Chevron Unraveled, Tax Law Unleashed

DORON NAROTZKI*

The article considers potential implications of repealing Chevron *deference on tax law. The* Chevron *doctrine, which historically allowed courts to defer to federal agencies' interpretations of ambiguous statutes, has been a cornerstone of administrative law. The article examines how the recent shift away from* Chevron *deference, highlighted by the Supreme Court's decision in* Loper Bright Enterprises v. Raimondo*, may affect various industries, including cannabis, cryptocurrency, renewable energy, and telecommunications, and potentially may lead to significant changes in tax policy and enforcement across these sectors. The article considers examples of how this legal shift might reshape certain aspects of tax practices, offering insights into the evolving balance of power between the judiciary and federal agencies in the post-*Chevron *landscape.*

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I. THE CHEVRON DOCTRINE AND ITS DECLINE

The *Chevron* doctrine, established by the 1984 Supreme Court case *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, created a precedent where courts would defer to federal agencies' interpretations of ambiguous statutes provided those interpretations were reasonable.[1] This doctrine was built upon the belief that agencies, due to their specialized expertise and political accountability, were better equipped to interpret ambiguous laws within their regulatory domains.

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* Doron Narotzki is an Associate Professor of Tax at the University of Akron College of Business, Daverio School of Accountancy, Frank & Karen Steininger Fellow, and the Director of the Master of Taxation Program. I wish to thank Andrew Leahey for his excellent comments. Any errors are solely my own.

[1] Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 865–66 (1984).

The doctrine has drawn increasing criticism over the years,[2] particularly for the expansive power it grants to administrative agencies, and in fact even before the Supreme Court decision in *Loper Bright Enterprises v. Raimondo* (2024),[3] the Court showed signs of retreating from Chevron deference.[4] In *Michigan v. EPA* (2015),[5] Justice Thomas in a brief concurrence with the majority's decision expressed concern over the agency's request for deference and argued that granting it with absolute deference in interpreting ambiguous statutes raises a constitutional issue.[6] In his view, granting such deference effectively allows an unconstitutional delegation of legislative authority, which contradicts the vesting clause of Article I of the Constitution.[7] In *Epic Systems Corp. v. Lewis* (2018),[8] the Court declined to apply *Chevron* due to conflicting interpretations by the DOJ and NLRB.[9] In *Pereira v. Sessions* (2018),[10] Justice Samuel Alito has remarked that *Chevron* has become an "increasingly maligned precedent" that the Court now feels free to overlook.[11] In *PDR Network, LLC v. Carlton & Harris Chiropractic, Inc.* (2019),[12] the Court avoided deciding if an FCC order warranted *Chevron* deference. Justice Gorsuch's[13] dissent, joined by Justice

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[2] Kristin E. Hickman & Aaron L. Nielson, *Narrowing* Chevron*'s Domain*, 70 DUKE L.J. 931, 933–35 (2021).

[3] Loper Bright Enters. v. Raimondo, 603 U.S. 369, 412–13 (2024).

[4] Hedstrom et al., *Tax Advisory:* Chevron *Overruled – What are the Tax Implications?*, ALSTON & BIRD (July 3, 2024), https://www.alston.com/en/insights/publications/2024/07/chevron-overruled---what-are-the-tax-implications [https://perma.cc/YG9T-RDXF].

[5] Michigan v. EPA, 576 U.S. 743, 760 (2015).

[6] *Id.*; Jonathan Dalziel, Michigan, et al. v. Environmental Protection Agency, et al.*: A Step Back from Federal Agency Deference*, JOULE: DUQ. ENERGY & ENV'T. L.J., Spring 2016, at 1, 84; *Michigan*, 576 U.S. at 760 ("I write separately to note that its request for deference raises serious questions about the constitutionality of our broader practice of deferring to agency interpretations of federal statutes.").

[7] *See Michigan*, 576 U.S. at 762; Dalziel, *supra* note 6, at 8.

[8] Epic Sys. Corp. v. Lewis, 584 U.S. 497, 499–500 (2018).

[9] The National Labor Relations Board (NLRB) is an independent federal agency responsible for enforcing labor laws in the United States, particularly those related to collective bargaining and unfair labor practices. It oversees the relationship between unions and employers, ensuring that workers' rights to organize and bargain collectively are protected. The NLRB adjudicates disputes between workers and employers, issuing rulings that influence labor relations across various industries. *See Who We Are*, NLRB, https://www.nlrb.gov/about-nlrb/who-we-are [https://perma.cc/L47W-ABL3].

[10] Pereira v. Sessions*,* 585 U.S. 198, 221–22 (2018).

[11] *Id.* ("Under [*Chevron*], if a federal statute is ambiguous and the agency that is authorized to implement it offers a reasonable interpretation, then a court is supposed to accept that interpretation. Here, a straightforward application of *Chevron* requires us to accept the Government's construction of the provision at issue. But the Court rejects the Government's interpretation in favor of one that it regards as the best reading of the statute. I can only conclude that the Court, for whatever reason, is simply ignoring *Chevron*.").

[12] *See* PDR Network, LLC v. Carlton & Harris Chiropr., Inc., 588 U.S. 1, 3–4 (2019).

[13] With Justice Thomas joining him.

Thomas, in *BNSF Railway Co. v. Loos* (2019)[14] can be viewed as a critique of *Chevron* deference, noting that, in the past, such a case might have focused on whether the Court should defer to the IRS's interpretation under *Chevron*. However, Gorsuch expresses satisfaction it did not happen, as the Court independently interpreted the statute without deferring to the agency's view, and, though Gorsuch disagrees with the majority's conclusion, he commends their effort to determine the law's meaning without relying on agency deference.[15] Similarly, in *Babb v. Wilkie* (2020),[16] the Court sidestepped *Chevron* despite arguments in the briefs.[17] The trend continued in *County of Maui v. Hawaii Wildlife Fund* (2020),[18] where the Court introduced the "functional equivalent" test under the Clean Water Act instead of deferring to the agency's interpretation.[19] The decision in *HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Association* (2021)[20] further continued this trend, and the Court bypassed Chevron when interpreting the Renewable Fuel Standard Program, signaling an ongoing shift away from agency deference. Finally, *West Virginia v. EPA* (2022)[21] further highlighted this change, as the Court ruled that the EPA overstepped its authority under the Clean Air Act[22] by attempting to regulate carbon emissions in a way that profoundly reshaped the nation's energy policy. The Court's majority decision emphasized that such significant decisions require clear congressional authorization and cannot be left to agency interpretation under the Chevron doctrine.[23] Overall, this decision further

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[14] *See* BNSF Ry. Co. v. Loos, 586 U.S. 310, 332–33 (2019) (Gorsuch, dissenting).

