



Mayo and Chenery: Too Much of a Shift in Rationale?

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Tax Notes

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Patrick J. Smith is a partner at Ivins, Phillips & Barker. *Mayo*, soon to be heard in oral argument before the Supreme Court, presents several issues, some that are specific to the particular statutory provision at issue and others that have considerably broader importance. One the parties have not addressed is the application of the *Chenery* rule to the shift in rationale relating to legislative history as between the preamble to the proposed regulations and the government's position in the Supreme Court. Because of this shift, the taxpayers should prevail even if the Court decides all other issues in favor of the government.