

# Instructions for Form 8839

## Qualified Adoption Expenses

### General Instructions

# Purpose of Form

Use Form 8839 to figure the amount of your adoption credit and any employer-provided adoption benefits you can exclude from your income. You can claim both the credit and the exclusion for expenses of adopting an eligible child. For example, you can claim a credit of up to \$12,150 and also exclude up to \$12,150 from your income. But, you cannot claim both a credit and an exclusion for the same expenses.

Adoption credit. Use Form 8839, Part II, to figure the amount of adoption credit you can take on Form 1040, line 52, or Form 1040NR, line 48. You may be able to take this credit in 2009 if any of the following statements are true.

- 1. You paid qualified adoption expenses in:
- a. 2008 and the adoption was not final at the end of 2008, or
  - b. 2009 and the adoption became final in or before 2009.
- 2. You adopted a child with special needs and the adoption became final in 2009. (In this case, you may be able to take the credit even if you did not pay any qualified adoption expenses.)
- 3. You paid qualified adoption expenses in connection with the adoption of an eligible foreign child in:
- a. 2009 or prior years and the adoption became final in
- b. 2009 and the adoption became final before 2009. See the instructions for line 1, column (e), on page 3.
- 4. You have a carryforward of an adoption credit from a prior year.

Income exclusion for employer-provided adoption benefits. Use Form 8839, Part III, to figure the amount of employer-provided adoption benefits you can exclude from your income Form 1040, line 7, or Form 1040NR, line 8. You may be able to exclude these benefits from income if your employer had a qualified adoption assistance program (see Employer-Provided Adoption Benefits beginning on this page) and any of the following statements are true.

- 1. You received employer-provided adoption benefits in 2009. However, special rules apply for benefits received in connection with the adoption of an eligible foreign child. See the instructions for line 1, column (e), on page 3.
- 2. You adopted a child with special needs and the adoption became final in 2009.
- You received employer-provided adoption benefits in connection with the adoption of an eligible foreign child in:
- a. 2009 or prior years and the adoption became final in 2009, or
- b. 2009 and the adoption became final before 2009. See the instructions for line 1, column (e), on page 3.

You must complete Form 8839, Part III, before you can figure the credit, if any, in Part II.



You cannot exclude employer-provided adoption benefits if your employer is an S corporation in which you own more than 2% of the stock or stock with more than 2% of the voting power.

#### **Definitions**

#### Eligible Child

An eligible child is:

- Any child under age 18. If the child turned 18 during the year, the child is an eligible child for the part of the year he or she was under age 18.
- Any disabled person physically or mentally unable to take care of himself or herself.



(or Part III).

If you and another person (other than your spouse if filing jointly) adopted or tried to adopt an eligible CAUTION child, see the instructions for line 2 on page 4 (or line 19 on page 6, if applicable) before completing Part II

#### **Qualified Adoption Expenses**

Qualified adoption expenses are reasonable and necessary expenses directly related to, and for the principal purpose of, the legal adoption of an eligible child.

Qualified adoption expenses include:

- Adoption fees,
- Attorney fees,
- Court costs.
- Travel expenses (including meals and lodging) while away from home, and
- Re-adoption expenses relating to the adoption of a foreign

Qualified adoption expenses do not include expenses:

- For which you received funds under any state, local, or federal program,
- That violate state or federal law,
- For carrying out a surrogate parenting arrangement,
- For the adoption of your spouse's child,
- Paid or reimbursed by your employer or any other person or organization, or
- Allowed as a credit or deduction under any other provision of federal income tax law.

#### **Employer-Provided Adoption Benefits**

Employer-provided adoption benefits are amounts your employer paid directly to either you or a third party for qualified adoption expenses under a qualified adoption assistance program. Generally, a qualified adoption assistance program is a separate written plan set up by an employer to provide adoption assistance to its employees. For more details, see Pub. 15-B, Employer's Tax Guide to Fringe Benefits.

Employer-provided adoption benefits should be shown in box 12 of your Form(s) W-2 with code T. Your salary may have been reduced to pay these benefits. You may also be able to exclude amounts not shown in box 12 of your Form W-2 if all of the following apply.

