How Will the Supreme Court's Decision Overturning the Chevron Doctrine Affect Tax Lawyers?

Allison D. H. Soares and Lauren Suarez

Jul 26, 2024 0 min read

Summary

- The decisions in *Loper Bright Enterprises v. Raimondo* and *Corner Post, Inc. v. Federal Reserve* set the stage for a potential boom within the tax community by opening the door to challenges to federal agencies and their regulations.
- In *Loper*, the Supreme Court determined that the "best interpretation" of a statute would be left to the new sheriff in town: the judiciary.
- Now that Chevron deference is gone, *Corner Post* allows more time for new challengers to contest old regulations.

©2019 Richard Sharrocks

The U.S. Supreme Court presides over a multitude of cases each term. The rulings and cases that have the most social impact seem to be the ones that receive more coverage in traditional and social media than the rest. However, that does not mean that all the other Supreme Court decisions are not equally impactful on the citizens of our country. In the most recent Court term, two of those cases created an opening for corporations, public interest groups, associations, and individuals to challenge federal agencies and their regulations and enactment. These cases could have a wide effect on everyone in the legal profession, not just those of us in the tax world.

The cases in question are *Loper Bright Enterprises v. Raimondo*, 603 U.S. ___ (2024), and *Corner Post, Inc. v. Federal Reserve*, 603 U.S. ___ (2024). With these decisions, there is no doubt that the simple word *Chevron* has become a trigger word among the U.S. population. No doubt, many people are probably thinking, "What did the Chevron oil company do now? Was there an oil spill? Did gas prices increase again?" Alas, it was nothing as exciting (or at all related to the familiar Chevron gasoline stations the average driver might pass on the way to work). Instead, it was a tax issue that pushed the Chevron name out into the open over the last month.

Loper Bright Enterprises v. Raimondo

The Supreme Court's ruling in *Loper Bright Enterprises v. Raimondo* overturned the Court's ruling 40 years ago in *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). *Chevron* instituted a doctrine to interpret statutes administered

by federal agencies, whereby a reviewing court must determine whether Congress expressed intent in a statute and, if so, whether this intent is ambiguous. If the intent of Congress is unambiguous, agencies must carry out the express intent of Congress. But if the intent is ambiguous, courts must defer to the interpretation of the agency tasked with administering the statute, so long as the agency's interpretation is not unreasonable.

In *Loper*, the Supreme Court determined that the Chevron Doctrine would be overturned, and the "best interpretation" of a statute would be left to the new sheriff in town: the judiciary. It was determined that a court must now operate with independent judgment in interpreting a statute and reviewing the administering agency's interpretation of the statute. The Administrative Procedure Act (APA), which Congress enacted to restrain federal agencies, will prescribe how courts are to review such federal agency actions. The APA makes it very clear that agencies are *not* entitled to deference when interpreting statutes.

An agency's interpretation, as reflected in a regulation or other agency action, may have *some* sway, the Court said. If a statute expressly authorizes an agency to act, courts must respect that delegation of authority, but "consistent with constitutional limits," the court must ensure the agency has acted within those limits. As attorneys, the question we need to know when the court is reviewing a case is, "Does the statute authorize the challenged agency action?"

Corner Post, Inc. v. Federal Reserve

The second case, *Corner Post, Inc. v. Federal Reserve*, might have a bigger impact on attorneys. In this case, a truck stop that opened for business in 2018 challenged under the APA certain regulations of the Federal Reserve Board that place limits on the fee that banks may charge merchants for debit-card purchases (as a merchant, the truck stop complained that the bank fee limits were too high as they allowed banks to collect costs that the authorizing statute prohibited). Because the regulations were promulgated in 2011, the lower courts initially dismissed the lawsuit—which the truck stop joined in 2021—on the grounds that the six-year limitations period applicable to APA claims had expired. The Supreme Court reversed, holding that the limitations period does not begin for a particular plaintiff until a claim accrues with that plaintiff. Because the truck stop only came into existence in 2018, its 2021 lawsuit was timely, thus extending the statute and timeline that a taxpayer can fight the agency's interpretation of the statute.

Now that Chevron deference is gone, *Corner Post* allows more time for new challengers to contest old regulations. This could lead to a flood of new lawsuits, potentially harming the federal government's ability to function. However, being able to challenge these older regulations doesn't guarantee success for those stepping forward looking for a change.

Implications for Tax Law

These two cases may be relatively insignificant to the average taxpayer, but combined, they have the potential to create a boom within the tax community by opening the door for corporations, public interest groups, associations, and individuals to come forward with challenges to federal agencies and their regulations that previously would never have seen the light of day. Ultimately, we highly recommend that you read the full opinions of these two monumental Supreme Court cases to gain a deeper understanding of whether challenging a federal agency's regulation might be worth the costs for you and your clients.

Author

Allison D. H. Soares

Allison D.H. Soares, JD, MBA San Diego (619) 618-6648 | Irvine (949) 449-1446 | San Francisco (415) 799-3031 Allison@VanstLawFirm.com | www.AllisonSoares.com| www.VanstLawFirm.com...

Lauren Suarez

Lauren Suarez (lsuarez@rjslawfirm.com), of counsel with RJS Law Firm, is a SanDiego native with a passion for tax. She has worked on both the tax controversy side and the tax preparation side for businesses and individuals...

Published by the American Bar Association ©2024. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

ABA American Bar Association | https://www.americanbar.org/groups/gpsolo/resources/ereport/2024-july/how-will-supreme-courts-decision-overturning-chevron-doctrine-affect-tax-lawyers/