

TAX TYPE: INCOME TAX
TAX YEAR: 2009
DATE SIGNED: 4-29-2014
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
COMMISSIONER DISSENTS: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 AND TAXPAYER-2, Petitioners, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. XX-XXXX</p> <p>Tax Type: Income Tax Tax Year: 2009</p> <p>Judge: Phan</p>
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Presiding:

D'Arcy Dixon, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, Attorney at Law
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney
General
RESPONDENT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on May 23, 2013, in accordance with Utah Code §59-1-501 and §63G-4-201 et seq. Petitioners (“Taxpayers”) had been granted the opportunity to file a post hearing brief but none was received from the Taxpayers in this matter. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioners (“Taxpayers”) are appealing a Notice of Deficiency and Audit Change issued on May 15, 2012,¹ in which Respondent (“Division”), denied the Special Needs Adoption Credit that the Taxpayers had claimed on their 2009 Utah Individual Income Tax Return.
2. The amount of the audit due based on the denial of the credit was \$1,000 in tax. At the time the notice was issued the amount of the interest assessed was \$\$\$\$\$.²
3. The Taxpayers were residents of Utah in 2009, for Utah income tax purposes.

¹ Respondent’s Exhibit 1.

² Interest will continue to accrue until the balance is paid in full.

4. During 2009 the Taxpayers adopted a child in FOREIGN COUNTRY. The child, now NAME, was born in FOREIGN COUNTRY on BIRTH DATE.³ It was through the adoption judgment issued by the DEPARTMENT of Civil Affairs in FOREIGN COUNTRY⁴ that the legal relationship was established between the Taxpayers and the adopted child, as well as the termination of the parental rights of the birth parents.

5. The Taxpayers then obtained on DATE, from the Third Judicial District Court, an “Order of Registration of Adoption Order from Foreign Country.”⁵ In that document the Third Judicial District Court orders:

That the adoption judgment be and hereby is registered in the State of Utah to be recognized by the courts of this State and enforced as if the Judgment were an Order rendered by a court of Utah and declaring that the minor child shall be regarded and treated in all respects as the child of the Petitioners.

6. There was no dispute from the Division that adoptee met the statutory definition as a “child with special needs” under Utah Code Sec. 59-10-1104(1).

APPLICABLE LAW

Utah Code § 59-10-1104 (2009)⁶ 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.

³ Petitioner's Exhibit 2.

⁴ Petitioner's Exhibit 1.

⁵ Petitioner's Exhibit 1.

⁶ This Order cites to and applies the Utah Individual Income Tax Act that was in effect for the 2009 tax year. In April 2013 the Utah Legislature adopted Senate Bill 31, with a retrospective application to tax years beginning on or after January 1, 2013. Senate Bill 31 amended Utah Code Section Utah Code § 59-10-1104 to allow the credit beginning with tax year 2013 for Utah resident taxpayers who adopt a child in a foreign country or out of state if the adoptee meets the statutory definition of “child who has a special need.” The amendment also limits the credit to \$1000 per return for a taxable year.

....

Utah Code § 59-10-1102(1) (2009) 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.

DISCUSSION

The facts were not in dispute in this appeal. The issue was whether the Taxpayers qualify for the \$1000 credit under § 59-10-1104(2) as a claimant who adopts in this state a child who has a special need during the tax year. There was no dispute that the Taxpayers had adopted a child during the 2009 tax year and that the child qualified as having a special need as defined by the statute. The issue before the Commission in this matter is whether the Taxpayers had complied with the portion of Utah Code § 59-10-1104(2) that indicates the claimant "adopts in this state" the child with special needs. The Taxpayers argue that they met that requirement.

The Taxpayers had adopted their son in FOREIGN COUNTRY, which was the place of his birth. There is no definition provided for adoption in the Utah Tax Code or specifically in Utah Code § 59-10-1104(2). The parties refer to the definition of adoption in Title 78B for guidance. Utah Code 78B-6-103(2) defines adoption to mean 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." There was no dispute that this occurred in FOREIGN COUNTRY.

After the adoption in that country the Taxpayers obtained from the Third Judicial District Court in Utah an Order of Registration of Adoption from Foreign Country. That order registers the adoption and provides that the adoption is "recognized by the courts of this State and enforced as if the Judgment were an Order rendered by a court of Utah . . ." The Taxpayers point out that Utah Code §78B-6-142⁷ provides that if the parents register the foreign adoption in Utah the court

⁷ Utah Code § 78B-6-142 (2009) provided:

- (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.

issues an order of adoption under Utah Code §78B-6-137, which is the same statute that grants Utah courts the authority to ratify all adoptions. The Taxpayers also argue that the Commission's interpretation of Utah Code §59-10-1104(2) results in a discriminatory treatment of foreign adoptions. The Taxpayers point out that rather than registering the adoption in Utah, they could have applied and gone through the adoption process over again in Utah and then they would have adopted their son "in this state" and qualified for the credit under the Division's interpretation, regardless of the fact that he was from FOREIGN COUNTRY.

