

Qualified Adoption Expenses

Department of the Treasury
Internal Revenue Service (99)

▶ **Attach to Form 1040 or 1040NR.**

▶ **For information about Form 8839 and its separate instructions, see www.irs.gov/form8839.**

Attachment
Sequence No. **38**

Name(s) shown on return

Your social security number

Part I Information About Your Eligible Child or Children—You must complete this part. See instructions for details, including what to do if you need more space.

1	(a) Child's name First Last		(b) Child's year of birth	Check if child was—			(f) Child's identifying number	(g) Check if adoption became final in 2012 or earlier
				(c) born before 1995 and disabled	(d) a child with special needs	(e) a foreign child		
Child 1				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Child 2				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Child 3				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

Caution. If the child was a foreign child, see **Special rules** in the instructions for line 1, column (e) before you complete Part II or Part III. If you received **employer-provided adoption benefits**, complete Part III on the back next.

Part II Adoption Credit

	Child 1	Child 2	Child 3	
2 Maximum adoption credit per child				2
3 Did you file Form 8839 for a prior year for the same child? <input type="checkbox"/> No. Enter -0-. <input type="checkbox"/> Yes. See instructions for the amount to enter. } 4 Subtract line 3 from line 2				3
5 Qualified adoption expenses (see instructions)				5
Caution. Your qualified adoption expenses may not be equal to the adoption expenses you paid in 2012.				
6 Enter the smaller of line 4 or line 5				6
7 Enter modified adjusted gross income (see instructions)				7
8 Is line 7 more than \$189,710? <input type="checkbox"/> No. Skip lines 8 and 9, and enter -0- on line 10. <input type="checkbox"/> Yes. Subtract \$189,710 from line 7				8
9 Divide line 8 by \$40,000. Enter the result as a decimal (rounded to at least three places). Do not enter more than 1.000				9 × .
10 Multiply each amount on line 6 by line 9				10
11 Subtract line 10 from line 6				11
12 Add the amounts on line 11, then see the instructions for the amount of Adoption Credit to enter here and on Form 1040, line 53, or Form 1040NR, line 50. Check box c on that line and enter " 8839 " in the space next to box c				12

For Paperwork Reduction Act Notice, see your tax return instructions.

IRS Federal Income Tax Form for Tax Year 2012
(Jan. 1, 2012 - Dec. 31, 2012)

You can prepare and efile this tax form as part of your 2012 Tax Return from:

Early Jan. 2013, until late October, 2013

You will just need to answer a few tax questions and the efile.com software will select the correct tax forms for you.

[You can start, prepare, and efile your tax return now](#)

Important Notice

If you need to file a 2012 Tax Return after October 2013 you have the following options:

- 1. After October 2013 you can no longer efile a 2012 Tax Return**
- 2. You can download this form and [mail it to the IRS](#)**
- 3. [Work with an efile.com LIVE TaxPro \(Accountant/CPA\) online](#)**



If you need to prepare tax returns for all other Tax Years please visit this page:

[Forms for back taxes or previous year tax returns](#)

OR

[You can work with an efile.com LIVE TaxPro online](#)

- Find a wide range of current [IRS Tax Publications](#) on efile.com.
- View a complete list of [Federal Tax Forms](#) that can be prepared online and efiled together with [State Tax Forms](#).
- Find many relevant Tax Tools here e.g. TaxStimator, Head of Household, Dependent, Qualifying Relative Educators. [efile.com Tax Tools, Educators and Estimators](#)
- Get online [answers to your tax questions](#).
- If you have further questions, please [contact an efile.com support representative](#).
- Work with a [tax professional LIVE online](#) to prepare your return.

