

## 2011 DRAFTING REQUEST

### Bill

Received: **08/01/2011**

Received By: **mshovers**

Wanted: **As time permits**

Companion to LRB:

For: **Kathleen Bernier (608) 266-9172**

By/Representing:

May Contact:

Drafter: **mshovers**

Subject: **Tax, Individual - income credit**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Bernier@legis.wi.gov**

Carbon copy (CC:) to:

---

### Pre Topic:

No specific pre topic given

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### Topic:

Create individual income tax deduction for adoption expenses; amend adoption expenses subtract modification

---

### Instructions:

See attached. Create indiv. income tax deduction for adoption expenses, based on 2003 SB 408, but if the fed. credit is expiring, add eligibility requirements to the bill. Also, amend the current law deduction for adoption expenses, such that it may be claimed only for amounts not claimed under the credit.

---

### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 08/09/2011	mduchek 08/30/2011		_____			State Tax
/1			jfrantze 08/30/2011	_____	mbarman 08/30/2011		State Tax
/2	mshovers 09/08/2011	mduchek 09/09/2011	jfrantze 09/09/2011	_____	sbasford 09/09/2011	ggodwin 09/20/2011	

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

\_\_\_\_\_ mbarman  
\_\_\_\_\_ 09/12/2011

FE Sent For:

*at intro  
9-29-11*

<END>

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Carbon copy (CC:) to:

*changed per MES  
(see attached)  
MB*

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Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

\_\_\_\_\_  
\_\_\_\_\_

mbarman  
09/12/2011

e-mail  
only

FE Sent For:

<END>

## 2011 DRAFTING REQUEST

### Bill

Received: **08/01/2011**

Received By: **mshovers**

Wanted: **As time permits**

Companion to LRB:

For: **Scott Suder (608) 267-0280**

By/Representing: **David**

May Contact:

Drafter: **mshovers**

Subject: **Tax, Individual - income credit**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Suder@legis.wisconsin.gov**

Carbon copy (CC:) to:

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No specific pre topic given

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Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

FE Sent For:

<END>

## 2011 DRAFTING REQUEST

### Bill

Received: **08/01/2011**

Received By: **mshovers**

Wanted: **As time permits**

Companion to LRB:

For: **Scott Suder (608) 267-0280**

By/Representing: **David**

May Contact:

Drafter: **mshovers**

Subject: **Tax, Individual - income credit**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Suder@legis.wisconsin.gov**

Carbon copy (CC:) to:

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/?	mshovers 08/09/2011	mduchek 08/30/2011		_____			State Tax
/1			jfrantze 08/30/2011	_____	mbarman 08/30/2011		

FE Sent For:

*12 MES 9/8/11*  
*12 med 9/8/11*  
*cjs*  
*9/9*

**2011 DRAFTING REQUEST**

**Bill**

Received: 08/01/2011

Received By: mshovers

Wanted: As time permits

Companion to LRB:

For: Scott Suder (608) 267-0280

By/Representing: David

May Contact:

Drafter: mshovers

Subject: Tax, Individual - income credit

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Suder@legis.wisconsin.gov

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Create individual income tax deduction for adoption expenses; amend adoption expenses subtract modification

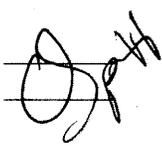
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1/1	MS	8/9/11					

FE Sent For:

<END>

## Shovers, Marc

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**From:** Fladeboe, David  
**Sent:** Monday, August 01, 2011 2:58 PM  
**To:** Shovers, Marc  
**Subject:** RE: Adoption tax credit drafting request

Let's go with option two, allow them to take the credit first then allow for a \$5,000 deduction for any costs above and beyond the credit.

---

**From:** Shovers, Marc  
**Sent:** Monday, August 01, 2011 2:34 PM  
**To:** Fladeboe, David  
**Subject:** RE: Adoption tax credit drafting request

Hi David:

Under current law, there exists a \$5,000 subtract modification, or deduction, for adoption expenses. Do you want your bill, based on 2003 SB 408, to repeal the current law deduction, or would you like to allow a double benefit? One option would be to allow the credit to be available for amounts not covered by the current deduction. Another option would be to allow the credit to be claimed first, as it would be more beneficial to the taxpayer than the deduction, and allow the deduction for amounts not claimed under the credit.

Here's what the current law deduction looks like; an individual may subtract from federal adjusted gross income:

71.05(6)(b)22.

22. For taxable years beginning after December 31, 1995, an amount up to \$5,000 that is expended during the period that consists of the year to which the claim relates and the prior 2 taxable years, by a full-year resident of this state who is an adoptive parent, for adoption fees, court costs or legal fees relating to the adoption of a child, for whom a final order of adoption has been entered under s. 48.91 (3) during the taxable year.

Please let me know how you'd like to proceed.

Marc

Marc E. Shovers

Managing Attorney  
Legislative Reference Bureau  
Phone: (608-266-0129)  
E-Mail: marc.shovers@legis.wisconsin.gov

---

**From:** Fladeboe, David  
**Sent:** Monday, August 01, 2011 1:42 PM  
**To:** Shovers, Marc  
**Subject:** Adoption tax credit drafting request

Marc,

We would like to draft a bill similar to 2003 SB 408 creating a non-refundable \$5,000 state tax credit for adoption costs. It looks like you were the original drafter of the bill.

One change we will probably need is the language on eligibility for the credit to be tied to the federal credit. It sounds like the federal credit may be expiring so we should probably outline the eligibility requirements in the bill itself. We can keep them the same as the feds but just put them in statute.

Please let me know if you have any questions or concerns.

Thanks.