The Division argues that the adoption occurred in FOREIGN COUNTRY and although the adoption was registered in Utah, the Taxpayers had not "adopted in this state," therefore they failed to meet that requirement of Utah Code §59-10-1104(2) and were not entitled to the credit. The Division notes that the Commission has previously issued a number of decisions dealing with the credit and foreign adoptions and had concluded that if the special needs child was adopted from another state or country, the credit was not available. The Orders cited by the Division go back to *Initial Hearing Order 10-0486* which was issued on November 17, 2010. The Divisions also cites to *Utah State Tax Commission Initial Hearing Orders in Appeal Nos. 10-1311 (2011) 10-2068 (2011) 11-2712 (2012)*.⁸ In these and other decisions the Utah State Tax Commission has set out its interpretation that the language of Utah Code §59-10-1104 "adopts in this state" means that the adoption itself must have occurred in Utah and the registration of the adoption in Utah is not an adoption in this state.⁹

In addition to the prior precedence from the State Tax Commission on this point the Division provided information regarding the legislative history on Utah Code §59-10-1104 in its Amended Pre-Hearing Memorandum, dated May 14, 2013. The Division pointed out that §59-10-1104 was originally codified at Utah Code §59-10-133 in 2001 and it was originally limited to children who were in the permanent custody of the Utah Division of Child and Family Services. Based on the Senate Floor Debates Utah Code §59-10-133 was enacted "to get children off of the state rolls and into private loving homes long term."¹⁰ The credit was expanded in 2005 by

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- (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.

⁸ These decisions are available for review in a redacted format at tax.utah.gov/commission-office/decisions.

⁹ These decisions were signed by a majority of the Commissioners. However, Commissioner Dixon has routinely dissented from the majority's position.

¹⁰ Respondent's Amended Pre-Hearing Memorandum, pg. 3, citing Senate Floor Debates, Day 33 (00:02:05).

Senate Bill 125 to include children with special needs who were outside the Division of Child and Family Services. It was the 2005 amendment that added the language limiting the credit to a “claimant who adopts in this state.”

The Division noted that in 2013 the Utah Legislature again amended Utah Code §59-10-1104, removing the requirement “adopts in this state” so that persons who adopted a qualified special needs child from another state or country could receive the credit. This amendment specifically applied to tax years beginning on or after January 1, 2013, and would not apply to the 2009 tax year at issue. The Division provided quotes from the House discussion on this amendment in which the reason stated for the amendment was treating “all children that are adopted by Utah parent the same.” See House Revenue and Taxation Committee, Feb. 7, 2013, (01:48:02)Utah.State.Legislature,http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=2467&meta_id=71200. Additionally in the Senate, the noted purpose was “to treat the families of the state of Utah the same regardless of where the adoption occurs and where the children are coming from-in Utah, in another state, or from a foreign country. Senate Floor Debates, Day 2, (01:03:38)Utah.State.Legislature,http://utahlegislature.granicu.com/MediaPlayer.php?clip_id=2127&meta_id=67299. Under the 2013 amendment, the Taxpayers would have qualified for the credit but under the law in affect for the 2009 tax year did not qualify. The Taxpayer was given the opportunity to submit a post hearing brief in response to the Memorandum from the Division regarding the legislative history but did not do so.

From review of the public information available from the Utah Legislature regarding the 2013 amendment it appears that the Utah Legislature was aware of the Commission’s interpretation of Utah Code §59-10-1104 to limit the credit to children adopted in Utah. It appears that the Legislature intended the 2013 amendment to expand the credit for qualifying special needs children adopted by Utah residents in other states or countries.¹¹ They also added the limitation that a taxpayer could qualify for only one credit per tax return. The Legislature was aware of the Tax Commission’s interpretation and application of this provision and did not make the amendment retroactive to years prior to the 2013 tax year.

Upon review of the evidence and legal arguments submitted by the parties, the Taxpayers have not presented any new argument or information not previously considered by the Tax

¹¹ The Legislative hearings amendments, revisions, fiscal note and floor debates are available to the public for review on the Utah Legislative website found at le.utah.gov/~2013/bills/static/SB0031.html. The Commission takes administrative notice that S.B. 31, did have a fiscal note that indicated a cost to the state of \$\$\$\$ per year based on an estimate that an additional 241 taxpayers would claim the credit per year with this amendment. Therefore, it appears that the clear intent was to expand those who could qualify for the credit.

