



# Pat Smith Quoted in Tax Notes on Notice Being Reviewed by OMB In Connection with SALT Regulations.

## PRACTICE AREAS

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IPB attorney Pat Smith was quoted in an article in *Tax Notes* on OMB review of a notice in connection with regulations relating to the limitation on deductions for state and local taxes. *IRS Notice Under OIRA Review Could Signal Guidance Shift*.

Tax regulations have frequently been issued with accompanying notices and revenue procedures in the past, and Patrick J. Smith of Ivins, Phillips & Barker Chtd. told *Tax Notes* that those subregulatory guidance documents are often so intertwined with the regs that they essentially have the force of law.

"In the past, sometimes IRS and Treasury have issued regulations that provide rules but that don't identify the precise situations that the rules apply to," Smith said, adding that that information is often contained in an accompanying notice or revenue procedure.

Smith said that's quite possibly the situation with the regs and notice currently under review, but he noted that the March 5 policy statement says that the IRS and Treasury will no longer claim that subregulatory guidance has the force of law.

"One would have thought that after that statement of policy, they wouldn't be doing this kind of thing anymore, but it's possible this SALT thing was already in the pipeline," Smith said. The fact that the notice could be an example of the kind of guidance Treasury is now trying to quash could explain the extra layer of review from OIRA, he said. But Smith said it's possible the notice's review was motivated by something totally unrelated to the policy statement.



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The validity of subregulatory guidance is currently a hot litigation issue, Smith noted. In *CIC Services LLC v. IRS*, Dkt. No. 18-5019 (6th Cir. 2018), a captive insurance company management firm is arguing that a notice violated the Administrative Procedure Act because it qualified as a legislative rule that carries the force of law but was issued without notice and comment.