



Ivins Wins Full Concession of \$3.6 Million Tax Court Case

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On May 30, 2018, the U.S. Tax Court entered a stipulated decision in favor of Ivins's client Platinum Supplemental Insurance, Inc. ("Platinum") in a case involving whether insurance agents who worked with Platinum were employees or independent contractors for tax purposes. *Platinum Suppl. Ins., Inc. v. Comm'r*, No. 9816-17.

Platinum is the leading provider of supplemental health insurance products in rural markets. The IRS determined that nearly one thousand insurance agents who worked with Platinum from 2011 to 2013 were Platinum's employees and not independent contractors as Platinum had treated them. The IRS proposed to assess an additional \$3.6 million in payroll taxes, plus interest.

Whether a worker is an employee or an independent contractor is governed by a fact-intensive common law test. The worker classification safe harbor in section 530 of the Revenue Act of 1978 also turns on facts and circumstances. Therefore, Platinum faced the prospect of a multi-week trial examining its relationship with each agent.

To avoid such a trial, Ivins filed a motion for summary judgment, arguing that the agents were independent contractors under Code section 3508, which treats direct sellers of "consumer products" as independent contractors. The IRS had argued in Appeals that insurance cannot be a consumer product, and no court has ever addressed whether insurance can qualify as a consumer product. Nonetheless, the IRS did not respond to Ivins's motion and instead conceded that the agents were independent contractors.

If you have any questions about this case or any worker classification issue, please contact Kevin O'Brien or Jamie Brown.