

ENERGY TAXATION

Syllabus – Spring 2024

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Course Number: 5297

Dates: Thursdays @5:30 p.m.

Mode of Instruction: in person

Office Hours: Via TEAMS, upon request

Casebook (optional): Tax Law and the Environment, A Multidisciplinary and Worldwide Perspective, edited by Roberta F. Mann and Tracey M. Roberts, 2018.

Attendance: The Law Center has a minimum 80% attendance policy for students. Attendance will be taken at the beginning of each class.

Office Hours: Upon request

Grading: Your course grade will be based on a final examination worth 100%. The final examination will be take-home and open book/notes comprised of both essay and multiple-point questions.

Course Objectives: By the end of this course, you will be able to:

- (a) Understand the role of energy the economy;
- (b) Understand the various energy sources and certain financial / commercial considerations related thereto; and
- (c) Understand the taxation of a variety of energy-related investments and operations.

Honor Code: The UHLC Honor Code applies to all aspects of this course. You are responsible for knowing all Honor Code provisions and for complying with the Honor Code. Please inquire if you have any questions regarding how the Honor Code's provisions apply to specific activities or situations related to this course. Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to comply with the Honor Code in relation to this course and to comply with the instructions in the course syllabus.

AI Generated Text: The software technology known as artificial intelligence has recently expanded its capability to generate text (AI Generated Text). Examples of the technology include what are known as "generative" large language models (LLMs), and a specific implementation what is well known in the general public is ChatGPT. These systems can generate text in response to prompts and/or input of other text/documents/code/images. The output, the AI Generated Text, appears to have human-mimicking "intelligence" and is thus potentially usable as a substitute for written work product one might generate themselves. AI Generated Text can include computer code or programs as well as human language content.

Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to not prompt, generate, obtain, read, or use any AI Generated Text in relation to any activity or assessment in this course. This applies to AI Generated Text from yourself or others. This pledge includes that your assessment work product in the course is without any contribution from AI Generated Text. This specifically extends to the plagiarism policy and unauthorized aid/materials parts of the Honor Code: AI Generated Text will be treated as from another/others in applying the plagiarism policy to this course. The term “assessment” means any work product generated for this course that is submitted to the instructor or presented in a class session, regardless whether it is graded content or not. Assessments include mid-terms and final exams. AI Generated Text may not be used in the development or drafting of any assessments created by you in a non-proctored environment, such as a “take-home” final examination unless specified as an exception below. The parts of the Honor Code that refer to unauthorized materials or aid are specifically prohibited from any use of AI Generated Text in this course.

Preliminary Syllabus:

- 1. Week 1 (January 18): Introduction and Energy Overview**
 - a. Introduction and tax recap
 - b. Overview of the energy segments
 - c. Role of the tax law and environmental incentives
- 2. Week 2 (January 25): Oil and Gas**
 - a. Casebook Reading (optional):
 - i. Pages 1-12, 45-57
 - b. Topics:
 - i. Oil and Gas – history and taxation (economic interest and pool of capital)
 - c. Cases and Citations:
 - i. *Palmer v. Bender*, 287 U.S. 551 (1933).
 - ii. GCM 22730, 1941-1 C.B. 214.
- 3. Week 3 (February 1): Oil and Gas**
 - a. Casebook Reading (optional):
 - i. Pages 19-45
 - b. Topics:
 - i. Cost recovery
 - ii. FIRPTA and other incentives
 1. FIRPTA
 2. Enhanced oil recovery
 - iii. Planning topics
 1. Production payments
 2. Carried interests / DrillCos
 3. Like kind exchanges
 4. Capital markets
 - c. Cases and Citations:
 - i. Cases
 1. *Helvering v. Bankline Oil Co.*, 303 U.S. 362 (1938).
 2. *Anderson v. Helvering*, 310 U.S. 404 (1940).
 3. *Comm’r v. Southwest Exploration*, 350 U.S. 308 (1956).

- ii. Citations
 - 1. Section 263(c)
 - 2. Sections 611-614
 - 3. Section 263A
 - 4. Sections 1245 and 1254
 - 5. Section 167(h)
 - 6. Section 168
 - 7. Section 897
 - 8. Section 43
 - 9. Section 1031

4. Week 4 (February 8): Mining and Metals

- a. Casebook Reading (optional):
 - i. Pages 59-83
- b. Topics:
 - i. Types of minerals
 - ii. Types of mining methods
 - iii. Batteries
 - iv. Depletion
 - v. Exploration costs
 - vi. Development costs
 - vii. Receding face
- c. Cases and Citations:
 - i. Parsons v. Smith, 359 U.S. 215 (1959).
 - ii. Paragon Jewel Coal Co. v. Comm’r, 380 U.S. 624 (1965).
 - iii. Hogan v. Comm’r, 141 F.2d 92 (5th Cir. 1944).
 - iv. Kirby Petroleum Co. v. Comm’r, 326 U.S. 599 (1946).
 - v. Burton-Sutton Oil Co. v. Comm’r, 328 U.S. 25 (1946).
 - vi. O’Donnell v. Helvering, 303 U.S. 370 (1938).
 - vii. Elbe Oil Land Dev. Co. v. Helvering, 303 U.S. 372 (1938).

