

Post-Adoption Contact and Communication Fact Sheet

A Post-Adoption Contact and Communication Agreement (PACCA) is a legally enforceable contract between the birth parent(s) and adoptive parent(s) to establish contact and/or communication regarding the adoptive child after the adoption is finalized. The agreement is developed in a collaborative process between the birth parent(s) and prospective adoptive family. This fact sheet provides basic information regarding a PACCA. Attorneys should be consulted in developing a PACCA.

Important information to consider in utilizing a PACCA includes:

- The PACCA can be used in all agency and parental placement adoptions.
- A PACCA is optional.
- Birth parent(s) and prospective adoptive parent(s) must agree to the agreement.

- If a child is 14 years of age or older, the child must agree to a PACCA.
- The agency sponsoring the adoption or completing the adoption report and the child's guardian-ad-litem (GAL) must recommend that the PACCA be approved.

- The prospective adoptive parent(s)/petitioner(s) must submit the agreement with the petition for adoption.
- The PACCA grants the birth parent(s) or the prospective adoptive parent(s) the right to seek enforcement of the agreement.

- The adoption is irrevocable even if the adoptive parent(s) or birth parent(s) do not honor the PACCA.
- A court cannot require a written PACCA as a precondition to making a decision in any case involving a child.
- A PACCA must be filed in a Virginia circuit court in order to be legally enforceable.
- It is important to consider future ramifications when developing the terms of the agreement, such as a party moving out of state.

The birth parent(s) and prospective adoptive parent(s) should develop the terms and conditions of the PACCA. After agreeing on the terms and conditions, the agreement is to be given to the child's GAL and either the sponsoring agency or the agency completing the adoption report for approval. After all approvals are received, the prospective adoptive parent must submit the PACCA with the adoption petition in order for the PACCA to be placed in the final order of adoption.



Topic 607 - Adoption Credit and Adoption Assistance Programs

Tax benefits for adoption include both a tax credit for qualified adoption expenses paid to adopt an eligible child and an exclusion for employer-provided adoption assistance. The credit is nonrefundable, which means it is limited to your tax liability for the year. The maximum amount (dollar limit) for 2014 is \$13,190 per child.

Qualified adoption expenses

For both the credit and the exclusion, qualified adoption expenses, defined in section 23(d)(1) of the Code, include:

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

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 do not include expenses that a taxpayer pays to adopt the child of the taxpayer's spouse.

Qualified adoption expenses include expenses incurred by a registered domestic partner who lives in a state that allows same-sex second parent or co-parent to adopt his or her partner's child, adoption expenses and that 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 2014 falls between \$197,880 and \$237,880, your credit or exclusion is subject to a phaseout (is reduced or eliminated). For tax year 2014, the MAGI phaseout begins at \$197,880 and ends at \$237,880. Thus, if your MAGI amount is below \$197,880 for 2014, your credit or exclusion will not be affected by the MAGI phaseout but if your MAGI amount for 2014 is above \$237,880, your credit or exclusion will be zero.

You should reduce the dollar limit for a particular year by the amount of qualified adoption expenses used in the previous years for the same adoption effort. For example, if you claimed a \$3,000 credit in connection with a domestic adoption in 2013 and paid an additional \$13,190 of qualified adoption expenses in 2014 (when the adoption became final), the maximum credit you can claim in 2014 is \$10,190 (\$13,190 dollar limit, less \$3,000 of qualified adoption expenses claimed in 2013).

The dollar limitation applies separately to both the credit and the exclusion, and you may be able to claim both the credit and the exclusion 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 cannot claim both a credit and an exclusion for the same expenses. Examples 1, 2 and 3 illustrate these rules.

Example 1. In 2014, the following events occur: (a) You pay \$13,190 of qualified adoption expenses in connection with an adoption of an eligible child; (b) your employer reimburses you for \$3,190 of those expenses; and (3) the adoption becomes final. Your MAGI amount for 2014 is less than \$197,880. Assuming you meet all other requirements you can exclude \$3,190 from your gross income for 2014. However, the expenses allowable for the adoption credit are limited to \$10,000 (\$13,190 total expenses paid less \$3,190 employer reimbursement).