Part III Employer-Provided Adoption Benefits

	Child 1	Child 2	Child 3	
13 Maximum exclusion per child	13			
14 Did you receive employer-provided adoption benefits for a prior year for the same child? <input type="checkbox"/> No. Enter -0-. <input type="checkbox"/> Yes. See instructions for the amount to enter.	14			
15 Subtract line 14 from line 13	15			
16 Employer-provided adoption benefits you received in 2012. This amount should be shown in box 12 of your 2012 Form(s) W-2 with code T	16			
17 Add the amounts on line 16				17
18 Enter the smaller of line 15 or line 16. But if the child was a child with special needs and the adoption became final in 2012, enter the amount from line 15	18			
19 Enter modified adjusted gross income (from the worksheet in the instructions)	19			
20 Is line 19 more than \$189,710? <input type="checkbox"/> No. Skip lines 20 and 21, and enter -0- on line 22. <input type="checkbox"/> Yes. Subtract \$189,710 from line 19	20			
21 Divide line 20 by \$40,000. Enter the result as a decimal (rounded to at least three places). Do not enter more than 1.000			21	x .
22 Multiply each amount on line 18 by line 21	22			
23 Excluded benefits. Subtract line 22 from line 18	23			
24 Add the amounts on line 23				24
25 Taxable benefits. Is line 24 more than line 17? <input type="checkbox"/> No. Subtract line 24 from line 17. Also, include this amount, if more than zero, on line 7 of Form 1040 or line 8 of Form 1040NR. On the dotted line next to line 7 of Form 1040 or line 8 of Form 1040NR, enter "AB." <input type="checkbox"/> Yes. Subtract line 17 from line 24. Enter the result as a negative number. Reduce the total you would enter on line 7 of Form 1040 or line 8 of Form 1040NR by the amount on Form 8839, line 25. Enter the result on line 7 of Form 1040 or line 8 of Form 1040NR. Enter "SNE" on the dotted line next to the entry line.				25

You may be able to claim the adoption credit in Part II on the front of this form if any of the following apply.



- You paid adoption expenses in 2011, those expenses were not fully reimbursed by your employer or otherwise, and the adoption was not final by the end of 2011.
- The total adoption expenses you paid in 2012 were not fully reimbursed by your employer or otherwise, and the adoption became final in 2012 or earlier.
- You adopted a child with special needs and the adoption became final in 2012.



Instructions for Form 8839

Qualified Adoption Expenses

What's New

Credit is nonrefundable. For 2012, the adoption credit is nonrefundable. A nonrefundable credit is subtracted from your tax. It may reduce your tax to zero. If the credit is more than your tax, the excess is not refunded to you.

Paper filing required. If you are filing Form 8839, you cannot file your income tax return and Form 8839 electronically. You must file a paper return. Mail your return to the address listed in your tax return instructions.

Documentation requirements. You should keep documentation that supports your claim for the adoption credit, but you no longer need to include any documentation when you file your tax return.

2012 maximum credit. The maximum credit and the exclusion for employer-provided benefits are both \$12,650 per eligible child in 2012. This amount begins to phase out if you have modified adjusted gross income in excess of \$189,710 and is completely phased out for modified adjusted gross income of \$229,710 or more.



Because the adoption credit is not refundable after 2011, you may be able to carryforward any unused credit amounts to future tax years. The 2013 Form 8839 and its instructions will have information on the credit carryforward.

General Instructions

Future Developments

For the latest information about developments related to Form 8839 and its instructions, such as legislation enacted after they are published, go to www.irs.gov/form8839.

Frequently asked questions. Answers to frequently asked questions about adoption benefits are available at www.irs.gov/individuals/article/0,,id=231663,00.html.

Purpose of Form

Use Form 8839 to figure your adoption credit and any employer-provided adoption benefits you can exclude from your income. You can claim both the exclusion and the credit for expenses of adopting an eligible child. For example, depending on the cost of the adoption, you may be able to exclude up to \$12,650 from your income and also be able to claim a credit of up to \$12,650. But, you cannot claim both a credit and exclusion for the same expenses. See [Qualified Adoption Expenses](#) and [Employer-Provided Adoption Benefits](#), later.

