

Professor Bret Wells

**Law Center
University of Houston**

Federal Income Taxation

Syllabus

Fall Semester 2013

Perspectives Concerning Taxation

“Basic tax, as everyone knows, is the only genuinely funny subject in law school.”

-- Martin D. Ginsburg

“One of the problems with trying to have a rational discussion about taxes is that so many people want to believe what's convenient rather than what's accurate. Believing, after all, requires so much less effort than thinking.”

-- Allan Sloan

“The subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state.”

Adam Smith
Wealth of Nations

“Taxes are what we pay for civilized society.”

Justice Oliver Wendell Holmes,
Compania General de Tabacos de Filipinas
v. Collector of Internal Revenue,
275 U.S. 87, 100 (1927) (dissenting).

“[T]axation, in reality, is life. If you know the position a person takes on taxes, you can tell their whole philosophy. The tax code, once you get to know it, embodies all the essence of life: greed, politics, power, goodness, charity.”

-- Sheldon S. Cohen

“Taxation is, in fact, the most difficult function of government and that against which their citizens are most apt to be refractory.”

-- Thomas Jefferson

“America's tax laws are similar to the writings of Karl Marx and the writings of Sigmund Freud in that many of the people who loudly proclaim opinions about these documents have never read a word of them.”

-- Jeffery L. Yablon

“Tax issues are fun. Getting to love them may take a bit of effort, but the same is true for Beethoven's string quartets, and think of how much pleasure they give if one does make the effort.”

-- Peter L. Faber

“People want just taxes more than they want lower taxes.”

-Will Rogers

FEDERAL INCOME TAX

Fall Semester 2013

Professor Wells

1. Class sessions: Monday & Wednesday from 8:30 A.M. to 10:30 A.M.

There is no scheduled make-up classes at this time, but make-up classes are possible albeit not expected.

2. Required materials:

- a) Bankman, Shaviro, & Stark, "Federal Income Taxation," 16th Edition, Wolters Kluwer (2012).
- b) Commerce Clearing House (CCH), "Federal Income Tax - Code & Regulations, Selected Sections," 2013-2014 Edition (with an accompanying CD-ROM). This volume contains (i) provisions of the Internal Revenue Code of 1986 (the most recent complete "codification" of the tax statutes), as subsequently amended on numerous occasions, and (ii) selected important "regulations," as promulgated by the U.S. Department of the Treasury.
- c) A Casebook Update that incorporates changes in the law arising from passage of the American Taxpayer Relief Act of 2012 and the required Supplemental Reading Materials for this course are available for download from my website at <http://www.law.uh.edu/faculty/bwells/courses.html>

3. Supplementary reading material:

- a) Recommended: Chirelstein, "Federal Income Taxation--A Law Student's Guide to the Leading Cases and Concepts," 12th Edition, Foundation Press (2011) is recommended as particularly useful for supplemental reading. This volume is helpful because the discussion often provides helpful analysis of the key tax cases covered in this course. You would be well served to read the sections in Chirelstein that correspond to the topics assigned in Bankman.
- b) The UH Law Library has on reserve other hornbooks and study guides that may also be consulted.

4. Attendance requirement policy:

Consistent with university policy, 80 percent attendance in class is required. An attendance list will be circulated in each class. Those individuals not satisfying the attendance requirement will be reported to UH Law Center administrative officials to be dropped from the course.

5. Class session coverage, focus & discussion:

a) Schedule of Coverage for Semester

The schedule on the following pages identifies that class discussions will proceed at an orderly pace. The number of class sessions anticipated to be held during the semester is 28 (two class sessions each week except during weeks with holidays). Each of these class sessions will last approximately 100 minutes. The syllabus contains 18 discrete reading assignments. We will move quickly through Chapter 1 and time value of money principles, but thereafter you should anticipate that we will reduce our pace and cover approximately 40 pages of the Bankman casebook per class. **Always the most important material to be read will be the relevant provision of the Internal Revenue Code.**

b) Subject Matter Coverage

In order to be prepared for class discussions, all assigned items should be read in connection with each class session. You should be prepared to discuss the reading assignment where we left off in the prior class and then be prepared to discuss the next succeeding reading assignment set forth in the attachment to this syllabus. We will proceed in the order set forth in the Reading Assignment list, but please note that the dates for covering these materials **will** shift. I will update the **Reading Assignment** sheet throughout the semester and post the update on my website before each class. Thus, please be diligent to know where we are on the Reading Assignment sheet and what you need to read in order to be prepared for the next class. The relevant provisions of the Internal Revenue Code (to be carefully read) are identified at various locations in the casebook. Although we will examine many court decisions, **ultimately this is a Code-based course**. **Class sessions will start with the assumption that all students have read the casebook materials and the pertinent Code provisions.**

6. Powerpoint Slides

Professor Wells will regularly use Powerpoint slide presentations in class. Last year's slides are currently posted on his website at www.law.uh.edu/faculty/bwells. Those slides will be replaced and updated with the Fall 2013 class slides after completion of the particular chapter.

