

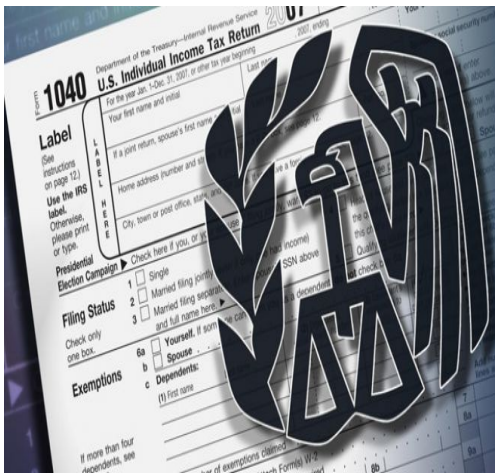
Adoption Tax Credit for Adoptions Finalized Prior to 2012

Foster and Adoptive Family Services does not employ tax experts, what is provided below is an interpretation of the Adoption Tax Credit intended for information purposes only. It is not meant to provide tax or legal advice to or for anyone to act on. If you need specific information to determine if you are eligible to claim the Adoption Tax Credit please contact the Internal Revenue Service, www.IRS.gov or 1-800-829-1040, or consult your tax professional.

The information provided here does not cover every aspect of the Adoption Tax Credit. The information only focuses on the aspects that are relevant to adoptions of children through the New Jersey Division of Child Protection and Permanency or other state's child welfare agencies.

What is a tax credit

A tax credit is an amount of money that the Internal Revenue Service (IRS) allows taxpayers to use for specific reasons that can eliminate or reduce tax liability and/or possibly provide a refund even if the individual is not otherwise required to file a tax return.



What is the Adoption Tax Credit?

The Adoption Tax Credit is a tax credit available to individuals who finalized an adoption that was designated as a Special Needs Adoption by the NJ Division of Child Protection and Permanency (DCP&P).

What is a Special Needs Adoption?

For purposes of the Adoption Tax Credit a Special Needs Adoption is the adoption of a child who DCP&P describes as being hard to place. There are a number of reasons why DCP&P would describe a child as hard to place and it is determined before the adoption is finalized. A Special Needs Adoption is also sometimes referred to as a Subsidized Adoption.

How can the Adoption Tax Credit benefit me now if I adopted before 2012?

The IRS allows individuals to amend prior year tax returns to correct mistakes and omissions made on those returns. You can amend a tax return for any of the previous three tax years. If you did not claim an eligible credit in either 2011, 2010 or 2009 you can amend the tax return for the particular year and receive the same or some of the benefit the credit would have provided at that time.

Was the Adoption Tax Credit any different in the years before 2012?

Yes, it was. Actually, there were two types of Adoption Tax Credits:

1. Non-Refundable (2012 and 2009) and

2. Refundable (2010 and 2011).

For tax years 2012 and 2009 the Adoption Tax Credit was Non-Refundable, for tax years 2011 and 2010 the Adoption Tax Credit was Refundable and a higher amount than 2012 and 2009.

Example:

Tax Year 2012 Amount \$12,650.00

Type of Credit **Non-Refundable**

Tax Year 2011 Amount \$13,360.00

Type of Credit **Refundable**

Tax Year 2010 Amount \$13,170.00

Type of Credit **Refundable**

Tax Year 2009 Amount \$12,150.00

Type of Credit **Non-Refundable**

What is the difference between a Refundable and a Non-Refundable tax credit?

A Refundable Tax Credit can benefit you whether or not you owe taxes or even if you did not have any taxable income during the tax year.

If you do owe taxes the credit can be used to offset the amount of tax you owe and reduce or eliminate that amount. Any amount of the credit that is left after that can be claimed as refund.

If you do not owe any taxes or do not have any taxable income the full amount of the credit can be claimed and received as a refund.

A Non-Refundable Tax Credit can only be used to offset taxes and reduce or

eliminate the amount you owe.

If you do not owe any taxes or didn't have taxable income the benefit of the credit is lost because the itself cannot be claimed as a refund.

If you do owe taxes, the amount you owe can be reduced or eliminated by the non-refundable credit. Any balance of the credit that is not refundable and would be lost.

However, in the case of the Adoption Tax Credit the IRS allows any amount of the credit that isn't used to be carried over for the next five tax years or until the credit is completely used, whichever comes first.

