



**December 14, 2011**

## Lesbians Denied Adoption Tax Credit

Since the federal government does not recognize same sex marriages, gays and lesbians are not allowed certain rights when it comes to taxes that straight couples are. For example, gays and lesbians cannot file joint income tax returns. But along with disadvantages should come advantages also. For instance, lesbians who adopt a child wishing to claim the adoption credit should technically be allowed to do so whereas straight couples cannot because the law states that you cannot claim tax credits when you adopt your spouse's child. Since lesbians are not considered married, then the adoption tax credit is allowable to a lesbian who adopts her partner's child.

The adoption credit directly offsets the taxes you are liable to and is a refundable credit, meaning if the credit is more than your tax liability, you get to claim the difference as a refund. For 2011, the adoption tax credit can go as high as \$13,360 and is claimable only once between a couple. This makes the credit very attractive and in turn also more likely to be abused. This has caused the IRS to be extra careful in scrutinizing the claims for the adoption credit.

68% of the 100,000 or so adoption credit claims were audited by mail according to a Government Accountability Office (GAO) report. These claims came from both gay and straight couples. Generally, claims from gay and lesbian couples were denied with various reasons. But at least 2 of those reasons given to lesbian couples were highly questionable. One of them was that the birth mother did not relinquish her rights as part of the adoption. Under normal circumstances with a straight couple wishing to adopt, it is not unusual for the birth mother not to give up her rights but this is not something a lesbian birth mother would do since her partner is simply performing a "second parent" adoption. Furthermore, there is nothing in the law that says relinquishing of parental rights is a prerequisite for claiming the adoption tax credit.

The other common reason given by the IRS for declining is that the adoptive mother is the domestic partner to the lesbian birth mother. But the law does not prohibit domestic partners from claiming the credit. According to the GAO report, the IRS did not adequately instruct its officers about these aspects of the adoption credit. As a result, they were not fully prepared to deal with claims by lesbian couples. The IRS admitted to making a mistake in an isolated number of cases and said they had rectified the errors. The agency issued a statement saying it regretted any inconvenience caused and that it has provided more training to their officers on this matter.

The IRS allows any taxpayer who feels they have been wrongly denied the adoption credit (both gay and straight) to contact the agency to resolve the matter. You will likely be required to provide appropriate documentation to substantiate your claim. So if you or your partner receive an audit notice from the IRS asking for more information in the next tax season, you should reply to them within the time frame given you. Most taxpayers have been granted the credit after clarifying matters with the IRS.