



## TAX RULES FOR ADOPTION, FOSTER CARE AND RELATIVES RAISING KIDS

### IF I GET MONEY TO TAKE CARE OF A CHILD, DOES IT COUNT AS INCOME ON MY TAX RETURN?

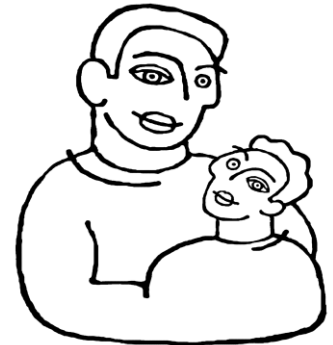
The money you get for any of the following things, DOESN'T count as income on your taxes.

- Cost of care payments
- “Difficulty of care” payments, (extra money you get if you care for a physically, mentally, or emotionally disabled foster children)
- Adoption assistance that pays for child care
- MFIP, and Food Stamps
- Caring for 10 or fewer children **if** the money comes from a for-profit child welfare agency that works under a contract with a government agency

You can use these payments to figure out the amount of Minnesota tax credits and the property tax refund.

The money you get for any of the following things is taxable and DOES count as income on your taxes.

- Caring for more than 10 foster children
- Keeping a bed available even if it is not used
- Operating a group home
- Caring for more than 5 people over the age of 19



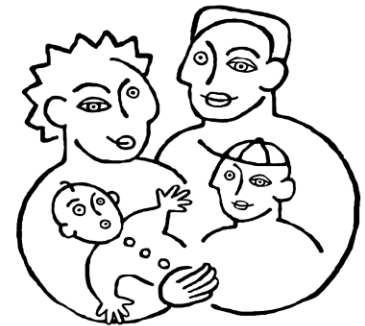
### CLAIMING SOMEONE ELSE ON YOUR TAX RETURN

For tax years after 2005 the definitions have changed about who you can claim. There is a “qualifying child” and a “qualifying relative.”

#### Qualifying Child

- The child must be the taxpayer’s child, stepchild, eligible foster child, brother, sister, stepbrother, stepsister or a descendent of one of these relatives. This includes a child placed with the taxpayer for adoption, even if the adoption is not final. An eligible foster child is any child placed with the taxpayer by an authorized placement agency or court.
- The child must live with the taxpayer for more than 6 months of the year in the US. Temporary absences for school, vacation, medical care, military service, or detention in a juvenile facility count as time lived at home. There is an exception for divorced or separated parents. The exception allows a parent who has not lived with the child for more than 6 months to claim them as a dependent and claim the child tax credit. But only one of the parents can claim the child. This exception does NOT apply to head of household filing status or the Earned Income Credit (EITC).

- The child must be younger than the taxpayer unless they are permanently and totally disabled. There are different age limits for the various credits:
  - **Credit for Child and Dependent Care Expenses** – the child must be under age 13 when the care was provided or any age if the child is disabled and cannot take care of themselves.
  - **Child Tax Credit** – child must be under age 17 on December 31, 2010.
  - **Dependency Exemption, Head of Household filing status, and Earned Income Tax Credit (EITC)** – the child must be under age 19 or a full-time student under age 24 on December 31, 2010, or any age if permanently and totally disabled.
- The child cannot have provided over half of his or her own support during the year. Social Security benefits received for a child as the beneficiary of a deceased or disabled parent are included in the child’s income. The support test does not apply when determining if the taxpayer has a qualifying child for the EITC.
- If the child can be claimed by a parent as a qualifying child, but neither parent claims the child NO ONE ELSE can claim the child unless their Adjusted Gross Income (AGI) is higher than the AGI of either parent. This situation can happen when extended family lives together.
- If a child is a qualifying child for more than one taxpayer, and they can’t agree on who will claim the child, the parent who lived with the child longest that year should claim the credit. If the child lived with both parents for the same length of time, the parent with the higher income should claim the credit.



If the child:

1. did not live with any parent,
  2. is a qualifying child of more than one taxpayer, and
  3. the taxpayers can’t agree who should claim the child,
- then the taxpayer with the highest income will get the credit.

### Qualifying Relative

A qualifying relative is someone who is:

- a U.S. Citizen or lived in the United States, Canada or Mexico,
- **a member of your household for the whole year** (even if not related to you), or a family member who may or may not live with you like:
  - your child, grandchild, great grandchild, stepchild,
  - your brother, sister, half brother, half sister, stepbrother, stepsister,
  - your parent, grandparent, stepparent,
  - your aunt or uncle, niece or nephew,
  - your father-in-law, mother-in-law, son-in-law, daughter-in-law,
  - brother-in-law, or sister-in-law.

The child or person usually **can’t** be your dependent if:

- They are married and file joint taxes with their spouse.
- They earn more than \$3,650 during 2010. **But**, if the person is your child under age 19 or a student under 24, they can still be your dependent and earn more than \$3,650.

The rules above are for federal taxes. Minnesota uses rules like these for state income and property taxes. Ask the person who does your taxes.

IRS Publications 17 and 501 have worksheets to help figure out if you meet the support test. You can call the IRS at 1-800-TAX-1040 or go to their website at [www.irs.gov](http://www.irs.gov) to get these.

Foster parents who claim a “charitable deduction” for certain costs (see below) can’t use those same costs to meet the support test.

