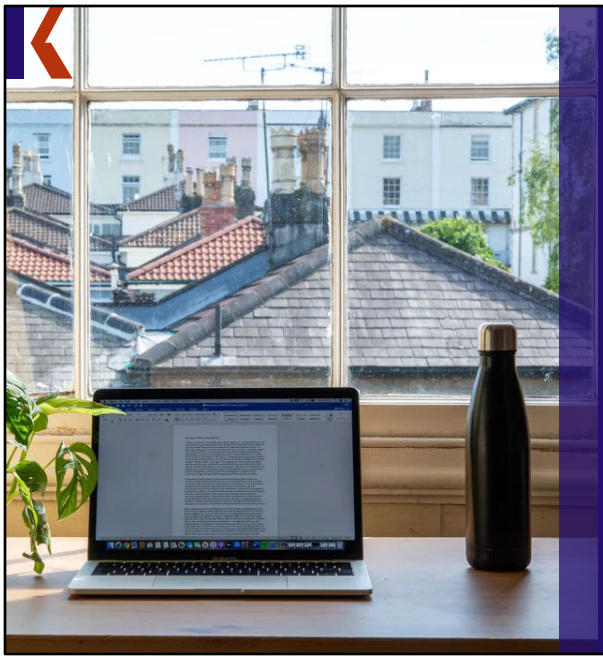

Current Federal Tax Developments

July 8, 2024

Kaplan Financial Education

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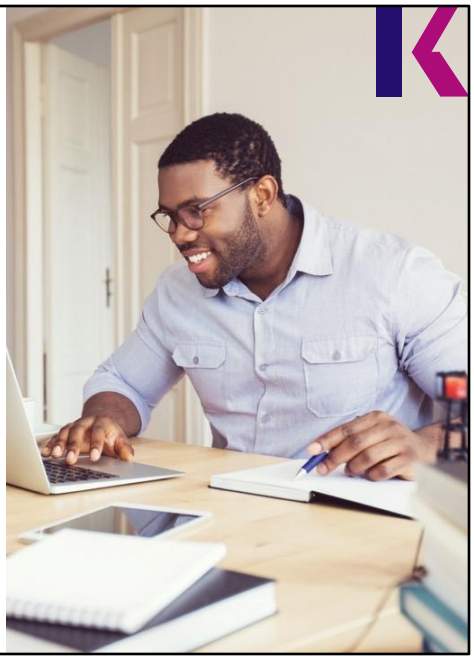
This Week We Look At:

End of term US Supreme Court cases that will likely impact challenges to Treasury regulations, overturning the concept of *Chevron* deference and extending the statute to challenge regulations under the Administrative Procedures Act



https://www.currentfederaltaxdevelopments.com

Key Cases on Regulations

Photo by Ian Hutchinson on Unsplash

- Two cases decided at the end of the term may have a major impact on the ability of taxpayers to mount court challenges to regulations
  - *Loper Bright Enterprises v. Raimondo* – Holds Courts do not have to give absolute deference to agencies on interpretation of ambiguous statutes
  - *Corner Post Inc. v. Federal Reserve* – The statute of limitations for a taxpayer to challenge a regulation under the Administrative Procedures Act does not begin to run until the taxpayer is first damaged by the rule, not when the agency releases the regulation
  - So have more time to file a challenge against a regulation and have an easier time challenging the regulation

- *Loper Bright Enterprises v. Raimondo* - https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf
- *Mayo Foundation for Medical Ed. and Research v. United States* - https://supreme.justia.com/cases/federal/us/562/44/

The End of Chevron Deference

Photo by Ian Hutchinson on Unsplash

- *Loper Bright Enterprises v. Raimondo*, USSC Case Nos. 22-451 and 22-1219, June 27, 2024
  - Not a tax issue, but deals solely with whether a court is bound by the Supreme Court's Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc., 467 U. S. 837 (referred to as Chevron deference)
  - The Court had been chipping away at Chevron, creating a number of special cases that worked around Chevron but had not explicitly overturned the case
  - In 2010 the Supreme Court had issued the opinion in *Mayo Foundation for Medical Ed. and Research v. United States*, 562 U.S. 44 (2010) that did cite Chevron but also found a delegation by Congress to the IRS at IRC §7805(a) (Justice Roberts wrote both opinions)

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The End of Chevron Deference

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- *Loper Bright Enterprises v. Raimondo*, USSC Case Nos. 22-451 and 22-1219, June 27, 2024
  - What was *Chevron* deference? Applied a two-pronged test for a court to determine a tax regulation's validity
    - First, did the IRC itself unambiguously address and provide an unambiguous answer on the matter is question – if so that is the answer & a contrary regulation is invalid
    - If there is ambiguity, is Treasury's regulation a reasonable interpretation of the law? If so, the regulation is valid even if the Court believes there exists a better reasonable interpretation using standard statutory interpretative techniques

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The End of Chevron Deference

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  - Case involved cases on fishing rules where the court had decided the case based solely on reliance on *Chevron* deference
    - Found the statute was ambiguous on the issue in question (charges to certain boats to pay for observers)
    - However, courts concluded applying such charges to the boat owners was a reasonable interpretation of the statute (thus valid under *Chevron*)
    - Did not consider if that was the "best" interpretation of the law

