

- Author: Thomas A. Hutson, final version, June 3, 2019

Divorce and Social Security Retirement Benefits

Although generally not of primary concern for high net worth individuals, the Social Security retirement benefits that may possibly be available to the former spouse of a well-paid individual can be an important source of supplemental income during retirement years.

Abundant free information can be found by visiting the Social Security's website at www.ssa.gov and searching the internet, but I hope you will find the following summary an interesting reminder.

Basics

If the applicant's ex-spouse is living, the applicant can receive Social Security retirement benefits based on the ex-spouse's work history if:

1. The marriage lasted ten (10) years or longer;
2. The applicant is unmarried;
3. The applicant is age 62 or older;
4. The benefit the applicant is entitled to receive based on his or her own work record is less than the benefit the applicant would receive based on the ex-spouse's work record; and
5. The ex-spouse is entitled to Social Security retirement or disability benefits.

If the ex-spouse has not applied for Social Security benefits but will qualify for them at age 62 or older, then the applicant can receive benefits based on the ex-spouse's work record if they have been divorced for at least two years.

The applicant's benefit as a divorced spouse is equal to one-half of the ex-spouse's full retirement amount (or disability benefit) if the applicant starts receiving benefits at full retirement age. The benefits do not include any delayed retirement credits the ex-spouse may receive. The applicant is first paid the amount of retirement benefit based on his or her own record, but the applicant receives the additional amount necessary to bring the total to one-half of the ex-spouse's full retirement amount (or disability benefit) if that amount is greater than benefit available to the applicant based on his or her own work history.

The amount of retirement benefits a divorced spouse receives has no effect on the amount of benefits their ex-spouse or their ex-spouse's current spouse may receive.

If the applicant's ex-spouse is deceased, the applicant can receive survivor benefits based on the deceased ex-spouse's work history if:

1. The applicant is age 60 (or 50 if the applicant is disabled), and if the marriage lasted at least ten (10) years, and if the applicant is not entitled to a higher benefit based on his or her own work record; or
2. At any age if the applicant is caring for a child of the marriage younger than 16 or disabled and entitled to benefits. The benefits will continue until the child reaches age 16 or until the child is

no longer disabled. The applicant can receive this child care associated benefit even if marriage lasted less than 10 years.

If an individual is already receiving retirement benefits as a spouse or ex-spouse, those benefits automatically convert to survivors benefits after Social Security is notified of the death.

If an individual is not currently getting benefits then survivor benefits should be applied for promptly, i.e. as soon as they learn they are eligible, since in some cases the benefits may not be retroactive.

If the applicant remarries before age 60 (or 50 if the applicant is disabled), the applicant cannot receive benefits as a surviving spouse while he or she is married. If the applicant remarries after age 60 (or 50 if the applicant is disabled), the applicant will continue to qualify for survivor benefits based on the deceased spouse's Social Security record – however, if the current spouse is a Social Security beneficiary then the ordinary spousal retirement benefit for the current spouse could be greater than the survivor benefit and, if applied for and approved, Social Security will pay a combination of benefits that equals the higher amount.

Limitations on Switching

A surviving divorced spouse who is receiving survivor benefits can switch to their own retirement benefit as early as age 62 if it is beneficial to do so, i.e. if eligible for retirement benefits and if their retirement benefit is higher than their rate as a surviving divorced spouse. It may, however, be beneficial for a surviving divorced spouse to wait until they have reached full retirement age, so they can receive their own retirement benefit at an unreduced rate. Should an individual find themselves in the unfortunate situation that they have become eligible to receive survivor benefits, they should make an appointment with their local Social Security Administration office to discuss their personal situation and to confirm the then available switching opportunities that may be available to them. The rules and regulations governing switching have changed from time to time.

If the applicant was born before January 2, 1954 they can choose to receive only the divorced spouse's retirement benefit and delay receiving their own retirement benefit until a later date.

If the applicant was born January 2, 1954 or later, however, the option to take a spousal or divorced spousal benefit and later switching to their own retirement benefit no longer exists. If a spouse or ex-spouse files for one retirement benefit they will be effectively filing for all the retirement or spousal benefits they are eligible to receive.

Government Pension Offset (GPO)

Although there are numerous rules and exceptions, if the applicant or the applicant's ex-spouse will also receive a pension based on work not covered by Social Security, such as certain government work or foreign work, then the benefits received from Social Security may be reduced due to receipt of that pension. This is generally referred to as the Government Pension Offset (GPO).

Information Required to Apply

To apply the applicant will, at a minimum, need to provide the ex-spouse's or ex-spouses' Social Security number. If the applicant doesn't have the number, they can instead provide the ex-spouse's date and place of birth and the names of the ex-spouse's parents. The applicant may also be asked to provide other documents that show they are eligible, such as the final divorce decree and the marriage certificate. A surviving divorced spouse cannot apply online for survivor benefits; they must visit a Social Security office.

Final Thoughts

Applying for Social Security benefits, budgeting, developing strategies for the receipt of distributions from IRA and other retirement accounts, and planning to minimize income taxes during retirement years can be an overwhelming and complicated process for many of us. And, on top of this, especially for those who cannot afford to privately pay for the cost of a nursing home or other long-term care, there are also important estate and elder care planning considerations.

We recommend scheduling appointments with your CPA, CFP®, and estate and elder care attorneys to discuss your individual circumstances.

Written by Thomas A. Hutson, CPA/ABV/CFF, CFP®

Partner

BST & Co. CPAs, LLP

Email: thutson@bstco.com

Website: www.bstco.com

About the Author

Tom Hutson is a Certified Public Accountant (CPA), Accredited in Business Valuation (ABV) and Certified in Financial Forensics (CFF) by the American Institute of Certified Public Accountants. Tom is also a CFP® certificant, approved by the Certified Financial Planner Board of Standards, Inc. to use the Certified Financial Planner™ mark. He earned a Bachelor of Science degree in Accounting and graduated *summa cum laude* from the State University of New York at Albany, in December 1987 and was admitted into Beta Gamma Sigma, National Business Honor Society. Tom has more than 30 years of experience as an accountant and business appraiser. In addition to his years of experience in auditing, accounting, and financial statement and income tax preparation, Tom specialized in business valuation and financial forensic services beginning in 1994 and since 1996 has devoted his practice almost exclusively to these specialties.

Tom received his ABV credential in 1998 and has extensive experience conducting engagements for purposes of valuing privately held business enterprises and professional practices and preparing business valuation reports. He has also analyzed and valued other securities and assets including professional license and other enhanced earnings capacity valuations, participants' interests in retirement plans and executive compensation award plans, stock options, carried / promoted interests, incentive fees, profits interests, and intangibles.

Tom has also conducted engagements and prepared reports summarizing his findings, analyses, and conclusions for use in litigated matters, including lifestyle analyses, tracing analyses, income analyses for support modification proceedings, reasonable rates of return on invested assets and associated income taxes, the determination and quantification of unreported income and assets, etc.

These engagements were conducted for a variety of circumstances including estate and gift tax filings, charitable deduction substantiation reporting, matrimonial matters, oppressed or dissenting shareholder actions, alternative methods of dispute resolution, sales and acquisitions of business interests, insurance claims, quantification of economic damages, buy-sell agreements, and other purposes.

Tom has provided testimony in support of his findings and opinions in New York and New Jersey. Tom has been appointed by the New York State Supreme Court as a business appraiser, professional license appraiser, and pension appraiser.