



## Pat Smith Quoted in a Tax Notes Article on Recent Trends in Tax Guidance.

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IPB attorney Pat Smith was quoted in a *Tax Notes* article on recent trends in tax guidance from the IRS and Treasury, including their recent policy statement setting forth various principles on tax regulatory guidance. *Changes in IRS Guidance Practices Reflect APA Concerns.*

Notices are generally less involved than revenue rulings and are meant to be put out quickly, said Patrick J. Smith of Ivins, Phillips & Barker Chtd. "A revenue ruling is a pretty significant thing. The IRS and Treasury take it seriously and don't want to put one out without having thought through the issues," he said.

The coming appellate decision in *CIC Services* will likely focus exclusively on the Anti-Injunction Act question that the district court based its decision on, but the underlying dispute is over whether the IRS failed to adhere to the APA's notice and comment procedures in identifying transactions of interest in a notice that wasn't afforded notice and comment. "The intent [of the notice at issue in *CIC Services*] was that it would have the force of law," Smith said.

The [policy] statement says that in Tax Court litigation, the IRS won't seek judicial deference under the rule established in *Auer v. Robbins*, 519 U.S. 452 (1997), for interpretations of law set forth only in subregulatory guidance. That represented a voluntary cutback, Smith said, but he noted that the IRS hasn't tried to use *Auer* deference often.

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The statement says that when temporary regulations are issued, the preamble will include a good cause explanation. Treasury hasn't included those statements in the past, even though they're required by the APA, Smith noted.