

## **Adoption Benefits FAQs**

### **Q.1 What is the adoption credit?**

**A.** The adoption tax credit offsets qualified adoption expenses making adoption possible for some families who could not otherwise afford it. Taxpayers who adopt a child may qualify for an enhanced adoption tax credit for the years 2010 and 2011.

You may qualify for the adoption credit if you adopted or attempted to adopt a child and paid qualified expenses relating to the adoption. The amount of the tax credit is as much as \$13,170 for 2010. You may be able to claim the credit even if the adoption does not become final. If you adopt a special needs child, you may qualify for the full amount of the adoption credit even if you paid few or no adoption-related expenses.

For 2010, you may not get the full amount of the adoption credit if your modified adjusted gross income (MAGI) is \$182,520 or more and the credit is completely phased out if your MAGI is \$222,520 or more. IRS may make inflation adjustments to the maximum amount of the credit and the MAGI amount for the phase-out for 2011.

### **Q.2 What is the income exclusion for employer-provided adoption benefits?**

**A.** You may be able to exclude from your income amounts paid to you or for you by your employer under a qualified adoption assistance program. You may qualify for the income exclusion if you adopted or attempted to adopt a child and the program paid or reimbursed you for qualified expenses relating to the adoption. The amount of the exclusion is as much as \$13,170 for 2010. You may be able to claim the exclusion even if the adoption does not become final. Special rules apply for when to exclude the income for foreign adoptions.

For 2010, you may not get the full amount of the exclusion if your modified adjusted gross income (MAGI) is \$182,520 or more and the credit is completely phased out if your MAGI is \$222,520 or more. IRS may make inflation adjustments to the maximum amount of the income exclusion and the MAGI amount for the phase-out for 2011.

### **Q.3 What are qualified adoption expenses?**

**A.** Qualified adoption expenses are reasonable and necessary adoption fees. They include: court costs, attorney fees, traveling expenses (including amounts spent for meals and lodging while away from home), and other expenses directly related to the legal adoption of an eligible child.

Expenses paid in an unsuccessful attempt to adopt an eligible child before finalizing the adoption of another child can qualify for the credit.

Qualified adoption expenses do not include expenses: for adopting your spouse's child, for a surrogate parenting arrangement, that violate state or federal law, paid using funds received from a federal, state, or local program, paid or reimbursed by your employer or any other organization, or allowed as a credit or deduction on a federal tax return.

You cannot claim a credit for the same adoption expenses used to claim the income exclusion.

Expenses connected with a foreign adoption (where the child was not a U.S. citizen or resident at the time the adoption process began) qualify only if you actually adopt the child.

#### **Q.4 Who is an eligible child?**

**A.** An eligible child is: a child under the age of 18, or an individual who is physically or mentally incapable of caring for him or herself.

#### **Q.5 What did the Patient Protection and Affordable Care Act (PL 111-148) also known as the Affordable Care Act) change about the adoption credit?**

**A.** Before the Affordable Care Act became law, the adoption credit was generally set to expire at the end of 2010. The credit was nonrefundable, but you could carry any unused credit forward up to five tax years.

The Affordable Care Act revised the adoption tax credit by: extending the credit's expiration date to the end of 2011, increasing the maximum adoption credit and the amount you can exclude from income to \$13,170 per child for 2010 (IRS can adjust the amount for inflation for 2011), and making the adoption credit refundable.

#### **Q.6 What is a Refundable Credit?**

**A.** A nonrefundable credit can reduce the amount of tax you owe (your tax liability) to zero but not below. A refundable credit can reduce your tax liability to zero and IRS pays back (refunds) any remaining credit to you. For example, if your tax liability is \$10,000 and your credit is \$12,000, with a nonrefundable adoption credit you would reduce your tax liability to zero and carry the remaining \$2,000 credit forward. With a refundable adoption credit, you reduce your tax liability to zero and also receive a refund of the \$2,000 by which your credit exceeds your tax liability.

#### **Q.7 I have a carryover from earlier years. Is the carryover amount refundable in 2010?**

**A.** Yes. If you carried forward an adoption credit from 2005 or later (because the credit was more than the tax you owed), you can claim the carried-forward amount as a refundable credit in 2010. You can find the amount of any unused carry forward

amount on line 23 of the worksheet on page 5 of the 2009 Form 8839, Qualified Adoption Expenses.

