



Patrick Smith, Ivins, Phillips & Barker, Tax Notes, February 4, 2016 Monetary relief not available to Starr International and Bank Groups Petition for Cert Over Reporting for Nonresidents

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Tax Notes and Bloomberg's BNA Daily Tax Notes

November 2, 2015

Ivins attorney Pat Smith was quoted by both Tax Notes and Bloomberg BNA's Daily Tax Report on November 2, 2015, in stories about the D.C. Circuit's decision on October 30, 2015, in *AICPA v. IRS*.

Contrary to the decision by the district court, the D.C. Circuit held that the AICPA has standing to challenge the validity of the voluntary program for regulating tax return preparers that the IRS adopted after the previous mandatory program was held invalid by the D.C. Circuit in *Loving v. IRS*. The case will now return to the district court for consideration of the merits of the challenge.

AICPA Has Standing to Challenge IRS Return Preparer Program (Tax Notes)

"Tax cases are typically refund or deficiency suits where standing is never an issue, but lately there have been a lot of lawsuits, generally under the [Administrative Procedure Act], that involve standing issues," said Patrick J. Smith of Ivins, Phillips & Barker Chtd. While it has not been one of the traditional areas of concern for tax cases, tax litigators should start to pay more attention to the issue of standing, he said.

Smith said, "The competitor standing theory was always the AICPA's best argument for standing, and it was a little surprising that the district court didn't think it worked." The theory is a clearly established aspect of standing law that states that if government action helps a party's competitors, that benefit to the competitors is sufficient to give the party standing, he said.



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Smith agreed that consideration of the merits will likely focus on the government's argument that a voluntary program, such as the program to provide a record of completion, cannot be challenged as improper government action. He noted that the district judge said the state of the law on voluntary programs was not nearly as settled as the government seems to think.

AICPA's Challenge to IRS Program to Be Heard on Merits (Daily Tax Report)

Patrick J. Smith, partner at Ivins, Phillips & Barker Chartered in Washington, who wrote a supporting brief in the Loving case, said it seems plausible the new IRS program would cause competitive harm.

"The people in the program will be given an advantage such that it's something they really can't afford to pass up," Smith said.