Adoption credit. Use Form 8839, Part II, to figure the adoption credit you can take on Form 1040, line 53 or Form 1040NR, line 50. Check box c on that line and enter "8839" in the space next to box c. You may be able to take this credit in 2012 if any of the following statements are true.

1. You paid qualified adoption expenses in connection with the adoption of an eligible U.S. child (including any expenses paid in connection with adopting an eligible U.S. child with special needs) in:

- a. 2011 and the adoption was not final at the end of 2011, or

- b. 2012 and the adoption became final in or before 2012.

2. You adopted an eligible U.S. child with special needs and the adoption became final in 2012. (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. 2012 or prior years and the adoption became final in 2012, or

- b. 2012 and the adoption became final before 2012. See [Column \(e\)](#), later.

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

1. You received employer-provided adoption benefits in 2012. However, special rules apply for benefits received in connection with the adoption of an eligible foreign child. See [Column \(e\)](#), later.

2. You adopted an eligible U.S. child with special needs and the adoption became final in 2012.

3. You received employer-provided adoption benefits in connection with the adoption of an eligible foreign child in:

- a. 2012 or prior years and the adoption became final in 2012, or

- b. 2012 and the adoption became final before 2012. See [Column \(e\)](#), later.

For purposes of calculating the adoption credit in Part II, [qualified adoption expenses](#) (defined later) do not include expenses reimbursed by an employer under a written qualified adoption assistance program (see [Employer-Provided Adoption Benefits](#), later). For this reason, you must complete Form 8839, Part III, before you can figure the credit, if any, in Part II. But see [Child with special needs](#), later.



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.

Income limit. The income limit on the adoption credit or exclusion is based on modified adjusted gross income (MAGI). For 2012, use the following table to see if the income limit will affect your credit or exclusion.

IF your MAGI is...	THEN the income limit...
\$189,710 or less	will not affect your credit or exclusion.
Between \$189,711 and \$229,709	will reduce your credit or exclusion.
\$229,710 or more	will eliminate your credit or exclusion.

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 individual physically or mentally unable to take care of himself or herself.



If you and another person (other than your spouse if filing jointly) adopted or tried to adopt an eligible U.S. child, see [Line 2](#) (or [Line 13](#), if applicable), later, before completing Part II (or Part III).

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 child.

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

In most cases, 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. But see [Child with special needs](#), later.

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 [Column \(d\)](#), later, for the definition of a child with special needs.
- The adoption became final in 2012.
- Your employer had a written qualified adoption assistance program as described earlier.

The following examples help illustrate how qualified adoption expenses and employer-provided adoption benefits apply to the maximum adoption credit allowed.

Example 1. Madelyn paid \$10,000 in qualified adoption expenses for the adoption of an eligible child. Under a qualified adoption assistance program, Madelyn's employer reimbursed her for \$4,000 of those expenses. Madelyn may exclude the \$4,000 reimbursement from her income. However, because of

the employer reimbursement, \$4,000 of her expenses no longer meet the definition of qualified adoption expenses. As a result, Madelyn's maximum adoption credit is limited to \$6,000 (\$10,000 – \$4,000).

Example 2. Haylee paid \$20,000 in qualified adoption expenses for the adoption of an eligible child, including \$8,000 of legal fees. Under a qualified adoption assistance program, Haylee's employer reimbursed the \$8,000 of legal fees. Haylee may exclude the \$8,000 employer reimbursement from her income. However, because of the employer reimbursement, \$8,000 of Haylee's expenses no longer meet the definition of qualified adoption expenses. As a result, Haylee's maximum adoption credit is limited to \$12,000 (\$20,000 – \$8,000).

Example 3. The facts are the same as in *Example 2* except that instead of reimbursing Haylee for her legal fees, the employer directly paid the \$8,000 to the law firm. The employer's payment of the legal fees produces the same result as the employer's reimbursement of the legal fees in *Example 2* (\$8,000 exclusion and \$12,000 credit).