**David Fladeboe**

Office of Majority Leader

Rep. Scott Suder

608-266-2401

608-267-0280

888-534-0069



#### Topic 607 - Adoption Credit

In 2010 and 2011, you may be able to take a refundable tax credit for qualifying expenses paid to adopt an eligible child (including a child with special needs). This means that you could qualify for a tax refund even if you did not have federal income tax withheld. For tax years prior to 2010, the adoption credit is not refundable.

Under new Adoption Credit Rules for the 2010 tax year, you must attach one or more adoption-related documents (identified in the form instructions) with the completed [Form 8839](#) (PDF), *Qualified Adoption Expenses*, and attach the form to your Form 1040 or Form 1040A return, to claim the adoption credit or income exclusion. The required documents are different if the adoption is foreign, or domestic, final or not final and if the adoption is for a special-needs child.

A tax credit, including the adoption credit, reduces your tax liability. For expenses paid prior to the year the adoption becomes final, the credit generally is allowed for the year following the year of payment. For expenses paid in and after the year the adoption becomes final, the credit is allowed in the year of payment. The adoption credit is not available for any reimbursed expense. In addition to the credit, certain amounts paid by your employer for qualifying adoption expenses may be excludable from your gross income.

A taxpayer who paid qualifying expenses in the current year for an adoption which became final in the current year, may be eligible to claim the credit for the expenses on the current year return, in addition to credit for expenses paid in a prior year.

For both the credit or the exclusion, qualifying expenses include reasonable and necessary adoption fees, court costs, attorney fees, traveling expenses (including amounts spent for meals and lodging while away from home), and other expenses directly related to and for which the principal purpose is the legal adoption of an eligible child. An eligible child must be under 18 years old, or be physically or mentally incapable of caring for himself or herself. The adoption credit or exclusion cannot be taken for a child who is not a United States citizen or resident unless the adoption becomes final. In the case of an adoption of a special-needs child, you may be eligible for a certain amount of credit or exclusion regardless of actual expenses paid or incurred. A child has special-needs if (1) the child otherwise meets the definition of eligible child, (2) the child is a United States citizen or resident, (3) a state determines that the child cannot or should not be returned to his or her parent's home, and (4) a state determines that the child probably will not be adopted unless assistance is provided. The credit and exclusion for qualifying adoption expenses are each subject to a dollar limit and an income limit.

The amount of your adoption credit or exclusion is limited to the dollar limit for that year for each effort to adopt an eligible child. If you can take a credit and exclusion, this dollar amount applies separately to each. For example, if we assume the dollar limit for the year is \$13,170 and you paid \$10,000 in qualifying adoption expenses for a final adoption, while your employer paid \$4,000 of additional qualifying adoption expenses, you may be able to claim a credit of up to \$10,000 and also exclude up to \$4,000.

The dollar limit for a particular year must be reduced by the amount of qualifying expenses taken into account in previous years for the same adoption effort.

The income limit on the adoption credit or exclusion is based on your modified adjusted gross income (MAGI). If your MAGI is below the beginning phase out amount for the year, the income limit will not affect your credit or exclusion. If your MAGI is more than the beginning phase out amount for the year, your credit or exclusion will be reduced. If your MAGI is above the maximum phase out amount for the year, your credit or exclusion will be eliminated.

Generally, if you are married, you must file a joint return to take the adoption credit or exclusion. If your filing status is married filing separately, you can take the credit or exclusion only if you meet special requirements.

To take the credit or exclusion, complete [Form 8839](#) (PDF), *Qualified Adoption Expenses*, and attach the form to your [Form 1040](#) (PDF) or [Form 1040A](#) (PDF).

[More Tax Topic Categories](#)

Page Last Reviewed or Updated: February 07, 2011

**Shovers, Marc**

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Attachments: Picture (Metafile)

# Everything You Want to Know and More about the Adoption Tax Credit

March 24, 2011

by Jason Kovacs

<http://abbafund.files.wordpress.com/2011/03/taxcredit.jpg>

[es.wordpress.com/2011/03/taxcredit.jpg](http://abbafund.files.wordpress.com/2011/03/taxcredit.jpg)

<http://abbafund.files.wordpress.com/2011/03/taxcredit.jpg>

It's that time of the year – TAXES! Thankfully for adoptive families the Federal Adoption Tax Credit is still in place and has actually increased and become refundable. That said, we receive A LOT of questions about the Adoption Tax Credit and I wanted to compile as much information as possible for you.

While this should give you a basic understanding of the credit I encourage you to talk to a tax professional about your personal situation if you have specific questions.

## The Federal Adoption Tax Credit

Taxpayers who adopt a child domestically or internationally may qualify for the **adoption tax credit**. This tax credit has been enhanced for 2010 through 2012.

You qualify for the adoption tax credit if you adopted a child and paid out-of-pocket expenses relating to the adoption. The amount of the tax credit you qualify for is dependent upon how much money you spent on adoption-related expenses. If you adopt a special needs child through the State you can claim the full amount of the adoption credit, even if your out-of-pocket expenses are less than the tax credit amount.

The adoption credit is calculated on Form 8839 Qualified Adoption Expenses (PDF). You may claim an adoption credit of up to \$13,170 (for tax year 2010) per eligible child.

