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to be revised

Professor William P. Streng

Law Center
University of Houston

Federal Income Taxation

Syllabus

Fall Semester 2014

Perspectives Concerning Taxation

Adam Smith, from “Wealth of Nations”:

“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.”

“Taxes are what we pay for civilized society”. **Justice Oliver Wendell Holmes**, in *Compania General de Tabacos de Filipinas v. Collector of Internal Revenue*, 275 U.S. 87, 100 (1927) (dissenting).

In his 1906 State of the Union Address, **President Theodore Roosevelt** proposed the creation of a Federal inheritance tax. Roosevelt explained: “The man of great wealth owes a peculiar obligation to the State because he derives special advantages from the mere existence of government.” Additionally, in a 1907 speech he said: “Most great civilized countries have an income tax and an inheritance tax. In my judgement both should be part of our system of federal taxation.”

“Nothing is more important in the face of a war than cutting taxes.” Former Houston Congressman **Tom DeLay**, 2003.

“We already pay enough taxes over our lifetimes, whether it is a water tax, a gas tax, a payroll tax, a utility tax, a cable tax, a property tax, a sales tax, an income tax--we are taxed every minute of our lives. We are taxed from that first cup of coffee in the morning to the time we flip off the lights at bedtime. In fact, we are taxed so much that one nonpartisan organization calculates that the first 5 months of the average American's salary is *confiscated* by the Government.” **Former Senator Bill Frist**, on the floor of the U.S. Senate, June 8, 2006. (Emphasis added)

“People want *just* taxes more than they want *lower* taxes.” **Will Rogers**

“When there is an income tax, the just man will pay more and the unjust less on the same amount of income.” Plato, *The Republic*.

Summary Sheet

FEDERAL INCOME TAX

Fall Semester 2014

Professor Streng

1. Class sessions:
Monday & Wednesday from 8:30AM to 10:15AM.
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 in the back flap). This volume contains (i) provisions of the Internal Revenue Code of 1986 (the most recent complete "codification" of the federal tax statutes), as subsequently amended on numerous occasions by various enacted U.S. Public Laws, and (ii) selected important "regulations," as promulgated by the U.S. Department of the Treasury. This CCH volume includes selected provisions of the Internal Revenue Code and regulations as of June 1, 2014.

Additionally, certain additional supplemental materials will be provided.

3. Supplementary reading material:
 - a) Recommended: Chirelstein, "Federal Income Taxation--A Law Student's Guide to the Leading Cases and Concepts," Twelfth Edition, Foundation Press (2012) is recommended as particularly useful for supplemental reading. This volume is helpful because the discussion often provides an analysis of tax planning issues from the perspective of fundamental economic objectives and results, rather than a mere recitation of the technical "black letter law" tax rules.
 - b) See the listing below of other hornbooks and study guides. Many of these items

will be on reserve in the UH Law Library. Some will be available at your local law school bookstore.

4. Attendance requirement policy for this class:

Consistent with university policy, 80 percent attendance in class is required. An attendance list will be circulated at the beginning of each class session. 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 directly from the beginning of the casebook and in the order presented in the casebook. This is the optimum plan but the progress through the semester will probably not conform precisely to this schedule. You should anticipate that during this semester we will cover most of the casebook (except, possibly, for the last several chapters).

The number of class sessions anticipated to be held during the semester is 28 (TWO class sessions each week except during several weeks with holidays). Each of these class sessions will last approximately 100 minutes (not including a five minute break). Students should anticipate that approximately 30-40 pages in the casebook will be covered during each class session. In addition, additional Supplementary Material (being separately provided) will also be assigned for reading.

PLEASE NOTE: Always the most important material to be read will be the relevant provision of the Internal Revenue Code.

b) Subject Matter Coverage

For class preparation all assigned items should be read in connection with each class session. 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.**

The focus of the classroom discussion will include:

- 1) the statutory federal income tax rules,
- 2) the fundamental policies supporting (or opposing) these tax rules,
- 3) economic and revenue assumptions concerning these rules,
- 4) alternatives for structuring the income tax system (as measured in the particular substantive tax context then being examined); and
- 5) possible tax planning options for clients and others.

Class sessions will proceed from the assumption that all students will have read: (1) the casebook materials, and (2) the pertinent Code provisions.

