



Tax Planning for 2025 and Beyond: A Review of Expiring TCJA Tax Provisions and the Overturning of Chevron Deference

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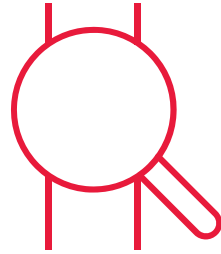
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Learning Objectives



Analyze the significant TCJA tax provisions that are expiring at the end of 2025.



Assess the options available to Congress to close the expected tax gap.



Evaluate what the overturning of Chevron deference may mean to taxpayers and the government.

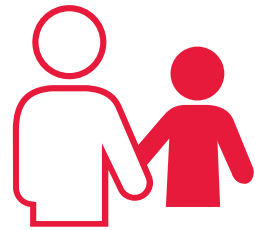
Discussion Topics



Legislative and Policy Update



Key International Provisions Changing After 2025



The Impact of TCJA Sunsetting on Estate, Gift, and Generation-Skipping Transfer Taxes



Change in Regulations and Policy

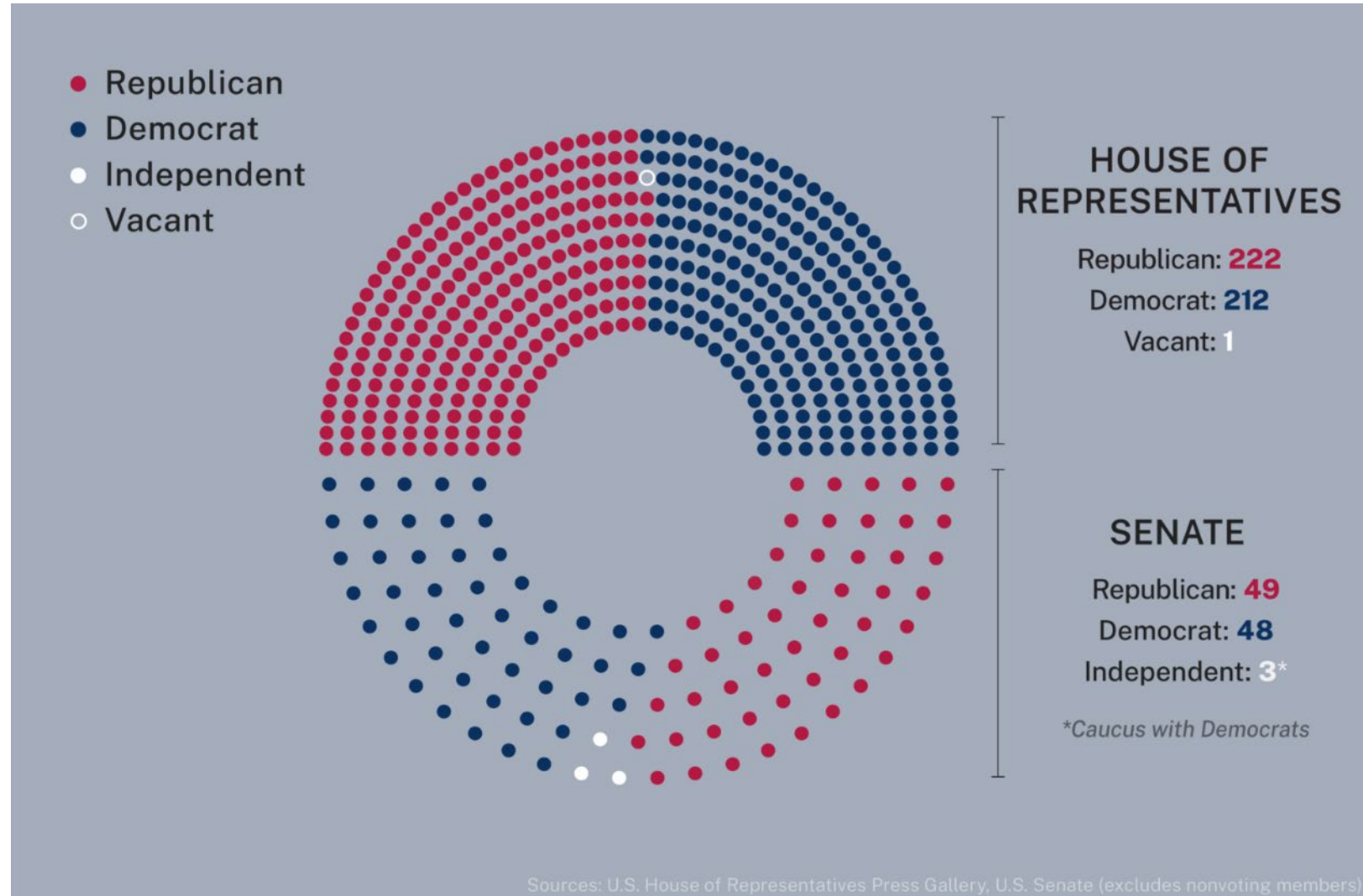
118th Congress by Political Party

HOUSE: **220-GOP**
212-Dem
3-Vacant

SENATE: **47-Dem**
4-Ind
49-GOP

WHITE HOUSE: **Joe Biden**

Sources:
U.S. House of Rep. Press Gallery U.S. Senate



Legislative Activity

SIGNIFICANT LAWS PASSED SINCE 2017

- ▶ JOBS Act of 2017
 - Most provisions expire after 2025
- ▶ Inflation Reduction Act of 2022, including clean energy provisions
 - \$80 billion funding to IRS, which was later reduced by \$20 billion
 - IRS has indicated it will use the funding to:
 - Improve services
 - Quickly resolve taxpayer issues
 - Focus expanded enforcement
 - Deliver cutting-edge technology
 - Attract, retain, empower highly-skilled workforce



Legislative Activity:

TAX RELIEF FOR AMERICAN FAMILIES AND WORKERS ACT OF 2024

- ▶ Where we might be
 - As of today, Senate sitting on H.R. 7024, Tax Relief for American Families and Workers Act of 2024 (passed House January 31, 2024)
 - Bill would restore R&D expensing, EBITDA-based interest deduction under 163(j), and 100% bonus depreciation through 2025.
 - Enhanced child credit, Taiwan double-tax relief, disaster relief, 179 expensing, and increase the 1099 reporting threshold.
