



Tax Notes Article Discusses Pat Smith's Amicus Brief in CIC Services

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An article in *Tax Notes* discusses the *amicus curiae* brief that was filed by IPB attorney Pat Smith in the *CIC Services* case, together with the two other *amicus* briefs that have thus far been filed in the case. There may be as many as five additional *amicus* briefs to come in this case, based on the attorneys copied with the government's request for an extension of time to file its response. *Supreme Court Needs to Clarify Anti-Injunction Act, Say Amici.*

Smith's brief pointed to the Supreme Court's decision in *Enochs v. Williams Packing & Navigation Co. Inc.*, 370 U.S. 1 (1962), in which it said the AIA barred only suits related to "taxes alleged to be due."

"If application of the AIA is properly limited to cases involving taxes alleged to be due,' it is clear that the AIA is not applicable to" *CIC Services'* pre-enforcement challenge because the firm has complied with Notice 2016-66 and thus didn't owe any taxes, according to Smith's brief.

Smith said that while two 1974 Supreme Court decisions expanded the scope of the AIA without acknowledging or explaining the departure from the principle set in *Enochs*, the Court's *Direct Marketing* decision requires a return to the test in *Enochs* that the AIA applies only to suits involving "taxes alleged to be due."

"The broad scope of the TIA that was rejected by the Court in *Direct Marketing* is essentially equivalent to the broad scope of the AIA that was applied" in the two 1974 decisions, Smith said.



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"Unless the Court is willing to impose a substantial inconsistency and disparity between the scope of the TIA and the scope of the AIA, the broad scope of the AIA that was applied in [the 1974 decisions] must be rejected as inconsistent with *Direct Marketing*," Smith argued.

Smith contends that the Sixth Circuit majority's reliance on *Florida Bankers Association v. Treasury*, 799 F.3d 1065 (D.C. Cir. 2015), is misplaced because the D.C. Circuit didn't fully address the *Direct Marketing* decision's relevance in analyzing the scope of the AIA.