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### Administrative Directive

<b>Transmittal:</b>	09-OCFS-ADM-08
<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
<b>Issuing Division/Office:</b>	Strategic Planning and Policy Development
<b>Date:</b>	April 7, 2009
<b>Subject:</b>	<b>Notification to Prospective Adoptive Families of the Federal Adoption Tax Credit</b>
<b>Suggested Distribution:</b>	Directors of Services Adoption Family Home Finders/Trainers Adoption Supervisors Foster Care Supervisors
<b>Contact Person(s):</b>	Any questions concerning this release should be directed to the appropriate Regional Office, Division of Child Welfare and Community Services:  Buffalo Regional Office- Mary Miller (716) 847-3145 <a href="mailto:Mary.Miller@ocfs.state.ny.us">Mary.Miller@ocfs.state.ny.us</a> Rochester Regional Office- Linda Kurtz (585) 238-8200 <a href="mailto:Linda.Kurtz@ocfs.state.ny.us">Linda.Kurtz@ocfs.state.ny.us</a> Syracuse Regional Office- Jack Klump (315) 423-1200 <a href="mailto:Jack.Klump@ocfs.state.ny.us">Jack.Klump@ocfs.state.ny.us</a> Albany Regional Office- Kerri Barber (518) 486-7078 <a href="mailto:Kerri.Barber@ocfs.state.ny.us">Kerri.Barber@ocfs.state.ny.us</a> Spring Valley Regional Office- Patricia Sheehy (845) 708-2499 <a href="mailto:Patricia.Sheehy@ocfs.state.ny.us">Patricia.Sheehy@ocfs.state.ny.us</a> New York City Regional Office- Patricia Beresford (212) 383-1788 <a href="mailto:Patricia.Beresford@ocfs.state.ny.us">Patricia.Beresford@ocfs.state.ny.us</a> Native American Services- Kim Thomas (716) 847-3123 <a href="mailto:Kim.Thomas@ocfs.state.ny.us">Kim.Thomas@ocfs.state.ny.us</a> New York State Adoption Services- Brenda Rivera (518) 474-9406 <a href="mailto:Brenda.Rivera@ocfs.state.ny.us">Brenda.Rivera@ocfs.state.ny.us</a>
<b>Attachments:</b>	Yes
<b>Attachment Available Online:</b>	No

## Filing References

Previous ADMs/INFs	Releases Canceled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
					Public Law 110-351 42 U.S.C. 671

### I. Purpose

The purpose of this Administrative Directive (ADM) is to notify local departments of social services (LDSS) and voluntary authorized agencies of the provisions of Title IV, Section 403 (Information on Adoption Tax Credit), of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351). The law adds a new 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.

This directive will explain the steps the Office of Children and Family Services (OCFS) has taken to be compliant with the requirements of this new law and will provide LDSS and voluntary authorized agencies with a standardized procedure to inform prospective adoptive families of their potential eligibility for the adoption tax credit.

### II. Background

The Small Business Job Protection Act of 1996 (Public Law 104-188) was enacted on August 20, 1996, and 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 federal adoption tax credit is a nonrefundable tax credit that is subtracted from the adoptive family's federal tax liability. A nonrefundable tax credit is a credit that only counts toward taxes that are actually due and will not result in a tax refund due to a tax liability of less than zero. 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.

For more information regarding the adoption tax credit, consult the IRS website: <http://www.irs.gov/taxtopics/tc607.html>

The President signed the Fostering Connections to Success and Increasing Adoptions Act of 2008 into law on October 7, 2008. Title IV, Section 403, of this act adds a new plan requirement in section 471(a)(33) of the Social Security Act for Title IV-E agencies to inform prospective adoptive parents of the federal adoption tax credit.

### **III. Program Implications**

There are several actions that OCFS has taken to meet the new 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 page is being updated to reflect the current tax year's dollar amounts and income limits. This webpage also includes links to the Internal Revenue Service (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*. 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 Internet website and in its adoption subsidy program summary for years. However, in support of the goal that this information also reaches families that are considering adoption, but are not yet actively involved in the process, OCFS is requiring LDSS and voluntary authorized agencies to include information regarding the adoption tax credit in their training orientation programs for all families considering adoption.

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 strongly recommended that agencies do not provide detailed tax credit information and instead refer individuals to tax professionals who can determine if they are eligible and can walk them through the process of filing for the tax credit, if appropriate. 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. Please note usage of this notice is not mandatory, and agencies can develop their own notice or other notification process if they prefer to do so, as long as the agency has a process in place that meets the requirement of the new law to inform all families adopting or considering adopting a child in foster care.

#### **V. Effective Date**

The Fostering Connections to Success and Increasing Adoptions Act of 2008 became law on October 7, 2008. Therefore, this administrative directive is effective immediately.

*/s/ Nancy Martinez*

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**Issued By:**

Name: Nancy 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 credit is an amount subtracted from your total tax liability. 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). 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, so it is important that you consult a tax professional or the Internal Revenue Service at [www.irs.gov](http://www.irs.gov) to obtain the current tax year information and determine if you are eligible.