 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. (Emphasis added.)

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

It is undisputed the Taxpayers were residents of this state when the adoptions of their ##### 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 which were registered in this state as if a Utah court rendered the orders. Thus the Taxpayer's adoption orders are the same as adoption orders rendered by a Utah court and as such the Taxpayer's adoptions are adoptions in this state.

As I have written before, 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.

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.