**Q.8 When do I claim the adoption credit?**

A. The following tables explain when to take the credit:

<i>Adopting a child who is a U.S. citizen or resident.</i>	
<b>IF you pay qualifying expenses in...</b>	<b>THEN take the credit in...</b>
Any year before the year the adoption is final	The year <b>after</b> the year of the payment.
The year the adoption is final	The year the adoption is final.
Any year after the year the adoption is final	The year of the payment.
<i>Adopting a foreign child.</i>	
<b>IF you pay qualifying expenses in...</b>	<b>THEN take the credit in...</b>
Any year before the year the adoption is final	The year the adoption is final.
The year the adoption is final	The year the adoption is final.
Any year after the year the adoption is final	The year of the payment.

**Q.9 When do I exclude employer-provided adoption assistance from my income?**

A. The following tables explain when to exclude employer-provided adoption assistance from your income:

<i>Adopting a child who is a U.S. citizen or resident.</i>	
<b>IF your employer pays for qualifying expenses under an adoption assistance program in...</b>	<b>THEN take the exclusion in...</b>
Any year	The year of the

	payment.
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<i>Adopting a foreign child.</i>	
<b>IF your employer pays for qualifying expenses under an adoption assistance program in...</b>	<b>THEN take the exclusion in...</b>
Any year before the year the adoption is final	The year the adoption is final.
The year the adoption is final	The year the adoption is final.
Any year after the year the adoption is final	The year of the payment.
<p>Note: If your employer makes a payment in a year before the adoption is final, you include the amount in your income for the year. When the adoption is final, exclude the amount from your income on your return for that year.</p>	

**Q.10 How do I claim the credit or the exclusion?**

**A.** Calculate the creditor the exclusion on the [Form 8839, Qualified Adoption Expenses](#), using the [Form 8839 Instructions](#).

To claim the credit for 2010, attach both Form 8839 and the required adoption-related documentation to your federal tax return. You cannot file a tax return with the adoption credit electronically. You must file a paper tax return because you need to attach the supporting documents.

**Q.11 What documentation will the IRS require you to provide to support your claim for the adoption credit on your return?**

**A.** IRS requires different documents if the adoption is foreign or domestic, final or not final, and if the adoption is of a child with special needs.

**Q.12 What records should I keep to claim the adoption credit or the income exclusion?**

**A.** Keep the following documents to make sure you get any credit that is allowable:

Receipts for qualified adoption expenses, entry visas for foreign adoptions, final decree, certificate or order of adoption, home study by an authorized placement agency, child placement agreements or court orders, and determination of special needs status by a State or the District of Columbia.

**Q.13 What audit documentation is necessary for special needs adoptions?**

**A.** If you are claiming the credit for a finalized special needs final adoption, you must submit the final adoption order or decree, and the state's determination of the child's special needs. You are not required to prove you paid any expenses in connection with the adoption.

You will need to send in a state court adoption certificate, order, judgment, or final decree showing the names of the adoptive child and parent and signed by a representative of the state court under seal. Also include documentation from the state establishing that the child has been determined to have special needs. . Acceptable documentation of the state's determination of special needs includes (but is not limited to) any of the following:

- An adoption assistance or subsidy agreement issued by the state or county
- Certification from the state or county child welfare agency verifying that the child is approved to receive adoption assistance
- Certification from the state or county child welfare agency verifying that the child has special needs

**Q.14 How long will it take IRS to process my return and refund the Adoption Credit?**

**A.** Processing times vary. The adoption credit, at up to \$13,170 per child, is the largest refundable tax credit available to individual taxpayers. For that reason, we require taxpayers claiming the credit to file paper returns, rather than filing electronically, and attach supporting documents. Unfortunately, this additional verification sometimes causes delays of these returns. These delays make it difficult for us to estimate the time it will take to process any particular return.

If we select your return for review, we notify you. If you are due a refund besides the adoption credit, we release your partial refund while we are conducting the review.

After we complete our initial review of the return, we send you a notice explaining any additional steps you need to take, such as providing certain documentation to establish whether you are eligible for the credit. If no additional steps are necessary, we will notify you that we have processed the credit and released the remaining refund.