- You adopted a child with special needs. See the instructions for line 1, column (d), on page 3 for the definition of a child with special needs.
- The adoption became final in 2009.
- Your employer had a qualified adoption assistance program as described on page 1.

# Who Can Take the Adoption Credit or Exclude Employer-Provided Adoption Benefits?

You may be able to take the credit or exclusion if all three of the following statements are true.

- 1. Your filing status is single, head of household, qualifying widow(er), or married filing jointly. Generally, if you are married, you must file a joint return to take the credit or exclusion. However, if you are married and filing a separate return, you may be able to take the credit or exclusion on a separate return if you are considered unmarried because you are legally separated or living apart from your spouse and you meet certain other requirements. See *Married Persons Filing Separate Returns* below.
- 2. Your modified AGI is less than \$222,180 or you have a carryforward of an adoption credit from a prior year. To figure your modified AGI, see the instructions for line 8 on page 5 (for the credit) or line 26 on page 6 (for the exclusion).
- 3. You report the required information about the eligible child in Part I.

#### **Married Persons Filing Separate Returns**

You may be able to take the credit or exclusion if all of the following apply.

- Statements (2) and (3) above under Who Can Take the Adoption Credit or Exclude Employer-Provided Adoption Benefits are true.
- You lived apart from your spouse during the last 6 months of 2009.
- The eligible child lived in your home more than half of 2009.
- You provided over half the cost of keeping up your home.

#### When To Take the Credit or Exclusion

When you can take the adoption credit or exclusion depends on whether the eligible child is a citizen or resident of the United States (including U.S. possessions) at the time the adoption effort begins.

**Child who is a U.S. citizen or resident.** If the eligible child is a U.S. citizen or resident, you can take the adoption credit or exclusion even if the adoption never became final. Take the credit or exclusion as shown in the following tables.

IF you pay qualifying expenses in	THEN take the credit in						
Any year before the year the adoption becomes final	The year <b>after</b> the year of the payment.						
The year the adoption becomes final	The year the adoption becomes final.						
Any year after the year the adoption becomes final	The year of the payment.						

IF your employer pays for qualifying expenses under an adoption assistance program in	THEN take the exclusion in
Any year	The year of the payment.

Children with special needs. If you adopt a child with special needs you can claim \$12,150 (minus any qualified adoption expenses claimed for the same child in a prior year) in the year the adoption becomes final even if you did not have any qualified adoption expenses. See the instructions for line 1, column (d), on page 3 for more information.

**Foreign child.** If the eligible child is not a U.S. citizen or resident, you cannot take the adoption credit or exclusion unless the adoption becomes final. Take the credit or exclusion as shown on the following tables.

IF you pay qualifying expenses in	THEN take the credit in
Any year before the year the adoption becomes final	The year the adoption becomes final.
The year the adoption becomes final	The year the adoption becomes final.
Any year after the year the adoption becomes final	The year of the payment.

IF your employer pays for qualifying expenses under an adoption assistance program in	THEN take the exclusion in
Any year before the year the adoption becomes final	The year the adoption becomes final.
The year the adoption becomes final	The year the adoption becomes final.
Any year after the year the adoption becomes final	The year of the payment.

If your employer makes adoption assistance payments in a year before the adoption of a foreign child is final, you must include the payments in your income in the year of the payment. Then, on your return for the year the adoption becomes final, you can make an adjustment to take the exclusion.



Your employer is not required to withhold income tax on payments for qualifying expenses under an adoption assistance program. If you must include the

payments in income in the year paid because your adoption of a foreign child is not final, your withholding may not be enough to cover the tax on those payments. You may need to give your employer a new Form W-4 to adjust your withholding, or make estimated tax payments, to avoid a penalty for underpayment of estimated tax.

# **Specific Instructions**

# Part I—Information About Your Eligible Child or Children Line 1

Complete all columns that apply to the eligible child you adopted or tried to adopt. If you do not give correct or complete information, your credit and any exclusion may be disallowed.