5. Week 5 (February 15): Mineral Transactions and Power & Utilities

- a. Topics:
 - i. Section 1031 transactions
 - ii. Production payments
 - iii. Sharing and leasing arrangements
 - iv. Power generation
 - v. Transmission
 - vi. Distribution
 - vii. Regulatory
 - viii. Cost recovery
- b. Cases and Citations:
 - i. Cases
 - 1. P.G. Lake Inc. v. Comm’r, 356 U.S. 260 (1958).
 - 2. Thomas v. Perkins, 301 U.S. 655 (1937).
 - ii. Citations

1. Section 1031
2. Section 636

6. Week 6 (February 22): Energy Transition and Renewable Energy Overview

- a. Topics:
 - i. Overview and survey of energy transition and renewable energy
 - ii. Introduction to solar energy
- b. Cases and Citations: None

7. Week 7 (February 29): Monetizing Energy Credits

- a. Topics:
 - i. Direct pay
 - ii. Transferability
 - iii. Tax equity / FLIP structures
- b. Cases and Citations:
 - i. Luna v. Comm'r, 42 T.C. 1067 (1964).
 - ii. Comm'r v. Culbertson, 337 U.S. 733 (1949).
 - iii. Rev. Proc. 2007-65 (wind)
 - iv. Frank Lyon Co. v. United States, 435 U.S. 561 (1978).

8. Week 8 (March 7): Wind, Solar and Energy Storage

- a. Casebook Reading (optional):
 - i. Pages 253-286
- b. Topics:
 - i. Wind energy
 - ii. Solar energy
 - iii. The investment tax credit and the production tax credit
- c. Cases and Citations:
 - i. Section 45
 - ii. Section 48
 - iii. Section 45Y
 - iv. Section 48E

9. Week 9 (March 21): Carbon Capture Use and Sequestration

- a. Casebook Reading (optional):
 - i. Pages 199-218
- b. Topics:
 - i. Carbon capture use and sequestration market overview
 - ii. Qualification for Section 45Q
 - iii. Market overview and potential structures
 - iv. Investments
- c. Cases and Citations:
 - i. Section 45Q
 - ii. Rev. Proc. 2020-12
 - iii. Notice 2020-12
 - iv. Rev. Rul. 2021-13
 - v. Preamble to final Section 45Q Treasury Regulations

10. Week 10 (March 28): Hydrogen and Geothermal

- a. Casebook Reading (optional):
 - i. Pages 151-174
- b. Topics:
 - i. Hydrogen - incentives
 - ii. Geothermal and cost recovery
- c. Cases and Citations:
 - i. Section 45
 - ii. Section 48
 - iii. Section 45V

11. Week 11 (April 4): Renewable Natural Gas, Biomass, and Biofuels

- a. Topics:
 - i. Renewable Natural Gas
 - ii. Biofuels
 - iii. Biomass
 - iv. Timber
 - v. Conservation easements
- b. Cases and Citations:
 - i. Section 631
 - ii. Section 40A
 - iii. Section 45H
 - iv. Section 45K

12. Week 12 (April 11): Advanced Manufacturing, Advanced Energy Projects and Nuclear

- a. Topics:
 - i. Section 45X advanced manufacturing tax credit
 - ii. Section 48C advanced energy projects
 - iii. Section 45U Nuclear
- b. Cases and Citations:
 - i. Section 45X
 - ii. Section 48C
 - iii. Section 45U

13. Week 13 (April 18): Non-tax credits and Other Energy-Related Tax Incentives

- a. Topics:
 - i. Carbon credits
 - ii. Fuel related credits
 - iii. Commercial and residential building credits
 - iv. Vehicle-related credits
- b. Cases and Citations: none

14. Week 14 (April 25): Recap

Mental Health and Wellness Resources

The University of Houston has a number of resources to support students' mental health and overall wellness, including CoogsCARE and the UH Go App. UH Counseling and Psychological Services (CAPS) offers 24/7 mental health support for all students, addressing various concerns like stress, college

adjustment and sadness. CAPS provides individual and couples counseling, group therapy, workshops and connections to other support services on and off-campus. For assistance visit uh.edu/caps, call 713-743-5454, or visit a Let's Talk location in-person or virtually. Let's Talk are daily, informal confidential consultations with CAPS therapists where no appointment or paperwork is needed.

The Student Health Center offers a Psychiatry Clinic for enrolled UH students. Call 713-743-5149 during clinic hours, Monday through Friday 8 a.m. - 4:30 p.m. to schedule an appointment.

The A.D. Bruce Religion Center offers spiritual support and a variety of programs centered on well-being.

Need Support Now? - If you or someone you know is struggling or in crisis, help is available. Call CAPS crisis support 24/7 at 713-743-5454, or the National Suicide and Crisis Lifeline: call or text 988, or chat 988lifeline.org.

Title IX/Sexual Misconduct

Per the UHS Sexual Misconduct Policy, your instructor is a "responsible employee" for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.

Reasonable Academic Adjustments/Auxiliary Aids

The University of Houston is committed to providing an academic environment and educational programs that are accessible for its students. Any student with a disability who is experiencing barriers to learning, assessment or participation is encouraged to contact the Justin Dart, Jr. Student Accessibility Center (Dart Center) to learn more about academic accommodations and support that may be available to them. Students seeking academic accommodations will need to register with the Dart Center as soon as possible to ensure timely implementation of approved accommodations. Please contact the Dart Center by visiting the website: <https://uh.edu/accessibility/> calling (713) 743-5400, or emailing jdcenter@Central.UH.EDU.

Recording of Class

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Justin Dart, Jr. Student Accessibility Center. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.