



Joint Committee on Taxation  
June 3, 2002  
JCX-46-02

**DESCRIPTION OF H.R. 4800, THE REPEAL OF THE  
SUNSET PROVISION FOR THE EXPANSION OF THE ADOPTION CREDIT  
AND THE EXCLUSION FOR ADOPTION ASSISTANCE**

**Present Law**

**Tax credit**

A maximum nonrefundable credit of \$10,000 per eligible child is allowed for qualified adoption expenses paid or incurred by the taxpayer. An eligible child is an individual (1) who has not attained age 18 or (2) who is physically or mentally incapable of caring for him or herself.

Qualified adoption expenses are reasonable and necessary adoption fees, court costs, attorneys' fees, and other expenses that are directly related to the legal adoption of an eligible child. All reasonable and necessary expenses required by a State as a condition of adoption are qualified adoption expenses. Generally, a taxpayer is not eligible for the adoption credit in the year that qualified adoption expenses are paid or incurred by the taxpayer, but rather, in the next taxable year. An exception is provided for qualified adoption expenses paid or incurred in the year the adoption becomes final.

In the case of a special needs child, the adoption expenses taken into account are increased by the excess, if any, of \$10,000 over actual qualified adoption expenses otherwise taken into account for that special needs child. This provision is effective for taxable years beginning after December 31, 2002. A special needs child is an eligible child who also meets other requirements. Specifically, a special needs child must be a citizen or resident of the United States which the State has determined: (1) cannot or should not be returned to the home of the birth parents, and (2) has a specific factor or condition because of which the child cannot be placed with adoptive parents without adoption assistance.

**Exclusion from income**

Present law provides a maximum \$10,000 exclusion from the gross income of an employee for qualified adoption expenses (as defined above) paid by the employer. The \$10,000 limit is a per-child limit, not an annual limitation. In the case of a special needs adoption, the amount of adoption expenses taken into account in determining the exclusion for employer-provided adoption assistance is increased by the excess, if any, of \$10,000 over the amount of the aggregate adoption expenses otherwise taken into account for that special needs child. This provision is effective for taxable years beginning after December 31, 2002.

### **Sunset provision**

The Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”) made a number of changes to the Federal tax laws, including expansion of the adoption credit and the exclusion for adoption assistance. However, in order to comply with reconciliation procedures under the Congressional Budget Act of 1974 (e.g., section 313 of the Budget Act, under which a point of order may be lodged in the Senate), EGTRRA included a “sunset” provision, pursuant to which the provisions of EGTRRA expire at the end of 2010. Specifically, EGTRRA’s provisions do not apply for taxable, plan, or limitation years beginning after December 31, 2010, or to estates of decedents dying after, or gifts or generation-skipping transfers made after, December 31, 2010. EGTRRA provides that, as of the effective date of the sunset, both the Code and the Employee Retirement Income Security Act of 1974 (“ERISA”) will be applied as though EGTRRA had never been enacted. Likewise, all other provisions of the Code and ERISA will be applied as though the relevant provisions of EGTRRA had never been enacted.

### **Explanation of Provision**

H.R. 4800 repeals the sunset provision of EGTRRA solely for purposes of the expansion of the adoption credit and the exclusion of adoption assistance.

### **Effective Date**

The provision is effective on the date of its enactment.