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THE TAX LAWYER

Nov. 12 2010 — 8:42 am

Tax Laws Rule GM And The World

Tax lawyers often feel inferior. See [Five True Tales From A Tax Lawyer](#). We are not even *real* lawyers, many say. More like accountants, but much less good with numbers. Was Atticus Finch a tax lawyer? Perry Mason, Melvin Belli, Johnny Cochran? Has any tax lawyer *ever* been called lion-like? I doubt it.

So when tax law is trumpeted in the popular press, lionized as the reason a mega-transaction is effected, we feel oddly proud, taking vicarious satisfaction that we surely are not so odd after all. Taxes are at the root of business, society and life. As [Samuel Johnson](#) said, when a man is tired of tax law, he is tired of life. (Or was it London?) In any case, there's little more fundamental than how much tax you pay.

Yet determining how much you pay can involve Byzantine complexity. If Ma and Pa pay copious taxes, how can vaunted General Motors pay none, especially when TV proclaims how well GM is doing and how our economy is thriving? Net operating losses (NOLs), of course.

You and I pay taxes annually, as do companies. But companies are allowed to carry losses backwards and forwards in a leapfrog game of skill and chance. NOLs are like gold in them thar hills. Many companies were purchased throughout history primarily for their NOLs to be used against gains from somewhere else. It was a little like a gold mine with buku profits buying another with big losses. If you could offset the two your profitable mine might pay no taxes for years.

Traffic Jam. So it went until 1986, when Congress clamped down on “trafficking in NOLs” by enacting Section 382 of the tax code. It limits using NOLs after an ownership change. Shorn of details, an ownership change is any shift involving a 5% shareholder whose stock increases by more than 50% during a three year period. It is highly complex, and it is very easy to trigger the NOL restrictions even where less than a majority of the company is purchased.

Once this trigger is tripped, the company’s income thereafter cannot be offset by NOLs accumulated before the change, except to a very limited extent: you chip away at your erstwhile NOLs not unlike using a Lilliputian rock hammer on Mount Everest. Quite Dickensian, really.

Luxury Drive. GM famously needed rescuing, and the feds pumped in billions to save Detroit, auto jobs, and the American tailfin. We taxpayers owned 61% of GM, and that’s a lot of tailfins. But in a move of unusual largesse, the IRS announced that despite the usual rules that would limit GM’s NOLs after its stock change, these were special times.

In normal times, companies face limitations on their NOLs, but companies bailed out by the fed are different. Despite a whopping 61% stock issuance to the federal government, GM was let off the [hook](#).

That means NOLs and other tax savings techniques normally not available because of Section 382 may save GM up to ***\$45.2 billion*** in the coming years. See [GM Could Be Free Of Taxes For Years](#). And how will GM use these NOLs to its advantage? GM just announced a \$2 billion third quarter profit, and an IPO. See [GM posts \\$2 billion quarter profit, IPO next](#) and [GM Reports \\$2 Billion Profit](#).

So tax lawyers should feel pretty darned important. Surely a Dickensian tax lawyer would say: “[Please sir, I want some more?](#)”

See also [382 Bailout Guidance](#).

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