### **Adoption Tax Credit Amounts**

- 2013:** \$5,000 or \$6,000 for a special needs child (projected)
- 2012:** at least \$12,170 (will be indexed for inflation), non-refundable
- 2011:** \$13,360 (will be indexed for inflation), refundable
- 2010:** \$13,170, refundable
- 2009:** \$12,150, non-refundable
- 2008:** \$11,650, non-refundable
- 2007:** \$11,390, non-refundable
- 2006:** \$10,960, non-refundable

### **Adoption Tax Credit Phase-out Ranges**

- 2011:** \$185,210 – \$225,210
- 2010:** \$182,520 – \$222,520
- 2009:** \$182,180 – \$222,180
- 2008:** \$174,730 – \$214,730
- 2007:** \$170,820 – \$210,820
- 2006:** \$164,410 – \$204,410

The IRS provides a worksheet for figuring your modified adjusted gross income for the adoption credit in the Instructions for Form 8839. Any income excluded from tax using the Foreign Earned Income Exclusion must be added back for the purposes of determining the phase-out range for the adoption credit.

### **Adoption Credit for 2010 and 2011**

The adoption credit was scheduled to sunset at the end of 2010. However, the massive health care reform legislation extended and revised the adoption tax credit. The health care legislation enhanced the adoption tax credit in three ways. First, it bumped the maximum adoption credit from \$12,150 to \$13,170. Second, it extended this increased tax credit amount to the year 2011. Third, it made the adoption credit refundable. The Tax Relief Act extended increased dollar amounts for an additional year, through 2012.

### **Adoption Credit Scheduled to Sunset after 2012**

The dollar amount of the adoption credit will revert back to \$5,000, or \$6,000 if a special needs child is adopted, beginning in the year 2013.

### **Adoption Tax Credit Eligibility Requirements**

To be eligible for the adoption credit, you must:

- Adopt an eligible child, and
- Pay qualified adoption expenses out of your own pocket.

**Eligible Children** include:

- any child age 17 or younger, or
- a child of any age who is a US citizen or resident alien and who is physically or mentally incapable of

caring for himself or herself.

**Qualified Adoption Expenses** are calculated by:

- Adding up all the expenses related to the adoption,
- Subtracting any amounts reimbursed or paid for by your employer, government agency, or other organization.

Adoption expenses include any and all costs directly relating to your adoption and that are reasonable and necessary for your adoption. Expenses include adoption fees, legal fees, court costs, and travel expenses.

**Taxpayers who adopt a special needs child** can claim the full amount of the adoption credit without regard to the actual expenses paid in the year the adoption becomes final.

**Eligible expenses** must be “directly related” to the adoption of an eligible child. This may include adoption fees, legal fees, and court costs. Expenses for a failed adoption might qualify for the credit if followed by a successful adoption, but the two adoption efforts would be considered as one adoption and subject to the dollar limit per eligible child. The editors of JK Lasser’s Your Income Tax advise:

“Do not include expenses paid or reimbursed by your employer or any other person or organization. You may not claim a credit for the costs of a surrogate parenting arrangement or for adopting your spouse’s child.” (page 469)

### **When to Claim the Adoption Credit**

What year you can claim the adoption credit depends on when the adoption was finalized and whether the adopted child is a US citizen, resident alien, or foreign national.

**If the child is a US citizen or resident alien**, then you take the adoption credit in the following order:

- for expenses paid before the adoption is final, you take the adoption credit in the year after your expenses were paid,
- for expenses paid in the same year that the adoption is final, you take the adoption credit in the same year, and
- for expenses paid in the year after the adoption is final, you take the adoption credit in the year the expenses were paid.

For example, you adopted a child in 2009, but you paid adoption expenses in 2008, 2009, and 2010. Your 2008 expenses are taken on your 2009 tax return (they must be delayed by one year because the adoption was not final). Your 2009 expenses are taken on your 2009 tax return (because they occurred in the same year as the adoption became final). You take your 2010 expenses on your 2010 tax return. In this example, your 2009 adoption expenses include costs incurred in both 2008 and 2009.

**If the child is a foreign national**, then you take the adoption credit only in the year when the adoption becomes final. Any expenses paid in the year after the adoption is finalized, you can take a credit for those expenses in the year that you paid them.

If your adopted child does not yet have a Social Security Number, you must apply for an Adoption Tax ID Number (ATIN) in order for you to begin claiming your adopted child as a dependent. The IRS provides comprehensive information on the Adoption Taxpayer Identification Number.

### **Carrying Forward the Adoption Credit**

Any adoption credit in the year 2009 or earlier that was in excess of your tax liability can be carried forward to the subsequent tax year. Excess adoption credits can be carried-forward for five years and is used up on a first-in, first-out basis. For 2010, any carryover adoption credits can be refunded to you in full.

### **Adoption Tax Credit Resources**

- Internal Revenue Code Section 23 (Legal Information Institute, Cornell Law School)
- Adoption Credit (Tax Topic 607 from the IRS)
- IRS Audit Guidelines and Required Documentation (from the Internal Revenue Manual)

[HT: William Perez]



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- HOME
- OPINION
- SPORTS
- CULTURE
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- PHOTO GALLERIES
- ENTERTAIN US
- FAMILY TODAY
- GLOBAL COMMUNITY
- LIVING SMART
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- RED THREAD: AN ADOPTIVE FAMILY FORUM
- ABOUT US
- V

## Tax time: IRS refund for adoption

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Photo: Andrea Poe



Tuesday, March 22, 2011 - Red Thread: An Adoptive Family Forum by Andrea Poe



Ask  
**Andrea a**  
**Question**

**BALTIMORE, Md, March 21, 2011** — Tax time is around the corner. For adoptive parents and prospective parents, this is a good time to pay attention to otherwise mind-numbing regulations from the IRS.

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**State Farm**

Switch to State Farm and you can save up to \$480\* on auto insurance.

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\*Average annual per household savings based on a 2010 national survey of new policyholders who reported savings by switching to State Farm.

Adoptive parents have never been given such meaningful tax credits before and they aren't likely to see this again, at least not any time soon.

A little known byproduct of last year's healthcare legislation was the extended, expanded and enhanced adoption tax credit provided by the federal government.



