

Basic Federal Income Taxation

Professor David Gamage

Spring 2024

Units: 3

Meeting Time: Tuesdays and Thursdays, 2:00-3:15 pm

Meeting Location: room 3

Professor's E-mail: dgamage@missouri.edu

Professor's Office: 309

Office Hours: 3:20 to 4:40 pm on Thursdays or by appointment.

(I have an open-door policy and—so long as my door is open—you are welcome to stop by my office without e-mailing in advance, either during my scheduled office hours or at any other time. However, I schedule meetings on a first-to-email-me first-to-be-served basis, so I highly recommend that you e-mail me in advance, as otherwise I may already have an appointment scheduled when you stop by. I am very happy to schedule either Zoom or in-person office hour appointments, either during my regular office hours or for other times, as best fits both your and my availability. **Please e-mail me to schedule an appointment.**)

Course Description

The principal subject matter of this course is federal income tax law, especially as it applies to individuals and families. Topics covered in this course include: what constitutes income subject to tax and what is excludible; what is deductible; the tax treatment of gains and losses; and which income items are taxed at preferential rates. Learning to read and apply the Internal Revenue Code and Treasury Regulations is an important focus of this course. Other focuses of this course include understanding tax planning dynamics and how tax law relates to both tax politics and tax policy. This is an introductory course with no prerequisites. This course is a prerequisite for most other tax courses. Grading will primarily be based on an open-book final exam.

Course Learning Objectives

Taxation is one of the most important subjects for most any legal practice. At least a basic understanding of tax law is essential for success in any transactional practice area and also for any litigation-oriented practice area that involves large amounts of money or wherein attorneys play a role in negotiating settlement agreements. The most important goal for this course is thus to provide students with a basic overview of essential elements of federal income tax law.

Additional goals for this course include introducing students to the basics of transactional planning and of statutory analysis, both of which are key skills for practicing attorneys. Finally, tax law and policy are central to democratic governance in the United States, and this course will introduce students to some key issues and debates surrounding tax policy and tax politics.

Beyond those specific goals, tax law is intellectually fascinating and learning about tax law should be enjoyable and fun.

Course Materials

The casebook for this course is LIVINGSTON & GAMAGE, TAXATION: LAW, PLANNING, AND POLICY (3rd edition). The casebook should be available for purchase from the bookstore or from various online vendors. In case you are not able to immediately purchase the casebook, I have secured the publisher's permission to post the background and basic themes section and the first chapter of the casebook to Canvas and also to SSRN (here: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3309003), for your use for purposes of this class.

In addition to the casebook, you will need a current version of the federal income tax code and regulations. I recommend STEVEN BANK AND KIRK STARK, SELECTED SECTIONS: FEDERAL INCOME TAX CODE AND REGULATIONS, as this selection is both significantly cheaper and easier to carry than its major competitors. However, due to its slimness, the Bank and Stark selection does not contain all of the code sections and regulations we will use in this course. I will thus occasionally post supplemental code sections and regulations to Canvas.

If you would prefer to use a different codebook (such as to save cost), any of the major codebooks that were updated after 2018 should work, although you should understand that your page numbers will be different from those in the codebook I will use in class. If you prefer, you can alternatively download the assigned code sections and regulations from Lexis or Westlaw (or from here: <https://www.law.cornell.edu/uscode/text/26>). But I highly recommend that you then print out the assigned code sections and regulations so that you can take notes on them and refer to them easily during class and as you study. If you go this route, you will ultimately need to create your own booklet of the code and regulations to use during the exam.

Finally, in addition to the required casebook and code and regulations, for the past decade of my teaching this course, I have highly recommended the following supplementary text: EDWARD MCCAFFERY, THE OXFORD INTRODUCTIONS TO U.S. LAW: INCOME TAX LAW (2012). Although this book has become somewhat out of date, it is still available for purchase from online booksellers, and I continue to highly recommend this book as a supplement. However, Ed McCaffery and I are currently in the process of co-authoring a revised, expanded, and updated version of this text. Although our work on this project is still in-progress, we have agreed to share the relevant portions of the draft of our new book with our income tax classes in PDF form for you to use as a supplement if you so desire. I highly recommend that you either purchase the original McCaffery

supplementary book or that you read the new draft PDF that I will provide via Canvas. Neither of these supplements are required, but they offer very helpful background information and context for the topics that we will cover.

