

Key Wealth Institute

Recent Supreme Court Ruling Impacts Estate and Tax Planning

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We often report on the impact of recent U.S. Supreme Court decisions, especially when they can have a major influence on the financial world. We believe that the court's landmark ruling in June overturning the 40-year-old Chevron Doctrine could potentially shake the foundations of estate and tax planning.

This article breaks down how that decision, *Loper Bright v. Raimondo*, and a companion case, *Relentless Inc. v. Department of Commerce*, may affect advisors and taxpayers.

Collectively, the cases are referred to as *Loper Bright*.

Ruling summary

In *Loper Bright Enterprises v. Raimondo*, the Supreme Court ruled that courts may not defer to an agency's interpretation of the law just because a statute is ambiguous. In plain language, estate and tax law is often vague. Many government agencies issue guidance and regulations on interpreting ambiguous laws. In the past, courts have given great weight, or deference, to such regulations issued by governmental agencies. This approach has been known as the Chevron Doctrine.

Overview of the Chevron Doctrine

The Chevron Doctrine, also known as Chevron deference, comes from a 1984 Supreme Court case (*Chevron USA, Inc. v. Natural Resources Defense Council*). In that case, Chevron contested regulations issued by the Environmental Protection Agency (EPA).



This doctrine provided the framework for determining whether a statute is substantively valid, giving authority to guidance issued by governmental agencies so long as the interpretation was reasonable. In a 2011 case, *Mayo Foundation for Medical Education and Research*, the court also held that the Chevron deference applied to interpretive tax regulations under Sec. 7805(a). That ruling gave a general grant of authority to "prescribe all needful rules and regulations for the enforcement" of the Internal Revenue Code.

For example, the U.S. Treasury can add additional requirements to a new tax law. It could issue regulations to require a new form to be filed, certain parameters to prevent abusive practices, or for the ease of administration. However, these requirements are not included in the actual statute.

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The Chevron Doctrine gave the Treasury's interpretive regulations a higher level of deference. They were basically considered substantial authority. In the tax world, substantial authority is what you strive for. You have substantial authority if, under IRS rules, the weight of published cases, rules, and other legal and administrative authorities is substantial in relation to the weight of opposing authorities.¹

Having substantial authority gives you greater confidence that your position has support with the tax authorities.

Now, the Supreme Court has returned to the courts much of the substantial authority previously given to government agencies, overruling 40 years of precedent. Under the Administrative Procedure Act (APA), a court must exercise independent legal judgment to decide whether an agency has acted within its statutory authority in issuing regulations.

Courts can pay "careful attention" to an agency's guidance. However, courts cannot simply defer to an agency's interpretation because the statute is ambiguous. Chief Justice John Roberts authored the opinion. Justices Neil Gorsuch and Clarence Thomas issued concurring opinions. Justices Elena Kagan, Sonia Sotomayor, and Ketanji Brown Jackson dissented in the 6-3 vote.

What does this mean?

The impact at the federal level will be immediate. All agency interpretations will be affected, not just tax-related agencies.

Federal judges will not have to rely on IRS tax regulations when interpreting the law for estate and tax planning. If the courts have to rule on an issue or position taken on a return, the court does not have to give weight to the regulation. If the court feels the IRS interpretation of the statute is not reasonable, judges could interpret the statute differently.

Post-Loper Bright, this means that you have to look at whether the statute gives specific direction to the administrative agency to issue interpretive regulations. Lacking such specific direction would mean less weight given than before the Loper Bright ruling.

If the law directs an agency to issue guidance, then those regulations may be given greater weight than a law that does not mandate that guidance be issued. This uncertainty, in what regulations will be given greater weight and future challenges to previous regulations, will leave taxpayers and advisors uneasy.

Taxpayers who have taken positions based on the Chevron doctrine should review those positions in light of the Loper Bright standard. If you relied on an agency regulation in taking your position, determine whether your position will withstand a challenge. Consult your certified public accountant and tax attorney about whether current action is advisable.

For actual court cases, the U.S. Supreme Court stated that if a previous pre-Loper case upheld the regulations of a federal agency under the Chevron Doctrine, that case could not be reopened. Those prior decisions hold despite the court's change in interpretive methodology.

For future tax rulemaking, Treasury and IRS guidance may be given less deference. This means that Congress will have to be more precise in drafting legislation if it wants specific issues to be covered, rather than relying on the Treasury or IRS to fill those gaps.

For more information, please contact your advisor.

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About the Author

In her role, Tina Myers is responsible for managing the Central Planning Team and overseeing the Key Wealth Institute and any financial planning content distributed. She works with our Regional Planning Strategists to help facilitate our best thinking and advice delivery to clients.

Before joining Key, Tina worked in the public accounting industry, where she focused on taxes, specifically individual, trust, estate, and gift tax planning. She also held roles at a small public accounting firm, a regional firm, and the private client group of a large multi-national firm.

Tina earned an M.Tax from Virginia Commonwealth University and holds several industry-standard licensures. She received the Circle of Excellence Award for Key Private Bank in 2016 and 2018. She was selected to attend the 2024 Key Wealth Education Symposium which recognizes top performance and extraordinary commitment to serving our clients and growing our business.



¹Treasury Regulation § 1.6662-4(d)(3)(iii) provides a list of what constitutes authority for purposes of the substantial authority exception.

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