

NEW YORK STATE
 DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243



CESAR A. PERALES
 Commissioner

[An Informational Letter informs local districts of potential developments in the Social Services field, or of actual or potential developments in collateral fields of interest.]

INFORMATIONAL LETTER

TRANSMITTAL NO.: 83 INF-15
 [Family and Children Services]

TO: Commissioners of Social Services
 Directors of Authorized Agencies

SUBJECT: Expenses for Adoptions of Handicapped or
 Hard to Place Children which may be tax
 deductible

DATE: August 11, 1983

SUGGESTED DISTRIBUTION: Child and Family Services Staff
 Adoption Homefinding Staff
 Adoption Services Staff
 Public Information Staff

CONTACT PERSON: Questions concerning policy and program issues regarding
 this release should be directed to Mr. Peter C. Winkler,
 Family and Children's Services Operations, Division of
 Services by calling 1-800-342-3715 x 3-0855.

PURPOSE

The purpose of this letter is to inform adoption staff of
 local districts and voluntary agencies of the tax deduction
 that some adoptive parents may take on income tax returns for
 certain adoption expenses incurred on or after January 1, 1981.

FILING REFERENCES

| Previous INFs/ADMs | Dept. Regs. | Social Services Law and Other Legal References | Bulletin/Chapter Reference | Miscellaneous References |
|--------------------|-------------|---|----------------------------|---|
| | | SSL 451 | | Internal Revenue Services Publication 529 |

IT.

BACKGROUND:

United States Department of the Treasury, Internal Revenue Services Publication 529 notes miscellaneous deductions that might be taken by persons who itemize their income tax deductions and who adopt certain handicapped and hard to place children. Page three of that Publication states the following: "There are other items that you may claim as miscellaneous deductions on Schedule A (Form 1040).

"Adoption expenses. Beginning in 1981, you may be able to deduct up to \$1,500 of qualified adoption expenses if you legally adopt a child with special needs.

"A child with special needs is one who is eligible to receive payments under the Social Security Act adoption assistance program. These payments can be made if there is a specific factor or condition that makes the child difficult to place with adoptive parents without adoption assistance. Such factors as a child's ethnic background, age, membership in a minority or sibling group, or a physical, mental or emotional handicap would make a child difficult to place."

"Qualified Adoption expenses include reasonable and necessary adoption fees, court costs, attorney fees, and other expenses that are directly related to the adoption of the child. These adoption expenses do not include any expenses for which you may receive a credit or that you may otherwise deduct. For example, pre-adoption medical expenses are claimed as a medical expense, not as an adoption expense. In addition, you may not deduct any expenses for which you received payments from a federal, state, or local program to pay for your adoption expenses."

The Federal Adoption Assistance Program, at Section 473(a) (4)(c) of the Social Security Act provides that a child shall not be considered a child with special needs unless the State has first determined that there exists with respect to the child a specific factor or condition such as ethnic background, age, membership in a minority or sibling group, or a physical, mental or emotional handicap because of which it is reasonable to conclude that such a child cannot be placed without adoption assistance. Section 451 of the Social Services Law has incorporated the above-referenced factors into the definition of a "handicapped child" and "hard to place child" for purposes of determining whether a child qualifies for adoption subsidies pursuant to New York State's Adoption Subsidy Program. Therefore, this State has complied with the provisions of Section 473(a)(4)(c) of the Social Security Act and expenses incurred in the adoption of a handicapped child are deductible as prescribed by the Internal Revenue Service.

III. PROGRAM IMPLICATION

This potential tax benefit might serve as an additional incentive to the adoption of handicapped and hard to place children. It is applicable to those adoptive parents who receive adoption subsidy as well as to those who adopt a handicapped or hard to place child that choose not to receive an adoption subsidy. As has been previously stated, the deduction applies only to non-reimbursed expenses directly related to the adoption of the child.

Those who would like more information regarding their specific eligibility for this tax deduction should be encouraged to contact their District Office of the United States Internal Revenue Service. The deduction referred to in this letter is described on page three of the Internal Revenue Service Publication 529 entitled "Miscellaneous Deductions" under the heading "Other Miscellaneous Deductions." Publication 529 is subject to revision and the latest revision should be consulted to determine whether there are any changes which would affect the ability to claim this tax deduction.

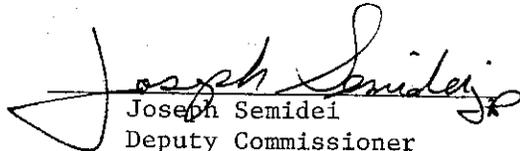
Residents of New York State and/or New York City may be able to take advantage of the previously described adoption expense deduction on their New York State and/or New York City tax returns. These persons as well as non-resident taxpayers in New York State or New York City should approach the appropriate tax office to determine whether costs related to the adoption of a child with special needs is deductible.

Those individuals who were eligible for this tax deduction, but did not take advantage of it may be able to file amended tax returns for the year in which the deduction could have been claimed, but was not claimed. Such persons should contact their District Office of the Internal Revenue Service and the appropriate New York State or New York City taxpayer assistance office for instructions on how to amend a previous years' tax return.

In cases where adoptive parents of handicapped or hard to place children make a specific request, the agency which handled the adoption should supply a written statement confirming that the child was classified handicapped or hard to place at the time of the adoptive placement.

IV. RECOMMENDATIONS:

Local districts and agencies should share this information with adoptive parent groups and persons who have either adopted a handicapped or hard to place child or may do so in the future.


Joseph Semidei
Deputy Commissioner
Division of Family and
Children Services

