

**Professor Bret Wells**

**Law Center  
University of Houston**

**Federal Income Taxation**

**Syllabus**

**Fall Semester 2021**

## 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 2021**

**Professor Wells**

- 1. Class sessions:** Tuesday, Wednesday, and Thursday from 9:00 A.M. to 10:20 A.M.  
There are no scheduled make-up classes at this time, but make-up classes are possible albeit not expected.
- 2. Required materials:**
  - (a) [DANIEL L. SIMMONS, MARTIN J. MCMAHON, BRADLEY T. BORDEN, AND BRET WELLS, FEDERAL INCOME TAXATION \(Foundation Press 8th ed. 2020\)](#)  
(ISBN: 9781647081164)
  - (b) Wolters Kluwer / CCH Publications, “Federal Income Tax — Code & Regulations, Selected Sections,” 2021-2022 Edition (ISBN: 9780808056287). 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.
- 3. Supplementary reading material:**
  - (a) Recommended: Chirelstein & Zelenak, “Federal Income Taxation—A Law Student’s Guide to the Leading Cases and Concepts,” 14<sup>th</sup> Edition, Foundation Press (2018) is recommended as particularly useful for supplemental reading. This volume is helpful because the discussion often provides 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 the [Simmons](#) casebook.
  - (b) The UH Law Library has on reserve other hornbooks and study guides that may also be consulted.
- 4. Synchronous Online Course?** While UH Administration has not (at time of publication) finalized the approved modes of instruction for Fall 2021, they have expressed interest in having in-person instruction. Given this, it is my preference to teach this course live in the classroom, with students who wish to attend in person, while allowing those who are unable to attend due to COVID-19 concerns to attend the synchronous course via Zoom. Nevertheless, whether this course will be offered only as a distance education course or will have a physical room assigned is not determined at this time. Moreover, a decision on the course modality may

be impacted by further developments and factors that are not known or knowable at this time. You may see contrary indications in the UH systems where you actually register for the course. In other words, this course might be distance education with no use of a physical classroom. It might be the “HyFlex” mode in which some Law Center courses used a physical room during 2020-21. As we get closer to the start of the term/semester for this course, this syllabus will be updated as decisions are determined. Moreover, decisions about modalities may not be invariant throughout the term/semester or between now and when the course starts.

- 5. Attendance.** Consistent with university policy, 80 percent attendance is required. Attendance will be taken via an electronic attendance sheet. I will give you a code at the beginning of class, and you need to log-in to the electronic attendance sheet to register your attendance and input “Today’s Code.” Those individuals not satisfying the attendance requirement will be reported to UH Law Center administrative officials to be dropped from the course. If UHLC allows online attendance in the fall 2021 semester, then students can attend online by utilizing Zoom internet video conferencing software (accessible at: [https://uhlc.zoom.us/j/98216323396?pwd=aUI4LzgxUU9QbFZCaVJqdENYV0g2UT09; Meeting ID: 982 1632 3396; Passcode: 2021](https://uhlc.zoom.us/j/98216323396?pwd=aUI4LzgxUU9QbFZCaVJqdENYV0g2UT09;Meeting+ID%3A982+1632+3396;Passcode%3A2021)). To participate via Zoom, there are several requirements: (1) you must log in no later than 8:55 am, (2) your computer must have a working video camera and quality audio capability (joining by audio-only will be treated as an absence) (3) you must identify yourself with your class roll name in the Zoom videoconferencing software; (4) you must have your video camera on and present yourself professionally in the video stream (both in attire and in conduct); (5) you must be able to fulfill your responsibilities if called on to discuss a case; and (6) you must keep yourself muted when you are not speaking.

**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 42 (three class sessions each week except during weeks with holidays). I will reserve the last class session for a Review Session. Each class session will last approximately 80 minutes. We will move quickly through Chapter 1, but thereafter you should anticipate that we will reduce our pace and cover approximately 40 pages of the casebook per class. **Always the most important material to be read will be the relevant provision of the Internal Revenue Code and the assigned cases.**
- (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 not currently posted on my website because those slides related to a different casebook. Professor Wells will post his slides on Blackboard after completion of the particular chapter.
7. **Archived Lectures.** Assuming no technological issues, I plan to record and archive my class lectures and will post them to Blackboard for your later access. As stated in ¶5 above, you are required to attend classes (either online or in-person) per UHLC policy and to be prepared for class. The availability of these recordings is not a substitute for your attendance and participation. However, I have found that making these video recordings available to students provides students the luxury of focusing their attention on the class discussion because the archived lectures allow students to later supplement their note taking.
8. **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. 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.
9. **Grading process for this course:**
  - (a) **Final Examination.** The grade in this course will be entirely dependent upon the final examination (except note Paragraphs (b) and (c) below). That examination will occur pursuant to the prescribed examination schedule. Through the university exam database, 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 reduction of one notch on 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.

**10. Questions to professor.** Student discussion in the professor’s office is welcomed and encouraged. Office hours are Wednesday from 10:30 to noon and Thursday from noon until 1:30 pm., 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](mailto:bwells@central.uh.edu). I am available to answer questions up until the last class day.

