



FAQs on the Adoption Tax Credit • January 2013

Congress recently passed a bill to avert the “fiscal cliff,” which was signed on January 2, 2013. The bill made the adoption tax credit permanent. However, it is not refundable. Below is a list of questions we have received since the recent extension of the credit.

What is the adoption tax credit?

The adoption tax credit, which can be claimed for eligible adoption-related expenses, has helped thousands of American families offset the high cost of adoption since the credit was established in 1997. The credit applies to all types of adoption (except stepparent adoption), including international, domestic private, and public foster care. Since 2003, families who adopted children with special needs could claim the maximum credit regardless of their qualified adoption expenses. The credit has made adoption a more viable option for many parents who might not otherwise have been able to afford adoption, allowing them to provide children with loving, permanent families.

What is the current status of the adoption tax credit?

The legislation to avoid the fiscal cliff (the American Taxpayer Relief Act of 2012, signed into law on January 2, 2013) included a provision that made the adoption tax credit permanent. It did not make the adoption credit refundable, so it will only benefit those adoptive families who have federal income tax liability.

The credit is still “flat” for special needs adoptions, meaning families who adopt a child with special needs (see special needs question below) do not need to document qualified adoption expenses.

What does it mean that the adoption tax credit is permanent?

A permanent tax credit is one that was extended without a specific expiration or sunset date. Congress can still choose to make changes to the credit in future legislation.

Glossary of Terms

Adoption Tax Credit Lingo

Special Needs – A U.S. adoption in which the state or county child welfare agency has determined that the child is not likely to be adopted unless the government provides assistance to the adoptive family. The special needs determination is almost exclusively for foster children.

Tax Liability – The amount of federal income tax you owe. Your applicable tax rate is determined according to your taxable income and can be found in the IRS tax tables.

Refundable Credit – A tax credit that is treated as a payment thus can be refunded to the taxpayer regardless of tax liability.

Non-Refundable Credit – A credit that reduces the taxes owed.

Flat Credit – “Flat” for special needs adoptions means that people who adopt children who are determined to be special needs (see above) by a state or county child welfare agency can claim the maximum credit regardless of their expenses.

Qualified Adoption Expenses – Necessary costs associated with the adoption, including court costs, attorney fees, travel expenses (meals/lodging), and other direct expenses related to the legal adoption.

What is the maximum amount of the credit for 2013? At what income level does the credit begin to phase out?

For 2013, the maximum adoption credit and exclusion is \$12,970. The credit will begin to phase out for families with modified adjusted gross incomes above \$194,580 and the credit will go away completely for those with incomes around \$234,580.

Can I receive the credit if I adopted a child from another country?

Yes, once the adoption is legally finalized, either in the child's home country or in the U.S., you can claim your qualified adoption expenses, up to the maximum.

Is the tax credit for all adoptions or just special needs? Can I receive the credit if I adopted a healthy child? What kinds of adoptions benefit from the tax credit?

The adoption credit is for all adoptions other than stepparent adoptions (international, domestic private, and public foster care). See below for more information about how special needs adoptions are different.

What are qualified adoption expenses?

The IRS writes: "Qualified adoption expenses are reasonable and necessary expenses directly related to, and for the principal purpose of, the legal adoption of an eligible child.

Qualified adoption expenses include:

- Adoption fees,
- Attorney fees,
- Court costs,
- Travel expenses (including meals and lodging) while away from home, and
- Re-adoption expenses relating to the adoption of a foreign child.

Qualified adoption expenses do not include expenses:

- For which you received funds under any state, local, or federal program,
- That violate state or federal law,
- For carrying out a surrogate parenting arrangement,
- For the adoption of your spouse's child (step-parent adoptions are excluded),
- Paid or reimbursed by your employer or any other person or organization, or
- Allowed as a credit or deduction under any other provision of federal income tax law."

How much of the credit can a parent claim?

Parents who adopted a child who has been determined to be special needs by the state or county child welfare agency (see next question for special needs definition) can claim the maximum credit regardless of whether they have qualified adoption expenses at all.

