



## Pat Smith Quoted in Tax Notes on Anti-Injunction Act Issue in Sixth Circuit Case *CIC Investors*

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Ivins attorney Pat Smith was quoted in a *Tax Notes* article on the oral argument in the Sixth Circuit appeal in *CIC Investors* relating to whether the Anti-Injunction Act precludes pre-enforcement challenges to tax regulations. *Scope of Anti-Injunction Act Questioned in Appeal.*

Nalbandian "seemed to have a very thorough and complete understanding of the issues," said Patrick J. Smith of Ivins, Phillips & Barker Chtd. He added that the judge's response to McLaughlin's comments about the "almost literal effect" of the AIA "was an encouraging statement from the appellant's point of view."

Smith had a different take on the purpose of the AIA. "When the AIA was enacted in 1867, no one was thinking about pre-enforcement challenges to tax regulations," he said.

It wasn't until the Supreme Court's 1967 decision in a nontax case, *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967), that people started to think about pre-enforcement challenges to any agency regulations, Smith said.

Imputing current conditions to the enactment of the AIA seems misguided, he added. "The AIA was directed at situations where taxpayers have a potential existing tax liability for transactions they have engaged in in the past," Smith said. "It was clearly not directed at situations where there is a potential future tax liability based on applying new tax regulations to current or future activity."



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Now that taxpayers have the ability to challenge IRS assertions of existing tax liability in Tax Court without having to first pay the tax before litigating, the policy rationale for the AIA has largely been eliminated, Smith said.

The existing tension between the AIA and the APA is more apparent than real, he added.

"The problem was really created by the extremely broad view of the AIA that was created by the Supreme Court in *Bob Jones University v. Simon* in 1974, and *Direct Marketing* clearly undermines that extremely broad view," Smith said.