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GENERAL MEMORANDUM 25-008

The Department of the Treasury and the Internal Revenue Service Announce Tribal Consultation on Changes in the One Big Beautiful Bill Act to the Adoption Tax Credit

On August 25, 2025, the Department of the Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) announced an upcoming virtual consultation on **September 15, 2025** on the implementation of the One Big Beautiful Bill Act (“OBBA”) Section 70403, Recognizing Indian Tribal Governments for Purposes of Determining Whether a Child Has Special Needs for Purposes of the Adoption Credit, P.L. 119-21, 139 Stat. 72 (July 4, 2025). The OBBA added enhancements to the adoption tax credit and provided Tribal governments with parity for special needs adoption determinations.

Enhancements to the Adoption Credit. The Adoption Tax Credit at 26 U.S.C. § 23 provides a non-refundable tax credit to individuals to offset the costs of adoption. The maximum amount of \$17,280 can be claimed for the adoption of eligible children in which there has been a special needs determination.

OBBA made two important changes to the statute. First, Section 70402 made part of the credit refundable. Second, Section 70403 permits Indian Tribal governments to make “special needs” determinations, which places Tribes on par with States for Adoption Tax Credit purposes. The term a “child with special needs,” means specific factors or conditions such as “ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps” are present such that the child could not be placed with the adoptive parents without adoption assistance. The adopting parents are entitled to claim the maximum amount of the adoption tax credit for a special needs child even if the taxpayer had no qualified adoption expenses. Further, a portion of the credit is refundable, even if the taxpayer had little or no income tax liability.

Topics to be Addressed in Consultation. To support the implementation of the Tribal government parity provision, Treasury and the IRS are initiating consultation. Because adoptive families are eligible for the Adoption Tax Credit for 2025 adoptions, Treasury is expediting the consultation to 45 days instead of 60 days.

Treasury has provided the following questions for Tribal feedback ahead of the consultation:

- What questions or comments do you have regarding the Adoption Tax Credit under 26 U.S.C. § 23?
- What questions or comments do you have regarding Section 70402 which provides that a portion of the Adoption Tax Credit is refundable?

- What questions or comments do you have regarding Section 70403, which recognizes Indian Tribal government special needs determinations for the purposes of the adoption tax credit?
- To support the implementation of Section 70403, do you have recommendations or comments related to Form 8839, Qualified Adoption Expenses, and/or Form 14806, Adoption Credit Documentation Requirements? Would Tribal examples be helpful in the instructions and do you have recommended topics and examples?
- Regarding the documentation for Tribal special needs determinations, what questions or comments do you have?
- What other questions or comments are important for the Department to know in implementing Section 70403?

This consultation will be held virtually on September 15, 2025, at 1:00 pm ET. You can register for the consultation [here](#). Treasury is accepting written comments until Thursday, October 10, 2025, 11:59 p.m. Alaska Time. Tribes may submit written comments at tribal.consult@treasury.gov.

Inquiries may be directed to:

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