



## Ivins Attorney Pat Smith Quoted in Tax Notes re: Monetary Relief not Available to Starr

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*Tax Notes*

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Ivins attorney Pat Smith was quoted in two separate articles in

***Tax Notes:***

The first article was ***Monetary Relief Not Available to Starr International***, dealing with a decision by the federal district court for the District of Columbia on the government's motion for reconsideration and holding that a refund suit relating to an IRS denial of treaty benefits must be dismissed because the court did not have the authority to order the IRS to pay the refund. However, the court held that the taxpayer could seek to amend its complaint to pursue a claim against the IRS under the **Administrative Procedure Act**.

Patrick J. Smith of Ivins, Phillips & Barker Chtd. agreed with the court on its decision on the motion for reconsideration.

"When I was reading the initial briefs in the case, I was focused just on whether there was a manageable standard and whether there was any possibility of judicial review," Smith said. "Getting a good result out of a motion for reconsideration is not something that happens often, but I think here it is not so surprising."

"This is part of the broader pattern of applying the APA far more often to tax cases than they have in the past," Smith said, noting that the court had taken it upon itself to ask the parties to brief it on the pursuit of a claim under the APA.

Smith said that he could imagine another court determining that because it did not have the authority to order the IRS to consult, it is meaningless to say that the IRS abused its discretion,



## | 2 | Ivins Attorney Pat Smith Quoted in Tax Notes re: Monetary Relief not Available to Starr

though he didn't necessarily agree with such a hypothetical decision. He added that he fully expected Starr to file a motion to amend its complaint to pursue a claim under the APA. The case would likely make its way to the D.C. Circuit eventually as well, he said.

"Clearly we haven't seen the end of this issue," Smith said. "This is still the relatively early stage of this case."

**The second article was *Banking Groups Petition for Cert Over Reporting for Nonresidents*, dealing with the D.C. Circuit decision in *Florida Bankers Association* holding that the Anti-Injunction Act bars a pre-enforcement APA challenge to the validity of regulations requiring banks to report to the IRS on interest paid to nonresident aliens.**

Another factor that may weigh in favor of the petition is the D.C. Circuit's influence in the administrative law area, said Patrick J. Smith of Ivins, Phillips & Barker Chtd. "Clearly the D.C. Circuit is where most pre-enforcement challenges to tax regulations would be brought," he said. As a result, the circuit's opinion would have disproportionate impact, he said, adding that the lengthy and strong dissent from Judge Karen LeCraft Henderson is also likely to draw the Supreme Court's attention.