If you opt to purchase the original McCaffery book, I recommend that you read chapters 1, 2, and 4 of that book prior to our beginning chapter 2 of the casebook. I then recommend that you read chapter 3 of the McCaffery book prior to our beginning chapter 3 of the casebook. I then recommend that you read chapters 7 and 8 of the McCaffery book prior to our beginning chapter 5 of the casebook. I then recommend that you read chapter 6 of the McCaffery book prior to our beginning chapter 6 of the casebook. Finally, I recommend that you read chapter 5 of the McCaffery book prior to our beginning chapter 7 of the casebook. (All of these recommendations will be included on the class assignment sheets, following the required readings for each class assignment. The original McCaffery book can be purchased from Amazon here: <https://www.amazon.com/Oxford-Introductions-U-S-Law-Income/dp/0195376714>)

If you instead opt to read the PDF of the relevant portions of the draft new book that I am co-authoring with Ed McCaffery and that I have posted to Canvas, I recommend that you read chapters 1, 2, and 4 of that PDF prior to our beginning chapter 2 of the casebook. I then recommend that you read chapter 3 of that PDF prior to our beginning chapter 3 of the casebook. I then recommend that you read chapter 7 of that PDF prior to our beginning chapter 4 of the casebook. I then recommend that you read chapters 8, 9, and 10 of that PDF prior to our beginning chapter 5 of the casebook. I then recommend that you read chapter 6 of that PDF prior to our beginning chapter 6 of the casebook. Finally, I recommend that you read chapters 5 and 11 of that PDF prior to our beginning chapter 7 of the casebook. (All of these recommendations will be included on the class assignment sheets, following the required readings for each class assignment. The PDF can be downloaded from Canvas.)

Besides these texts, I will also assign a number of short supplemental readings. Any such supplemental readings I assign will be noted on the class assignments and will be made available for downloading from the course Canvas page.

Please have both your casebook and your codebook (or the relevant casebook pages, code sections, and regulations) ready for every class session. We will discuss questions from the casebook and parse code sections and regulations continually throughout the course. If you do not bring your books and have them readily accessible, you will find it difficult to follow the class discussions.

Grading and Class Participation

Your grade will primarily be determined by an open-book final exam. This will be a “medium security” exam, meaning that students will be blocked from accessing the Internet, but otherwise students will be allowed to access all files and applications on their laptops. Please be advised that that e-books will be accessible only if the application stores a local copy that can be reviewed without Internet access.

If needed, I will use class participation as a tie-breaker in awarding final course grades. Be aware that I typically do need a tie-breaker for awarding final grades, so it is highly likely that class participation will be decisive in determining the final grades for some students whose exam scores end up between two possible grade levels.

I will primarily rely on volunteers to answer questions posed to the class. However, if there are insufficient volunteers, I may switch to using an on-call system. Also, if you would like to participate but if you feel shy about volunteering, please let me know and we can agree in advance that I will call on you to answer questions during a class session. Note that if some event unexpectedly forces us to move to online teaching, I will plan to use a panel on-call system during any prolonged period of online teaching.

As an additional option for earning participation points, if you find any errors, typos, or confusing statements in the casebook, or in the draft PDF of the new supplementary book that I am co-authoring with Ed McCaffery, please email their locations to me so that I can make sure they are fixed for future editions. I will award participation credit for anyone sending me helpful emails of this sort, and that participation credit (along with credit for in-class participation) may serve as a tie-breaker for determining your final course grade.

Additional Requirements and Other Course Logistics

I plan to record all class sessions and to make them available via Canvas. I cannot guarantee that all class sessions will be successfully recorded, however, and student questions and answers may not be audible. You are welcome to make recordings of your own or to ask another student to do so for you. To respect student privacy, any such recordings should not be shared beyond students enrolled in this course.

