

# Adoption Credit and Adoption Assistance Programs

Tax benefits for adoption include both a tax credit for qualified adoption expenses that are paid in the adoption of an eligible child and an exclusion from income for employer-provided adoption assistance. The credit is nonrefundable, which means it's limited to your tax liability for the year. However, any credit in excess of your tax liability may be carried forward for up to five years. The maximum amount (dollar limit) for 2019 is \$14,080 per child.

## Qualified Adoption Expenses

For both the credit and the exclusion, qualified adoption expenses, defined in section 23(d)(1) of 26 U.S. Code § 23. *Adoption Expenses*, include

- Reasonable and necessary adoption fees
- Court costs and attorney fees
- Traveling expenses (including amounts spent for meals and lodging while away from home)
- Other expenses that are directly related to and for the principal purpose of the legal adoption of an eligible child

An expense may be a qualified adoption expense even if the expense is paid before an eligible child has been identified. For example, prospective adoptive parents who pay for a home study at the outset of an adoption effort may treat the fees as qualified adoption expenses.

An eligible child is an individual who is under the age of 18, or is physically or mentally incapable of self-care.

Qualified adoption expenses don't include expenses that a taxpayer pays to adopt the child of the taxpayer's spouse.

Qualified adoption expenses include expenses paid by a registered domestic partner who lives in a state that allows a same-sex second parent or co-parent to adopt his or her partner's child, as long as those expenses otherwise qualify for the credit.

## 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). If your MAGI amount for 2019 falls between certain dollar limits, your credit

or exclusion is subject to a *phase-out* (is reduced or eliminated). For tax year 2019, the MAGI phase-out begins at \$211,160 and ends at \$251,160. Thus, if your MAGI amount is below \$211,160 for 2019, your credit or exclusion won't be affected by the MAGI phase-out, whereas if your MAGI amount for 2019 is \$251,160 or more, your credit or exclusion will be zero.

You must reduce the dollar limit for a particular year by the amount of qualified adoption expenses paid and claimed in previous years for the *same adoption effort*. For example, if you claimed a \$4,000 credit in connection with a domestic adoption in 2018 and paid an additional \$14,080 of qualified adoption expenses in 2019 (when the adoption became final), the maximum credit you can claim in 2019 is \$10,080 (\$14,080 dollar limit minus \$4,000 of qualified adoption expenses claimed in 2018).

In computing the dollar limitation, qualified adoption expenses paid and claimed in connection with an unsuccessful domestic adoption effort must be combined with qualified adoption expenses paid in connection with a subsequent domestic adoption attempt, whether or not the subsequent attempt is successful. For example, assume that in 2017 an individual claimed \$8,000 in qualified adoption expenses in an unsuccessful adoption effort. In 2018 and 2019, the individual spent a total of \$10,000 in qualified adoption expenses in connection with a successful domestic adoption that became final in 2019. The maximum adoption credit allowable in 2019 is \$6,080 (\$14,080 dollar limit for 2019 minus \$8,000 previously claimed.)

The dollar limitation applies separately to both the credit and the exclusion, and you may be able to claim both for qualified expenses. However, you must claim any allowable exclusion before claiming any allowable credit. Expenses used for the exclusion reduce the amount of qualified adoption expenses available for the credit. As a result, you can't claim both a credit and an exclusion for the same expenses. Examples 1, 2, and 3 illustrate these rules.

**Example 1:** In 2019, the following events occur: (a) You pay \$14,080 of qualified adoption expenses in connection with an adoption of an eligible child; (b) your employer reimburses you for \$4,080 of those expenses; and (c) the adoption becomes final. Your MAGI amount for 2019 is less than \$211,160. Assuming you meet all other requirements, you can exclude \$4,080 from your gross income for 2019. However, the expenses allowable for the adoption credit are limited to \$10,000 (\$14,080 total expenses paid minus \$4,080 from employer reimbursement).

**Example 2:** The facts are the same as in Example 1, except that you pay \$19,080 of qualified adoption expenses and your employer reimburses you for \$5,000 of those expenses. Assuming you meet all other requirements, you can exclude \$5,000 from your gross income for 2019 and claim a \$14,080 adoption credit (\$19,080 total expenses paid minus \$5,000 from 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 \$14,080 of those expenses. Assuming you meet all other requirements, you can exclude \$14,080 from your gross income for 2019. You can also claim a credit of \$14,080. Because of the dollar limitation, the remaining \$1,840 of expenses (\$30,000 total expenses paid, minus \$14,080 dollar-limited exclusion, minus \$14,080 dollar-limited credit), can never be used for either the exclusion or the adoption credit.

## **Timing Rules: For what tax year can you claim the credit?**

The tax year for which you can claim the credit depends on

- When the expenses are paid
- Whether it's a domestic adoption or a foreign adoption
- When, if ever, the adoption was finalized

Generally, the credit is allowable whether the adoption is domestic or foreign. However, the timing rules for claiming the credit for qualified adoption expenses differ, depending on the type of adoption:

- 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 begins). Qualified adoption expenses paid before the year the adoption becomes final are allowable as a credit for the tax year following the year of payment (even if the adoption is never finalized and even if an eligible child was never identified).
- A *foreign adoption* is the adoption of an eligible child who isn't yet a citizen or resident of the U.S. or its possessions before the adoption effort begins. Qualified adoption expenses paid before and during the year are allowable as a credit for the year when the adoption becomes final.

Once an adoption becomes final and subject to the dollar limitation, qualified adoption expenses paid during or after the year of finality are allowable as a credit for the year of payment, whether the adoption is foreign or domestic.