 - \$79 billion over 10 years, to be paid for by retroactively ending ERC to January 31, 2024.
 - Could Senate vote on H.R. 7024 before year end?
- ▶ Majority Leader Schumer could put this bill on the floor before year end/early next year (depending on the election); however, without 60 votes, it likely will not get out of the Senate. If Dems sweep in November, however, it may have a chance...

Legislative Activity:

JOBS ACT EXPIRING PROVISIONS

- ▶ Whether through a tax package or an extenders bill, most JOBS Act provisions expire after 2025. These include:
 - Business provisions. The 21% corporate rate and 15% CAMT are permanent, as is the increased Sec. 179 expensing (from \$500K to \$1M). The 15% new CAMT is also not set to expire. Expiring provisions include:
 - Limit on excess business losses under Sec. 461; incomes over \$500K must carry forward
 - Bonus depreciation phase out; 20% 2026, then zero in 2027
 - Qualified 20% Business Income Deduction under Sec. 199A
 - Individual provisions. The alimony provisions effective in 2018 are permanent. Expiring provisions include:
 - Individual rates with top rate of 39.6%
 - AMT exemption
 - PEP and Pease (personal exemption and itemized deduction limits)
 - Charitable contribution limit
 - SALT \$10,000 cap

Legislative Activity

JOBS ACT INTERNATIONAL RATE CHANGES AFTER 2025

- ▶ Absent extending the current statutes, the following key changes to several TCJA related international provisions are set for tax years beginning after 12/31/2025:
 - Global Intangible Low-Taxed Income (GILTI) effective rate will increase from 10.5% to 13.125% with decrease in Sec. 250 deduction
 - Foreign-Derived Intangible Income (FDII) rate will increase from 13.125% to ~ 16%
 - Base Erosion Anti-Abuse Tax (BEAT) will increase due to the following changes:
 - Increase of BEAT rate from 10% to 12.5%
 - Elimination of benefit for R&E tax credits



