However, the era of tax law being insulated from constitutional law may be over. Recent litigation, most notably *U.S. v. Moore* (discussed in full in the supplement to page 158), indicates that the efficacy of the well-funded antitax movement to advance strategic attacks on tax laws, as well as a shift in the composition of the Supreme Court, has begun to unsettle assumptions long held by the tax bar and academy that the Constitution ends where tax law begins.

p. 53. Strike the last sentence of the second full paragraph and remove the third paragraph. Add the following two paragraphs instead:

In a landmark case, *Loper Bright Enterprises v. Raimondo*, No. 22-451 (U.S. June 28, 2024), the Supreme Court overruled the *Chevron* doctrine, reasoning that it is inconsistent with the Administrative Procedure Act's requirement that courts are the ultimate arbiter of legal questions and must exercise independent judgment in fulfilling that role. Throughout the opinion, the majority endorsed *Skidmore* deference, reverting to the pre-*Chevron* approach to statutory interpretation. That doctrine allows courts to seek aid from agency interpretations and gives particularly weight to those interpretations that are thoroughly considered, validly reasoned, and have remained consistent over time. *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). But the majority also seemed to contemplate a category of cases that delegate discretionary authority to an agency by calling upon it to define a term, to "fill up the details" of a statutory scheme, or to regulate subjects in a way that leaves the agency with flexibility. For these cases, the majority stated that the role of the judiciary is only to ensure the agency has engaged in "reasoned decisionmaking" within the constitutional bounds of delegation, thereby seeming to grant more deference to such delegated agency actions. One scholar has predicted that "most or even all of the cases that were previously called "*Chevron* deference" cases can now be relabeled as "*Loper Bright* delegation" cases.[1]

Although the courts have not yet tested the parameters of those cases entitled to this potentially more deferential *Loper Bright* delegation standard, it is quite possible that tax regulations issued under general § 7805(a) rulemaking authority would not qualify for it and instead would receive *Skidmore* deference. Additional rulemaking authority, however, is also delegated to Treasury by specific Code sections. See, e.g., § 25A (delegating to Treasury authority to prescribe such regulations as may be necessary or appropriate" to interpret the rules with respect to the credit for education expenses). This type of rulemaking may be more likely to qualify for the *Loper Bright* delegation standard. To be sure, it is unclear the effect *Loper Bright* will ultimately have on the ability of the Treasury and IRS to write regulations to interpret the many ambiguities in the Code, but it seems certain that the case will result in more legal challenges to tax regulations.

~~p. 54: After the first full paragraph, add the following~~:

~~Some commentators critiqued the cost-benefit analysis as required by OIRA review as analytically inappropriate since revenue (the primary goal of the tax system) was not counted as a benefit. In 2023, the Biden administration reversed the requirement that tax regulatory actions~~

[1] Adrian Vermeule, *Chevron By Any Other Name*, The New Digest (June 28, 2024), https://thenewdigest.substack.com/p/chevron-by-any-other-name.