



Patrick Smith Comments on Tax Notes Article re: Discretionary Actions

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"Can Courts Review Competent Authority's Discretionary Actions?"

Tax Notes: TaxAnalysts / News Analysis

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Patrick Smith was quoted on whether a decision is committed to agency discretion by law and if the APA applies. With respect to the disagreement between the IRS and SICO and whether the APA applies, Smith said, "The APA issue is whether this decision is in fact committed to agency discretion." He went on to comment: "The APA's provisions on judicial review have six possible standards of review, one of which is abuse of discretion. The arbitrary and capricious standard is what normally applies outside tax law when people who are subject to agency regulation contest something the agency has done. *De novo* review is another standard, which has traditionally applied in tax refund suits and deficiency proceedings." "The relationship between tax litigation and the APA is widely misunderstood," said Smith. He noted that the case law is poorly developed, perhaps in part because before *Mayo Foundation*, taxpayers did not think much about applying nontax administrative law rules in tax cases.