Example 4. Paul paid \$30,000 in qualified adoption expenses to adopt an eligible foreign child, and the adoption became final in 2012. Under a qualified adoption assistance program, Paul's employer reimbursed him for \$12,650 of those expenses. Paul may exclude the \$12,650 reimbursement from his income. The remaining \$17,350 of expenses (\$30,000 – \$12,650) continue to be qualified adoption expenses that are eligible for the credit. However, Paul's credit is dollar-limited to \$12,650. The remaining \$4,700 (\$30,000 – \$12,650 – \$12,650) may never be claimed as a credit or excluded from gross income.

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 are not filing jointly, you may be able to take the credit or exclusion on your own 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 Not Filing Jointly](#), later.

2. Your modified adjusted gross income (MAGI) is less than \$229,710. To figure your MAGI, see [Line 7](#) (for the credit) or [Line 19](#) (for the exclusion), later.

3. You report the required information about the eligible child in Part I.

Married Persons Not Filing Jointly

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

- Statements (2) and (3) earlier 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 2012.
- The eligible child lived in your home more than half of 2012.
- 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 began (domestic adoption).

Child who is a U.S. citizen or resident (U.S. child). 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.

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

Child with special needs. If you adopt a U.S. child with special needs, you may be able to exclude up to \$12,650 and claim a credit for additional expenses up to \$12,650 (minus any qualified adoption expenses claimed for the same child in a prior year). The exclusion may be available, even if you or your employer did not pay any qualified adoption expenses, provided the employer has a written qualified adoption assistance program. See [Column \(d\)](#), later, for more information.

Foreign child. If the eligible child is a foreign child, you cannot take the adoption credit or exclusion unless the adoption becomes final. A child is a foreign child if he or she was not a citizen or resident of the United States (including U.S. possessions) at the time the adoption effort began. Take the credit or exclusion as shown on the following tables.

Foreign Adoption	
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.

For more information, see [Column \(e\)](#) later. 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, and Rev. Proc. 2010-31, 2010-40 I.R.B. 413, available at www.irs.gov/irb/2010-40_IRB/ar10.html.

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.



For examples of the type of records you may want to keep to substantiate your claim for the adoption credit, see Notice 2010-66, 2010-42 I.R.B. 437 available at www.irs.gov/irb/2010-42_IRB/ar09.html.

Attempted Adoptions of U.S. Children

In general, the dollar limitation requires you to combine the qualified adoption expenses you paid if you made more than one attempt to adopt one eligible U.S. child. When you combine the amounts you spent, complete only the "Child 1" line. Do not report the additional attempt(s) on the "Child 2" or "Child 3" line. Complete the "Child 2" or "Child 3" lines only if you adopted or tried to adopt two or three eligible children.

Example 1. You planned to adopt one U.S. child. You paid \$10,000 of qualified adoption expenses in an unsuccessful attempt to adopt a child. You later paid \$8,000 of additional qualified adoption expenses in a successful adoption of a different child. Complete only the "Child 1" line because you made more than one attempt to adopt one eligible child.

Example 2. The facts are the same as in *Example 1* except that both attempts are unsuccessful and no adoption is ever finalized. Enter \$18,000 (\$10,000 + \$8,000) on the "Child 1" line because you made more than one attempt to adopt one eligible child.

Example 3. You planned to adopt one U.S. child. You paid \$9,000 in qualified adoption expenses in an unsuccessful attempt to adopt a child. You later successfully adopted twins, after paying an additional \$24,000 in qualified adoption expenses (\$12,000 per child). Enter \$21,000 (\$9,000 + \$12,000) on the "Child 1" line because you made more than one attempt to adopt one eligible child. Enter \$12,000 on the "Child 2" line because you made a successful attempt to adopt a second eligible child.



