

Tax Treatment of Thrift Savings Plan Payments Made Under Qualifying Orders

Qualifying orders are retirement benefits court orders, legal processes, and child abuse orders.¹ Before you receive a payment made under a qualifying order from the Thrift Savings Plan (TSP), you should review the important information in this notice. Although the TSP can assist you in receiving your payment, we cannot provide tax advice. Because tax rules are complex, you may wish to speak with a tax advisor before you make any decisions that might have tax consequences.

1. Tax Liability

If a payment is made to a current or former spouse, it will be taxable income to that individual. If a payment is made to someone else (such as to a child for child support), it will be taxable income to the TSP participant.

2. Income Tax Withholding and Reporting

Contributions to the TSP are generally tax-deferred. This means the participant did not pay taxes on his or her own contributions, any agency contributions, or earnings. As a consequence, taxes will be owed when a court-ordered payment is made from a TSP account. We report all TSP distributions to the Internal Revenue Service (IRS), and to the person responsible for paying taxes, on IRS Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

We must withhold for Federal income tax from payments we make unless the person responsible for paying taxes is allowed to request that there be no withholding. The Federal income tax withholding and rollover rules that apply to a payment made under a qualifying order depend upon whether the payment is made to the current or former spouse or to someone else.

The chart on page 2 describes these rules; it also shows the withholding rate and whether the taxpayer can change or waive the withholding amount. If the taxpayer wants to change the standard withholding, he or she must file IRS Form W-4P, Withholding Certificate for Pension or Annuity Payments, with the TSP before the payment is disbursed.

We do not withhold for state or local income tax. However, on IRS Form 1099-R, we do report all TSP distributions to the taxpayer's state of residence at the time of the payment (if that state has an income tax). The taxpayer may need to pay state and local income tax on the payment. Your tax advisor or state or local tax officials can explain any potential tax obligations.

3. Transferring or Rolling Over a TSP Payment Made to a Current or Former Spouse

If you are the current or former spouse of a TSP participant, you may be able to ask the TSP to transfer all or a portion of your court-ordered payment to a traditional individual retirement account (IRA), eligible employer plan, or Roth IRA. If you receive the payment directly, you may be able to deposit (roll over) the payment into your traditional IRA, eligible employer plan, or Roth IRA yourself.

¹ **Retirement benefits court orders** are issued pursuant to court action for a divorce, annulment, or legal separation. They award an amount to be paid from a participant's TSP account to a current (including separated) spouse or former spouse or a dependent. This includes alimony and property settlement awards. **Legal processes** are issued pursuant to state law and garnish a participant's account to enforce a current child support or alimony obligation. **Child abuse orders** are issued to garnish a participant's account to satisfy a judgment related to the abuse of a child.

If you are the current or former spouse of a TSP participant and you have your own TSP account from which you are not receiving monthly payments, you may roll over — or ask the TSP to transfer — the court-ordered payment into your TSP account.

A **traditional IRA** is any IRA that is **not** a Roth IRA, a SIMPLE IRA, or an education IRA. Before-tax money that is transferred from the TSP to a traditional IRA is not subject to tax until it is withdrawn from the IRA.

An **eligible employer plan** includes a plan qualified under section 401(a) of the Internal Revenue Code, such as a section 401(k) plan, profit-sharing plan, defined benefit plan, stock bonus plan, and money purchase plan; a section 403(a) annuity plan; a section 403(b) tax-sheltered annuity; a section 457(b) plan maintained by a governmental employer; and the TSP.

A **Roth IRA** accepts only after-tax dollars, but provides tax-free growth. You are not eligible for a Roth transfer if either one of the following conditions applies: (1) your modified adjusted gross income is over \$100,000 or (2) you are married and file a separate return. Further, you must pay taxes on the funds you transfer to a Roth IRA; the tax liability is incurred for the year of the transfer.

No IRA or eligible employer plan is required to accept a transfer or rollover. Before you decide to transfer or roll over a court-ordered payment, you should find out whether the IRA or plan accepts transfers or rollovers and whether the IRA or plan has a minimum amount it will accept.

If you choose to have the TSP **transfer** all or part of the court-ordered payment:

- Your transfer to a traditional IRA or eligible employer plan will not be taxed in the current year, and no income tax will be withheld. Your payment

will be taxed when you withdraw it from the traditional IRA or the eligible employer plan.

