

A Teaspoon of TSP

By Mark E. Sullivan*

5.0—Military Service and Family Obligations

Introduction

The military retirement system does not end with the pension and the Survivor Benefit Plan. Not to be overlooked is the third deferred compensation attribute of the system, the Thrift Savings Plan (TSP). This can be a valuable asset in property division, potentially containing tens of thousands of dollars of marital or community funds.

Current contributions to a TSP account are shown on the individual's leave-and-earnings statement (LES). A servicemember (SM) can contribute all or a percentage of base pay and any special pay, incentive pay, or bonus pay received, up to a total of \$18,000 annually, as of 2015. Incentive pay (e.g., flight pay, submarine pay, hazardous duty pay) and special pay (e.g., medical and dental officer pay, hardship duty pay, career sea pay) are identified and explained in Chapter 5, Title 37, U.S. Code. Bonus pay, which generally is a type of special pay, is addressed separately for election purposes because different TSP rules apply. Contributions from pay earned in a combat zone do not count against this ceiling.

While a SM receives no direct tax benefit from contributing pay to the TSP that has been excluded from gross income, the earnings on those contributions are tax-deferred. When a SM makes a withdrawal, money is taken from the total account balance proportionally from taxable funds and tax-exempt funds. The amount attributable to tax-exempt contributions will not be taxable. The quarterly participant statement will show the tax-exempt balance separately. Contributions to the TSP come from pre-tax dollars. SMs do not pay federal or state income taxes on contributions or earnings until they are withdrawn.¹

Dividing the TSP

A servicemember's TSP account can be divided by means of a court decree of divorce, annulment, or legal separation. It can also be distributed through a court order or court-approved property settlement agreement incident to such a decree.

The order is not a QDRO (Qualified Domestic Relations Order). The rules for QDROs – issued under the Employee Retirement Income Security Act of 1974 (ERISA) – apply to private-sector retirement plans, not to federal retirement programs authorized by Congress. Therefore, a QDRO may not be valid in regard to dividing the TSP. TSP calls the account-division document

¹For a more complete explanation, see the TSP home page, located at <http://www.tsp.gov>.

a retirement benefits court order, or RBCO.²

Contents of the Court Order

The pamphlet “Court Orders and Powers of Attorney” contains much useful information for attorneys in the divorce process. It explains that the TSP will review only a complete copy of the RBCO. To be complete, the order must contain all pages and attachments. It also must provide (or be accompanied by a document that provides):

- the participant’s TSP account number or Social Security number (SSN);
- the name and mailing address of each payee; and
- if the current or former spouse of the participant is a payee, the SSN of the spouse-payee.

The RBCO must meet four basic requirements set forth in 5 C.F.R. § 1653.2, according to the pamphlet:

- It must be issued by a court in any of the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, or by any Indian court as defined by 25 U.S.C. § 1301(3).
- It must expressly relate to the Thrift Savings Plan, meaning that it must specifically contain the name “Thrift Savings Plan.” Terms such as “all retirement benefits,” “Government benefits,” “Federal retirement benefits,” “Thrift Savings,” or “Thrift Savings Account” are not adequate.
- If the RBCO requires a payment from a TSP account, it must clearly describe the payee’s entitlement. It can only award a specified dollar amount or a fraction or a percentage of the participant’s account as of a specific past or current date.
- The RBCO can require a payment only to the participant’s current or former spouse or to the participant’s dependents. In addition, a court order will not be honored if it demands a single payment to be made jointly (for example, \$8,000 to be divided among the participant’s ex-wife and three children).

The court order must separately specify the dollar amount, percentage, or fraction of the award made to each person.

Access to Information

The “Court Orders and Powers of Attorney” pamphlet also notes that spouses may access certain TSP account information pursuant to 5 U.S.C. § 552a. Upon a written request, TSP will provide to the spouse (and his or her lawyer) account information including the account balance of the participant, any loan balance on the account, a transaction history, and quarterly or annual statements. TSP will not, however, provide personal information to the spouse or spouse’s attorney, such as the address, date of birth or Social Security Number of the participant. Requests must be directed to the TSP Legal Processing Unit, shown at the end of

²Information about court orders and dividing TSP accounts is found at www.tsp.gov > Forms and Publications > All Publications > Court Orders and Powers of Attorney.

the “Court Orders and Powers of Attorney” booklet. The request may also be faxed to 1-866-817-5023. A subpoena is not required.

To receive prompt and complete responses, requests should provide the participant’s name and TSP account number (or SSN). They should identify the individual requesting the information and describe his or her relationship to the participant. They should describe the information needed and state the purpose for which the information is being requested.