For other adoptions (other than stepparent adoptions, which are not eligible for the credit at all), parents can claim the credit for qualified adoption expenses up to the maximum. So if a family has \$5,000 in expenses for a private, non-special needs adoption, they can claim only that \$5,000 not the maximum. Families who have expenses above the maximum can only claim the maximum. So if

a family has expenses of \$30,000 for a 2013 adoption of one child, they will be able to claim only \$12,970 (as long as their income is below the phase-out limits listed above).

In all cases, how much a parent will actually receive in a given year depends on their tax liability (see below).

What is a special needs adoption?

A special needs adoption is one in which the state or county child welfare agency has determined that the child is not likely to be adopted unless the government provides assistance to the adoptive family. The special needs determination is almost exclusively for foster children, and a significant majority of foster children are considered special needs.

Children who are determined to be special needs are typically older, are part of sibling groups that will be placed together with one family, or have physical, emotional, or mental disabilities. All children adopted from foster care with an adoption assistance agreement (also referred to as adoption subsidy agreement) from their state or county are considered special needs for purposes of the tax credit.

Just because a child is disabled does not mean the child is special needs under the tax credit. No child adopted internationally is considered special needs for the adoption 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 have an adoption assistance agreement are not special needs.

Simply meeting the state's definition of special needs is not sufficient. The state or county child welfare agency must have made an active determination that the child is considered special needs, and an adoption assistance agreement must be in place. (For example, if a parent privately adopts three siblings from a family member with no child welfare involvement, those children are not considered special needs even though a sibling group of three adopted from foster care would meet the special needs definition.)

If my child doesn't receive a monthly adoption assistance benefit is my child considered special needs?

You do not need to receive a monthly payment to qualify as special needs as long as you receive either reimbursement of non-recurring adoption expenses or Medicaid through the adoption assistance program. You must receive benefits through the adoption assistance program.

Is the credit refundable for 2012 or future years?

No. The credit was only refundable in 2010 and 2011. A refundable credit is one that a person can receive regardless of their tax liability (see definition below). It is treated as a payment so the parent can receive a refund larger than any taxes they have paid in during the year.

What does it mean that the credit is not refundable?

A non-refundable credit is one in which taxpayers receive a refund of federal income taxes, but only up to the amount of taxes they otherwise had due. In one year, taxpayers can use as much of the adoption tax credit as the full amount of their federal income tax liability, which is the amount on line 46 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; with the adoption tax credit the taxpayer could get a larger refund.

Families who have lower or moderate incomes typically have no tax liability and will not benefit from a non-refundable credit. We still encourage families who don't think they have a tax liability to file for the credit (Form 8839), in case families' tax liabilities change in future years (see more below under "carry forward").

Here's a very simplified example: A family has \$5,000 in federal income taxes withheld from their paychecks during the year. When they do their taxes, they look at the tax tables and based on their adjusted gross income, their federal income taxes are \$1,000 (this is their tax liability). If there were no adoption credit, they would be due a refund of \$4,000. The family had qualified adoption expenses of \$8,000. Because of the adoption credit, they would receive an additional \$1,000 refund for that tax year (reducing their tax liability to zero), meaning that they get the full \$5,000 that was withheld back rather than just the \$4,000 they would have gotten without the non-refundable credit.

They can carry the remaining \$7,000 (\$8,000 in expenses minus the \$1,000 they received) forward to future years and receive additional refunds depending on their tax liability in future years. (See more on the carry forward below.)

Is the credit a deduction?

No, the credit is not a deduction. The credit is a dollar for dollar reduction in the amount of federal taxes owed for the year.

What is tax liability?

It is the amount of federal income tax that you owe the IRS for the year. If you did your taxes manually, it's the amount you look up in the tax table based on your adjusted gross income.

You can get a refund and still have tax liability; a refund simply means you paid in more than you owe. It's not really this simple but the general idea is that if your employer withholds \$5,000 in federal income tax during the year and you get a refund of \$3,000, your tax liability was the \$2,000 that the IRS keeps in federal income taxes.

Can the credit be carried forward if I don't have enough tax liability the first year I claim it?