- The entire amount of your transfer to a Roth IRA will be taxed in the current year. No income tax will be withheld at the time of the transfer. (You may need to pay estimated taxes to mitigate your tax liability.)

The tax treatment and plan rules for withdrawals from the plan to which you transfer the distribution may be different from those of the TSP.

If the TSP pays a court-ordered payment directly to you and you subsequently decide to do a **“rollover”**:

- You will receive only 80% of the taxable amount of the payment because we are required to withhold 20% for Federal income tax.
- Your full payment will be taxed in the current year if you do not complete the rollover within 60 days of receiving the payment from the TSP.
- You can roll over all or part of the payment to your traditional IRA or plan. The amount rolled over will not be taxed until you take it out of the IRA or plan. However, if you want to roll over 100% of the payment, you must replace the 20% that was withheld with your own funds. If you roll over only the portion you received, the 20% that was withheld and not rolled over is taxable income to you.

You may be able to roll over your payment into a Roth IRA; the full amount rolled over will be taxed in the current year.

The tax treatment and plan rules for withdrawals from the plan to which you roll over the distribution may be different from those of the TSP.

Tax Treatment of TSP Court-Ordered Payments

Type of TSP Payment	Type of Payment for IRS Purposes	May the Recipient Transfer or Roll Over the Payment?	What Is the Withholding Rate?	May the Taxpayer Increase Withholding (Using IRS Form W-4P*)?	May the Taxpayer Decrease Withholding (Using IRS Form W-4P*)?	May the Taxpayer Waive Withholding (Using IRS Form W-4P*)?
Court-ordered payment to a current or former spouse**	Eligible rollover distribution	Yes***	20% (unless transferred)	Yes—complete line 3	No	No
Court-ordered payment <i>not</i> to a current or former spouse	Non-periodic payment	No	10%	Yes—complete line 3	No	Yes—complete line 1

* If you are receiving court-ordered payments from both a civilian TSP account and a uniformed services TSP account, you must submit a separate IRS Form W-4P for each account.

** Applies to payments of \$200 or more received in a single year.

*** You can transfer or roll over a payment into a traditional IRA, eligible employer plan, or Roth IRA.

4. Special Note Regarding Uniformed Services Accounts

TSP accounts for members of the uniformed services may include contributions from pay that is subject to the combat zone tax exclusion. That pay, earned in a combat zone, is exempt from Federal income tax. Consequently, TSP contributions from that pay are also tax-exempt. However, the earnings on those contributions are taxable when they are distributed. The TSP will make all payments from a uniformed services account on a *pro rata* basis from both taxable and tax-exempt balances unless the court order or legal process directs otherwise. Therefore, if the participant from whose account a court-ordered payment is made has tax-exempt contributions, the TSP will report the tax-exempt portion separately on IRS Form 1099-R.

TSP tax-exempt contributions that are part of a payment to a spouse or former spouse may be transferred or rolled over into a traditional IRA or a Roth IRA or transferred to certain eligible employer plans, but only if the IRA or plan certifies that it will accept tax-exempt contributions. If the IRA or plan does not accept tax-exempt money, the tax-exempt funds will be paid directly to the participant's spouse or former spouse.

Tax-exempt contributions in a uniformed services TSP account may **not** be transferred to the spouse's or former spouse's civilian TSP account if he or she has one.

5. Ten-Year Tax Option

If you are the spouse or former spouse of a participant who was born before January 2, 1936, you may be eligible to calculate the amount of the tax on the court-ordered payment by using the 10-year tax option, which will often reduce the tax you owe. To learn more, see IRS Publication 575, *Pension and Annuity Income*, and IRS Form 4972, Tax on Lump Sum Distributions.

6. Rules for Nonresident Aliens

Special tax withholding rules apply to payments the TSP makes to nonresident aliens. To learn more, see the TSP tax notice "Tax Treatment of Thrift Savings Plan Payments to Nonresident Aliens and Their Beneficiaries."

7. Resources

TSP publications are available from the TSP Web site, www.tsp.gov, or by calling the TSP toll free at 1-877-968-3778 (TDD: 1-877-847-4385). Outside the U.S. and Canada, please call 404-233-4400 (not toll free). You can also send a fax to 1-866-817-5023 or write to the TSP at the address on the Web site.

IRS publications are available from your local IRS office, on the IRS Web site at www.irs.gov, or by calling 1-800-TAX-FORM.