



Important Information about the Federal Adoption Tax Credit

Since 2003, families adopting a “child with special needs” are eligible to claim a federal adoption tax credit without needing to incur or document “qualified adoption expenses.” Basically, a “child with special needs” is a U.S. foster child who receives monthly adoption assistance program (AAP) benefits. Families adopting children without special needs (i.e., private adoptions) are also eligible for the credit, but they must be able to document qualified adoption expenses.

The Amount of Credit to Be Claimed

The amount of the credit is based on the year the adoption finalized. For adoptions finalized in **2019**, the federal adoption tax credit is **\$14,080** per child. The 2019 adoption tax credit is a **non-refundable tax credit**, which means that you must have federal tax liability in order to claim the credit. In other words, the credit is an amount you can subtract dollar-for-dollar from the taxes you owe, thus reducing your total tax liability.¹ You have five years to use the full amount of credit to reduce your federal tax liability.

How much of the credit you can claim is affected by income. If your modified adjusted gross income is below \$211,160, you can claim the full credit. Those with incomes above \$251,160 cannot claim the credit. Those with incomes from \$211,160 to \$251,160 can claim partial credit.

Families that adopt a child from foster care can claim the full credit of \$14,080 on the line that asks for their expenses – whether or not they actually paid any expenses to complete the adoption.

When to Claim the Credit

Parents who adopt a child with special needs claim the credit the year of adoption finalization. The credit is paid one time *for each adopted child with special needs*, and should be claimed when taxpayers file taxes for 2019 (typically, in early 2020). Also, if you finalized your adoption before 2019 and failed to claim the adoption tax credit, you may still file an amended tax return to qualify for the tax credit.

How Much Taxpayers Will Benefit

How much, if any, of the adoption tax credit you will receive depends on your federal income tax liability in 2019 (and the next five years). In one year, you can use as much of the credit as the full amount of your federal income tax liability, which is the amount on line 22 (in 2019) of the Form 1040 less certain other credits (such as the Child Tax Credit). Even those who normally get a refund may still have tax liability and could get a larger refund with the adoption tax credit. You have six years (the year you first claimed the credit plus five additional years) to use the credit.

If you do not have federal income tax liability, you will not benefit from the credit. Nevertheless, you should still file a Form 8839 with your taxes to document the credit. You will then be able to carry the credit forward to future years in case the credit becomes refundable again in the future or your tax situation changes.

¹ The adoption tax credit was **refundable** for adoptions finalized in 2010 and 2011, which meant that you could get the amount of the credit as a tax refund regardless of what you owed or paid in taxes for that year. The American Taxpayer Relief Act of 2012 made the adoption tax credit permanent; but it did not make the adoption tax credit refundable.

Claiming the Credit

To claim the adoption credit, complete *IRS Form 8839, Qualified Adoption Expenses (PDF)* and attach the form to your *Form 1040, U.S. Individual Tax Return (PDF)* when you file your 2019 taxes. The Instructions for Form 8839 (PDF) contain additional information about the adoption credit. Before filing, review the Form 8839 instructions carefully to be sure you apply for the credit correctly. Note: The IRS no longer requires you to attach the adoption documentation (i.e., copies of the certified adoption order and adoption assistance program (AAP) agreement) with your tax return; however, you must keep the documentation as part of your records.

BACKGROUND ON FEDERAL ADOPTION TAX CREDIT

What is an Adoption Tax Credit?

Congress has made an adoption tax credit available since the 1997 tax year. Until 2003, the adoption credit allowed families earning less than \$115,000 to subtract from their tax liability “qualified adoption-related expenses,” as defined by the IRS -- up to \$5,000 for each private adoption, or \$6,000 for each adoption of a child with special needs. A “child with special needs” is any child that a state child welfare agency determines cannot be returned home to his/her parents and a specific factor makes it reasonable to conclude the child cannot be placed with adoptive parents unless adoption assistance is provided. Most children adopted from foster care, and for whom the adoptive parents are receiving Adoption Assistance Program (AAP) benefits, qualify as a child with special needs. “Qualified” expenses are expenses directly related to the adoption, such as adoption agency fees, attorney fees, court costs, medical expenses, and travel expenses.

However, most families adopting a child from foster care saw limited benefit from the adoption credit because they incur few expenses directly related to the adoption; because for families who adopt from public agencies, agency fees for home studies are often waived or reimbursed through the non-recurring adoption expenses provision of the AAP. These families’ adoption-related costs are more likely to include ongoing medical services and counseling, larger vehicles, and housing modifications that occur before and after a child or sibling group is placed in their home. Such costs do not count as “qualified adoption-related expenses” for purposes of the adoption tax credit.

