

## Part III - Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.  
(Also Part 1, §§ 23, 137.)

Rev. Proc. 2010-31

### SECTION 1. PURPOSE

This revenue procedure provides safe harbors for determining the finality of foreign adoptions for purposes of the adoption credit under § 23 of the Internal Revenue Code, redesignated § 36C after 2009, and the exclusion for employer reimbursements under § 137. A taxpayer within the scope of this revenue procedure who meets the requirements of a safe harbor described in section 4 may rely on that safe harbor to determine when a foreign adoption of an eligible child is final.

Rev. Proc. 2005-31, 2005-1 C.B. 1374, provides guidance to taxpayers on the finality of foreign adoptions but does not apply to adoptions governed by the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention) and subject to the Intercountry Adoption Act of 2000, Pub. L. 106-279, 114 Stat. 825 (IAA), 42 U.S.C. §§ 14901-14954 (Convention adoptions). The Convention became effective in the United States on April 1, 2008. This revenue procedure provides taxpayers with safe harbors for claiming the adoption credit and

exclusion for Convention adoptions, and guidance on filing amended returns to claim the credit or exclusion for Convention adoptions that became final in 2008 or 2009.

Rev. Proc. 2005-31 continues to apply to foreign adoptions not governed by the Convention (non-Convention adoptions).

## SECTION 2. BACKGROUND

.01 Section 23 allows a taxpayer to claim a credit for qualified adoption expenses (QAE) for the adoption of an eligible child. Section 10909 of the Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119, redesignated § 23 as § 36C and made the credit refundable for taxable years beginning in 2010 and 2011. For convenience, references to § 23 in this revenue procedure, in general, also apply to § 36C.

.02 Section 137 allows an employee to exclude from gross income QAE reimbursed under an employer-provided adoption assistance program.

.03 Section 23(d)(1) and Notice 97-9, 1997-1 C.B. 365, define QAE as reasonable and necessary adoption fees, court costs, attorney's fees, traveling expenses (including amounts expended for meals and lodging) while away from home, and other expenses directly related to, and for the principal purpose of, the legal adoption of an eligible child by the taxpayer.

.04 Section 23(d)(2) provides that an eligible child is an individual who has not attained age 18 or who is physically or mentally incapable of caring for himself. Under § 23(d)(1)(C), a stepchild is not an eligible child.

.05 Section 23(a) provides the general rule governing when the credit for QAE is allowed. If the adoption is not final in the taxable year a taxpayer pays or incurs QAE,

the credit is allowable for those expenses in the next taxable year. Section 23(a)(2)(A). For QAE paid or incurred during or after the taxable year in which the adoption is final, the credit is allowable in the taxable year in which the QAE are paid or incurred.

Section 23(a)(2)(B).

.06 Section 23(e) provides special rules governing when the credit for foreign adoptions is allowed: (1) the credit is allowable only if the adoption becomes final; and (2) QAE paid or incurred in any taxable year before the taxable year in which the adoption becomes final are treated as paid or incurred in the taxable year in which the adoption becomes final. Rules similar to § 23(e) apply under § 137(e) for purposes of the exclusion for employer-provided adoption assistance.

.07 For purposes of this revenue procedure, a Convention adoption means the adoption, on or after the Convention effective date, of an alien child habitually resident in a Convention country by a United States citizen habitually resident in the United States, when in connection with the adoption the child has moved, or will move, from the Convention country to the United States. See 8 C.F.R. § 204.301; § 3(10) of the IAA, 42 U.S.C. § 14902(10). See also Rev. Proc. 2005-31, section 2.05. An adoption may be a Convention adoption only if a prospective adoptive parent has filed an Application for Determination of Suitability to Adopt a Child from a Convention Country (Form 1-800A or successor) with the Department of State on or after April 1, 2008. See 8 C.F.R. §§ 204.300(a) and (b), and 301.

.08 A Convention country is a country that is party to the Convention and for which the Convention is in force. See § 3(12) of the IAA, 42 U.S.C. § 14902(3)(12); 8 C.F.R. § 204.301; and 22 C.F.R. § 96.2.

.09 Section 301(a)(1) of the IAA, 42 U.S.C. § 14931(a)(1), requires the Secretary of State to issue a certificate for each Convention adoption by a U.S. domiciled citizen of a child immigrating to the United States. The Secretary of State issues two types of certificates for Convention adoptions, IHAC (Hague Adoption Certificate) and IHCC (Hague Custody Certificate). The Secretary of State issues the certificates if the Secretary (1) receives appropriate notification from the central authority of the child's country of origin, and (2) has verified that the requirements of the Convention and the IAA have been met for the adoption.

.10 Section 301(a)(2) of the IAA, 42 U.S.C. § 14931(a)(2), provides that if a certificate (IHAC or IHCC) is appended to an original adoption decree, Federal and state agencies, courts, and other public and private persons and entities must treat the certificate as conclusive evidence of the facts certified.

.11 Section 301(b) of the IAA, 42 U.S.C. § 14931(b), provides that a final adoption in another Convention country, certified by the Secretary of State pursuant to § 301(a) of the IAA (IHAC), must be recognized as a final valid adoption for purposes of all Federal, state, and local laws of the United States.

.12 Section 301(c) of the IAA, 42 U.S.C. § 14931(c), provides that a home-state jurisdiction may not declare an adoption final for a child who has entered the United States from another Convention country unless the Secretary of State has issued an IHCC.

.13 General information about foreign adoptions and the Convention can be accessed through the Department of State website at <http://www.adoption.state.gov>.

### SECTION 3. SCOPE

This revenue procedure applies to taxpayers who claim the adoption credit or exclusion for QAE paid or incurred for a Convention adoption of a child who is not a citizen or resident of the United States at the time the adoption process commences and who is immigrating to the United States. This revenue procedure does not apply to non-Convention adoptions within the scope of Rev. Proc. 2005-31 or to the adoption of a child who is a citizen or resident of the United States at the time the adoption process commences.

#### SECTION 4. FINALITY OF CONVENTION ADOPTIONS

.01 Adoption finalized in another Convention country. If a taxpayer is within the scope of this revenue procedure, the Internal Revenue Service will not challenge the taxpayer's treatment of an adoption that is finalized in another Convention country (sending country) as final in the taxable year that either:

- (1) The sending country enters a final decree of adoption, or
- (2) The Secretary of State issues a certificate under § 301(a) of the IAA (IHAC).

.02 Adoption finalized in the United States. If a taxpayer is within the scope of this revenue procedure, the Service will not challenge the taxpayer's treatment of an adoption of a child who has entered the United States for the purpose of adoption subject to § 301(c) of the IAA (IHCC) as final in the taxable year that a state court enters a final decree of adoption.

#### SECTION 5. EFFECTIVE DATE

This revenue procedure is effective September 29, 2010. A taxpayer may file an amended return to claim the adoption credit for QAE paid in taxable year 2008 or 2009, if the period of limitation under § 6511 has not expired, for a Convention adoption that

became final within the meaning of section 4 of this revenue procedure during the period beginning on April 1, 2008, and ending on December 31, 2009.

#### DRAFTING AND OTHER INFORMATION

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