

Johnny Depp, Tax Lawyer

By Robert W. Wood

Johnny Depp has played varied roles, from pirates, to FBI agents, to gangsters. He has had a lot of quirky roles too, from Edward Scissorhands to a demon barber, to Tonto in “The Lone Ranger.” He was even the Mad Hatter.

So far, though, I do not think he has played a tax lawyer (unlike Tom Cruise, who played one in the movie version of John Grisham’s “The Firm”). But Johnny Depp seems to have the *instincts* of a tax lawyer in his real life. Depp and his actress wife Amber Heard are divorcing, and that means taxes as well as legal fees.

And some elements of their divorce made it clear that taxes were pulling the strings, so to speak. For a time, it looked as if Depp might have to pay Heard \$50,000 a month in alimony. Alimony, if it is done properly, is tax deductible by the payer, and taxable income to the recipient.

The IRS likes to audit divorcing couples. Often, the split couple take inconsistent tax positions that can get one or both of them in trouble. It turns out that many divorcing couples do not follow through with their written agreements about tax issues. Moreover, you might be surprised at how many divorces leave tax points up in the air, which can fuel the kind of whipsaw that the IRS likes to discover.

As it turned out, though, Depp and Heard were lawyered up and were thinking taxes at least before the dust settled. Eventually, they settled for a one-time payment from Depp to Heard of \$7 million. Is that alimony or a property settlement?

The distinction matters. If it is alimony, it is taxable income to Heard and tax-deductible to Depp. If it is a property settlement, it is not income to Heard and is not tax-deductible by Depp. As it turned out, though, taxes would come up again.

When the \$7 million deal was struck, Heard said she would give the entire \$7 million to charity. Her press release said: “As described in the restraining order and divorce settlement, money played no role for me personally and never has, except to the extent that I could donate it to charity and, in doing so, hopefully help those less able to defend themselves.”

Heard said she was splitting the money between her two favorite charities: the American Civil Liberties Union to prevent violence against women, and Children’s Hospital of Los Angeles. Keep in mind that Heard probably wasn’t thinking about taxes. Yes, she was probably thinking that she would come out OK tax-wise if she received the \$7 million from Depp and then handed the full \$7 million to charity.

What’s wrong with that, you might ask? Plenty. If she had to include \$7 million in income, couldn’t she deduct the \$7 million she immediately gave to charity? Not hardly.

There are annual limitations on charitable contributions — usually 50 percent of adjusted gross income. So in very rough numbers, with income of \$7 million, her maximum deduction could be only \$3.5 million. That means she might have to pay tax on \$3.5 million she had just given away!

Donations to charity are tax deductible, of course. But they are subject to various limitations depending on the nature of the property being donated, and the tax status of the donee organization. Sure, there are carry-overs of unused tax deductions to future years. But carryovers don’t help you in the current year.

The real whipsaw is that Heard would have to pay current taxes (to the IRS and the state of California) on money she had just given away. Give away \$7 million, pay tax on \$3.5 million means digging in her pocket. And unless her acting career produced some big dollars, paying tax on \$3.5 million isn’t easy. According to court documents filed by Heard, she makes approximately \$120,000 per year.

To make matters worse, charitable contributions are itemized deductions, which face several limitations. So, without getting too far into the math, she actually might have to pay taxes on *considerably more* than the \$3.5 million. Of course, this isn’t how the story faded to black.

Not too long after the \$7 million to charity announcement, Depp evidently changed the deal. It might have unsettled Heard, but Depp may have actually done her a favor. Depp came along and said he would do the deal directly, bypassing Heard and handing the \$7 million straight to the two charities.

Depp’s representative announced in a statement that the actor had decided to donate the settlement money directly to the charities in a series of installments. In response, a member of Heard’s team made a statement rejecting Depp’s payment plan, and stating that: “Amber Heard appreciates Johnny Depp’s novel interest in supporting two of her favorite charities, the ACLU for domestic violence and the Children’s Hospital of Los Angeles. This is great and unexpected news. However, if Johnny wishes to change the settlement agreement, we must insist that he honor the full amount by donating \$14M to charity, which, after accounting for his tax deduction, is equal to his \$7M payment obligation to Amber. We would also insist that the full amount be paid immediately and not drawn out over many years. Anything less would be a transparent attempt by Johnny’s counsel, Laura Wasser and Patti Glaser, to reduce their client’s true payment by half under the guise of newfound concern for charities that he has never previously supported.”

Perhaps this sounds like the kind of posturing that goes on in many lawsuits, or even like politics. But at least the discussions were taking place before everything was finalized. Some of the worst tax messes occur when documents are signed and money is paid, only to discover *later* that there’s a tax problem.



Robert W. Wood is a tax lawyer with www.WoodLLP.com, and the author of “Taxation of Damage Awards & Settlement Payments” (www.TaxInstitute.com). This is not legal advice.