

Professor William P. Streng

**Law Center
University of Houston**

Federal Income Taxation

Syllabus

Fall Semester 2018

Differing Perspectives Concerning Federal 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

FEDERAL INCOME TAX

Fall Semester 2018

Professor Streng

1. Class sessions:

Monday, Tuesday and Wednesday from 10:30AM to 11:45AM.

2. Required materials:

a) Graetz and Schenk's "Federal Income Taxation: Principles and Policies," Foundation Press (new edition available in August 2018). This casebook is being revised in 2018 to incorporate the significant changes made to the Internal Revenue Code in the Tax Cuts and Jobs Act (2017).

b) Commerce Clearing House (CCH), "Federal Income Tax - Code & Regulations, Selected Sections," 2018-2019 Edition (to be published Summer 2018). This volume contains:

(i) provisions of the Internal Revenue Code, i.e., the complete "codification" of the federal tax statutes, as subsequently amended on numerous occasions by various enacted U.S. Public Laws, and,

(ii) selected important interpretative and administrative "regulations," as promulgated by the U.S. Department of the Treasury.

This CCH volume will include these selected provisions of the Internal Revenue Code and pertinent regulations as of June 1, 2018. Therefore, it includes relevant provisions included in the significant tax legislation (Tax Cuts and Jobs Act) signed into law on December 22, 2017.

Certain additional supplemental materials will be provided (primarily to be posted at the Federal Income Taxation site on Professor Streng's UHLC webpage).

3. Supplementary reading material:

a) Recommended: Chirelstein & Zelenak, "Federal Income Taxation - A Law Student's Guide to the Leading Cases and Concepts," 2018 revision forthcoming Summer, 2018 (revision of Thirteenth Edition, Foundation Press (2015)). This book is recommended as particularly useful for supplemental reading. It is helpful because the discussion often provides an analysis of tax planning issues from the perspective of fundamental economic objectives and results, rather than being a mere recitation of technical "black letter law" tax rules.

b) See the listing below of other hornbooks and study guides. Many of these items will be on the reserve shelf in the UH Law Library. Some will be available at your local law school bookstore or via a website.

4. Attendance requirement policy for this class:

Consistent with University of Houston Law Center and State of Texas policies, 80 percent class attendance 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 enrollment in this 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. The number of class sessions anticipated to be held during the semester is 41 (three class sessions most weeks). Each of these class sessions is required to last approximately 69 minutes (but they will in most situations be extended until 11:45AM (for 75 minute class sessions). Students should anticipate that approximately 30-40 pages in the casebook will be covered during each class session. The amount of coverage will dependent upon whether the particular material in the casebook consists of primarily text, problems or cases and similar materials.

PLEASE NOTE: Always the most important material to be read will be the relevant provisions 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 and administrative pronouncements by the Internal Revenue Service, **ultimately this is a Code-based course.**

The focus of the classroom discussion will include these topics:

- 1) the statutory federal income tax rules (tax code, cases and rulings),
- 2) the fundamental policies supporting (or opposing) these tax rules,
- 3) economic and revenue assumptions concerning these rules,
- 4) alternatives for better 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 Internal Revenue Code provisions.

Often when considering the various income tax issues being examined an analysis when considering 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 tax 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 involved); and,
- 5) Tax news reporters/publishers (e.g., how are these rules and developments to be cogently explained to the public?).

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. The Powerpoint slides for Fall Semester 2018 will be periodically posted on Mr. Streng’s website (ordinarily not until after the class session when the particular subject matter is being examined) 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). **Powerpoint slides from the prior semester (Spring Semester 2018) are not posted there because a different casebook is being used during the Fall Semester 2018.**

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, i.e., “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 being 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 (1) by providing tax planning advice, or (2) through tax advocacy (in either the legislative or litigation) context.

8. The grading/assessment process for this course is as follows:

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 on

the date prescribed in the 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 the final examination in this course. The course materials to be permitted in the room for this final examination will be limited to: (I) the student's casebook for this course, (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. Anticipated learning outcomes

As a result of active participation (including thorough preparation) in this class students should achieve the following results:

- a) A fundamental understanding of the basic federal income tax rules.
- b) Develop a capacity to read and interpret difficult statutory material.
- c) Develop an appreciation for the importance of tax policy and legislative alternatives in the appropriate structuring of a tax system.
- d) Understand that practicing attorneys have a substantial responsibility in enabling their clients to structure and plan transactions to appropriately maximize tax savings.
- e) Understand the ethical responsibilities which are pertinent in advising clients about appropriate tax planning.

Professor William P. Streng
Federal Income Tax - UH Law Center
Fall Semester 2018

10. 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 can be individually arranged with Professor Streng.

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 both federal income tax risk exposure exists 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. An effort to develop this capability is strongly encouraged.