If you cannot give complete information about an eligible child you tried to adopt in 2008 because the adoption was either unsuccessful or was not final by the end of 2009, complete the entries that you can on line 1. Enter "See Attached Statement" in the columns for which you do not have the information. Then attach a statement to your return, providing the name and address of any agency or

agent (such as an attorney) that assisted in the attempted adoption. Be sure to write your name and social security number on the statement.

#### Child 1 or Child 2

If you made more than one attempt to adopt one eligible child, combine the amounts you spent and complete only the "Child 1" line. Do not report the additional attempt(s) on the "Child 2" line. Complete the "Child 2" line only if you adopted or tried to adopt two eligible children.

Example. You planned to adopt one child. You had one unsuccessful attempt to adopt a child and later successfully adopted a different child. Complete only the "Child 1" line because you made more than one attempt to adopt one eligible child.



If you filed Form 8839 for a prior year in connection with this adoption, enter your 2009 information on CAUTION the same line (Child 1 or Child 2) that you used in the prior year.

#### More Than Two Eligible Children

If you adopted or tried to adopt more than two eligible children, fill in and attach as many Forms 8839 as you need to list them. Also, enter "See Attached" to the right of the Caution below line 1.

For Part II, fill in lines 2 through 6 for each child. But fill in lines 7 through 18 on only one Form 8839. The amount on line 7 of that Form 8839 should be the combined total of the amounts on line 6 of all the Forms 8839.

For Part III, fill in lines 19 through 22 and 24 for each child. But fill in lines 23 and 25 through 31 on only one Form 8839. The amount on line 23 of that Form 8839 should be the combined total of the amounts on line 22 of all the Forms 8839. The amount on line 25 of that form should be the combined total of the amounts on line 24.

#### Column (c)

A child is disabled if the child is physically or mentally unable to take care of himself or herself.

#### Column (d)

A child is a child with special needs if all three of the following statements are true.

- 1. The child was a citizen or resident of the United States or its possessions at the time the adoption process began.
- A state (including the District of Columbia) has determined that the child cannot or should not be returned to his or her parents' home.
- 3. The state has determined that the child will not be adopted unless assistance is provided to the adoptive parents. Factors used by states to make this determination include:
  - a. The child's ethnic background and age,
- b. Whether the child is a member of a minority or sibling group, and
- c. Whether the child has a medical condition or a physical, mental, or emotional handicap.

You may be able to claim a credit or exclusion for the adoption of a child with special needs even if you did not have any qualified adoption expenses. See line 24 and the instructions for line 5.



If you check the box in column (d), indicating the child has special needs, be sure to keep evidence of EAUTION the state's determination in your records.

#### Column (e)

A child is a foreign child if he or she was not a citizen or resident of the United States or its possessions at the time the adoption process began.

**Special rules.** If you paid qualified adoption expenses in 2009 or any prior year in connection with the adoption of a foreign child and the adoption became final in 2009, you can use the total expenses you paid in 2009 and all prior years in determining the amount to enter on line 5. If you and another person (other than your spouse if filing jointly) each paid qualified adoption expenses to adopt the same child, the total qualified expenses must be divided between the two of you. You can divide it in any way you both agree.

If the adoption did not become final by the end of 2009, you cannot take the adoption credit for that child in 2009. If the adoption becomes final in a later year, you may be able to take a credit for the expenses in that year.

To find out when a foreign adoption is treated as final, see Rev. Proc. 2005-31, 2005-26 I.R.B. 1374, available at www.irs.gov/irb/2005-26\_IRB/ar14.html.



The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption САЦТІОН (Hague Adoption Convention) entered into force for

the United States on April 1, 2008. The Hague Adoption Convention applies if you adopted a child from a country that is party to the Hague Adoption Convention and you filed your application and petition (Forms I-800A and I-800) with the U.S. Citizenship and Immigration Service after March 31, 2008. See www.adoption.state.gov for more information on the Hague Adoption Convention, the application and petition, and a complete list of countries that are parties to the Convention. Separate guidance will be issued providing procedures for determining when a Convention adoption will be treated as final.

