



Ivins Attorney Pat Smith Quoted Re: Regulatory Freeze

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Ivins attorney Pat Smith was quoted in a Tax Notes article on the effect of the Trump Administration's regulatory freeze on tax regulations. *Regulatory Freeze Might Upend Already Released Tax Guidance.*

Patrick J. Smith of Ivins, Phillips & Barker Chtd. agreed that the broad language of the memo likely made its terms applicable to tax.

Smith, however, thought that if the section 385 guidance was not otherwise subject to the freeze then the corrections would likewise not be covered by the memo.

In 2008 the Bush administration held that tax regs were not subject to Executive Order 12866, a position cemented in a 1983 memorandum of understanding between Treasury and the Office of Management and Budget and reaffirmed in 1993 . That memo waives the OMB review process for IRS regs, except those designated as major, a designation that rarely catches tax guidance. But Smith argued that the Priebus memo instituting the freeze was much more direct than the MOU.

According to the memo, agencies can request that the OMB director exclude some regs from the freeze. However, the only enumerated exclusions apply to regs that affect "critical health, safety, financial, or national security matters" and may not be applicable to tax guidance. Smith argued that the financial exclusion likely referred to banking regulations.

Speaking generally, Smith said the Trump administration would likely "take a very hard look" at a lot of recently released tax guidance.

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"Everybody in all agencies that is going to be appointed as part of the Trump administration is going to be extremely suspicious of all regulations issued by the Obama administration in the last few years. And they are going to be particularly suspicious of regulations issued so close to the change in administration," Smith said.