



Pat Smith Quoted re Debt-Equity Regulations under Section 385

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Ivins attorney Pat Smith was quoted in an article in Bloomberg BNA's *Daily Tax Report* on the likelihood of court challenges to the recently issued debt-equity regulations under section 385, *Voluminous Preamble Won't Stop Court Challenge to Debt Rules*.

Pat Smith, a partner at Ivins, Phillips & Barker, Chartered in Washington, told Bloomberg BNA Oct. 14 that the IRS "clearly learned their lesson from *Altera*."

"They have done a very good and conscientious job of responding to comments, but they didn't alter the substance of the regulations. They did a good job of responding to the technical issues around the edges, but they didn't change the basic structure, because the basic structure was about earnings stripping, which is what they wanted to accomplish," Smith said.

"The basic structure of the regulations is inconsistent with Section 385," Smith said. Congress' intent in enacting Section 385 was to eliminate the confusion caused by varying multi-factor tests adopted by courts to determine whether a transaction was debt or equity, he added.

Smith said, "There is absolutely no question that within the next few months, actions will be filed challenging these rules on the basis that they exceed the authority granted by Section 385."