What: The adoption tax credit has been increased from \$12,150 to \$13,170.

It is now fully refundable. That means that even if you don't owe taxes equal or exceeding that amount, you will get the credit in the form of a refund check. Yep—a refund check that will be sent to you once you file your taxes. This is a big deal. It means you can pay off those credit cards and loans quickly without having to rack up years of interest. Previously, the credit would carry forward through the following years applied against the taxes you owed.

Below is a chart that details the tax credit you can apply for based on the year in which you completed your adoption:

- 2012:** at least \$12,170 (will be indexed for inflation), non-refundable
- 2011:** \$13,360 (will be indexed for inflation), refundable
- 2010:** \$13,170, refundable
- 2009:** \$12,150, non-refundable

**Qualifying**

Who: You qualify for this credit whether you adopt a child 17 or under domestically or abroad and whether or not your child has special needs.

Although the vast majority of Americans will be able to access this tax credit, some parents in the higher income brackets may not be eligible. The federal government has set income limits that are based on modified adjusted gross income for those receiving for the credit.

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12

Below is a chart of the phase-out ranges. Parents whose income reach or exceed these amounts will not be eligible for the adoption tax credits:

**2011:** \$185,210 - \$225,210

**2010:** \$182,520 - \$222,520

**2009:** \$182,180 - \$222,180

Which: All expenses related to the adoption qualify. You will have to subtract expenses that were paid by others, like contributions from your employer or a religious organization. The remainder—what you actually paid of out pocket—is what your credit is based on. These include legal and adoption fees, court costs, and travel expenses.

The IRS details what constitutes a qualifying expense at their website. The IRS requires documentation of these expenses, so keep all of your receipts.

Alert: The new tax credits will sunset December 31, 2012, sliding way down to \$5,00 per adoption and \$6,000 for special needs adoption. For more details on the federal tax credit, go to Tax Topics at the IRS Website.

Disclaimer: I am not an accountant. This article is meant to present you with information that you can bring to your tax preparer for further investigation.

Andrea is an adoptive mother and a journalist. She is at work on a book, "The Red Thread," a collection of stories told by families united through adoption. She is also owner of Media Branding International, a public relations/media consulting firm.

**Read more The Red Thread: An Adoptive Family Forum in The Communities at The Washington Times.**

More from **Red Thread: An Adoptive Family Forum**



**Michele Bachmann Government bars American plays politics with family from contacting foster care daughter**



**New regulations make international adoption harder than ever for Americans**

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TUES REBEL  
REQUESTER

2011-2012

2008 LEGISLATURE

- 2614/1  
LRB-493X1  
MES:WAA

med & cjs

PM NR

2011 **2008 SENATE BILL 408**

If the allowable <sup>federal</sup> credit exceeds the taxpayer's tax liability, the excess credit is refunded to the taxpayer. For taxable years beginning after December 31, 2011, the federal credit <sup>once</sup> becomes a nonrefundable credit. <sup>again</sup> <sup>approximately</sup> the maximum allowable credit will be qualified adoption expenses (or \$6,000 for a special

January 27, 2004 Introduced by Senator REYNOLDS. Referred to Committee on Health, Children, Families, Aging and Long Term Care. <sup>needs child after 2012</sup>

\* → \$12,170 for taxable year 2012, and \$5,000 thereafter for

\$12,170

- 1 AN ACT to create 71.07 (6e) and 71.10 (4) (ce) of the statutes; relating to:
- 2 creating a nonrefundable individual income tax credit for certain adoption
- 3 expenses, and modifying eligibility for the adoption expenses tax deduction

**Analysis by the Legislative Reference Bureau**

In calculating an individual's Wisconsin adjusted gross income (AGI), an adoptive parent may generally, under current law, deduct from federal AGI up to \$5,000 that is expended during the year to which the claim relates and the preceding two years for adoption fees, court costs, or legal fees relating to the adoption of a child.

Under federal law, there is a nonrefundable adoption expenses tax credit, under which amounts of up to \$10,000 of qualified adoption expenses may, generally, be credited against the federal tax that is imposed. The Internal Revenue Code (IRC) defines qualified adoption expenses to mean, generally, reasonable and necessary adoption fees, court costs, attorney fees, and other costs that are directly related to the legal adoption of an eligible child by the taxpayer, and defines eligible child to mean an individual <sup>who is the of</sup> under age 18 or <sup>who is</sup> physically or mentally incapable of caring for himself or herself.

Federal law provides that, if adoption expenses are paid or incurred during a taxable year before the taxable year in which the adoption is finalized, the credit for those expenses is allowed during the year following the year during which the expenses are paid or incurred, and, if the expenses are paid or incurred during or after the year in which the adoption becomes final, the credit for those expenses <sup>is allowed</sup> may be claimed for the year in which they are paid or incurred.

STET: leave as typed

(which will be nonrefundable after 2011)

\$13,170 (for taxable year 2010, and indexed for inflation for TY 2011)

6

\$ 182,520

LRB-4093/1  
MES:jld:rs

SENATE BILL 408

maximum credit

\$182,520 to \$222,520  
(for taxable year 2010)

If the amount of the federal credit for which a taxpayer is eligible exceeds the amount of taxes owed, the excess amount of credit may be carried forward for up to five years. The ~~320,000~~ limit is for each child adopted and is a cumulative limit. The amount of the credit that may be claimed is phased out to zero as the claimant's modified federal AGI (income) rises from ~~\$150,000 to \$190,000~~. With regard to the adoption of a child who is not a citizen or resident of the United States at the time that the adoption proceedings commence, the credit may be claimed only upon the adoption becoming final.

