11-2712
INCOME TAX
TAX YEAR: 2008
SIGNED: 09-28-2012
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN
DISSENT: D .DIXON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 11-2712 Account No. ##### Tax Type: Income Tax Tax Years: 2008 Judge: Nielson-Larios

GUIDING DECISION

Presiding:
Aimee Nielson-Larios, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER 1 and PETITIONER 2, in person
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 March 27, 2012. On June 16, 2011, Respondent ("Division") issued a Notice of Deficiency and Audit Change ("Statutory Notice") to Petitioners ("Taxpayers"), in which the Division imposed additional tax and interest as follows:

Year	Tax	Penalties	Interest	Total
2008	$$$$$	$$$$$	$$$$$	$$$$$

Interest has continued to accrue. The audit tax is based on the Division's denial of the special needs adoption credit ("Credit") of $$$$$ for the adoption of a child from COUNTRY 1 and the denial of a medical savings account credit of $$$$$. At the Initial Hearing, the Taxpayers challenged the denial of the special needs adoption credit but did not challenge the denial of the medical savings account credit.

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 one child from COUNTRY 1 during the 2008 calendar year. The parties agree that this child meets the definition found in § 59-10-1104(1) of 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, 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-6-103(2) (2008) defines "adoption" as follows:

> "Adoption" means the judicial act which creates the relationship of parent and child where it did not previously exist and which permanently deprives a birth parent of parental rights.

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**

[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.

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

Utah Code § 78B-6-137 (2008) (prior version at § 78-30-9(1)) states:

> The court shall examine each person appearing before it in accordance with this chapter, separately, and, if satisfied that the interests of the child will be promoted by the adoption, it shall enter **a final decree of adoption** declaring that the child is adopted by the adoptive parent or parents and shall be regarded and treated in all respects as the child of the adoptive parent or parents.
>
> (Emphasis added.)

The Commission has been granted the discretion to waive interest. Utah Code § 59-1-401(13) provides, "Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the . . . interest imposed under this part."

DISCUSSION

The Taxpayers were residents of Utah when the adoption was finalized in 2008 through the COUNTRY 1 legal process. Based on their Utah residency, they assert they qualify as claimants who adopted in this state for purposes of the Credit. The Taxpayers referred to § 78B-6-142 and explained that § 78B-6-142 requires Utah courts to recognize adoption orders from foreign countries the same way as Utah courts recognize adoption orders issued by Utah courts. The Taxpayers registered the adoption in 2009, signing their application on February 19, 2009 and receiving a Court Ordered Delayed Birth Certificate issued on April 15, 2009 with an April 15, 2009 Date of Registration.

A. Based on Case Law, § 59-10-1104, the Statute Providing the Credit, Should be Construed Against the Taxpayer Because This Statute Provides a Credit Rather Than Imposes a Tax.

The Taxpayers assert that any ambiguity in the tax statutes and legislative history should be construed in their favor. For this proposition, they cited to *County Bd. of Equalization of Wasatch County v. Utah State Tax Comm'n*, 944 P.2d 370 (Utah 1997), *Industrial Communications, Inc. v. Utah State Tax Comm'n*, 12 P.3d 87 (Utah 2000), and the Tax Commission's Private Letter Ruling 96-011. On the other hand, the Division asserts that because a tax credit is at issue, the statute providing the Credit should be narrowly construed in favor of the State. In *County Bd. of Equalization of Wasatch County*, 944 P.2d at 373-74, the Utah Supreme Court recognized the rule that tax exemptions are narrowly construed, in favor of taxation; however in that case, the Court also explained that a narrow construction was not appropriate because a tax

imposition statute, not a tax exemption statute, was involved. In *Parson Asphalt v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980), the Utah Supreme Court similarly discussed how exemptions are construed against a taxpayer, when the Court stated,

> In considering the application of those statutory provisions to this controversy, we note our agreement with certain principles advocated by the Commission: that taxes should be imposed equally and without discrimination so that everyone bears his fair share of the tax burden. [4] **Even though taxing statutes should generally be construed favorable to the taxpayer and strictly against the taxing authority, [5] the reverse is true of exemptions. Statutes which provide for exemptions should be strictly construed, [6]** and one who so claims has the burden of showing his entitlement to the exemption. [7] Notwithstanding the foregoing, there is also to be considered the over-arching principle, applicable to all statutes, that they should be construed and applied in accordance with the intent of the Legislature and the purpose sought to be accomplished. [8]
>
> (Emphasis added.)

