



Tax Notes Covers IPB's Petitions for Review of the Final Foreign Tax Credit Regulations

ATTORNEYS

James E. Brown

Jon Holbrook

Leslie J. Schneider

PRACTICE AREAS

Federal Tax Policy & Advocacy

International Tax

Tax

July 22, 2022

In the article *Petitions for Review of FTC Regs Raise Substantive Issues*, *Tax Notes* describes petitions filed April 12 and June 3 by Ivins, Phillips and Barker attorneys Les Schneider and Jamie Brown requesting review of the final foreign tax credit regulations released by the Department of Treasury in December 2021, which among other items included a new attribution requirement, which says that for foreign-source income to be creditable, the applicable foreign tax law must be similar to U.S. income tax law, based on the character of the income.

The article notes that, "In its first petition, Ivins, Philips & Barker addressed the creditability of foreign withholding taxes imposed on royalties. The petition followed up on concerns expressed by the firm in February 2021 in its response to a consultation on the proposed

FTC regs. In 2021 it questioned the inclusion of a new jurisdictional nexus requirement, saying it was a substantial departure from previous tax policy.

The June 3 petition requests a modification of the attribution requirement for royalties, claiming that it overly restricts sourcing rules by making the U.S. sourcing rules the norm. The petition also argues that the changes in the final regs represent a drastic departure from previously settled law without justification and that "

Treasury violated the APA by adopting the royalties attribution requirement for the first time in final regulations without notice and comment."

Treasury lacked the authority to "reverse decades of case law under the pretense of revising regulations," the petition asserts."



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"In its second petition, the firm noted that for a taxpayer to receive an FTC in the United States, the country imposing the tax must follow the arm's-length standard. The petition says that rule is essentially impracticable because of the inconsistent nature of the arm's-length standard and that it imposes an unnecessarily broad restriction.

Further, the regs' arm's length requirement is a drastic change from preexisting policy, the petition says. "The long-standing rule never suggested that a taxpayer could potentially lose all foreign tax credits for the entire amount of foreign tax paid on its income," it adds."

IPB's Jon Holbrook said the next step "is a waiting game to see what type of response the

IRS will provide to the petition. If it is rejected, the

IRS must provide a brief explanation for the denial, he said.

Depending on the

IRS's response, several more steps can be taken, including asking the

IRS for more information or clarification or pursuing judicial action, Holbrook said. The APA allows litigation over insufficient or arbitrary responses, and challenges may be subject to a lower standard than arbitrary and capricious because they point out a rule that an agency may not have had the discretion to enact, he added."