

Taxation I

Professor Deborah A. Geier

Room 11

M, T, Th

1:00-2:10

Administrative Matters and Syllabus

Required Texts

(1) U.S. FEDERAL INCOME TAXATION OF INDIVIDUALS 2021 by Deborah A. Geier.

You can download this textbook for free from <https://www.cali.org/books/us-federal-income-taxation-individuals>. For those who prefer a hard copy (as I do), you can also purchase a hard copy at cost (no mark-up for either CALI or me) for about \$35 from Lulu.com, which you can access from the same link above. (I'll be using a hard copy in class.)

(2) Access to the Internal Revenue Code & Regulations in class. I shall be using **SELECTED FEDERAL TAXATION—STATUTES AND REGULATIONS** (West 2022 ed.) (ISBN: 9781636592633).

If you have access to a used copy of the 2021 selected sections book (whether from West or another publisher), that should do, as well. While the American Rescue Plan (enacted in March) made a few tax changes, I'll try to alert you to them so those with an old Code can access (and print) the new language online. I do think working with a hard copy of the Code and regs is helpful, particularly in your first tax class. Nevertheless, for those who wish to avoid the cost of purchasing a hard copy, you can access the relevant Code section or Treasury Regulation online by typing the code section (e.g., IRC 61) or treasury regulation (e.g., TR 1.61-2) into your browser's search box, and the first item to come up will be the Legal Information Institute's version of the code section or regulation. The LII is hosted by Cornell law school, and it is the source that I used for the hyperlinks in my e-textbook. *You will need access in real time in class, so if you do not purchase a hard copy, you will need to bring a laptop to class.*

One word of warning, however. Although the final exam is open book, you will not be able to access the internet during the exam, so those of you choosing online access only may wish to print out some of the Code sections and Treasury Regulations that you wish to have with you during the final exam. Alternatively, you can copy and paste some Code and Regulation provisions in a saved file, as you will have access to your files (though *not* the internet) during the final exam. (I permit access to your files so that students wishing to avoid the cost of printing out or purchasing the textbook can still access it during the exam.)

Laptop Use in Class

Because I know that some students will be accessing the textbook and/or Internal Revenue Code and Regulations online during class, I do not ban laptop use in the classroom.

Nevertheless, I wanted to remind you of studies showing that students who take class notes by hand perform better on quizzes/exams than those who take notes on computers. While most early evidence has come from studies of undergraduates, a more recent study confirms these results with respect to law students and law classes. The study looked at 2L students in two courses, Con Law and Evidence, at Roger Williams University School of Law. Controlling for LSAT, the study found that students who handwrote their notes received, on average, one grade higher than students who took notes on a computer (i.e., an A- rather than a B+). *See*

https://taxprof.typepad.com/taxprof_blog/2019/12/law-students-who-handwrite-their-notes-outperform-laptop-users-by-one-grade-eg-b-to-a-.html

Finally, I ask that students *not* use their laptops in class to access *unrelated content*. Study after study shows that those who do earn lower grades than those who do not, and such activity is also distracting to your colleagues. Please show respect by staying focused on the class material while in class. Many thanks!

Office and Hours

Office: Room 233 Phone: 687-2341 e-mail: d.geier@csuohio.edu

Feel free to stop by anytime! No appointment is necessary. I am here most weekdays, all day. You can also contact me over email, of course, though long and involved questions could require an in-person discussion. Please remember to wear your masks in class and in my office.

Attendance

ABA and AALS accreditation rules require that law schools announce and adhere to attendance requirements, which are examined for compliance during the every-7-year accreditation visits. Absent an accommodation through ODS, I require that students miss no more than 2 weeks of a 14-week semester. Thus, for this class, students may miss no more than 6 classes without consequence, absent an ODS accommodation. I consider “attendance” to encompass “adequate preparation” as well as physical presence, which means that a failure to prepare adequately can constitute an absence.

Absence (or its equivalent—a failure to prepare) for more than 2 weeks of classes will result in a lower final grade (including the grade of “F”) or even involuntary withdrawal in egregious instances *in my sole discretion*, depending on my evaluation of the equities of the situation that caused the excessive absences or lack of preparation.

