

Part III - Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part 1, §§ 23, 36C.)

Notice 2010-66

SECTION 1. PURPOSE

This notice provides interim guidance on the adoption credit. Section 10909 of the Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119 (PPACA) amended § 23 of the Internal Revenue Code to make the adoption credit refundable, redesignated § 23 as § 36C, and made certain other changes, effective for taxable years beginning after December 31, 2009. Pending the publication of regulations, this notice provides rules for computing the adoption credit for a taxable year beginning in 2010 and for substantiating claims for the adoption credit. See Notice 97-9, 1997-1 C.B. 365, and Notice 97-70, 1997-2 C.B. 332, for general guidance on the adoption credit.

SECTION 2. BACKGROUND

Section 36C allows a refundable tax credit for qualified adoption expenses (QAE). QAE are the reasonable and necessary adoption fees, court costs, attorney fees, and other expenses directly related to, and for the principal purpose of, adopting

an eligible child. For example, a taxpayer may claim traveling expenses (including amounts expended for meals and lodging while away from home) paid or incurred to adopt an eligible child. A taxpayer may claim QAE paid or incurred for an unsuccessful domestic adoption.

For both domestic and foreign adoptions, if a taxpayer pays or incurs QAE during or after the taxable year in which the adoption is final, the credit is allowable in the taxable year in which the taxpayer pays or incurs the QAE.

For domestic adoptions, the credit is allowable for QAE that a taxpayer pays or incurs in a taxable year before the adoption is final. However, a taxpayer may not claim the credit for those QAE until the next taxable year.

For foreign adoptions, the credit is allowable only in the taxable year in which the adoption is final. QAE that a taxpayer pays or incurs in a taxable year before the adoption is final are treated as paid or incurred in the taxable year in which the adoption is final. See Rev. Proc. 2010-31, 2010-40 I.R.B. 413, for determining the finality of foreign adoptions subject to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention) and the Intercountry Adoption Act of 2000, Pub. L. 106-279, 114 Stat. 825, 42 U.S.C. §§ 14901-14954. See Rev. Proc. 2005-31, 2005-1 C.B. 1374, for determining finality of foreign adoptions from countries not party to the Hague Convention.

For a taxable year beginning in 2010, the credit is limited to \$13,170 of the aggregate QAE that a taxpayer pays or incurs for all taxable years. For 2011 this dollar limitation will be adjusted as necessary for inflation. Expenses for an unsuccessful domestic adoption of an identified child are aggregated with the expenses of a

successful adoption of another child in applying the dollar limitation. See Notice 97-9, section 1.G., Example 3.

Under §§ 36C(a)(3) and 36C(d)(3), a taxpayer may claim the credit up to the full amount of the dollar limitation for an adoption of a child with special needs, as determined by the state where the adoption occurs, in the year in which the adoption is final without regard to the amount of QAE the taxpayer pays or incurs.

The credit is subject to an income limitation based on the taxpayer's modified adjusted gross income (MAGI). The income limitation applies to QAE in the first taxable year the taxpayer claims the credit for that QAE. For taxable years beginning after December 31, 2009, the allowable credit begins to phase out for taxpayers with MAGI of \$182,520 and is completely eliminated for taxpayers with MAGI of \$222,520. The income limitation may be adjusted in future years for inflation.

Prior to amendment under PPACA, the credit was not refundable. Former § 23(c) allowed a taxpayer to carry forward the amount of the credit in excess of the taxpayer's tax liability to five subsequent taxable years. The income limitation did not apply to an amount carried forward to a later taxable year.

Section 36C(f)(2)(B) authorizes the Secretary of the Treasury to require taxpayers to provide information substantiating claims for the adoption credit.

SECTION 3. INTERIM GUIDANCE

1. Amounts Carried Over from Earlier Taxable Years to a Taxable Year Beginning in 2010

An amount of an adoption credit claimed in an earlier taxable year that a taxpayer carries forward to a taxable year beginning in 2010 is allowable as a

refundable tax credit. An amount that a taxpayer carries forward to a taxable year beginning in 2010 is not subject to an income limitation in that taxable year.

