The Supreme Court Turns the Corner on Challenging Tax Regulations

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ABSTRACT

Estate planning cases show a changing landscape in how courts will impact future estate planning law. Planners should review the three cases that are discussed and prepare for more court interference in the future.

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Although U.S. Supreme Court rulings in the trust and estate field are infrequent, this summer there were three within 5 weeks. All deserve thorough understanding, but this column notes two and explores the ramifications of the third.

First, the *Estate of Michael P. Connelly, Sr. v. United States* was issued June 4, 2024.[1] In the lower court, the case had both an Internal Revenue Code (IRC) Sec. 2703 (part of the infamous Chapter 14) issue relating to the buy-sell agreement as well as valuation of a company that owns life insurance on a shareholder that dies. The 8th Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota) held that the buy-sell did not bind the IRS and that the insurance increased the company value with no offset.

In contrast, in 2005, in the *Estate of Blount*, the 11th Circuit (Alabama, Florida, and Georgia) held insurance was an asset that was offset by the contractual liability to redeem the shares, zeroing it out.[2] This offset was available when there was a mandatory obligation to purchase the shares from the estate (i.e., a redemption agreement). In 1999, in the *Estate of Cartwright*, the 9th Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington) permitted an offset in a parallel situation (the purchase of a deceased's stock in a law firm).[3] Because the 8th Circuit holding resulted in a split among the circuits, the Supreme Court agreed

to rule on the valuation issue. It agreed with the 8th Circuit and held that the obligation under a redemption agreement did not cause a financial offset to the death benefit received and used to fund the purchase of shares from the deceased shareholder's estate. For readers advising affected clients, it would be a good idea to reach out to discuss planning options—and there are some.

The second is *Loper Bright Enterprises v. Raimondo,*[4] which obviated the *Chevron* deference, which deferred to agencies' interpretations (rules and regulations) when a statute is ambiguous so long as they are reasonable. In a sense, the Court determined that deferring to agencies was allowing the usurpation of the role of the judiciary (and, perhaps, the ability of agencies to use rule-making authority to further political objectives). By way of *Loper*, the Supreme Court perhaps inflated the role of courts and deflated the use of agency rules and regulations as a political football. Further, while the Court was careful to protect existing regulations, it put into play the legitimacy of those "in the works" and those to be finalized in the future.

The Administrative Procedure Act (APA) requires not just a "notice and comment" period, it requires the agency to address all comments in the preamble to the final regulations. Agencies now will be well advised to carefully prepare thorough analysis of comments, lengthening the preambles and preparing a summary of the analysis undertaken in response to them to help protect against future litigation.

But let us focus more philosophically on the possible impact of the third case. *Corner Post, Inc. v. Board of Governors of the Federal Reserve System* was decided on July 1, 2024.[5] Despite having received perhaps the least amount of published commentary among these three cases, it may have the biggest impact in years to come. First, for a regulation to have the force and effect of law, it must comply with the APA. This act was initially put into place as a buffer to the regulatory activity taking place during the New Deal era (e.g., courts in the first 2 years of President Franklin Roosevelt's first term issued over 1,600 injunctions against New Deal rules and regulations).

The APA has a 6-year statute of limitations, meaning if a lawsuit is not initiated within that time frame, it will be dismissed as untimely. The issue in *Corner Post* boiled down to the question of when does the 6 years begin to toll—at the publishing of the regulation or when it first impacts a taxpayer.

The history of *Corner Post* is that in 2021 two North Dakota trade associations sued challenging a 2011 regulation of the Federal Reserve Board setting the maximum fees that large banks can charge merchants for a debit-card transaction.

The Federal Reserve Board filed a motion in response seeking to dismiss because the 6-year statute of limitations had elapsed. The argument was that the regulation was promulgated in 2011 and the case was filed 10 years later. Instead of forcing the court to decide on that point, the trade associations added a third plaintiff, Corner Post, Inc., which is a truck stop that opened in 2018. The argument (again, this was 2021) was that the regulation did not impact this plaintiff until 3 years before, in 2018. The Supreme Court agreed and ruled that the start date was when the regulation first impacts the plaintiff—or, in our world, the taxpayer.

Ruling that the time clock for statute of limitations under the APA does not begin to run until the plaintiff is impacted results in a degree of uncertainty regarding the validity of regulations; e.g., for tax regulations no matter when promulgated. For example, a regulation adopted in 2024 could be challenged in 2050 by a business started in 2045.

The upshot of the ruling in *Corner Post* is that professional tax advisors may feel the ever-present peril of the Sword of Damocles—which always hangs by a thread above the head of tax regulations. There are many cases where we are comforted in advising clients to comply with regulations, or perhaps their safe harbors. But, if the future could find them chal-

lenged, it may undermine confidence in the categorical giving of such advice. ■

The author takes sole responsibility for the views expressed herein and these views do not necessarily reflect the views of the author's employer or any other organization, group or individual.

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(1) *Estate of Michael P. Connelly, Sr. v. United States,* 602 U.S.__ (2024).
(2) *Estate of Blount v. Commissioner*, 428 F.3d 1338 (11th Cir. 2005).
(3) *Estate of Cartwright v. Commissioner,* 183 F 2d 1035 (9th Cir. 1999).
(4) *Loper Bright Enterprises v. Raimondo,* 144 S. Ct. 2244 (June 28, 2024).
(5) *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S.__ (2024).