Industrial Communications and Private Letter Ruling 96-011, both of which were cited by the Taxpayer, only involve statutes imposing taxes; thus, they do not instruct how a person should interpret a statute providing an exemption or credit. For the case at hand, because § 59-10-1104 provides a credit rather than imposes a tax, the statute must be construed strictly against the Taxpayers, based on the case law discussed above.

B. The Commission Previously Considered Legislative Intent and Concluded that to Qualify for the Credit, the Adoption Order Must Have Been Issued by a Utah Court; the Evidence Submitted for This Case Does Not Change that Conclusion.

The Taxpayers argue that the Utah Legislature did not intend to exclude foreign adoptions from the Credit. To show legislative intent, the Taxpayers provided three documents, which the Commission has not considered in its prior decisions about the Credit.[2] The Taxpayers' first document is titled "Special Needs Adoption Bill to Become Law" issued by the office of Attorney General Mark Shurtleff. This document suggests that the Credit was enacted "to help parents handle the financial stress of adopting disabled children." However, this document is not part of the official legislative history, available on the Utah Legislature's website; it was issued after the bill became law; and the Attorney General's comments are not comments by a Utah legislator. The second document is an email sent on March 8, 2012 from Rep. Mike Morley to the Taxpayers. In that email, Rep. Morley wrote, "[A]lthough I was the primary sponsor [of the 2005 amendment to the Credit,] it's my understanding that it was not to exclude foreign adoption." However, Rep. Morley's email is not part of the official legislative history and also was sent in 2012, long after the amendment to the Credit was enacted in 2005. The third document is an email dated December 10, 2004 from PERSON 2, (TITLE LISTED) of DHS, to PERSON 1, Associate General Counsel. PERSON 2 wrote:

[2]Those prior decisions are Appeal No. 10-0486, available at http://tax.utah.gov/commission/decision/10-0486.intsanqc.pdf, Appeal No. 10-1311, available at http://tax.utah.gov/commission/decision/10-1311.intsanqc.pdf, and

> The modifications suggested will have no impact on STATE OF UTAH DEPARTMENT as proposed since children in state custody would still meet the criteria outlined. I **assume what the Senator wants to do** is broaden who can benefit from this tax credit. The original bill in 2000 was sponsored by Sen. Carlene Walker and she originally had it broader as well but scaled it back due to the fiscal note that was placed on the bill reflecting loss of tax revenue.
>
> (Emphasis added.)

However, PERSON 2 is not a legislator and she only assumed, generally, what Sen. Hellewell wanted the 2005 amendment to the Credit to do.

Additionally for legislative intent, the Taxpayers also explained that PERSON 3 of the Utah Adoption Council and Rep. Morley, who were not present at the Initial Hearing, were willing to testify on the Taxpayers' behalf at a Formal Hearing.

The Division presented a different perspective on the legislative intent, emphasizing the Legislature's monetary considerations when it enacted the Credit. The Division explained that the Credit was originally enacted to save the state money by encouraging people to adopt children who were in state custody before their adoption. The Taxpayers disagreed with the Division's emphasis; they said the legislative history for the 2005 amendment to the Credit showed no fiscal impact.

Previously in Appeal No. 10-2068, the Commission considered the legislative history of §§ 78-30-8.6 and 59-10-1104 in detail and in a 3-1 decision denied the Credit for taxpayers who adopted children from another country. In the majority decision for Appeal No. 10-2068, the Commission stated:

> 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

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Appeal No. 10-2068, available at http://tax.utah.gov/commission/decision/10-2068.intsanqc.pdf.

> 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 Taxpayers' evidence is not enough to show that the Commission's current interpretation of § 59-10-1104 is incorrect. The Order for Appeal No. 10-2068, quoted above, shows 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 adoption was finalized in COUNTRY 1, the adoption was not in this state for purposes of the Credit and the Taxpayers do not qualify for the Credit.

C. The Utah Order Issued in 2009 Registering the Adoption Does Not Support the Taxpayers Receiving the Credit for 2008.

The Taxpayers explained that they went through a re-adoption process in Utah when they registered the foreign adoption order in Utah. They said that at the end of the process they received a Utah court order and a delayed birth certificate. They asserted that even though the re-adoption process is simpler because of § 78B-6-142(2), it is still an adoption process. The Taxpayers submitted a copy of their Petition for Registration of an Adoption Order from a Foreign Country, which included a copy of a drafted, unsigned Order of Registration of Foreign Adoption. The term "re-adoption" was not used in any of the language of these documents.

The Division asserted that the adoption concluded in one place, COUNTRY 1, with an order of a court or a similar decree. The Division contends that the Utah Judicial Code provides for recognition of other courts' adoption orders.

