



If you adopted a foster child between 2005 and 2010 and the child receives adoption subsidy, you may be eligible for thousands of dollars in federal adoption tax credit!

Since 2003, families who adopted a child with special needs from foster care could claim a federal adoption tax credit *even if they had no adoption expenses*. Other adoptive families are also eligible for the credit, but must document qualified adoption expenses.

The tax credit became refundable for 2010 and 2011. A refundable tax credit is one you get back regardless of what you owe or paid in taxes for the year.

Families who adopted from 2005 to 2009 may be able to benefit from the refundable credit because credits from those years can be carried forward until 2010. (Families who adopted in 2003 and 2004 may be able to take some limited advantage of the credit but will not benefit from refundability. Families who adopted earlier will not benefit from the credit if they did not take it already.)

The amount of the credit is based on the year the adoption finalized:

2010 — \$13,170	2006 — \$10,960
2009 — \$12,150	2005 — \$10,630
2008 — \$11,650	2004 — \$10,390
2007 — \$11,390	2003 — \$10,160

The credit is paid one time *for each adopted child* with special needs.

For families who adopt in 2011, the credit is \$13,360 but cannot be claimed until the 2011 tax season.

Below, we explain the basics of the adoption tax credit for adoptions from 2010 and earlier. More detailed information is available at www.nacac.org/taxcredit/taxcredit.html.

To be eligible for the credit, you must:

- ***Have adopted a child other than a stepchild*** — Children who receive a monthly adoption subsidy payment have been determined by the state to have special needs, so these children are eligible for the full tax credit without documenting expenses. Families who adopted children without special needs are also eligible, but need to have had expenses and can take the credit only up to the maximum credit or their expenses, whichever is lower.
- ***And be within the income limits*** — How much of the credit you can claim is also affected by income. In 2010, families with a federal modified adjusted gross income above \$222,520 cannot claim the credit; families with incomes above \$182,520 can claim part credit. Adoptions from previous years had different income limits.

You will need to prove the adoption by providing the IRS with a copy of the adoption decree. Families who adopted a child with special needs must also provide a copy of the adoption assistance agreement. Families who incurred expenses are likely to be asked by the IRS to verify those expenses once the credit is reviewed.

If You Adopted in 2010

To claim the credit, you complete IRS Form 8839 with your IRS Form 1040. On line 5 of 8839, which asks for qualified adoption expenses, enter \$13,170 as long as your child receives adoption assistance. Others should enter their qualified adoption expenses.

If You Adopted between 2005 and 2009 and Claimed the Credit the Year You Finalized

If you finalized in 2005 or later, claimed the credit that year, and carried forward the adoption tax credit on each year's returns, just carry forward the remaining amount of the credit from your 2009 return to 2010. You can claim the full amount remaining as a credit on your 2010 return.

If you claimed the credit the year you finalized, but didn't carry it forward to subsequent years' tax forms, you'll need to amend returns for those years.

If You Adopted in 2008 or 2009 and Didn't Claim the Credit

You must file for the adoption tax credit in the year you finalized the adoption, so you need to amend your tax return for the year the adoption was finalized and any subsequent years, carrying forward the amount of the adoption tax credit that you are not able to use each year. Any part of the credit not paid before 2010 can be used fully with the 2010 return.

If You Adopted between 2005 and 2007 and Didn't Claim the Credit

Adoptions finalized in 2005 to 2007 are more complicated because the IRS allows people to amend returns to claim a credit only for the past three years. These are considered closed tax years, but the IRS has written that these older credits can be accessed (www.nacac.org/policy/irsletter.pdf).

If you adopted in 2005, 2006, or 2007, you should amend your returns starting the year you finalized. Because it's longer than three years

ago, you cannot be paid a refund for the portion of the credit you were due in 2005, 2006, or 2007. The amount you were due is based on your federal income tax liability for that particular year.

You must still complete the 2005, 2006, and/or 2007 return as if you are getting a refund for the credit used, but any credit that could have been refunded in these years will be lost. When you amend your 2008 taxes and forward, you can use any credit due that year.

Whatever amount remains after you do your 2009 taxes can be carried over and refunded in 2010. Please note that the IRS may reject your amendment but we encourage you to appeal. A taxpayer advocate may be helpful in the appeal.

If you didn't claim the credit in 2005, 2006, or 2007 and had sufficient tax liability in those years to use up the whole credit, you will not benefit. You need to have some credit carried forward to 2008 to get a payment.

If You Adopted in 2003 and 2004 and Didn't Claim the Credit

If you finalized an adoption in 2003 or 2004, the issue about amending returns more than three years old applies so you are less likely to benefit. You cannot carry the credit forward to 2010 when the credit becomes refundable.

A family with significant tax liability may use up all of the adoption tax credit in the years before 2008, but they cannot get a refund for these years. Those families who have a moderate tax liability might be able to carry forward some of the credit to 2008, or 2009, when they could get a refund for whatever tax liability they had that year.

For more information, visit www.nacac.org/taxcredit/taxcredit.html, e-mail taxcredit@nacac.org, or call 800-470-6665. NACAC is not a tax professional organization and this should information not be considered to be legal or tax advice.

NACAC was instrumental in passage of the law that made the full tax credit available to families who adopt from foster care without documenting expenses. We need your support to continue similar advocacy efforts and to enable us to share information about the credit with other families.

Please become a member of NACAC or make a donation at www.nacac.org.

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