If you received employer-provided adoption benefits in 2009 in connection with the adoption of a foreign child and the adoption did not become final by the end of 2009, you must include the benefits in the total entered on Form 1040, line 7, or Form 1040NR, line 8. Also, enter "AB" (adoption benefits) on the dotted line next to Form 1040, line 7, or Form 1040NR, line 8. If the adoption becomes final in a later year, you may be able to exclude the benefits from your income in that year.

**Exclusion of prior year benefits.** If you received employer-provided adoption benefits before 2009 in connection with the adoption of a foreign child and the adoption became final in 2009, you may be able to exclude part or all of those benefits from your 2009 income. To find out if you can, complete the worksheet on page 4. You also must use the worksheet to complete Form 8839, Part III, and to figure any taxable benefits to enter on Form 8839, line 31.

If the adoption of more than one foreign child became final in 2009, complete lines 1 through 3 of the worksheet on page 4 separately for each foreign child and use the combined totals to complete lines 4 through 9 of the worksheet.

### Column (f)

Enter the child's identifying number. This can be a social security number (SSN), an adoption taxpayer identification number (ATIN), or an individual taxpayer identification number (ITIN).

Enter the child's SSN if the child has an SSN or you will be able to get an SSN in time to file your tax return. Apply for an SSN using Form SS-5.

If you are in the process of adopting a child who is a U.S. citizen or resident alien but you cannot get an SSN for the child in time to file your return, apply for an ATIN using Form W-7A. However, if the child is not a U.S. citizen or resident alien, apply instead for an ITIN using Form W-7.

#### **Exclusion of Prior Year Benefits Worksheet** (for the adoption of a foreign child that became final in 2009)

Keep	for	Your	Records



1.	Enter the total employer-provided adoption benefits you received in <b>2009 and all prior years</b> for the adoption of the foreign child	1
2.	Enter \$12,150. If you and another person (other than your spouse if filing jointly) each received employer-provided adoption benefits in 2009 or any prior year to adopt the same child, see instructions below.	2
3.	Enter the <b>smaller</b> of line 1 or line 2 here and on Form 8839, line 19. If necessary, cross out the preprinted amount on line 19 and enter the result above the preprinted amount	3
Nex	t:	
	• Enter -0- on Form 8839, line 20.	
	• Enter the amount from line 3 above on Form 8839, line 21.	
	• On Form 8839, line 22, enter the total amount of employer-provided adoption benefits received in <b>2009</b> and all prior years. On the dotted line next to line 22, enter "PYAB" and the total amount of benefits you received before <b>2009</b> .	
	• Complete Form 8839 through line 30. Then, complete lines 4 through 9 below to figure the amount of any prior year benefits you can exclude and the taxable benefits, if any, to enter on Form 8839, line 31.	
4.	Is the amount on your 2009 Form 8839, line 30, less than the amount on Form 8839, line 23?	
	□ No. Skip lines 4 through 6 and go to line 7.	
	☐ <b>Yes.</b> Subtract Form 8839, line 30 from line 23	4
5.	Enter the total employer-provided adoption benefits you received <b>before 2009</b> included on Form 8839, line 22, for all children	5
6.	<b>Taxable benefits.</b> Subtract line 5 from line 4. If zero or less, enter -0 Enter the result here and on Form 8839, line 31. If more than zero, also include this amount on line 7 of Form 1040 or line 8 of Form 1040NR, and enter "AB" on the dotted line	6.
7	Enter the amount from Form 8839, line 30	
	· · · · · · · · · · · · · · · · · · ·	
	Enter the total <b>2009</b> employer-provided adoption benefits included on Form 8839, line 22, for all children	o
9.	<b>Prior year excluded benefits.</b> Subtract line 8 from line 7. If zero or less, <b>stop</b> ; you cannot exclude any of your prior year benefits	9.
	<b>Next.</b> Figure the total you would enter on line 7 of Form 1040 or line 8 of Form 1040NR <b>before</b> you exclude the line 9 above. Then, subtract the amount from line 9 above from that total. Enter the result on line 7 of Form 1040NR. On the dotted line next to the line for wages, enter "PYAB" and the amount from line 9 above.	ne amount from

#### **Worksheet Instructions**

Line 2. The maximum amount of employer-provided adoption benefits that can be excluded from income is \$12,150 per child. If you and another person (other than your spouse if filing jointly) each received employer-provided adoption benefits to adopt the same child, the \$12,150 limit must be divided between the two of you. You can divide it in any way you both agree. Enter your share of the \$12,150 limit on line 2 of the worksheet above.