Example Tax Year 2010/2011 Refundable Tax Credit:

Family A is eligible for a 2010 Refundable Tax Credit of \$13,170.00. They do not owe any taxes and are left with the full amount of the available credit. Because the credit is refundable, **Family A** can claim the full amount of the credit and they will the refundable credit of \$13,170.00.

\$13,170.00 Refundable Tax Credit minus \$0 taxes owed = a \$13,170.00 credit balance that can be claimed as a refund.

Family B is eligible for a Refundable Tax Credit of \$13,170.00. They owe \$7000.00 in income taxes. **Family B** can use the credit to eliminate the \$7000.00 of taxes they owe. After applying the credit to the \$7000.00 they are left with a credit balance of \$6,170.00 that can be claimed as refund.

\$13,170.00 refundable tax credit minus \$7000.00 taxes owed = \$6,170.00 to be claimed as a refund.

For tax year 2011 the Refundable Tax Credit was a higher amount, but the process to claim the credit was the same.

Example: Tax Year 2009 Non-Refundable Credit

Family A is eligible for a Non-Refundable Tax Credit of \$12,150.00. They owe \$7000.00 in income taxes.

Family A will use the Non-Refundable Tax Credit to eliminate \$7000.00 they owe leaving a balance of \$5,150.00. Because the credit is non-refundable **Family A** cannot claim the credit balance as a refund.

Family A can carry the \$5,150.00 balance forward to the 2010 tax year.

\$12,150.00 Non-Refundable Tax Credit minus \$7000.00 taxes owed = \$5,150.00 remaining Non-Refundable Tax Credit. The remaining credit balance may be carried over and applied to taxes owed in the next tax year.

Family B is eligible for a Non-Refundable Tax Credit of \$12,150.00. They do not owe any income tax amount. Since **Family B** does not owe any taxes they don't have any way to use the credit and it cannot be claimed as a refund.

The tax credit remains at the full amount of \$12,150.00, but **Family B** does not receive any benefit from it this tax year.

Family B is allowed to carry the credit forward to the next tax year.

\$12,150.00 Non-Refundable Tax Credit minus \$0 taxes owed = \$12,150.00 Non-Refundable Tax Credit not used.

Again, because the tax credit is non-refundable **Family B** will not receive any of the tax credit but, the full amount may be carried over and applied to any taxes owed over the next five years.

(Note: As it stands now and going forward the Adoption Tax Credit is and will be Non-Refundable.)

How do I claim the Adoption Tax Credit for a Special Needs Adoption finalized before 2012?

To claim the credit you must amend the tax return you filed for the tax year you finalized the adoption and would have been eligible to receive the credit.

What forms do I need to amend a prior year tax return and claim the credit?

You will need a Form 1040X Amended

Individual Tax Return and a Form 8839 Qualified Adoption Expenses for each year you want to amend. The Form 1040X will cover tax years 2011, 2010 and 2009, the Form 8839 must be for the specific year you're amending.

The forms are available on <http://www.irs.gov/Forms-&-Pubs> or you can call 1-800-829-3676 to order them. You can also contact FAFS Information Line at 1-800-222-0047 or visit our website www.fafsonline.org.

Note: While the Form 8839 Qualified Adoption Expenses mentions Adoption Expenses; it is not necessary to have had any expenses if the adoption was a Special Needs Adoption.)

You will also need documentation to verify that the adoption you finalized was considered to be a Special Needs Adoption by the state. That documentation is a copy of:

- the adoption decree you received from the court when you finalized the adoption;
- the Determination of Eligibility for Subsidy and;
- the Agreement to Subsidy you signed.

Both the Determination of Eligibility for Subsidy and the Agreement to Subsidy should have been included in the Adoption Subsidy folder you received after finalization.

How do I amend the prior year's tax return?

You must complete a Form 1040X and a Form 8839 and include any requested Special Needs Adoption documentation. The Form 1040X must cover the tax year of the return you intend to amend and the Form 8839 must be for the specific tax year that you finalized the adoption and could have claimed the Adoption Tax Credit.

Example: Amending Tax Year 2010 or 2011 (Refundable Adoption Tax Credit)

Refundable Tax Credit of \$13,170.00.

\$13,170.00 Refundable Adoption Tax Credit minus \$0 taxes owed = a balance of \$13,170.00 Refundable Adoption Tax Credit.

Family A can claim the full amount, \$13,170.00, as a refund.

