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Tax and Professional Ethics

Mondays 5:30-7:30

University of Houston Law Center

Fall 2024 Syllabus

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Required Course Materials:

- Ethical Problems in Federal Taxation Practice (5th Ed., 2015), Wolfman, Holden & Schenk, Little, Brown and Company [Aspen Publishers]. (ISBN 978-1454808169)

- Circular 230. In the back of the Ethical Problems text, and also available at: https://www.irs.gov/tax-professionals/circular-230-tax-professionals,

- ## Additional reading usually is assigned for each class. Please pay close attention to the assigned reading for each class.

You need access to:

- ABA Model Code of Professional Responsibility

- Internal Revenue Code of 1986, as amended (various sections)

Course Description

This course covers Tax Ethics and Professional Responsibility of the Tax Attorney. This is an upper- level tax class, and as such your participation is welcome, encouraged, **and required.** Additionally, we may conduct exercises in class that require participation based on the current and past reading materials.

We will examine and review the interaction of various laws, regulations, and cases which govern the professional conduct of the tax attorney and other tax professionals. At the end of this course the student should understand the role of the tax lawyer in the practice of tax law; the rules and regulations which govern the professional ethics and responsibility to the client and the legal system in the area of tax practice.

Class Sessions; Reading & Problem Assignments Please note this Syllabus is subject to change. Any corrections will be provided to you in writing and discussed in class.

Class 1 - August 19

Syllabus/Review Intro to class; Analytical Framework of Tax Ethics; What kind of tax lawyer are you?

1) Chapter 1, Pages 1-17

   a. Discussion Focus: Note 3 p. 13; Note 1 p. 15

2) Additional Required Reading: Field, Heather M. (2018) "*Tax Law: The Ethics of Tax Lawyering*," The Judges' Book: Vol. 2 , Article 16. Available at: https://repository.uchastings.edu/judgesbook/vol2/iss1/16 –

Class 2 – August 26

Unauthorized Practice of Law; Accountants and Tax Attorneys

1) Chapter 1 – Pages 31-67

2) **Additional Required Reading**

- *Grace v. Allen* 407 S.W. 2d 321 (Tex. Civ. App. 1966)

- *Sexton v. Hawkins* A.F.T.R.2d 2017-11872017-1; USTC P 50,181 (**IN BLACKBOARD CONTENT FOLDER; ignore Procedure and Section 330 discussion in case**)

- Karen Hawkins, 2017 *Erwin N. Griswold Lecture Before the American College of Tax Counsel: A (Not So) Modest Proposal* available at
  https://www.americanbar.org/content/dam/aba/publishing/tax_lawyer/vol70/703/hawkins-griswold-lecture-ttl-spring17-p647-659.pdf   **STOP** @ the **bottom** of page 654.

- Review Circular 230 to get a sense of what the document contains.

Labor Day – September 2 -No Class

Class 3 - September 9

Professional Liability Framework; Malpractice

1) Chapter 1, Pages 74-96;

2) **Additional Required Reading**: *Rhodes v. Batilla* 848 S.W. 2d 833 (**IN BLACKBOARD CONTENT FOLDER**)

Class 4 - September 16

Preparer and Taxpayer Penalties (to be covered over two weeks)

Pages 111-144; **prepare responses for questions 2, 6, 7, and 8 on pages 142 and 143**

Class 5 – September 23

Preparer and Taxpayer Penalties Continued; Opinions

Pages 111-144

Class 6 –September 30

Duty of Loyalty; Conflict of Interest; Fees

Pages 145-184 *(Introduction to Class Project if applicable)*

Class 7 – October 7

Disclosure; Privilege; Errors (to be covered over two weeks)

 Pages 184-275

Class 8 – October 14

Tax Accrual Workpapers; Textron and Wells Fargo

1) Pages 184-275

2) Additional Required Reading: *Wells Fargo & Co vs. U.S,* 2013 WL 2444639112; A.F.T.R.2d 2013-53802013-1; USTC P 50,368 **SPECIAL INSTRUCTIONS: 1) Read Wells Fargo AFTER Textron 2) Before reading Wells Fargo, review reading guide and have responses to questions ready for class**

Class 9 – October 21

Tax Planning and Advice

1) Chapter Four: Read entire chapter <u>except</u> for *Section #7 Estate Planning*

   a) Prepare answers to Problem @Page 280 (don't get hung up on understanding the accumulated earnings tax)

   b) Prepare answers to Problem #2 @pp 282-283

   c) Prepare answers to all questions for Problem @pp @284-285

SKIP ESTATE PLANNING SECTION – <mark>RESTART READING</mark> AT #<u>8, RULINGS PRACTICE</u> p. 287 Prepare answer to Problem #1 @pp 288-289

   d) Prepare answer to Problem #3 @ p307

Skip Notes Page 311l

Class 10 – October 28

Public Choice Theory; Legislative Process; Tax Lobbying

1) Chapter Five: Read Entire chapter

   a) Prepare answers to Problems 3-6 @ p. 321

   b) **Additional Reading – NYT Article Posted in Blackboard – <u>please prepare your thoughts after reading this article to share with class</u>**

   c) What is your reaction to the Joseph Peckman article?

