



DEPARTMENT OF THE TREASURY  
WASHINGTON, DC.

August 25, 2025

Via Email

Dear Tribal Leader:

On behalf of the U.S. Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) (collectively, Department), I invite you to a consultation on implementation of Section 70403, Recognizing Indian Tribal Governments for Purposes of Determining Whether a Child Has Special needs for Purposes of the Adoption Credit, in Public Law 119-21, 139 Stat. 72 (July 4, 2025), commonly known as the One, Big, Beautiful Bill Act (OBBA). This consultation will be held virtually on September 15, 2025, at 1:00 pm ET.

***A. Adoption Tax Credit & Special Needs Overview Prior to OBBA***

The adoption tax credit, under 26 U.S.C Section 23, provided a non-refundable tax credit to offset the costs of adopting a child. Specifically, an individual could file for a tax credit for qualified adoption expenses paid or incurred in connection with the adoption of an eligible child. For 2025, this tax credit could be claimed for up to \$17,280 in qualified adoption expenses. The credit began to phase out for adjusted gross incomes (AGI) over \$259,190 and completely phased out at AGIs over \$299,190. The maximum qualified adoption expenses and AGI limits are indexed for inflation. Any unused credit could be carried forward for up to five years.

In the case of an adoption of “a child with special needs,” an individual could receive the value of the full tax credit, regardless of the expenses incurred, when the adoption became final. Pursuant to Section 23(d)(3), 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)).

As a result of Section 23(d)(3), if a taxpayer(s) were to adopt a child with a special needs determination, and have incurred no expenses for the adoption, they would still be eligible to claim the full \$17,280 credit if they had tax liability up to \$17,280.

Prior to OBBA, a Tribal court special needs determination could not qualify for the adoption tax credit because the statute restricted such determination to State entities. As a result, families adopting in Tribal Court were excluded from this tax benefit in contrast to State court adoptions of similarly situated children with special needs.

## **B. OBBA Provides an Enhancement to the Adoption Tax Credit**

OBBA 1 added Section 70402 which provides an enhancement of the adoption tax credit. Specifically, this provision makes the adoption tax credit partially refundable up to \$5,000 (indexed for inflation) for tax years that begin in 2025. Prior to this amendment, a taxpayer could only benefit from this credit to the extent that they had tax liability to offset. Therefore, a taxpayer who had qualified adoption expenses could not receive this credit if they had no tax liability, or their tax liability was already offset through this credit or other credits. As an example, if Taxpayer A had \$5000 in qualified adoption expenses, but owed only \$2000 in taxes, they could claim only \$2000 in the adoption tax credit.

As a result of Section 70402, a portion of the adoption tax credit is now refundable up to \$5000 (for 2025) and taxpayers can now receive a refund from this credit regardless of whether there is a tax liability to offset. As an example, if Taxpayer B has \$5000 in qualified adoption expenses and \$0 tax liability, they can receive a \$5000 refund. Additionally, if Taxpayer B had a special needs determination for the adopted child, they do not need to prove qualified adoption expenses and may claim this \$5,000 refundable tax credit.

## **C. OBBA Provides Tribal Governments with Parity for Special Needs Adoption Determinations**

OBBA added Section 70403 which recognizes Indian Tribal government “special needs” determinations for the purpose of the adoption tax credit. Now, Indian Tribal government and state government determinations of special needs are both recognized for the purposes of the adoption tax credit. Below are examples of how Tribal families benefit from this addition.

- Taxpayer C adopts in Tribal Court in 2025 and has a special needs determination from a Tribal child welfare agency; also, the adoption was finalized that year. Taxpayer C is eligible to claim the full \$17,280 adoption tax credit for tax year 2025.
- If Taxpayer C has no tax liability and still has a valid, finalized adoption in 2025 with a Tribal government special needs determination, they may claim the refundable portion of the adoption tax credit and receive a \$5000 refundable credit for tax year 2025.

## **D. Existing IRS Process for Claiming the Adoption Tax Credit**

A taxpayer who claims the adoption tax credit does so by filing Form 8839, *Qualified Adoption Expenses*.<sup>1</sup> Instructions for Form 8839 provided information regarding the categories in Form 8839 and contained examples.<sup>2</sup> In the event of an examination, a taxpayer may receive Form 14806, *Adoption Credit Documentation Requirements*.<sup>3</sup> This form references a non-exclusive list of documents that can demonstrate a special needs determination.