If you filed Form 8839 for a prior year in connection with this adoption, enter your 2012 information on the same line (Child 1, Child 2, or Child 3) that you used in the prior year.

More Than Three Eligible Children

If you adopted or tried to adopt more than three 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 and 10 and 11 for each child. But fill in lines 7 through 9 and 12 on only one Form 8839. The amount on line 1 of the [Credit Limit Worksheet](#) in these instructions should be the combined total of the amounts on line 11 of all the Forms 8839.

For Part III, fill in lines 13 through 16, 18, 22, and 23 for each child. But fill in lines 17, 19 through 21, 24, and 25 on only one Form 8839. The amount on line 17 of that Form 8839 should be the combined total of the amounts on line 16 of all the Forms 8839. The amount on line 24 of that form should be the combined total of the amounts on line 23.

Column (c)

A disabled individual, one who is physically or mentally unable to care for himself or herself, is an eligible child regardless of his or her age at the time of adoption.

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 effort began (U.S. child).
2. 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 an exclusion or credit for the adoption of a U.S. child with special needs even if you did not pay any qualified adoption expenses. See [Line 18](#) and the instructions for [Line 5](#).

For more information, see Tax Topic 607 available at www.irs.gov/taxtopics/tc607.html.

Example 1. Agency A is the child welfare department of State W. Mark, Rachel, and Janet, brother and sisters, are U.S. children residing in State W. When Mark was 10, Rachel 8, and Janet 6, Agency A removed the children from the home of the biological parents.

After Agency A placed the children in foster care, Agency A determined it would be difficult to place the children for adoption without providing assistance to the adoptive family because of the ages and sibling relationship of the children. Agency A provided the adoptive parents with monthly subsidy payments on behalf of each child. The adoption assistance agreements entered into between Agency A and the adoptive parents are evidence that state W has determined that Mark, Rachel, and Janet are children with special needs and may be used to substantiate the adoptive parents' claim to the adoption tax credit.

Because State W has determined that Mark, Rachel, and Janet are children with special needs, their adoptive parents may claim an adoption tax credit for each child, even if the adoptive parents paid no qualifying adoption expenses, if all other requirements of the credit are met.

Example 2. Hannah is born in State X. Her biological parents place Hannah for adoption through a private adoption agency and voluntarily relinquish their parental rights. Hannah then is adopted. A medical exam performed shortly after Hannah's birth establishes that Hannah has serious physical disabilities. Hannah is not a child with special needs for purposes of the adoption tax credit because State X has neither removed her from her biological parents nor made a determination that Hannah has special needs. However, Hannah's adoptive parents may claim the adoption tax credit for the qualified adoption expenses they paid in connection with Hannah's adoption, if all other requirements of the credit are met.

Example 3. Noah is born in Country Z and is diagnosed with serious physical and mental disabilities. Noah's adoptive parents, who are residents of State Y, adopt Noah in Country Z, bring him to the United States, and re-adopt him in State Y. Noah is not a child with special needs for purposes of the adoption tax credit because he was not a citizen or resident of the United States when the adoption process began and because State Y neither removed him from the home of his biological parents nor made a determination that Noah has special needs. However, Noah's adoptive parents may claim the adoption tax credit for the qualified adoption expenses they paid in connection with Noah's adoption, if all other requirements of the credit are met.



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

For information and examples on a state determination of special needs, see frequently asked questions on adoption benefits at www.irs.gov/individuals/article/0,,id=231663,00.html.

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 effort began.

Special rules. If you paid qualified adoption expenses in 2012 or any prior year in connection with the adoption of a foreign child and the adoption became final in 2012, you can use the total expenses you paid in 2012 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 2012, you cannot take the adoption credit for that child in 2012.

