



HSAs and Special Family Situations

The HSA legislation was written 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) has 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 health plan. We have a separate paper outlining issues at the intersection of HSAs and an ex-spouse.

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 eligible expenses tax-free from my HSA?

No. The Internal Revenue Code (IRC) specifies that you can reimburse only your own, your spouse’s and your tax dependents’ expenses tax-free from your HSA. Any distributions for a domestic partner or ex-spouse, unless he or she is your tax dependent (not common, and generally a result of the partner’s disability) are included in your taxable income and subject to an additional 20% tax (penalty).

Note: If you made distributions before understanding this rule, you can 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 eligible expenses?

Perhaps. If your domestic partner or ex-spouse is HSA-eligible, she can open and contribute to her own HSA. An individual doesn’t have to be the health plan subscriber to be HSA-eligible. A domestic partner or ex-spouse enrolled on your health plan who has no other disqualifying coverage and isn’t your tax dependent is eligible to open and contribute to an HSA. Your

domestic partner or ex-spouse can then make tax-free distributions to reimburse her eligible expenses as well as eligible expenses incurred by her tax dependents.

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 (\$6,750 in 2017, projected to rise to \$6,850 in 2018) between their HSAs in any proportion that they choose, per the original legislation. The law is silent on contribution limits for domestic partners and ex-spouses. Most HSA trustees and benefit attorneys rely on direction provided by an IRS expert at a 2010 meeting of the American Banker's Association, who 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 could contribute up to \$6,750 in 2017 and \$6,850 (projected) in 2018, plus an additional \$1,000 each, each year, if you're age 55 or older. Be sure that you and your domestic partner or ex-spouse check with your respective legal or tax counsel, though, 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 account holder 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, while she deducts the contribution on his or 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 for any reason (not enrolled on your medical plan, enrolled in Medicare, etc.), she can't open her own HSA. No one will be able to reimburse your partner's eligible 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 eligible dental and vision expenses tax-free from it?

No. You can't reimburse a domestic partner's or ex-spouse's eligible expenses from a Health FSA. And because a Health FSA is a group health plan, your domestic partner or ex-spouse can't open one on her own.

HSAs and Children Who Aren't Tax Dependents

7. I still cover my adult child on my HSA-qualified health plan, but he or she is no longer my tax dependent. Can I reimburse his or her eligible expenses tax-free from my HSA?

No. You can't reimburse any eligible expenses that your child incurred on or after the date that he or she no longer qualified as your tax dependent under Section 152 of the Internal Revenue Code (IRC). Any distributions thereafter from your HSA for your child's eligible expenses are included in your taxable income and subject to an additional 20% tax. If you made distributions before understanding this rule, you can work with your HSA trustee to avoid taxes and penalties on any distributions made during the current tax year.

8. Is this rule different from my Health FSA?

Yes. A traditional or Limited-Purpose Health FSA is classified as a health plan. Under federal law, you can cover children on your health plan to the last day of the month of their 26th birthday, whether or not they remain your tax dependents. So, if an adult child who's no longer your tax dependent incurs a \$300 bill for dental work, you can't reimburse it tax-free from your HSA, but you can reimburse it tax-free from your Limited-Purpose Health FSA.

9. Can my adult child who is no longer a tax dependent open his or her own HSA?

Yes, if he/she meets the eligibility criteria of being covered on an HSA-qualified plan, as a subscriber or as a spouse/dependent on someone else's, and has no conflicting coverage.

10. 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, the child 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.

This information is accurate as of May 1, 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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