



Robert W. Wood

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Fallen Solyndra: Is Even Its Bankruptcy A Scam?

With or without President Obama, Solyndra may have flown too close to the sun, as the IRS seems to think. The IRS has a tough job to and sometimes must fight court battles.



In Bankruptcy Court, it often means trying to collect taxes instead of losing out to other creditors. It can also mean urging the Bankruptcy Court to rule that taxes owed to the IRS survive the bankruptcy and are **not** discharged.

After all, if tax debts are discharged the IRS is out of luck. If taxes aren't discharged, the IRS may get them later as part of an installment payment plan. The IRS is pretty good at this, in part because the tax rules governing debts in bankruptcy are technical.

Plus, many debtors don't handle the timing of debts and filings to maximum advantage. Sometimes, though, bankruptcy plans are very clever indeed. Enter Solyndra, once the darling of the solar panel craze that was famously visited by President Obama, probably to his later regret.

As reported here: [IRS Says 'Tax Avoidance' at Heart of Solyndra Bankruptcy Plan](#), the IRS claims that Solyndra's reorganization plan proposed in court is little more than an avenue for owners of an empty corporate shell to avoid paying taxes. "The undeniable conclusion is that

tax benefits drive this plan,” attorneys for the IRS wrote in a bankruptcy pleading. See [IRS Slams Solyndra Bankruptcy Plan](#).

Arguing that the court should not confirm a plan “whose principal purpose is tax avoidance,” attorneys said in court filings that the tax benefits would be worth much more than the meager funds set aside for creditors. Taxpayers are stuck covering more than a half-billion dollars after the company filed for bankruptcy last year. Adding insult to injury, that was only two years after Solyndra won a loan guarantee from the Department of Energy.

The IRS now claims Solyndra’s owners have been planning for years to use the company’s Net Operating Losses (NOLs) post-bankruptcy. The bankruptcy rules on NOLs are complex, but there are ways NOLs can survive bankruptcy. See [Bailout and NOL Rules: What, Me Worry?](#) It appears that’s what Solyndra and its shareholders are counting on. See [Attorneys for IRS, Energy Department Object to Solyndra Bankruptcy Plan](#).

The legal question is whether the use of NOLs here is legit. According to lawyers for the IRS, it isn’t: “The only reason for the shell corporation to exist post-confirmation is to enable its owners to exploit these tax attributes, which would be lost in liquidation.” Is it a good deal for creditors to get \$7 or \$8 million out of the Solyndra mess? Maybe, but the IRS claims the outsize tax benefits Solyndra’s smiling owners will reap are more like \$150 million.

That sounds pretty rich. Still, I’m guessing that neither President Obama nor Mitt Romney will be visiting this once sunny company—er former company since it has ceased all operations—anytime soon.

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009 with 2012 Supplement, [Tax InSTITUTE](#)), he can be reached 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.*