[15] *Id.* ("In the past, the briefs and oral argument in this case likely would have centered on whether we should defer to the IRS's administrative interpretation of the RRTA. After all, the IRS . . . agrees with BNSF's interpretation . . . . And the *Chevron* doctrine, if it retains any force, would seem to allow BNSF to parlay any statutory ambiguity into a colorable argument for judicial deference to the IRS's view, regardless of the Court's best independent understanding of the law. . . . But nothing like that happened here. . . . And no doubt, too, this is all to the good. Instead of throwing up our hands and letting an interested party—the federal government's executive branch, no less—dictate an inferior interpretation of the law that may be more the product of politics than a scrupulous reading of the statute, the Court today buckles down to its job of saying what the law is in light of its text, its context, and our precedent.").

[16] Babb v. Wilkie, 589 U.S. 399, 411–13 (2020).

[17] Boseul Jeong, *Babb v. Wilkie*, GEO. WASH. L. REV., https://www.gwlr.org/babb-v-wilkie [https://perma.cc/345S-B5WB].

[18] County of Maui v. Haw. Wildlife Fund, 590 U.S. 165, 170 (2020).

[19] Though in this case neither party suggested nor argued that the court should apply the Chevron doctrine, *see id.* at 169, 180.

[20] HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Ass'n, 594 U.S. 382, 394, 399–400 (2021).

[21] *See generally* West Virginia v. EPA, 597 U.S. 697, 702 (2022).

[22] Clean Air Act, 42 U.S.C. §§ 7401-7671q.

[23] "We presume that 'Congress intends to make major policy decisions itself, not leave those decisions to agencies.'" *West Virginia*, 597 U.S. at 723 (quoting United States Telecom Ass'n v. FCC, 855 F.3d 381, 419 (CADC 2017) (Kavanaugh, J., dissenting from denial of rehearing en banc)).

emphasized the Court's growing reluctance to grant agencies broad deference, especially when their actions involve major policy decisions that SCOTUS believed should be left to the legislative branch.

Over the years, criticism of the Chevron doctrine has grown significantly and became difficult to ignore.[24] Some argued that Chevron undermines the separation of powers by allowing agencies, rather than courts, to interpret ambiguous laws.[25] This has led to concerns that unelected bureaucrats can effectively create binding legal standards without sufficient judicial oversight. Furthermore, some legal scholars and judges, including several Supreme Court Justices, have argued that Chevron deference weakens judicial independence and risks allowing agencies to expand their power beyond what Congress intended.[26] Another key criticism is that Chevron deference can lead to inconsistencies in how laws are applied, depending on the agency's current leadership.[27] This can result in regulatory uncertainty, where businesses and individuals are unsure of how laws will be interpreted and enforced over time. Such unpredictability can be particularly problematic in highly regulated industries like healthcare, environmental law, and finance, where stability and clear guidelines are essential.[28] Additionally, some critics contend that Chevron deference erodes the rule of law by placing too much interpretative authority in the hands of executive agencies, which may pursue political agendas rather than

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[24] *See* Jack M. Beermann, *End the Failed Chevron Experiment Now: How Chevron Has Failed and Why It Can and Should Be Overruled*, 42 CONN. L. REV. 779, 782 (2010); Richard W. Murphy, *Abandon Chevron and Modernize Stare Decisis for the Administrative State*, 69 ALA. L. REV. 1, 49–56 (2017); Jonathan Dalziel, *Michigan et al. v. Environmental Protection Agency et al.: A Step Back from Federal Agency Deference*, 4 JOULE: DUQ. ENERGY & ENV'T. L.J. [i] (2016); including legislators' criticism, for example the House of Representatives addressed this concern by passing the Separation of Powers Restoration Act, which requires courts to apply de novo review to agency interpretations of statutes. Senator Mike Lee of Utah emphasized the importance of this legislation, asserting that "Chevron deference has become a direct threat to the rule of law and the foundational principles of America's constitutional order." With such strong opposition, the push to eliminate Chevron deference has moved from a theoretical discussion to a pressing legislative issue. Senator Mike Lee, *Senate & House Leaders Introduce Bill to Restore Regulatory Accountability Through Judicial Review*, U.S. SENATE (Mar. 17, 2016),https://www.lee.senate.gov/2016/3/senate-house-leaders-introduce-bill-to-restore-regulatory-accountability-through-judicial-review [https://perma.cc/5LJD-26RY].

[25] Randolph J. May, Chevron's *Possible Demise: Independent Agencies and Justice Kagan*, YALE J. ON REG.: NOTICE & COMMENT (Jan. 10, 2024), https://www.yalejreg.com/nc/chevrons-possible-demise-independent-agencies-and-justice-kagan-by-randolph-j-may/ [https://perma.cc/E2MQ-U754]; Randolph J. May & Andrew K. Magloughlin, *NFIB v. OSHA: A Unified Separation of Powers Doctrine and* Chevron's *No Show*, 74 S.C. L. Rev. 265, 268 (2022).

[26] *See* Aditya Bamzai, *The Origins of Judicial Deference to Executive Interpretation*, 126 YALE L.J. 908, 997–1000 (2017); Philip Hamburger, *Chevron Bias*, 84 GEO. WASH. L. REV. 1187, 1227 (2016); Hickman & Nielson, *supra* note 2, at 934–35.

[27] *See* Juan P. Caballero, *An Inconsistent Chevron Standard: Refining Chevron Deference in Immigration Law*, 52 LOY. U. CHI. L. J. 179, 183 (2020).

[28] *See* Hickman & Nielson, *supra* note 2, at 944.

neutral legal interpretations.[29] This concern is heightened when agencies change interpretations with shifting administrations, leading to fluctuating regulatory environments that can disrupt long-term planning for businesses and individuals.[30]

The recent judicial trend towards weakening or even repealing the Chevron doctrine reflects these concerns, as courts move to reassert their role in interpreting statutes independently. By reducing reliance on agency interpretations, the judiciary aims to restore what it views as a more balanced separation of powers and ensure that laws are applied consistently and predictably across different administrations.

