

## Mark Allison to Speak on Monthly Conference Call for ABA Tax Administrative Practice Committee Subcommittee on IRS Liaison Activities

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Program: Seventh Circuit Adopts Majority View on Valuation Misstatement Penalty

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The Seventh Circuit recently held that a partnership created as part of a distressed asset/debt (or DAD) tax shelter was a sham that lacked a business purpose. *Superior Trading, LLC v. Comm'r*, No. 12-3367 (7th Cir. Aug. 26, 2013). The transaction involved the transfer of distressed consumer debt from a Brazilian retailer to a newly created partnership. The court determined that the only purpose of the transaction was to generate tax losses for U.S. investors in the partnership. In affirming the Tax Court (137 T.C. 6 (2011)), the Seventh Circuit joined the majority of circuits that have upheld the application of the gross valuation misstatement penalty for transactions that are disregarded because they lack economic substance. The minority view, held by the Fifth and Ninth Circuits, is that the IRS may not apply the penalty to a valuation misstatement when the IRS completely disallows the deduction that results from the valuation misstatement. The Supreme Court, having granted certiorari in *United States v. Woods*, No. 12-562, 133 S. Ct. 1632 (2013), has agreed to address the circuit split. The Court's decision will be significant both for decided cases and cases pending on appeal that present the valuation misstatement issue.

### **Attorneys**

Mark D. Allison

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