Family B finalized a Special Needs Adoption in 2011, but they didn't claim the Adoption Tax Credit. They had a tax liability of \$7000.00 which they paid. They are going to amend their 2011 tax return to claim the credit now. They will complete a Form 1040X Amended Individual Income Tax Return and a 2011 Form 8839 Qualified Adoption Expenses and include Special Needs Adoption documentation. By amending their 2011 income tax return Family B will receive a refund of \$13,360.00 the full amount of the 2011 Refundable Adoption Tax Credit.

\$13,360.00 Refundable Adoption Tax Credit minus \$0 existing tax liability because they paid the taxes owed when due = \$13,360.00 Refundable Adoption Tax Credit not used.

Family B can claim the full 2011 Adoption Tax Credit of \$13,360.00.

Amending Tax Year 2009 (Non-Refundable Adoption Tax Credit)

Note: If you had your 2009 tax return prepared by a professional tax preparer or preparation service and they did not claim the Adoption Tax Credit for you; return to them to have the amendment prepared for you.

Is the amendment process the same for 2009 as it is for 2010 and 2011?

No, the amendment process is different for 2009 than it is for 2010 and 2011.

Because the Adoption Tax Credit was Non-Refundable in 2009; you will have to amend both your 2009 and 2010 tax returns to receive any part of the benefit of the 2009 Adoption tax Credit.

Also, because of IRS tax rules you will lose any part of the 2009 tax credit that you could have claimed at the time you

filed your 2009 tax return.

Example: Amending Tax Year 2009 (Non-Refundable Adoption Tax Credit)

Family A was eligible for a Non-Refundable Tax Credit of \$12,150.00, but they did not claim the credit because they were not aware it existed. They had a tax liability of \$3000.00 and paid that amount. Now they have become aware of the adoption tax credit and want to claim it by amending their 2009 tax return.

In order to claim the credit now they must amend their 2009 tax return and file a Form 8839 Qualified Adoption Expenses.

\$12,150.00 2009 Non-Refundable Adoption Tax Credit minus the 2009 tax liability and the amount of the credit they could have used, \$3000.00, = \$9,150.00 Non-Refundable Adoption Tax Credit balance eligible for carry over to the 2010 tax year.

The Non-Refundable credit is reduced by the amount, \$3000.00, **Family A** could have used to pay their 2009 tax liability.

Family A must now amend the 2010 tax return and file a Form 8839 Adoption Tax Credit to claim the \$9,150.00 as a refund.

\$9,150.00 2009 eligible credit amount carried to the 2010 tax year minus \$0 2010 tax liability = \$9,150.00 balance available to claim as a refund.

Family A could have used to pay their 2009 tax liability.

Family A must now amend the 2010 tax return and file a Form 8839 Adoption Tax Credit to claim the \$9,150.00 as a refund.

\$9,150.00 2009 eligible credit amount carried to the 2010 tax year minus \$0 2010 tax liability = \$9,150.00 balance available to claim as a refund.

Family A can claim and receive the credit balance as a refund because the Adoption Tax Credit was refundable in 2010.

Family B finalized a Special Needs Adoption in 2009; they didn't claim the \$12,150.00 Adoption Tax Credit because they didn't owe any tax amount. They are going to amend their 2009 tax return to carry the credit of \$12,150.00 over to the 2010 tax year. They will complete a Form 1040X Amended Individual Income Tax Return and file a 2009 Form 8839 Qualified Adoption Expenses and

provide Special Needs Adoption documentation.

\$12,150.00 2009 Non-Refundable Adoption Tax Credit minus \$0 2009 tax liability = \$12,150.00 tax credit balance to carry forward to the 2010 tax year.

Since **Family B** did not have a tax liability in the 2009 tax year they would not have been able to use any amount of the credit. This allows them to carry the full amount forward to the 2010 tax year.

Family B will amend their 2010 tax return and file a 2010 Form 8839 Qualified Adoption Expenses and provide Special Needs Adoption documentation.

\$12,150.00 2009 Non-Refundable Adoption Tax Credit carried to 2010 minus \$0 2010 tax liability = \$12,150.00 Adoption Tax Credit.

Family B will claim the full amount of the credit as a refund.

If you have any questions about **Adoption Tax Credit for Adoptions Finalized Prior to 2012**, please contact FAFS' Information Line at 800.222.0047, or visit us online at www.fafsonline.org.

All of our services are free and confidential.



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