

Federal Income Taxation
Law 236
Prof. Chorvat
Fall 2021

Required Casebook: FEDERAL INCOME TAXATION by Bankman, Shaviro, Stark & Kleinbard, 18th edition.

Required/Recommended : You will need to have access to a copy of the Internal Revenue Code and Regulations. Any reasonably current (within the last year or so) version of selected sections from the Internal Revenue Code and Treasury Regulations designed to be used in a basic income tax class should be sufficient. An example is Selected Sections: Federal Income Tax Code and Regulations. Steven Bank and Kirk Stark (available from Amazon and other booksellers). You can also access the Code and Regs on-line if you wish (see e.g., <https://www.law.cornell.edu/uscode/text/26> and <https://www.law.cornell.edu/cfr/text/26/part-1>), but you will need to access them regularly, as we will be discussing these materials in every single class.

Semi-Recommended: Federal Income Taxation (Concepts and Insights), Marvin Chirelstein and Lawrence Zelenak (I think the latest is the 14th edition, 2018). If you feel that your background might not be as strong as you might like, this might be a good book for you. It is written in a very user-friendly way and introduces the most important concepts that we will cover in the course. There will be no assignments from this book, so it is not at all required.

Learning Outcomes:

The first intended learning outcome for this course is for you to gain familiarity with the principles of the federal income tax. A related intended learning outcome is for you to obtain insight into how the interplay between the code, the regulations, case law and various administrative materials creates what we can refer to as the income tax law. Another intended learning outcome is for you to gain a basic understanding of the effect of income tax on the structure of a wide variety of activities, both those traditionally considered to be economic and those considered to be non-economic.

By the end of the course, you should be able to formulate arguments for and against positions taken by taxpayers. This will be the primary focus of the final grade for the course.

The purpose of this course is not to make you an expert in tax law. That would not be possible in a semester or even two or three years of the study of tax law. The purpose of this course is to introduce you to the federal income tax law with a focus on the practice of law. That is, the focus is on learning how to be an advocate for either the government or for taxpayers. As such, the main focus of the course is on the structure of the law itself. The policies behind the law are discussed only to the extent that they aid in understanding the structure of the law. The nature of the policies behind tax law are the focus of the course entitled Tax Policy.

Assessment:

The grade for this course will be based on the final examination. Currently, the exam is scheduled for December 8th. The details of this exam will be discussed in class and announced on TWEN as they become available, as they may depend on the situation at the end of the semester. The structure of the final will focus on the Learning Outcomes discussed above.

All references below to “Chapters” refer to chapters in FEDERAL INCOME TAXATION casebook. The code sections specified below are the sections on which you should focus for the respective assignment. Each assignment is expected to take approximately one week. The two major exceptions are the first assignment, which will likely take approximately one class to perhaps one and one-half classes and the fifth assignment which will likely take at least three classes. Electronic versions of the extra cases and handouts can be found on the TWEN site for the class. The Powerpoint slides that I will use during the lectures are also to be found on the TWEN site. There is also additional supplemental material posted to the TWEN site.

Beginning this year, I will also be using a Blackboard site. The plan is that all of the content available on the TWEN site will also be available on the Blackboard site and vice versa. If you do not have access to either the TWEN site or the Blackboard site, please let me know right away.

The Code sections listed in connection with each assignment are the essential code sections for that assignment, but not necessarily the only ones that might apply. That is, the assignment will focus on these sections, however other code sections will also be discussed. It is important to review the code sections noted below before class to be able to follow and contribute to the discussion. The lecture notes and additional material on the TWEN and Blackboard sites discuss the other Code and Regulation sections that will be discussed in class.

This course is currently scheduled to be an in-person class. However, I will also establish a Zoom link for exigent circumstances that may arise. I will post a link to the Zoom meeting on both the Blackboard and TWEN sites. I will be adding some asynchronous material from time to time, which one can view as a form of required reading for the course. These will generally be short videos in which I review a particular idea or skill. I will post announcements to Blackboard and TWEN as I add this material.

Outline of the Course:

Assignment I.

Reading: Chapter 1, Chapter 2 A and B

Code Sections: §§ 1, 61, 62, 63, 1001, 1011, 1012, Skim *Nat’l Fed. Of Business v. Sebelius* (on TWEN)

Beginning on p.31 to p. 44 of the opinion

The class discussion for this unit will only roughly follow the readings. The purpose of this lecture is to lay the groundwork for the course. I expect this unit to take more than one class, but not two classes.

