



# Pat Smith Quoted in Tax Notes on *Bullock v. IRS*, Invalidating Elimination of Donor Reporting Requirements

## PRACTICE AREAS

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IPB attorney Pat Smith was quoted in a *Tax Notes* article on the broader significance of the Montana district court decision in *Bullock v. IRS*, which agreed with the states of Montana and New Jersey that the IRS and Treasury had violated the Administrative Procedure Act notice-and-comment requirements when they attempted to use a revenue procedure to eliminate the donor reporting requirements for all tax-exempt organizations other than section 501(c)(3) organizations. *Entering the Next Frontier of Tax and Administrative Law.*

In the future when the government seeks to alter the scope of a regulation, the APA considerations that have surfaced under decisions like *Bullock* will likely mean those types of rules will undergo notice and comment procedures. But the IRS and Treasury might effectively still be operating on an honor system of sorts regarding the APA requirements. In many cases the Anti-Injunction Act will be an obstacle for plaintiffs who want to challenge subregulatory guidance on the grounds that it was issued in contravention of the APA, said Patrick J. Smith of Ivins, Phillips & Barker Chtd.

Pat had also been quoted in a separate *Tax Notes* article at the time the *Bullock* decision was released. *Montana Federal Court Strikes Down EO Donor Rule Change.*

Patrick J. Smith of Ivins, Phillips & Barker Chtd. said that while the court's discussion on the states' standing "is unquestionably interesting," he found that the holding on the APA violation is "clearly the overwhelmingly important aspect of this decision."



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Smith noted that the substantive issue is similar to that of the taxpayer's claim in *CIC Services LLC v. IRS*, No. 18-5019 (6th Cir. 2019), in which a captive insurance advisory firm contended that the IRS's microcaptive notice violated the APA because it was issued without notice and comment. The firm has appealed the Sixth Circuit's May decision that its lawsuit is barred by the Anti-Injunction Act.

"The question is whether the IRS and Treasury have the legal authority to expand or contract the scope of regulations by issuing documents in the Internal Revenue Bulletin without following the APA notice and comment requirements," Smith said.

The Montana district court's decision "says resoundingly that these tax agencies do not have that authority," Smith said.

While the case is getting a lot of political attention because of the donor disclosure issue, it also has considerable legal significance because Treasury has issued regulations with provisions allowing the IRS to later expand or contract a rule via informal guidance, Smith said.

"This decision calls that practice into question," Smith added.