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THE TAX LAWYER

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# Johnny Depp Can Write Off Legal Fees, Amber Heard Can't, Here's Why

Talk about a doubly whammy. After the \$10,350,000 verdict she owes Depp, [Amber Heard's lawyer says the actress can't pay Depp](#) the whopping verdict the court says she owes him. Add to that Heard's tax problems, and it seems to pile on the bad news. There was already a nasty divorce, but the live-streamed trial was all about defamation, whether Depp abused her, and ultimately whether Heard defamed him in a 2018 op-ed she wrote about being a victim of domestic abuse. 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 which Heard has already vowed to pursue—is Depp \$10,350,000, and Heard \$2M. But why the tax problems?

The taxes will matter a lot, and the [tax bill on the Johnny Depp and Amber Heard damages could be ugly](#). Heard pledged \$3.5M to the ACLU after she received \$7 million in her divorce from Depp, but only \$1.3 million went to the ACLU so far. How about tax deductions for the legal fees, 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, as the 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. After all, most tax returns—even if you are wealthy and famous—are not audited. Of course, [Johnny Depp & Amber Heard may have other tax issues too.](#)



But Amber Heard will not be so lucky. Her case is personal, and that could make her tax bite especially harsh. She will have to pay tax on \$2M, but she may not be able to deduct *any* part of the \$10,350,000 the verdict says she must pay Depp. And the legal fees are another real problem here. Both Depp and Heard spent big, very big, on legal fees for this case. Each spent millions,

although Depp surely spent more, well in excess of \$5 million according to estimates. Depp can say this was business, as it did have a blowback on his career.

But the tax deduction case for Heard is considerably weaker. In her case, this appears to be a personal dispute, not about her trade or business. That means paying out millions of legal fees—and \$10,350,000 in damages—with no tax deduction. They aren't the only litigants to face big taxes when they resolve a lawsuit. 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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