

The Bankruptcy Protector



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Sticking it to the IRS – Judge Rules IRS Code Interest Rate does not Trump Interest Rate in Confirmed Plan

By [Shane G. Ramsey](#)

If, like me, you have ever scratched your head in confusion while preparing your taxes and thought to yourself – “I can’t believe the IRS takes such an absurd position on xyz tax exemption I want to use – who comes up with these crazy positions?” – then you might take some pleasure in a recent opinion from Judge Gross of the United States Bankruptcy Court for the District of Delaware calling an argument made by the IRS “strained and a bit confusing.” You read that right.

In a recent dispute in the W.R. Grace chapter 11 cases, Judge Gross was faced with the following question: “Does a chapter 11 plan govern the post-petition interest rate on a priority tax claim, or is the government entitled to the higher rate specified in the Tax Code, 26 U.S.C. § 6621?”

The dispute with the IRS arose under the chapter 11 plan of W.R. Grace & Co., confirmed in 2011. On the filing date, the IRS had a tax deficiency claim of almost \$6 million for 1998.

It was agreed that the Tax Code’s interest rate applied up to the filing date in 2001. The government wanted the same rate to apply from filing until 2009, when the claim was paid. The debtor argued for the lower rate of 4.19% provided in the plan for allowed claims. The difference in the two rates amounted to about \$1.6 million.

The dispute ultimately involved a refund, not an allowed priority tax claim, because the debtor had a net operating loss carryback erasing the 1998 tax deficiency.

In an argument Judge Gross called “strained and a bit confusing,” the IRS contended that it had a right of recoupment, not a claim and, as a result, the plan interest rate did not apply.

Judge Gross sided with the debtor “because, in reality and effect, the Plan is the basis for the payment of post-petition interest on Allowed Tax Claims.” As of the filing date, the IRS had an allowed priority claim equal to the deficiency plus statutory interest that was paid during the course of the chapter 11 proceedings. According to Judge Gross, “The Plan takes priority and it would be inappropriate for the court to apply equitable recoupment under the circumstances.”

Case: *In re W.R. Grace & Co.*, 01-1139 (Bankr. D. Del. Oct. 23, 2017).

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