7. Use of personal computers:

The permitted use of personal computers in the classroom is **solely** for the purposes of (i) reviewing preparation note, and (ii) taking notes during class. Specifically **excluded** from in-class computer usage is anything beyond these activities, e.g., “surfing the web” and messaging. Nonparticipation due to diversionary uses of your personal computer constitutes an absence from the class. In the event this occurs, you are not eligible to sign the attendance sheet and are subject to appropriate action as the professor may determine in his sole discretion.

8. Grading process for this course:

a) Final Examination. The grade in this course will be entirely dependent upon the final examination (except note Paragraph (b) and (c) below). That examination will occur pursuant to the prescribed examination schedule. On my webpage there is a link to a prior examination for this course. That prior examination should give you a good understanding of the types of questions that you can expect for the final examination. We will also discuss the final exam in the last class. Course materials will be permitted in the examination room but will be limited to: (i) the student's casebook, (ii) the CCH code and regulations volume, (iv) this syllabus, (iv) any supplemental materials (as provided during the semester), and (v) student prepared outlines. **Not** permitted in the examination room are commercially prepared materials and outlines (including the Chirelstein book identified above).

b) Impact of the “Written Exercises.” I may assign short written exercises during the semester. These exercises are expected to be completed by all students in a satisfactory manner. Because of the short, summary nature of those presentations, they will not be graded. The only impact on the grade in this course from this written exercise part of the course will be a five point reduction from the final grade for each paper which is either (1) not timely provided to the professor or (2) grossly inadequate. If the latter event occurs the student will have an opportunity to (a) consult with the professor about the paper and (b) revise the paper to assure that it is to be treated as acceptable.

(c) Impact of Class Participation. Class participation is expected in this class. Significant class participation may positively impact your grade.

9. Questions to professor. Student discussion in the professor's office is welcomed and encouraged. Office hours are Monday and Wednesday from 10:30 a.m. until 12:30 p.m. and Tuesday from 9:00 am to 11:30 a.m., or as otherwise arranged. Please contact Professor Wells at Room 124 (TU-II), or by telephone at 713-743-2502, or by email at: bwells@central.uh.edu.

INTRODUCTORY INFORMATION

1. Perspectives on this Course

Federal Income Taxation is a foundational course. Almost any transaction that achieves a non-tax objective will simultaneously offer opportunities and pitfalls from a tax perspective. Through the tax code, the federal government has become an uninvited party-of-interest to a wide array of private arrangements. A lawyer must understand the extent and nature of the tax issues raised by the legal claims and business strategies of their clients in order to properly advise clients on how to best structure their affairs. Thus, an important objective for this course is to identify the scope of the federal income taxation system. In actual practice, you will find that the federal income tax laws are far-reaching. Furthermore, the below cartoon illustrates an important tax insight:

how one frames a tax question can often have an important impact on how one views the tax answer. Many of the most interesting tax questions are highly conceptual questions where reasonable minds can and do differ. Fundamental tax concepts must be appropriately identified and analyzed in order to predict how courts will frame and resolve a tax dispute.



"It's funny how two intelligent people can have such opposite interpretations of the tax code!"

As a result, in this course, we will spend our time arguing about the underlying theory—the structure upon which the detail is built. As lawyers, we want to concern ourselves with the undecided and the ambiguous so that we can understand what is shaping the tax law at its core. Congress may change the tax laws, but the fundamental guiding principles that frame the U.S. income tax structure are transcendent. In this course, you will gain an understanding of current tax law, but more importantly you will gain an understanding about the underlying policy conflicts that explain current law.

However, in order for us to really understand the federal income tax principles that are inherent in our federal income tax laws, we are going to need to understand some important economic and financial concepts. The objective in this course is not to make you an economist or to make

you an investment banker, but you need to have a basic understanding of some key principles from those other disciplines in order to understand the policy concepts that shape the federal income tax laws. After studying some basic economic and financial concepts, we will then turn our attention in earnest to the federal income tax laws.