Freezing Your Assets

Finally, the pamphlet points out that a court order can be used to prevent a participant from withdrawing his or her TSP account during a divorce action. As soon as possible after receiving a court order that is issued in an action for divorce, annulment, or legal separation, the TSP will freeze the participant’s account if:

- the court order names the “Thrift Savings Plan” and provides that the participant may not obtain a TSP loan or withdrawal; or
- the court order purports to divide a participant’s TSP account.

There is no such thing as “one size fits all” in pension division orders, and this includes the TSP variety. A sample Retirement Benefits Court Order, containing alternate clauses, is found below.³

Sample Retirement Benefits Court Order

(Note: A retirement benefits court order must meet the requirements found at 5 U.S.C. §§ 8435(c) and 8467, and 5 C.F.R. part 1653, part A. The Thrift Savings Plan will honor any court order or court-approved property settlement agreement that meets these requirements. Use of the format below is not required.)

STATE OF EAST VIRGINIA
COUNTY OF JEFFERSON

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. CVD

Jane M. Doe,
Plaintiff
v.
John Q. Doe,
Defendant.

RETIREMENT BENEFITS COURT ORDER

THIS MATTER having come before the court on the motion of plaintiff for division of the Thrift Savings Account of defendant. The court, having reviewed the file, received evidence and heard argument, hereby orders that:

*(Note: Any **ONE** of the following examples would qualify to require payment from the TSP, although ambiguous or conflicting language used elsewhere could cause the order to be rejected.)*

³ If the participant has both a civilian TSP account and a uniformed services TSP account, the court order must expressly identify the account to which it relates.

Jane M. Doe, SSN 123-45-6789, 455 Windy Lane, Apex, East Virginia 20122 is awarded \$5,300 from the uniformed services Thrift Savings Plan account of John Q. Doe, SSN 321-54-9876, 7809 Langston Court, Fairfield, East Virginia, 20132.

-OR-

Jane M. Doe, SSN 123-45-6789, 455 Windy Lane, Apex, East Virginia 20122 is awarded 44.65% of the uniformed services Thrift Savings Plan account of John Q. Doe, SSN 321-54-9876, 7809 Langston Court, Fairfield, East Virginia, 20132 as of [date].

-OR-

Jane M. Doe, SSN 123-45-6789, 455 Windy Lane, Apex, East Virginia 20122 is awarded one-third (1/3) of the uniformed services Thrift Savings Plan account of John Q. Doe, SSN 321-54-9876, 7809 Langston Court, Fairfield, East Virginia, 20132 as of [date].

(Note: The following optional language can be used in conjunction with any of the above examples.)

It is further ordered that earnings will be paid on the amount of the entitlement under this ORDER until payment is made. For the purpose of a retirement benefits court order, the term “earnings” includes earnings and losses.

District Court Judge Presiding

Date: _____

Resources and Tax Issues

The Thrift Savings Plan is governed by U.S. Code Title 5, Chapter 84, Subchapters III–IV, as well as 5 C.F.R. Part 1653 (Subpart A for court orders dividing the TSP, and Subpart B for orders regarding alimony or child support). The website for Thrift Savings Plan orders and other forms is <http://www.tsp.gov>. Look for “All Publications” under *Forms and Publications*. The website contains a sample Retirement Benefits Court Order, sample language for a garnishment order for TSP funds, and “Court Orders and Powers of Attorney,” the pamphlet for attorneys to help them prepare orders. An example of the letter that counsel will receive upon acceptance of the TSP order is found at the end of this article.

Note that the above-mentioned pamphlet states under “Tax Treatment”:

If a payment is made to the current or former spouse of the participant, the taxable portion of the payment is reported to the Internal Revenue Service (IRS) as gross income for the recipient spouse for the tax year in which the payment is made (unless the funds are transferred to a traditional IRA, a Roth IRA, or an eligible employer plan). This is the case even if the payment is intended to satisfy child or spousal support arrears.

Note: The transfer option does not apply to court-ordered payments made from beneficiary participant accounts.

If the payment is made to someone other than the current or former spouse of the participant (e.g., a child or a support enforcement agency), the taxable

portion of the payment is reported to the IRS as gross income for the participant for the tax year in which the payment is made.

A payment in response to a retirement benefits court order or legal process is not subject to an early withdrawal penalty tax. Such distributions are exempt from the early withdrawal penalty tax under the Internal Revenue Code.

For more detailed information about tax treatment of payments, see the TSP tax notice "Tax Treatment of Thrift Savings Plan Payments Made Under Qualifying Orders," available on the TSP website.

