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**Rules of**  
**Department of Revenue**  
**Division 10—Director of Revenue**  
**Chapter 400—Individual Income Tax**

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**Title 12—DEPARTMENT OF  
REVENUE**

**Division 10—Director of Revenue  
Chapter 400—Individual Income Tax**

**12 CSR 10-400.200 Special Needs Adoption Tax Credit**

*PURPOSE: Section 135.327, RSMo, provides an income tax credit up to ten thousand dollars (\$10,000) for qualified expenses incurred in the adoption of a special needs child. This rule explains when the tax credit is available and how the individual may claim the credit.*

(1) In general, an individual may qualify for a credit for nonrecurring expenses incurred in the legal adoption of a special needs child. The credit may be used to reduce individual income tax. The classification of a child as a “special needs child” is determined by the Children’s Division of the Department of Social Services (Children’s Division).

(2) Definitions of Terms.

(A) Special needs child—As certified by the Children’s Division, a child-placing agency licensed by this state, or a court of competent jurisdiction. This does not include any child who has attained the age of eighteen (18); unless it has been determined the child has a medical condition or handicap that would limit the child’s ability to live independently of the adoptive parents.

(B) Resident special needs child—A special needs child who was a resident of this state, or who was a ward of a resident of this state, at the time the adoption was initiated.

(C) Nonresident special needs child—A special needs child who was neither a resident of this state nor a ward of a resident of this state at the time the adoption was initiated.

(D) Qualified expenses—Reasonable and necessary nonrecurring adoption expenses including attorney fees, court costs, and other directly related expenses not taken as a deduction or credit under any similar provision of federal, state, or local law.

(E) Fiscal year—July 1 to June 30.

(F) Filing period—The filing period for claiming a credit related to a resident special needs adoption begins on July 1 of the fiscal year and ends on April 15 of the fiscal year. The filing period for claiming a credit related to a nonresident special needs adoption begins on July 1 of the fiscal year and ends on December 31 of the fiscal year. If the filing period ends on a Saturday, Sunday, or a holiday, the last day for filing shall be the first business day following the end of the filing period.

(G) Approved payment arrangement—a payment plan signed by the taxpayer and submitted to and approved by the Department of Revenue (department) within sixty (60) days from the notice of denial.

(3) Basic Application.

(A) An individual residing in this state who proceeds in good faith to adopt a special needs child may be eligible for an adoption tax credit. The tax credit is limited to the lesser of ten thousand dollars (\$10,000) or the actual amount of qualified expenses incurred in the adoption of each special needs child. The tax credit is available for a total of five (5) years. The five (5)-year period begins when the tax credit is first taken or the adoption is finalized, whichever occurs first, and the years for claiming the tax credit run consecutively.

(B) The lesser of one-half (1/2) of the actual amount of qualified expenses incurred or five thousand dollars (\$5,000) may be used to reduce the income tax on the adoptive parent’s individual income tax return for the tax year in which the special needs child is placed in the home. The remaining tax credit may be used to reduce the income tax in the tax year the adoption is finalized.

(C) The adoption tax credit used may not exceed the income tax for the tax year. The portion of the tax credit which exceeds the income tax shall not be refunded but may be carried forward and used against the taxpayer’s income tax for the subsequent four (4) tax years from the year the child is placed in the home.

(D) The owner of an adoption tax credit may assign, transfer or sell the credit. To claim the credit, the buyer must provide a statement signed by the seller that includes the names, addresses, and Social Security numbers of the buyer and seller, the date the credit was sold, the amount of tax credit sold, and a copy of the Form MO-ATC completed by the adoptive parents.

(E) The adoption tax credit is subject to the original owner’s delinquent income, sales, and use taxes, including interest and penalties.

(F) No credit shall be allowed for that portion of the qualified expenses paid from any funds received under any federal, state or local program.

(G) The credit shall be reduced by an amount equal to the state’s cost of providing care, treatment, maintenance and services when:

1. There is no intent to return the child to the adoptive home and the special needs child is placed in foster care or a residential treatment facility, which is licensed by the

Division of Family Services, the Division of Youth Services, or the Department of Mental Health; or

2. A juvenile court temporarily or finally relieves the adoptive parents of custody of the special needs child.

(H) Only one (1) ten thousand dollar (\$10,000) credit is available for each special needs child that is adopted.

