



Pat Smith quoted in both Tax Notes and the Daily Tax Report about why the choice of Judge Kavanaugh for the Supreme Court is bad news for taxpayers

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Tax Notes and Bloomberg BNA Daily Tax Report

July 11, 2018

Ivins attorney Pat Smith was quoted in articles in both *Tax Notes* and the Bloomberg BNA *Daily Tax Report* about why President Trump's selection of Judge Brett Kavanaugh of the D.C. Circuit to replace Justice Kennedy on the Supreme Court is not good news for taxpayers who would like to challenge the validity of tax regulations, because of Kavanaugh's very broad view of the scope of the Anti-Injunction Act in precluding pre-enforcement challenges.

Kavanaugh's Positions May Not Have Always Helped Taxpayers. Tax Notes.

"From the perspective of taxpayers who are interested in being able to bring challenges in court to tax regulations, the choice of judge Kavanaugh is, frankly, bad news," Patrick J. Smith of Ivins, Phillips & Barker Chtd. told Tax Analysts. He added that any of the other Supreme Court candidates under consideration would have been better from the perspective of taxpayers wanting to bring pre-enforcement challenges.

Smith was referring to Kavanaugh's 2015 opinion in *Florida Bankers Association v. Treasury*, No. 14-5036 (2015), in which the D.C. Circuit held that a challenge to a tax-related statutory or regulatory requirement, one that is enforced by a penalty, is barred by the AIA. In the opinion, Kavanaugh said the ruling didn't preclude taxpayers from challenging the statute or regulation; they just had to pay the tax and later sue for a refund.



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Court Pick Kavanaugh's Views Could Limit Impact on Tax Challenges. Daily Tax Report.

Kavanaugh's interpretation of the [Anti-Injunction] act wouldn't be favorable for taxpayers, Patrick Smith, a partner at Ivins, Phillips & Barker, Chartered in Washington, told Bloomberg Tax. Smith said that while there aren't many cases that deal with the act, they often are decided by a narrow margin.

Kavanaugh could seek to eliminate the use of the landmark administrative law [*Chevron*] ruling, which gives deference to agency expertise, Smith said.

Smith said that Kavanaugh's stance on *Chevron* is consistent with the thinking of Justices Clarence Thomas and Neil Gorsuch. If confirmed, the next step could be "to substantially cut back on *Chevron*, if not totally cut *Chevron*," he said.