II. THE IMPACT OF CHEVRON'S REPEAL

The repeal of Chevron deference, highlighted by the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, marks a significant shift in the balance of power between the judiciary and federal agencies.[31] With courts now taking on a more active role in interpreting statutes, agencies may face increased challenges to their regulatory authority. This change is likely to result in a more cautious approach to rulemaking, as agencies anticipate potential legal disputes over their interpretations.

The impact of this decision cannot be overstated and may have multiple implications across almost any legal area and may lead to a surge in litigation, with businesses and individuals more willing to challenge agency regulations which they view as overreaching or inconsistent with legislative intent. This could slow the implementation of new regulations, as agencies may be forced to defend their interpretations in court. In theory, the repeal of Chevron deference might prompt Congress to draft more precise and unambiguous legislation. By doing so, Congress could reduce the need for agency interpretation, potentially reclaiming some of the power that had shifted towards

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[29] *See* Christopher J. Walker, *Attacking Auer and* Chevron *Deference: A Literature Review*, 16 GEO. J.L. & PUB. POL'Y 103, 112 (2018); Adam White, Chevron *Deference vs. Steady Administration*, YALE J. ON REG.: NOTICE & COMMENT (Jan. 24, 2024), https://www.yalejreg.com/nc/chevron-deference-vs-steady-administration/.

[30] *See generally* Hickman & Nielson, *supra* note 2.

[31] *See* Michael Desmond, *IRS Should Brace for more Taxpayer Lawsuits with* Chevron's *Death*, BLOOMBERG (July 1, 2024), https://news.bloombergtax.com/tax-insights-and-commentary/irs-should-brace-for-more-taxpayer-lawsuits-with-chevrons-death [https://perma.cc/6AN3-7BHU]; Mario J. Verdolini, Christopher A. Baratta, William A. Curran & Margaret E. Tahyar, *Supreme Court Overruling of* Chevron v. NRDC *Expected to Strengthen Challenges to Tax Regulations*, DAVIS POLK (July 15, 2024), https://www.davispolk.com/insights/client-update/supreme-court-overruling-chevron-v-nrdc-expected-strengthen-challenges-tax [https://perma.cc/ZEZ7-5B88]; Michelle Levin & Carneil Wilson, *After* Chevron*: Uniform Tax Law Interpretation not Guaranteed*, DENTONS SIROTE (July 9, 2024), https://www.dentons.com/en/-/media/fce574da281b4817886fabdbb9b5938c.ashx [https://perma.cc/HLE3-ZWA3].

the executive branch under Chevron. However, this new legal landscape could also create regulatory instability. Without the consistency provided by Chevron deference, courts may frequently overturn or reinterpret agency rules, leading to uncertainty for industries that depend on stable regulatory frameworks.

Finally, the weakening of Chevron deference may drive the development of new legal doctrines that guide how courts should review agency actions. These emerging frameworks could redefine the balance between judicial oversight and agency expertise, shaping the future of administrative law in the United States.

The repeal of Chevron deference has profound implications for tax law, an area often characterized by complex and ambiguous statutes. Moreover, though Chevron itself does not directly evaluate the validity of tax regulations, it indirectly affects them because these are often the result of an agency's interpretation of a statute, and frequently involve intricate economic considerations and the interpretation of detailed provisions that can have significant financial impacts. With the courts now assuming a more active role in interpreting these statutes, there is an increased potential for disputes over how tax laws should be applied. This shift makes the role of the judiciary crucial in shaping the economic landscape, particularly in determining how tax burdens are distributed across different industries.[32] As we move forward, it is essential to explore how this new legal environment will affect specific tax issues, potentially leading to significant changes in tax policy and enforcement.[33]

III. TAX ISSUES POTENTIALLY IMPACTED BY THE CHEVRON REPEAL

The real-world impact of Chevron's repeal on tax law, a domain often defined by elaborate but also vague statutes, can be far-reaching and complex.[34] The removal of judicial deference to agency interpretations opens a new landscape where courts, rather than agencies, will have the final say on the application of tax laws. This shift could lead to significant changes in how tax regulations are enforced and interpreted, affecting industries from cannabis to technology.[35] The following sections will explore specific examples of how this

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[32] *Potential Tax Implications of the US Supreme Court Overruling the* Chevron *Doctrine*, PRICEWATERHOUSECOOPERS (July 2024) https://www.pwc.com/us/en/services/tax/library/potential-tax-implications-of-scotus-overruling-chevron.html [https://perma.cc/9LXU-QBS8]; Timothy S. Shuman, Susan E. Ryba, Parisa M. Griess & Samuel J. Preston, *Supreme Court Overrules* Chevron*, Opening Door for New Tax Reg Challenges*, MCDERMOTT WILL & EMERY (July 10, 2024), https://www.mwe.com/insights/supreme-court-overrules-chevron-opening-door-for-new-tax-reg-challenges/ [https://perma.cc/Q2HL-62BQ].

[33] *See* Devon Bodoh, Joseph Pari, Alex Dobyan & Grant Solomon, *Clear as Mud–* Chevron *Irreverence and Tax Law*, WEIL (July 1, 2024), https://tax.weil.com/insights/clear-as-mud-chevron-irreverence-and-tax-law/ [https://perma.cc/9ME7-AS22].

[34] *See id.*

[35] Potentially, this may also lead to significant transfer pricing changes (I.R.C. § 482) across all sectors and industries; *See Id.*

legal transformation might reshape tax policy and practice across various sectors.

a. *Cannabis Industry and Section 280E*

The repeal of Chevron deference significantly alters the legal landscape for interpreting Section 280E of the Internal Revenue Code (IRC),[36] which disallows deductions for businesses trafficking in controlled substances, including cannabis, under federal law.[37] Historically, courts have deferred to the Internal Revenue Service's (IRS) strict interpretation of 280E, leading to disproportionately high tax liabilities for cannabis businesses. many of which operate with narrow margins or are unprofitable due to this tax burden.[38]

With Chevron deference gone, courts may now scrutinize the IRS's interpretation more rigorously, which opens the door for cannabis businesses to argue that the IRS's application of 280E is overly broad, particularly where expenses are only indirectly related to the sale of cannabis or pertain to activities legal under state law but still tied to the business.

