



# The Adoption Tax Credit

The adoption expense tax credit was modified and extended as part of the tax bill signed into law by President Bush on June 7, 2001. What does this mean for adoptive families? The answers below are based on IRS and Treasury Department policy and guidelines.

**Q In a nutshell, what does the new law provide?** It provides a tax credit (an amount that can be subtracted directly from the taxes you owe) for expenses incurred in the adoption of a child who is not the child of the taxpayer's spouse. Qualifying expenses include reasonable and necessary adoption fees, court costs, attorney fees, traveling expenses, and other expenses directly related to the adoption.

You may not claim expenses reimbursed by another source, such as an employer adoption benefit, but beginning in 2007, you may be able to exclude up to \$11,390 from your adjusted gross income (AGI) for adoption expenses paid by your employer under a qualified adoption assistance program.

**Q How much can I claim?** For the adoption of U.S. children with special needs, the law provides a flat \$11,390 credit for 2007, regardless of expenses incurred. Most children, though not all, adopted from foster care are considered special needs. If you receive a state subsidy for your child, the state has determined your child has special needs.

For the adoption of U.S. children without special needs, parents can take a tax credit of up to \$11,390 for adoption expenses, even if the adoption is never finalized. For the adoption of children from other countries, parents can take a tax credit of up to \$11,390 for all adoption expenses incurred after 1996, but only if and when the adoption is finalized.

**Q What would prevent me from claiming the tax credit?** Just as the maximum tax credit families can claim has increased slightly for the past few years, the income cap for claiming the credit has increased each year, as well. For the 2007 tax year, the credit begins to phase out if your AGI is \$170,820 or more, and you are not eligible for the credit at all if you have an income of \$210,820 or more.

The adoption expense exclusion phases out at the same income levels as the credit.

**Q How does the IRS define a child with special needs?** The child must be a citizen or resident of the U.S. A state must have determined that the child cannot or should not be returned to his parents' home and that the child probably will not be adopted unless some assistance is provided to the adoptive parents. A child who is adopted internationally can never qualify as a child with special needs in this context.

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**Q When can the credit be taken?** If your child is a U.S. citizen or resident, and you incurred expenses before the adoption became final, you're allowed to take the credit the following year. However, if you paid expenses for and finalized an adoption in the current year, you can claim the credit on this year's return.

If any expenses are incurred after an adoption is finalized, the credit can be taken in the year the expenses were paid. If your child is not a U.S. citizen, the credit cannot be claimed before the year the adoption is finalized and the child becomes a citizen.

The credit is available to both single people and married couples. If you are married, you generally must file a joint return to take the adoption credit or exclusion.

**Q What if your tax liability for a particular year is less than your allowable credit for that year?** If you reduce your tax bill to zero and still have not claimed \$11,390 (or the full amount allowed based on your income), the unused amount can be carried forward to your next five tax years, or until you have claimed the entire amount, whichever comes first.

**Q In an international adoption, does the IRS consider the overseas adoption**

**or the U.S. readoption to be the final one?** This depends on the type of immediate relative (IR) visa the child will have when entering the U.S.

For IR-3 visas, the adoption is considered final when a competent authority, meaning the court or government agency of the country that has the authority to make decisions about the child's welfare, enters a decree of adoption. Thus, if a child enters the U.S. with an IR-3 visa, the overseas adoption is considered final in terms of the tax credit.

For other IR visas, the adoption is considered final on the date of the U.S. readoption—when a court of the state in which the parents and child reside enters a decree of adoption.

**Q Does the tax credit apply per child or per placement (i.e., in the case of a sibling group of two children, is the family entitled to one or two tax credits)?**

The tax credit is per child, not per placement, so a family adopting siblings would receive a credit for each child.

**Q In a state that offers reimbursement for special-needs adoption expenses, does this reimbursement offset the tax credit?** No, there is no offset to the federal tax credit for state spe-



cial needs adoption reimbursements. In fact, since 2003, there has been no need to document expenses in the case of a special-needs adoption.

**Q Must all adoption expenses be documented for reimbursement under the adoption tax credit?** Yes, all adoption expenses must be documented with receipts, except in the case of special-needs adoptions.

**R**ead the official IRS documents about the Adoption Tax Credit on their website: [irs.gov/taxtopics/tc607.html](http://irs.gov/taxtopics/tc607.html), and download the Adoption Tax Credit form (Form 8839) at: [irs.gov/pub/irs-pdf/f8839.pdf](http://irs.gov/pub/irs-pdf/f8839.pdf).

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