The following examples illustrate these rules.

Example 1. (i) In 2008, Taxpayer pays \$2,000 of QAE to adopt an eligible child who is a citizen of the United States. In 2009, Taxpayer pays an additional \$8,000 of QAE and the adoption becomes final. The adoption credit for \$10,000 of QAE is allowable in 2009.

(ii) Taxpayer's tax liability for taxable year 2009 is \$6,000, and Taxpayer applies \$6,000 of the \$10,000 credit against Taxpayer's 2009 tax liability. Taxpayer carries forward \$4,000 of the credit to 2010.

(iii) In 2010, Taxpayer's tax liability is \$3,000. Taxpayer applies \$3,000 of the \$4,000 carried forward adoption credit against Taxpayer's 2010 tax liability. Taxpayer is entitled to a refund of the remaining credit.

Example 2. (i) The facts are the same as in Example 1, except that in 2010, Taxpayer pays an additional \$2,000 of QAE. Taxpayer's income exceeds the upper income limitation for 2010.

(ii) Because of the income limitation, the adoption credit is not allowable for the \$2,000 of QAE Taxpayer pays in 2010. However, Taxpayer may apply the \$4,000 adoption credit carried forward to reduce Taxpayer's tax liability for 2010 and may receive a refund of any carried forward credit that exceeds Taxpayer's tax liability.

2. Substantiation Requirements

A taxpayer must provide a copy (unless otherwise specified) of the applicable documents described in paragraph a. or b. below to substantiate the taxpayer's adoption or attempted adoption of an eligible child. A taxpayer also must comply with paragraph c. below for a special needs adoption. The taxpayer attaches the document(s) to the taxpayer's income tax return for the taxable year that the taxpayer claims the credit, beginning after December 31, 2009.

a. Domestic and foreign adoptions that have been finalized

(1) For a domestic or foreign adoption finalized in the United States, an adoption

order or decree.

(2) For a foreign adoption governed by the Hague Convention and finalized in another country:

- A. A Hague Adoption Certificate (Immigrating Child),
- B. An IH-3 visa, or
- C. A foreign adoption decree, translated into English.

(3) For a foreign adoption from a country that is not party to the Hague Convention:

- A. A foreign adoption decree, translated into English, or
- B. An IR-2 or IR-3 visa.

b. Domestic adoptions that are not final

(1) An adoption taxpayer identification number, obtained by the taxpayer for the child, included on the taxpayer's income tax return (instead of attaching a document),

(2) A home study completed by an authorized placement agency,

(3) A placement agreement with an authorized placement agency,

(4) A document signed by a hospital official authorizing the release of a newborn child from the hospital to the taxpayer for legal adoption,

(5) A court document ordering or approving the placement of a child with the taxpayer for legal adoption, or

(6) An original affidavit or notarized statement signed under penalties of perjury from an adoption attorney, government official, or other person, stating that the signor:

- A. Placed or is placing a child with the taxpayer for legal adoption, or
- B. Is facilitating the adoption process for the taxpayer in an official capacity,

summarizing the facilitation.

c. Adoptions of special needs children

In addition to the documentation required under paragraph 2.a. of this notice, a taxpayer claiming the adoption credit for a child with special needs must attach a copy of the state determination of special needs to the taxpayer's income tax return for the taxable year that the taxpayer claims the adoption credit for a child with special needs.

d. Information to be included in documentation

An order or decree must include information that establishes that the taxpayer's adoption of the eligible child has been finalized and the date finalized, and a special needs determination must include information that establishes that the state has made a determination of special needs for the eligible child. A taxpayer may redact sensitive personal information from an adoption order or decree or a special needs determination. However, the Internal Revenue Service may require the taxpayer to provide an unredacted copy of the document if needed to substantiate the claim for the credit.

SECTION 4. EFFECTIVE DATE

This notice is effective for taxable years beginning after December 31, 2009.

DRAFTING INFORMATION

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