

Contact**Houston**

1200 Smith Street, Suite 1400
Houston, Texas 77002-4310
Tel: 713.658.1818
Fax: 713.658.2553

Atlanta

191 Peachtree Street, N.E.,
Forty-Sixth Floor
Atlanta, Georgia 30303
Tel: 404.659.1410
Fax: 404.659.1852

Philadelphia

300 Conshohocken State Road
Suite 570
West Conshohocken, PA 19428
Tel: 610.772.2300
Fax: 610.772.2305

San Antonio

112 East Pecan Street, Suite
1450
San Antonio, Texas 78205
Tel: 210.253.8383
Fax: 210.253.8384

High Court's Microcaptive Case Could Weaken IRS Rule Shield

Phil Karter quoted in High Court's Microcaptive Case Could Weaken IRS Rule Shield

Law360

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In an article published in *Law360* on May 6, 2020, Philadelphia-based shareholder Phil Karter commented on the Supreme Courts grant of a writ of certiorari in an important case, *CIC Services, LLC v. Internal Revenue Service, et al.* The case involves a challenge by a captive manager to the IRS's reliance on the Anti-Injunction Act to bar challenges to unlawful regulatory mandates issued by administrative agencies that are not taxes. The question is whether the Anti-Injunction Act overrides the Administrative Procedure Act and insulates governmental agency action from pre-enforcement review whenever that agency, in this case the IRS, enforces that action with a penalty that it labels as a tax.

In the article, Karter noted that the main purpose of the Administrative Procedure Act is to ensure that regulated parties can bring a court challenge to a federal regulation before having to choose whether to comply with the administrative mandate or face steep civil or even criminal penalties for noncompliance. He added that if the Supreme Court finds that pre-enforcement review of the 2016 IRS notice is not prohibited by the Anti-Injunction Act (which bars suits intended to restrain the assessment or collection of tax), then a failure to follow Administrative Procedure Act procedures can be the basis for challenging regulatory guidance that do not restrain tax collection by initiating a lawsuit, instead of having to violate the guidance, pay penalties and only then bring a challenge via refund litigation.

Karter observed that because a victory by the petitioner would chip further away at the notion of tax exceptionalism, which has often been cited by the IRS as the reason the tax law it is entitled to special treatment that does not apply to other areas of the law, including exemption from Administrative Procedure Act requirements. For that reason, Karter pointed out that a reversal in the case has potentially far-reaching implications.

To read the full *Law360* article, subscribers may [click here](#).