The Other GM Bailout: The $18 Billion Tax Gift Obama Didn't Mention

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President Obama appeared at a United Auto Workers tent revival meeting Tuesday, and he made several notable claims. Critics of the Detroit bailout of 2008-09 are motivated, apparently, by their antipathy to American workers. The alternative to a government rescue was letting the entire auto industry "die." But one particular claim stood out. Mr. Obama said the bailouts succeeded not "because of anything the government did."

The lacuna in this account is the $81.8 billion that taxpayers surrendered to General Motors and Chrysler, and we detailed the many other costs in a February 25 editorial "Halftime in Detroit." As it happens, however, we missed one big thing the government did that deserves more attention: GM's tax gift courtesy of the U.S. Treasury.

Corporations in the red, as GM was for years, are allowed to carry forward net operating losses that reduce their future tax liability when they are making money. GM had accumulated about $45 billion in such profit-shielding chits by 2008, with a book value of about $18 billion. When companies enter bankruptcy, carry-forwards disappear or are greatly limited under IRS section 382, which kicks in when ownership changes by more than 50 percentage points.

The point is to prevent companies from buying assets solely for tax arbitrage or tax avoidance. But starting in 2009, Treasury began to issue regulatory "notices" that suspend this law when it comes to Treasury-owned stock. The provisions also apply to AIG and Citigroup.

So when GM entered bankruptcy in June 2009, the government swapped the debt the auto maker owed it as a creditor for 61% of "new GM," while handing another chunk to the United Auto Workers. But new GM also inherited the accumulated net operating losses that would have turned into a pumpkin in normal bankruptcy.

In a 2011 working paper, J. Mark Ramseyer of Harvard and Eric Rasmusen of Indiana University argue that by manipulating corporate tax rules by fiat, "Treasury gave the firm (and its owners, including the UAW) $18 billion more in assets." Thus a Democratic Administration gave "a massive tax benefit to one of the party's biggest supporters." The other problem is that the move put Ford and GM's other competitors at a disadvantage, as bailouts always do.

Mr. Obama crowed yesterday about GM's "highest profits in its 100-year history." We'd be interested to hear how its effective tax rate compares with Warren Buffett's secretary's.