For example, cannabis businesses could assert that certain administrative costs or compliance-related expenses mandated by state law should be deductible, despite their connection to cannabis operations. Additionally, if a cannabis business engages in non-cannabis-related activities, it could argue that expenses associated with those activities should be deductible, even if the business as a whole is subject to 280E.[39] Courts could also be asked to reconsider the IRS's broad interpretation of what constitutes "trafficking" in controlled substances, potentially narrowing the definition to exclude certain business activities and allowing more expenses to be deducted. Generally, courts have historically allowed business deductions for illegal activities like

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[36] I.R.C. § 280E.

[37] Abraham Finberg & Simon Menkes, Chevron's *End Can Help Cannabis Firms Use Tax Code Favorably*, BLOOMBERG TAX (Aug. 9, 2024), https://news.bloombergtax.com/tax-insights-and-commentary/chevrons-end-can-help-cannabis-firms-use-tax-code-favorably [https://perma.cc/UY83-CSBQ].

[38] *See* Doron Narotzki & Tamir Shanan, A Comprehensive, and a Joint, Marijuana Tax, 44 VA. TAX REV. 303, Winter 2025, at 18.

[39] Californians Helping to Alleviate Med. Probs, Inc. v. C.I.R., 128 T.C. 173, 182 (2007) ("We hold that section 280E does not preclude petitioner from deducting expenses attributable to a trade or business other than that of illegal trafficking in controlled substances simply because petitioner also is involved in the trafficking in a controlled substance.").

gambling,[40] prostitution,[41] and racketeering,[42] and they applied the same approach to narcotics before the enactment of Section 280E. At the same time, courts applied strict substantiation requirements, ensuring that expenses were properly documented and directly related to business operations.[43] Courts have emphasized that deductions are a matter of legislative grace, not an inherent right, and must meet all statutory requirements to be allowed.[44] However, with the current reality that cannabis is legal in many states, the courts may face new challenges in balancing federal tax laws with state legality. The historical denial of deductions for marijuana businesses under Section 280E might increasingly come under scrutiny as businesses operating legally under state law seek the same tax benefits afforded to other industries. This evolving legal landscape could prompt courts to reconsider the application of Section 280E, potentially leading to a shift in how cannabis-related expenses are treated under federal tax law.[45]

These challenges could be driven by the significant economic incentive for cannabis companies to reduce their tax liabilities. The (legal) cannabis industry is currently heavily taxed, with effective tax rates that can exceed those of traditional businesses,[46] contributing to financial strain and, in many cases, lack of profitability. The potential for substantial tax savings and improved financial viability provides strong motivation for cannabis companies to pursue legal challenges in a post-Chevron landscape.

A successful challenge to the IRS's interpretation of Section 280E could lead to significant tax savings for cannabis companies, reducing their effective tax rates and enhancing their overall financial stability. This shift could also lead to increased litigation as businesses seek to capitalize on the new legal

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[40] English v. Comm'r, 249 F.2d 432, 433 (7th Cir. 1957); Mesi v. Comm'r, 242 F.2d 558, 559 (7th Cir. 1957); Comm'r v. Doyle, 231 F.2d 635, 636, 638 (7th Cir. 1956); Comeaux v. Comm'r, 10 T.C. 201, 202, 206–08 (1948), *aff'd sub nom*. Cohen v. Comm'r, 176 F.2d 394 (10th Cir. 1949); Clemons v. Comm'r, No. 12096, 1948 Tax Ct. Memo LEXIS 252, at *5, *13 (T.C. Feb. 18, 1948), *aff'd sub nom*. Cohen v. Comm'r, 176 F.2d 394 (10th Cir. 1949).

[41] Toner v. Comm'r, Nos. 10826-80, 13639-80, 1990 WL 154691, at *7 (T.C. Oct. 17, 1990).

[42] McDonald v. United States, No. 96-0665-BH-S, 1997 WL 1108454, at *3 (S.D. Ala. Dec. 23, 1997).

[43] Jeffrey Edmondson v. Comm'r, No. 4586-76, 1981 T.C.M. LEXIS 118, at *4 (T.C. Oct. 26, 1981).

[44] Indopco, Inc. v. Comm'r, 503 U.S. 79, 84 (1992); New Colonial Ice Co., Inc. v. Helvering, 292 U.S. 435, 440 (1934).

[45] *See* Narotzki & Shanan, *supra* note 38, at 24. Also, this may further worsen the inconsistencies between regions, which we already have under the current states' laws.

[46] Steve Gelsi, *IRS Leaves No Wiggle Room on Higher Taxes for Legal Cannabis Companies*, MARKETWATCH (July 5, 2024), https://www.marketwatch.com/story/irs-leaves-no-wiggle-room-on-higher-taxes-for-legal-cannabis-companies-eac90bef; NAT'L CANNABIS INDUS. ASS'N, IRC SECTION 280E: AN UNJUST BURDEN ON STATE-LEGAL CANNABIS BUSINESSES, https://thecannabisindustry.org/wp-content/uploads/2017/10/NCIA-IRC-Section-280E-white-paper_web.pdf.

environment, potentially prompting the IRS to revise its guidance or Congress to amend the statute to clarify its application.

b. *Cryptocurrency and Digital Assets*

The repeal of Chevron deference could significantly impact how courts evaluate IRS guidance on cryptocurrency taxation.[47] For instance, the IRS classifies cryptocurrencies as property under Notice 2014-21,[48] which creates complexities in recognizing gains and losses. Additionally, Rev. Rul. 2019-24[49] requires taxpayers to recognize gross income under Section 61[50] when receiving cryptocurrency through hard forks or airdrops.[51] Historically, courts may have deferred to the IRS's interpretations if they carried the force of law, but Revenue

