



## Pat Smith Quoted re Maze v. IRS

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*Tax Notes and Bloomberg BNA's Daily Tax Report*

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Ivins attorney Pat Smith was quoted in article in both Tax Notes and Bloomberg BNA's Daily Tax Report on the D.C. Circuit decision last Friday in *Maze v. IRS*, holding that the Anti-Injunction Act (AIA) barred a suit that challenged the IRS's refusal to permit the plaintiffs to switch from one offshore voluntary disclosure program (OVDP) to another more favorable OVDP program because the switch would have had the effect of reducing the penalties the taxpayers were subject to, since the penalties are considered taxes for purposes of the AIA.

#### ***D.C. Circuit AIA Ruling Bars Challenge to OVDP Transition Rules; Tax Notes***

Patrick J. Smith of Ivins, Phillips & Barker Chtd. said the facts of *Maze* were fairly unusual. "The much-more usual situation where the AIA has come up recently is where taxpayers challenge the validity of regulations soon after they are issued," he said. Accordingly, the decision in *Maze* does not imply that the AIA applies to those situations, because in the challenges to regulations, the taxpayers are not already subject to the regulations, he said. "To me, this is a very narrow decision without broad implications," Smith said.

Smith noted that Henderson was the dissenting judge in *Florida Bankers Association v. Treasury*, 799 F.3d 1065 (D.C. Cir. 2015), where she wrote a strong dissent against the majority's broad reading of the scope of the AIA.

#### ***Offshore Account Holders Lose Bid for Tax Penalty-Free Program; Daily Tax Report***



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Patrick Smith, a partner at Ivins, Phillips & Barker, Chartered in Washington, told Bloomberg BNA July 14 that the case differed from those where the IRS has raised the AIA to defeat challenges to its rulemaking that have yet to be enforced.

Smith cited *Fla. Bankers Assoc. v. United States*, in which the majority of a D.C. Circuit panel found banks couldn't challenge, prior to enforcement, a regulation requiring them to report to the IRS deposit interest paid to nonresident aliens, and the pending case of *Chamber of Commerce of U.S. v. IRS*, W.D. Tex., No. 1:16-cv-00944, which is a challenge to Obama-era anti-inversion regulations.

Smith noted that Henderson dissented in *Florida Bankers*. "In this case, the taxpayers had identified themselves as owing tax. It wasn't hard to see Henderson's view," he said.

Henderson referenced the trial court's observation that if the account holders don't like the situation, they could opt out of the 2012 voluntary disclosure program, allow the IRS to determine their liabilities by audit, pay the assessed liabilities, and file an administrative refund claim for the difference between the determined liability and what they would have owed under the 2014 streamlined procedure.

Henderson added that the account holders could then file a refund lawsuit in federal court if the IRS denied their refund claim.

Smith described the refund suggestion "as perhaps the least satisfactory part of the decision. It's hard to see how a refund suit would provide a satisfactory result."