



Pat Smith Quoted in Tax Notes re Fourth Circuit QinetiQ Case

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Ivins attorney Pat Smith was quoted in a *Tax Notes* article on the upcoming oral argument in the Fourth Circuit *QinetiQ* case, dealing with the issue of whether the Administrative Procedure Act's reasoned decision-making requirement applies to IRS deficiency notices, *Previewing the APA Arguments in QinetiQ*.

Challenges to deficiency notices are evaluated by the Tax Court on a de novo basis, not the more deferential arbitrary and capricious standard that governs most other agency actions, which are reviewed only on the basis of the administrative record. As a result, it's inappropriate to apply the principle of reasoned decision-making to a notice of deficiency, said Patrick J. Smith of Ivins, Phillips & Barker Chtd. The IRS doesn't get any deference except a burden of proof advantage in the Tax Court, so there is no reason to apply a reasoned decision-making standard," he said. The government advanced that same argument in its brief.

The text of section 7522 may not decide the question in *QinetiQ* because a violation of it doesn't give the taxpayer any rights, Smith said.

The issues in *Ax* and *QinetiQ* aren't identical, but both address whether the arbitrary and capricious standard and reasoned decision-making aspect of it apply to challenges to deficiency notices in the Tax Court, Smith said.

The impact of *Ax* in the *QinetiQ* arguments could mean a decisive win for the government. The Tax Court decision in *Ax* was totally correct," said Smith. The *Ax* taxpayers' reliance on

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SEC v. Chenery Corp., 318 U.S. 80 (1943), was appropriate because although *Chenery* was decided before the APA was enacted, the rationale the court gave for the reasoned decision-making requirement was that a decision committed to agency discretion can be upheld only on a basis that the agency itself relied upon, he said. The court needs to know what rationale the agency relied on. That's the reason for that requirement," Smith said.