The registration of an adoption order from a foreign country is not an adoption for Utah individual income tax purposes. Adoption is defined in § 78B-6-103(2). When that definition for adoption, found in § 78B-6-103(2), is applied to an adoption from a foreign country, the conclusion is that "the judicial act which creates the relationship of parent and child where it did not previously exist and which permanently deprives a birth parent of parental rights" occurred in the foreign country when that country issued the adoption order. Taxpayers do not adopt in this state for purposes of the Credit when they petition and receive orders of registration of foreign adoptions. In such cases, Utah courts do not create relationships of parent and child where they did not previously exist or permanently deprive birth parents of parental rights. Instead, these relationship changes previously occurred, through the foreign adoption orders alone.

Consideration of § 78B-6-137 as referenced in § 78B-6-142(2), does not change the above conclusion. Section 78B-6-142(2) references § 78B-6-137 as follows:

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

Section 78B-6-137 places requirements on a Utah court before it can issue a final decree of adoption, as follows:

> The court shall **examine each person appearing before it** in accordance with this chapter, separately, and, **if satisfied that the interests of the child will be promoted by the adoption,** it shall enter **a final decree of adoption** declaring that the child is adopted by the adoptive parent or parents and shall be regarded and treated in all respects as the child of the adoptive parent or parents.
>
> (Emphasis added.)

Under § 78B-6-142, for an order of registration a Utah court must find that the foreign adoption order was rendered to a resident of this state and that the order was made by a foreign country. Section 78B-6-142 does require more; a Utah court is not required to examine each person appearing before it or be satisfied that the interests of the child will be promoted before entering an order of registration, as it must do for a final decree of adoption under § 78B-6-137. Furthermore, § 78B-6-142 only references § 78B-6-137 for purpose filing the order of registration. Although an order of registration is filed the same as a final decree of adoption, this filing requirement does not change an order of registration to a final decree of adoption.

D. The Taxpayers' Reliance on the Credit when Deciding to Adopt Does Not Qualify Them for the Credit.

The Taxpayers explained that they researched and believed they qualified for the Credit before they adopted the child. They said they considered the $1,000 state tax credit and the $11,000 federal tax credit before deciding to adopt and that they used the credits to pay part of the $$$$$ cost of the adoption. They said the state credit, in particular, was used to TRAVEL to COUNTRY 1 and bring the child home. PETITIONER 2 said she talked with EMPLOYEE 1 in the Auditing Division before claiming the Credit and EMPLOYEE 1 had given her a basic explanation of the Credit. PETITIONER 2 said EMPLOYEE 1 knew PETITIONER 2 was adopting an older child from COUNTRY 1, and the Division did not dispute this assertion. PETITIONER 2 submitted an email from EMPLOYEE 1 dated January 2, 2007 which states in part, "If you are adopting a child with special needs, you can take a dollar for dollar credit up to $1,000 . . ."

The Division explained that policy is determined by the Commission, not by State Tax Commission employees. The Division said employees can give their interpretation or opinions, but policy is set by Commission rules, Commission orders, statutes, and higher courts' orders.

The Taxpayers did not present a legal basis for a decision allowing them the Credit, even if they decided to adopt because they thought they qualified for the Credit.

However, the conversations with EMPLOYEE 1 are adequate for the Commission to waive the interest assessed. Notably, EMPLOYEE 1 knew PETITIONER 2 was adopting a special needs child from COUNTRY 1 when EMPLOYEE 1 gave PETITIONER 2 a basic explanation of the Credit around January 2007.

E. Conclusion

In summary, the Taxpayers have not shown that they adopted the child in this state because the adoption was finalized in COUNTRY 1 in 2008. However, the Taxpayers have shown reasonable cause for a waiver of interest.

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Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's assessment of tax but waives the interest assessed. 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

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.

COMMISSIONER DIXON DISSENTS and CONCURS IN PART

I respectfully dissent from my colleagues in the reading and intent of the law. I would find in favor of the Taxpayer. I concur in the waiving of interest imposed.

In three previous orders 10-0486, 10-2068 and 10-1311[3] involving special needs adoption tax credits, I found in favor of the Taxpayer. While a tax exemption is to be construed against a taxpayer if any ambiguity exists, I find no ambiguity in the intent, meaning and application of the applicable statutes in this appeal.