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[47] *Supreme Court Faces Landmark Decision on Federal Agency Power*, GORDON LAW, https://gordonlaw.com/learn/chevron-doctrine-crypto-regulation/ [https://perma.cc/V9ZQ-DCVJ]; Jennifer A. Dlouhy & Greg Stohr, *Supreme Court 'Chevron' Case to Shape Crypto, Climate Rules,* BLOOMBERG LAW (Jan. 16, 2024) https://news.bloomberglaw.com/us-law-week/supreme-court-chevron-case-set-to-shape-crypto-climate-rules [https://perma.cc/8BV2-6PMC]; MICHELLE LEVIN & CARNEIL WILSON, *AFTER CHEVRON: UNIFORM TAX LAW INTERPRETATION NOT GUARANTEED* (2024), https://www.dentons.com/en/-/media/fce574da281b4817886fabdbb9b5938c.ashx [https://perma.cc/4SLD-5D3W]; Sarah Wynn, *US Supreme Court Ruling to Overturn Chevron Gives Crypto Industry a Win, Pundits Say*, THE BLOCK (June 28, 2024), https://www.theblock.co/post/302634/us-supreme-court-ruling-to-overturn-chevron-gives-crypto-industry-a-win-sources-say [https://perma.cc/N29A-ECVQ]; and Cheyenne Ligon, *Supreme Court Rules to Overturn the Chevron Doctrine, Curbing Federal Agencies' Power,* COINDESK (June 28, 2024), https://www.coindesk.com/policy/2024/06/28/supreme-court-rules-to-overturn-the-chevron-doctrine-curbing-federal-agencies-power (though discussing the SEC in this context, it should be noted that the SEC treatment of crypto assets may have an effect on the way the IRS treats these assets).

[48] I.R.S. Notice 2014–21, 2014–16 I.R.B. 938. IRS notices are generally not subject to the Chevron doctrine because they do not carry the force of law. Instead, courts typically evaluate them under the Skidmore standard, which grants deference based on the persuasiveness of the notice's reasoning, see Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944). For Chevron doctrine to apply, an agency action must be issued under a statute granting the agency authority to act with the force of law and must arise from formal procedures, such as notice-and-comment rulemaking. Most IRS notices do not meet these criteria, as they serve as interpretive guidance rather than binding rules. *See* Christensen v. Harris Cnty., 529 U.S. 576, 587 (2000), and United States v. Mead Corp., 533 U.S. 218, 226 (2001).

[49] Rev. Rul. 2019–24, 2019–44 I.R.B. 1004–05.

[50] I.R.C. § 61(a).

[51] Hard forks and airdrops are methods of distributing new cryptocurrency. A hard fork occurs when a blockchain splits, creating a new chain with its own rules, while an airdrop involves distributing tokens directly to users, often as a reward or promotion. Rev. Rul. 2019–24, 2019–44 I.R.B. 1004.

Rulings, as interpretive guidance, are not subject to Chevron deference.[52] Without Chevron, taxpayers may more easily challenge these rulings, arguing that such transactions do not result in taxable income unless an economic benefit is realized, such as when the cryptocurrency becomes immediately accessible or tradeable. This shift in judicial review may also influence future IRS rules, such as those outlined in Rev. Proc. 2024-28,[53] which requires wallet-by-wallet tracking for cost basis starting January 1, 2025. Courts are likely to play a more active role in scrutinizing whether these requirements align with statutory provisions under Sections 1012 and 6045,[54] potentially providing opportunities for taxpayers to contest compliance burdens.[55]

The repeal of Chevron deference introduces greater judicial independence in interpreting ambiguous tax statutes related to digital assets.[56] As courts take a more active role, this could, hopefully, lead to rulings that better reflect the economic realities of cryptocurrency transactions, potentially reshaping the tax compliance landscape for individuals and businesses in the digital asset industry.[57]

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[52] While Revenue Rulings like Rev. Rul. 2019–24 are considered interpretive guidance and do not qualify for Chevron deference, the broader removal of Chevron deference makes it more challenging for the IRS to defend similar future interpretations in court.

[53] *See* Rev. Proc. 2024–28, 2024-1 C.B. ___; Hannah Lang, *U.S. Treasury Finalizes New Crypto Tax Reporting Rules*, REUTERS (June 28, 2024), https://www.reuters.com/technology/us-treasury-finalizes-new-crypto-tax-reporting-rules-2024-06-28/[https://perma.cc/9AUD-36WJ]; Matthew Dimon, David Forst, Kevin Kirby & Sean McElroy, *Treasury's Crypto Tax Reporting Rules Defer on DeFi*, JDSUPRA (July 5, 2024), https://www.jdsupra.com/legalnews/treasury-s-crypto-tax-reporting-rules-9094161/ [https://perma.cc/LA5R-PET9].

[54] I.R.C. §§ 1012, 6045.

[55] Amber Gray-Fenner, *A New Provision of an Old Law is Confusing Crypto Investors*, FORBES (Jan. 4, 2024), https://www.forbes.com/sites/digital-assets/2024/01/04/a-new-provision-of-an-old-law-is-confusing-crypto-investors/ [https://perma.cc/HXZ7-BVLE].

[56] *See* GORDON LAW, *supra* note 47.

[57] *Cf.* Joseph A. Peterson, *How the Reversal of Chevron will Impact the IRS*, PLUNKETT COONEY (Sept. 3, 2024), https://www.plunkettcooney.com/dontbetthebusinessblog/Chevron-decision-impacts-IRS [https://perma.cc/T7K4-K8BD];
Matthew P. Hedstrom et al, Tax Advisory*: Chevron Overruled – What Are the Tax Implications?*, ALSTON & BIRD (July 3, 2024), https://www.alston.com/en/insights/publications/2024/07/chevron-overruled---what-are-the-tax-implications [https://perma.cc/YG9T-RDXF]; *Supreme Court's Overturning of Chevron Could Cause Tax Shake-Up*, CBIZ, https://www.cbiz.com/insights/articles/article-details/supreme-courts-overturning-of-chevron-could-cause-tax-shake-up (last visited Feb. 14, 2025) [https://perma.cc/8RDF-3ACL]; Michael Desmond & Nicole Butze, *IRS Should Brace for More Taxpayer Lawsuits With Chevron's Death*, BLOOMBERG TAX (July 1, 2024), https://news.bloombergtax.com/tax-insights-and-commentary/irs-should-brace-for-more-taxpayer-lawsuits-with-chevrons-death [https://perma.cc/6AN3-7BHU].

c. *Renewable Energy Tax Credits*

The renewable energy sector is highly dependent on tax credits and deductions, such as the Investment Tax Credit (ITC) under Section 48 of the Internal Revenue Code[58] and the Production Tax Credit (PTC) under Section 45.[59] These incentives have been crucial in driving investment in renewable energy projects like solar and wind.[60] However, the IRS's interpretations of these provisions have often been restrictive, particularly regarding the eligibility of certain expenses or the timing of when credits can be claimed.[61]

In a post-Chevron landscape, where courts may no longer automatically defer to the IRS's interpretations, energy companies have an opportunity to challenge these restrictive rulings. For example, the IRS has traditionally limited the scope of qualifying expenses under the ITC to direct costs associated with energy generation equipment, often excluding related infrastructure or indirect costs that are essential for the project.[62] Companies might now argue that these interpretations are too narrow and seek to include a broader range of expenses, such as grid integration costs, under the ITC.

