

August 2024 Update Memorandum for

**The Fundamentals of Federal Taxation:
Problems and Materials
(6th ed. 2023)**

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Introductory Note

This update memorandum provides a brief summary of recent tax developments relevant to the contents of our casebook, THE FUNDAMENTALS OF FEDERAL TAXATION: PROBLEMS AND MATERIALS (6th ed. 2023).

Chapter 1: Introduction

Pages 9-10: In “2. Treasury Regulations,” note the following:

In the recent landmark decision *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), the Supreme Court overturned the decades-old *Chevron* doctrine, holding that the Administrative Procedure Act (APA) gives courts ultimate authority to exercise their independent judgment in deciding whether an agency has acted within its statutory authority (adding that “the ‘law of deference’ that this Court has built on the foundation laid in *Chevron* has instead been ‘[h]eedless of the original design’ of the APA”). While reinforcing the APA’s requirements, the Supreme Court also reverted to the standard set in *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), which gives weight to an agency’s interpretation according to its persuasiveness. Now, the weaker *Skidmore* form of deference generally applies to regulatory guidance, as it did before *Chevron*, which is the same form of deference used for sub-regulatory guidance.

Although *Loper Bright* was not a tax case, it will have a significant impact on the IRS’s administration of tax law. Indeed, the IRS will now have a more difficult burden in defending the validity of its Treasury Regulations by having to convince a court that its interpretation of an ambiguous Code section is persuasive based on numerous *Skidmore* factors (“the thoroughness evident in its consideration, the validity of its reasoning, [and] its consistency with earlier and later pronouncements”). Gone are the days in which the IRS merely had to convince a court that its interpretation was a reasonable one.

The demise of *Chevron* raises numerous questions. For example, will we see a rise in litigation challenges (i.e., taxpayers invoking *Loper Bright* in challenging pro-IRS regulations and the IRS invoking *Loper Bright* in challenging pro-taxpayer regulations)? Will the IRS begin to incorporate its positions in Revenue Rulings rather than Treasury Regulations, considering both are now subject to the same *Skidmore* standard? Will we see legislation passed that codifies the *Chevron* doctrine requiring courts to defer to an agency’s reasonable or permissible interpretation of a statute? For discussion of some of these issues, see Mitchell M. Gans, *Does the End of Chevron Deference Mean a Weaker IRS?*, 184 TAX NOTES FEDERAL 1503 (Aug. 19, 2024).

Pages 14-19

As noted in the main text, the Supreme Court in *Mayo Foundation v. United States* refused to distinguish between Treasury Regulations issued pursuant to general grant of authority (under section 7805) or pursuant to a specific congressional grant of authority (under a Code section other than section 7805). Under *Loper Bright*, discussed above, while *Skidmore* deference generally applies, greater deference may apply to regulations issued pursuant to specific congressional grant of authority if several requirements are satisfied.

Chapter 2: Gross Income

Pages 23-24: In “1. The Realization Requirement,” note the following:

The Supreme Court recently decided *Moore v. United States*, 144 S. Ct. 1680 (2024). In that case, the Court voted to uphold the mandatory repatriation tax enacted in the Tax Cuts and Jobs Act of 2017. Writing for the five-justice majority, Justice Kavanaugh wrote: “the precise and narrow question that the Court addresses today is whether Congress may attribute an entity’s realized and undistributed income to the entity’s shareholders or partners, and then tax the shareholders or partners on their portions of that income. This Court’s longstanding precedents, reflected in and reinforced by Congress’s longstanding practice establish that the answer is yes.” The Court answered a narrow question and avoided the broader question whether realization is required under the Sixteenth Amendment for there to be a tax on income. Although the majority avoided deciding that wider issue of whether realization is constitutionally required (i.e., whether the Code’s statutory realization requirement (for administrative convenience) is also a constitutional requirement), there were four Justices who expressed support for a constitutional realization requirement for taxing income. As noted by some commentators, that would affect “vast swaths of the Internal Revenue Code” (e.g., subpart F, discussed in Chapter 40, sections 446 and 448, discussed in Chapter 13, section 701, 1361-1379, discussed in Chapter 37, and sections 2501-2524, discussed in Chapter 41) and cost the government trillions in lost tax revenue. See Reuven S. Avi-Yonah, *Limiting the Blast Radius: Can Congress Save the Code from Realization?*, U. of Michigan Public Law Research Paper (June 25, 2024).

