



Federal Tax ADVISORY ■

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Associational Standing

The federal courts have recognized that an association, such as a trade association, or other organization with members can represent as a plaintiff as few as one member that has standing to pursue a civil action. The concept originated with organizations such as the NAACP and has migrated to organizations such as chambers of commerce.

As a result, an organization can survive a motion to dismiss for lack of standing when one member was dissuaded from pursuing a business transaction because the IRS issued guidance stating that the transaction would have an unfavorable tax treatment.

But standing is not the only hurdle a plaintiff must jump over to obtain a declaration that the IRS guidance was wrong: it must avoid the Anti-Injunction Act. That statute precludes pre-enforcement injunctions or declaratory judgment on IRS actions that could lead to taxing the plaintiff or others.

But here the association member did not do the transaction and so a lawsuit would not be trying to stop an assessment of taxes from the member. In theory, the IRS guidance might be applied to assess taxes against some other taxpayer that pursued such a transaction, but perhaps it is not known whether anyone did.

At least one court has granted relief to a chamber of commerce with one such interested member in such a case, against the IRS. In a way, the plaintiff threaded its way through a narrow opening. But perhaps it is not so narrow after all.

That is just one of many changes occurring in the case law concerning the right to sue the IRS and the possibility of success. Potential plaintiffs should reconsider the standard assumption that they must pay and sue for refund or wait to be assessed, particularly if they are part of an umbrella association.

For more information, please contact [Jack Cummings](#) at 919.862.2302.

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If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Federal Tax Group

John F. Baron
Chair
704.444.1434
john.baron@alston.com

George B. Abney
404.881.7980
george.abney@alston.com

Jasper L. Cummings, Jr.
919.862.2302
jack.cummings@alston.com

Sam K. Kaywood, Jr.
404.881.7481
sam.kaywood@alston.com

Daniel M. Reach
704.444.1272
danny.reach@alston.com

John F. Baron
704.444.1434
john.baron@alston.com

Scott Harty
404.881.7867
scott.harty@alston.com

Ryan J. Kelly
202.239.3306
ryan.kelly@alston.com

Heather Ripley
212.210.9549
heather.ripley@alston.com

Henry J. Birnkrant
202.239.3319
henry.birnkrant@alston.com

Brian D. Harvel
404.881.4491
brian.harvel@alston.com

Brian E. Lebowitz
202.239.3394
brian.lebowitz@alston.com

Michael Senger
404.881.4988
michael.senger@alston.com

Seth M. Buchwald
404.881.7836
seth.buchwald@alston.com

L. Andrew Immerman
404.881.7532
andy.immerman@alston.com

Clay A. Littlefield
704.444.1440
clay.littlefield@alston.com

Edward Tanenbaum
212.210.9425
edward.tanenbaum@alston.com

James E. Croker, Jr.
202.239.3309
jim.croker@alston.com

Stefanie Kavanagh
202.239.3914
stefanie.kavanagh@alston.com

Ashley B. Menser
919.862.2209
ashley.menser@alston.com

ALSTON & BIRD

WWW.ALSTON.COM

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ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghua Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86 10 8592 7500
BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719
CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
DALLAS: Chase Tower ■ 2200 Ross Avenue ■ Suite 2300 ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100
NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
RALEIGH: 555 Fayetteville Street ■ Suite 600 ■ Raleigh, North Carolina, USA, 27601-3034 ■ 919.862.2200 ■ Fax: 919.862.2260
SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001
SILICON VALLEY: 1950 University Avenue ■ 5th Floor ■ East Palo Alto, California, USA, 94303-2282 ■ 650-838-2000 ■ Fax: 650.838.2001
WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333