Similarly, disputes might arise over the IRS's interpretation of when construction begins for the purposes of claiming the PTC. The IRS has issued

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[58] I.R.C. § 48.

[59] I.R.C. § 45.

[60] *See* Matthew Celsa & George Xydis, *The Inflation Reduction Act Versus the 1.5 Cent/kWh and 30% Investment Tax Credit Proposal for Wind Power*, SN BUS. ECON., Feb. 13, 2023, at 10, https://doi.org/10.1007/s43546-023-00448-x [https://perma.cc/HEQ2-GKCK]; MARK BOLINGER, RYAN WISER, KARLYNN CORY & TED JAMES, PTC, ITC, OR CASH GRANT?: AN ANALYSIS OF THE CHOICE FACING RENEWABLE POWER PROJECTS IN THE UNITED STATES 1 (2009), https://www.nrel.gov/docs/fy09osti/45359.pdf [https://perma.cc/KXU6-VKM2]; Chesta Dwivedi, *Influence of Production and Investment Tax Credit on Renewable Energy Growth and Power Grid*, in 2018 IEEE Green Technologies Conference, 149, 149 (2018); JAY BARTLETT, BEYOND SUBSIDY LEVELS: THE EFFECTS OF TAX CREDIT CHOICE FOR SOLAR AND WIND POWER IN THE INFLATION REDUCTION ACT 3 (2023), https://www.rff.org/publications/reports/beyond-subsidy-levels-the-effects-of-tax-credit-choice-for-solar-and-wind-power-in-the-inflation-reduction-act [https://perma.cc/Q47Z-ZVA8]; *See* Brian Lips, *The Past, Present, and Future of Federal Tax Credits for Renewable Energy*, NCCETC BLOG (Nov. 19, 2024), https://nccleantech.ncsu.edu/2024/11/19/the-past-present-and-future-of-federal-tax-credits-for-renewable-energy/ [https://perma.cc/XRR2-L7MC]; Neil Ford, *Soaring US Tax Credit Deals Boost Solar, Storage Build*, REUTERS (Sept. 6. 2024), https://www.reuters.com/business/energy/soaring-us-tax-credit-deals-boost-solar-storage-build-2024-09-06 [https://perma.cc/DE36-TTHK].

[61] I.R.S. Notice 2013-29, 2013-20 I.R.B. 1085; I.R.S. Notice 2013-60, 2013-44 I.R.B. 431.

[62] *Final Regulations Issued Regarding Section 48 Investment Tax Credit*, BAKER BOTTS (Dec. 18, 2024), https://www.bakerbotts.com/Thought-Leadership/Publications/2024/December/Final-Regulations-Issued-Regarding-Section-48-Investment-Tax-Credit [https://perma.cc/775K-6LRT]; Press Release, U.S. Dep't of the Treasury, U.S. Department of the Treasury Releases Final Rules on Investment Tax Credit to Produce Clean Power, Strengthen Clean Energy Economy (Dec. 4, 2024), https://home.treasury.gov/news/press-releases/jy2736 [https://perma.cc/TU95-DRC4].

guidance on what constitutes the "beginning of construction," but these definitions have sometimes been restrictive, leading to the loss of tax credits if a project is delayed.[63] Without Chevron deference, courts might take a more flexible view, potentially allowing projects that have faced delays due to regulatory or supply chain issues to still qualify for these credits.

If successful, these challenges could lead to more favorable tax outcomes for renewable energy companies, making it easier to finance new projects and further stimulating investment in renewable technologies. This, in turn, could accelerate the transition to a more sustainable energy grid, aligning with broader environmental goals. Additionally, these legal challenges could prompt the IRS to revisit its guidance, leading to a more industry-friendly interpretation of the tax code that supports the growth of renewable energy.[64]

d. *Tech Companies and R&D Credits*

Tech companies frequently take advantage of Research and Development (R&D) tax credits governed by Section 41 of the Internal Revenue Code[65] which incentivizes innovation by allowing deductions for qualifying research expenses.[66] Under Chevron, the IRS's interpretation of what constitutes "qualified research" under Section 41 and the related Section 174[67] has typically been given significant deference.[68] For instance, the IRS often limits the credit to activities involving the elimination of technological uncertainty through a process of experimentation.[69]

With Chevron's repeal, tech companies may now challenge the IRS's restrictive interpretations, particularly in areas where they believe the IRS has applied overly narrow definitions.[70] For example, the IRS has often excluded

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[63] I.R.S. Notice 2013-29, 2013-20 I.R.B. 1085; I.R.S. Notice 2013-60, 2013-44 I.R.B. 431.

[64] Kat Lucero, *Tax Credit Transfer Regs Show IRS Caution in Rulemaking*, LAW360 (May 1, 2024), https://www.crowell.com/a/web/a32yUW7ZiYySxQ2qeTtUnv/tax-credit-transfer-regs-show-irs-caution-in-rulemaking.pdf [https://perma.cc/AJ99-E39P].

[65] I.R.C. § 41.

[66] Edwin Mansfield, *The R&D Tax Credit and Other Technology Policy Issues*, 76 AM. ECON. REV. 190, 190 (1986).

[67] I.R.C. §41; I.R.C. § 174.

[68] *See e.g.*, Union Carbide Corp. v. Comm'r of Internal Revenue, 697 F.3d 104, 109 (2d Cir. 2012); *see also* Suder v. Comm'r of Internal Revenue, 108 T.C.M. (CCH) 354, at *14 (T.C. Oct. 1, 2024).