**11. Counseling Options:** 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](http://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. [http://www.uh.edu/caps/outreach/lets\\_talk.html](http://www.uh.edu/caps/outreach/lets_talk.html)

**12. Sexual Misconduct Policy.** The University is committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there is a confidential reporting process available to you. For more information, please refer to the University system’s Anti-Discrimination Policy SAM 01.D.07 and Sexual Misconduct Policy SAM 01.D.08, available here:

<http://www.uhsystem.edu/compliance-ethics/uhs-policies/sams/01-general-information/index.php>

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d7.pdf> (antidiscrimination)

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d8.pdf> (sexual misconduct)

Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty are required to report to the University any information received regarding sexual misconduct as defined in the policy. Please note that the reporting obligations under the sexual misconduct policy reach to employees and students. Also, as a required reporting party, Law Center employees and faculty members are not a confidential resource.

## 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.

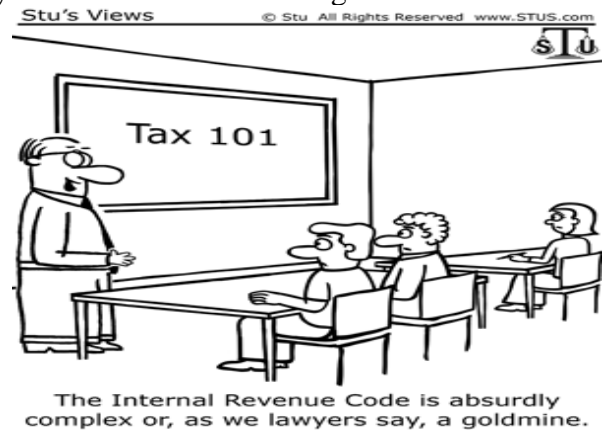
**This is a “Code” course.** This course involves the careful reading and interpretation of one of the most complicated statutory structures, i.e., the U.S. Internal Revenue Code (Title 26, United States Code). The regular reading of the Internal Revenue Code can significantly enhance one’s ability to 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.



## 2. 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
<u>Less:</u>	Cost of goods sold
<u>Equals:</u>	<u><b>Gross income</b></u>
<u>Less:</u>	<b><i>Business deductions</i></b>
<u>Equals:</u>	<u><b>Adjusted gross income</b></u>
<u>Less:</u>	<b><i>Itemized deductions or standard deduction &amp; personal exemption</i></b>
<u>Equals:</u>	<u>Tentative Taxable income</u>
<u>Less:</u>	<b><i>Tax credits</i></b> (including withholding & estimated tax payments)
<u>Equals:</u>	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!