Questions to Consider:

What is the definition of a tax for purposes of the power granted to Congress under Article 1 of the Constitution? Does the income tax as embodied in the sections discussed this week (that is, Sections 61-63) fit within that definition? What kind of rules do not fit within this definition?

Assignment II.

Readings: Chapter 2 C, D, E, F, G, H (skim 4.C.1 in connection with Chapter 2 C)

Code Sections: §§ 117, 119, 121, (skim 125), 132

Questions to Consider:

Now that you have read a number cases that consider the definition of income, can you come up with a sentence or two which defines “income” for purposes of Section 61 (without being quite as circular)? Does the definition of income cover everything good or bad that happens in your life? Should it?

Assignment III.

Readings: Chapter 2 I, J, Chapter 3 A, B Skim C (we will cover the *Davis* case in class), Chapter 4 A
Code Sections: §§ 102, 172, 1014, 1015, 1341

Questions to Consider:

Does it make sense to exclude gifts from income? How does that affect the definition of income? What is the role of basis in an income tax system? Do the rules of Section 1015 make sense? Can you come up with a justification for Section 1014's rules based on a definition of income?

Assignment IV.

Readings: Chapter 5 A, B, C, E, F, G (not D)
Code Sections: 61 (a)(3), 61(a)(12), 101, 103, 104

Questions to Consider:

When should proceeds from an insurance policy be included in income? When shouldn't they? What is the justification for the rules in Section 104? Is it purely administrative, or can you argue that it can be based on a definition of income, at least to some degree?

Assignment V.

Readings Chapter 7, *Indopco* (on TWEN), Depreciation Handout
Code Sections: §§ 162, 263, 167, 168

This assignment will likely take at least three classes

Questions to Consider:

What is the basic argument for the deductions allowed under Section 162? What does it mean to capitalize the cost of an item versus "expensing" it? When might this matter? How can one justify the rules allowing a deduction for depreciation, given that we generally have a realization requirement for both the inclusion of income and the allowance of deductions?

Assignment VI.

Readings Chapter 10 A, B, C, D, E, F plus *Hernandez*
Code Sections: §§ 61, 62, 63, 163, 164, 165(a), (c), 170, 213, 262

Questions to Consider:

What is the difference between the justification for the medical expense deduction and the charitable deduction? How are these justifications tied to the definition of income? How does the court's view of the purpose of the charitable deduction influence the outcomes in *Ottawa Silica*, *Bob Jones*, and *Hernandez*? How are these cases similar and how are they different?

Assignment VII.

Readings Chapter 9
Code Sections: §§ 67, 183, 212, 262, 274,

Questions to Consider:

Are the rules discussed in this chapter based on the theory of income, administrative expedience, a combination of the two or something else? For each of the decisions, are the rules set forth by the courts easy to follow or are they ambiguous?

Assignment VIII.

Readings: Chapter 4 C & D plus *Philadelphia Park, Jordan Marsh* (on TWEN)

Code Sections: §§ 61, 165, 1001, 1031

Points to Consider:

The cases in this unit are more difficult than those considered in earlier sections. For example, *Philadelphia Park* is a more complicated case than it might first appear. Spend some time thinking about whether the court reached the correct answer. What does the realization doctrine really mean? Is it constitutionally required for any “income tax” under the 16th amendment?

Assignment IX.

Readings: Chapter 6A, B, C, D, E, F

Code Sections: §§ 1, 83, 482

Questions to Consider:

Why does the assignment of income matter? When will this be a difficult question? How does the definition of a taxable unit influence this? How does the assignment of income doctrine connect to the definition of a gift?

Assignment X

Readings: Chapter 12 A, B, C, D, E, F, Capital Gains Handout

Code Sections: §§ 1211-1222

Questions to Consider:

Why do we have a preference for “capital gains”? What is the nature of this preference? When is an asset a “capital asset”? Can this character change?

Assignment XI

Readings: Chapter 12 G, H, I.

Code Sections: §§ 1211-1222, also § 469

Questions to Consider:

Can intangible rights be capital assets? When is an intangible right an “asset”? For that matter, what is an “asset”?

Assignment XII (Only if time permits, most years we do not get this far)

Readings: Chapter 4 B, E, F, G, Chapter 5 D

Code Sections: §§ 422, 453, 483, 1041, 1271-5

Assignment XIII (really unlikely to cover this, but I include it so that there is no chance we will run out of material)

Readings Chapter 8

Code Sections: §§ 7701(o)