



Topic 607 - Adoption Credit and Adoption Assistance Programs

Tax benefits for adoption include both a tax credit for qualified adoption expenses paid to adopt an eligible child and an exclusion for employer-provided adoption assistance. For tax years 1997 through 2009, the credit was nonrefundable. For 2010 and 2011, the credit was refundable. For tax year 2012, the credit has reverted to being nonrefundable, with a maximum amount (dollar limitation) of \$12,650 per child.

Qualified adoption expenses

Qualified adoption expenses for both the credit and the exclusion include reasonable and necessary adoption fees, court costs, attorney fees, traveling expenses (including amounts spent for meals and lodging while away from home) and other expenses that are directly related to and for the principal purpose of the legal adoption of an eligible child. An eligible child must be under 18 years old, or be physically or mentally incapable of caring for himself or herself.

Income and dollar limitations

The credit and exclusion are each subject to an income limitation and a dollar limitation. The income limit on the adoption credit or exclusion is based on your modified adjusted gross income (MAGI). For tax year 2012, the MAGI phase out begins at \$189,710 and ends at \$229,710. Thus, if your MAGI is below \$189,710 for 2012, your credit or exclusion will not be affected by the MAGI phase out, but if your MAGI for 2012 is above \$229,710, your credit or exclusion will be eliminated. If your MAGI for 2012 falls between \$189,710 and \$229,710, your credit or exclusion will be reduced.

The credit and exclusion are each limited to a specific dollar amount (\$12,650 for tax year 2012) for each effort to adopt an eligible child. The dollar limit for a particular year must be reduced by the amount of qualified adoption expenses used in the previous years for the same adoption effort. For example, if you claimed a \$3,000 credit in connection with a domestic adoption in 2011 and paid an additional \$12,650 of qualified adoption expenses in 2012 (when the adoption became final), the maximum credit you can claim in 2012 is \$9,650 (\$12,650 dollar limit, less \$3,000 of qualified adoption expenses claimed in 2011).

The dollar limitation applies separately to both the credit and the exclusion, and you may be able to claim both the credit and the exclusion for qualified expenses paid in adopting an eligible child. However, any allowable exclusion must be claimed before any allowable credit is claimed. Any exclusion of expenses reduces the amount of expenses available for the credit, and you cannot claim both a credit and an exclusion for the same expenses. Examples 1, 2, and 3 illustrate these rules.

Example 1. In 2012 the following events occur: (a) You pay \$12,650 of qualified adoption expenses in connection with an adoption of an eligible child; (b) your employer reimburses you for \$2,650 of those expenses; and (3) the adoption becomes final. Assuming all other requirements are met, you can exclude \$2,650 from your gross income for 2012. However, the expenses allowable for the adoption credit are limited to \$10,000 (\$12,650 total expenses paid, less \$2,650 employer reimbursement).

Example 2. The facts are the same as in Example 1, except that you pay \$17,650 of qualified adoption expenses and your employer reimburses you for \$5,000 of those expenses. Assuming all other requirements are met, you can exclude \$5,000 from your gross income for 2012 and claim a \$12,650 adoption credit (\$17,650 total expenses paid, less \$5,000 employer reimbursement).

Example 3. The facts are the same as in Example 1, except that you pay \$30,000 of qualified adoption expenses and your employer reimburses you for \$12,650 of those expenses. Assuming all other requirements are met, you can exclude \$12,650 from your gross income for 2012. You can also claim a credit of \$12,650. The remaining \$4,700 of expenses (\$30,000 total expenses paid, less \$12,650 dollar-limited exclusion, less \$12,650 dollar-limited credit) cannot be used for either the exclusion or the adoption credit.

Timing rules: When can you claim the credit?

Generally, the credit and exclusion are allowable whether the adoption is domestic or foreign. A domestic adoption is the adoption of a U.S. child (an eligible child who is a citizen or resident of the U.S. or its possessions before the adoption effort began). A foreign adoption is the adoption of an eligible child who was not a citizen or resident of the U.S. or its possessions before the adoption effort began.

The tax years for which you can claim the credit depend on when the expenses are paid, whether the adoption is domestic or foreign, and whether the adoption has been finalized. In domestic adoptions, qualified adoption expenses paid before the year the adoption becomes final are allowable for the tax year following the year of payment (and the credit is allowable even if the adoption is never finalized). For a foreign adoption, however, the credit and exclusion are allowable only if the adoption is finalized. Qualified adoption expenses paid before and during the year of finality of a foreign adoption are allowable for the year of finality. Once an adoption becomes final, expenses paid during or after the year of finality are allowable for the year of payment, whether the adoption is foreign or domestic.