# Part II—Adoption Credit Line 2

The maximum adoption credit is \$12,150 per child. If you and another person (other than your spouse if filing jointly) each paid qualified adoption expenses to adopt the same child, the \$12,150 limit must be divided between the two of you. You can divide it in any way you both agree. Cross out the preprinted entry on line 2 and enter above line 2 your share of the \$12,150 limit for that child.

#### Line 3

If you filed Form 8839 for a prior year for the same child, enter on line 3 the total of the amounts shown on lines 3 and 6 of the last form you filed for the child.

#### Line 5



Special rules apply if you paid expenses in connection with the adoption of an eligible foreign child. See the instructions for line 1, column (e), on page 3 for details.

Enter on line 5 the total qualified adoption expenses (as defined on page 1) you paid in:

- 2008 if the adoption was not final by the end of 2009,
- 2008 and 2009 if the adoption became final in 2009, or
- 2009 if the adoption became final before 2009.

Special needs adoption. If you adopted a child with special needs and the adoption became final in 2009, enter on line 5:

- \$12,150, minus
- Any qualified adoption expenses you used to figure any adoption credit you claimed for the same child in a prior year. This is the amount you entered on line 3 of Form 8839 for this child.



1.	Enter the amount from Form 8839, line 12	1	
	Did you use the <b>Credit Carryforward Worksheet</b> in the <b>2008</b> Form 8839 instructions?   □ <b>No.</b> Skip lines 2 through 6. Enter the amount from line 1 above on line 7.   □ <b>Yes.</b> Have that worksheet handy and go to line 2.		
2.	Enter any 2004 credit carryforward (line 12 of your 2008 worksheet)	2	
3.	Enter any 2005 credit carryforward (line 14 of your 2008 worksheet)	3	
4.	Enter any 2006 credit carryforward (line 16 of your 2008 worksheet)	4	
5.	Enter any 2007 credit carryforward (line 18 of your 2008 worksheet)	5	
6.	Enter any 2008 credit carryforward (line 20 of your 2008 worksheet)	6	
7.	Add lines 1 through 6	7	
8.	Enter the amount from Form 8839, line 18	8	
9.	Subtract line 8 from line 7	9	
	Did you enter an amount on line 2, 3, 4, 5, or 6 above?  No. Enter the amount from line 9 on lines 20 and 23 below; skip all the other lines.  Yes. Continue to line 10.		
10.	Subtract line 8 from line 2. If zero or less, enter -0-	10	
11.	Subtract line 2 from line 8. If zero or less, enter -0-	11	
12.	2005 credit carryforward to 2010. Subtract line 11 from line 3. If zero or less, enter -0	12	
13.	Subtract line 3 from line 11. If zero or less, enter -0-	13	
14.	2006 credit carryforward to 2010. Subtract line 13 from line 4. If zero or less, enter -0	14	
15.	Subtract line 4 from line 13. If zero or less, enter -0-	15	
16.	2007 credit carryforward to 2010. Subtract line 15 from line 5. If zero or less, enter -0	16	
17.	Subtract line 5 from line 15. If zero or less, enter -0-	17	
18.	2008 credit carryforward to 2010. Subtract line 17 from line 6. If zero or less, enter -0	18	
19.	Add lines 10, 12, 14, 16, and 18	19	
20.	2009 credit carryforward to 2010. Subtract line 19 from line 9. If zero or less, enter -0	20	
21.	Add lines 19 and 20	21	
22.	Enter the amount from line 10	22	
23.	Total credit carryforward to 2010. Subtract line 22 from line 21	23.	

If you did not claim any adoption credit for the child in a prior year, enter \$12,150 on line 5 even if your qualified adoption expenses for the child were less than \$12,150 (and even if you did not have any qualified adoption expenses for this child).

**Unsuccessful adoption.** If you paid qualified adoption expenses in an attempt to adopt a child and the attempt was unsuccessful, treat those expenses in the same manner as expenses you paid for adoptions not final by the end of the year.

