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Internal Revenue Code Section 23

Adoption expenses.

(a) Allowance of credit.

(1) In general.

In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter the amount of the qualified adoption expenses paid or incurred by the taxpayer.

(2) Year credit allowed.

The credit under paragraph (1) with respect to any expense shall be allowed-

(A) in the case of any expense paid or incurred before the taxable year in which such adoption becomes final, for the taxable year following the taxable year during which such expense is paid or incurred, and

(B) in the case of an expense paid or incurred during or after the taxable year in which such adoption becomes final, for the taxable year in which such expense is paid or incurred.

(3) \$10,000 credit for adoption of child with special needs regardless of expenses.

In the case of an adoption of a child with special needs which becomes final during a taxable year, the taxpayer shall be treated as having paid during such year qualified adoption expenses with respect to such adoption in an amount equal to the excess (if any) of \$10,000 over the aggregate qualified adoption expenses actually paid or incurred by the taxpayer with respect to such adoption during such taxable year and all prior taxable years.

(b) Limitations.

(1) Dollar limitation.

The aggregate amount of qualified adoption expenses which may be taken into account under subsection (a) for all taxable years with respect to the adoption of a child by the taxpayer shall not exceed \$10,000.

(2) Income limitation.

(A) In general. The amount allowable as a credit under subsection (a) for any taxable year (determined without regard to subsection (c)) shall be reduced (but not below zero) by an amount which bears the same ratio to the amount so allowable (determined without regard to this paragraph but with regard to paragraph (1)) as-

(i) the amount (if any) by which the taxpayer's adjusted gross income exceeds \$150,000, bears to

(ii) \$40,000.

(B) Determination of adjusted gross income. For purposes of subparagraph (A), adjusted gross income shall be determined without regard to sections 911, 931, and 933.

(3) Denial of double benefit.

(A) In general. No credit shall be allowed under subsection (a) for any expense for which a deduction or credit is allowed under any other provision of this chapter.

(B) Grants. No credit shall be allowed under subsection (a) for any expense to the extent that funds for such expense are received under any Federal, State, or local program.

(4) Repealed.

(c) Carryforwards of unused credit.

(1) In general.

If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 25D and 1400C), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

(2) Limitation.

No credit may be carried forward under this subsection to any taxable year following the fifth taxable year after the taxable year in which the credit arose. For purposes of the preceding sentence, credits shall be treated as used on a first-in first-out basis.

(d) Definitions.

For purposes of this section -

(1) Qualified adoption expenses.

The term "qualified adoption expenses" means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses-

(A) which are directly related to, and the principal purpose of which is for, the legal adoption of an eligible child by the taxpayer,

(B) which are not incurred in violation of State or Federal law or in carrying out any surrogate parenting arrangement,

(C) which are not expenses in connection with the adoption by an individual of a child who is the child of such individual's spouse, and

(D) which are not reimbursed under an employer program or otherwise.

(2) Eligible child.

The term "eligible child" means any individual who-

(A) has not attained age 18, or

(B) is physically or mentally incapable of caring for himself.

(3) Child with special needs.

The term "child with special needs" means any child if-

(A) a State has determined that the child cannot or should not be returned to the home of his parents,

(B) such State has determined that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance, and

(C) such child is a citizen or resident of the United States (as defined in section 217(h)(3)).

(e) Special rules for foreign adoptions.

In the case of an adoption of a child who is not a citizen or resident of the United States (as defined in section 217(h)(3))-

(1) subsection (a) shall not apply to any qualified adoption expense with respect to such adoption unless such adoption becomes final, and

(2) any such expense which is paid or incurred before the taxable year in which such adoption becomes final shall be taken into account under this section as if such expense were paid or incurred during such year.

(f) Filing requirements.

(1) Married couples must file joint returns.

Rules similar to the rules of paragraphs (2) , (3) , and (4) of section 21(e) shall apply for purposes of this section .

(2) Taxpayer must include TIN.

(A) In general. No credit shall be allowed under this section with respect to any eligible child unless the taxpayer includes (if known) the name, age, and TIN of such child on the return of tax for the taxable year.

(B) Other methods. The Secretary may, in lieu of the information referred to in subparagraph (A) , require other information meeting the purposes of subparagraph (A) , including identification of an agent assisting with the adoption.

(g) Basis adjustments.

For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(h) Adjustments for inflation.

In the case of a taxable year beginning after December 31, 2002, each of the dollar amounts in subsection (a)(3) and paragraphs (1) and (2)(A)(i) of subsection (b) shall be increased by an amount equal to-

(1) such dollar amount, multiplied by

(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2001" for "calendar year 2016" in subparagraph (A)(ii) thereof.

If any amount as increased under the preceding sentence is not a multiple of \$10, such amount shall be rounded to the nearest multiple of \$10.

(i) Regulations.

The Secretary shall prescribe such regulations as may be appropriate to carry out this section and section 137, including regulations which treat unmarried individuals who pay or incur qualified adoption expenses with respect to the same child as 1 taxpayer for purposes of applying the dollar amounts in subsections (a)(3) and (b)(1) of this section and in section 137(b)(1).