

August 7, 2018

In Sudden About-Face, Ninth Circuit Withdraws Altera Decision Pending Further Discussions with New Panel Judge

As [previously reported](#) by Ropes & Gray, on July 24, 2018, the Ninth Circuit reversed the Tax Court's prior decision in the *Altera* case and upheld the IRS regulation requiring the allocation of stock-based compensation in qualified cost-sharing agreements. The decision was particularly notable since it ended in a 2-1 vote, in which Judge Reinhardt, who passed away in March 2018, cast the deciding vote. Late last week, the Ninth Circuit appointed a new judge, Susan Graber, to replace Judge Reinhardt under a local procedural order mandating that the court clerk randomly draw a replacement judge upon the death of any panel member. However, in lieu of awaiting any motions for rehearing, today the Ninth Circuit withdrew its opinion "to allow time for the reconstituted panel to confer on this appeal." Since a withdrawn decision has no legal effect and the decision of the court could change, affected taxpayers who have not already taken action in response to the decision should consider watching and waiting for a new opinion to be issued before taking any further action. To read today's order, [click here](#).