STET: leave as typed

This bill creates a nonrefundable individual income tax credit for adoption expenses incurred by an individual who is eligible for, and claims, the federal credit. The credit may be claimed for an amount of qualified adoption expenses, up to \$5,000, to the extent that the expenses exceed the amount that the claimant is eligible for, and claims, under the federal credit. For claimants who are nonresidents or part-year residents of Wisconsin, the credit that may be claimed is prorated based on the ratio of the claimant's Wisconsin AGI to federal AGI.

If the credit amount that the claimant is eligible for exceeds the claimant's taxes due, the claimant may carry forward the unused credit for up to five years. Generally, under the bill, the provisions of the federal credit, including the definitions of qualified adoption expenses and eligible child, the maximum income phaseout provisions, the determination of the years in which the credit may be claimed for expenses paid or incurred, and the provisions relating to foreign adoptions apply to the credit created in the bill.

TAX EXM

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

INS 2-1

- 1 SECTION 1. 71.07 (6s) of the statutes is created to read:
- 2 71.07 (6s) ADOPTION EXPENSES CREDIT. (a) Definitions. In this subsection:
- 3 1. "Claimant" means an individual who is eligible for, and claims, the federal
- 4 credit.
- 5 2. "Federal credit" means the federal tax credit for adoption expenses under
- 6 section 213 of the Internal Revenue Code.
- 7 (b) Filing claims. Subject to the limitations provided in this subsection, a
- 8 claimant may claim as a credit against the tax imposed under s. 71.02, up to the
- 9 amount of those taxes, an amount of up to \$5,000 of qualified adoption expenses, to

Also under this bill, the current law \$5,000 deduction from Wisconsin AGI for adoption expenses may be claimed only to the extent that the adoption expenses are not claimed under the federal credit or the credit created in this bill.

**SENATE BILL 408**

1 the extent that those expenses exceed the amount of the credit <sup>for</sup> ~~for which~~ <sup>that</sup> a claimant  
2 is eligible <sup>for</sup> and claims, under the federal credit in the year to which the claim relates.

3 (c) *Limitations.* 1. No credit may be allowed under this subsection unless it  
4 is claimed within the time period under s. 71.75 (2).

5 2. For a claimant who is a nonresident or part-year resident of this state and  
6 who is a single person or a married person filing a separate return, multiply the  
7 credit for which the claimant is eligible under par. (b) by a fraction the numerator of  
8 which is the individual's Wisconsin adjusted gross income and the denominator of  
9 which is the individual's federal adjusted gross income. If a claimant is married and  
10 files a joint return, and if the claimant or the claimant's spouse, or both, are  
11 nonresidents or part-year residents of this state, multiply the credit for which the  
12 claimant is eligible under par. (b) by a fraction the numerator of which is the couple's  
13 joint Wisconsin adjusted gross income and the denominator of which is the couple's  
14 joint federal adjusted gross income.

15 3. The provisions contained in section ~~244~~ <sup>36c</sup> of the Internal Revenue Code, to the  
16 extent that they apply to the credit under that section, apply to the credit under this  
17 subsection, unless this subsection explicitly provides otherwise.

18 (d) *Administration.* Subsection (9e) (d), to the extent that it applies to the credit  
19 under that subsection, applies to the credit under this subsection.

20 (e) *Carry-forward.* If a credit computed under this subsection is not entirely  
21 offset against Wisconsin income taxes otherwise due, the unused balance may be  
22 carried forward and credited against Wisconsin income taxes otherwise due for the  
23 following 5 taxable years to the extent not offset by these taxes otherwise due in all  
24 intervening years between the year in which the expense was incurred and the year  
25 in which the carry-forward credit is claimed.

**SENATE BILL 408**

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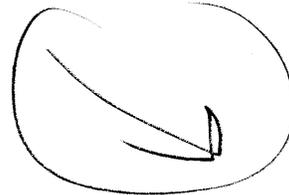
SECTION 2. 71.10 (4) <sup>CS</sup> ~~(a)~~ of the statutes is created to read:

71.10 (4) <sup>CS</sup> ~~(a)~~ The adoption expenses credit under s. 71.07 <sup>65</sup> ~~(b)~~.

**SECTION 3. Initial applicability.**

(1) This act first applies to taxable years beginning on January 1, ~~2004~~.

(END)



**ASSEMBLY BILL 112****SECTION 1**

1           4. If a part-year resident or a nonresident of this state files a claim under this  
2 subsection, the maximum credit amount in subd. 1., 2., or 3. shall be multiplied by  
3 a fraction, the numerator of which is the individual's and his or her spouse's  
4 Wisconsin adjusted gross income and the denominator of which is the individual's  
5 and his or her spouse's federal adjusted gross income. In this subdivision, for  
6 married persons filing separately "adjusted gross income" means the separate  
7 adjusted gross income of each spouse, and for married persons filing jointly "adjusted  
8 gross income" means the total adjusted gross income of both spouses.

9           5. No credit may be allowed under this subsection unless it is claimed within  
10 the time period under s. 71.75 (2).

11           6. No credit may be allowed under this subsection for a taxable year covering  
12 a period of less than 12 months, except for a taxable year closed by reason of the death  
13 of the taxpayer.

14           (d) *Administration.* Subsection (9e) (d), to the extent that it applies to the credit  
15 under that subsection, applies to the credit under this subsection.

16           **SECTION 2.** 71.10 (4) (cs) of the statutes is created to read:

17           71.10 (4) (cs) Nonpublic education expenses credit under s. 71.07 (8m).

18           **SECTION 3. Initial applicability.**

19           (1) This act first applies to taxable years beginning on January 1 of the year  
20 in which this subsection takes effect, except that if this subsection takes effect on or  
21 after August 1 this act first applies to taxable years beginning on January 1 of the  
22 year following the year in which this subsection takes effect.

