



## Pat Smith Quoted in Tax Notes on Statute of Limitations Issue in Altera

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### *Tax Notes*

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Ivins attorney Pat Smith was quoted in a *Tax Notes* article on an order issued by the Ninth Circuit in the pending *Altera* appeal raising a possible statute of limitations issue with respect to Altera's challenge to the stock-based compensation rule in the cost-sharing provisions in the section 482 regulations. *Court Raises Statute of Limitation Question in Altera*.

"This really came out of nowhere," Patrick J. Smith of Ivins, Phillips & Barker Chtd. said of the court's September 28 order.

Smith said he doesn't expect Altera's case to be thrown out for being untimely, but he was troubled by the implications of a case cited in the order.

Smith said the *Perez-Guzman* decision is "surprising, counterintuitive, and very troubling" because it holds that the statute of limitations on challenging the validity of a regulation applies not only to a direct challenge, but also to situations such as in *Altera* when the challenge is raised as a defense in an enforcement action.

The government will likely tell the court that Altera's claim isn't untimely, so the IRS can reconcile its position that pre-enforcement review of tax regulations is barred by the Anti-Injunction Act, Smith said.

"It would be extremely unfair and inconsistent for the IRS to say that taxpayers not only can't bring pre-enforcement challenges, but then they can't challenge the validity of tax regulations in Tax Court if they're outside the six-year statute of limitations," Smith said.

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Smith noted that the Ninth Circuit has held that the six-year statute of limitations isn't a jurisdictional question. "The only way Altera could potentially be time-barred is if the government raises it, and I don't think the IRS will want to take that position," Smith said.