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Federal Adoption Tax Credit for Special Needs Adoptions Finalized in 2010

Families who adopt a child with special needs from foster care can claim a federal adoption tax credit without needing to incur or document expenses. [For non-special needs adoptions (except step-parent adoptions, which do not qualify for the credit), parents can claim the credit with the same rules as below, except that they have to document qualified adoption expenses.] The per-child tax credit is \$13,170 for adoptions finalized in 2010.

Are We Eligible for the Credit?

To qualify for the credit without documenting expenses, families must:

- have adopted a child with special needs from foster care and
- have a modified adjusted gross income of a certain level.

Does my child have special needs?

Children who are harder to place for adoption—older children, children of color, sibling groups, and children with medical conditions or disabilities—are often determined to have special needs. NACAC interprets the IRS instructions to mean that if a child receives adoption assistance (subsidy), the adoption assistance agreement (or application and agreement) is evidence that the state has determined that child has special needs.

If your child does not receive adoption assistance, NACAC believes the state has not determined that your child has special needs and you will have to document adoption expenses to claim the credit.

Are we financially eligible for the credit?

How much, if any, of the credit you can use is based on your income. Families with a 2010 federal modified adjusted gross income above \$222,520 cannot claim the credit at all; families with 2010 incomes above \$182,520 can claim partial credit.

How Do I Claim the Adoption Tax Credit?

To claim the credit you need to complete IRS Form 8839 in addition to filing IRS Form 1040. You can find Form 8839 at www.irs.gov/pub/irs-pdf/f8839.pdf or by requesting it from 800-829-1040.

What do I do when the IRS asks for qualifying expenses?

Because you do not need to document expenses for children with special needs, simply enter \$13,170 for 2010 as long as your child receives adoption assistance. [Although 2010 instructions haven't yet been issued, the 2009 IRS instructions related to special needs adoption state: "If you did not claim any adoption credit for the child in a prior year, enter \$12,150 on line 5 even if your qualified adoption expenses for the child were less than \$12,150 (and even if you did not have any qualified adoption expenses for this child)."]

Refundable Credit for 2010 and 2011

The Patient Protection and Affordable Care Act (the health reform bill passed in March 2010) made the adoption tax credit refundable for tax year 2010 and 2011. When a credit is refundable, individuals can get more money back from the IRS than they have paid in federal taxes. For families who normally get a refund, that means the refund would likely increase by \$13,170 per child as long as they do not exceed the income guidelines.

Families who finalize the adoption of a foster child with special needs in 2010 should carefully read any instructions that are issued by the IRS to determine how the refundable tax credit will actually work in their situation.