Thus if the former spouse receives funds with which to pay her attorney under the first of these paragraphs, she will be taxed on the proceeds received. If, however, the court were to order payment of attorney fees directly from the TSP account of the SM/retiree, then the tax burden would fall upon the shoulders of the latter.

*Mr. Sullivan is a retired Army Reserve JAG colonel and a life member of the Reserve Officers Association (ROA). He practices family law in Raleigh, North Carolina and is the author of THE MILITARY DIVORCE HANDBOOK (Am. Bar Assn., 2nd Ed. 2011) and many internet resources on military family law issues. A Fellow of the American Academy of Matrimonial Lawyers, Mr. Sullivan has been a board-certified specialist in family law since 1989. He works with attorneys and judges nationwide as a consultant and an expert witness on military divorce issues in drafting military pension division orders. He can be reached at 919-832-8507 and mark.sullivan@ncfamilylaw.com.

* * *



THRIFT SAVINGS PLAN

Thrift Savings Plan
Legal Processing Unit
P.O. Box 4390, Fairfax, VA 22038-9998

April 28, 2008

RE: NUNC PRO TUNC FINAL DECREE OF DIVORCE IN DANITA RAMIREZ AND STEVEN JAMES RAMIREZ, CASE NO. 123,456-D, FILED NOVEMBER 14, 2007, RECEIVED MARCH 24, 2008.

Dear Mr. RAMIREZ:

The above-referenced court order requires the Thrift Savings Plan (TSP) to make a payment from your Uniformed Services account to the payee, named below. This payment will be paid on a pro rata basis from the taxable and tax exempt monies in your account. The court order was evaluated according to the requirements at 5 U.S.C. §§ 8435(c), 8467, and 5 C.F.R. § 1604.9 and part 1653, subpart A.

Payee: Ms. Danita RAMIREZ

The court order awards \$5,467.77 from your TSP account to the payee. The payee's entitlement was calculated as follows. The order awards 50 percent of your account as of September 18, 2007. See page 36 of the court order. As of that date, your account balance was \$10,935.54, 50 percent of which is \$5,467.77. The payee's entitlement will be credited with earnings at the TSP Government Securities Investment Fund (G Fund) rate beginning with the business day following the entitlement date and ending two business days prior to payment. Please note that the TSP does not segregate or separately invest the amount awarded pending payment.

Scheduled Payment Date: June 30, 2008

Tax and payment information is enclosed with the payee's copy of this letter. That information includes the forms the payee must use to elect payment options, including a request to transfer the payment to an individual retirement arrangement (IRA) or eligible retirement plan or to request direct deposit of the payment. The payee's entitlement will be disbursed in a single payment (a check) on the **Scheduled Payment Date** shown above unless the TSP timely receives instructions electing one of the following options.

The payee may request an expedited payment, which can occur no sooner than 31 days from the date of this letter (to allow the parties time to review this letter).

To have the entitlement transferred to an IRA or other eligible employer plan **or** to have the funds sent electronically (direct deposit) to the payee's checking or savings account, the enclosed Form TSP-13-S-C **must** be properly completed and received by the TSP Legal Processing Unit at least five (5) business

days before the scheduled payment date. We may not be able to process the form if we receive it within 5 business days of the payment date. Please note that a properly paid court order cannot be returned to the TSP.

The payee may request a payment extension of 30 days in order to submit Form TSP-13-S-C. This request must be in writing; fax or mail it to the TSP Legal Processing Unit so that it is received at least 5 business days before the scheduled payment date. The fax number is (703) 592-0151.

Documents pertaining to this case may be faxed to the Legal Processing Unit. Include your daytime telephone number and your TSP Account Number (or your Social Security number) on all correspondence. In addition, the TSP court order booklet is available from the TSP website (www.TSP.gov). If you do not have web access, please call the Thrift Line to receive a printed copy.

This letter is a final administrative action by the TSP. Upon receipt of the court order, your account was frozen for loans and withdrawals. That freeze will be lifted after the award has been paid.

This letter applies only to your TSP account. You may obtain information about your other Government retirement benefits by writing to the Office of Personnel Management, Court Ordered Benefits Branch, P.O. Box 17, Washington, DC 20044.

If you have any questions, contact the TSP Legal Processing Unit at the address on the letterhead or call the Thrift Line at 1877-968-3778, (TDD for hearing-impaired 1-877-847-4385). Callers outside the United States and Canada should call (404) 233-4400.

Sincerely yours,

Angelita Duncan, Director
Office of Participant Services

Enclosures

cc: Ms. Danita RAMIREZ