



The APA's Arbitrary and Capricious Standard and IRS Regulations

PRACTICE AREAS

Tax

Tax Accounting

Tax Controversies

Patrick J. Smith

Tax Notes

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The Supreme Court's *Mayo* decision and the D.C. Circuit's *Cohen* decision have made clear that principles of administrative law generally, and the Administrative Procedure Act (APA) in particular, apply to tax law and the IRS just as they do to all other federal agencies. The APA's arbitrary and capricious standard provides a powerful but seldom-used tool for taxpayers in challenging IRS regulations, because the IRS seems unaware of the requirements imposed by the standard and even instructs its personnel to draft preambles to regulations in a way that is inconsistent with what the standard requires.