Chapter 7: Business Expenses

Page 115: In “E. Section 162(a)(1)—Reasonable Salaries,” note the following:

See *Clary Hood, Inc. v. Commissioner*, 69 F.4th 168 (4th Cir. 2023) (affirming a multifactor approach to determine the reasonableness of compensation).

Chapter 9: Depreciation and Amortization

Pages 160-161: B. Bonus Depreciation

In 2024, the aggregate cost of any section 179 property that a taxpayer elects to treat as an expense cannot exceed \$1,220,000. This limit is reduced (but not below zero) by the amount by

which the cost of section 179 property placed in service in 2024 exceeds \$3,050,000. Rev. Proc. 2023-34.

Chapter 12: The Deduction Hierarchy

Page 210: In “A. Itemized Deductions versus the Standard Deduction,” note the following:

In 2024, the standard deduction is \$29,200 for married individuals filing joint returns and surviving spouses, and \$14,600 for unmarried individuals (other than surviving spouses and heads of households). The additional standard deduction amount for the aged or the blind is \$1,550. Rev. Proc. 2023-34.

Chapter 14: Ordinary Tax Rates and Taxpayer Classification

Page 256: In “D. Alternative Minimum Tax,” note the following:

In 2024, the inflation-adjusted AMT exemption amounts are \$133,300 for joint filers, \$85,700 for unmarried individuals, and \$66,650 for married individuals filing separate returns. Rev. Proc. 2023-34.

Pages 258-259: In “IV. Materials,” note the following:

The inflation-adjusted tax rate tables for 2024 can be found in Rev. Proc. 2023-34.

Chapter 15: Tax Credits

Page 263: In “1. The Dependent Care Credit,” note the following:

Of historical note, The American Rescue Plan Act of 2021, P.L. 117-2 (enacted in March 2021) increased the dependent care credit for 2021 only. The top credit percentage increased from 35% to 50%. Plus, eligible taxpayers could claim dependent care expenses of up to \$8,000 for one qualifying child (up from \$3,000 before 2021) or \$16,000 for two or more qualifying individuals (up from \$6,000 before 2021). Most importantly, the adjusted gross income (AGI) level at which the credit percentage is reduced was raised substantially from \$15,000 to \$125,000, allowing more people to qualify for the new maximum 50% credit rate. Beyond \$125,000, the 50% credit percentage was reduced as income increased. Note that in 2021, for the first time, the credit was fully refundable, which means families could claim it even if they didn't owe any taxes.

Pages 264: In “2. *The Child Tax Credit and the Partial Credit for Other Dependents*,” note the following:

Of historical note, The American Rescue Plan Act of 2021 expanded the child tax credit for 2021 only. It increased the amount of the credit (from \$2,000 per child to \$3,000 per child for dependents ages 6 through 17 and \$3,600 for dependents ages 5 and under), made it available for 17-year old dependents, made it fully refundable (before only \$1,400 was refundable), and made it possible for families to get 50% of it in advance during the last half of 2021 (estimated from the 2020 tax return). The maximum credit was available to taxpayers with a modified adjusted gross income (AGI) of \$75,000 or less for singles and \$150,000 or less for joint filers). Above these income thresholds, the extra amount above the original \$2,000 credit (either \$1,000 or \$1,600) was reduced by \$50 for every \$1,000 of modified AGI.

Chapter 17: Capital Gains and Losses

Page 281-283: In “*5. Determining the Appropriate Capital Gains Rate on “Net Capital Gain,”*” note the following:

For 2024, the taxable income breakpoint between the 0% and 15% rate is \$47,025 for unmarried individuals (\$94,050 for joint filers). The breakpoint between the 15% and 20% rates is \$518,900 for unmarried individuals (\$583,750 for joint filers). Rev. Proc. 2023-34.

Chapter 20: The Charitable Contribution Deduction

Pages 317-318: In “*3. Sections 170(b)(1)(A) & (B),*” add the following at the end of the section:

Of historical note, the CARES Act suspended the 60% limitation (for cash contributions to public charities) and raised it to 100% in 2020 in response to the COVID-19 (coronavirus) crisis. And, the Taxpayer Certainty and Disaster Tax Relief Act of 2020 extended the suspension for an additional year (2021). *See* Taxpayer Certainty and Disaster Tax Relief Act of 2020, § 213, P.L. 116-260. Thus, for 2020 and 2021, an individual could deduct charitable contributions in cash to public charities as long as the contributions did not exceed the individual’s contribution base (100%). Consistent with other carry forward rules in section 170, an individual could carry forward for five years any qualified cash contributions that exceeded her contribution base. P.L. 116-136, § 2205; P.L. 116-260, 213.