The 2-week period is intended to account for the range of emergencies that arise, including personal and family illnesses, child-care problems, moot court and law review deadlines, outside work responsibilities, and employer interviews. *You need **not** report to me the reason for an absence; the function of the two-week period is to allow you to miss class, when necessary, without the need for me to evaluate the merits of the reason for your absence. I assume good faith on the part of students and that, when you are not in class, you have a good reason for the absence.* You need not use the free days to observe religious holidays; such absences will constitute additional excused days if you give me advance notice *before* the holiday. Please see me if absences or instances of lack of preparation begin to mount and put you at risk.

I use the seating chart to take attendance at the beginning of each class. Until I get to know you, please let me know if you change your seat in the course of the semester or for a particular class. Please be in your seat ready to begin class promptly. Many thanks for your consideration.

Recording of Classes

Absent an accommodation from ODS, neither audio nor visual recording of classes is

permitted.

Outside Consulting

Most of your professors deal with areas of law that do not affect you today as immediately and personally as does tax law. I think it would be rare, for example, for a student to consult her Contracts professor regarding a contract she personally executed.

I do not believe that my proper role as an employee of this University is to serve as your personal tax advisor by answering or researching your personal tax questions or tax questions that arise in the course of your outside employment. My role here is that of professor. *I am always happy to discuss with you anything covered in class or in the material that is unclear to you, as would any professor with respect to his or her class material.*

Optional Practice Quizzes

During the course of the semester, I shall distribute two “optional practice quizzes,” the first after Chapter 8 and the second near the end of the course. The purpose of these quizzes is to give you practice and provide you feedback regarding your knowledge and exam-writing skills during the course of the semester in an unpressured (*i.e.*, ungraded) context. I provide detailed comments on both substance and style to help you improve both in your *understanding* of content and in your *writing* of content. (I shall distribute my list of “exam-taking tips” with each quiz.)

These optional practice quizzes are not mandatory. To encourage participation, though, *I will not review the quizzes in class.* I have found that—if I do—very few students submit answers; they just wait for the class discussion. It’s actually *your* active review of the material in order to construct an answer and *your* active construction of a cogently written answer that are the most useful parts of the exercise. Moreover, there is no opportunity to give feedback tailored to your (or your group’s) specific answers with a mass review in class. Each of your answers deserves feedback tailored specifically to it, as your skills will vary; different answers show different strengths and weaknesses.

While I permit individual submissions, I encourage collaboration. There is no limit to the number of names that may appear on a quiz; three or four names may appear if there are that many students in your study group, as is often the case. Moreover, if you do decide to work together, I encourage you to work on drafting responses cooperatively rather than splitting up the questions for different people to answer. In the real world, lawyers work cooperatively, both in the discussion phase and in the drafting phase, and the final work product is always better for it. Students, just as lawyers, learn from each other. Your submitted answers should be better if you work on them cooperatively—correcting each other’s substantive, grammatical, and citation errors and helping each other draft well-constructed sentences and paragraphs—rather than alone.

Practice quizzes must be submitted by the date noted on the quiz. Absent an accommodation from ODS, late submissions will *not* be accepted. I feel strongly that feedback should be provided promptly to students, so I usually shall return the quizzes within one week.

Examination and Grading

There will be one final examination at the end of the course consisting chiefly of fact patterns requiring analysis. Each question is allocated a number of minutes, and each minute is worth one point. For example, a question allocated 20 minutes is worth 20 points, a question allocated 40 minutes is worth 40 points, and so on. The total number of assigned minutes (and total number of points) is 180 (3 hours), but you have an additional 30 minutes to use as you like, for a total of 3.5 hours of exam time. *I suggest that you allocate your time wisely.*

You will not be examined on any topic or Code section (or subsection) not actually covered in class.

Because my textbook is available primarily in e-textbook format, the final exam will be given in “open” exam software mode, so you will be able to access your personal files (though not the internet) during the exam. In addition, you may have with you any compilation of the Internal Revenue Code and Income Tax Regulations (or printouts for those of you who do not purchase the Selected Sections book but access the Code and Regulations primarily online), any class handouts, class notes, any outline material prepared by you and your colleagues (if you work in a study group and prepare an outline together), and, if you prefer, a calculator. In other words, you can have just about anything except other people’s work, such as commercially published outlines, treatises, and study aids.

