

12-1694
TAX TYPE: INCOME TAX
TAX YEARS: 2009 AND 2010
DATE SIGNED: 4-11-2013
COMMISSIONERS: M. CRAGUN, R. PERO
EXCUSED: B. JOHNSON
DISSENTS: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 AND TAXPAYER-2, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION Respondent	INITIAL HEARING ORDER Appeal No. 12-1694 Account No. ##### Tax Type: Income Tax Tax Year: 2009 - 2010 Judge: Nielson-Larios
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Presiding:

Aimee Nielson-Larios, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, by telephone

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General, in person
RESPONDENT, 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 October 11, 2012. On May 9, 2012, Respondent (“Division”) issued Notices of Deficiency and Audit Change (“Statutory Notices”) to Petitioners (“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>
2009	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2010	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

Interest has continued to accrue. The audit tax is based on the Division’s denial of the special needs adoption credit (“Credit”) of \$1,000 per child for the adoptions of three children from FOREIGN COUNTRY.

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) (2009-2010). The Taxpayers adopted one

child from FOREIGN COUNTRY during the 2009 calendar year and two additional children from FOREIGN COUNTRY during the 2010 calendar year. The parties agree that these children meet the definition found in § 59-10-1104(1) of children who have special needs. 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, the Taxpayers would be entitled to the Credit for 2009 and 2010. However, if the Division's interpretation is correct, the Taxpayers would not be entitled to the Credit for 2009 or 2010.

APPLICABLE LAW

Utah Code § 59-10-1104 (2009-2010)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) (2009-2010) 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) (2009) 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-6-103(2) (2010) defines "adoption" as follows:

- "Adoption" means the judicial act that:
- (a) creates the relationship of parent and child where it did not previously exist; and
 - (b) except as provided in Subsection 78B-6-138(2), terminates the parental rights of any

¹This Order cites to and applies the Utah Individual Income Tax Act that was in effect for the 2009-2010 tax years, the years at issue in this appeal.

other person with respect to the child.

Utah Code § 78B-6-138(2) (2010) states:

The rights and duties of a pre-existing parent . . . who, at the time the child is adopted, is lawfully married to the person adopting the child are not released or terminated under Subsection (1)(b).

Utah Code § 78B-6-142 (2009-2010) (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
 - (b) file a certificate of birth for the child pursuant to Section 26-2-28.

. . . .

(Emphasis added.)

Utah Code § 78B-6-137 (2009-2010) (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.)

DISCUSSION

The Taxpayers were residents of Utah when the adoptions were finalized in 2009 and 2010 through the FOREIGN COUNTRY legal processes. Based on their Utah residency, the Taxpayers assert they qualify as claimants who adopted in this state for purposes of the Credit. The Taxpayers referred to § 78B-6-142 (prior version at § 78-30-8.6) 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 later registered these adoptions through the Utah Courts.

The Taxpayers asserted that the Legislature intended the Credit to apply to all special needs children adopted by Utah residents. The Taxpayers explained that the Legislature wanted to help the families of these children by offsetting some of the cost of taking these children into their homes. The Taxpayers explained how special needs children benefit the citizens of Utah by improving the lives of the citizens who meet the children. The Taxpayers explained how other people have remarked that their lives are better because they met the Taxpayer's adopted children and learned how remarkable the children are. However, the Taxpayers did not have any reference supporting their interpretation of the Legislative intent.

The Division disagreed with the Taxpayer's characterization of the Legislative intent. The Division cited to following prior commission decisions: Appeal No. 10-0486, available at <http://tax.utah.gov/commission/decision/10-0486.intsanqc.pdf>, Appeal No. 11-1969, available at <http://tax.utah.gov/commission/decision/11-1969int.sanqc.pdf>, and Appeal No. 10-2068, available at <http://tax.utah.gov/commission/decision/10-2068.intsanqc.pdf>.² The Division noted that in the prior decisions the commission found the language of § 59-10-1104 to be unambiguous. The Division commented that adoption is defined in § 78B-6-103(2) and then asserted that under that definition the Taxpayers' adoptions took place in FOREIGN COUNTRY. The Division commented that § 78B-6-142 provides Full Faith and Credit recognition by courts in this state of adoption orders issued by foreign governments, but § 78B-6-142 does not create a re-adoption in Utah of the children.

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.

For the case at hand, because § 59-10-1104 provides a credit, the statute must be construed strictly against the Taxpayers, based on the case law discussed below. In *Parson Asphalt v. Utah State Tax Commission*, 617 P.2d 397, 398 (Utah 1980), the Utah Supreme Court 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.)