JOBS Act Expiring Estate, Gift, & GST Exemption

- ▶ Estate tax is 40% of asset value above exemption amount transferred.
 - Exemption for 2024 is \$13.61M per individual; \$27.2M per couple, adjusted for inflation.
 - More than a dozen states have estate or inheritance tax at lower exemption thresholds.
- ▶ Generation-skipping transfer (GST) tax exemption may also be allocated to gifts and estates at the same \$13.61M per person, allowing for assets to be protected in trust for multiple future generations free from additional levels of estate and gift tax.
 - GST tax is another 40% in addition to estate tax when a trust is not allocated GST exemption usually when the trust no longer has non-skip beneficiaries or makes distributions to skip beneficiaries.
- ▶ Exemption may be used during life, at death, or a combination.
- ▶ Exemption amounts sunset **January 1, 2026, to about \$7M per individual.**
- ▶ In most instances, transfers made in higher exemption years, when an individual passes in a lower exemption year, will not be brought back into the taxable estate.

Biden/Harris Administration Wish List

KEY ITEMS

- ▶ Raise corporate rate from 21% - 28%.
- ▶ Increase GILTI rate from 10.5%/13.125% to 21%, implementation of a country by country GILTI, and overall foreign tax credit system.
- ▶ Repeal FDII and replace with a tax credit for “onshoring” jobs and a denial of deductions for “offshoring” jobs.
- ▶ Repeal BEAT and replace with rules consistent with the OECD Pillar 2 (Qualified Domestic Minimum Top-up Tax and Under-taxed Payment Rule).
- ▶ Expand the net investment income tax to 5% for incomes over \$400,000.
- ▶ Tax LT capital gains at ordinary rates for those earning \$1 million.
- ▶ Unrealized gain tax at death.
- ▶ Carried interest taxed as ordinary income.
- ▶ 20% unrealized gain tax for those with assets of \$100 million.
- ▶ Child credit fully refundable.
- ▶ Tighten estate tax.
- ▶ Increase earned income credit.
- ▶ Increase stock buyback excise tax to 4%.
- ▶ Increase top rate to 39.6 for individuals earning over \$400,000 (\$450,000 joint).
- ▶ Extend expiring individual provisions for those earning \$400,000 or less.

Legislative Activity

NOVEMBER, NOVEMBER, NOVEMBER

Depending on the November election, there could essentially be three possible scenarios:

GOP SWEEPS PRESIDENCY, HOUSE, AND SENATE.

Make the JOBS Act provisions, or some, permanent (would be difficult under reconciliation, as they likely would not get 60 votes in the Senate)?

Trump wants policy changes beyond JOBS Act. He would, e.g., lower the corporate rate to 15%. Would provisions be paid for?

DEMS SWEEP PRESIDENCY, HOUSE, AND SENATE.

Tax reform? Does the \$400,000 line for individual tax increases come into play? VP Harris supports the \$400,000 line.

Also supports raising corporate rate to 28%, corporate AMT to 21%. OECD global minimum tax on the table (it is a revenue raiser)?

DIVIDED GOVERNMENT

Things would move very slowly until maybe end of 2025, then perhaps a negotiated bill to, at least, address expiring provisions for a year or two.

But they do agree on exempting tips from tax...

Comparing the Presidential Candidates' Tax Policies

KAMALA HARRIS

We know what the Biden/Harris administration has expressed recent support for.

Harris has come out in support of specific policies - some that were supported by the Biden/Harris administration, some that are new:

- ▶ Increase corporate rate to 28%.
- ▶ Increase small business startup deduction from \$5,000 to \$50,000.
- ▶ Make it cheaper and easier for smalls to file taxes.
- ▶ Make it easier to take standard deduction (individuals).
- ▶ Exempt tips from tax.
- ▶ Increase maximum individual rate to 39.6 plus 5% NIIT, for total rate of 44.6%.