*Example.* You paid \$3,000 of qualifying adoption expenses in 2008 in an attempt to adopt a child. You paid \$2,000 in qualified adoption expenses early in 2009. However, the adoption attempt is unsuccessful. Enter \$3,000 on line 5. The \$2,000 paid in 2009 may qualify in 2010.

#### Line 8

Use the following chart to find your modified adjusted gross income to enter on line 8.

IF you file	THEN enter on line 8 the amount from
Form 1040	Form 1040, line 38, increased by the total of any:
	Exclusion of income from Puerto Rico and
	Amounts from
	<ul> <li>Form 2555, lines 45 and 50,</li> </ul>
	<ul> <li>Form 2555-EZ, line 18, and</li> </ul>
	• Form 4563, line 15.
Form 1040NR	Form 1040NR, line 36.

#### Line 16

If you are claiming the child tax credit for 2009, include on this line the amount from line 12 of the Line 11 Worksheet in Pub. 972.



If you are not claiming the child tax credit for 2009, you do not need Pub. 972.



<b>Before</b>	vou	bec	nin:

- √ If you file Form 1040, complete lines 8a through 21, 23 through 32, and 36 if they apply.
- √ If you file Form 1040NR, complete lines 9a through 21, 24 through 31, and 34 if they apply.

_																					_	
	amount on Form	8839, li	ne 23																		1	
1	Enter the amount	WOLL WIC	ם אווור	nter c	nn Iir	10 7 c	մ ⊢∩r	m 1 (	14() o	r lınd	$8 \cap 1$	-orm	10401	√IH ıt ı	VOLL	COLIT	AVC	luda	the	t∩tal		

- 2. Enter the amount from Form 8839, line 23
- 3. Form 1040 filers, enter the total of lines 8a, 9a, 10 through 14, 15b, 16b, 17 through 19, 20b, and 21. Form
- 5. Form 1040 filers, enter the total of lines 23 through 32, and any write-in adjustments entered on the dotted line next to line 36. Form 1040NR filers, enter the total of lines 24 through 31 and any write-in adjustments entered on
- Form 1040 filers, increase the amount on line 6 above by the total of the following amounts. Enter the total on Form 8839, line 26.
  - Any amount from Form 2555, lines 45 and 50, Form 2555-EZ, line 18, and Form 4563, line 15, and
  - Any exclusion of income from Puerto Rico.

Form 1040NR filers, enter on Form 8839, line 26, the amount from line 6 above.

# Line 18—Credit Carryforward to 2010

If Form 8839, line 17, is smaller than line 14, you may have an unused credit to carry forward to the next 5 years or until used, whichever comes first. Use the worksheet on page 5 to figure the amount of your credit carryforward. If you have any unused credit to carry forward to 2010, be sure you keep the worksheet. You will need it to figure your credit for 2010.

# Part III—Employer-Provided **Adoption Benefits** Line 19

The maximum amount that can be excluded from income for employer-provided adoption benefits is \$12,150 per child. If you and another person (other than your spouse if filing jointly) each received employer-provided adoption benefits in connection with the adoption of the same eligible child, the \$12,150 limit must be divided between the two of you. You can divide it in any way you both agree. Cross out the preprinted entry on line 19 and enter above line 19 your share of the \$12,150 limit for that child.

#### Line 20

If you received employer-provided adoption benefits in a prior year for the same child, enter on line 20 the total of the amounts shown on lines 20 and 24 of the last Form 8839 you filed for the child.



Special rules apply if the prior year benefits were received in connection with the adoption of a foreign CAUTION child and the adoption became final in 2009. See Exclusion of prior year benefits on page 3.

#### Line 26

Use the worksheet above to figure your modified adjusted gross income.

5 before you enter an amount on that line.



Your modified adjusted gross income (AGI) for the adoption credit may not be the same as the modified CAUTION AGI figured in the worksheet above. If you are taking the credit, be sure to read the instructions for line 8 on page

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

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The average time and expenses required to complete and file this form will vary depending on individual circumstances. For the estimated averages, see the instructions for your income tax return.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.