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### Fallen Solyndra Won Bankruptcy Battle But Faces Tax War

This failed alternative energy company was gilded by President Obama's glow. But with \$527 million from taxpayers it filed for bankruptcy just two years after being handed a loan guarantee from the Department of Energy. Like taxpayers, most creditors—including the IRS—are out of luck.

The shuttered energy concern has only \$71 million to stretch across more than \$900 million in unpaid debts. Is it fair for creditors to squeeze only \$7 or \$8 million out of the Solyndra mess? The IRS claims tax benefits to Solyndra's smiling owners are worth about \$150 million.

Yet Solyndra's lawyers won their battle with the IRS over whether its Chapter 11 plan should be confirmed. It was, and the owners of Solyndra must be pleased. What's more, the IRS lost its request for a stay that would have stopped Solyndra from carrying out its restructuring plan while the IRS appeals the bankruptcy court's approval of the plan. See [IRS Loses Appeal to Stop Solyndra From Carrying Out Plan](#).



The IRS didn't mince words about Solyndra's plan, claiming its "[principal purpose is tax avoidance](#)." The IRS said the owners of the empty corporate shell were just avoiding taxes. See [IRS Slams Solyndra Bankruptcy Plan](#). The tax breaks soak up income that would otherwise be taxed. See [IRS Says 'Tax Avoidance' at Heart of Solyndra Bankruptcy Plan](#).

The bankruptcy rules on net operating losses (NOLs) are complex, but there are ways NOLs can survive. See [Bailout and NOL Rules: What, Me Worry?](#) It appears that's what Solyndra and its shareholders counted on. See [Attorneys for IRS, Energy Department Object to Solyndra Bankruptcy Plan](#). But is this a done deal?

The loan guarantee means taxpayers are on the hook, and the confirmation of the bankruptcy plan means creditors lose out too. But the IRS gets another bite at the apple. When Solyndra starts claiming the NOLs, the IRS will surely resurface.

In fact, the tax code allows the IRS to argue all over again that the losses can't be used because they were just for tax avoidance. The finding of the bankruptcy court has no effect. The question the IRS can be expected to probe is slightly different from what the IRS argued in bankruptcy court.

In bankruptcy court, the question was whether the main purpose of the *plan* was tax avoidance. But under [section 269](#) of the tax code, the question is whether the principal purpose of acquiring *control* of the company was tax avoidance. No matter how you slice it, the Solyndra mess is unfortunate, an embarrassment to President Obama's administration, and expensive. And all the battles aren't over yet.

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