The effect of these timing rules is that a taxpayer may be claiming both prior-year and current-year expenses in the year of finality. Example 4 illustrates this rule.

Example 4. An adoptive parent pays qualifying adoption expenses of \$3,000 in 2010, \$4,000 in 2011, and \$5,000 in 2012. In 2012, the adoption becomes final.

If the adoption was domestic, the adoptive parent may claim the \$3,000 of expenses paid in 2010 on the parent's 2011 tax return (with the credit being refundable). The adoptive parent claims both the \$4,000 paid in 2011 and the \$5,000 paid in 2012 on the parent's 2012 tax return. The \$4,000 is claimed on the 2012 return because 2012 is the year after the year in which the \$4,000 was paid, and the \$5,000 is claimed on the 2012 return because 2012 is the year of finality. Since the adoption credit is nonrefundable for tax years ending after December 31, 2011, the \$9,000 claimed on the 2012 tax return can be used to reduce any tax liability owed for 2012, but the excess will not be refunded.

If the adoption was foreign, the adoptive parent claims all \$12,000 of expenses (\$3,000 + \$4,000 + \$5,000) on the adoptive parent's 2012 tax return because 2012 is the year of finality.

Adoption of U.S. children who have been determined by a state to have special needs

In the case of an adoption of a U.S. child that a state has determined has special needs, you may be eligible for the maximum amount of credit or exclusion for the year of finality, even if you paid no qualified adoption expenses. A child is considered special needs for purposes of the adoption credit if all of the following conditions are met:

1. The child was a U.S. citizen or resident when the adoption effort began.
2. A state determines that the child cannot or should not be returned to his or her parent's home, and
3. A state determines that the child probably will not be adopted unless assistance is provided to the adoptive family.

The adoption credit's definition of children with special needs is narrower than the definitions of special needs for other purposes. For purposes of the adoption credit, foreign children are not considered special needs. Additionally, many U.S. children who have disabilities are not considered special needs for the purposes of the adoption credit. Generally, special needs adoptions are the adoptions of children whom the state's child welfare agency considers difficult to place for adoption, and most foster care adoptions are special needs adoptions, but few other adoptions are special needs adoptions.

Filing status

There are five filing statutes:

- Single,
- Married filing jointly,
- Married filing separately,

- Head of household, and
- Qualifying widow(er) with dependent child

If you file as single or as a qualifying widow(er) with dependent child, you are eligible to claim the adoption credit or the exclusion. Generally, if you are married, you must file a joint return to claim the adoption credit or exclusion. However, a married individual who is considered to be unmarried for tax purposes, as well as a single individual, may be eligible to file as head of household under some circumstances. If you file as head of household, you are eligible to claim the adoption credit or the exclusion. For more information on filing status, see [Publication 501, Exemptions, Standard Deductions, and Filing Information](#).

If your filing status is married filing separately in the year that particular qualified adoption expenses are first allowable, you will never be eligible to claim the credit or exclusion for the particular expenses unless you amend your return and file a joint return for the year within the period of the statute of limitations. Example 5 illustrates this rule.

Example 5. Husband and wife pay qualifying adoption expenses of \$3,000 in 2010, \$4,000 in 2011, and \$5,000 in 2012 in connection with a domestic adoption. In 2012, the adoption becomes final. Husband and wife file their 2010 and 2011 returns using the married filing separately filing status, but change their filing status to married filing jointly when filing their 2012 return.

Husband and wife's filing status for 2010 is irrelevant for purposes of the adoption credit because the \$3,000 of qualified adoption expenses that they paid in 2010 are not first allowable until 2011. But because husband and wife's filing status for 2011 is married filing separately, they cannot claim the \$3,000 of qualified adoption expenses that they paid in 2010. However, the \$9,000 of qualified adoption expenses first allowable in 2012 (\$4,000 paid in 2011, plus \$5,000 paid in 2012) can be claimed on the 2012 tax return because husband and wife's filing status for 2011 is married filing jointly.

Form 8839 and instructions

To claim the credit or exclusion, complete [Form 8839](#) (PDF), *Qualified Adoption Expenses*, and attach the form to your [Form 1040](#) (PDF) or [Form 1040NR](#) (PDF).

There is no longer a requirement to attach the adoption documentation to 2012 returns. However, documentation must be kept as part of a taxpayer's records.

The IRS encourages taxpayers to use tax preparation software to prepare their Forms 1040 and Forms 8839. However, instead of filing electronically, they must print and mail their completed forms to the IRS.

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