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations. Note that students “may make audio or video recordings of course activity”, however, “the redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course is prohibited without the express permission of the faculty member and of any students who are recorded.” **The sharing or redistribution of any video or audio recordings of our class sessions to individuals who are not students in the course is thus prohibited.**

I plan to post all of the PowerPoint slides I show in class to Canvas. I also plan to post lightly edited versions of my lecture notes to Canvas following each assignment. These materials are offered to aid in your review and understanding of the assigned materials and our class discussions. You are only responsible for the material that we cover during our class discussions.

I may additionally post some optional supplementary readings to Canvas. These are offered to aid in your understanding and to provide you with the opportunity to explore additional topics you might find interesting. You will not be responsible for these materials, although

reviewing them may help improve your understanding of the materials and concepts that we cover in class and that you will be responsible for.

Regular attendance and participation are required, except when you have an excused reason for being absent. Both ABA Standards and the law school's academic regulations require "regular attendance" as a condition for awarding credit for a class. However, if you have any health-related or weather-related travel concerns about attendance, please do stay home for the days in which such concerns apply and then either join us via Zoom or watch the recorded videos and read the other provided materials to catch up with what you missed. I am happy to excuse absences for any health-related or weather-related travel reasons or for any valid professional or personal related reasons (such as job interviews), to the extent permitted by Law School, University, and ABA policies. Please email me if you will be missing class due to any situation that does not affect the entire class.

Disability Accommodation

The School of Law collectively and I personally are committed to accommodating students who have disabilities. If I can reduce disability-related barriers to the course and you feel comfortable sharing your needs with me, please feel free to contact me in person or by email. Some accommodations require time to provide, so the earlier I know about them, the better.

If you require disability-related accommodations that I cannot individually provide (such as a notetaker, extended time on exams or professional captioning), please contact the Law School's Registrar Denise Boessen (Room 203) and the Associate Dean for Academic Affairs Ben Trachtenberg. They will advise you as to the steps you need to take, such as establishing an Accommodation Plan with the Disability Center.

Intellectual Pluralism

The School of Law community welcomes intellectual diversity and respects student rights. Students who have questions concerning the quality of instruction in this class may address concerns to either the Dean or Director of the Office of Student Rights and Responsibilities (<http://osrr.missouri.edu>). All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of this course.

Academic Integrity

Academic integrity is fundamental to the activities and principles of the School of Law. All members of the law school community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The law school community regards breaches of the School of Law's Honor Code as extremely serious matters. In the event that you violate our Academic Integrity rules on any portion

of the work required for this class, you may expect a failing grade in this course as well as possible disciplinary sanctions ranging from probation to expulsion.

When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, feel free to email me or talk to me after class or during office hours.

Assignments

I will post reading assignments to Canvas and I will announce in class when I have posted a new set of reading assignments. Each reading assignment is designed to take up at least one class session, and we will typically devote between one and two class sessions to each reading assignment.

You will be more than fully prepared for each class if you read one assignment ahead of where we finished in the prior class. At the end of each class session, I will update you on what I expect we will cover in the subsequent class session.

The final pages of this syllabus show the first five assignments for the course. I will post additional sets of assignments as the semester progresses.

“CB” indicates assigned readings in the casebook. The instruction “skim” indicates that you are to look over the relevant materials, but that you do not need to read them in detail.

Assignment	Topic	Readings
1	Introduction and Course Overview	-Review the course syllabus -CB, pp. 3-14 (The Background and Basic Themes section and the first chapter of the casebook can be downloaded from the course Canvas page.) -As you have time, I recommend that you also read either the McCaffery supplement book or the PDF of the draft new McCaffery and Gamage book that I have posted to Canvas. If you opt for the former, you should aim to have finished reading chapters 1, 2, and 4 of the McCaffery supplement book before we begin chapter 2 of the casebook. If you opt for the latter, you should aim to have finished reading chapters 1, 2, and 4 of the PDF before we begin chapter 2 of the casebook. -As an additional review supplement, consider also watching Professor Lederman’s video on “Sources of Tax Authority”, available on YouTube (here: https://www.youtube.com/watch?v=xRDLaXYIDhE)

