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THE TAX LAWYER

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### Dispute Your Tax Bill, But Not IRS Regulations!

Most tax law is not in the Internal Revenue Code itself but resides in Treasury Regulations—they put meat on the bare bones of the tax law. You can often argue that your situation isn't covered by the Regulations, that your facts are different. Agreeing that your facts are covered but arguing the Regulations are *invalid* is *always* a tough sell. Sometimes it is the only argument you have, but the Supreme Court has made it even tougher to assert.

In [\*Mayo Foundation for Medical Education and Research\*](#), the Supreme Court supports IRS rulemaking, giving the IRS much broader discretion than many would like. National Taxpayer Advocate Nina Olson suggests that this case may signal more discrimination in the tax system and may give the IRS [\*unfettered discretion\*](#).

The Court's opinion involved a seemingly arcane question. Were stipends paid to Mayo's medical residents subject to FICA (Social Security) tax? That turned on the validity of Regulations. They quite clearly go significantly outside the bounds of the Internal Revenue Code itself.

Nevertheless, the Supreme Court in *Mayo* *unanimously* upheld these IRS rules. That unanimity underscores just how big a victory this case is for the IRS and Treasury. In 2007, a district court held a portion of these

Regulations invalid, noting they were only “interpretive.” [503 F. Supp. 2d 1164 \(2007\)](#).

Many tax lawyers thought “interpretive regulations” were quite different from “legislative regulations.” The latter give the IRS and Treasury an express grant of authority to cover a particular topic. That implies more latitude for legislative regulations and less for mere IRS interpretations.

The [Eighth Circuit Court of Appeals](#) reversed the District Court and said these FICA Regulations were valid, teeing up the question for the Supreme Court. [568 F.3d 675 \(8th Cir. 2009\)](#). In a sweeping opinion, the Supreme Court held these Regulations represented a reasonable construction of the underlying Code section. Significantly, the Supreme Court underscored [Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.](#), a case involving environmental regulations that had not been applied to tax law.

The Court in *Chevron* ruled that an interpretive regulation is valid if it implements a congressional mandate in a **reasonable** manner, and if it “harmonizes with the plain language of the statute, its origin, and its purpose.” [National Muffler Dealers Association v. United States](#). Does that sound broad, permissive, even **laissez faire**? It sure does.

The Court in *Mayo* even admitted that some of its prior opinions had stated that Regulations promulgated by the IRS pursuant to a general grant of authority were entitled to less deference. After *Mayo*, the wider *Chevron* standard applies with full force to tax law. If it’s reasonable, the IRS can do it.

**New Challenge?** Challenging an IRS Regulation is never easy. The difficulty a taxpayer faces in arguing that a Treasury Regulation should be struck down are quite significant. It has been done successfully numerous times. I’ve even done it myself. Yet in the wake of the IRS’s latest enormous victory in *Mayo*, it will be even harder in the future.

For more, see:

[The Supreme Court Expands The IRS’s Ability to Write the Tax Rules](#)

[Supreme Court Rules for IRS, Against Medical Residents](#)

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