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The End of Chevron Deference

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  - Majority opinion found that the Chevron was in violation of the Administrative Procedures Act
  - Courts are in charge of the proper interpretation of legal issues
    - Agency's position is deserving of respect assuming there is a reasonable amount of evidence behind it
    - However, the Court is not *required* to accept that position, even if it is a reasonable interpretation of the law
    - Rather Court applies standard methods of statutory interpretation

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The End of Chevron Deference

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  - That respect can extend to legal issues that are impacted by the agency's special expertise, but not all legal issues benefit from the agency's subject matter expertise
  - Agencies will receive more respect for their position on factual issues related to their expertise
  - Argued that Chevron did not provide uniformity or predictability for application of the law, one of the key arguments of the government and the dissent

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The End of Chevron Deference

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  - *Stare decisis* is not adequate to save *Chevron* in the majority's view, as it was poorly decided and not useful
  - However, the mere fact a precedential case issued before this opinion was decided based on *Chevron* deference does not mean it is automatically invalid

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The End of Chevron Deference

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- *Loper Bright Enterprises v. Raimondo*, USSC Case Nos. 22-451 and 22-1219, June 27, 2024
  - Tax impacts – while it will be easier to challenge an IRS regulation in court, that only helps if you truly can afford to take the IRS to court
    - Don't expect IRS agents to accept such a challenge absent existing clear controlling precedent (you need someone else to get it to trial)
    - However, if a client has the resources and it would make economic sense to take the matter to trial, you may find the IRS decides to settle before the matter could get to court if Counsel believes your case may have merit (want to avoid a problematic decision) - *Jarrett et al v. United States* where the IRS avoided trial on staking

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The End of Chevron Deference

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  - As *Chevron* only affects regulations, may see the IRS lean harder on unofficial guidance (website, announcements, etc.)
  - Since the "correct" answer seems unclear to judges at times (see the 6-2 decision in this case), expect to see more Circuit splits (where a taxpayer lives may have an impact on the law unless the taxpayer can litigate at Court of Claims or get SCOTUS to hear the case)
  - Will also need to see how much difference the "respect" test makes vs. *Chevron* deference

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Challenges to Regulations Under APA Statute Begins When Plaintiff First Suffered Injury

Photo by Ian Hutchinson on Unsplash

- *Corner Post Inc. v. Federal Reserve*, USSC Case No. 22-1008, July 1, 2024
  - Under the APA a challenge can be brought up to 6 years after "the right of action first accrues"
  - Six Circuits have held that a facial challenge to a regulation, a right of action accrues, and the limitation period begins, upon publication of the regulation
  - However, the Sixth Circuit held that the limitation period begins only when the party is injured by the final action
  - Supreme Court notes that under the law, the party could not have sued over this issue until they had incurred an injury

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- *Corner Post Inc. v. Federal Reserve*, USSC Case No. 22-1008, July 1, 2024
  - Government argued that a claim "accrues" when the final regulation is published, so six years from that date the APA claim would be outside of statute for everyone
  - Supreme Court finds a right of action accrues when the plaintiff has a complete and present cause of action – that is, the right to bring suit

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Challenges to Regulations Under APA Statute Begins When Plaintiff First Suffered Injury

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  - That only occurs under the Act when the party suffers an actual injury, not when the causes that may lead to the injury took place
  - The injury test for a cause of action is the standard rule and there's no indication Congress intended a different interpretation – and Congress has written such earlier start dates into other laws but not this one

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Challenges to Regulations Under APA Statute Begins When Plaintiff First Suffered Injury

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- *Corner Post Inc. v. Federal Reserve*, USSC Case No. 22-1008, July 1, 2024
  - As well, it doesn't matter that some other person had the right to sue on the date the final rule was published (in this particular case existing businesses were being charged interchange fees for accepting debit cards at the time the rule was finalized)
  - The majority opinion also rejected claims that the statute should start when the rule is finalized to give certainty and not disadvantage those who have relied upon the regulation for years – it finds that "administrative convenience" does not override the clear wording of the statute and the there are other means by which a long-standing regulation can be challenged.

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Challenges to Regulations Under APA Statute Begins When Plaintiff First Suffered Injury

Photo by Ian Hutchinson on Unsplash

- *Corner Post Inc. v. Federal Reserve*, USSC Case No. 22-1008, July 1, 2024
  - Impact on tax
    - Allows impacted taxpayers to challenge the regulation via failure to properly follow the APA along with other existing options
    - Arguably will make it easier to bring challenges to those regulations
    - Could be useful combined with the repeal of the Chevron rule to bring certain regulations back before the courts

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Regulatory Challenges Following Cases

Photo by Ian Hutchinson on Unsplash

- Likely won't know the impact until we see how courts react to these Supreme Court cases
  - Immediate impact is likely limited until/unless your client is willing to litigate (and IRS believes they aren't bluffing)
  - Key questions will be how much difference the lower courts see between respect and deference for agency positions
  - With increased activity by the courts in using APA issues to invalidate guidance, the Corner Post case may be the more substantial one

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