

U.S. Supreme Court Rulings Affect Challenges to Tax Regulations

Christopher Rizek, Joshua Odintz, Chad Vanderhoef and Jim Dawson

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Holland & Knight

The Administrative Procedures Act

- Primer on APA – Notice & Comment, force and effect of law.
- Application to tax cases
- Levels of deference

Loper Bright and Corner Post

- Summary of *Loper Bright Enterprises v. Raimondo*, No. 22-451 (U.S. June 28, 2024)
- Summary of *Corner Post Inc. v. Board of Governors of the Federal Reserve System*, No. 22-1008 (U.S. July 1, 2024)

Loper Bright and Corner Post and their impact on Tax Regulations

- Application to tax regulation challenges
 - “Fighting” regs
 - Legislative regulations v. interpretative regulations
 - Substantive regulations v. procedural regulations
 - Limitations
 - Would *any* regs be *immune* to these challenges? Why?

Examples of regs that may be subject to challenge

- Sections 385 regs
- Section 482 (Alterra)
- Partnership Basis Shift Regulation
- BBA regs

Potential Challenges

- Taxpayers approach
 - Legislative history (e.g., reasons for change)
 - Reconciling challenge to tax regulations with tax anti-injunction act
- IRS approach
 - Drafting of statutory notice of deficiency language
 - Will the IRS increase its use of judicial doctrines in lieu of regs? - See *Liberty Global*

Potential Challenges- Continued

- Effect on statutory drafting process
- Effect on reg writing process
- Fact vs legal determinations

Impact to Flora rule due to Corner Post

- An APA challenge might apply to the first partial payment otherwise barred by Flora
- Conversely, if your refund cause of action doesn't arise until full payment, when does your APA claim become ripe?

Questions?

Our Team



James Dawson
PARTNER

James.Dawson@hklaw.com

561.650.8352

James "Jim" Dawson is a highly experienced tax litigation attorney and tax advisor in Holland & Knight's West Palm Beach office with extensive knowledge resolving Internal Revenue Service (IRS) controversies in audit, appeals and litigation. For more than 13 years, Mr. Dawson served as staff attorney for the IRS' Office of Chief Counsel, where he developed, prepared and tried complex factual and legal cases for trial before the U.S. Tax Court.

Our Team



Joshua Odintz
PARTNER

Joshua.Odintz@hklaw.com

202.469.5207

Joshua D. Odintz is a tax attorney in Holland & Knight's Washington, D.C., office. Mr. Odintz focuses on tax policy, tax controversy and tax planning matters.

Mr. Odintz represents clients before the U.S. Department of the Treasury, Internal Revenue Service (IRS), U.S. Congress and the Organisation for Economic Co-operation and Development (OECD). He assists clients in seeking legislative and regulatory changes to tax laws, as well as monitoring key legislative and regulatory developments.

Our Team



Christopher Rizek
PARTNER

Christopher.Rizek@hklaw.com

202.469.5660

Christopher S. Rizek is a tax attorney in Holland & Knight's Washington, D.C., office. Mr. Rizek represents taxpayers in all types of federal civil and criminal tax controversy matters. He guides clients through IRS audits, prepares administrative claims and protests of IRS actions, and litigates tax and tax-related cases in U.S. district and appellate courts, the U.S. Court of Federal Claims and U.S. Tax Court.

Our Team



Chad M. Vanderhoef
PARTNER

Chad.Vanderhoef@hklaw.com

813.227.6388

Chad Vanderhoef is a tax attorney based in Holland & Knight's Tampa office, where he focuses his practice on tax controversy and litigation, offshore tax and reporting compliance (e.g., Report of Foreign Bank and Financial Accounts / FBARs, international information returns), cross-border tax planning, and foreign investment in U.S. real estate.