



# May Regulations That Violate the APA Be Remanded to the IRS?

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Patrick J. Smith is a partner at Ivins, Phillips & Barker in Washington. Last year in *Dominion Resources*, the Federal Circuit invalidated a tax regulation in part on the basis that it violated the Administrative Procedure Act's arbitrary and capricious standard. The IRS failed to provide an explanation for the regulation at the time it was issued. It was the first time a court of appeals invalidated a tax regulation on that basis. Smith discusses a recent case comment in the *Harvard Law Review* contending that although many tax regulations would be vulnerable to similar challenges, large-scale invalidation would be prevented by remanding defective regulations to the issuing agency for corrective action while leaving them in effect. Smith disputes that contention, arguing that the practice of remanding without vacating would not apply to most tax litigation because of the Anti-Injunction Act.