Commission on the issue of whether under the law prior to the 2013 amendment, a taxpayer would qualify for the a Special Needs Adoption Tax Credit when the child is adopted out of state or out of the country. It is a well recognized principle that statutes providing exemptions or credits are strictly construed. *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.” *See MacFarlane v. State Tax Comm'n*, 2006 UT 25, ¶11. However, the court did explain in that case, “While we recognize 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.

In Appeal No. 10-2068, the Commission considered §59-10-1104 and concluded that the language “in this state” was not ambiguous and clearly prohibited the credit where the adoption occurred outside of Utah. In the majority decision for Appeal No. 10-2068 (Redacted), 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.

The credit is set out at Utah Code §59-10-1104 which, for the tax year, allowed a credit of \$1,000 for a “claimant who adopts in this state a child who has a special need . . .” The adoption occurred in FOREIGN COUNTRY. The adoption was registered and recognized in the state of Utah and enforced as if the adoption order was rendered by a court of Utah based on the Order of the Third Judicial District Court and operation of Utah Code §78B-6-142. If the adoption meets the requirements, the court shall file the order pursuant to Section 78B-6-137 as it would other adoption orders. However, these provisions do not supersede Utah Code §59-10-1104, which is the specific provision providing the tax credit. As the Utah Supreme Court has noted in *Jensen v. IHC Hospitals Inc.*, 944 P.2d 327, 331 (1997), “When we are faced with two statutes that purport to cover the same subject, we seek to determine the legislature’s intent as to which applies. In doing this, we follow the general rules of statutory construction, which provide both that ‘the best evidence of legislative intent is the plain language of the statute (Citations Omitted),’ and that ‘a more specific statute governs instead of a more general statute (Citations Omitted).” In this situation the specific code section is §59-10-1104 which provides the tax credit. It is not in the same or related chapters in Title 78B, which provide for the adoption process and procedures. There is no specific reference in the tax credit provision to definitions or processes in the adoption provisions.

If it is appropriate to look beyond the plain reading of the statute, the Commission’s interpretation is not inconsistent with the Legislative purpose of encouraging adoptions of special needs children, first only those children already being supported fiscally by the state in 2001 and then in 2005 expanding to special needs children adopted in the state, for whom the state may become fiscally responsible if not adopted. In 2013 the Utah Legislature expanded the credit further for special needs children from other states or countries with the stated purpose being, “to treat the families of the state of Utah the same regardless of where the adoption occurs and where the children are coming from . . .”¹²

CONCLUSIONS OF LAW

1. Utah Code §59-10-1104(2009) provided an individual income tax credit of \$1,000 for a “claimant who adopts in this state a child who has a special need . . .” Based on the statute in affect during the 2009 tax year, the credit is only allowed if the adoption took place in Utah. Where parents adopted children in a foreign country or other state they are not entitled to

¹² Senate Floor Debates, Day 2, (01:03:38) Utah State Legislature, http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=2127&meta_id=67299.

the credit based on the 2009 provision. The Utah Legislature understood this to be the interpretation of law and in S.B. 31 expanded the exemption.

2. In this matter, the adoption took place in FOREIGN COUNTRY. Utah Code §78B-6-103(2) provides that adoption is the judicial act that creates the relationship of parent and child where it did not previously exist and which permanently deprives a birth parent of parental rights. The facts and this law support the Division's position that the adoption occurred in FOREIGN COUNTRY.

3. Pursuant to the operation of Utah Code §78B-6-142 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. Additionally that section provides that a person who adopts a child in a foreign country may register the order in this state. If the adoption meets the requirements the court shall file the order pursuant to Section 78B-6-137. However, these provisions do not supersede Utah Code §59-10-1104, which is the specific provision providing the tax credit. *See Jensen v. IHC Hospitals Inc.*, 944 P.2d 327, 331 (1997); and *MacFarlane v. State Tax Comm'n*, 2006 UT 25.

Upon review of the evidence submitted by the parties and the arguments presented in this matter, the audit should be upheld.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Taxpayers' appeal. It is so ordered.

DATED this _____ day of _____, 2014.

R. Bruce Johnson
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

COMMISSIONER DIXON DISSENTS

I respectfully dissent from my colleagues. I would find in favor of the Taxpayer. This is consistent with my position in four previous orders on foreign special needs adoptions.

I stand by the reasoning in my previous dissents, and incorporate, by reference the reasoning of those dissents¹³ into this dissent (beginning at page 11), but write to further dissent from the majority's conclusions of law.