Do not become complacent from the fact that the exam is open-book. My exams are open book primarily because no newly minted tax lawyer tries to analyze an issue without the Internal Revenue Code and other resources at hand. But simply because the exam is open book, do not fall into the trap of thinking that you can look up the relevant material ***and learn it*** during the exam itself once you recognize the topic at issue. ***This is a recipe for failure.*** *To do well on the exam, you need to know the material well going into the exam, using your notes only to pinpoint a Code section, regulation, etc., to cite as authority. The time allotments are sufficient for students who know the material going into the exam but clearly are **not** sufficient for students who have to spend considerable time looking up material during the exam and trying to figure out at that point how the law works.*

The exam grade normally will count for 100% of the final grade. Outstanding class work, however, can move a grade to a higher grade category. As noted above, absences (including a failure to prepare) beyond the 2-week period may lower a final grade.

Course Goals

By the end of the course, you should be able to:

- Understand the Schanz-Haig-Simons definition of income and identify the core provisions in the Internal Revenue Code that implement this structure, as well as provisions (so-called tax expenditures) that deviate from it;
- Know generally (in broad strokes only) how a consumption tax differs from an income tax and identify some provisions in the Internal Revenue Code that implement consumption tax (rather than income tax) values;
- Identify and apply common tax policy tools, including horizontal and vertical equity, the

ability-to-pay fairness norm (and the standard-of-living norm in competition with it), the neutrality economic norm, and common deviations from the neutrality norm in the name of combatting negative externalities or rent-seeking behavior (or in the form of tax expenditures);

- Analyze the § 61(a)(1) gross income inclusion for compensation for services rendered (including deferral of compensation subject to a substantial risk of forfeiture under § 83) and the statutory exclusions for compensation that we cover, including §§ 132 and 119;
- Analyze the scope, content, and interpretation approaches (by both the IRS and courts) of the vague residual (or catchall) clause in § 61—“gross income means all income from whatever source derived”—under *Glenshaw Glass* and related authorities, including the treatment of windfalls, bargain purchases, rebates, and tenant improvements;
- Analyze the taxation of *inter vivos* and death-time gifts and bequests (and life insurance proceeds) under §§ 101, 102, 1015, and 1014;
- Analyze statutory and common law defenses against the assignment of income from one taxpayer to another in both the intact and fractured families, including the transfer of cash and property in a divorce under § 1041;
- Understand the income tax consequences of borrowing and lending and identify what receipts can properly be analyzed under the “borrowing exclusion”;
- Analyze bad-debt deductions (or worthless securities deductions) taken by lenders or security owners under §§ 165(g) and 166;
- Analyze § 61(a)(12) debt-discharge income for borrowers and relevant statutory exclusions under § 108;
- Analyze the tax consequences of purchasing property with borrowed money and transferring property subject to indebtedness (both recourse and nonrecourse) under *Crane*, *Tufts*, and related statutory provisions;
- Calculate realized gain and loss under § 1001, apply certain nonrecognition rules that may allow realized gains to go unrecognized (or may prevent realized and otherwise deductible losses from being recognized), and analyze the basis rules that apply in these instances under §§ 1012, 1033, 1031, and 267;
- Analyze how depreciation and related provisions apply to certain business and investment property under §§ 179, 168, 280F, and 197;
- Analyze the income tax consequences of “net capital gain” under § 1222(11), the capital loss limitation and carryover rules under §§ 1211(b) and 1212(b), depreciation recapture under §§ 1245 and 1250, and the “quasi-capital gain” rules of § 1231;
- Understand the basic concept of a “tax shelter” and how the statutory rules (including §§ 456, 469, 461(l), and 163(d)) combat them;
- Analyze the tax consequences of both human capital acquisition costs in the form of education and human capital losses (and compensation for those losses, if obtained) are analyzed under §§ 117, 127, 25A, Treas. Reg. § 1.162-5, and § 104;

- Analyze both gambling losses and so-called hobby losses under §§ 165(d) and 183;
- Analyze the tax expenditures pertaining to home ownership under §§ 163(h)(3), 121, and 164(a)(1), the likely economic effect of these tax expenditures, and possible reform proposals; and
- Analyze the basic rules pertaining to charitable contributions under § 170.