	A	B	C	D	E	F
1	<b>Federal Income Taxation Reading Assignment</b>					
2		<b>Class Date</b>	<b>Topic</b>	<b>Reading Material</b>		
3	1	Tuesday, August 24, 2021	Introduction, General Principles of Gross Income	Simmons Ch. 1., (pp. 3-59); Course Supp. pp. 2-5 (Johnston article); Ch. Simmons Ch.2 (pp. 63-87); Course Supp. pp. 6-9 (Opray Winfrey & Homerun articles)		
4	2	Wednesday, August 25, 2021	What is Income? Compensation for Services & Indirect Payments	Continue Simmons Ch.2 (pp. 83-87); Course Supp. pp. 6-9 (Opray Winfrey & Homerun articles); Simons Chapter Ch. 3 (pp. 89-124)		
5	3	Thursday, August 26, 2021	What is Income? Imputed Income, Gifts, Inheritances & Similar Items	Continue: Graetz Ch.3 (pp. 89-124); Read Simmons Ch. 4 (pp. 127-170); Course Supp. p. 10 (§139)		
6	4	Tuesday, August 31, 2021	What is Income? Loans and Other Receipts Balanced by Offsetting Obligations	Simmons Ch. 5 (pp.171-200); Course Supp. pp. 11-12 (Lewis)		
7	5	Wednesday, September 1, 2021	What is Income? Income from the Disposition of Property	Finish earlier material; Simmon Ch. 6 (pp. 201-252)		
8	6	Thursday, September 2, 2021	What is Income? The Role of Debt in Property Transactions	Simmons Ch. 34 (pp.1277-1316); Read Course Supp. pp. 12-22 (Rev. Rul. 91-31, Rev. Rul. 90-16, & Estate of Levine)		
9	7	Tuesday, September 7, 2021	What is Income? Relation of Basis to Income Recognition	Simmons Ch. 7 (pp. 253-278)		
10	8	Wednesday, September 8, 2021	What is Income? Taxation of Periodic Income	Simmons Ch. 8 (pp. 279-318); Course Supp. pp. 23-25 (Time Value of Money)		
11	9	Thursday, September 9, 2021	What is Income? Damage Awards and Settlements and Insurance Recoveries; Income from Cancellation of Indebtedness	Simmons Ch. 9 (pp. 319-341); Course Supp. p.26 (NFL article); Ch. 10 (pp. 343-370)		
12	10	Tuesday, September 14, 2021	What is Income: Annual Accounting Concept	Simmons Ch. 29 (pp. 1123-1160)		
13	11	Wednesday, September 15, 2021	Business Deductions: Ordinary and Necessary Business and Profit Shifting Expenses	Simmons Ch. 12 (pp.405-452)		
14	12	Thursday, September 16, 2021	Business Deductions: Profit-Seeking Expenses versus Capital Expenditures	Simmons Ch. 13 (pp. 453-490); Read Course Supp. pp. 27-36 (Mt. Morris Drive-In Theater; Midland Empire Packing Co.; & Rev. Rul. 2001-4)		
15	13	Tuesday, September 21, 2021	Business Deductions: Cost Recovery Mechanisms	Simmons Ch. 14 (pp. 491-538)		
16	14	Wednesday, September 22, 2021	Business Deductions: Transactional Losses	Simmons Ch. 15 (pp. 539-578)		
17	15	Thursday, September 23, 2021	Business Deductions: Interest as a Profit-Seeking Expense	Simmons Ch. 16 (pp. 579-610)		
18	16	Tuesday, September 28, 2021	Dual Purpose Expenses: Determining When a Taxpayer Is Engaging in a Business or Profit-Seeking Activity	Simmons Ch. 18 (pp. 633-658); Read Course Supp. pp. 37-43 (Nickerson; Plunkett); Simmons Ch. 19 (pp. 659-710); Course Supp. pp. 44-46 (Correll); Simmons Ch. 20 (pp. 711-730)		
19	17	Wednesday, September 29, 2021	Deductions for Personal Living Expenses: Itemized Personal Deductions, Standard Deduction, and Tax Expenditures for Education	Simmons Ch. 21 (pp. 731-806); Read Course Supp. pp. 47-51 (Ottawa Silica; Lombardo; Taylor; Rev. Rul. 2012-25; Reg. §1.67-2T); Simmons Ch. 22 (pp. 807-826); Read Course Supp. pp.52-62 (Rev. Rul. 2012-25, Reg. §1.67-1T; Baker)		
20	18	Thursday, September 30, 2021	Character: Capital Gains & Losses	Simmons Ch. 24 (pp. 851-958); Read Course Supp. pp. 63-84 (Arkansas Best; Gillete Motor Transport; Brown; Freda, Merchant Nation's Bank)		
21	19	Tuesday, October 5, 2021	Character: Sales of Assets Held For Use in Trade or Business	Simmons Ch. 25 (pp. 959-983)		
22	20	Wednesday, October 6, 2021	Deferred Recognition: Like-Kind Exchanges of Real Property	Simmons Ch. 26 (pp. 985-1013); Course Supp. pp. 85-91 (Alderson; Jordan Marsch Co.)		
23	21	Thursday, October 7, 2021	Deferred Recognition: Involuntary Conversions	Simmons Ch. 27 (pp. 1015-1036)		
24	22	Tuesday, October 12, 2021	Taxable Unit: Shifting Income	Simmons Ch. 37 (pp. 1375-1408); Read Course Supp. pp.92-93 (Estate of Stranahan)		
25	23	Wednesday, October 13, 2021	Taxable Unit: Taxation of Families	Simmons Ch. 38 (pp. 1409-1449); Read Course Supp. pp. 94-97 (Princess article; Boyter)		
26	24	Thursday, October 14, 2021	Tax Accounting	Simmons Ch. 28 (pp. 1037-1122); Course Supp. pp. 98-110 (Reg. §1.446-1(e); Rev. Proc. 2015-13; Rev. Proc. 2002-18)		
27	25	Tuesday, October 19, 2021	Deferred Compensation Arrangements	Simmons Ch. 30 (pp. 1161-1206)		
28	26	Wednesday, October 20, 2021	Deferred Payment Sales	Simmons Ch. 31 (pp. 1207-1224)		
29	27	Thursday, October 21, 2021	Interest on Discount Obligations	Simmons Ch. 32 (pp. 1225-1245)		
30	28	Tuesday, October 26, 2021	Transactions Involving Leased Property	Simmons Ch. 33 (pp. 1247-1276)		
31	29	Wednesday, October 27, 2021	Statutory Limitations on Tax Shelters	Simmons Ch. 35 (pp. 1317-1343)		
32	30	Thursday, October 28, 2021				
33	31	Tuesday, November 2, 2021				
34	32	Wednesday, November 3, 2021				
35	33	Thursday, November 4, 2021				
36	34	Tuesday, November 9, 2021				
37	35	Wednesday, November 10, 2021				
38	36	Thursday, November 11, 2021				
39	37	Tuesday, November 16, 2021				
40	38	Wednesday, November 17, 2021				
41	39	Thursday, November 18, 2021				
42	40	Tuesday, November 23, 2021				
43		Wednesday, November 24, 2021	Holiday-- Thanksgiving			
44		Thursday, November 25, 2021	Holiday-- Thanksgiving			
45	41	Tuesday, November 30, 2021	Open (Virtual Attendance Only)			
46	42	Wednesday, December 1, 2021	Review Session (Virtual Attendance Only)			
47		Thursday, December 9, 2021	Exam (9 a.m. - 1 p.m.)			