As a result of the timing rules, qualified adoption expenses allowable in the current year may include expenses paid in a former year or years. Example 4 illustrates the difference between the domestic and the foreign timing rules.

**Example 4:** An adoptive parent pays qualified adoption expenses of \$3,000 in 2017, \$4,000 in 2018, and \$5,000 in 2019. In 2019, the adoption becomes final.

If the adoption in Example 4 is domestic, the \$3,000 of expenses paid in 2017 is allowable in 2018 (the year after the year of payment) and may be claimed as a credit on the parent's 2018 tax return. The adoptive parent claims both the \$4,000 paid in 2018 and the \$5,000

paid in 2019 as a credit on his or her 2019 tax return. The \$4,000 paid in 2018 is allowable in 2019 (the year after the year of payment); the \$5,000 paid in 2019 is allowable in 2019 (the year of finalization). Accordingly, nothing is allowable in 2017, \$3,000 is allowable in 2018, and \$9,000 (\$4,000 plus \$5,000) is allowable in 2019. The \$3,000 allowable in 2018 reduces 2018 tax liability, with any excess being carried forward into 2019. Similarly, the \$9,000 allowable in 2019 (plus any carried-forward amount from 2018) reduces the 2019 tax liability, with any excess credit, from either year, being carried forward into later years. If the adoption in Example 4 is foreign, the adoptive parent may claim all \$12,000 in qualified adoption expenses (\$3,000 paid in 2017, \$4,000 paid in 2018, and \$5,000 paid in 2019) on the adoptive parent's 2019 tax return, because 2019 is the year when the adoption becomes final.

If the adoptive parent pays an additional \$2,000 in qualified adoption expenses in 2020, then that \$2,000 is allowable in 2020 (subject to the 2018 MAGI and dollar limitations), whether the adoption is domestic or foreign.

## **Adoption of U.S. Children That a State Has Determined to Have Special Needs**

If you adopt a U.S. child that a state has determined has special needs, you're generally eligible for the maximum amount of credit in the year of finality. Thus, if the adoption of a child who a state has determined has special needs becomes final in 2019, the maximum credit allowable generally would be \$14,080. However, the maximum amount will be reduced by any qualified adoption expenses you claimed for the same child in a prior year or years, and the MAGI limitation may apply.

If you adopt a child who a state has determined has special needs, and if your employer has a written qualified adoption assistance program, you may be eligible for the exclusion, even if you or your employer didn't pay any qualified adoption expenses.

A child has special needs for purpose of the adoption expenses if the following apply:

1. The child is a citizen or resident of the United States or its possessions when the adoption effort began.
2. A state determines that the child can't or shouldn't be returned to his or her parent's home.
3. The state determines that the child probably won't be adoptable without assistance provided to the adoptive family.

Don't confuse *children with special needs* for purposes of the adoption credit with the definitions of *children with special needs* for other purposes. Foreign children aren't considered to have special needs for purposes of the adoption credit. Even U.S. children who have disabilities may not have special needs for 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.

## Filing Status

To determine your filing status, see [Link opens in a new windowhttps://www.irs.gov/publications/p501](https://www.irs.gov/publications/p501), *Exemptions, Standard Deductions, and Filing Information*, and [Link opens in a new windowWhat Is My Filing Status?](#).

If you file your return using the "married filing separately" status in the year particular qualified adoption are first allowable, you can't claim the credit or exclusion for those particular expenses. You may need to file an [Link opens in a new windowamended return](#) to change to a qualifying filing status within the period of limitations.

**Example 5:** Husband and wife pay qualified adoption expenses of \$3,000 in 2017, \$4,000 in 2018, and \$5,000 in 2019. In 2019, the domestic adoption became final. They have filed "married filing separately" for all prior tax years.

On the 2019 tax return they file "married filing jointly," and only \$9,000 (\$4,000 paid in 2018 and \$5,000 paid in 2019) of the expenses qualify for 2019. Since they filed "married filing separately" in 2018, and the \$3,000 paid in 2017 is first allowable for 2018, they can't claim the adoption credit for those expenses unless they change their filing status to "married filing jointly" for 2018.

## Form 8839 and Instructions

To claim the adoption credit or exclusion, complete [Link opens in a new windowForm 8839.pdf](#), *Qualified Adoption Expenses*, and attach the form to your [Link opens in a new windowForm 1040.pdf](#), *U.S. Individual Income Tax Return*, or [Link opens in a new windowForm 1040NR.pdf](#), *U.S. Nonresident Alien Income Tax Return*. The [Link opens in a new windowForm 8839 Instructions](#) contain additional information about the adoption credit and exclusion. Also, visit [Link opens in a new windowAm I Eligible to Claim a Credit for Adopting a Child or to Exclude Employer-Provided Adoption Benefits from My Employer?](#) You're no longer required to attach the adoption documentation with your tax return; however, you must keep the documentation as part of your records. The IRS encourages taxpayers to e-file their federal income tax returns. Form 8839 can be e-filed with Form 1040 or Form 1040NR. Consequently, taxpayers who e-file their tax returns do not need to print and mail completed forms to the IRS.

## Reference

All 2019 dollar amounts pulled from the following source:

North American Council on Adopted Children (NACAC). (Updated 2019, January). [Link opens in a new window](#) *Adoption Tax Credit 2019*. Retrieved December 16, 2019, from <https://www.nacac.org>

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Internal Revenue Service (IRS). (Revised 2019). *Adoption credit and adoption assistance programs* (Topic No. 607) [B. Schuette, Ed.]. Retrieved December 16, 2019, from <https://www.irs.gov>

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