



Pat Smith Quoted in Both Tax Notes and the Daily Tax Report on Revised Ninth Circuit Decision in Altera

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IPB attorney Pat Smith was quoted in articles in both *Tax Notes* and Bloomberg Tax's *Daily Tax Report* on the revised Ninth Circuit decision in *Altera*, reaching the same split decision result reversing the Tax Court as in the first Ninth Circuit decision, but with new discussions in both the majority opinion and the dissent of an issue that had been the focus of questioning by the new judge, Judge Graber, at the second oral argument, namely, the issue of whether cost-sharing arrangements should be considered "transfers" of intangibles within the meaning of the second sentence of section 482 so as to make the commensurate-with-income standard directly applicable to these arrangements.

Altera Case Loss Doesn't Mean End of Litigation Fight. Daily Tax Report.

This majority opinion would also make it harder to challenge regulations issued prior to the Tax Court's *Altera* ruling, said Patrick J. Smith, a partner at Ivins, Phillips & Barker, Chartered in Washington.

"It displays an attitude that is very generous to agencies, certainly very generous to the IRS and Treasury in terms of not requiring an adequate explanation as to why they're doing what they're doing," Smith said.

"I'd be surprised if this was the last we're going to hear on this case," Smith said.



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Kelly and Smith said they expect Altera will likely file a petition for a rehearing before the Ninth Circuit's full roster of judges, in light of Judge Kathleen M. O'Malley's "very strong dissent."

If the outcome of the full roster of judges is the same as that of the three-judge panel, then Altera could file a petition with the U.S. Supreme Court, Kelly said.

But that is unlikely because the issue doesn't involve any split between circuit courts, Smith said.

Ninth Circuit Again Upholds Cost-Sharing Regs in Altera. Tax Notes.

Graber "made it clear that she agreed with the government that cost-sharing arrangements should be considered transfers of intangible property," Patrick J. Smith of Ivins, Phillips & Barker Chtd. told Tax Notes. "To me, that was the key takeaway from the oral argument, and the emphasis on that in the new opinion is the most notable change from the withdrawn opinion."