

BENCH CARD FOR JUDGES – THRIFT SAVINGS PLAN

by Mark E. Sullivan, COL, USA (Ret.), and Kris J. Hilscher, Attorneys at Law, Raleigh, NC

Issue	Comments
What is the Thrift Savings Plan?	TSP is a defined contribution plan which is similar to a 401(k) account. Earnings are tax-deferred. Servicemembers [SMs] don't pay federal or state income taxes on contributions or earnings until they are withdrawn. There are no taxes due upon the division of the funds at divorce through a court order.
Know the resources for understanding the uniformed services Thrift Savings Plan (TSP).	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). “Court Orders and Powers of Attorney” is a booklet at the TSP home page, www.tsp.gov > Forms and Resources. There are also booklets on “Summary of the Thrift Savings Plan,” “Tax Rules about TSP Payments,” “The Thrift Savings Plan and IRA’s” and a link to the Court Order Center for information on RBCO’s and child support orders. At the “Life Changes” tab, you’ll find information on “Divorce, annulment and legal separation,” as well as “Marriage and spouse’s rights.” Also check out the Silent Partner info letter, <i>A Teaspoon of TSP</i> , at the website of the N.C. State Bar’s military committee: www.nclamp.gov > Publications. It contains a sample order. You can find booklets on model language, procedures and child support court orders (CSCO’s) at https://qoc.rk.tsp.gov/qoc/b/alt-flow-federal.htm?execution=e1s1 .
What entity manages Thrift Savings Plans?	On May 24, 2022, the Federal Retirement Thrift Investment Board published a notice in the Federal Register designating Accenture Federal Services as the “recordkeeper” for TSP; in effect, this means that Accenture is the plan administrator. The notice made substantial changes to the TSP rules.
Can a judge order the division of a TSP account incident to divorce?	Yes. The order is commonly known as a Retirement Benefits Court Order, or RBCO.
Is there a cost for processing the RBCO?	Yes. Upon receipt of the first order (whether rough draft or final, filed version), Accenture will subtract \$600 from the account for a one-time service charge.
Who pays that charge, the account owner, or the payee-spouse?	When there is a fixed-dollar award and if there is nothing said in the court’s order about shifting the fee, then this winds up being a charge paid by the account owner, since it comes from the amount which remains for him/her, after allocation of funds to the payee.
What happens to the money allocated to the payee in the RBCO?	It is placed in a temporary TSP account, where it will remain for 60 days while the payee decides what to do with it. If there is no decision, then the money is disbursed directly to the payee.
Doesn't that cause tax problems for the payee?	Yes. The money is subject to a mandatory 20% withholding for taxes plus a penalty for early distribution.

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What happens to the amount awarded to the payee-spouse if the accounts value grows or shrinks before that transfer to the temporary account?	There needs to be a decision on whether the sum of money will include “earnings,” which means passive gains or losses. This is usually for the payee to decide, since it is her/his money that runs the risks.
What will happen when the RBCO is received by Accenture?	When the RBCO is received, the TSP Court Order Center will 1) restrict the participant’s benefit activity; 2) review the order to ensure that it meets all the requirements; and 3) if the order is qualified, direct the TSP to establish separate benefits for the payee.
Is it possible for the court or a spouse to obtain information about the TSP account?	Spouses may access certain TSP account information pursuant to 5 U.S.C. § 552a. Upon a written request to the record-keeper, 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. A subpoena is not required. Details are in the Silent Partner info letter.
Q4C	QUESTIONS FOR THE COURT
Q4C: How can I tell if a SM is a TSP participant?	Get a copy of the member’s LES (leave and earnings statement), which will contain information on contributions to the TSP account.
Q4C: Can I also order child support payments from a TSP account?	Yes. A court order can also be used for payment of money for child support out of the TSP account.
Q4C: What does the order need to contain?	See the section in <i>A Teaspoon of TSP</i> for information on the requirements for the RBCO.
Q4C: Can I direct that the payee be responsible for the \$600 service fee?	Yes. The RBCO can require the fee to be paid entirely by the payee, by the account owner, or in equal or unequal shares (e.g., 50-50 or 75-25).
Q4C: How does one calculate the marital share of an account that was begun before the marriage?	While this may vary according to state law, the general approach is to 1) determine the value at the marriage date, 2) measure the growth in that amount until the “valuation date” under state law (e.g., divorce date, date of parties’ separation, date of filing divorce case), and then subtract that value from the total value at the date of valuation.
Q4C: Can they allocate a specific dollar amount to the payee-spouse?	Yes. The rules allow the court to award a fixed dollar amount to the payee.
Q4C: Can I order a percentage to the payee?	Yes. The court can also award the payee a percentage of the TSP account.

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Q4C: Is dividing the TSP account the best way of dealing with this asset?	Not necessarily. In certain cases, it may be advisable to leave the TSP account as it is, with a set-off for that value through other assets awarded to the payee. For example, if the TSP account is worth \$100,000, and there is about \$100,000 of marital equity in the parties' residence, the court may decide to award the home to the payee and not divide the TSP account.
Q4C: Can I order a freeze on the TSP account?	<p>Yes. A court order can be used to prevent a participant from withdrawing money from 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:</p> <ul style="list-style-type: none"> • 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. <p>This means that there will be no withdrawals or disbursements. All other activity will be permitted, however, and this means that the participant may still change the mix of investments up to the "date of liquidation," that is, the date when the funds are transferred to her/his own TSP account. Restrictions upon the participant's power should be stated in the court order.</p>
Q4C: Can we get pre-filing approval of the RBCO?	Yes – unlike military pension division orders, the draft TSP order (i.e., RBCO) can be submitted by upload to Accenture Federal Services for pre-filing review and approval.
Q4C: Who can explain all of this in an intelligible way to the judge?	Consider appointment of expert for testimony as court's own witness (e.g., a retired military attorney, Reserve or National Guard JAG officer).