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Potential State and Local Tax Implications of the U.S. Supreme Court's Decision in Loper Bright Enterprises v. Raimondo

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On June 28, 2024, the U.S. Supreme Court issued its decision in *Loper Bright Enterprises et. al. v. Raimondo, Secretary of Commerce, et. al.*, No. 22-451 603 U.S. ___, (June 28, 2024), in which it held that in interpreting ambiguous statutes, courts are not required to defer to agency interpretations. The 6-2 majority opinion written by Justice Roberts overturned the Court's four-decade old decision in *Chevron U.S.A., Inc. v. NRDC* which required courts to defer to "permissible" agency interpretations of ambiguous statutes they administer as long as certain circumstances were met. Although *Chevron* was not a tax case, the principle of deference to agency interpretation ("*Chevron* deference") was often invoked by courts deciding tax cases, almost universally to the taxpayer's detriment.

Writing for the Court, Justice Roberts found that *Chevron* deference "cannot be squared with" the federal Administrative Procedure Act ("APA") which, among other things, "specifies that courts, not agencies, will decide *all* relevant questions of law arising on review of agency action." (Emphasis in original, quotations omitted.) The Court also noted that the deference to agency interpretation "was misguided because agencies have no special competence in resolving statutory ambiguities. Courts do."

State and Local Tax Implications

While the decision in *Loper Bright* held that *Chevron* deference was incompatible with the federal APA, which generally does not apply to the state and local taxing authorities that are involved in state and local tax controversies, the decision still has the potential to greatly impact state and local tax cases.

First, although state taxing authorities are not subject to the federal APA, many states have their own administrative procedure act which have provisions that are substantially similar to the provisions of the federal APA and therefore warrant a substantially similar interpretation.

Second, many state courts and administrative tribunals have cited to *Chevron* and applied *Chevron* style deference when deferring to a taxing authority's interpretation of a tax statute,

including interpretations formally set forth in agency regulations. To the extent *Chevron* has been relied upon by courts when giving deference to administrative interpretations of tax statutes, this reliance is no longer appropriate. (It should be noted, however, that the Court in *Loper Bright* expressly stated that its decision does "not call into question prior cases that relied on the *Chevron* framework," so the Court's decision in *Loper Bright* does *not* provide a basis to challenge previous decisions.)

Third, while the Court's primary focus was on the conflict between the APA and the holding in *Chevron*, the Court also explained that it has always been the courts' job to interpret statutory provisions and that this 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." (Emphasis in original.) This general principle, that a court's primary function is to interpret the law and that its function should not be usurped by an agency, is equally applicable at the state court level and can be used to help level the playing field between taxpayers and taxing authorities in controversies involving statutory interpretation.

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