Non-Refundable Tax Credit in 2002-2009

In 2002, Congress passed parts of President Bush’s tax incentive package. The Economic Growth and Tax Relief Reconciliation Act of 2001, among other things, increased the amount of the adoption tax credit from \$5,000 to \$10,000 for all adoptions (plus an annual cost-of-living adjustment) with a five-year carry forward; and increased the upper limit on the amount of income parents may earn in order to use the credit to \$150,000, phased out at \$190,000. More significantly, for all special needs adoptions finalized on or after January 1, 2003, the requirement of “qualifying expenses” was eliminated. In other words, all taxpayers who complete an adoption that includes AAP qualify for a full tax credit even if they have zero expenses.

The 2001 Tax Relief Act provided for a non-refundable adoption tax credit. A nonrefundable tax credit allows taxpayers to use the credit to lower their tax liability to zero, but not below zero.

Families who adopted children from 2005 to 2009 who have not already claimed the adoption credit for those adoptions may still be able to benefit from the credit because credits from those years can be carried forward until 2010. Some families who adopted in 2003 and 2004 may be able to take some limited advantage of the credit. Families who adopted earlier cannot benefit from the credit if they did not take it already. To learn more about the credit for previous years’ adoptions, visit <http://www.nacac.org/taxcredit/taxcredit.html> or call NACAC at 651-644-3036.

Refundable Adoption Tax Credit in 2010-2011

The federal adoption tax credit was due to sunset on December 31, 2010, but it was extended until December 31, 2011 under a provision of President Obama's Patient Protection and Affordable Care Act of 2010. In addition, the amount of the adoption credit was increased to \$13,170 for 2010 and \$13,360 for 2011.

Further, the adoption tax credit was made a **refundable** credit for tax years 2010 and 2011, meaning that eligible taxpayers could receive the amount of the credit as a *tax refund* even if they owed no taxes for that year. Families who finalized the adoption of a foster child with special needs in 2010 or 2011 should carefully read any instructions that were issued by the IRS to determine how the refundable tax credit would actually work in their situation. **Note the adoption tax credit was NOT made a refundable credit for 2012 and future years.**

Prior to the Affordable Care Act, the adoption tax credit was a non-refundable tax credit. A nonrefundable tax credit allows taxpayers to lower their tax liability to zero, but not below zero. By contrast, a refundable tax credit is a flat credit and can be claimed in its entirety regardless of a taxpayer's income. A refundable tax credit allows taxpayers to lower their tax liability to zero and still receive a refund. In other words, the taxpayer would receive a refund for the full amount of the adoption tax credit, even in excess of their tax liability.

Current (2019) Non-Refundable Adoption Tax Credit

As summarized above, for 2019, you may claim an adoption tax credit of up to \$14,080. You can take the full amount of the adoption credit if your federal adjusted gross income is \$211,160 or less. Those with incomes above \$251,160 cannot claim the credit. The adoption tax credit can be claimed in the year that your child's adoption finalized. It is a non-refundable tax credit, meaning you can use the credit to subtract dollar-for-dollar from the taxes you owe, thus reducing your total tax liability.

How to Claim the Adoption Tax Credit - Forms

Use IRS Form 8839 to figure out if you qualify for the adoption tax credit. To claim the adoption tax credit, file IRS Form 8839 <https://www.irs.gov/pub/irs-pdf/f8839.pdf>, *Qualified Adoption Expenses*. Attach Form 8839 to Form 1040 <https://www.irs.gov/pub/irs-pdf/f1040.pdf> and report the credit on Schedule 3 (Form 1040), line 6. Check box c on that line and enter "8839" in the space next to box c. The IRS Instructions to Form 8839 are at <https://www.irs.gov/pub/irs-pdf/i8839.pdf>. The North American Council on Adoptable Children (NACAC) is a helpful website that explains how to claim the federal adoption tax credit: <https://www.nacac.org/help/adoption-tax-credit/>.

Important Note: You should consult a tax attorney, tax preparer, accountant, or the IRS (1-800-829-1040 or www.irs.gov) for information on whether you are actually able to claim the adoption tax credit and how the credit will affect your individual tax situation. You may also go to a Volunteer Income Tax Assistance (VITA) center for free assistance in preparing your tax returns. See <https://www.irs.gov/individuals/free-tax-return-preparation-for-you-by-volunteers>; also https://www.ftb.ca.gov/individuals/vita/site_search.shtml.

If you receive AAP benefits for your adopted child and have questions about whether it is taxable income; or if you can claim that child as a dependent (and receive the Child Tax Credit), helpful information can be found in the NACAC fact sheet: *Tax Issues Related to Adoption Assistance and Adoption* (<http://www.nacac.org/adoptionssubsidy/factsheets/taxes.html>).

If you have any questions about the Federal Adoption Tax Credit, please call Alliance Adoption Program Director, Cynthia Billey, Esq., at (213) 368-6010 or c.billey@kids-alliance.org. Or, contact NACAC at (651) 644-3036 or taxcredit@nacac.org.