



# Life After Mayo: Silver Linings

## PRACTICE AREAS

Tax

Tax Controversies

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*Tax Notes*

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Most tax practitioners interpreted the Supreme Court's *Mayo* decision to mean that it is now virtually impossible for taxpayers to prevail in challenges to tax regulations and that the IRS can therefore do almost anything it wants. However, nothing in *Mayo* suggests the Court intended that result.

To the contrary, the Court's clear message in *Mayo* is that tax law and the IRS are governed by the same rules that apply to every other area of federal administration. That provides a powerful tool for taxpayers, who traditionally have not attempted to invoke against the IRS administrative law rules that limit agency discretion. Smith discusses those limitations, which include the Administrative Procedure Act's arbitrary and capricious standard and its requirements for reasoned agency decision-making and explanations, the general presumption against retroactivity in regulations, recent case law narrowing the classification of jurisdictions requirements for bringing suit, exceptions to the exhaustion of administrative remedies requirements, and the principle that nonregulatory agency guidance is given weight only according to its power to persuade.