Ivins Secures Post-Mayo Victory in Federal Circuit Invalidating Treasury Regulation -- Dominion Resources v. United States

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In *Dominion Resources, Inc. v. United States*, decided on May 31, 2012, in which Eric Fox, Les Schneider, and Pat Smith of Ivins, Phillips & Barker represented Ivins' long-time client, Dominion Resources, the Federal Circuit drove home the point that the Supreme Court's ruling in *Mayo Foundation For Medical Education and Research v. United States,* 131 S. Ct. 704 (2011), that the two part test established in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984), applies to tax regulations by no means created the nearly insurmountable obstacle to challenges to IRS regulations that many practitioners and even some in the IRS believed. Rather, as Ivins' Pat Smith has noted in his writings since the *Mayo* ruling, the case was a double edged sword for the IRS, requiring it to meet the standards of the Administrative Procedure Act just as any other agency must do.

The Federal Circuit underscored the correctness of this view today in a ruling that held that a provision of the interest capitalization regulations under section 263A is invalid under the second step of the *Chevron* test as being an unreasonable interpretation of the statute, as well as being in violation of the arbitrary and capricious standard in the Administrative Procedure Act, based on the failure to provide an explanation of the reasons for the provision as required by *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29 (1983).