



Pat Smith Quoted in Tax Notes on Case Challenging IRS Elimination of Donor Reporting Requirement for Tax-Exempt Organizations.

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Ivins attorney Pat Smith was quoted in *Tax Notes* article discussing the currently pending district court case in *Bullock v. IRS*, which challenges the validity under the APA notice-and-comment requirements of the elimination by the IRS and Treasury of the requirement for some tax-exempt organizations to report to the IRS information about contributors to the organizations. *APA Challenges Could Spotlight Informal Guidance*.

Montana's complaint raises the question whether Treasury has the authority to issue regulations with a provision allowing the IRS to expand or contract a rule via informal guidance published in the Internal Revenue Bulletin, said Patrick J. Smith of Ivins, Phillips & Barker Chtd.

"If it's a situation where the IRS can determine on a case-by-case basis that a specific organization is exempt from the reporting requirements, I think they have the authority to do that," Smith said. "But when it goes beyond a single organization and applies to every organization other than 501(c)(3)s, that seems so broad that it ought to be subject to notice and comment."

If the court were to hold that the regulation violates the APA, "that could affect other Treasury regulations that authorize the IRS to take specified action through documents published in the IRB," said Smith. "I'd expect such a decision would cause people to start thinking about how the holding could be broadened."



| 2 | Pat Smith Quoted in Tax Notes on Case Challenging IRS Elimination of Donor Reporting Requirement for Tax-Exempt Organizations.

Smith said it's possible the government may argue that the issuance of Rev. Proc. 2018-38 is unreviewable because of 5 U.S.C. section 701(a)(2), which precludes judicial review when "agency action is committed to agency discretion by law."

In the landmark Supreme Court case *Heckler v. Chaney*, 470 U.S. 821 (1985), the Court held that whether a specific agency action is "committed to agency discretion by law" turns on whether the relevant statute provides a "meaningful standard" against which a court can judge an agency's exercise of discretion.

Smith said Montana could argue that section 6033(a)(3)(B) provides such a meaningful standard because it requires a determination by the IRS that the reporting "is not necessary to the efficient administration of the internal revenue laws."