Page 321: In “*E. Substantiation,*” note the following:

As noted in the “*Planning Pointer,*” it very important to comply with applicable rules in substantiating charitable contributions. For another illustration, see *Albrecht v. Commissioner*, T.C. Memo, 2022-53 (denying taxpayer a deduction for the donation of a large collection of Native American jewelry because she did not have the required statement from the charity that she received no goods or services in return).

Chapter 23: Hobby Losses

Page 361: In “III. Overview,” note the following:

The main text notes that hobby losses are classified as below-the-line miscellaneous itemized deductions, temporarily suspended under the Tax Cuts and Jobs Act. *See* Gregory v. Commissioner, 69 F.4th 762 (11th Cir. 2023), *aff’g* T.C. Memo 2021-115 (affirming that hobby losses are miscellaneous itemized deductions).

Chapter 27: Limitations on Deductions

Pages 419-420: In “E. Limitation on Excess Business Losses,” add the following at the end of the section:

The limitation on excess business losses of noncorporate taxpayers has been extended and applies to tax years beginning before 2029. IRC § 461(l), as amended by the Inflation Reduction Act (P.L. 117-169).

For tax years beginning in 2024, in determining a taxpayer’s excess business loss, the amount under section 461(l)(3)(A)(ii)(II) is \$305,000 (\$610,000 for joint returns).

Chapter 33: Education Benefits and Costs

Page 520: 1. Deductibility of Interest

For 2024, the \$2,500 maximum deduction for interest paid on qualified education loans under section 221 begins to phase out for taxpayers with modified adjusted gross income in excess of \$80,000 (\$165,000 for joint returns), and is completely phased out for taxpayers with modified adjusted gross income of \$95,000 or more (\$195,000 or more for joint returns). Rev. Proc. 2023-34.

Chapter 34: Personal Injury Recoveries and Punitive Damages

Pages 531-534: In “A. Damages Received on Account of Personal Injuries or Sickness,” note the following:

Case law continues to develop in this area. *See, e.g.,* Blum v. Commissioner, T.C. Memo 2021-18 (2021), *aff’d* 129 A.F.T.R.2d 2022-1170 (9th Cir. 2022) (holding taxpayer, who allegedly sustained physical injuries when she fell from a broken hospital wheel chair, could not exclude a \$125,000 settlement payment from a malpractice suit against her former attorneys for bungling her negligence lawsuit against the hospital).

Chapter 36: Retirement Resources and Deferred Compensation

Page 580: In “b. Payout,” note the following change:

Beginning in 2023, Congress raised the age that one must begin taking required minimum distributions (RMDs) to age 73.

Page 583: in “C. Social Security,” note the following:

As noted in the text, the Social Security tax has a wage limit (maximum wage that is subject to the tax). For earnings in 2024, the base is \$168,600. There is no wage base limit for the 2.9% Medicare tax (i.e., all covered wages are subject to Medicare tax).

In 2024, the average monthly benefit was \$1,907, and the maximum monthly benefit was \$3,822. The latest figures on benefits may be found at www.ssa.gov.

Page 583: In “1. Eligibility,” note the following:

In 2024, a person received one credit for each \$1,730 of earnings, up to a maximum of four credits per year.

Chapter 37: Overview of Entity Taxation

Pages 601-604: D. The Deduction for Qualified Business Income—Section 199A

For 2024, the threshold amount under section 199A(e)(2) is \$383,900 for joint filers and \$191,950 for single filers. Rev. Proc. 2023-34.

Chapter 41: Overview of Estate and Gift Taxation

Page 657-658: 4. *The Unified Credit*

For 2024, the basic exclusion amount is \$13,610,000 for determining the amount of the unified credit against estate tax under section 2010. Rev. Proc. 2023-34.

Page 658-659: 1. *The Annual Exclusion*

For 2024, the annual exclusion amount is \$18,000. Rev. Proc. 2023-34.