

Omissions From Gross Income And the Chenery Rule

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Patrick Smith Quoted in Tax Analysts Article on Omissions from Gross Income Cases

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Tax Notes

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The Tax Court recently held that 2009 regulations providing that an understatement of basis constituted an omission from gross income for purposes of the special rule extending the statute of limitations on assessments to six years could not be upheld under the *Brand X* case because the Supreme Court's *Colony* decision adopting a contrary rule was a *Chevron* step-one holding and therefore could not be overruled by a regulation. In this article, Ivins partner Pat Smith presents an additional reason why these regulations cannot overrule *Colony* — namely, the *Chenery* principle that agency action can be upheld only on the basis articulated by the agency at the time it acted.