(I) The cumulative amount of tax credits that may be issued for qualified expenses in any one (1) fiscal year shall not be less than four (4) million dollars, but may be increased by appropriation in any one (1) fiscal year. Two (2) million dollars may be issued for the adoption of resident special needs children. The remaining two (2) million dollars is available first for credits claimed on or before December 31 of the fiscal year for the adoption of nonresident special needs children. If less than two (2) million dollars is claimed on or before December 31 of the fiscal year for nonresident special needs children, the remainder is available for credits claimed for the adoption of resident special needs children. If less than the allotted funds are claimed for the resident adoption applications the remaining amount of unclaimed funds will be available for Children in Crisis tax credits as defined in section 135.327, RSMo. If the remaining unclaimed funds are not used for the Children in Crisis, the funds are available for the adoption of nonresident special needs children.

(J) If the total adoption tax credits claimed exceed the amount available in either category, the credits will be apportioned *pro rata* among all of the taxpayers in each category who have filed a valid claim within the filing period.

(K) All claims filed after the filing period will be denied, and may be refiled during the filing period for the following fiscal year provided the statute of limitations has not expired.

(L) In the first year in which the credit is claimed, any taxpayer claiming this tax credit must attach to the individual income tax return a completed Missouri Department of Revenue Form ATC. This form can be accessed from the Department of Revenue’s website at <http://www.dor.mo.gov/tax/personal/individual/forms>, under tax credit forms.

(M) After December 31 but before February 1 each year, the director shall calculate the total of all applications received for nonresident special needs adoptions and submit this calculation to the speaker of the House of Representatives, the president pro tempore of the Senate, and the director of the Division of



Budget and Planning in the Office of Administration.

(N) In the event of a credit denial, due to lack of available funds, the taxpayer will not be held liable for any penalty or interest, provided the balance is paid, or a payment arrangement has been received and approved by the department, within sixty (60) days from the notice of denial.

(O) Any amounts still outstanding sixty (60) days after the denial notice date, will be charged interest at the rate statutorily provided.

#### (4) Examples.

(A) A special needs child is placed in the home and the adoption is finalized in 2002. The taxpayer incurred \$15,000 in qualified expenses. The taxpayer has income tax of \$6,000 for the tax year. The individual may use \$6,000 in 2002 and has \$4,000 to carry forward to 2003.

(B) A special needs child is placed in the home in 2002. The adoption is finalized in 2003. The individual incurred \$15,000 in qualified expenses. The individual has income tax of \$6,000 for 2002. Because the credit is limited to 50% of the total credit in the year that the child is placed in the home, the individual may only use \$5,000 in 2002 and has \$5,000 to carry forward to 2003.

(C) A special needs child is placed in the home in 2002. The adoption is finalized in 2004. The individual incurred \$15,000 in qualified expenses. The individual has income tax of \$6,000 for 2002, and may use \$5,000 of credit in that year (50% of the total credit of \$10,000). Because the adoption was not finalized until 2004, the individual has no credit available for 2003, and has \$5,000 available for 2004.

(D) A special needs child is placed in the home in 2002. The adoption is finalized in 2004. The individual incurred \$15,000 in qualified expenses. The individual has income tax of \$3,000 for 2002 and for 2003. The individual may use \$3,000 of the \$5,000 available credit in 2002, \$2,000 of the credit in 2003, and has another \$5,000 available for 2004.

(E) A special needs child is placed in the home in 2002. The adoption is finalized in 2004. The individual incurred a total of \$8,000 in qualified expenses. The individual has income tax of \$3,000 for 2002 and for 2003. The individual may use \$3,000 of the \$4,000 available credit in 2002, \$1,000 of the credit in 2003, and has another \$4,000 available for 2004.

(F) An individual incurred a total of \$10,000 in qualified expenses related to the adoption of a resident special needs child.

The individual incurred income tax of \$3,000 in 2006 and filed a 2006 return on April 30, 2007, after the filing period for the adoption tax credit. The claim for credit will be denied since the claim was filed after the filing period. The claim may be refilled in the next fiscal year provided the statute of limitations has not expired.

(G) The individual incurred a total of \$10,000 of qualified adoption expenses and income tax of \$3,000 for 2004. The individual filed a 2004 return within the filing period to claim the credit. The total claims for the adoption expenses for nonresident special needs children filed within the filing period equaled \$4,000,000. The individual will be approved for a credit of \$1,500 for 2004, 50% of the credit claimed (\$2,000,000 divided by \$4,000,000), and will have \$8,500 of credit available for 2005.

(H) A car dealer accepts an adoption tax credit as payment for a car. The car dealer may use the adoption tax credit to offset any income tax, subject to the applicable restrictions. No portion of the credit is refundable, but can be carried over for the remaining life of the credit.

(I) In the year the adoption is finalized and after the tax credit had been sold, a juvenile court temporarily relieved the parents of custody, at a total cost to the state of \$8,000. The credit of \$10,000 will be reduced by the amount of the state's cost in providing care, and the transferee of the credit has \$2,000 available.