This is a "Code" course. This course involves the careful reading and interpretation of one of the most complicated statutory structures, i.e., the U.S. Internal Revenue Code (Title 26, United States Code). The regular reading of the Internal Revenue Code can significantly enhance one's ability to interpret complicated statutory material other than the federal tax rules. The contemporary practice of law is largely based upon statutory material along with an examination of judicial case law and regulatory guidance that interprets the controlling statutory provisions. Thus, a steady dose of the Internal Revenue Code can aid you in your legal development.

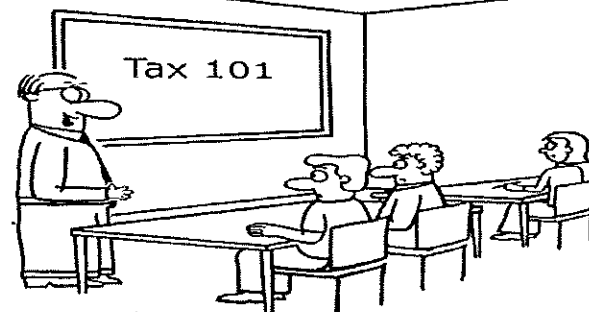
Some are repelled by the complexity of the U.S. tax laws. However, all lawyers need to have a well-developed "smell test" for business arrangements. This "smell test" extends to tax planning ideas. Today's lawyer cannot simply exclude tax issues from their vocabulary and claim that these are not relevant to their thinking. In a post-Enron world, all lawyers (not just tax lawyers) need to have a general understanding of federal income tax issues. This course lays the foundation for developing one's tax instincts.

However, although the federal income tax laws are complex, the reality is that these laws are centered on the following fundamental tax questions:

1. Is a particular item income or does it give rise to a tax deduction?
2. When is the proper time period for recognizing an item of income or expense (including the capitalization of expenses)?
3. What is the character of the item of income (e.g., capital gains and losses)?
4. Who is the "true taxpayer" for reporting the item of income or expense?
5. What is the type of taxpayer that must report the item of income or expense (individual, corporation, partnership, limited liability company, trust, estate, resident or nonresident) and are their special rules for this type of taxpayer?

Once you understand these fundamental questions, you should be able to navigate the complexity of the federal income tax laws. The stakes for many tax issues are large, and so correctly addressing these questions can be very important to both the government and to private parties. A lawyer who can correctly identify the relevant tax issues, who can apply the tax principles to a particular set of facts, and who can then provide proactive tax planning suggestions will provide enormous value to clients.

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The Internal Revenue Code is absurdly complex or, as we lawyers say, a goldmine.

2. Possible Future Tax Legislation

Throughout calendar 2013, there have been ongoing discussions concerning “fundamental tax reform.” Tax collections represent the primary funding source for our government, and central to that effort are the nation’s federal income tax laws. The discussion of fundamental tax reform will continue during the Fall Semester. For more information on current reform efforts, you can visit the President’s Advisory Panel on Federal Tax Reform website at www.taxreformpanel.gov.

3. Federal Income Tax Computation Structure (a tax on net income)

We are going to spend our time discussing the conceptual, but it is helpful in that study to know how the tax concepts discussed in this course (*bolded and italicized in the below computation*) implicate the computation of one’s tax liability:

	Gross receipts
Less:	Cost of goods sold
Equals:	<i>Gross income</i>
Less:	<i>Business deductions</i>
Equals:	<i>Adjusted gross income</i>
Less:	<i>Itemized deductions or standard deduction & personal exemption</i>
Equals:	<i>Tentative Taxable income</i>
Less:	<i>Tax credits</i> (including withholding & estimated tax payments)
Equals:	Final tax amount owing (or refund amount)

PLEASE NOTE: Excluded from the scope of this Federal Income Tax Course is the need to prepare a tax return. We will spend our time discussing the law and conceptual principles. So, let’s begin!