23           **(END)**

FNS 2-1

X

Section #. 71.05 (6) (b) 22. of the statutes is amended to read:

71.05 (6) (b) 22. For taxable years beginning after December 31, 1995, an amount up to \$5,000 that is expended during the period that consists of the year to which the claim relates and the prior 2 taxable years, by a full-year resident of this state who is an adoptive parent, for adoption fees, court costs or legal fees relating to the adoption of a child, for whom a final order of adoption has been entered under s. 48.91 (3) during the taxable year.

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, 183, 255, 289, 321, 326; 2005 a. 22, 25, 216, 254, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 205, 265, 269, 276, 295, 332, 344; 2011 a. 3, 5, 10; s. 13.92 (1) (bm) 2., (2) (i).

to the extent that such <sup>expenses</sup> ~~amounts~~ ~~have~~  
are not ~~AAAn~~ claimed under section 36c of  
the Internal Revenue Code or under  
§. 71.07 (6s)

↓  
(6s)

## Shovers, Marc

---

**From:** Fladeboe, David  
**Sent:** Tuesday, September 06, 2011 3:14 PM  
**To:** Shovers, Marc  
**Subject:** RE: Adoption tax credit drafting request

Marc,

Can you add a line to LRB 2614 that caps the total amount of the credits awarded to all claimants to \$500,000 per year?

I'm assuming it would be similar to language I found in a tax credit bill we did in Commerce a couple of sessions ago 2007 AB 635.

(c) *Limitations.* 1. The maximum amount of the credits that may be allocated to all claimants under this subsection and ss. 71.28 (5m) and 71.47 (5m) in each fiscal year is \$2,500,000, as determined by the department of commerce under s. 560.207.

Thanks.

**David Fladeboe**  
Office of Majority Leader  
Rep. Scott Suder  
608-266-2401  
608-267-0280  
888-534-0069

---

**From:** Shovers, Marc  
**Sent:** Monday, August 29, 2011 2:32 PM  
**To:** Fladeboe, David  
**Subject:** RE: Adoption tax credit drafting request

Hi David:

I checked with the Administrative Services manager and she told me that the draft will be out tomorrow. Please let me know if you have any further questions.

Marc

---

**From:** Fladeboe, David  
**Sent:** Wednesday, August 17, 2011 4:18 PM  
**To:** Shovers, Marc  
**Subject:** RE: Adoption tax credit drafting request

Marc,

I wanted to check in and see how the drafting is going on this bill.

**David Fladeboe**  
Office of Majority Leader  
Rep. Scott Suder  
608-266-2401

608-267-0280  
888-534-0069

---

**From:** Shovers, Marc  
**Sent:** Monday, August 01, 2011 2:34 PM  
**To:** Fladeboe, David  
**Subject:** RE: Adoption tax credit drafting request

Hi David:

Under current law, there exists a \$5,000 subtract modification, or deduction, for adoption expenses. Do you want your bill, based on 2003 SB 408, to repeal the current law deduction, or would you like to allow a double benefit? One option would be to allow the credit to be available for amounts not covered by the current deduction. Another option would be to allow the credit to be claimed first, as it would be more beneficial to the taxpayer than the deduction, and allow the deduction for amounts not claimed under the credit.

Here's what the current law deduction looks like; an individual may subtract from federal adjusted gross income:

71.05(6)(b)22.

22. For taxable years beginning after December 31, 1995, an amount up to \$5,000 that is expended during the period that consists of the year to which the claim relates and the prior 2 taxable years, by a full-year resident of this state who is an adoptive parent, for adoption fees, court costs or legal fees relating to the adoption of a child, for whom a final order of adoption has been entered under s. 48.91 (3) during the taxable year.

Please let me know how you'd like to proceed.

Marc

Marc E. Shovers

Managing Attorney  
Legislative Reference Bureau  
Phone: (608-266-0129)  
E-Mail: marc.shovers@legis.wisconsin.gov

---

**From:** Fladeboe, David  
**Sent:** Monday, August 01, 2011 1:42 PM  
**To:** Shovers, Marc  
**Subject:** Adoption tax credit drafting request

Marc,

We would like to draft a bill similar to 2003 SB 408 creating a non-refundable \$5,000 state tax credit for adoption costs. It looks like you were the original drafter of the bill.

One change we will probably need is the language on eligibility for the credit to be tied to the federal credit. It sounds like the federal credit may be expiring so we should probably outline the eligibility requirements in the bill itself. We can keep them the same as the feds but just put them in statute.

Please let me know if you have any questions or concerns.

Thanks.

**David Fladeboe**

Office of Majority Leader

Rep. Scott Suder

608-266-2401

608-267-0280

888-534-0069



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-2614/v

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2011 BILL

TODAY  
GIVEN:  
FN 9/8

Wegen

1 AN ACT *to amend* 71.05 (6) (b) 22.; and *to create* 71.07 (6s) and 71.10 (4) (cs) of  
2 the statutes; **relating to:** creating a nonrefundable individual income tax  
3 credit for certain adoption expenses and modifying eligibility for the adoption  
4 expenses tax deduction.

***Analysis by the Legislative Reference Bureau***

In calculating an individual's Wisconsin adjusted gross income (AGI), an adoptive parent may generally, under current law, deduct from federal AGI up to \$5,000 that is expended during the year to which the claim relates and the preceding two years for adoption fees, court costs, or legal fees relating to the adoption of a child.

