

Johnny Depp, Amber Heard, and Your Divorce



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Taxes, taxes, who pays the taxes?

By Lili A. Vasileff

The divorce of actor Johnny Depp and actress Amber Heard—replete with public drama and a \$7 million alimony payment—may seem like worlds away from any marital breakup you might be involved in. But, in fact, it holds an important lesson for those of us whose marriages (and breakups) are not regularly covered by *People*.

As part of the negotiated divorce settlement ending the couple's one-year marriage, Depp wrote checks worth \$7 million, immediately donated to two nonprofits supported by Heard: the American Civil Liberties Union and Children's Hospital Los Angeles.

The involvement of these two charities in the divorce was out of the ordinary, but the actual execution of the payments was even more noteworthy.

Instead of sending the money to his ex-wife, Depp, according to press reports, gave the money directly to the ACLU and the hospital. As a result, he's entitled to receive a full charitable deduction for his gift to the ACLU and the hospital. Given his income, that probably cuts his tax bill for this year by \$3.5 million.

That was a mistake, says Heard. She says Depp should have paid \$14 million, so that, taking into account his probable tax deduction, he'd be out \$7 million.

But it's too late. The divorce judgment is certified, and the payment was made.

The most interesting aspect of this is the tax treatment of the payment for Depp and Heard.

No matter if you call it alimony or a charitable donation, Depp receives the same tax deduction against his earnings.

The situation could be far less favorable for Heard. If she has a legal agreement saying she is to receive \$7 million in alimony, she could owe taxes on it. Unlike Depp, she cannot claim a charitable deduction. In fact, she may owe taxes on monies she never received.

Admittedly, we don't have all the details of the divorce agreement. It's possible Heard may have an out from paying taxes if the \$7 million payment is deemed to be what's called "property transfer" instead of alimony.

And if the \$7 million payment is characterized as alimony, one must look further to the language of the divorce decree. Alimony can be taxable to the recipient and tax deductible to the payor. Alternatively, it can be nontaxable to the recipient and non-tax deductible to the payor.

The divorce instrument must specify how alimony is treated. Cash payments to a third party (such as these charities) can qualify as cash payments to the ex-spouse—that is, be considered alimony. In order for those payments not to be taxed as alimony by the IRS, the divorce decree must state that they are not alimony for tax purposes and are excludible from taxable income. You have to attach a copy of the divorce instrument to your tax return each year the exemption is claimed.

Remember these important things about alimony if you're not Johnny Depp or Amber Heard. Whether you're giving or receiving these payments...

- Quantify the amount of alimony.
- Characterize the nature of alimony—whether it's taxable or not.
- Be specific on how and when the money will be paid.
- Know the IRS requirements for alimony and property transfers.

When the deal is done, be sure your divorce decree reflects and memorializes both the intent and terms for specific financial transactions.

Vasileff received the Association of Divorce Financial Planners' 2013 Pioneering Award for her public advocacy and outstanding leadership in the field of divorce financial planning. Vasileff is president emeritus of the ADFP and is a member of the Financial Planning Association. She is president and founder of Divorce and Money Matters, serving clients nationwide from Greenwich, Conn. Her website is <http://www.divorcematters.com>.