[69] IRS, AUDIT TECHNIQUES GUIDE: CREDIT FOR INCREASING RESEARCH ACTIVITIES (I.E. RESEARCH TAX CREDIT) IRC § 41* – QUALIFIED RESEARCH ACTIVITIES (2005), https://www.irs.gov/businesses/audit-techniques-guide-credit-for-increasing-research-activities-ie-research-tax-credit-irc-ss-41-qualified-research-activities [https://perma.cc/GY27-GWM9]; Suder v. Comm'r of Internal Revenue, 108 T.C.M. (CCH) 354, at *14 (T.C. Oct. 1, 2024).

[70] *See, e.g.*, I.R.S. Notice 2023–63, 2023–35 I.R.B, https://www.irs.gov/pub/irs-drop/n-23-63.pdf.

activities like software development, process improvement, and certain types of engineering work from qualifying as R&D, arguing that they do not meet the criteria of Section 41 or Section 174.[71] Companies might now argue that these activities should qualify for the credit, especially in light of modern technological advancements and the blurred lines between research and practical application in the tech industry.

Additionally, disputes may arise over the IRS's treatment of indirect research expenses, such as overhead or costs associated with administrative activities supporting R&D. Tech companies could contend that these expenses should be included in the calculation of R&D credits, broadening the scope of eligible deductions.

For example, a tech company involved in developing new software may argue that its iterative testing and refinement process should qualify as R&D under Section 41, even if it involves modifications to existing products or processes.[72] Without Chevron deference, courts may be more willing to accept these broader interpretations, potentially leading to increased tax benefits for tech companies.

This shift could result in more favorable tax outcomes for tech companies, enabling them to claim larger credits and reduce their overall tax liabilities. In turn, this could incentivize greater investment in research and development, driving further innovation in the technology sector. The legal challenges that emerge from this new environment may also prompt the IRS to update its guidelines, leading to a more flexible and modern interpretation of what constitutes qualifying R&D activities.

e. *Healthcare and Medical Devices*

Similar to the previous issue regarding tech companies and R&D credits, the healthcare industry, especially companies developing and manufacturing medical devices, operates within a highly regulated tax environment. Historically, the IRS has provided specific guidance on how these devices should be classified and taxed, often leading to significant tax liabilities or reduced benefits for companies in this sector.[73] With the decline of Chevron

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[71] IRS, *supra* note 69.

[72] The term "iterative" refers to a process that involves repeating a series of steps or procedures with the goal of gradually refining or improving a product, system, or solution. Each cycle, or iteration, builds on the previous one, incorporating feedback and data to enhance the outcome. This approach is commonly used in fields like software development and R&D, where continuous improvement is critical. While iterative processes can be resource-intensive and costly due to the repeated cycles, the investment is often justified by the superior quality and functionality of the final product. *See generally* Nadine Bachmann & Herbert Jodlbauer, *Iterative Business Model Innovation: A Conceptual Process Model and Tools for Incumbents*, 168 J. BUS. RSCH., 2023.

[73] *Pharmaceutical Industry Research Credit Audit Guidelines*, IRS (Apr. 30, 2004), https://www.irs.gov/businesses/pharmaceutical-industry-research-credit-audit-guidelines-revised-4-30-04 [https://perma.cc/M9XX-9TFT]; *See generally Pharmaceutical Industry*

deference, these companies may now challenge IRS interpretations more effectively. For instance, the classification of certain medical devices and Qualified Research Expenses (QRE) for tax purposes, such as whether they qualify for specific deductions or credits under Sections 174 and 41 for R&D, could be reevaluated by courts.

Proving eligibility for the R&D tax credit is often one of the most complex challenges for many taxpayers. Previously, the IRS might have interpreted the scope of qualifying R&D activities or costs related to medical device development narrowly, limiting the tax benefits available to companies.[74] Without Chevron, courts may take a broader view, potentially allowing more activities to qualify as deductible R&D expenses. For example, if a medical device company invests in improving existing technologies or in developing new manufacturing processes, these activities could be argued as qualifying R&D under Sections 174 and 41, thus increasing the company's eligibility for tax credits.

Another area of potential challenge involves the tax treatment of expenses related to regulatory compliance. Medical device companies often incur substantial costs to meet FDA requirements, such as clinical trials or safety testing. Historically, the IRS might have excluded these costs from deductible R&D expenses,[75] arguing that they are related to compliance rather than innovation. In a post-Chevron landscape, companies could argue that these activities are integral to the research and development process and should be deductible, leading to substantial tax savings.

If these challenges are successful, the healthcare industry could see a more favorable tax environment, similar to the potential benefits anticipated in other sectors like the cannabis industry. This would not only reduce tax liabilities for medical device companies but also encourage further innovation and investment

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Research Credit Audit Technique Guide, IRS (Apr. 1, 2024), https://www.irs.gov/pub/irs-pdf/p5931.pdf; U.S. GEN. ACCT. OFF., GAO–94–139, PHARMACEUTICAL INDUSTRY'S USE OF THE RESEARCH TAX CREDIT 3 (1994);*see generally* Donny Lucaj, Amy Forester & Ginger Powell, *IRS Issues Additional Guidance for Documentation of R&D Tax Credit Refund Claims*, PLANTE MORAN (Sept. 5, 2024), https://www.plantemoran.com/explore-our-thinking/insight/2022/02/irs-issues-guidance-for-documentation-of-rd-tax-credit-refund-claims [https://perma.cc/MPW2-H56D].

[74] *See* CONG. RSCH. SERV., RL 31181, FEDERAL RESEARCH TAX CREDIT: CURRENT LAW AND POLICY ISSUES 9 (2022).

