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.”


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 2013

Professor Streng

1. Class sessions:
   Monday & Wednesday from 8:30AM to 10:15AM.

2. Required materials:
   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, 2013.

   Additionally, certain additional supplemental materials will be provided.

3. Supplementary reading material:

   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 2013 slides will later be available at the following Internet site:
The slides presently at that website for Federal Income Tax are as previously used during the Fall Semester 2012 class sessions in this course. The Fall Semester 2013 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 111\textsuperscript{th} Congress,” JCS-2-11 (March 2011), identifies twenty-one separate tax acts enacted during the 111\textsuperscript{th} U.S. Congress (its two years concluded at the end of 2010). During the 112\textsuperscript{th} 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 112\textsuperscript{th} 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 2013 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 2013 (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 2014 budget (i.e., for the year to end September 30, 2014, included various tax proposals. See the U.S. Treasury Greenbook, dated April, 2013.
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

<table>
<thead>
<tr>
<th>Chapter/ Segment Number</th>
<th>Casebook Reading</th>
<th>Subject Matter</th>
<th>Appendix Material (See specific references)</th>
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<td>1A-J.</td>
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Chapter 2. Some Characteristics of Income?

<table>
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<tr>
<th>Segment</th>
<th>Casebook Reading</th>
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<td>2E</td>
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<td>Annual Accounting</td>
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<tr>
<td>2F</td>
<td>142-145</td>
<td>Personal Injury Recoveries</td>
</tr>
</tbody>
</table>

THIS AGENDA INDICATES THAT WE WILL PROCEED DURING THE SEMESTER DIRECTLY THROUGH THE CASEBOOK. 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.
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


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

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
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
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)
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
Airport and Airway Extension Act of 2008,” P.L. 110-190
Worker, Homeownership, and Business Assistance Act of 2009, P.L. 111-92
Hiring Incentives to Restore Employment Act,” P.L. 111-147
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
   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