Comparing the Presidential Candidates' Tax Policies

KAMALA HARRIS (CONTINUED)

- ▶ Top long-term capital gains rate of 28% for individuals with income at or over \$1 million (33% with the 5% NIIT).
- ▶ Impose a billionaire minimum tax.
- ▶ Impose capital gains tax on certain estates at death.
- ▶ Expand child credit to \$6,000; expand EIC.
- ▶ 25% minimum tax on those with at least \$100 million in wealth.
- ▶ First-time home buyer credit of \$10,000.
- ▶ Global provisions? (Biden/Harris administration)
- ▶ Tax unrealized gains at death?

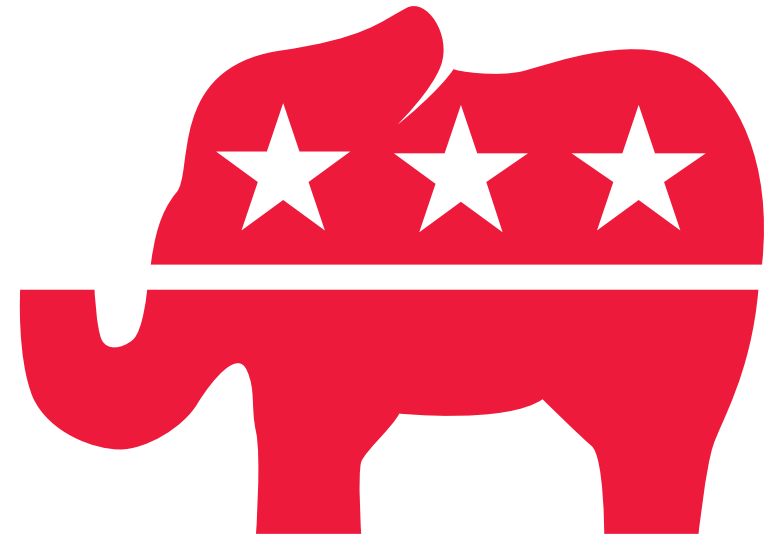


Comparing the Presidential Candidates' Tax Policies

DONALD TRUMP

Would make permanent the provisions under the JOBS Act, most of which expire in 2025, 2026. Trump also would:

- ▶ Decrease the corporate rate from 21% to 20% or 15% (Tax Foundation notes 20%; others report at 15%).
- ▶ Exempt tips from tax.
- ▶ Make the JOBS Act provisions permanent regarding individual and estate tax.
- ▶ Tax large private university endowments.
- ▶ Would replace the individual income tax with tariffs and increase tariffs.
- ▶ Increase child credit to \$5,000. (JD Vance)
- ▶ Exempt SS benefits from taxation.



Legislative Activity

OTHER TAX LEGISLATION UNDER CONSIDERATION

- ▶ Senate bipartisan bill would end tax-free reorganizations (\$500 million).
- ▶ IRS administration provisions.
- ▶ House GOP planned listening sessions, etc. to address 2025 cliff.