In general, the year of finality of a foreign adoption is determined either under Rev. Proc. 2005-31, I.R.B. 2005-31, 2005-26 1374, available at www.irs.gov/irb/2005-26_IRB/ar14.html (non-Hague adoptions) or under Rev. Proc. 2010-31, 2010-41 I.R.B. 413, available at www.irs.gov/irb/2010-40_IRB/ar10.html (Hague adoptions).

Non-Hague adoptions. In most non-Hague adoptions, there is an adoption proceeding in the foreign country (and the country is one that is not a party to the Hague Adoption Convention, discussed later) before the child is permitted to come to the United States. There may also be a re-adoption proceeding in the United States, either in the same year as the foreign adoption or in a later year. Rev. Proc. 2005-31 generally allows

Exclusion of Prior Year Benefits Worksheet
(for the adoption of a foreign child that became final in 2012)

1. Enter the total employer-provided adoption benefits you received in **2012 and all prior years** for the adoption of the foreign child 1. _____
2. Enter **\$12,650**. If you and another person (other than your spouse if filing jointly) each received employer-provided adoption benefits in 2012 or any prior year to adopt the same child, see instructions below. 2. _____
3. Enter the **smaller** of line 1 or line 2 here and on Form 8839, line 13. If necessary, cross out the preprinted amount on line 13 and enter the result above the preprinted amount 3. _____

Next:

- Enter -0- on Form 8839, line 14.
 - Enter the amount from line 3 above on Form 8839, line 15.
 - On Form 8839, line 16, enter the total amount of employer-provided adoption benefits received in **2012 and all prior years**. On the dotted line next to line 16, enter "PYAB" and the total amount of benefits you received **before 2012**.
 - Complete Form 8839 through line 24. 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 25.
4. Is the amount on your 2012 Form 8839, line 24, less than the amount on Form 8839, line 17?
 No. Skip lines 4 through 6 and go to line 7.
 Yes. Subtract Form 8839, line 24 from line 17 4. _____
 5. Enter the total employer-provided adoption benefits you received **before 2012** included on Form 8839, line 16, for all children 5. _____
 6. **Taxable benefits.** Subtract line 5 from line 4. If zero or less, enter -0-. Enter the result here and on Form 8839, line 25. 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 24 7. _____
 8. Enter the total **2012** employer-provided adoption benefits included on Form 8839, line 16, for all children 8. _____
 9. **Prior year excluded benefits.** Subtract line 8 from line 7. If zero or less, **stop**; you cannot exclude any of your prior year benefits 9. _____

Next. Figure the total you would enter on line 7 of Form 1040 or line 8 of Form 1040NR **before** you exclude the amount from line 9 above. Then, subtract the amount from line 9 above from that total. Enter the result on line 7 of Form 1040 or line 8 of Form 1040NR. On the dotted line next to the line for wages, enter "PYAB" and the amount from line 9 above.

Line 2. The maximum amount of employer-provided adoption benefits that can be excluded from income is \$12,650 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 \$12,650 limit must be divided between the two of you. You can divide it in any way you both agree. Enter your share of the \$12,650 limit on line 2 of the worksheet above.

taxpayers to choose as the year of finality: (1) the year of the foreign-sending country adoption proceeding, or (2) the year of the re-adoption, if the re-adoption occurs in either the first or second year following the year of the foreign-country proceeding. The expenses of re-adoption are qualified adoption expenses in the year in which the expenses are paid, subject to the dollar limitation.

Example. Brian and Susan paid qualified adoption expenses of \$7,000 in 2009, \$8,000 in 2010, and \$ 9,000 in 2011 in connection with the adoption of an eligible foreign child from Country X. Country X is a non-Hague country (a country not party to the Hague Adoption Convention). In 2011, Country X issued a final decree of adoption to Brian and Susan, who brought the child to the United States on an IR2, IR3, or IR4 visa. In 2012, Brian and Susan paid \$1,000 in qualified adoption expenses in connection with re-adopting the child in their home state. Brian and Susan's modified gross income (MAGI) is less than the MAGI limitation in all years.