Yes, taxpayers have at least six years to use the credit. We believe that the new law made it possible for taxpayers to carry forward 2013 and future adoption tax credits with no time limitation. For 2012 adoptions, the situation is less clear. We know they can be carried forward for five additional

years, but it is possible they will also be able to be carried forward with no time limitations. We don't expect formal confirmation on this issue until later in 2013.

We encourage adoptive families who file taxes to include a Form 8839 to establish the adoption tax credit even if they do not believe they will receive a refund. Families may have tax liability in future years and establishing the credit would save them from having to go back and amend taxes once they were able to benefit.

I already claimed the credit for an earlier adoption. Does the new law affect me?

No. It is a one-time credit and if you have received it already for an earlier adoption, you do not benefit further.

If you never filed for the credit, but adopted in 2005 or more recently, you may still be able to benefit depending on your personal tax situation. Visit <http://www.nacac.org/taxcredit/taxcredit.html> for more information.

Does a parent who adopted a child with special needs still have to have tax liability?

Yes, the only difference for special needs adoptions is that parents can claim the maximum credit regardless of whether they had any adoption expenses at all. The credit is still non-refundable for special needs adoptions.

When can I claim the credit?

For special needs or international adoptions, you cannot claim the adoption credit until you file taxes for the year of finalization. So, if you received placement of a child in 2012 but the adoption was not finalized until 2013, you cannot claim the credit until you file your 2013 taxes in early 2014.

For U.S. private adoptions with qualified adoption expenses, you can claim the credit before finalization (or for a failed adoption) but you must wait one year after you incur the expenses. So, if you had expenses for an adoption in 2011 that has not or will not finalize, you must claim them with your 2012 taxes filed in early 2013.

Is there still advocacy taking place for refundability?

Yes, the Adoption Tax Credit Working Group will continue to advocate for refundability. We will keep all of our followers informed once we work out an ongoing advocacy strategy. Congress is interested in long-term solutions and broader tax policy reform. We think this creates a good opportunity for continued advocacy on this subject.

Is it possible that the tax credit could still become refundable for 2012?

In theory, it is possible. In reality, we do not believe it will happen soon. We hope that the credit will become refundable in future years and those who adopt in 2012 will then be able to benefit once they carry the credits forward.

Should we go ahead and file our taxes for 2012?

You could file your taxes, but the instructions for Form 8839 aren't out yet, and you need those to

calculate your tax liability and how much you will receive. If you are using software and it does this calculation properly, you could decide to file now. We expect the instructions to be out by the end of January 2013.

Should we still be actively contacting Congress again?

We are working with members to get a new bill introduced in the 113th Congress that would include refundability. Once that has happened we will share what this legislation is and how to advocate for it going forward.

If you are unable to benefit from the credit unless it is refundable (if you do not have a tax liability), we encourage you to continue to share your concerns and stories with your members of Congress. Being sure to thank legislators for extending the credit, but explaining how refundability is important to you.

What is the exclusion for employer-provided adoption benefits?

The law also allows adoptive parents whose employers offer an *approved adoption assistance program* to exclude any reimbursed expenses from their taxable income. Parents cannot claim the expenses for the exclusion and the credit. For example, a family spends \$17,000 on their adoption, and the employer reimburses \$10,000 through an approved adoption assistance program. The family can exclude the \$10,000 from their taxable income, and claim only the remaining \$7,000 for the adoption credit.

Those who adopt children with special needs can use the maximum amount of the exclusion (\$12,970 for 2013) regardless of any expenses or reimbursement as long as their employer offers a qualified adoption assistance program.

Please review the instructions for Form 8839 for more information on the exclusion.

What do I need to give my tax person?

Parents need to refer to IRS Form 8839 and the accompanying instructions. Visit: <http://www.irs.gov/pub/irs-pdf/f8839.pdf>.

Please note that the instructions for Form 8839 for tax year 2012 have not been released yet. We expect the IRS will release them by the end of January.

Disclaimer

The Adoption Tax Credit Working Group and its members are not tax preparers and the information provided is not intended as professional tax advice. The information provided should not be used as a replacement for instructions and/or information provided by the IRS. Please consult with the instructions for Form 8839 and with your tax preparer for information on how the Adoption Tax Credit can be used when filing your taxes.