Syllabus

One of the benefits of writing the textbook that we shall use is that it generally covers the material in the order that I think is most effective. For that reason, there will be no major jumping around in the textbook (except a bit at the end). We shall generally begin with Chapter 1 and move methodically through. We shall *not* be able to get through the entire textbook, however. My hope is to cover Chapters 1 through 16, 18, and Parts A. and D. of 17 (on the tax consequences of home ownership and charitable contributions). If we have any remaining time, we'll add health care. We'll see how it goes!

Always read the relevant Code provisions and Treasury Regulations before class. Just as important, always try your best to work through the assigned problems before class. Class time is best used to explore where you are having problems, what language in the statute or regulations is giving you pause, *etc.* It is not a good use of class time for you to be reading the statute or a problem for the first time and trying to work through it in real time. That is why the problems are provided for you before class rather than during class.

The class assignments below are estimates only. We inevitably end up taking a bit longer with some assignments and taking less time with others. Nevertheless, the class assignments below should provide a good idea of the content and general pace of the course.

Class 1: Preface, Introduction, and the Introduction to Unit I.

Unit I: The Core Structures of Income and Consumption Taxation and Tax Policy

The Core Structure of a Tax on “Income”

Classes 2-4: Chapter 1, Part A., including the problems. Focus on §§ 61(a); 262(a); 162(a); 212(1)-(2); 165(a)-(c); 263(a); 167(a); 1001(a)-(b); 1012; 1221(a)(1); 1222 (general idea); 1211(b). This is a *lot* of Code sections, I know, but in this first part of Chapter 1 we examine the big picture of a tax on “income,” and these provisions make up the core structure of an income tax. *We shall be revisiting these Code sections throughout the course. For example, we'll spend an entire chapter on capital gains and losses.* On the first of the three class sessions for this assignment, we won't get beyond Problem 1. We'll work through Problems 2 through 8 in the remaining two classes.

Class 5: Chapter 1, Part B., including the problems. Focus on §§ 62(a); 67, including in particular 67(g) (temporarily suspending until 2026 deduction of all “miscellaneous itemized deductions” within the meaning of § 67); 24(a)-(c), (h), (i); Treas. Reg. § 1.62-2(c)(4). **The American Rescue Plan enacted in March significantly amended the Child Tax Credit described in the text, so be sure to look at the new language in § 24(i).**

Consumption Taxation

Class 6: Chapter 2. Focus on §§ 103(a); 265(a)(2).

Tax Policy

Class 7: Chapter 3.

Capital Expenditures

Classes 8-9: Chapter 4, including the problems. Focus on § 263 and the cited Treasury regulations.

Unit II: The Scope of Compensation and Residual Gross Income

Compensation

Classes 10-11: First read the Introduction to Unit II. Chapter 5, including the problems. Focus on §§ 61(a)(1); 119; 132; 83, and the cited regulations.

Residual Gross Income

Classes 12-13: Chapter 6, including the problems. Focus on that (vague) residual clause at the beginning of § 61—“gross income means all income from whatever source derived ...”—and §§ 74 and 109.

Unit III: The Possibilities for Income Shifting

Gifts and Bequests

Classes 14-15: First read the Introduction to Unit III. Chapter 7, including the problems. Focus on §§ 102; 274(b); 1014(a)(1); 1015(a); 101(a); and the cited Treasury regulations.

Income Shifting in the Happy and Fractured Families

Classes 16 & 17: Chapter 8, including the problems, except skip the *Reynolds* case at the end of the chapter (and its problem). Peruse §§ 1(g) and 671-677 (though you are not responsible for their details).

Unit IV: Everything You Wanted to Know About Debt but Were Afraid to Ask

Borrowing and Lending

Classes 18-19: First read the Introduction to Unit IV. Chapter 9, including the problem. Please don't be intimidated by the math here, for which *you are not responsible*. If you can follow along, however, it shows the internal logic regarding identifying principal and interest in a loan, which will also be relevant to understanding how the depreciation provisions (studied in Chapter 13) are frontloaded.