Further, with regard to documentation required for the special needs determination, the Internal Revenue Manual (IRM) contains technical instructions related to Special Needs Adoptions. Please

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<sup>1</sup> See About Form 8839, Qualified Adoption Expenses <https://www.irs.gov/forms-pubs/about-form-8839>

<sup>2</sup> See Instructions for Form 8839 (2024) <https://www.irs.gov/instructions/i8839>

<sup>3</sup> See Attachment 1 for this form.

note that the IRM consists of operating instructions to IRS employees, including for matters related to the administration of tax laws. The IRM does not constitute formal tax guidance.

Regarding Special Needs Adoptions, IRM 4.19.15.5.4 (03-12-2018),<sup>4</sup> provides that:

1. If the adoption is domestic and final, and is of a special needs child (as determined by the state where the adoption occurs), the taxpayer is entitled to claim the maximum amount of the credit (minus any amounts claimed for that child in a previous year) even if the taxpayer paid no qualified adoption expenses.
2. A child meets the definition of special needs if **all of the following statements** are true:
  - The child was a citizen or resident of the United States or its possessions at the time the adoption process began **and**
  - A state (including the District of Columbia) has determined that the child cannot or should not be returned to their parents' home **and**
  - The state has determined that the child is unlikely to be adopted unless assistance is provided to the adoptive parents
3. The taxpayer must provide **both** of the following documents when substantiating the credit for a special needs child. Do not request verification of any expenses:
  - a. Adoption certificate, report or final decree signed by a representative of the State Court showing the names of the adoptive child and parent and,
  - b. The state's determination of special need designation. See (4) for acceptable documentation of the state's determination of special needs.
4. The following are acceptable documentation of the state's determination of special needs (this list not all inclusive)
  - A signed adoption assistance or subsidy agreement issued by the state or county
  - Certification from the state or county welfare agency verifying that the child is approved to receive adoption assistance
  - Certification from the state or county welfare agency verifying that the child has special needs

**Caution:** For these purposes, an order or decree must include information establishing that the taxpayer's adoption of the eligible child has been finalized and the date it was finalized. A special needs determination must include information establishing that the state has made a determination of special needs for the eligible child.

5. Don't confuse "children with special needs" for purposes of the adoption credit with the definitions of "children with special needs" for other purposes. Foreign children aren't considered to have special needs for purposes of the adoption credit. Even U.S. children who have disabilities may not have special needs for purposes of the adoption credit. Generally, "**special needs adoptions**" are the adoptions of children whom the state's child welfare agency considers **difficult to place for adoption**.

## ***B. Consultation Content***

Pursuant to Treasury's Tribal consultation policy, Treasury and IRS are initiating Tribal consultation to support the implementation of Section 70403. As explained above, adoptive families are eligible for this credit for 2025 adoptions. As a result, we are initiating an expedited

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<sup>4</sup> See Internal Revenue Manual, Part 4. Examining Process, Chapter 19. Liability Determination, Section 15. Discretionary Programs [https://www.irs.gov/irm/part4/irm\\_04-019-015r#idm140147233444064](https://www.irs.gov/irm/part4/irm_04-019-015r#idm140147233444064)

consultation of 45 days, instead of 60 days, to receive Tribal government feedback to inform the implementation of this Section to support Tribal families in accessing this credit.

Towards that goal, we welcome Tribal feedback on the below topics:

1. What questions or comments do you have regarding the Adoption Tax Credit under Section 23?
2. What questions or comments do you have regarding Section 70402 which provides that a portion of the Adoption Tax Credit is refundable?
3. What questions or comments do you have regarding Section 70403, which recognizes Indian Tribal government special needs determinations for the purposes of the adoption tax credit?
4. To support the implementation of Section 70403, do you have recommendations or comments related to Form 8839, *Qualified Adoption Expenses*, and/or Form 14806, *Adoption Credit Documentation Requirements*?
  - a. Would Tribal examples be helpful in the instructions and do you have recommended topics and examples?
5. Regarding the documentation for Tribal special needs determinations, what questions or comments do you have?
6. What other questions or comments are important for the Department to know in implementing Section 70403?

[Register here for the consultation.](#)

We respectfully request that each Tribe register one person to participate in the consultation. All others are welcome to register as listen-only participants.

**Please note that consultations are off the record and not for press purposes.**

We will send out an Agenda and a list of registered speakers before or on September 12, 2025. The deadline to submit written comments is Thursday, October 10, 2025, 11:59 p.m. Alaska Time. Written comments should be sent to [tribal.consult@treasury.gov](mailto:tribal.consult@treasury.gov).

We hope that you will be able to join us for this important discussion and value your participation.

Sincerely,

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Point of Contact for Tribal Consultation  
U.S. Department of the Treasury