Pat Smith Quoted in Tax Notes

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Ivins attorney Pat Smith was quoted in a *Tax Notes* article about the government's opening brief in the Fifth Circuit in its appeal of the district court decision in *Chamber of Commerce v. IRS*. *Inversion Suit Could Be Vehicle to Flesh Out Direct Marketing*.

> "Ultimately, this question of what effect *Direct Marketing* had on interpretations of the Anti-Injunction Act is going to have to be decided by the Supreme Court," Patrick J. Smith of Ivins, Phillips and Barker Chtd. said, noting that a circuit split that would occur if the Fifth Circuit were to affirm the lower court decision in Chamber of Commerce would increase that likelihood. "There's a very strong indication that *Direct Marketing* changed the landscape on the Anti- Injunction Act," Smith said, adding that Chamber of Commerce "is the ready and available vehicle for this issue to reach the Supreme Court."
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> But Smith was not convinced by this line of argument. "Any case on the AIA that was decided before *Direct Marketing* has questionable validity," Smith said. "They're not all wrong . . . but the very big issue here is what effect *Direct Marketing* had on *Bob Jones*."
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> The government's brief focuses on the difference between the AIA and TIA based on the terms "enjoin" or "suspend," found only in the TIA, in arguing for the inapplicability of *Direct Marketing*."That's unquestionably in the opinion; however, there is other analysis in the Supreme Court opinion that doesn't depend on the presence of those other words," Smith said. As an example, he cited the Court's analysis of "assessment" and "collection," which would remain fully valid, and questioned whether the analysis of "restrain" was necessary for the Court to reach its decision.
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> The district court.also held that the anti-inversion rule was "not a tax, but a regulation determining who is subject to taxation."
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> The government's brief summarily rejects this thinking and argues there is "no principled distinction" between the two.
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> "That is not a tenable line . . . but, to me, it's just semantics," Smith said about the court's differentiation, while still endorsing the rest of the district court decision. "In challenging regulations, the key question in deciding whether the Anti-Injunction Act bars the suit is whether the plaintiffs . . . have engaged in the kind of behavior that would make them subject to the tax. If they have then I would say it's quite likely that the Anti-Injunction Act would apply."

But, since Allergan and Pfizer called off their transaction, they had not engaged in the behavior that is subject to the rule, so the AIA should not apply, Smith argued.