Under Rev. Proc. 2005-31, Brian and Susan may treat 2011 (the year of the adoption in Country X) or 2012 (the year of re-adoption in the United States) as the year of finality. If Brian and Susan choose 2011, then the \$24,000 of aggregate qualified adoption expenses paid in 2009, 2010, and 2011 (\$7,000 plus \$8,000 plus \$9,000) will be treated as paid in 2011. The credit will be limited to \$13,360 (the dollar limitation for 2011).

Brian and Susan instead may choose to treat 2012 (the year of re-adoption in the United States) as the year of finality. If Brian and Susan choose 2012, then the \$25,000 of aggregate qualified adoption expenses paid (\$24,000 total from 2009, 2010, and 2011, plus the \$1,000 of re-adoption expenses paid in 2012) will be treated as paid in 2012. The credit will be limited to \$12,650 (the dollar limitation for 2012).

Hague adoptions. In Hague adoptions, there is usually an adoption proceeding in the sending country (and the country is

one that is a party to the Hague Adoption Convention, discussed later) before the child is permitted to come to the United States. Rev. Proc. 2010-31 generally allows taxpayers to choose as the year of finality: (1) the year in which the sending country enters a final decree of adoption, or (2) the year in which the U.S. Secretary of State issues a certificate under section 301(a) of the Intercountry Adoption Act of 2000, 42 U.S.C. sections 14901 - 14954.

Custodial agreements followed by adoption in the United States. In a few cases, the sending country may permit the child to come to the United States under a custodial agreement. If so, the child will be adopted later in a state court in the United States. Both Rev. Proc. 2005-31 and Rev. Proc. 2010-31 allow the adoptive parent(s) to treat the year of the state-court adoption as the year of finality.



The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (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.

If you received employer-provided adoption benefits in 2012 in connection with the adoption of a foreign child and the adoption did not become final by the end of 2012, 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.

Exclusion of prior year benefits. If you received employer-provided adoption benefits before 2012 in connection with the adoption of a foreign child and the adoption became final in 2012, you may be able to exclude part or all of those benefits from your 2012 income. To find out if you can, complete the [Exclusion of Prior Year Benefits Worksheet](#). You also must use that worksheet to complete Form 8839, Part III, and to figure any taxable benefits to enter on Form 8839, line 25.

If the adoption of more than one eligible foreign child became final in 2012, complete lines 1 through 3 of the Exclusion of Prior Year Benefits Worksheet separately for each foreign child and use the combined totals to complete lines 4 through 9 of the worksheet.



If you check the box in column (e), you must also check the box in column (g), indicating the adoption was finalized in 2012 or earlier.

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.

Column (g)

Check the box in column (g) if the adoption for each child became final in 2012 or earlier.

Part II—Adoption Credit

Line 2

The maximum adoption credit is \$12,650 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 \$12,650 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 \$12,650 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 (or corresponding line) 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 [Column \(e\)](#), earlier, for details.

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

- 2011 if the adoption was not final by the end of 2012,
- 2011 and 2012 if the adoption became final in 2012, or
- 2012 if the adoption became final before 2012.



Expenses reimbursed by your employer under a written qualified adoption assistance program are not qualified adoption expenses and must not be entered on line 5. See the examples following [Employer-Provided Adoption Benefits](#), earlier.

Special needs adoption. If you adopted a U.S. child with special needs and the adoption became final in 2012, enter on line 5:

- \$12,650, 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.

If you did not claim any adoption credit for the child in a prior year, enter \$12,650 on line 5 even if your qualified adoption expenses for the child were less than \$12,650 (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 U.S. 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 qualified adoption expenses in 2011 in an attempt to adopt a U.S. child. You paid \$2,000 in qualified adoption expenses early in 2012. However, the adoption attempt was unsuccessful. Enter \$3,000 on line 5. The \$2,000 paid in 2012 may qualify in 2013.

