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Amber Heard Settles With Johnny Depp, IRS Tax Problems Remain

The Amber Heard and Johnny Depp trial was riveting. For the last chapter, after saying that she would appeal, Amber Heard has settled her messy defamation case with Depp for an undisclosed sum. Earlier this year, Heard was ordered to pay $15 million in damages to Depp when the jury found that she defamed him by calling herself a survivor of domestic abuse. After the verdict, her lawyer said she could not pay Depp. The amount of the settlement is presumably less than the verdict, but the cost to Heard is big, especially when you consider taxes.

The jury found that Heard defamed Depp, and awarded him $10 million in compensatory damages and $5 million in punitive damages, which were cut to $350,000. Heard was awarded $2 million in damages, so the tally before appeal was Depp $10,350,000, and Heard $2M. Now Heard is paying Depp, but can she claim a tax write-off? It's hard to see how. Most tax returns—even if you are wealthy and famous—are not audited, but you have to have a reasonable tax position under the law to be able to claim a deduction.

It is hard to see one for Amber Heard. Her case was personal, not business, and that means she probably cannot deduct her legal settlement to Depp. If it was a business expense, a tax deduction would have made the payment much less painful. What's more, even Heard's legal fees are probably not a tax write-off. Both Depp and Heard spent big on legal fees for this case. Each spent millions, although Depp surely spent more, well in excess of $5 million according to estimates.

Aren't all legal fees deductible on your taxes? Not hardly. Depp could argue that he sued to protect his business, and the IRS might well buy that. That Op-Ed did cost Depp a lot in lost business. The IRS could say this was still a personal matter, just one that had business repercussions, but Depp and his tax people could likely still claim deductions. They might convince the IRS, and they might not even have to.

But the tax deduction case for Heard is considerably weaker. The lack of tax deduction for the legal fees is especially painful, given the cost of legal bills. And Heard is not the only person not being able to write off legal fees. Since

2018, many plaintiffs cannot deduct their legal fees, in what is like a tax on legal settlements. Parties need to be creative in looking for ways to deduct their legal fees. Contingent fees don’t solve it either.

If the lawyer is entitled to 40%, the plaintiff generally will receive only the net recovery after the fees. But under *Commissioner v. Banks,* 543 U.S. 426 (2005), plaintiffs in contingent fee cases must generally include 100% in income, even if the lawyer is paid directly. It’s just one of many odd rules on how legal settlements are taxed. This harsh tax rule usually means plaintiffs must figure a way to *deduct* their 40% fee, maybe one of the 12 ways to deduct legal fees under new tax laws.

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