The majority wrote:

As the Utah Supreme Court has noted in *Jensen v. IHC Hospitals Inc.*, 944 P.2d 327, 226 (1997), “When we are faced with two statutes that purport to **cover the same subject**, we seek to determine the legislature’s intent as to which applies. In doing this, we follow the general rules of statutory construction, which provide both that ‘the best evidence of legislative intent is the plain language of the statute (Citations Omitted),’ and that ‘**a more specific statute governs instead of a more general statute** (Citations Omitted).” In this situation the specific code section is §59-10-1104 which provides the tax credit. It is not in the same or related chapters in Title 78B, which provide for the adoption process and procedures. There is no specific reference in the tax credit provision to definitions or processes in the adoption provisions.

The Commission does have two statutes that must be considered 78B-6-142 and 59-10-1104; however, the governing statute in this matter is UCA 78B-6-142, not UCA 59-10-1104 as the majority concludes.

First, the two statutes do not cover the same subject; one covers special needs adoptions and one covers foreign adoptions. Second, when both statutes are read together the issue is whether the foreign adoption should be considered an adoption in this state for the purposes of 59-10-1104. Therefore we must to look to the more specific statute addressing how foreign adoptions are to be treated which is 78B-6-142. 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 (emphasis added)** the order were rendered by a court in this state.”

Under 78B-6-103(2) (2009) “Adoption” is defined as follows:

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

“**As if**” in **78B-6-142** is to be interpreted that the Court is to recognize the foreign adoption order **as if** the Utah Court was the one performing the judicial act which creates the relation of parent and child where it did not previously exist and which permanently deprives a birth parent of

¹³ This includes 10-0486, 10-2068 and 10-1311, and 12-1694. A redacted version of my dissent in 12-1694 is included with this dissent. The other dissents can be found at <http://www.tax.utah.gov/commission-office/decisions>

parental rights. The law requires that the adoption of a child from a foreign country by a resident of the State and the foreign adoption order rendered by that foreign country be looked upon no different, treated no different, and held no different and given no different standing than that of an adoption order rendered to an equally situated Utah resident going through the Utah court system for an adoption.

In their analysis, the majority ignores the two-word phrase “as if” in UCA 78B-6-142, and as such their analysis is incomplete. “As if” means the Utah Court and all Utah agencies are to do more than just recognize and give effect to another jurisdiction’s decree—which is the majority’s “full faith and credit” argument and position; it means the foreign adoption order is to be treated and given effect as a Utah decree.

The adoption order from a foreign country in which a parent-child relationship was created where one previously did not exist is to be recognized and therefore treated as an adoption order rendered by a court of the State of Utah which created a parent-child relationship where one did not previously exist, and therefore an adoption in this state for the purposes of 59-10-1104. This recognition mirrors the act of adoption itself where an adoptive parent looks on and treats an adoptive child no differently, but as if that child was their own birth child.

If a Utah court is to recognize and enforce the foreign adoption order as if a Utah court issued the adoption order creating the parent child relationship where it did not previously exist, then the Utah State Tax Commission should similarly regard the adoption order, and grant the adoption credit.

For the reasons noted above, I hold SB 31 was a clarification that Utah residents that adopt a special needs child from a foreign country are eligible for the special needs adoption credit; SB 31 was a clarification, not an expansion. Because I hold this to be true, there is no need for any further analysis of the Majority opinion.¹⁴

D’Arcy Dixon Pignanelli
Commissioner

¹⁴I do not believe the clarification was needed; however, there may have been a concern that the majority opinion was not recognizing the reading of the law and the intent of the legislation. Legislation is rarely made more retroactive than six months or a year – certainly not four or more years. And after so many years, particularly after the Great Recession, it is logical and reasonable that the fiscal impact of any legislation would need to be considered.

Commissioner Dixon's Dissent for Order 12-1694 issued April 11, 2013 is incorporated into her dissent for this Order 12-1902.

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 Legislature¹⁵

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 states¹⁶:

“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 DCFS¹⁷. **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.’**¹⁸”

¹⁵ I hold the account of the legislative history as related in tax commission order 10-2068 is incomplete.

¹⁶As transcribed by Commissioner Dixon

¹⁷ DCFS is understood to mean the Division of Child and Family Services in the Utah Department of Human Services

¹⁸The 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.¹⁹ 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,²⁰ "*...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)

¹⁹ 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).

²⁰As transcribed by Commissioner Dixon

and is disabled because of it. CHILD-2, WORDS REMOVED, was born BIRTH DATE-3²¹ 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 established²² 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

²¹ The Certificate of Adoption Registration (Translation) of the FOREIGN COUNTRY gives the date of birth as (DATE).

²² As in tax commission order 10-1311

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 recognized by Utah Courts.

In Utah, the registration²³ 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.

²³ 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.

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.

Signed by Commissioner Dixon
4/11/13 in Appeal No. 12-1694

D’Arcy Dixon Pignanelli
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.