If you meet the rules to claim the child as a dependent, and the child is under age 17, you may be able to get the **Child Tax Credit**, which is worth up to \$1000 per child.

### **CAN MY OUT OF POCKET COSTS FOR CARING FOR THE CHILD BE COUNTED AS A “CHARITABLE DEDUCTION”?**

If you paid for things to help care for and support a foster child, and you didn’t get the money back from the government (reimbursement), you may be able to claim this money as a “charitable donation” and end up paying less tax. You need to fill out Schedule A, Itemized Deductions.

Any money you spent but DID get back from the government CAN’T be claimed as a “charitable deduction”.

**Foster parents can’t claim** a charitable deduction for costs used to meet the support test for claiming a dependent. (see above)

**Legal guardians can’t claim** a charitable deduction for out of pocket costs for the care and support of the child.



### **CAN I CLAIM THE CHILD AS A QUALIFYING CHILD FOR THE EARNED INCOME TAX CREDIT (EITC) AND THE MINNESOTA WORKING FAMILY TAX CREDIT (WFTC)?**

Yes, if that child meets the definition of “qualifying child” on the first page of this fact sheet. A “qualifying relative” **cannot** be claimed for the EITC or WFTC.

### **DO DAYCARE EXPENSES COUNT AS A DEDUCTION?**

You may be able to get the Federal Child and Dependent Care Credit or the Minnesota Child and Dependent Care Credit if the child

- qualifies as your dependent,
- was under age 13 during the tax year, **AND**
- was cared for by someone else (that you paid) while you worked or looked for work.

If the child was age 13 or over, disabled and not capable of self-care, you may also be able to get these credits.

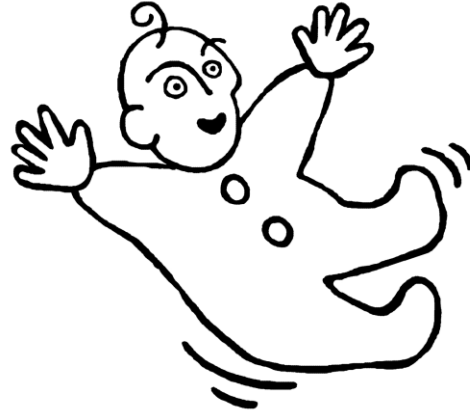
Many low income families who can’t claim the federal credit **do** qualify to claim the Minnesota credit.

## WHAT IS THE ADOPTION TAX CREDIT?

The Adoption Tax Credit is a **refundable** credit for certain costs you had during the adoption of a child. The maximum credit is \$13,170. Costs that count for the credit are things like

- adoption fees
- court costs
- attorney fees
- medical expenses
- travel expenses

The child must be under age 18 or mentally or physically disabled. If you adopt a special needs child you may be able to get the full credit even if you have not spent that amount. To get the credit, the special needs child must be a U.S. citizen and a state child welfare agency must have decided that adoption assistance is necessary for you to complete the adoption.



## CAN I CLAIM A CREDIT FOR EDUCATION EXPENSES?

If you can claim the child as a dependent, and the child is enrolled in a post-secondary institution (like college), you may be able to claim a tax credit or deduction based on tuition paid. To get more information on the federal education tax credits and deduction, see IRS publication 970. Call 1-800-TAX-1040, or go to [www.irs.gov](http://www.irs.gov).

If the child is a qualifying child for the EITC, and is in Kindergarten through 12<sup>th</sup> grade, you may be able to get a Minnesota tax credit or a subtraction for education expenses. You can get the **credit** even if you don't have earned income. You can get the **credit** and up to 75% of eligible costs back if your household income is below \$37,500 with 1 or 2 qualifying children. If you have more qualifying children, the maximum household income allowance goes up by \$2,000 per child. You can take the **subtraction** no matter what your income is.

Eligible costs include

- after school academic programs
- music lessons
- academic summer camps
- computer hardware or software (\$200 maximum)
- paper, pens, pencils etc.
- private school tuition (this can only be a subtraction not a credit).

## **IF YOU HAVE NOT FILED, FILE NOW!**

The EITC and other income tax credits can be claimed up to 3 years late. If you did not file a tax return for some or all of the last 3 years, you can file now and claim the EITC and other credits. The forms and credit amounts change each year. Be sure to use the form for the year that you are filing for! For forms call the IRS at the number below or get them off their website, [www.irs.gov](http://www.irs.gov). If you did file your return, but did not claim credits you now think you could have used, you can file an amended Form 1040X (federal) or M-1X (Minnesota) for any of the past 3 years.

If you met all the rules for getting the EITC in the years before now, except that you did not have a social security number, but now you do, you can use your new social security number to file your tax returns and claim the EITC for the past 3 years.

For federal tax questions, call 1-(800) TAX-1040.  
For Minnesota tax questions, call (651) 296-3781.

**Free** tax preparation is available for low income, disabled persons, and senior citizens. To find help near you, call (651) 297-3724 or United Way at 211, (or (651) 291-0211 from a cell phone), statewide.

***This fact sheet applies only to the tax year 2010***

***Income tax returns must be filed by April 18<sup>th</sup>, 2011***

To find other Legal Aid Society materials, including any fact sheets mentioned in this document, go to [www.lawhelpmn.org/LASMfactsheets](http://www.lawhelpmn.org/LASMfactsheets).

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