Example 2. The facts are the same as in Example 1, except that you pay \$18,190 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 2014 and claim a \$13,190 adoption credit (\$18,190 total expenses paid less \$5,000 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 \$13,190 of those expenses. Assuming you meet all other requirements, you can exclude \$13,190 from your gross income for 2014. You can also claim a credit of \$13,190. The remaining \$3,620 of expenses (\$30,000 total expenses paid, less \$13,190 dollar-limited exclusion, less \$13,190 dollar-limited credit), cannot be used for either the exclusion or the adoption credit due to the dollar limitation.

Timing rules: For what tax year can you claim the credit?

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

- When the expenses are paid;
- Whether it is a domestic adoption or a foreign adoption; and
- Whether the adoption has finalized in the year.

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 between the two types 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).
- A **foreign adoption** is the adoption of an eligible child who is not 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 it becomes final**.

Once an adoption becomes final, 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. Because of these timing rules, a taxpayer may sometimes claim a credit for both prior-year and current-year qualified adoption expenses in the year of finality. Example 4 illustrates the difference.

Example 4. An adoptive parent pays qualified adoption expenses of \$3,000 in 2012, \$4,000 in 2013 and \$5,000 in 2014. In 2014, the adoption becomes final.

If the adoption in Example 4 is **domestic**, the adoptive parent may claim the \$3,000 of expenses paid in 2012 as a credit on the parent's 2013 tax return. Then the adoptive parent claims both the \$4,000 paid in 2013 and the \$5,000 paid in 2014 as a credit on their 2014 tax return. The credit claimed on the 2014 tax return includes the \$4,000 paid in 2013, because 2014 is the year after the year in which it was paid. The \$5,000 is claimed on the 2014 return because 2014 is the year when the adoption becomes final. Since the adoption credit is nonrefundable, the total \$9,000 credit claimed on the 2014 tax return reduces any tax liability for 2014. The excess, if any, will be carried forward to the next year.

If the adoption in Example 4 is **foreign**, the adoptive parent may claim all \$12,000 in qualified adoption expenses (\$3,000 paid in 2012, \$4,000 paid in 2013 and \$5,000 in 2014) on the adoptive parent's 2014 tax return because 2014 is the year when the adoption becomes final.

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 to have special needs, you are eligible for the maximum amount of credit or exclusion for the year the adoption is final, even if you did not pay qualified adoption expenses.

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

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 cannot or should not be returned to his or her parent's home; and
3. The state determines that the child probably will not be adoptable without assistance provided to the adoptive family.

Do not confuse "children with special needs" for purposes of the adoption credit with the definitions of "children with special needs" for other purposes. Foreign children are not 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 [Publication 501, Exemptions, Standard Deductions, and Filing Information](#), and [What is My Filing Status?](#) on [IRS.gov](#).

If you filed your return using the married filing separately filing status in the year particular qualified adoption expenses are first allowable, you cannot claim the credit or exclusion for those particular expenses. You may need to file an [amended 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 2012, \$4,000 in 2013, and \$5,000 in 2014. In 2014, the domestic adoption becomes final. They have filed married filing separately for all prior tax years.

On the 2014 tax return, they file married filing jointly and only \$9,000 (\$4,000 paid in 2013 and \$5,000 paid in 2014) of the expenses qualify for 2014. Since they filed married filing separately in 2013 and the \$3,000 paid in 2012 is first allowable for 2013, they cannot claim the adoption credit for those expenses unless they change their filing status to married filing jointly for 2013.

Form 8839 and instructions

To claim the adoption credit or exclusion, complete [Form 8839 \(PDF\)](#), *Qualified Adoption Expenses*, and attach the form to your [Form 1040 \(PDF\)](#), *U.S. Individual Income Tax Return*, or [Form 1040NR \(PDF\)](#), *U.S. Nonresident Alien Income Tax Return*.

There is no longer a requirement 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 need not print and mail completed forms to the IRS.

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