(J) A special needs child is placed in the home and the adoption is finalized in 1999. The individual incurred \$15,000 in qualified expenses. The individual has income tax of \$6,000 each tax year. The individual did not claim an adoption tax credit on the individual's 1999 through 2003 returns. The individual may not claim a credit for 2004. However, the individual may file amended returns for any tax year for which the statute of limitations remains open and claim the adoption tax credit.

(K) An individual adopts a special needs child in a foreign country and the adoption was finalized in the foreign country in 1999. The individual incurred \$14,000 in qualified expenses and owed no income tax in 1999, 2000, or 2001, and owed income tax of \$4,000 for 2002. The individual claimed \$4,000 adoption tax credit on the tax return for 2002. The unused \$6,000 of qualified expenses is available to be carried over to 2003, but no further.

*AUTHORITY: section 143.961, RSMo 2000 and 135.327, RSMo Supp. 2006.\* Emergency rule filed Jan. 7, 2005, effective Jan. 17,*

*2005, expired July 15, 2005. Original rule filed Jan. 7, 2005, effective July 30, 2005. Amended: Filed Oct. 31, 2006, effective May 30, 2007.*

*\*Original authority:135.327, RSMo 1987, amended 1995, 1999, 2002, 2004, 2006 and 143.961, RSMo 1972.*

### 12 CSR 10-400.210 Children in Crisis Tax Credit

(Rescinded July 30, 2018)

*AUTHORITY: section 135.327, RSMo Supp. 2006. Original rule filed Oct. 26, 2006, effective May 30, 2007. Rescinded: Filed Jan. 26, 2018, effective July 30, 2018.*

### 12 CSR 10-400.250 Computation of an Individual's Missouri Adjusted Gross Income on a Combined Income Tax Return

*PURPOSE: This rule explains how the combined Missouri adjusted gross income is computed on a combined return for purposes of computing each spouse's separate income tax liability.*

(1) In general, if a married couple files a combined Missouri income tax return, the combined Missouri adjusted gross income equals the sum of each spouse's separate Missouri adjusted gross income. The spouse's separate Missouri adjusted gross income equals the federal adjusted gross income reportable by the spouse had the spouse filed a separate federal return, as adjusted by the modifications under sections 143.121 and 135.647, RSMo.

#### (2) Examples.

(A) A married couple reported federal adjusted gross income of thirty-two thousand dollars (\$32,000) on their joint federal income tax return. On their combined Missouri income tax return, one (1) spouse reported separate federal adjusted gross income of thirty-eight thousand dollars (\$38,000), and the other spouse reported separate federal adjusted gross income of negative six thousand dollars (\$6,000). The combined Missouri adjusted gross income equals thirty-two thousand dollars (\$32,000) (thirty-eight thousand dollars (\$38,000) plus negative six thousand dollars (\$6,000)).

(B) A married couple reported federal adjusted gross income of thirty-nine thousand dollars (\$39,000) on their joint federal income tax return. On their combined Missouri income tax return, one (1) spouse reported separate federal adjusted gross income of thirty-eight thousand dollars



(\$38,000), and the other spouse reported separate federal adjusted gross income of one thousand dollars (\$1,000) and a five thousand dollar (\$5,000) subtraction for interest from exempt U.S. government obligations. The combined Missouri adjusted gross income equals thirty-four thousand dollars (\$34,000) (thirty-eight thousand dollars (\$38,000) plus negative four thousand dollars (\$4,000)).

(C) A married couple reported federal adjusted gross income of thirty-nine thousand dollars (\$39,000) on their joint federal income tax return. On their combined Missouri income tax return, one (1) spouse reported separate federal adjusted gross income of thirty-eight thousand dollars (\$38,000), and the other spouse reported separate federal adjusted gross income of one thousand dollars (\$1,000) and a five thousand dollar (\$5,000) subtraction for a contribution to a Missouri Savings for Tuition (MOST) account. The combined Missouri adjusted gross income equals thirty-eight thousand dollars (\$38,000) (thirty-eight thousand dollars (\$38,000) plus zero) because the MOST subtraction is limited to the spouse's Missouri adjusted gross income.

*AUTHORITY: section 143.961, RSMo 2000 and section 135.647, RSMo Supp. 2007.\* Original rule filed Dec. 1, 2004, effective July 30, 2005. Amended: Filed Aug. 14, 2007, effective Feb. 29, 2008.*

*\*Original authority: 135.647, RSMo 2007 and 143.961, RSMo 1972.*