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Administrative Directive

Transmittal:	13-OCFS-ADM-05
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	March 13, 2013
Subject:	Notification to Prospective Adoptive Families of the Federal Adoption Tax Credit
Suggested Distribution:	Directors of Services Adoption Family Home Finders/Trainers Adoption Supervisors Foster Care Supervisors
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Attachments:	Attachment A: Notice to Families Considering Adopting a Foster Child
Attachment Available Online:	No

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
	09-OCFS-ADM-08 10-OCFS-ADM-06				Fostering Connections to Success and Increasing Adoptions Act of 2008 (PL 110-351); Patient Protection and Affordable Care Act of 2010 (PL 111-148); 42 U.S.C. 671; American Taxpayer Relief Act of 2012 (PL 112-240)

I. Purpose

The purpose of this Administrative Directive (ADM) is to notify local departments of social services (LDSS) and voluntary authorized agencies of the changes in the adoption tax credit enacted by the federal American Taxpayer Relief Act of 2012 (Public Law 112-240), which was signed into law on January 2, 2013. This Act made the adoption tax credit permanent.

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351) added a plan requirement in section 471(a)(33) of the Social Security Act (42 U.S.C. 671 (a)) that states provide information to individuals who are adopting a child from foster care, and to those who the state learns are considering such an adoption, of their potential eligibility for the federal adoption tax credit. The Office of Children and Family Services (OCFS) previously communicated this requirement to LDSSs and voluntary authorized agencies through an ADM (09-OCFS-ADM-08). That ADM was updated in 2010 when the Patient Protection and Affordable Care Act of 2010 (Public Law 111-148) made changes to the adoption tax credit. This new ADM retracts information from 09-OCFS-ADM-08 and 10-OCFS-ADM-06 due to the changes to the adoption tax credit as a result of the federal American Taxpayer Relief Act of 2012. This ADM also provides an updated copy of the sample notice provided in the previous adoption tax ADMs which may be used to notify prospective adoptive families of the adoption tax credit.

II. Background

The Small Business Job Protection Act of 1996 (Public Law 104-188) was enacted on August 20, 1996. It allowed adoptive families to take a tax credit for qualifying expenses paid to adopt eligible children. Qualifying adoption expenses include any and all costs directly related to an adoption and that are reasonable

and necessary for the adoption, including, but not limited to, adoption fees, legal fees, court costs, and travel expenses. The credit usually applies in the year after the year in which the expenses are paid. The adoption tax credit is not available for any reimbursed expense, such as non-recurring adoption expense payments. Non-recurring adoption expense payments are reimbursements adoptive families may receive for one-time-only expenses related to the adoption of a child with special needs (including, but not limited to, necessary adoption fees, attorney fees, court costs, and some travel expenses to facilitate an adoptive placement). In addition to the credit, certain amounts reimbursed by an employer for qualifying adoption expenses may be excluded from the family's gross income. There is an income limit on the adoption credit or exclusion based on the modified adjusted gross income (AGI) for the adoptive family. The amount of the credit or exclusion may be reduced or eliminated based on the income limits set each tax year.

Beginning in tax year 2003, families adopting a child with special needs from foster care were allowed access to the federal adoption tax credit without needing to document their qualifying expenses. For these special needs adoptions, the maximum credit amount can be applied whether or not the adoptive family incurred that maximum allowed. Children that are hard to place for adoption (such as older children; minority children; sibling groups; and children with medical conditions or physical, mental, and emotional handicaps) may be determined to have special needs.

As noted above, the federal Patient Protection and Affordable Care Act of 2010 had previously made the adoption tax credit a refundable tax credit, increased the amount of the adoption tax credit, and provided for increases in the tax credit based on inflation. However, the American Taxpayer Relief Act of 2012 has changed the tax credit back to being a non-refundable credit starting in tax year 2012.

For more information regarding the adoption tax credit, consult the Internal Revenue Service (IRS) website: <http://www.irs.gov/taxtopics/tc607.html> or <http://www.irs.gov/uac/Adoptive-Parents:-Don%E2%80%99t-Delay-Your-Adoption-Credit-Refund>

III. Program Implications

There are several actions that OCFS has taken to meet the requirement of notifying prospective adoptive families of their potential eligibility for the federal tax credit. Information on the adoption tax credit continues to be posted on the OCFS Internet website at <http://www.ocfs.state.ny.us/adopt/taxcredit.asp>. This Web page also includes links to the IRS website for further tax credit information. We have confirmed that several agencies that serve prospective adoptive families have also included information on their websites regarding the adoption tax credit available.