Under federal law, there is a refundable adoption expenses tax credit (which will become nonrefundable after 2011), under which amounts of up to \$13,170 (for taxable year (TY) 2010, and indexed for inflation for TY 2011) of qualified adoption expenses may, generally, be credited against the federal tax that is imposed. If the allowable federal credit exceeds the taxpayer's tax liability, the excess credit is refunded to the taxpayer. For taxable years beginning after December 31, 2011, the federal credit becomes a nonrefundable credit and the maximum allowable credit will be approximately \$12,170 for taxable year 2012, and \$5,000 (or \$6,000 for a special needs child) thereafter for qualified adoption expenses.

The Internal Revenue Code defines qualified adoption expenses to mean, generally, reasonable and necessary adoption fees, court costs, attorney fees, and other costs that are directly related to the legal adoption of an eligible child by the

**BILL**

taxpayer, and defines eligible child to mean an individual who is under the age of 18 or who is physically or mentally incapable of caring for himself or herself.

Federal law provides that, if adoption expenses are paid or incurred during a taxable year before the taxable year in which the adoption is finalized, the credit for those expenses is allowed during the year following the year during which the expenses are paid or incurred, and, if the expenses are paid or incurred during or after the year in which the adoption becomes final, the credit for those expenses is allowed for the year in which they are paid or incurred.

If the amount of the federal credit for which a taxpayer is eligible exceeds the amount of taxes owed, the excess amount of credit may be carried forward for up to five years. The maximum credit limit is for each child adopted and is a cumulative limit. The amount of the credit that may be claimed is phased out to zero as the claimant's modified federal AGI rises from \$182,520 to \$222,520 (for taxable year 2010). With regard to the adoption of a child who is not a citizen or resident of the United States at the time that the adoption proceedings commence, the credit may be claimed only upon the adoption becoming final.

This bill creates a nonrefundable individual income tax credit for adoption expenses incurred by an individual who is eligible for, and claims, the federal credit. The credit may be claimed for an amount of qualified adoption expenses, up to \$5,000, to the extent that the expenses exceed the amount that the claimant is eligible for, and claims, under the federal credit. For claimants who are nonresidents or part-year residents of Wisconsin, the credit that may be claimed is prorated based on the ratio of the claimant's Wisconsin AGI to federal AGI. ~~(ENS ANL INOB)~~

If the credit amount that the claimant is eligible for exceeds the claimant's taxes due, the claimant may carry forward the unused credit for up to five years. Generally, under the bill, the provisions of the federal credit, including the definitions of qualified adoption expenses and eligible child, the maximum income phaseout provisions, the determination of the years in which the credit may be claimed for expenses paid or incurred, and the provisions relating to foreign adoptions apply to the credit created in the bill.

Also under this bill, the current law \$5,000 deduction from Wisconsin AGI for adoption expenses may be claimed only to the extent that the adoption expenses are not claimed under the federal credit or the credit created in this bill.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 71.05 (6) (b) 22. of the statutes is amended to read:

**BILL**

1           71.05 (6) (b) 22. For taxable years beginning after December 31, 1995, an  
2 amount up to \$5,000 that is expended during the period that consists of the year to  
3 which the claim relates and the prior 2 taxable years, by a full-year resident of this  
4 state who is an adoptive parent, for adoption fees, court costs or legal fees relating  
5 to the adoption of a child, for whom a final order of adoption has been entered under  
6 s. 48.91 (3) during the taxable year, to the extent that such expenses are not claimed  
7 under section 36c of the Internal Revenue Code or under s. 71.07 (6s).

8           **SECTION 2.** 71.07 (6s) of the statutes is created to read:

9           71.07 (6s) ADOPTION EXPENSES CREDIT. (a) *Definitions.* In this subsection:

10           1. "Claimant" means an individual who is eligible for, and claims, the federal  
11 credit.

12           2. "Federal credit" means the federal tax credit for adoption expenses under  
13 section 36c of the Internal Revenue Code.

14           (b) *Filing claims.* Subject to the limitations provided in this subsection, a  
15 claimant may claim as a credit against the tax imposed under s. 71.02, up to the  
16 amount of those taxes, an amount of up to \$5,000 of qualified adoption expenses, to  
17 the extent that those expenses exceed the amount of the credit that a claimant is  
18 eligible for, and claims, under the federal credit in the year to which the claim relates.

19           (c) *Limitations.* 1. No credit may be allowed under this subsection unless it  
20 is claimed within the time period under s. 71.75 (2).

21           2. For a claimant who is a nonresident or part-year resident of this state and  
22 who is a single person or a married person filing a separate return, multiply the  
23 credit for which the claimant is eligible under par. (b) by a fraction the numerator of  
24 which is the individual's Wisconsin adjusted gross income and the denominator of  
25 which is the individual's federal adjusted gross income. If a claimant is married and

**BILL****SECTION 2**

1 files a joint return, and if the claimant or the claimant's spouse, or both, are  
2 nonresidents or part-year residents of this state, multiply the credit for which the  
3 claimant is eligible under par. (b) by a fraction the numerator of which is the couple's  
4 joint Wisconsin adjusted gross income and the denominator of which is the couple's  
5 joint federal adjusted gross income.

6 3. The provisions contained in section 36c of the Internal Revenue Code, to the  
7 extent that they apply to the credit under that section, apply to the credit under this  
8 subsection, unless this subsection explicitly provides otherwise.

9 (d) *Administration*. Subsection (9e) (d), to the extent that it applies to the credit  
10 under that subsection, applies to the credit under this subsection.

11 (e) *Carry-forward*. If a credit computed under this subsection is not entirely  
12 offset against Wisconsin income taxes otherwise due, the unused balance may be  
13 carried forward and credited against Wisconsin income taxes otherwise due for the  
14 following 5 taxable years to the extent not offset by these taxes otherwise due in all  
15 intervening years between the year in which the expense was incurred and the year  
16 in which the carry-forward credit is claimed.

