



HSAs and Divorce

The dissolution of a marriage has an effect 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 HSAs and divorce to examine the issues that an HSA owner needs to know to remain compliant with HSA rules.

1. Can I reimburse my ex-spouse's qualified 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 qualified for tax-free reimbursement from your HSA. These distributions are included in your taxable income and subject to an additional 20% tax unless you're age 65 or older or disabled.

2. I'm required by court order to keep my ex-spouse on my medical plan and pay her out-of-pocket expenses. Can I reimburse her 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 qualified for tax-free distribution from your HSA. This situation holds true even when you're required by court order to pay a portion of her medical expenses.

3. 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, she can open her own HSA. Anyone, including you, can contribute to her HSA. She receives the deduction for any contributions into her HSA, regardless of who actually contributes the money.

4. If my ex-spouse and I are covered on the same family contract and she opens her own HSA, how much can each of us contribute?

HSA legislation and subsequent guidance by the Internal Revenue Service (IRS) doesn'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 refer to an IRS agent's statements at a 2010 meeting of the American Bar Association in counseling account holders that the subscriber and ex-spouse can *each* contribute up to the statutory maximum annual contribution for a family contract into their respective HSAs. That maximum contribution is \$7,000 in 2019.

It's important to understand that the IRS agent attended the meeting as a private citizen, not as a representative of the IRS. He answered the question based on his knowledge of the law and didn't speak for the Service. We recommend that you discuss your personal situation with your legal, financial, or tax counsel to evaluate the role that this opinion should play in your HSA contribution decisions.

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

Generally yes. IRS guidelines allow parents to reimburse their children's qualified 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*, page 8: "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."

6. 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 her own HSA with an HSA administrator of her choice. She doesn'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 her own and her tax dependents' qualified expenses tax-free from her HSA. She can make contributions only if she's HSA-eligible.

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

You can reimburse tax-free any qualified expenses that she incurs on or after your second wedding day. In addition, you can reimburse tax-free any qualified expenses that she incurred prior to your receiving 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 she 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.

This information is accurate as of Nov. 5, 2018. 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.

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