Often when considering the various tax issues being examined an analysis from the following differing perspectives will be useful and essential:

- 1) (a) The taxpayer(s) and (b) the taxpayer's representatives (noting that these interests might not always be synonymous);
- 2) The Internal Revenue Service (and the U.S. Department of the Treasury);
- 3) The federal judiciary (having a responsibility to appropriately interpret and apply the existing statutory rules and regulations) in IRS-taxpayer litigation;
- 4) The tax legislator (assuming recognizing his/her responsibility to identify the best taxation approach from the tax policy perspective, and without a particular political bias or economic philosophy); and,
- 5) Tax news reporters/publishers (e.g., how are these rules and developments to be cogently explained?).

This will enable a better understanding of the roles of the various constituents in the federal taxation process. This includes, particularly, understanding these rules from the perspective of the "tax collector," i.e., the Internal Revenue Service.

D. Powerpoint Slides

To enable the identification of the most important items for discussion in the classroom sessions Powerpoint slide presentations will be regularly used by Professor Streng. These 2014 slides will later be available at the following Internet site:

[www.law.uh.edu/faculty/wstreng/homepage/tax presentations/federal income tax](http://www.law.uh.edu/faculty/wstreng/homepage/tax%20presentations/federal%20income%20tax)

The slides presently at that website for Federal Income Tax are as previously used during the Fall Semester 2013 class sessions in this course. The Fall Semester 2014 Powerpoint slides will be periodically posted on Mr. Streng's website (ordinarily not until after the class session when the particular subject matter is being examined).

6. Use of personal computers:

The permitted use of personal computers in the classroom is **solely** for the purposes of (i) reviewing preparation notes, 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 are **not** appropriate. Your nonparticipation and nonresponsiveness in the classroom discussion which is attributable to your diversionary uses of your personal computer during the class session means that you are to be treated as absent from the class. You are not then eligible to sign the attendance sheet and are subject to appropriate action as the professor may determine in his sole discretion.

7. Written Tax Planning Exercises

During the course of the semester each student may be asked on one or several occasions to prepare a written response to a specific tax planning or tax policy question. These responses are anticipated to be one or two page presentations, e.g., such as how to advise a client concerning a specific tax planning issue. The objective of these exercises will be to acquaint students with the process of "tax lawyering," whether being (1) tax planning advice, or (2) advocacy (in either the legislation or litigation) context.

8. The grading process for this course:

a) Final Examination. The grade in this course will be entirely dependent upon the final examination (except see Paragraph (b) below). That examination will occur pursuant to the prescribed examination schedule. Early in the semester a copy of Mr. Streng's most recent prior examination in this course will be provided to enable an

understanding of the anticipated format for this final examination in this course. The course materials to be permitted in the room for the final examination will be limited to: (i) the student's casebook, (ii) the CCH Internal Revenue Code and Regulations volume, (iv) this syllabus, (iv) any supplemental materials (as provided to the class by the Professor during the semester), and (v) student prepared outlines. Not permitted in the examination room are commercially prepared materials and outlines (including, e.g., the Chirelstein book identified above).

b) Impact of the "Written Exercises." As noted above, certain short written exercises may be required at several intervals during the semester. The assumption is that these will 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 any 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.

9. Questions to professor:

Student discussion in the professor's office is welcomed and encouraged when convenient. If you have questions concerning this course, please contact Professor Streng as follows:

Office: Room 226, Bates Law Building (TU-1)

Telephone: 713-743-2148

Email: Wstreng@uh.edu

Office hours are Monday & Wednesday, 10:30AM until noon (i.e., immediately after the class sessions), or as otherwise arranged.

INTRODUCTORY INFORMATION

1. Perspectives on this Course

One important objective of these pages is to identify the scope of the federal income taxation system and, particularly, that this federal income tax course is relevant to a wide variety of law practice (and non-law practice) situations arising after the completion of law school studies. Students will find that federal income taxation is quite comprehensive in its application. One benefit to be derived from taking this course should be to identify the wide variety of those situations where federal income tax exposure and tax planning possibilities might arise.

This is a "Code" course. This 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). Note that this is **not** the “**IRS Code**”; rather, this Code is enacted into law by the **United States Congress** (i.e., **not the IRS**). The regular reading of the complex Internal Revenue Code provisions as relevant in this course can significantly enhance one’s capability to read complicated statutory material other than the federal tax rules. The contemporary practice of law is significantly based on the interpretation and application of statutory material, in addition to the examination of case law. Consequently, your development of skills to comprehend and interpret statutory material can be substantially enhanced by developing your capability to read the Internal Revenue Code provisions.

