



DC Circuit: 'The IRS Is Not Special'

PRACTICE AREAS

Tax

Tax Controversies

Patrick J. Smith

Tax Notes

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The D.C. Circuit's recent *en banc* decision in *Cohen* allowed a challenge to a tax refund procedure established in an IRS notice to proceed as a free-standing suit under the Administrative Procedure Act (APA), outside the traditional framework for challenging IRS actions through tax refund suits or Tax Court petitions. Because that result depended on the highly unusual circumstances presented in the case, it is unlikely that taxpayers will often be able to take advantage of the holding.

More broadly significant, however, is the fact that, in its analysis, the D.C. Circuit confirmed that the IRS is subject to the requirements of the APA. That confirmation is a welcome application in the APA context of the Supreme Court's more general holding in *Mayo* that the IRS is subject to the same general requirements of administrative law that apply to all other federal agencies.