



## Pat Smith Quoted in Tax Notes on New Ninth Circuit Oral Argument in Altera

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Ivins attorney Pat Smith was quoted in a *Tax Notes* article on the second Ninth Circuit oral argument in the *Altera* case. *New Judge in Altera Rehearing Skeptical of Taxpayer's Arguments*.

The new panel's questions focused almost exclusively on the section 482 issues instead of whether Treasury had complied with the APA's rulemaking requirements. The lack of any APA specific questions was disheartening, Patrick J. Smith of Ivins, Phillips & Barker Chtd. told *Tax Notes*.

"From my perspective, this case was decided by the Tax Court on the basis of the APA," Smith said. "That's what should've been at issue here, but I guess the government very much wanted it to be about the authority question. When judges focus all their attention on the issue of whether Treasury had the authority to issue these regulations and totally ignored the question whether they followed proper procedures, it's very discouraging."

"Based on Judge Graber's questioning, it certainly seems as though she thought that a cost sharing agreement was in fact a transfer or license of an intangible," Smith said. "If that's the way she feels, that basically means she's going to decide the case for the government. That would be my expectation."