2. Recent Federal Tax Legislation

The casebook being used was published during mid-2012. Consequently, all recent enacted tax legislation should be appropriately referenced in the casebook and also included in the Code volume, except for (in the casebook) the “American Taxpayer Relief Act of 2012,” P.L. 112-240, which was signed into law on January 3, 2013.

Provisions in numerous Public Laws have been incorporated (i.e., codified) into the “Internal Revenue Code of 1986, as amended.” The Joint Committee on Taxation’s

“General Explanation of Tax Legislation Enacted in the 111th Congress,” JCS-2-11 (March 2011), identifies twenty-one separate tax acts enacted during the 111th U.S. Congress (its two years concluded at the end of 2010). During the 112th U.S. Congress at least thirteen additional acts have become law - mostly being quite minor changes to the Internal Revenue Code, plus the “American Taxpayer Relief Act of 2012,” P.L. 112-240, signed into law on January 3, 2013, but treated as year 2012 legislation. See Joint Committee on Taxation’s “General Explanation of Tax Legislation Enacted in the 112th Congress,” JCS-2-13 (February 2013),

Consequently, please observe that:

1) the subject of federal income taxation is exceptionally dynamic (i.e., continually changing);

2) the subject of federal income taxation is very political (everyone, particularly political candidates, have diverse and strong opinions on this subject); and

3) the federal income tax system applies to all U.S. citizens, resident aliens, U.S. corporations, foreigners (individuals and corporations) investing or conducting business in the United States, trusts, estates and various other taxpayers. Consequently, the federal income tax system potentially applies to everyone subject to U.S. jurisdiction, although obviously with differing effects.

3. Possible Future Income Tax Legislation

a) During 2014 the discussion has been continuing concerning “fundamental tax reform.” Suggestions include amending, or even abandoning, the federal income tax system. Some suggest that the entire structure should be abandoned, with a national sales tax being substituted. The discussion of this possible change will continue during 2014 (and presumably beyond) as the tax reform debate evolves. This includes possible consideration of the recommendations from the National Commission on Fiscal Responsibility (Co-chairs: Erskine Bowles & Alan Simpson). See: www.fiscalcommission.gov (and a description on Wikipedia).

b) President Obama’s year 2015 budget (i.e., for the year to end September 30, 2015, included various tax proposals. See the U.S. Treasury Greenbook, dated March, 2014.

c) Specific income tax legislative items remaining on the immediate tax legislative agenda include:

1) Closing the “loophole” that allows private equity firms, including hedge funds, to pay capital gains taxes on their earnings, rather than the higher income tax rates applicable to wage income, i.e., the “carried interest” issue.

2) An alternative minimum tax (or “AMT”) “patch.”

3) Patents on “tax schemes,” including reporting transactions using a patented tax strategy.

4) The appropriate allocation of the federal income tax burden (between wage income and capital income).

INCOME TAXATION - AGENDA FOR CLASS SESSIONS

<u>Chapter/ Segment Number</u>	<u>Casebook Reading Assignment</u>	<u>Subject Matter</u>	<u>Appendix Material</u> (See specific references)
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THIS AGENDA INDICATES THAT WE WILL PROCEED DURING THE SEMESTER DIRECTLY THROUGH THE CASEBOOK (APPROXIMATELY 25 PAGES EACH CLASS SESSION). THIS SUMMARY DOES NOT IDENTIFY THE PRECISE MATERIAL TO BE COVERED DURING A PARTICULAR CLASS SESSION. ANY APPENDIX MATERIAL TO BE READ IN CONJUNCTION WITH A PARTICULAR SUBJECT AREA WILL BE SUBSEQUENTLY IDENTIFIED.

Chapter 1. Introduction

1A-J.	1-44	Brief History of Taxation
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Chapter 2. Some Characteristics of Income?

2A	45-70	Noncash Benefits
2B	71-77	Imputed Income
2C	78-109	Windfalls and Gifts
2D	110-126	Recovery of Capital
2E	127-141	Annual Accounting
2F	142-145	Personal Injury Recoveries

2G	145-181	Transactions Involving Loans
2H	181-185	Illegal Income
2I-J	188-194	Tax-Exempt Interest; Residence Sales

Chapter 3. Problems of Timing

3A	195-225	Gains & Losses
3B	227-240	Non-recognition
3C-E	241-255	Constructive Sales; Open Transactions
3F	256-289	Constructive Receipt
3G	290-306	Marriage & Divorce
3H-J	307-331	Cash Receipts, etc.