2. Recent Federal Tax Legislation

The casebook being used is being published during summer 2018. Consequently, all recently enacted significant tax legislation should be appropriately referenced in the casebook and also included in the Code volume (including, particularly, the Tax Cuts and Jobs Act, enacted on December 22, 2017).¹

¹ On December 22, 2017, the President signed into law the bill formerly known as the “Tax Cuts and Jobs Act” (the Final Bill), which was earlier passed by the House of Representatives and the Senate. The passage of the

Note that provisions included in numerous Public Laws enacted over thirty years have been incorporated (i.e., codified) into the “Internal Revenue Code of 1986, as amended.” For example, 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 (2011-2012) at least thirteen additional acts became 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 the Joint Committee on Taxation’s “General Explanation of Tax Legislation Enacted in the 112th Congress,” JCS-2-13 (February 2013). See the Joint Committee on Taxation’s “General Explanation of Tax Legislation Enacted in the 113th Congress,” JCS-1-15 (March 16, 2015) identifying that twelve tax acts were enacted during the 113th Congress, mostly minor items except for the “Tax Increase Prevention Act of 2014,” P.L. 113-295, which includes the usual “tax extenders.” During the 114th U.S. Congress tax provisions were included in at least twenty-two enacted bills. During the 115th Congress the “Tax Cuts and Jobs Act” has been enacted, and the Chairman of the House Ways and Means Committee has indicated that further tax legislation will be forthcoming during the calendar year 2018.

Please observe in this context that:

- 1) the subject of federal income taxation is exceptionally dynamic (i.e., continually changing);
- 2) the subject of federal income taxation is very politically sensitive (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, U.S. trusts, U.S. 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.

Final Bill came after the Senate parliamentarian ruled that the “Tax Cuts and Jobs Act” name violated Senate rules, forcing the Final Bill to be renamed the somewhat less catchy “To provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018.” See 115 P.L. 97, 131 Stat. 2054.

INCOME TAXATION - AGENDA FOR CLASS SESSIONS

THIS AGENDA INDICATES THAT WE WILL PROCEED DURING THE SEMESTER DIRECTLY THROUGH THE CASEBOOK FROM THE BEGINNING. AS NOTED ABOVE, THE NUMBER OF ANTICIPATED CLASS SESSIONS DURING THE SEMESTER IS 41. THE PAGES IN THE CASEBOOK NUMBER _____. THEREFORE, UNDER MAXIMUM CONDITIONS AN AVERAGE OF APPROXIMATELY ____ PAGES OF CASEBOOK COVERAGE WILL OCCUR DURING EACH CLASS SESSION.

THIS SUMMARY DOES NOT IDENTIFY THE PRECISE MATERIAL TO BE COVERED DURING A PARTICULAR CLASS SESSION. WE WILL PROCEED EXPEDITIOUSLY FROM THE BEGINNING OF THE CASEBOOK AND WITHOUT SKIPPING ANY MATERIAL (UNTIL THAT DECISION MIGHT BE MADE LATE IN THE SEMESTER). THIS SUMMARY BELOW IDENTIFIES THE VARIOUS CHAPTERS AND TOPICS IN THE CASEBOOK.

<u>Chapter/ Segment Number</u>	<u>Casebook Reading Assignment</u>	<u>Subject Matter</u>	<u>Supplemental Material</u> (references to include “TCJA” §§)
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<u>Chapter</u>	<u>Introduction</u>
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[To come after publication of casebook]

Additional Basic Published Income Tax Source Materials
(often also available in digital format)

Pratt, Griffith & Bankman, “Federal Income Tax—Examples & Explanations”, Seventh Edition, Wolters-Kluwer, 2014.

Burke & Friel, “Understanding Federal Income Taxation,” Fourth Edition, LexisNexis 2013.

Chirelstein & Zelenak, “Federal Income Taxation,” Fourteenth Edition, Foundation Press (2018) — FORTHCOMING.

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

Hudson, Lind & Yamamoto, “Federal Income Taxation”, Thirteenth Edition, West Group Black Letter Outlines Series, 2016.

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

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

Steuerle, “Contemporary U.S. Tax Policy,” Urban Institute Press, 2008.

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

Various commercial publishers (e.g., Thomson-Reuters, Bloomberg BNA-Tax, Lexis-Nexis & Westlaw).

Initial Perspectives on this Federal Income Tax Course

I. Examples of "Real World" Matters Impacted by Applicability of 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

During this semester you will observe that the subject matter in this federal income tax class will be impacted by issues you might also have previously examined (or will examine) in courses such as:

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 Law

1. U.S. Constitution, Article 1, Section 8, Clause 1, and the 16th Amendment
2. U.S. Congress - legislation, including the Internal Revenue Code of 1986, as amended by numerous subsequent legislative acts
3. U.S. Department of the Treasury - regulations (interpretative and legislative).
4. Internal Revenue Service - administrative interpretations, rulings, procedures.
5. Litigation - federal courts, including the U.S. Tax Court & U.S. Claims Court, and the Supreme Court of the United States.

V. The Federal Income Tax Structure for Tax Computational Purposes

(a tax is imposed on net income and 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 fundamental tax 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

NOTE CONCERNING MANAGING LAW SCHOOL STRESS

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let's Talk” program, a drop-in consultation service at convenient locations and hours around campus.

See http://www.uh.edu/caps/outreach/lets_talk.html