Class 11 – November 4

Lawyer for the Government; Lawyer for the Corporation; Social Media/Advertising

1. Chapter Six and Chapter Seven: Skip to page 403; Read 403-432 and 433-451(stop at Social Media); We will address the role of Government Lawyers briefly at the beginning class via lecture

   a. Prepare answers to Notes #1 and #4 pp. 419-420

   b. Prepare answers to Notes #2 and #3 pp. 422

   c. Prepare answers to Notes #1 and #2 p. 432

2. **NOTE: Social Media will be covered in class. There is no assigned reading but you will be responsible for the materials we cover in class.**

3. **Required: look for examples on the internet of tax attorney or tax advisor advertising that you feel may be over the line or possible stretching things with respect to assertions, credentials, or claims – not limited to attorneys.** Take a screen shot and be ready to share with the class why you think they may be a violation of ethics, just don't feel right, or may violate outright law.

Class 12 – November 11

International Tax (Microsoft Case Study)

1. No reading from text required <u>– no power point in Blackboard</u>

2. Read Microsoft Materials in Blackboard and make a list of every issue you can spot in these articles, based on everything we have read in the class so far. <mark>**Send to us at least 24 hours before class starts**</mark>. **Class participation (each person will report out) and this written response will constitute 10% of your grade. This can take the form of a table, chart, bullet points, narrative, whatever works best for you to lay out your thoughts.**

3. **Must include an inventory of facts and the issues raised by those facts and the relevant authorities to the identified issues.**

- Model Rules?

- Circular 230?

- Case law?

- ABA Opinions?

- General ethical concepts we have discussed in class?

Class 13 – November 18

Guest Speakers. Details to follow

Class 14 – November 25

What kind of lawyer are you? Class Review/questions

1. Read before class and be prepared to discuss: Heather M. Field, *Aggressive Tax Planning & the Ethical Tax Lawyer*, 36 VA. TAX REV. 261

   a. How do we ethically plan (or defend) aggressive tax positions?

   b. We touched on this when class started- what kind of lawyer are you? Has anything changed as we moved through the course?

   c. If you were representing Microsoft, how would your style have influenced your advice and defense on their offshoring tax planning?

   d. What biases might you have that influence your style of lawyering?

   e. How can you make sure you both recognize and address your biases?

2. Class Review

Class Preparation Students are required to read assignments prior to attending class. Our teaching method will include a combination of lectures, problem solving and questioning. Additionally we may assign in-class exercises based on class readings. Consequently, students will find it difficult to participate in class discussion without reading the material prior to class, particularly the problem solving and question portions. Material for each class will be drawn from the text books, other material assigned, IRS Code and the other required access materials listed above, relevant cases, hypothetical problems and other materials assigned in or prior to class. We may deviate slightly from the syallabus so students who miss a class need to check with the Instructor or a classmate to verify the subject matter to be covered in the next class. We welcome students bringing material relevant to the subject matter.

Attendance Class attendance is required. A student may not be absent from class more than two times without being subject to penalty. More than two absences is considered excessive; we reserve the right to lower any student's grade by one letter if a student has a record of excessive absenteeism. A student who is absent more than two class periods due to illness or personal reasons should advise us immediately upon return to class and should submit supporting documentation for consideration pursuant to rules, regulations and requirements of the University Of Houston School Of Law. Pursuant to University rules if a student misses more than three classes, then the student *may* be dropped and receive no credit for this course. Notification by the student at the end of the semester regarding absenteeism will not be considered.

Grading Policy Final grades will be based on the final exam, assigned projects and class participation. A student's final grade may be impacted if they have a record of excessive absenteeism. We also reserve the right to raise or lower the final grade by a plus or minus based upon exceptionally good or poor class participation and performance. With respect to extra credit, exceptional classroom performance refers to a student's performance which is substantially above the minimum requirements. Poor performance refers to being repeatedly unprepared or non-responsive when called upon or failing to participate in class discussions.

Other Information Students who may be in need of help under the Americans with Disabilities Act should contact Student Services.

Should you have any questions please feel free to contact me via email and/or phone listed on this syllabus. I welcome your comments and encourage student contact, and most of all your participation.