Chapter 4. Personal Deductions, Exemptions & Credits

4A-B	331-348	Casualty Losses
4C	349-355	Medical Expenses
4D	356-376	Charitable Contributions
4E-F	377-382	Interest and Taxes
4G-H	383-388	Personal Exemptions & Credits

Chapter 5. Mixed Business/Personal Expenses

5A	389-414	Abusive Deductions?
5B	415-433	T&E
5C-E	433-455	Child-Care; Commuting; Clothing
5F-G	455-464	Legal & Education Expenses

Chapter 6. Deductions for Costs of Earning Income

6A-C	465-484	Capital & Repair Expenses & Inventory
6D	485-489	Rent v. Purchase
6E	489-504	Ordinary & Necessary
6F-G	504-514	Depreciation & Depletion
6H	515-544	Tax Avoidance
6I	545-550	ALTMIN

Chapter 7. Tax Progressivity

7A&B	551-565	Services Income
7C	566-569	Marriage Penalty
7D-E	569-581	Property Transfers
7F-K	582-606	Trusts, Partnerships, etc.

Chapter 8. Capital Gains & Losses

8A-C	609-619	Capital Gains Policy
8D-E	620-641	“Primarily for Sale” & Business
8F	642-669	Ordinary Income Substitutes
8G	670-690	Claims & Contract Rights
8H	690-693	Corporate Earnings Bailouts
8I-K	693-701	Fragmentation; Prior Transactions; Sale or Exchange

Additional Basic Published Tax Source Materials

Bankman, Griffith & Pratt, “Federal Income Tax—Examples & Explanations”, Sixth Edition, Aspen Law & Business, 2011.

Burke & Friel, “Understanding Federal Income Taxation,” Third Edition, LexisNexis 2008.

Chirelstein, “Federal Income Taxation,” Twelfth Edition, Foundation Press (2012).

Donaldson, “Acing Federal Income Tax,” Second Edition, Thomson-West (2008).

Hudson , Lind & Yamamoto, “Federal Income Taxation”, Eleventh Edition, West Group Black Letter Outlines Series, 2011.

McNulty & Lathrope, “Federal Income Taxation of Individuals,” 8th Edition, West Group “Nutshell”, 2012.

Posin & Tobin, “Principles of Federal Income Taxation,” Seventh Edition, Thomson-West, 2005.

Slemrod & Bakija, “Taxing Ourselves,” Fourth Edition, MIT Press (2008).

Steuerle, “Contemporary U.S. Tax Policy,” Urban Institute Press, 2004.

Ward, “Problems and Solutions for Basic Federal Income Taxation,” Thomson-West, 2007.

See also the UH Law Library Guide to Federal Tax Research at the following website:

[www.law.uh.edu/libraries/ResearchResources/Legal Research Guides/Federal Tax Law Research Guide](http://www.law.uh.edu/libraries/ResearchResources/Legal_Research_Guides/Federal_Tax_Law_Research_Guide)

Useful Tax Information Internet Websites

A. U.S. Government Websites

Internal Revenue Service: <http://www.irs.ustreas.gov/>

U.S. Department of the Treasury: <http://www.ustreas.gov/>

Senate Finance Committee, United States Senate: <http://www.senate.gov/~finance/>
Ways & Means Committee, U.S. House of Representatives:

<http://waysandmeans.house.gov/>

Joint Committee on Taxation, United States Congress: <http://www.house.gov/jct/>

Congressional Budget Office: <http://www.cbo.gov/>

B. Tax “Think Tanks”

Center on Budget and Policy Priorities: <http://www.cbpp.org/>

Citizens for Tax Justice: <http://www.ctj.org/>

Tax Policy Center (Urban Institute and Brookings Institution):

<http://www.taxpolicycenter.org/home/>

C. Tax Publishers

<http://www.bnatax.com/tm/index.html>

D. Some Tax “Humor”

<http://www.markfiore.com/animation/taxcut.html>

<http://www.faireconomy.org/press/ufenews/2005/heiressad.html>

Initial Perspectives on this Federal Income Tax Course

I. Examples of "Real World" Matters Impacted by the Federal Income Tax

Employment relationships
Family relationships
Economic-fiscal policy
Stock-bond market
Insurance and annuity policies
Financial accounting
Health and medical coverage
Research and development expenditures
Business expenses and deductions
Residence acquisition and disposition
Charitable gifts
Buying and selling property
Barter transactions