The Bad-Debt Deduction

Class 20: Chapter 10, Part A., including the problems. Focus on §§ 165(g), 166, and the cited Treasury regulations.

§ 61(a)(12) Debt-discharge Income and Possible § 108 Exclusion

Classes 21-22: Chapter 10, Part B., including the problems. Focus on §§ 61(a)(12) and 108(a) through (b)(3)(A) & (d)(2)-(3).

Debt and Property

Classes 23-24: Chapter 11, including the problems. Focus on §§ 108(a)(1)(D) & (e)(5). This is probably one of the most difficult chapters in the book, particularly because the law developed here does not make conceptual sense in some respects. Nevertheless, *Crane* and *Tufts* are crucial cases in understanding both the development of tax shelters (studied later) and, in particular, some of the rules studied in Tax II pertaining to the taxation of business enterprises. It's a topic that *every* basic tax class in the country covers. I warn you that multiple readings of the chapter are usually necessary for good understanding.

Unit V: The Ownership and Disposition of Property

Accounting for Property Gain and Loss and Nonrecognition Rules

Classes 25-26: First read the Introduction to Unit V. Chapter 12, including the problems. Focus on §§ 1033(a)(2)(A)-(B) & (b)(2); 1031(a)-(d); 267(a)(1), (b)(1) & (c)(4).

Depreciation and Related Provisions

Classes 27-28: Chapter 13, including the problems. Focus on §§ 167(a)-(c)(1); 168(a)-(d)(2), (e)(1)-(3) & (k)(1), (2)(A) & (F)(i), (6)(A) & (7); 179(a)-(b)(2), (c) & (d)(1); 280F(a)(1); 197(a)-(d) & (e)(4).

Capital Gains and Losses

Classes 29-30: Chapter 14, including the problems. Focus on §§ 1211(b); the rules of § 1212 described in the text; 1245(a)(1)-(3)(A); 1250(a)(1)(A), (B)(v), (b)(1) & (c); 1231(a)(1)-(3)(A)(i), (b)(1).

Tax Shelters

Classes 31-32: Chapter 15, including the problems. Please don't be intimidated by the math after the *Estate of Franklin* case, which is intended chiefly to illustrate the underlying economics in some tax shelters. While I shall say a few words about the common law rules that you will read about, we shall concentrate most of our class time on the statutory provisions explored in the chapter. Focus on §§ 465(a)-(b)(2) & (6); 469(a)-(c)(2) & (7), (d)(1), (h)(1)-(2) & (i)(1)-(3)(A); and 163(d); 1(h)(2), (h)(11)(A) & (D)(i). Peruse § 461(l).

Unit VI: Distinguishing Between Income Production and Personal Consumption

Acquiring Human Capital in the Form of Education

Class 33-34: First read the Introduction to Unit VI. Chapter 16, Part A., including the problems. Focus on §§ 117, 127, 25A, and Treas Reg. § 1.162-5.

Compensation Received for the Loss of Human Capital

Class 35: Chapter 16, Part B., including the problems. Focus on §§ 104(a)(2) & the last two sentences of § 104(a); 212(1); 265(a)(1); 62(a)(20) & (e). But also don't forget § 67(g), which suspends the deduction of all "miscellaneous itemized deductions" as defined in § 67 until 2026.

Gambling and Hobby Losses

Class 36: Chapter 18, including the problems. Focus on §§ 165(d) and 183. But also don't forget § 67(g), which suspends the deduction of all "miscellaneous itemized deductions" as defined in § 67 until 2026.

Home Ownership

Classes 37: Chapter 17, Introduction and Part A., including the problems. Focus on §§ 163(h)(3) and 121.

Charitable Contributions

Classes 38-39: Chapter 17, Part D., including the problems. Focus on §§ 170(a)(1), (c), & (e)(1) and the cited Treasury regulations.

If we have remaining time, we shall cover the tax provisions pertaining to health care in Chapter 17, Part C.