2	<p><u>I. What is Income?</u> Employer-provided meals and lodging, and the convenience of the employer test.</p>	<p>-CB, pp. 21-39 -Code Secs. 61 & 119(a)-(b) -Skim Treas. Reg. 1.119-1 -Answer “Understanding” questions 1, 2, 3, and 4 on pages 26-27, and “Politics and Policy” questions 1 and 2 on pages 27-28. -Answer “Understanding” questions 1 and 2 on pages 37-38, “Law and Planning” question 1 on page 38, and the “Politics and Policy” questions on pages 38-39. -As you have time, I recommend that you also read either the McCaffery supplement book or the PDF of the draft new McCaffery and Gamage book that I have posted to Canvas. If you opt for the former, you should aim to have finished reading chapters 1, 2, and 4 of the McCaffery supplement book before we begin chapter 2 of the casebook. If you opt for the latter, you should aim to have finished reading chapters 1, 2, and 4 of the PDF before we begin chapter 2 of the casebook.</p>
3	<p><u>I. What is Income?</u> Windfalls, and further introduction to tax planning dynamics.</p>	<p>-CB, pp. 40-46 -Code Secs. 6662(a)-(b), 6663(a)-(b), & 6694(a)-(b) -Treas. Regs. 1.61-1(a)-(b), 1.61-14(a), 1.61-21(b)(1)-(2), & 1.6664-4(a)-(b)(2)(1) -Supplemental Reading: the audit lottery (download the reading from the course website) -Supplemental Reading: need a tax opinion? (download the reading from the course website) -Answer the “Understanding” and “Law and Planning” questions on pages 44-45. -As you have time, I recommend that you also read either the McCaffery supplement book or the PDF of the draft new McCaffery and Gamage book that I have posted to Canvas. If you opt for the former, you should aim to have finished reading chapters 1, 2, and 4 of the McCaffery supplement book before we begin chapter 2 of the casebook. If you opt for the latter, you should aim to have finished reading chapters 1, 2, and 4 of the PDF before we begin chapter 2 of the casebook.</p>
4	<p><u>I. What is Income?</u> Prizes and Awards, and more on valuation problems.</p>	<p>-CB, pp. 46-54 -Code Sec. 74(a) -Treas. Reg. 1.74-1(a) <i>(if this regulation is not in your codebook, you can download it from the course website or from https://www.law.cornell.edu/cfr/text/26/1.74-1)</i></p>

		<p>-Answer “Understanding” question 1 on page 48, “Understanding” questions 1 and 2 on pages 52, and “Using the Sources” questions a, b, c, d, and e on pages 52-53.</p> <p>-As you have time, I recommend that you also read either the McCaffery supplement book or the PDF of the draft new McCaffery and Gamage book that I have posted to Canvas. If you opt for the former, you should aim to have finished reading chapters 1, 2, and 4 of the McCaffery supplement book before we begin chapter 2 of the casebook. If you opt for the latter, you should aim to have finished reading chapters 1, 2, and 4 of the PDF before we begin chapter 2 of the casebook.</p>
5	<p><u>I. What is Income?</u> Gifts, and integrating statutory materials, case law materials, and fundamental concepts.</p>	<p>-CB, pp. 54-67 -Code Sec. 102 -Treas. Reg. 1.102-1 -Supplemental Reading: when payments to a pastor are not gifts (download the reading from the course website) -Answer “Understanding” questions 1 and 2 on page 65. Then answer the “Using the Sources” questions on pages 66-67 and the “Law and Planning” questions on page 67. <i>(Note: if you are using the codebook I assigned, proposed Treas. Reg. 1.102-1(f)(2) should be included, and you should read this in addition to the finalized portions of the Regulation. However, if you are accessing the Code and Regulations from some other source that does not include Prop. Treas. Reg. 1.102-1(f)(2), please make sure to also look up and read Prop. Treas. Reg. 1.102-1(f)(2), which you should be able to find on Lexis or Westlaw, or please let me know if you have any difficulties.)</i> -As you have time, I recommend that you also read either the McCaffery supplement book or the PDF of the draft new McCaffery and Gamage book that I have posted to Canvas. If you opt for the former, you should aim to have finished reading chapters 1, 2, and 4 of the McCaffery supplement book before we begin chapter 2 of the casebook. If you opt for the latter, you should aim to have finished reading chapters 1, 2, and 4 of the PDF before we begin chapter 2 of the casebook.</p>