Adoptive parents who are adopting a child with special needs from foster care may apply for adoption subsidy by completing a New York State Adoption Subsidy Agreement application. Attached to the Adoption Subsidy Agreement form is Appendix A *Summary of New York's Adoption Subsidy Program*. This summary includes a notification for adoptive parents that federal and state tax credits may be available, and recommends that parents consult with a tax specialist or the IRS to determine their eligibility.

OCFS, in collaboration with OTDA, has published a guide for kinship caregivers titled *Having a Voice and a Choice, New York State Handbook for Relatives Raising Children*, which is available in English: (<http://www.ocfs.state.ny.us/main/publications/Pub5080.pdf>), and in Spanish: (<http://www.ocfs.state.ny.us/main/publications/Pub5080-S.pdf>). Included in this guidebook is a section on the *Federal Adoption Tax Credit* that informs relatives that they may be eligible for a tax credit if they adopted an eligible child from foster care.

IV. Required Action

As part of the Fostering Connections to Success and Increasing Adoptions Act of 2008, New York State is required to inform all prospective adoptive families and any families considering adopting a child in foster care of their potential eligibility for the federal tax credit. OCFS has made adoption tax credit information available on its website and in its adoption subsidy program summary. OCFS requires LDSS and voluntary authorized agencies to include information regarding the adoption tax credit in their training orientation programs for all families considering adoption. This is in an effort to reach families who are considering adoption, but not yet actively involved in the process.

LDSS and voluntary authorized agencies may decide how they wish to incorporate this information into their orientation programs. The information provided must, at the very least, inform prospective adoptive families that a federal adoption tax credit exists and that they may be eligible for it. It is impermissible for agencies to provide tax credit information; agencies should instead refer prospective adoptive families to tax professionals who can determine if they are eligible for the tax credit. To assist LDSS and voluntary authorized agencies, OCFS has developed a sample notice that can be used as a model to achieve this notification. Please see Attachment A, which is attached to this ADM. This attachment has also been updated to reflect the changes from the federal American Taxpayer Relief Act of 2012 (PL 112-240). If your agency has been using this sample notice to notify prospective adoption families of the adoptive tax credit, please substitute it with the updated version attached to this ADM. Please note that usage of this notice is not mandatory. Agencies can

develop their own notice or other notification processes. Each agency must have a process in place that meets the requirement to inform all families adopting or considering adopting a child in foster care of their potential eligibility for the federal tax credit.

V. Effective Date

The Fostering Connections to Success and Increasing Adoptions Act of 2008 became law on October 7, 2008. The changes to the adoption tax credit enacted by the federal American Taxpayer Relief Act of 2012 apply to taxable years beginning with 2012. Therefore, this administrative directive is effective immediately.

/s/ Nancy W. Martinez

Issued By:

Name: Nancy W. Martinez

Title: Director

Division/Office: Strategic Planning and Policy Development

Attachment A

Notice to Families Considering Adopting a Foster Child

Adoptive families may be eligible for a federal tax credit for qualifying expenses (including, but not limited to, adoption fees, court costs, attorney fees, traveling expenses) paid to adopt an eligible child in foster care. The adoption tax credit is not available for any reimbursed expense payment, such as non-recurring adoption expense payments. Non-recurring adoption expense payments are reimbursements adoptive families may receive for one-time-only expenses related to the adoption of a child with special needs (including, but not limited to, necessary adoption fees, attorney fees, court costs, and some travel expenses to facilitate an adoptive placement). Families adopting a child with special needs from foster care may be eligible for the full tax credit without needing to document expenses; however, such families must document that the state has determined that the child has special needs. Special needs can be documented through a copy of the child's signed Adoption Subsidy Agreement.

In addition to the credit, certain amounts reimbursed by your employer for qualifying adoption expenses may be excludable from your gross income. The credit and exclusion for qualifying adoption expenses are each subject to a dollar limit and an income limit. Families that fall in a defined range of income may receive an adjusted amount based on their income or may be ineligible if their income exceeds a certain level.

Each year the income limits and tax credit amounts change. The information contained in this notice shall not be deemed to be tax advice. Under IRS standards, we must inform you that only formal, written tax opinions meeting IRS requirements may be relied upon. It is important that you consult a tax professional or the Internal Revenue Service at www.irs.gov, to obtain the current tax year information and determine if you are eligible.