Likewise in Appeal No. 11-1969, available at <http://tax.utah.gov/commission/decision/11-1969int.sanqc.pdf>, the Commission stated that it is a “well recognized principle [to] narrowly construe statutes against exemptions (or credits)” and the Commission further explained the following in footnote 3:

Generally, tax exemption or tax credit statutes are strictly construed against the taxpayer. *See Parson Asphalt Prods., Inc. v. State Tax Comm'n*, 617 P.2d 397, 398 (Utah 1980) (“[s]tatutes which provide for exemptions should be strictly construed, and one who so claims has the burden of showing his entitlement to the exemption”). Tax credit statutes, like tax exemptions, “are to be strictly construed against the taxpayer.” *MacFarlane v. State Tax Comm'n*, 2006 UT 18, ¶11. However, the court did explain in that case, “While we recognize

²The judge notes that Appeal No. 11-1969 addresses the Historic Preservation Credit, not the Special Needs Adoption Credit, and that Appeal No. 10-1311, available at <http://tax.utah.gov/commission/decision/10-1311.intsanqc.pdf>, is another prior commission decision addressing the Special Needs Adoption Credit.

the general rule that statutes granting credits must be strictly construed against the taxpayer, the construction must not defeat the purposes of the statute. The best evidence of that intent is the plain language of the statute.” (Citations omitted.) *See id.* at ¶19.

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 Taxpayers’ Arguments Presented for This Case Does Not Change that Conclusion.

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 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’ policy arguments, which do not reference the Legislative record, are 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” requires the adoption order to have been issued by a Utah court. For this appeal, because the adoptions were finalized in FOREIGN COUNTRY, the adoptions were not in this state for purposes of the Credit and the Taxpayers do not qualify for the Credit.

C. The Utah Orders Registering the Adoption Do Not Support the Taxpayers Receiving the Credits for 2009 and 2010.

In accordance with § 78B-6-142(2), the Taxpayers obtained a Utah court order of registration of foreign adoption for each of the three adopted children. However, the Division asserts that the adoptions still concluded in one place, FOREIGN COUNTRY, through court orders or similar decrees. The Division contends that the Utah Judicial Code provides for full faith and credit 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. Conclusion

In summary, the Taxpayers have not shown that they adopted children in this state because the adoptions were finalized in FOREIGN COUNTRY in 2009 and 2010.

Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's assessment in its entirety. 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 _____, 2013.

R. Bruce Johnson
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
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

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

In three previous orders 10-0486, 10-2068 and 10-1311³ 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 Legislature⁴

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 states⁵:

“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 DCFS⁶. **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”**

³ These can be found at <http://www.tax.utah.gov/commission-office/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 Utah Department 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

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.

Sen. Hellewell said, "*it is hard to get parents to take these special needs kids, who might have a lot of problems...This bill says you can have that tax credit if you adopt these special needs kids from somebody else like LDS social services or private adoption or whatever.*" I note in the hearing file is a letter from NAME-1 MD, dated DATE, which reads:

This letter is in response to a request from TAXPAYER-1 regarding a state audit.

He has three children that are disabled. CHILD-1, born BIRTH DATE-1, is DISABLED and has (X). CHILD-3, born BIRTH DATE-3, has (Y) and is disabled because of it.

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>.

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).

⁹As transcribed by Commissioner Dixon

CHILD-2, WORDS REMOVED, was born BIRTH DATE-3¹⁰ without BODY PARTS.

Based on information in the hearing file, CHILD-1 and CHILD-2 were adopted by the Taxpayers from FOREIGN COUNTRY on ADOPTION DATE-1, and CHILD-3 adopted from FOREIGN COUNTRY on ADOPTION DATE-2. There are also Third District Court documents for all three children that read “The adoption order was issued by a court of competent jurisdiction in the country of FOREIGN COUNTRY.” It would thus appear the Taxpayers did adopt special needs children, and met the intent of the sponsor of the legislation, which was to adopt special needs children.

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 established¹¹ 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. 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) (2009) 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

¹⁰The Certificate of Adoption Registration (Translation) of the FOREIGN COUNTRY gives the date of birth as DATE.

¹¹As in tax commission order 10-1311

recognized by Utah Courts.

In Utah, the registration¹² 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. This counters and makes irrelevant the Divisions' position and majority's finding based on 78B-6-137 that the filing of an order of registration is not the same as the filing of a final decree of adoption. It is undisputed that there are Third District Court documents in the hearing file that read a "court of competent jurisdiction in the country of FOREIGN COUNTRY" issued an adoption order. Utah law 78B-6-142 reads "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."

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 children. The Taxpayers claimed the special needs adoption tax credit in the same taxable years the foreign court issued the orders granting adoption of their special needs children. 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 children with special needs and should be granted the special needs adoption credit.

Finally, I take notice of one additional item in the majority opinion. In terms of the "full faith and credit" argument advanced by the majority in appeal 10-2068 and cited in this order, a foreign adoption is registered with the State of Utah for the purposes of the children receiving U.S. birth certificates. 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.

D'Arcy Dixon Pignanelli
Commissioner

¹² Utah Law does not require a foreign adoption order to be registered; the law reads "may" register. Again, the purpose for registering a foreign adoption is to obtain a U.S. birth certificate issued by the State of Utah.

