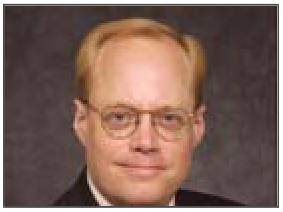
Forbes



Robert W. Wood
THE TAX LAWYER

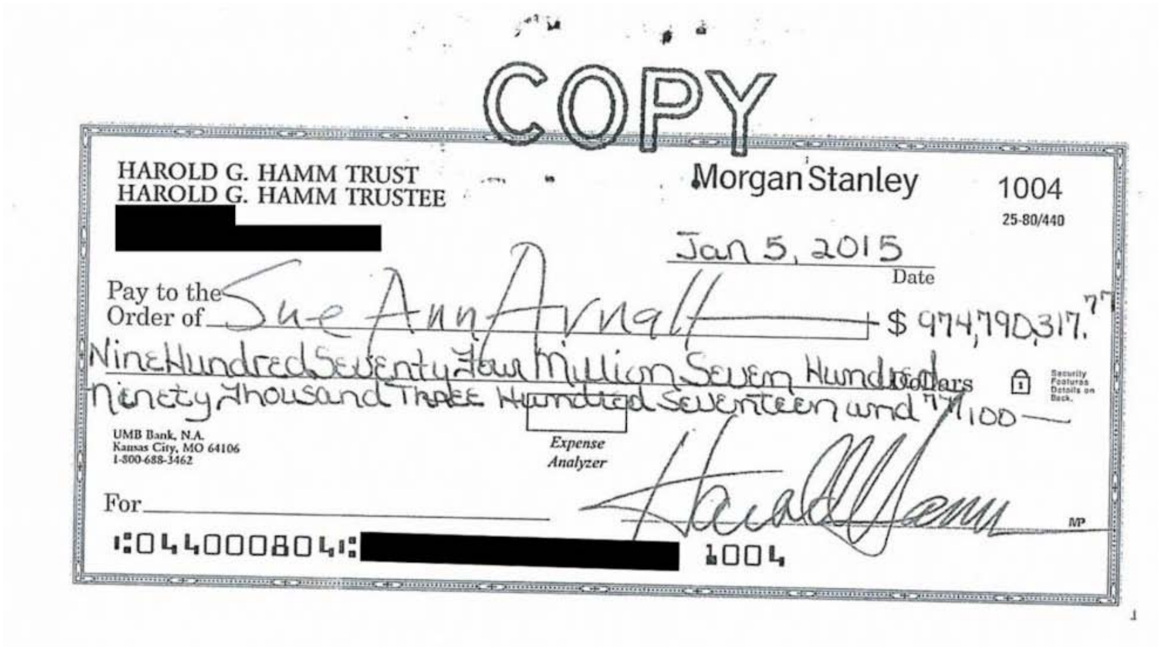
TAXES 1/10/2015

# Harold Hamm's $975 Million Divorce Check: First Rejected, Then Cashed, Now Taxed

Billionaire Continental Resources CEO Harold Hamm wrote a $975 million personal check to his ex-wife Sue Ann Arnall this week. It was meant to settle a bitter divorce that's been in the courts for several years. At first, she rejected it, saying she was appealing. Then she abruptly changed her mind. $975 million is a lot of money.

Good thing that when Mr. Hamm got the news that she had refused the money he didn't put a stop payment order on the check. That gave his ex time to change her mind and get to the bank. It was a dramatic change of events from earlier this week. Mr. Hamm's attorney Craig Box said they were called by the bank when Ms. Arnall presented the check for payment.

That means the long litigated divorce will soon be over. Mr. Hamm founded Continental Resources in 1967, and is worth more than $8 billion. After a 25 year marriage, some observers expected that this most expensive divorce might cost Mr. Hamm up to $5 billion. From that perspective, $975 million is a bargain. The timing was good too.



COPY

HAROLD G. HAMM TRUST
HAROLD G. HAMM TRUSTEE
[redacted]

Morgan Stanley 1004
25-80/440

Jan 5, 2015
Date

Pay to the Order of Sue Ann Arnall $ 974,790,317.77

Nine Hundred Seventy Four Million Seven Hundred Ninety Thousand Three Hundred Seventeen and 77/100 Dollars

Security Features Details on Back.

UMB Bank, N.A.
Kansas City, MO 64106
1-800-688-3462

Expense Analyzer

For

MP

⑆044000804⑆ [redacted] 1004

After all, with the check written January 5, rejected, and then accepted and deposited January 8, everything happened in January. But just imagine if the rejection and the change of heart had spanned year-end? A check is generally regarded as a conditional payment. When you write it and mail it in the ordinary course, you can deduct it, provided that it's a deductible expense.

But from the recipient's side, a check is income when you receive it or when it is available to you, even if you don't cash it then. It's called constructive receipt, and it trips up many people on their taxes. When your boss tries to pay your bonus in December and you say, "pay me next year," it's technically income in December when you *could* have received it.

Of course, we don't know how much of the $975 million is alimony and how much is property settlement. Big tax dollars can turn on the difference. If you divide property during marriage or post-divorce, Section 1041 of the tax code says there's generally no tax to either party. But don't assume "tax-free" means there are not big tax consequences. The tax basis of property matters as much as its fair market value.

Getting high basis property in divorce is better than getting low basis property, since basis will control *future* taxes. If Mrs. Hamm ended up with appreciated Continental Resources 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 to equalize the tax burden.

If there's no legal marriage, there can be no divorce and no tax-free division of property. When unmarried couples 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.

The IRS often audits couples post-divorce. A property settlement isn't tax deductible. Alimony is tax deductible to the payor, and income to the recipient. 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 they aren't taxable.

The IRS often cleans up when it finds inconsistent treatment after divorce. That's one reason if you want to minimize the likelihood of audits and tax disputes, agreeing with your ex how much money is property settlement,  alimony or child support can be wise. Hopefully, none of your checks will be for $975 million.

*For alerts to future tax articles, follow me on Forbes. You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*