There are three main supporting reasons why the Order should be in favor of the Taxpayer. These three supporting reasons are as follows:

1. The intent of the Utah State Legislature
2. The required Utah residency of adopting parent(s)
3. The required recognition of adoption orders by courts in the State

Supporting Reason One (#1): The Intent of the Utah State Legislature[4]

I take administrative notice of the presentation of ***SB 125 Amendments to Individual Income Tax Credit for Special Needs Adoptions (Hellewell)*** in 2005 on the floor of the Utah State Senate, of which the audio is available on the public legislative website. Sen. Hellewell, as the sponsor of SB 125 states[5]:

> "Here in this State we do have a lot of adoptions; there's a lot of these that are special needs adoptions and these are very important adoptions because it is hard to get parents to take these special needs kids, who might have a lot of problems. In the past, the law said you could get a tax credit for adopting kids with special needs as long as those kids came from DCFS[6]. **This bill says you can also have that tax credit if you adopt these special needs kids from somebody else like LDS social services or private adoption or whatever.** This is very important because it will allow more special needs kids to be adopted. **We did have an amendment made in committee because somebody had a concern that maybe somebody from out of state would adopt a child here in the State of Utah and then be able to claim that tax credit, so we amended the bill in committee to say the adoption has to, well, it says, 'requires that the adoption occur in the state for a taxpayer to be eligible for the tax credit.[7]'"**

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[3] These can be found at http://tax.utah.gov/commission/decisions

[4] I hold the account of the legislative history as related in tax commission order 10-2068 is incomplete.

[5] As transcribed by Commissioner Dixon

[6] DCFS is understood to mean the Division of Child and Family Services in the Depatement of Human Services

[7] The Senator's reading was not exact to the amendment language on lines 13a and 13b of the bill which reads "*Requires that an adoption occur in this state for a taxpayer to be eligible for a tax credit."* To be consistent with the amendment on lines 13a and 13b, line 41 was amended and line 41a added to read, "a taxpayer who adopts *IN THIS STATE* a child who has a special need may claim…"
See http://le.utah.gov/~2005/bills/sbillamd/sb0125.htm.

At no time in the Senate debate was it stated or inferred that special needs adoptions does not include foreign adoptions or adoptions from outside the state, or that private adoptions does not include foreign adoptions or adoptions from outside the state. Nor was there any discussion on potential costs to the State of either of these types of special needs adoptions.

The only discussion on the Senate floor in terms of costs to the State was in regards to a policy question raised by Sen. Bramble as to whether step-parents should be able to claim the tax credit.[8] Upon adoption of Sen. Bramble's floor amendment allowing adopting step-parents to claim the tax credit, the sponsor of SB 125 (2005) Sen. Hellewell said, ***"any special needs adoption can be done and would receive the credit."*** And on final passage of SB125, Sen. Hellewell said the bill: *"… make(s) it so in special needs adoption it is open to anybody; not just children from DCFS."*

I also take administrative notice of the presentation of ***SB125 (2005)*** on the floor of the Utah House of Representatives, of which the audio is available on the public legislative website. Rep. Morley as the House Sponsor of SB125, in his presentation of the bill on the floor of the House of Representatives said,[9] *"…this actually makes that tax credit available to people who are adopting children who are also outside of DCFS. It's a fairness issue, it addresses special needs children. It's a good bill."*

These Legislative statements counter the Division's position that the special needs adoption credit is only for children who are in Utah and being supported by state resources until they are adopted.

Supporting Reason Two (#2): The required Utah residency of adopting parent(s)

The sponsor of SB 125 (2005), Sen. Hellewell, makes it clear through his statements on the Senate floor that the phrase "adopts in this State" refers to the parent(s) being a resident of Utah. The phrase "adopts in this State" does not imply the child(ren) must be a resident of the State of Utah before the adoption occur or that the adoption decree be issued by a Utah court. The location of the child or the place where the custodial relationship was established[10] usually determines where the adoption decree is issued, but where the adoption decree is issued is not the determining factor of whether a special needs adoption credit can be claimed. This is true for special needs adoptions from foreign countries as well as special needs adoptions from other states.

[8] On the Senate floor Senator Bramble refers to a question raised in committee as to whether a step-parent could claim the credit. In the scenario presented a parent has a special needs child, and marries, and the step-parent is willing to adopt the special needs child. In that scenario, could that step-parent claim the tax credit? Sen. Bramble advocated "yes" saying that in doing so the State is providing an incentive for a step–parent to accept responsibility for the needs of that child, stating this is a "benefit to the State and society" because there is less chance that child will need State assistance (as transcribed by Commissioner Dixon).

