



Pat Smith Quoted in Tax Notes on Supreme Court Decision in *Kisor v. Wilkie*, Retaining but Narrowing Auer Deference

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IPB attorney Pat Smith was quoted in an article in *Tax Notes* on the Supreme Court's June 26 decision in *Kisor v. Wilkie*, a 5-4 decision in which the Court rejected a challenge to the doctrine of *Auer* deference, under which courts are required to defer to an agency's interpretation of one of the agency's own regulations, but in which the Court also imposed significant restrictions and limitations on the application of this doctrine. The opinion may have its greatest significance for what it says or implies about the closely related doctrine of *Chevron* deference, under which courts are required to defer to agency regulations interpreting statutes the agency is responsible for enforcing. *Auer Deference Survives, But Neutered' and Zombieified.'*

"From the perspective of the tax world, what's interesting about this case is what it says and implies about *Chevron*," Patrick J. Smith of Ivins, Phillips & Barker Chtd. told *Tax Notes*. "The message that I'm getting from the opinion in this case is that nominally it's about *Auer*, but really much of what is said applies equally to applying *Chevron*," he said.

Smith said that even though Roberts declined to overrule *Auer*, it doesn't mean he won't overrule *Chevron*. Smith noted that the court has already overruled several prior opinions this term and he said Roberts may be hesitant to defy stare decisis on too many occasions in succession.

"In Justice Kagan's opinion, she stresses over and over again that determining whether the regulation is ambiguous is not easy," Smith said, adding that step two of the analysis isn't easy to meet either.