17 **SECTION 3.** 71.10 (4) (cs) of the statutes is created to read:

18 71.10 (4) (cs) The adoption expenses credit under s. 71.07 (6s).

19 **SECTION 4. Initial applicability.**

20 (1) This act first applies to taxable years beginning on January 1 of the year  
21 in which this subsection takes effect, except that if this subsection takes effect on or  
22 after August 1 this act first applies to taxable years beginning on January 1 of the  
23 year following the year in which this subsection takes effect.

24

(END)

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FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2614/lins  
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INS 4-8

(noH) The maximum credit that may be claimed each <sup>fiscal</sup> year by all claimants is \$500,000. If the total amount of eligible claims exceed this amount, the department of revenue must prorate the amount of credit that each claimant may receive.

4. The maximum amount of credit that may be allocated under this subsection, each <sup>fiscal</sup> year, is \$500,000. If the amount of eligible claims under this subsection exceed \$500,000 in any <sup>fiscal</sup> year, the department of revenue shall prorate the amount of credit which each eligible claimant may receive.

**Barman, Mike**

---

**From:** Shovers, Marc  
**Sent:** Monday, September 12, 2011 3:09 PM  
**To:** Barman, Mike  
**Subject:** RE: Adoption tax credit drafting request

Sorry, Mike. It's -2614/2.

---

**From:** Barman, Mike  
**Sent:** Monday, September 12, 2011 12:09 PM  
**To:** Shovers, Marc  
**Subject:** RE: Adoption tax credit drafting request

What's the LRB number?

---

**From:** Shovers, Marc  
**Sent:** Monday, September 12, 2011 11:44 AM  
**To:** Barman, Mike  
**Subject:** FW: Adoption tax credit drafting request

Hi Mike:

Could you make the changes requested by David Fladeboe? Thanks.

Marc

---

**From:** Fladeboe, David  
**Sent:** Monday, September 12, 2011 11:23 AM  
**To:** Shovers, Marc  
**Cc:** Stewart, Kate  
**Subject:** RE: Adoption tax credit drafting request

Marc,

The new draft looks good. We will be handing the bill off to Rep. Bernier to author. Can you please transfer the ownership of the bill to her office so she has the ability to introduce and make changes to it?

Thank you.

**David Fladeboe**  
Office of Majority Leader  
Rep. Scott Suder  
608-266-2401  
608-267-0280  
888-534-0069

---

**From:** Shovers, Marc  
**Sent:** Monday, August 29, 2011 2:32 PM  
**To:** Fladeboe, David  
**Subject:** RE: Adoption tax credit drafting request

Hi David:

I checked with the Administrative Services manager and she told me that the draft will be out

tomorrow. Please let me know if you have any further questions.

Marc

---

**From:** Fladeboe, David  
**Sent:** Wednesday, August 17, 2011 4:18 PM  
**To:** Shovers, Marc  
**Subject:** RE: Adoption tax credit drafting request

Marc,

I wanted to check in and see how the drafting is going on this bill.

**David Fladeboe**  
Office of Majority Leader  
Rep. Scott Suder  
608-266-2401  
608-267-0280  
888-534-0069

---

**From:** Shovers, Marc  
**Sent:** Monday, August 01, 2011 2:34 PM  
**To:** Fladeboe, David  
**Subject:** RE: Adoption tax credit drafting request

Hi David:

Under current law, there exists a \$5,000 subtract modification, or deduction, for adoption expenses. Do you want your bill, based on 2003 SB 408, to repeal the current law deduction, or would you like to allow a double benefit? One option would be to allow the credit to be available for amounts not covered by the current deduction. Another option would be to allow the credit to be claimed first, as it would be more beneficial to the taxpayer than the deduction, and allow the deduction for amounts not claimed under the credit.

Here's what the current law deduction looks like; an individual may subtract from federal adjusted gross income:

71.05(6)(b)22.

22. For taxable years beginning after December 31, 1995, an amount up to \$5,000 that is expended during the period that consists of the year to which the claim relates and the prior 2 taxable years, by a full-year resident of this state who is an adoptive parent, for adoption fees, court costs or legal fees relating to the adoption of a child, for whom a final order of adoption has been entered under s. 48.91 (3) during the taxable year.

Please let me know how you'd like to proceed.

Marc

Marc E. Shovers

Managing Attorney

Legislative Reference Bureau  
Phone: (608-266-0129)  
E-Mail: marc.shovers@legis.wisconsin.gov

---

**From:** Fladeboe, David  
**Sent:** Monday, August 01, 2011 1:42 PM  
**To:** Shovers, Marc  
**Subject:** Adoption tax credit drafting request

Marc,

We would like to draft a bill similar to 2003 SB 408 creating a non-refundable \$5,000 state tax credit for adoption costs. It looks like you were the original drafter of the bill.

One change we will probably need is the language on eligibility for the credit to be tied to the federal credit. It sounds like the federal credit may be expiring so we should probably outline the eligibility requirements in the bill itself. We can keep them the same as the feds but just put them in statute.

Please let me know if you have any questions or concerns.

Thanks.

**David Fladeboe**  
Office of Majority Leader  
Rep. Scott Suder  
608-266-2401  
608-267-0280  
888-534-0069

**Godwin, Gigi**

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**From:** Stewart, Kate

**Sent:** Tuesday, September 20, 2011 2:45 PM

**To:** LRB.Legal

**Subject:** Draft Review: LRB 11-2614/2 Topic: Create individual income tax deduction for adoption expenses; amend adoption expenses subtract modification

Please Jacket LRB 11-2614/2 for the ASSEMBLY.