Line 7

Use the following chart to find your modified adjusted gross income to enter on line 7.

IF you file . . .	THEN enter on line 7 the amount from . . .
Form 1040	Form 1040, line 38, increased by the total of any: <ul style="list-style-type: none"> • Exclusion of income from Puerto Rico and • Amounts from— <ul style="list-style-type: none"> • Form 2555, lines 45 and 50, • Form 2555-EZ, line 18, and • Form 4563, line 15.
Form 1040NR	Form 1040NR, line 37.

Line 12

Complete the credit limit worksheet to figure the limit of your nonrefundable adoption credit.

Credit Limit Worksheet—Line 12

1. Enter the total of the amounts on Form 8839, line 11 _____
2. Enter the amount from Form 1040, line 46, or Form 1040NR, line 44 _____
3. **1040 filers:** Enter the total of any amounts from Form 1040, lines 47 through 50; Form 5695, line 32; line 12 of the Line 11 Worksheet in Pub. 972; Form 8396, line 9; Form 8834, line 23; Form 8910, line 22; Form 8936, line 23; and Schedule R, line 22. _____
1040NR filers: Enter the total of any amounts from Form 1040NR, lines 45 through 47; Form 5695, line 32; line 12 of the Line 11 Worksheet in Pub. 972; Form 8396, line 9; Form 8834, line 23; Form 8910, line 22; and Form 8936, line 23. _____
4. Subtract line 3 from line 2 _____
5. **Adoption credit.** Enter the smaller of line 1 or line 4 here and on Form 8839, line 12, and on Form 1040, line 53, or Form 1040NR, line 50. Check box c on that line and enter "8839" in the space next to box c. _____



If you are not claiming the child tax credit for 2012, you do not need Pub. 972.

Part III—Employer-Provided Adoption Benefits

Line 13

The maximum amount that can be excluded from income for employer-provided adoption benefits is \$12,650 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 \$12,650 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 13 and enter above line 13 your share of the \$12,650 limit for that child.

Line 14

If you received employer-provided adoption benefits in a prior year for the same child, enter on line 14 the total of the amounts shown on lines 14 and 18 (or corresponding lines) 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 child and the adoption became final in 2012. See [Exclusion of prior year benefits](#), earlier.

Line 18

If the child was a child with special needs and the adoption became final in 2012, enter the amount from line 15 only if your employer has a qualified adoption assistance program, as defined earlier under [Employer-Provided Adoption Benefits](#). This requirement applies whether or not you received any employer-provided adoption benefits under this plan.

If your employer has no qualified adoption assistance program, you must enter the smaller of line 15 or line 16.

Line 19

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



Your modified adjusted gross income (MAGI) for the adoption credit may not be the same as the MAGI figured in the worksheet below. If you are taking the credit, be sure to read [Line 7](#) before you enter an amount on that line.

Modified Adjusted Gross Income (MAGI) Worksheet—Line 19

Before you begin: ✓ 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 32, and 35 if they apply.

1. Enter the amount you would enter on line 7 of Form 1040 or line 8 of Form 1040NR if you could exclude the total amount on Form 8839, line 17 **1.** _____
2. Enter the amount from Form 8839, line 17 **2.** _____
3. **Form 1040 filers**, enter the total of lines 8a, 9a, 10 through 14, 15b, 16b, 17 through 19, 20b, and 21. **Form 1040NR filers**, enter the total of lines 9a, 10a, 11 through 15, 16b, 17b, and 18 through 21 **3.** _____
4. Add lines 1, 2, and 3 **4.** _____
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 32 and any write-in adjustments entered on the dotted line next to line 35. **5.** _____
6. Subtract line 5 from line 4 **6.** _____

Form 1040 filers, increase the amount on line 6 above by the total of the following amounts. Enter the total on Form 8839, line 19.

- 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 19, the amount from line 6 above.