[9] As transcribed by Commissioner Dixon

The majority is improperly interpreting the intent of the statute. **In looking at the totality of the legislative intent, I am convinced that in Section 59-10-1104(2) the phrase "in this state" should be interpreted as a qualifier of the term "claimant," and understood as "a claimant in this state."**

Supporting Reason Three (#3): The required recognition of adoption orders by courts in the State

When a foreign adoption decree is registered with a state district court in Utah, the Court recognizes it as an adoption in this state and issues a registration order titled "ORDER OF REGISTRATION OF ADOPTION FROM FOREIGN COUNTRY." This court order is forwarded to the Registrar for the State of Utah ordering the state registrar to file the order and prepare a birth certificate. **The Utah Court does not issue another adoption decree because under 76B-6-142 a foreign adoption decree is as valid and binding as an adoption decree issued by a court in the state, and as such, an adoption in this state.** This is supported by the fact that Utah Code 78B-6-103(2) (2008) defines "adoption" as the judicial act which creates the relationship of parent and child where it did not previously exist and which permanently deprives a birth parent of parental rights. In the case before us the judicial act was the foreign adoption decree, which is recognized by Utah Courts.

In Utah, the registration[11] of a foreign adoption order is so adopting parents who are residents of Utah can obtain a U.S. birth certificate from the State of Utah for their adopted child with the adopted child(s)'s name, any name changes, and the adopting parents' names as the child's parent(s). A foreign country can issue an adoption order that is recognized and accepted as an adoption decree by Utah Courts, but a foreign country cannot issue a U.S. birth certificate. The term "registration" may be used interchangeably with the term "re-adoption" by adopting parents, but under Utah law the foreign adoption is already recognized as an adoption in this state. This counters and makes irrelevant the Division's position that *"certifications of adoptions are not themselves adoptions."*

Supporting Evidence from the Taxpayers

The Taxpayers also brought supporting evidence that the Legislature did not specifically intend to exclude adopting parents of special needs children from foreign countries from claiming the special needs adoption tax credit. The Taxpayers submitted an email from the House Sponsor of SB 125 (2005) Rep. Morley regarding his understanding of the intent of the committee amendment to SB 125, in which he wrote *"…it's my understanding that it was not to exclude foreign adoption."* This email corroborates the statements made by Rep. Morley on the House Floor, and by Sen. Hellewell, the Senate Sponsor, on the Senate Floor as to

[10] As in tax commission order 10-1311

[11] Utah Law does not require a foreign adoption order to be registered; the law reads "may" register. Again, the

the intent of the amendment to SB 125, and the full intent of SB 125 prior to its passage by the Utah State Senate.

Final Conclusions

Based on the Legislative Intent and Utah law as I understand it, I would find in favor of the Taxpayers. The Taxpayers were residents of Utah when a foreign court issued an order granting the adoption of their special needs child. The Taxpayers claimed the special needs adoption tax credit in the same taxable year the foreign court issued the order granting adoption of their special needs child. Utah courts, which I hold includes the Tax Commission as an administrative court, must recognize and enforce a foreign adoption order as if rendered by a Utah Court. Therefore and accordingly under Utah Code §59-10-1104 the Taxpayers are claimants who adopted in this state a child with special needs and should be granted the special needs adoption credit.

I appreciate the majority recognizing that all imposed interest should be waived. The email from EMPLOYEE 1 dated January 2, 2007 is prior to any orders issued from the Commission on the special needs adoption tax credit, therefore it would follow EMPLOYEE 1, as an employee of the Tax Commission, was giving information based on her interpretation and understanding of the law. While I agree with EMPLOYEE 1's interpretation of the law, the majority has deemed it incorrect. As the Taxpayers were relying on tax commission interpretation that has been deemed incorrect, based on Publication 17 http://tax.utah.gov/forms/pubs/pub-17.pdf, the interest should be waived because a Tax Commission employee gave incorrect information.

Finally, I take notice of two items in the majority opinion. First, in terms of the "full faith and credit" argument advanced by the majority in appeal 10-2068, and cited on page five of this order, a foreign adoption is registered with the State of Utah for the purposes of the child(ren) receiving a U.S. birth certificate. A marriage performed in another state is not registered in the State of Utah for the purposes of receiving a U.S. document; therefore, the full faith and credit argument is not germane. Second, I have concerns with statements of the Division that would seem to erase the distinction between the formation of tax policy by the Legislature and Governor, and the interpretative and administrative function of the Tax Commission. I hold the Tax Commission does not set tax policy as the Division believes; the Utah State Legislature and Governor do, as I hold was done with SB 125(2005).

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purpose for registering a foreign adoption is to obtain a U.S. birth certificate issued by the State of Utah.

D'Arcy Dixon Pignanelli
Commissioner