

Chevron Ruling No Sea Change For Tax Court, Judge Says

By **Kat Lucero**

Law360 (June 28, 2024, 3:28 PM EDT) -- The U.S. Tax Court will continue to rely on the IRS and Treasury's expertise in the tax code following the U.S. Supreme Court's landmark decision to overturn the 40-year-old Chevron doctrine that directed courts to defer to federal agencies' interpretations of ambiguous law, a judge said Friday.

The U.S. Treasury Department and the Internal Revenue Service have special competence in drafting tax regulations, so the Tax Court will continue to lend considerable credence to the agencies' rules, Tax Court Judge Elizabeth Ann Copeland said, speaking at New York University School of Professional Studies' tax controversy forum, held in New York and online.

"I don't think that will change that much," she said.

The Supreme Court issued the decision that struck down Chevron deference in a case known as *Loper Bright v. Raimondo* just before Copeland's panel began.

While the Tax Court will follow the new Supreme Court precedent, taxpayers and practitioners can still expect that disputed regulations will be considered in light of the entire statutory scheme when there is any ambiguity, Copeland said.

In a 6-3 ruling in the *Loper Bright* case, a majority of the Supreme Court held that the high court's test established in 1984's *Chevron v. Natural Resources Defense Council* improperly prioritized the executive branch's legal interpretations over the judicial branch's.

The *Loper Bright* case was brought by fishing groups that sought to strike down Chevron deference in their challenge to a 2018 National Marine Fisheries Services rule that required fishers to pay part of the cost of having federal compliance monitors aboard their ships. The high court consolidated the *Loper Bright* opinion with a similar case called *Relentless v. Department of Commerce*.

In the *Loper Bright* opinion, the majority said, Chevron deference was "misguided because agencies have no special competence in resolving statutory ambiguities. Courts do."

IRS Chief Counsel Margie Rollinson, speaking at the same panel Friday, said the majority's opinion recognized that some statutes expressly authorize agencies to exercise a degree of discretion in their regulations. Rollinson said this is especially true when the tax agency has recently "upped the degree of difficulty" in making sure a regulation complies with the Administrative Procedure Act, which

governs federal agency rulemaking, she said.

"We'll still be complying with the APA, and then we'll also have the hurdle of whether the court thinks we got it right," Rollinson said.

Practitioners on the same panel as Copeland and Rollinson noted the opinion's reference to the so-called Skidmore principle, which says the courts' level of deference to an agency is based on its experience and informed judgment as allowed in the statute.

"We might be going back to that where we're looking at how the agency thought through and documented that contemplation in the process of issuing or promulgating the regulations," said Jennifer Breen, a partner at Morgan Lewis & Bockius LLP.

--Additional reporting by Juan-Carlos Rodriguez. Editing by Neil Cohen.