[75] *Pharmaceutical Industry Research Credit Audit Guidelines*, IRS (Apr. 30, 2004), https://www.irs.gov/businesses/pharmaceutical-industry-research-credit-audit-guidelines-revised-4-30-04 [https://perma.cc/M9XX-9TFT]; *Pharmaceutical Industry Research Credit Audit Technique Guide*, IRS (Apr. 1, 2024), https://www.irs.gov/pub/irs-pdf/p5931.pdf; U.S. GEN. ACCT. OFF., GAO–94–139, PHARMACEUTICAL INDUSTRY'S USE OF THE RESEARCH TAX CREDIT 8 (1994) https://www.gao.gov/assets/ggd-94-139.pdf; *See generally* Donny Lucaj, Amy Forester & Ginger Powell, *IRS Issues Additional Guidance for Documentation of R&D Tax Credit Refund Claims*, PLANTE MORAN (Sept. 5, 2024), https://www.plantemoran.com/explore-our-thinking/insight/2022/02/irs-issues-guidance-for-documentation-of-rd-tax-credit-refund-claims [https://perma.cc/HF4G-LU8H].

in healthcare technologies. Ultimately, the decline of Chevron deference could lead to more nuanced and industry-specific interpretations of tax laws, benefiting companies that operate within complex regulatory frameworks.

f. *Telecommunications and Internet Service Providers*

The telecommunications industry, regulated by both the Federal Communications Commission (FCC) and the IRS, has long been subject to complex tax-related interpretations, particularly regarding the taxation of internet services and infrastructure investments. These interpretations, often upheld due to Chevron deference, have imposed significant tax burdens on telecom companies. However, with the repeal of Chevron, telecom companies may now challenge these regulatory interpretations more effectively.[76] For example, disputes might arise over the classification of broadband investments, where companies could argue that certain infrastructure expenditures should qualify for more favorable tax treatments, such as accelerated depreciation under Sections 168 and 179 of the Internal Revenue Code, as opposed to the IRS opinion that these should be capitalized as improvements under Section 263(a).[77]

Historically, the IRS and FCC have provided guidelines on how telecommunications companies should account for these investments, often requiring the capitalization of certain costs that could otherwise be deducted immediately. For instance, under IRS guidelines, telecom companies have often been required to capitalize the costs associated with laying fiber optic cables or installing cell towers, classifying them as capital expenditures rather than allowing immediate deductions.[78] These capitalized costs are then depreciated over the asset's useful life under Section 168, rather than being fully deducted in the year they were incurred.

Another example is the treatment of intangible assets, such as spectrum licenses granted by the FCC. These licenses, critical to telecom operations, must be capitalized and amortized over a period under Section 197,[79] rather than being immediately expensed.

Without Chevron deference, courts may scrutinize these interpretations more closely, potentially leading to rulings that allow telecom companies to deduct these expenses more quickly, reducing their tax liabilities and freeing up capital for further investments in infrastructure.

The tax treatment of bundled services, where telecommunications companies offer packages that combine internet, phone, and television services,

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[76] *E.g.*, Rev. Proc. 2015–12, 2015-2 I.R.B. 303 (offering guidance and several safe-harbor accounting methods for cable system operators providing video, high-speed internet, and VoIP phone services through a cable network).

[77] I.R.C. § 263(a)

[78] *See* Rev. Proc. 2011–27, 2011–18 I.R.B. 745.

[79] I.R.C. § 197.

has historically been complex.[80] The IRS has often required that each component of these bundles be treated separately for tax purposes.[81] For example, different services in a bundle might be subject to varying depreciation schedules or income recognition rules, complicating tax reporting.

Without Chevron deference, telecom companies might challenge this fragmented approach. They could argue for a more unified treatment under Section 61, where the entire bundled package is treated as a single product or service for tax purposes. This could simplify tax calculations and potentially reduce the tax burden by allowing companies to allocate revenue more flexibly across the different components of the bundle, possibly resulting in a more favorable overall tax position.

Overall, the decline of Chevron deference could lead to a more favorable tax environment for telecommunications companies, encouraging further investment in critical infrastructure and potentially lowering the cost of services for consumers. This shift could also prompt regulatory bodies like the FCC to reconsider their guidance, leading to more industry-friendly tax policies that better align with the realities of modern telecommunications.

IV. CONCLUSION

The repeal of Chevron deference represents a significant shift in the dynamics between federal agencies and the judiciary and empowers industries to more effectively challenge agency interpretations that they view as overly restrictive or inconsistent with legislative intent, potentially leading to a more favorable tax and regulatory environment.[82] As courts take a more active role in interpreting statutes independently, the outcomes of these challenges could set new legal precedents, and the long-term effects will depend on how courts handle these cases and whether Congress enacts legislative reforms to address gaps or ambiguities in the law. This shift also introduces uncertainty, as previous agency interpretations that were upheld due to Chevron may now be open to reinterpretation. Industries may increasingly engage in litigation to contest unfavorable rulings, leading to a potential increase in court cases that could reshape regulatory frameworks across various sectors.

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[80] KPMG, KPMG COMMENTS ON PROPOSED REVISIONS TO COMMUNICATIONS EXCISE TAX RULES 17 (2005),https://www.taxnotes.com/research/federal/other-documents/public-comments-on-regulations/kpmg-comments-on-proposed-revisions-to-communications-excise-tax-rules/yd80?highlight=%22REG-137076-02%22+%2269+F.R.+40345%22 [https://perma.cc/F8Q3-TT36].

[81] *See* Rev. Rul. 69-152, 1969–1 C.B. 289.

[82] Mario J. Verdolini, Christopher A. Baratta, William A. Curran & Margaret E. Tahyar, *Supreme Court Overruling of Chevron v. NRDC Expected to Strengthen Challenges to Tax Regulations*, DAVIS POLK (July 15, 2024), https://www.davispolk.com/insights/client-update/supreme-court-overruling-chevron-v-nrdc-expected-strengthen-challenges-tax [https://perma.cc/ZEZ7-5B88].

Although the U.S. Tax Court is likely to continue respecting the IRS's expertise,[83] tax regulations will now be subject to heightened scrutiny under the Administrative Procedure Act and the Skidmore deference framework. This change demands that the IRS provide robust reasoning and thorough documentation to defend its interpretations, ensuring that tax regulations align more closely with statutory intent and withstand judicial examination.

Moreover, the judiciary's expanded role in statutory interpretation could encourage businesses to push for legislative clarity, particularly in areas where ambiguity has allowed agencies broad discretion. This evolving legal landscape presents both challenges and opportunities, as industries navigate the new balance of power between the courts and federal agencies.

[83] Kat Lucero, *Chevron Ruling No Sea Change For Tax Court, Judge Says*, LAW360 (June 28, 2024), https://www.morganlewis.com/-/media/files/news/2024/chevron-ruling-no-sea-change-for-tax-court-judge-says.pdf?rev=a53e98d414e6494994b0ef4b1b7610be&hash=175D27737776B569FB40BDA37F4BF5D7.