The Courts and Regulations: *Chevron* Overruled

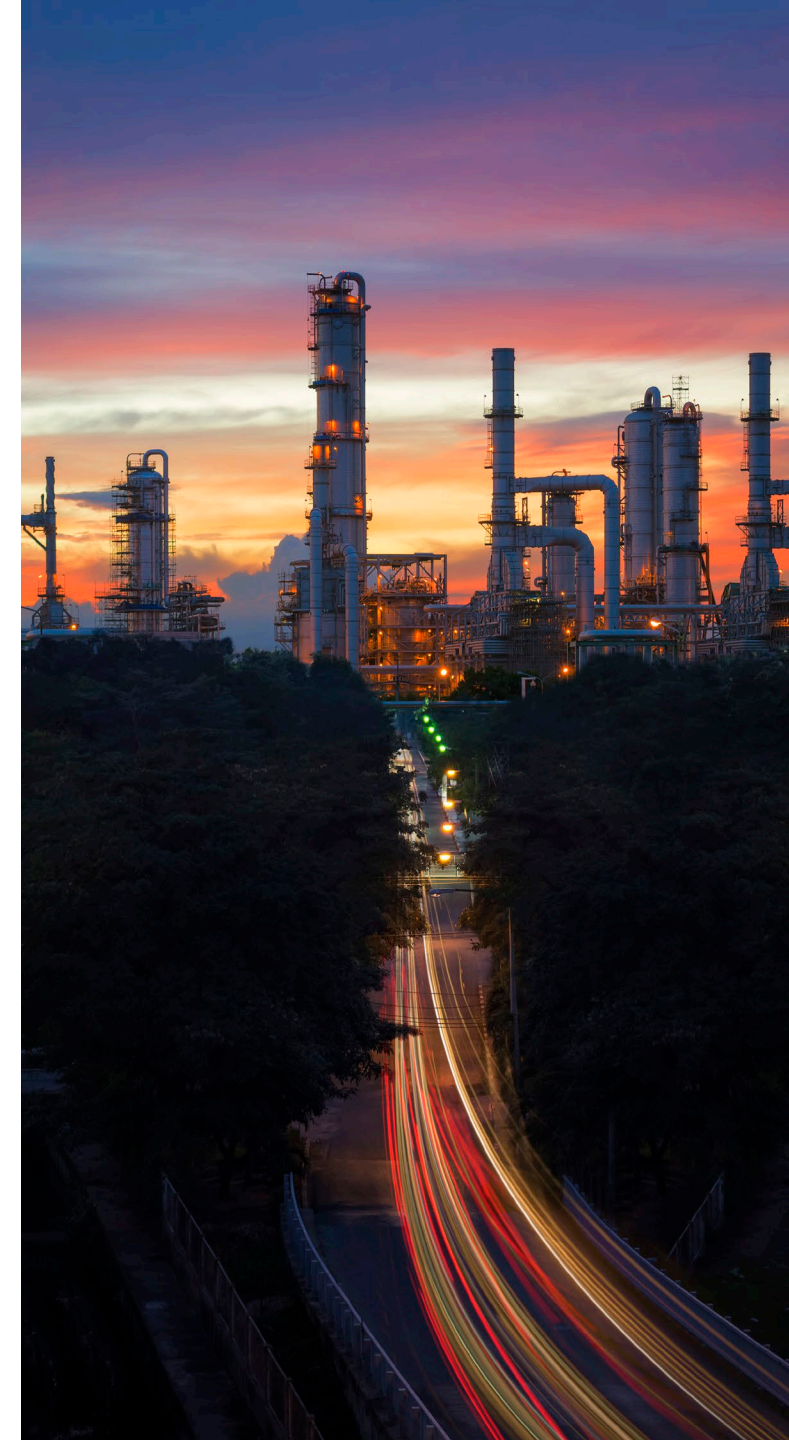
There are essentially two types of regulations:

- ▶ Legislative: where Congress has expressly asked the agency to regulate.
- ▶ Interpretive: where the agency has filled in gaps.

For 40 years, the standard of reviewing regulations was as follows under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984):

1. Agencies must conform to clear legislation when interpreting and applying a law (e.g., legislative regulations)
2. Courts were to give the agency “deference” in ambiguous situations, asking if its interpretation in such a case is reasonable (e.g., interpretive regulations)

In June 2024, the Supreme Court of the United States overruled *Chevron* and the deference to agencies in the case of interpretive regulations. *Loper Bright Enterprises et al. v. Raimondo, Secretary of Commerce, et al.* (Supreme Court of the United States, No. 22-451, June 28, 2024).

