



If you finalized an adoption in 2011, you are likely eligible for thousands of dollars in federal adoption tax credit!

For adoptions finalized in 2011, there is a federal adoption tax credit of up to \$13,360 per child. The 2011 adoption tax credit is refundable, which means taxpayers can typically get the credit refunded regardless of what they owe or paid in taxes for the year. Even people who have no income can qualify for a refundable credit.

The credit is paid one time *for each adopted child*, and should be claimed when taxpayers file taxes for 2011.

To be eligible for the credit, parents must:

- ***Have adopted a child other than a stepchild***
- ***And be within the income limits*** — How much of the credit parents can claim is affected by income. In 2011, families with a federal modified adjusted gross income below \$185,210 can claim the full credit. Those with incomes above \$225,210 cannot claim the credit; families with incomes between \$185,210 and \$225,210 can claim partial credit.

The Amount of Credit to Be Claimed

Families who finalize the adoption of a child with special needs in 2011 (*see details on page 2*) can claim the full credit of \$13,360 whether or not they had any adoption expenses.

Example — A grandparent adopts three of her grandchildren from foster care and the state agency paid for all of the fees. However, all three children receive monthly adoption assistance benefits and thus are considered special needs. The grandmother earns less than \$185,210 so can claim the full credit of \$13,360 per child for a total of \$40,080.

Other adopters can claim a credit based on their qualified adoption expenses, which are the reasonable and necessary expenses paid to complete the adoption as long as those expenses are not reimbursed by anyone else. If the expenses are less than \$13,360, the adopters claim only the amount of the expenses. If expenses exceed \$13,360, the maximum credit to be claimed is \$13,360 per child.

Example — A couple adopted two children from China and had \$40,000 in legal fees, travel expenses, and

agency fees. They received a grant of \$20,000, leaving them with \$20,000 in qualified adoption expenses. They can claim only the \$20,000 (not the full \$26,720 they might have been eligible for).

When to Claim the Credit

Parents who adopt a child with special needs and are not basing their refund request on expenses claim the credit the year of finalization. Parents who adopt internationally also cannot claim the credit until the year of finalization. Parents who are adopting from the U.S. and claiming qualified adoption expenses can claim the credit either the year of finalization or the year after they spent the funds.

Example — A family begins the process of adopting a U.S. infant in 2010 and incurs \$7,000 in expenses that year plus \$4,000 in 2011, but will not finalize the adoption until 2012. In 2011, the parents can claim the \$7,000 for the 2010 expenses but not the \$4,000 spent in 2011. In 2012 when the adoption is final, the parent can claim the 2011 and 2012 expenses up to the maximum credit.

Adoptions from Previous Years

Families who adopted from 2005 to 2010 who have not already claimed the adoption credit for those adoptions may still be able to benefit from the credit.

Taxpayers who adopted from 2005 to 2009 can carry credits forward to 2010 (when the credit first became refundable). In cases of adoptions before 2008, however, some or all of the credit may be lost.

Some families who adopted in 2003 and 2004 may be able to take limited advantage of the credit but will not benefit from refundability. Families who adopted earlier than 2003 cannot benefit from the credit if they did not take it already.

To learn more about whether the credit for previous years' adoptions, visit <http://www.nacac.org/taxcredit/taxcredit.html> or call NACAC at 651-644-3036.

Qualifying as Special Needs

Families who adopted a child who has been determined to have special needs can claim the full credit of \$13,360 without having any adoption expenses. The credit for all other adopted children is based on the family's qualified adoption expenses.

Basically, a child with special needs is a U.S. foster child who is adopted and receives adoption subsidy or adoption assistance program benefits. The instructions for the 2010 tax credit explain that to be considered a child with special needs, the child must meet all three of the following characteristics:

- “The child was a citizen or resident of the United States or its possessions at the time the adoption process began.
- A state (including the District of Columbia) has determined that the child cannot or should not be returned to his or her parents' home.
- The state has determined that the child will not be adopted unless assistance is provided to the adoptive parents. Factors used by states to make this determination include:
 - The child's ethnic background and age,
 - Whether the child is a member of a minority or sibling group, and
 - Whether the child has a medical condition or a physical, mental, or emotional handicap.”

Just because a child has a disability does not mean the child is considered special needs under the tax credit. Not even every child adopted from foster care is considered special needs (about 10 percent of children adopted from care do not receive adoption assistance support). Those who do not receive any support from the adoption assistance program are likely not to have been determined to have special needs.

Bottom line, if your child does not receive adoption subsidy/adoption assistance benefits, you will likely have to have qualified expenses to claim the credit.

Claiming the Credit

Taxpayers should review 2011 Form 8839 instructions (which will be issued by early 2012) very carefully to be sure that they apply for the credit correctly. In 2010, taxpayers were required to file taxes by mail rather than electronically and had to submit certain documentation with the return.

Unless the process changes significantly, taxpayers will complete a 2011 version IRS Form 8839 (which should be available by early 2012) and submit it with their Form 1040 when they file 2011 taxes. On Form 8839, those who adopted children determined to have special needs can write \$13,360 on the line that asks for qualified adoption expenses. Other adopters should enter their qualified adoption expenses.

IRS Review

In 2010, the IRS reviewed the vast majority of adoption tax credit applications. The review process was often lengthy, with many parents waiting months to hear from the IRS and even longer before they received their refund. In many cases, parents had to resubmit documentation of the adoption and either proof of expenses or special needs determination.

Unless the process changes from 2010, parents will need to prove the adoption by providing the IRS with a copy of the adoption decree with the official seal visible. Families who adopted a child with special needs must also provide a copy of one of the following: (1) the adoption assistance agreement, (2) a letter certifying that the child has been approved for adoption assistance, and (3) a letter from the state or county child welfare agency stating that the child has been determined to have special needs.

Families who incurred expenses are likely to be asked by the IRS to verify those expenses during the review process. Proof of expenses included copies of receipts, canceled checks, and credit card statements.

For more information, visit www.nacac.org/taxcredit/taxcredit.html, e-mail taxcredit@nacac.org, or call 800-470-6665. NACAC is not a tax professional organization and this should information not be considered to be legal or tax advice.

NACAC was instrumental in passage of the law that made the full tax credit available to families who adopt from foster care without documenting expenses. We need your support to continue similar advocacy efforts and to enable us to share information about the credit with other families.

Please become a member of NACAC or make a donation at www.nacac.org.

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