Federal Income Taxation Reading Assignment

	Class Date	Topic	Reading Material
1	Monday, August 26, 2013	Introduction to Tax Policy Issues, Time Value of Money and Sources of Tax Law	Bankman: Ch. 1 (pp 1-44); Supplement pp.1-22
2	Wednesday, August 28, 2013	What is Income? Non-Cash Benefits	Bankman Ch. 2 (pp.45-71); Read <u>Old Colony Trust Co.</u> Supplement pp.23-24
	Monday, September 2, 2013	Holiday-- Labor Day	
3	Wednesday, September 4, 2013	What is Income? Imputed Income/Realization and Windfalls & Gifts	Bankman Ch. 2 (p.78-110), Read <u>Eisner v. Macomber</u> pp. 195-204; Read "Historic Homeruns" and <u>Oprha Winfrey</u> Article in Supplement pp.25-28
4	Monday, September 9, 2013	What is Income? Recovery of Capital, Annual Accounting, Claim of Right & Tax Benefit Rule	Bankman Ch. 2 (pp. 110-142); Read <u>Hillsboro & Bliss Dairy</u> and <u>Alice Phelan</u> cases (Supplement pp. 29-36)
5	Wednesday, September 11, 2013	What is Income? Personal Injuries; Loan Transactions; Transfer of Property Subject to Debt	Bankman Ch.2 (pp.142-181) and <u>Woodsam</u> case (Bankman pp.213-215) and <u>Estate of Franklin</u> (Bankman pp. 523-526)
6	Monday, September 16, 2013	What is Income? Illegal Income, Munibond Interest, Sale of Home, and Dividends Timing: Realization Requirement	Bankman Ch.2 (pp.181-194) and <u>James</u> (Supplement pp.37-38); Ch.3 (pp. 195-196, 207-212; pp.215-226)
7	Wednesday, September 18, 2013	Timing: Nonrecongition Transaction & Constructive Sales	Bankman Ch. 3 (pp. 227-244)
8	Monday, September 23, 2013	Timing: Original Issue Discount; Installment Sales; Transfers Incident to Marriage & Divorce	Bankman Ch.3 (pp. 245-256); Bankman Ch. 3 (pp. 290-307); Read Excerpt on Installment Sales & News Article on <u>Princess Farid Es Sultaneh</u> (Supplement pp. 39-54)
9	Wednesday, September 25, 2013	Personal Deductions: Casualty Losses; Personal Deductions	Bankman Ch. 4 (pp. 331-388)
10	Monday, September 30, 2013	Mixed Outlay	Bankman Ch. 5 (pp. 389-464) Read <u>Plunkett</u> case (Supplement pp. 55-57)
11	Wednesday, October 2, 2013	Business Expenses: Current Expense versus Capital Expenditure	Bankman Ch. 6 (pp. 465-482); Read <u>Idaho Power</u> and <u>Rev. Rul. 2001-4</u> (Supplement pp. 58-65)
12	Monday, October 7, 2013	Business Expenses: Current Expense versus Capital Expenditure; "Ordinary & Necessary"	Bankman Ch. 6 (pp. 483-515)
13	Wednesday, October 9, 2013	Assignment of Income: Marriage Penalty and Property Transfers	Bankman Ch. 7 (pp. 551-577); Read <u>Estate of Stranahan</u> case (Supplement pp.66-68)
14	Monday, October 14, 2013	Assignment of Income: Services, Trusts, Family Partnerships, and Corporations	Bankman Ch. 7 (pp. 577-608)
15	Wednesday, October 16, 2013	Capital Gains & Losses: Statutory Framework and Definition; "Held for Sale"	Bankman Ch. 8 (pp. 609-642)
16	Monday, October 21, 2013	Capital Gains & Losses: Substitutes for Ordinary Income	Bankman Ch. 8 (pp. 642-670) Read <u>Lattera</u> case (Supplement pp. 69-75)
17	Wednesday, October 23, 2013	Capital Gains & Losses: Other Claims and Contract Rights	Bankman Ch. 8 (pp. 670-691)
18	Monday, October 28, 2013	Capital Gains & Losses: Correlation and Prior Transaction	Bankman Ch. 8 (pp. 697-702); Read <u>Skelly Oil</u> case (Supplement pp. 76-79)
19	Wednesday, October 30, 2013	TBA	
20	Monday, November 4, 2013	TBA	
21	Wednesday, November 6, 2013	TBA	
22	Monday, November 11, 2013	TBA	
23	Wednesday, November 13, 2013	TBA	
24	Monday, November 18, 2013	TBA	
25	Wednesday, November 20, 2013	TBA	
26	Monday, November 25, 2013	TBA	
	Wednesday, November 27, 2013	Holiday-- Thanksgiving	
27	Monday, December 2, 2013	TBA	
28	Wednesday, December 4, 2013	Review	
	Wednesday, December 18, 2013	Exam (9 a.m. - 1 p.m.)	