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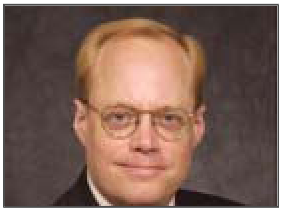

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THE TAX LAWYER

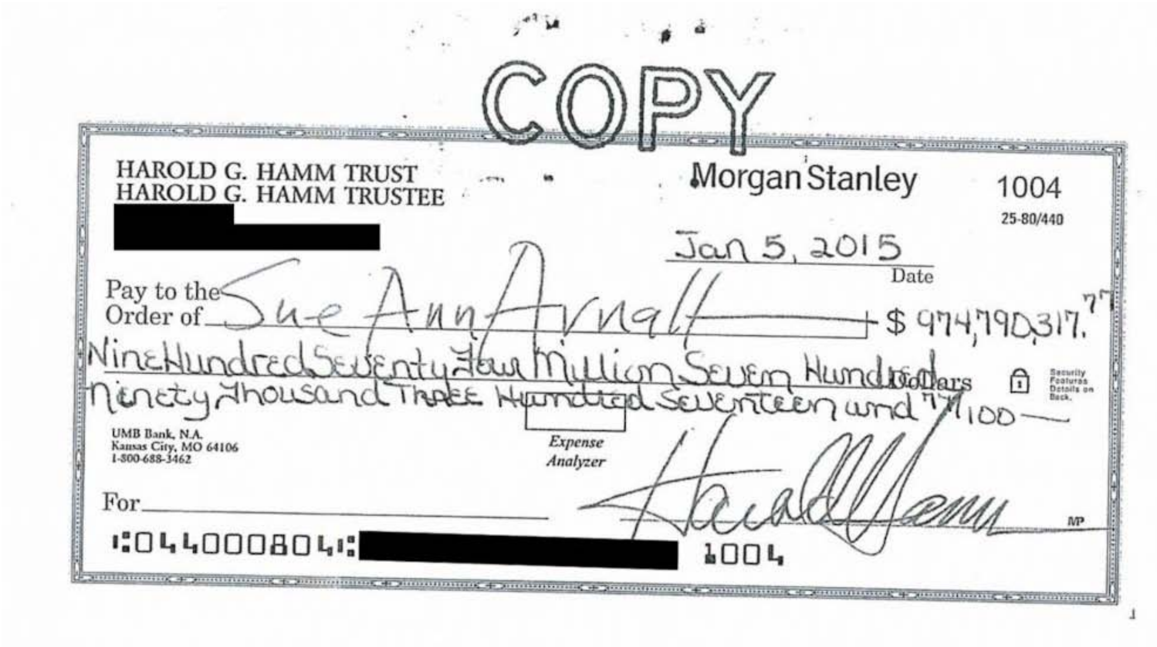
TAXES 1/08/2015

Harold Hamm's $975 Million Uncashed Divorce Check? How About Deducting It

Billionaire Continental Resources CEO Harold Hamm wrote a $975 million check to his ex-wife, who rejected the personal check, which got me thinking. Can't you deduct a check when you write it, even if it isn't cashed until next year? You bet. When you write a check and mail it December 31st, it's *never* cashed until next year. When you dispatch it you've paid.

So when you write checks for taxes, business expenses, you name it, people write it off. Credit cards give you even more float. You claim the deduction when you make the charge even though the credit card bill won't come until next year. Then, you have a grace period of a few weeks before you really have to pay.

But what if the check is never cashed? And what if the whopper check is to your ex for a divorce settlement? Deductions there aren't so easy. It's hard not to notice a check for $975 million, but when Mr. Hamm sent the big check to his former wife, Sue Ann Arnall, she rejected the $975 million check. Mr. Hamm is worth more than $8 billion, so after 25 years, his former wife thought she should get more.



The not so happy couple appealed a November 2014 divorce judgment. Although it entitles her to $1 billion, reports suggest that taking this money could risk the appeal being dismissed. The divorce was protracted, but the judge ordered Mr. Hamm to pay Mrs. Hamm $995.5 million, roughly $320 million of which is due by the end of 2014. Thereafter, there are to be monthly installments of $7 million or more.

For a time, it seemed that Harold Hamm's divorce could end up being the world's most expensive, at over $5 billion. With no prenup, second wife, lawyer and economist Sue Ann Hamm could have received the biggest settlement in history. And then one has to consider taxes, which are also likely to be huge on these numbers.

Taxes on divorce can be tricky, and there are sometimes delayed taxes. Even on big dollars it is often possible to divorce and not face immediate tax bills. The tax problems often occur down the road, sometimes in unanticipated ways.

If you divide property between spouses during marriage (or within limits, even post-divorce), Section 1041 of the tax code says there's no tax to either party. You can divvy up property between spouses however you want (as long as both spouses are U.S. citizens). But don't assume "tax-free" means there are not big tax consequences.

When you divide property, don't consider the fair market value of the property alone. You'd better consider the tax basis of the property too. Getting high basis property in divorce is better than getting low basis property, since basis will control *future* taxes.

Example: If the Hamms had divvied up shares, think about tax basis. Mr. Hamm founded Continental Resources in 1967, so his tax basis is small. If Mrs. Hamm ended up with stock and sells it, she alone is taxable on a whopping gain. If the Hamms divide cash, securities, and houses, with a mixture of high and low bases, each spouse could take some of each. That way the future tax burden is equalized.

But that's tough if most of the value is in the shares and if they are highly appreciated. Couldn't the parties *sell* assets to each other as part of their divorce? Maybe, but it is tricky and carries tax risks. Unless you do it *very* carefully the sale won't be respected for tax purposes. The IRS can disagree and try to tax the later sale too. That's hardly a way to make divorce less taxing.

Interestingly, if there's no legal marriage there can be no divorce. That means there can be no tax-free division of property. When unmarried couples (same sex or otherwise) divide property it usually triggers taxes just like a sale. But since the parties are just dividing assets, there's no cash to pay the taxes.

As a result, taxes on resolving palimony and cohabitation cases can be high. Some people actually get married if it's legally permitted so they can promptly get divorced. You can take advantage of the tax code's tax-free property settlement rule even if you're only married for a day!

What about tax mismatches in divorce, and what about Mr. Hamm? A property settlement isn't tax deductible. Alimony is tax deductible to the payor, and income to the recipient. So the IRS often audits couples post-divorce. Whoever is paying the money might be inclined to call a payment alimony to write it off. Recipients, on the other hand, often say money is "property settlement," since property settlements aren't taxable income.

You guessed it, both can't be right, and the IRS often cleans up after it finds inconsistent treatment. As for Mr. Hamm, whatever portion is ultimately alimony v. property settlement, I'll bet his deduction sails through just fine. Besides, even if he can't deduct a penny of the $975 million, with his potential liability being widely estimated to be up to $5 billion, who needs tax deductions?

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