

HSA's and Divorce

The dissolution of a marriage has an affect on a Health Savings Account (HSA) owner, particularly around whose expenses the HSA owner can reimburse and what options the ex-spouse has to open and contribute to an HSA.

In this paper, we look at the intersection of HSA's and divorce to examine the issues that an HSA owner needs to know to remain compliant with HSA rules.

Can I reimburse my ex-spouse's eligible expenses tax-free from my HSA?

No. Your ex-spouse's expenses incurred after a court order of separate maintenance (or the legal equivalent in your jurisdiction) aren't eligible for tax-free reimbursement from your account. These distributions are included in your taxable income and subject to an additional 20% tax unless you're age 65 or older or disabled.

I'm required by court order to keep my ex-spouse on my medical plan and pay their out-of-pocket expenses. Can I reimburse their eligible expenses tax-free from my HSA with this court order?

No. Judges can't overrule federal tax law, which says that your ex-spouse's expenses aren't eligible for a tax-free distribution from your account. This situation holds true even when you're required by court order to pay a portion of their medical expenses.

Is there any way to get a tax break for my ex-spouse's out-of-pocket costs?

Maybe. An individual doesn't have to be the medical plan subscriber to be HSA-eligible. If your ex-spouse meets all HSA eligibility requirements, they can open their own HSA. Anyone, including you, can contribute to their HSA. They receive the deduction for any contributions into their HSA, regardless of who actually contributes the money.

If my ex-spouse and I are covered on the same family contract and they open their own HSA, how much can each of us contribute?

HSA legislation and subsequent guidance don't address this issue. The legislation states that a married couple who are both HSA-eligible can split the family contribution between their HSAs in any proportion that they wish. It doesn't address ex-spouses, domestic partners, and children who are no longer a parent's tax dependent but remain on the family medical plan until their 26th birthday.

Many benefits advisors, attorneys, and HSA administrators believe that in this scenario, each unmarried adult can deposit up to the statutory maximum annual contribution for a family contract into their respective accounts. In 2010, an IRS official, speaking as an individual with knowledge of HSA (but not representing the IRS's official position), suggested to an industry group that its conclusion that each party could contribute to the family maximum was correct. Be sure to check with your personal legal or tax counsel to assess the opportunity and risk associated with this approach in the absence of formal guidance.

My ex-spouse claims our children as dependents some years or all years. Can I reimburse their eligible expenses tax-free from my account?

Generally, yes. IRS guidelines allow parents to reimburse their children's eligible expenses tax-free from either parent's HSA, regardless of which parent claims the children as tax dependents in a given year. Here's the rule from the *IRS Publication 969*.

“For this purpose, a child of parents that are divorced, separated, or living apart for the last 6 months of the calendar year is treated as the dependent of both parents whether or not the custodial parent releases the claim to the child's exemption.”

As part of the divorce settlement, I have to transfer half my HSA balance to my ex-spouse. How does that work?

Your ex-spouse can open their own HSA with an administrator of their choice. They don't need to be HSA-eligible to open an account for the sole purpose of receiving a rollover from an ex-spouse's HSA balance by court order as part of a divorce settlement.

This rollover isn't a taxable event for either party. Once the rollover is executed, your ex-spouse can reimburse their own and their tax dependents' qualified expenses tax-free from their account. They can make contributions only if they're HSA-eligible.

My ex-spouse and I reconciled, and now we've remarried. What expenses of theirs can I reimburse tax-free from my HSA?

You can reimburse tax-free eligible expenses that they incur on or after your second wedding day. In addition, you can reimburse tax-free eligible expenses that they incurred before you received a court order of separate maintenance (or the legal equivalent in your jurisdiction) as the start of your divorce proceedings.

You can't go back and reimburse tax-free any qualified expenses that they incurred from the issuance of the court order of separate maintenance to begin your divorce to the day before your remarriage. Any distributions for those expenses are included in your taxable income, plus you're assessed an additional 20% tax unless you're age 65 or older, or disabled.

Disclaimer: This information is accurate as of January 20, 2021. Please note that this discussion is for informational purposes only and is based on current regulations. It doesn't represent, and shouldn't be construed as, a substitute for professional advice. Please consult your personal legal, financial, or tax counsel to discuss your personal situation and refer to IRS Publication 969.