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## Altera Aftermath: IRS Lifts Moratorium on Examining Stock-Based Compensation Cost-Sharing Arrangements

In the wake of the IRS' Ninth Circuit victory in *Altera Corporation v. Commissioner*, 926 F.3d 1061 (9th Circuit 2019), the IRS' Large Business and International (LB&I) Division issued [Memorandum LB&I-04-0719-008](#), informing examiners that they may once again open examinations to require taxpayers to include stock-based compensation costs as intangible development costs under Treasury Regulations §§ 1.482-7A(d)(2) and 1.482-7(d)(3). In *Altera*, a Ninth Circuit panel reversed a 2015 Tax Court decision invalidating the Treasury Regulation § 1.482-7A(d)(2) requirement that related parties allocate stock-based compensation costs when entering into cost-sharing arrangements to develop intangible assets. For more about the *Altera* decision, including prior actions by the Ninth Circuit, click [here](#).

### Attorneys

[Kat Saunders Gregor](#)  
[Elizabeth Julia Smith](#)

LB&I had previously, in Memorandum [LB&I-04-0118-005](#) (referred to as the “Altera memo”), instructed examiners to refrain from opening audits related to the disputed regulation and suspend issue development in ongoing cases after the 2015 Tax Court decision invalidating the regulation.

LB&I's newest guidance withdraws the moratorium, instructs examiners to apply the regulations in ongoing examinations, and encourages opening new examinations of cost-sharing arrangements relating to stock-based compensation, if appropriate. The IRS has taken this step despite *Altera*'s request for the full Ninth Circuit to reconsider the case, and the likelihood of a future appeal to the Supreme Court.

LB&I's move is expected to simultaneously result in:

- a wave of audits of companies taking positions contrary to the disputed regulations by excluding stock-based compensation from cost-sharing arrangements, and
- the denial of existing refund claims filed by companies in response to the 2015 Tax Court decision to invalidate the regulations.

Please contact the [Ropes & Gray tax controversy team](#) with any questions you may have or if you would like any further information.