



HSAs and Special Family Situations

The Health Savings Account (HSA) legislation was written in 2003 with “traditional” families in mind. In the real world, though, many families don’t follow the once-common pattern of husband, wife, 2.3 kids, and a dog. As a result, the legislation and subsequent interpretation by the Internal Revenue Service (IRS) have created some restrictions and some opportunities for non-traditional families. This paper is designed to help you navigate the intersection of HSA rules and a wider definition of families so that you remain in compliance with HSA rules. We focus on three specific family members: a domestic partner (unmarried partner of either sex), an ex-spouse, and adult children who are no longer a parent’s tax dependent but remain covered on the family medical plan. We have a separate paper outlining issues at the intersection of HSAs and divorce.

HSAs and Domestic Partners or Ex-Spouses

1. I cover my domestic partner or ex-spouse on my HSA-qualified plan. Can I reimburse his qualified expenses tax-free from my HSA?

No. HSAs follow federal tax rules. The Internal Revenue Code (IRC) specifies that you can reimburse only your own, your spouse’s, and your tax dependents’ qualified expenses tax-free from your HSA. Any distributions for qualified expenses incurred by a domestic partner or ex-spouse, unless she is your tax dependent (not common, and generally a result of the partner’s disability) are included in your taxable income. Your distribution is also subject to an additional 20% tax (penalty) unless you’re at least age 65, are disabled, or die.

Note: If you made distributions before understanding this rule, you may be able to work with your HSA trustee to avoid taxes and penalties on any distributions made during the current tax year.

2. Is there any way that we can enjoy tax savings when reimbursing my domestic partner's or ex-spouse's qualified expenses?

Perhaps. If your domestic partner or ex-spouse is HSA-eligible, she can open and contribute to her own HSA. A person doesn't have to be the medical plan subscriber to be HSA-eligible. A domestic partner or ex-spouse enrolled on your medical plan who has no other disqualifying coverage and isn't your tax dependent is eligible to open an HSA to which anyone, including you, can contribute. Your domestic partner or ex-spouse can then make tax-free distributions to reimburse qualified expenses that she and her tax dependents incur.

3. If my domestic partner or ex-spouse opens an HSA, are we limited to splitting the statutory maximum annual family contribution between our two accounts?

Probably not. Married couples must split the maximum contribution (\$7,000 in 2019) between their HSAs in any proportion that they choose. The law is silent on contribution limits for domestic partners and ex-spouses. Most attorneys, benefits advisors, and HSA administrators rely on direction provided by an IRS official at a 2010 meeting of the American Banker's Association. That official agreed with the ABA's interpretation that each unmarried partner could contribute up to the statutory maximum annual contribution for a family contract. Thus, each of you can contribute up to \$7,000 in your respective HSAs for 2019. And, you can deposit an additional \$1,000 each, each year, if you're age 55 or older.

It's important to note that the IRS official attended the meeting as a private individual, not an IRS employee, and responded to a question based on his understanding of the law. He was not stating an official Service position on the topic. So, be sure that you and your domestic partner or ex-spouse check with your respective legal or tax counsel to assess the potential risks associated with relying on that unofficial statement.

4. My domestic partner or ex-spouse doesn't work (or doesn't have sufficient income to contribute to his own HSA). Can I contribute to her HSA?

Yes. Anyone can contribute to anyone else's HSA. Unless it's an employer contribution, the HSA owner receives the tax deduction, regardless of who actually makes the contribution. Thus, you can contribute some or all of your domestic partner's or ex-spouse's maximum contribution, and she can deduct the contribution on her personal income tax return.

5. What if my domestic partner or ex-spouse isn't HSA-eligible? Will this strategy still work?

No. If your domestic partner or ex-spouse isn't HSA-eligible, she can't open her own HSA. No one will be able to reimburse her qualified expenses tax-free from an HSA.

6. I also have a Limited-Purpose Health FSA. Can I reimburse my domestic partner's or ex-spouse's qualified dental and vision expenses tax-free from it?

No. The same restrictions apply to a Health FSA, which is also governed by federal tax law. You can't reimburse a domestic partner's or ex-spouse's qualified expenses from a Health FSA. And because a Health FSA is an employer-sponsored plan, your domestic partner or ex-spouse can't open one on her own.

HSAs and Children Who Aren't Tax Dependents

7. Can my adult child who's covered on my HSA-qualified plan but who's no longer a tax dependent open her own HSA?

Yes, as long as she meets all eligibility requirements. She doesn't have to be a plan subscriber to be HSA-eligible.

8. What's the maximum contribution that this child can make to his HSA?

HSA legislation and IRS guidance are silent on this issue. By the same logic described in Question 3 above, a child covered on a family contract can contribute up to the statutory maximum family contribution, independent of your contribution to your HSA. Be sure that you and your child check with your respective legal or tax counsel, though, to assess the potential risks associated with relying on that informal statement.

9. I still cover my adult child on my HSA-qualified medical plan, but he's no longer my tax dependent. Can I reimburse his qualified expenses tax-free from my HSA?

No. You can't reimburse any qualified expenses that your child incurred on or after the date that she no longer qualified as your tax dependent under Section 152 of the IRC. Any distributions thereafter from your HSA for your child's qualified expenses are included in your taxable income and subject to an additional 20% tax unless you are age 65, are disabled, or die. If you made distributions before understanding this rule, you may be able to work with your HSA administrator to avoid taxes and penalties on any distributions made during the current tax year.

10. Is this rule different from my Health FSA?

Yes. A general or Limited-Purpose Health FSA follows medical-plan eligibility rules. Under federal law, you can cover children on your medical plan until they turn age 26, whether or not they remain your tax dependents. So, if an adult child who's no longer your tax dependent incurs a bill for dental work or new glasses, you can't reimburse the expense tax-free from your HSA (to which federal medical-plan eligibility rules don't apply), but you can reimburse it tax-free from your Limited-Purpose Health FSA.

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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