benefit strategies LLC

HSA GPS Fact Sheet Series

HSAs and Divorce

The dissolution of a marriage has an impact on a Health Savings Account, or 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 in this situation needs to know to navigate these situations.

1. 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 HSA. These distributions are included in your taxable income and subject to an additional 20% tax unless you're age 65 or older or meet the federal definition of disabled under Section 72 of the Internal Revenue Code, or IRC.

2. I'm obligated to keep my ex-spouse on my medical plan by court order and required to 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 eligible for tax-free distribution from your HSA, even if you're required to pay a portion of them.

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 criteria, 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?

The original legislation doesn't address this issue, and subsequent interpretations by the Internal Revenue Service, or IRS, haven't shed light on it either. Section 223 of the Internal Revenue Code, or IRC, states that a husband and wife who are both HSA-eligible can split the family contribution between their HSAs in any proportion that they wish. The text 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 the last day of the month of their 26th birthday. Many HSA trustees and administrators refer to an IRS agent's statements at a 2010 meeting of the American Bar Association in counseling accountholders 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 $6,750 in both 2016 and 2017.

We recommend that you discuss your personal situation with your legal, financial or tax counsel to receive proper direction.

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

Generally yes. IRS guidelines allow parents to reimburse the children's eligible expenses tax-free from either parent's HSA, regardless of who claims the children as tax dependents in a given year. Here's the rule from the *IRS Publication 969 (version used to complete 2015 income tax returns)*, 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 give half my HSA to my ex-spouse. How does that work?

Your ex-spouse can open his own HSA with an HSA trustee or administrator of his choice. He doesn't have 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 has all the rights and responsibilities of any other HSA owner.

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

You can reimburse tax-free any of his eligible expenses incurred on or after your second wedding day. In addition, you can reimburse tax-free any eligible expenses that he incurred prior to your receiving a court order of separate maintenance (or the legal equivalent in your jurisdiction). You can't go back and reimburse tax-free any eligible expenses that he incurred from the time that the court issued the court order of separate maintenance to begin your divorce and the eve of 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 May 18, 2016. 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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