Larry's Tax Law

The U.S. Supreme Court Overrules the Landmark Decision in Chevron - Loper Bright Enterprises v. Raimondo

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On June 28, 2024, in *Loper Bright Enterprises v. Raimondo*,[1] the U.S. Supreme Court overruled the landmark case of *Chevron U.S.A. v. Natural Resources Defense Council, Inc. et. al.*[2] Interestingly, the *Loper* decision was rendered exactly 40 years and three days after the U.S. Supreme Court had decided *Chevron*.

I expect there will be a slew of law review and other scholarly journal articles that will examine in detail the court's decision and its impact on American jurisprudence. This blog article is not designed to provide that type of commentary. Rather, my aim is to provide readers with a succinct but clear understanding of the *Loper* ruling and its likely implications relative to the administration of our federal tax laws.

Background

On June 25, 1984, the U.S. Supreme Court rendered its opinion in *Chevron.* In that decision, the high court ruled that courts must defer to the expertise of regulatory agencies to interpret and apply federal laws. While the case before the court in *Chevron* was focused on agencies that interpret and apply labor and employment laws (e.g., the Department of Labor, the National Labor Relations Board, the Equal Employment Opportunity Commission, etc.), its ruling extended and applied to the other federal administrative agencies, including the Department of the Treasury ("Treasury") and its regulations.

The outcome of the 1984 ruling was what has come to be known as the "Chevron Doctrine." The doctrine, which has been cited and applied in a plethora of cases over the past 40 years, in essence, provides that a court is required to uphold an agency's interpretation of a statute as long as the interpretation is reasonable. In order words, the courts must give deference to the agencies.

In the context of federal tax laws, Treasury is the executive body of the government responsible for implementing tax laws. The Internal Revenue Service, a bureau of Treasury, is responsible for enforcing the tax laws.

Treasury (the highest administrative authority in the context of federal tax laws) has authority

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to issue tax regulations. Code Section 7805(a) expressly grants Treasury authority to "prescribe all needful rules and regulations for enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."

There are two types of Treasury Regulations, namely "Legislative Regulations" and "Interpretative Regulations." In general, Legislative Regulations arise from express authority given to the IRS that is set forth in legislation. As such, these regulations are authoritative and difficult to overturn as long as they do not exceed the express authority embodied in the legislation.

On the other hand, Interpretative Regulations, which come within Treasury's general authority to make rules and regulations relative to our tax laws, are more often ripe for challenge. When these regulations come under attack, the claim is often that they are contrary to the underlying legislation or that they go beyond a mere interpretation of the law.

In accordance with the court's decision in *Chevron*, the Chevron Doctrine has been used by the courts as the proper tool for deciding challenges to Treasury Regulations. Under the doctrine, as stated above, when the agency's interpretation of the law is at issue, the courts, giving deference to the agency, were required to explore whether the agency's interpretation of the law in the regulation is reasonable.

***Loper* Decision**

As stated above, on June 28, 2024, almost 40 years to the day that *Chevron* was decided, the U.S. Supreme Court overturned it in the *Loper* case, inflicting the death of the Chevron Doctrine. In a 6-3 decision,[3] Chief Justice Roberts delivered the opinion.

In its opinion, the court states that giving agencies deference in resolving statutory ambiguities is misguided and inconsistent with the Administrative Procedure Act ("APA"). Rather, the court reasons that the APA requires that the courts exercise independent judgment in deciding whether an agency has acted within its statutory authority. The court ultimately concludes, in the case of ambiguity, courts may not defer to an agency interpretation of the law.

Justice Roberts states:

"Perhaps most fundamentally, Chevron's presumption is misguided because agencies have no special competence in resolving statutory ambiguities. Courts do. The Framers, as noted, anticipated that courts would often confront statutory ambiguities and expected that courts would resolve them by exercising independent legal judgment. And even Chevron itself reaffirmed that "[t]he judiciary is the final authority on issues of statutory construction" and recognized that "in the absence of an administrative interpretation," it is "necessary" for a court to "impose its own construction on the statute." Id., at 843, and n. 9. Chevron gravely erred, though, in concluding that the inquiry is fundamentally different just because an

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administrative interpretation is in play. The very point of the traditional tools of statutory construction-the tools courts use every day- is to resolve statutory ambiguities. That is no less true when the ambiguity is about the scope of an agency's own power-perhaps the occasion on which abdication in favor of the agency is least appropriate."

Likely Impact of the *Loper* Decision

As stated above, we will definitely see a large number of scholarly law review and journal articles about the *Loper* decision in the days to come. In the interim, relative to its application to our federal tax laws, there are a few takeaways.

First, the standard to be employed by the courts in a challenge to a Treasury Regulation has changed. That standard is now depleted of agency deference. Rather, it appears that the standard will be, looking at the totality of the matter, including the statute and its legislative history, whether the agency's interpretation of the law is "reasonable."

Second, the *Loper* standard of review may result in more controversies over administrative rules. From the taxpayer perspective, one thing is clear - the bar has been lowered. Consequently, any preexisting reluctance to challenge an administrative interpretation of the Code may be lessened now that the hurdles created by *Chevron* are no longer. Whether we will see a rise in tax controversies is yet to be seen.

Third, the *Loper* decision may play into Treasury's future regulation writing. One would expect more caution will be deployed, possibly slowing down Treasury's regulation writing process. Accordingly, *Loper* could be a hinderance in cases where taxpayers need prompt regulatory guidance from Treasury like we saw with the adoption of Code Section 199A by Congress as part of the Tax Cuts and Jobs Act.

Fourth, keep in mind, while I focus on tax laws, *Loper* extends to all of our federal agencies and their rulemaking activities (e.g., Commerce; Transportation; Education; Health and Human Services; Homeland Security; Veterans Affairs; Housing and Urban Development; Elections; Labor; Communications; Trade; Securities and Exchange, etc.). Like tax practitioners, lawyers and advisors dealing with federal agencies, as well as the agencies themselves, will have to wrestle with the new standard of review created by *Loper*.

Last, it is worth noting that some states have judicially or legislatively adopted the Chevron Doctrine. Other states have adopted a different or modified standard of review. Whether *Loper* will affect how state courts review agency administrative interpretations of their laws is not known. Time will tell.

Conclusion

The extent to which *Loper* will impact the administration of our federal tax laws is yet to be seen. I look forward to reading the scholarly law review and journal articles on *Loper*.

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[1] 603 U.S. __ (2024).

[2]467 U.S. 837 (1984).

[3] Justices Thomas and Gorsuch filed concurring opinions. Justice Kagan, joined by Justice Sotomayer, filed a dissenting opinion. Justice Jackson did not participate in the decision.

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Tagged as Chevron, Loper Bright Enterprises v. Raimondo, regulatory agencies, Treasury, U.S. Supreme Court

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