II. Law School Courses/Subjects Relevant in the Federal Income Tax Context

U.S. Constitutional law
Administrative law
Contracts
Family law
Financial law
Business associations
Commercial transactions
Bankruptcy law
Estates and trusts
Property
Criminal law
Torts
Civil procedure
Oil and gas

III. Types of Federal, State and Local Taxes Imposed

Income - federal, state and local; flat tax
Excise--alcohol & tobacco; airplane tickets
Transfer - Estate and gift
Transaction taxes--sales, VAT or turnover
Property/wealth
Poll/head
Franchise
Consumption/savings
Social security
User fees

IV. Sources of the Federal Income Tax Laws

U.S. Constitution, Article 1, Section 8, Clause 1, and the 16th Amendment
U.S. Congress - legislation, including the Internal Revenue Code of 1986, as amended by numerous subsequent legislative acts, including the following:

Revenue Act of 1987
Technical and Miscellaneous Revenue Act of 1988
Revenue Reconciliation Act of 1989, Revenue Reconciliation Act of 1990
Revenue Reconciliation Act of 1993, and similarly named 1996, 1997 and 1998 federal tax legislation;
Economic Growth and Tax Relief Reconciliation Act of 2001
Job Creation and Worker Assistance Act of 2002
Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27)
Working Families Tax Relief Act of 2004 (P.L. 108-311)
American Jobs Creation Act of 2004 (P.L. 108-357)
Katrina Emergency Tax Relief Act of 2005 (P.L. 109-73)
Gulf Opportunity Zone Act of 2005 (P.L. 109-135)
Tax Increase Prevention and Reconciliation Act (P.L. 109-222)
Pension Protection Act of 2006 (P.L. 109 -280)

Tax Relief and Health Care Act of 2006 (P.L. 109-432)
Small Business and Work Opportunity Tax Act of 2007 (P.L. 110-28).
Energy Independence and Security Act of 2007 (P.L. 110-140).
Mortgage Forgiveness Debt Relief Act of 2007 (P.L. 110-142)
Department of Transportation Appropriations Act, 2008 (P.L. 110-161)
Tax Increase Prevention Act of 2007, P.L. 110-166
Tax Technical Corrections Act of 2007, P.L. 110-172
Court Security Improvement Act of 2007, P.L. 110-177
Economic Stimulus Act of 2008, P.L. 110-185
Airport and Airway Extension Act of 2008," P.L. 110-190
Heroes Assistance and Relief Tax Act of 2008, P.L. 110-245 (re tax responsibilities" of expatriates).
Housing and Economic Recovery Act of 2008,P.L. 110-289
Emergency Economic Stabilization Act of 2008, P.L. 110-343.
The American Recovery and Reinvestment Act of 2009, P.L. 111-5
Worker, Homeownership, and Business Assistance Act of 2009, P.L. 111-92
Temporary Extension Act of 2010," P.L. 111-144.
Hiring Incentives to Restore Employment Act," P.L. 111-147
Patient Protection and Affordable Care Act," P.L. 111-148.
Health Care and Education Reconciliation Act of 2010, P.L. 111-152
Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312

U.S. Department of the Treasury - regulations (interpretative and legislative).
Internal Revenue Service - administrative interpretations, rulings, procedures.
Litigation - federal courts, including the U.S. Tax Court & U.S. Claims Court.

V. The Federal Income Tax Structure for Tax Computational Purposes

(a tax is imposed on net income, not gross income)

A. Income Tax Computation

- 1) Gross amount Gross receipts
 Less: Cost of goods sold
 Equals: Gross income
 Less: Business deductions
 Equals: Adjusted gross income
 Less: Itemized deductions or standard deduction and personal
 exemption
 Equals: Taxable income
- 2) Tentative income tax amount on taxable income
 Less: credits (including withholding and estimated tax payments)
 Equals: Final tax amount owing (or refund amount)
- 3) Other federal income tax system: Alternative minimum tax (ALTMIN)

B. Other considerations

Timing of income (including the capitalization of expenses)

Characterization of income (capital gains as preferred income)

Who is the taxpayer? (i.e., possible assignment or deflection of income)

Category/tax status of the taxpayer: individual, corporation, partnership, limited liability company, trust or estate, resident or nonresident

PLEASE NOTE:

VI. Excluded from the Scope of this Federal Income Tax Course are:

- 1) Tax return preparation
- 2) Tax calculations/computations