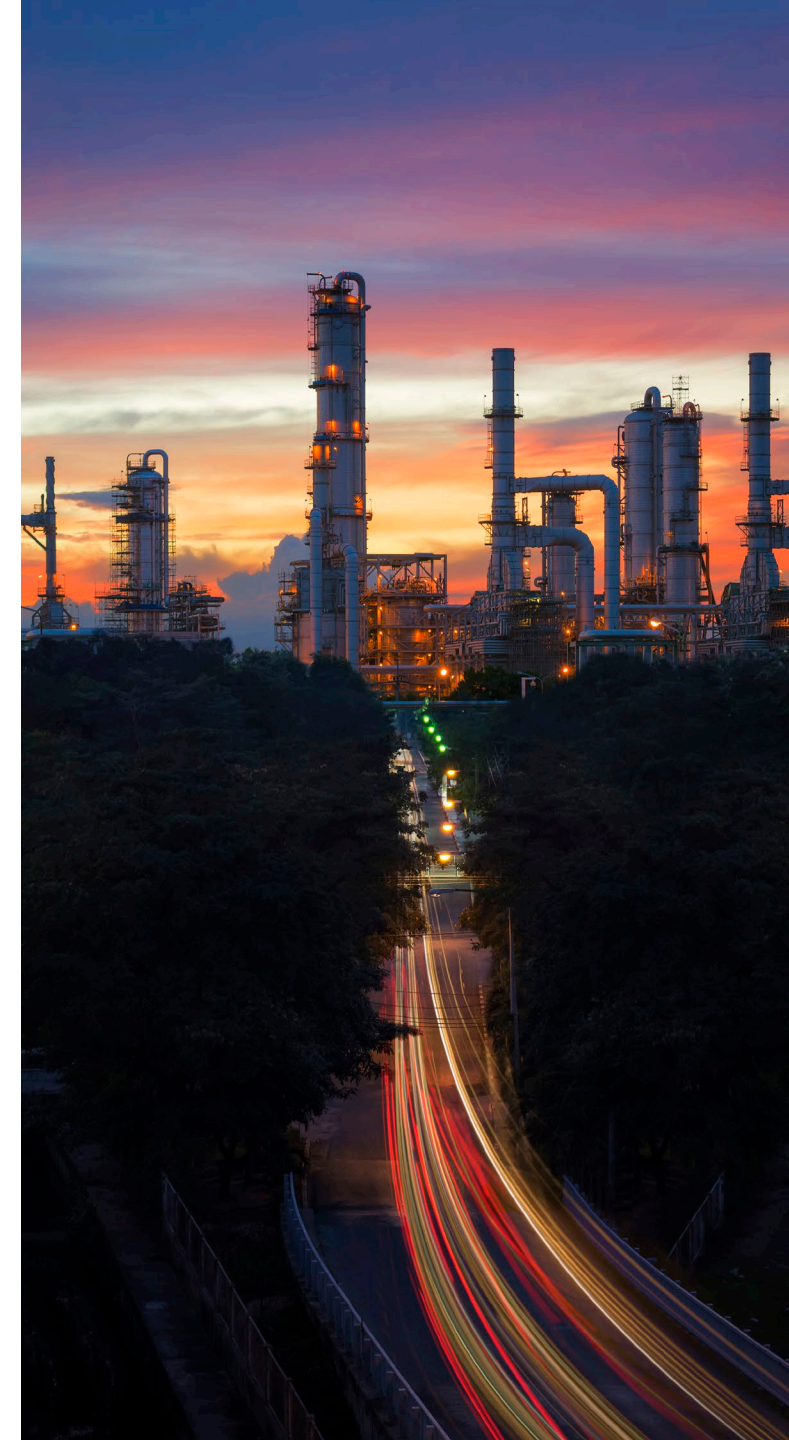


The Courts and Regulations: *Chevron* Overruled

CONTINUED

The world under *Loper*:

- ▶ Agency interpretations (i.e., interpretive regulations) are **NOT** entitled to deference.
- ▶ *Chevron* was inconsistent with the Administrative Procedures Act (APA) in allowing deference to the agency.
- ▶ Interpretive issues are more appropriately decided by judges than by the relevant agency.
- ▶ *The Court did hold that its ruling does NOT call into question prior cases that did rely on Chevron; rather they were lawfully decided at the time.*



How Will *Loper* Impact Federal Tax?

- ▶ While it is very early to truly assess how *Loper* will impact the federal tax space, there are some key observations:
 - If the regulation at issue is a legislative regulation, it likely will not change; the agency must adhere to the intent of Congress.
 - If, however, the regulation is interpretive, if challenged in the courts, the reviewing court is to essentially apply its view of the rule rather than deferring to the agency's rule.
 - The court will, though, have the agency's view in the record; it does not become irrelevant.
- ▶ When challenging an interpretive regulation, opinions of tax practitioners can help.
- ▶ Time will tell, however, how this plays out in cases that come up.
- ▶ Remember, past cases analyzing regulations under *Chevron* were not invalidated by the Court; only prospective cases.

Thank You!

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