

Directions:

If you have received a letter in response to your having provided more information about your claim of the adoption credit on your 2010 tax return and if that letter concludes that your adoption credit should be denied, then you have the right to disagree with the IRS's conclusion. Typically the letter says that you have 30 days to respond to tell the IRS whether you agree or disagree. If you wish to challenge the IRS (and you should, because after many reviews of this sort the agents are allowing the credit to stand) you might want to explain why you disagree. The language below is one suggested response.

You should look at the form you received called "Explanation of Items" and see what reason the IRS gives. Three of the most commonly used reasons are listed below in brackets. Choose the one that corresponds to your correspondence (or more than one if the Explanation lists more than one item.

If the IRS does not agree with you after this communication, you will receive a more formal 30-day letter that will explain your right to appeal the decision to the "Appeals" division of IRS.

Suggested Language

You have denied the adoption credit I claimed on my return for 2010. Based on the Explanation of Items provided, the credit was denied because [the child's mother did not terminate her parental rights in the adoption process][I am a domestic partner of the child's mother][the child's mother and I are jointly responsible for supporting the child]. I can find no authority to support your position. The statute, Internal Revenue Code Section 36C, does not require a termination of parental rights [or any of the additional requirements you suggest]. I also cannot find any such requirement[s] in regulations, rulings, or other authority. While I understand the credit is not available for a taxpayer who adopts his or her spouse's child, that is not my situation. I am aware of Notice 97-9, which provides that when an unmarried couple jointly adopts the same child, they will be entitled to a single adoption credit to be split between them. That also does not apply to my situation as I adopted my partner's child on my own and did not engage in a joint adoption.

When I consult secondary authority, I find that tax scholars are in agreement that I should be able to claim the adoption credit as I did. Please see Theodore P. Seto, *The Unintended Tax Advantages of Gay Marriage*, 65 Wash & Lee L. Rev. 1529, 1580 (2008); Patricia A. Cain, *DOMA and the Internal Revenue Code*, 84 Chi.-Kent L. Rev. 481, 500 (2009); Debra E Guston and William S. Singer, *The State of Gay and Lesbian Adoption in New Jersey*, 239 New Jersey Lawyer 35 (April 2006).

Please advise me as to what authority you are relying on to deny me the adoption credit.