

FEDERAL INCOME TAXATION – Fall 2020
Professor Michael Kirsch
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Course Website: mkirsch.nd.edu/fedtax
Office Hours Scheduling: calendly.com/michaelkirsch

Course Materials:

Required:

- Freeland, Lathrope, Lind & Stephens, *Fundamentals of Federal Income Taxation*[:] *Cases and Materials* (19th ed., Foundation Press 2018)
- *Selected Federal Taxation Statutes and Regulations, 2021 Edition* (Daniel J. Lathrope ed., West)

Optional:

- Marvin A. Chirelstein & Lawrence Zelenak, *Federal Income Taxation: A Law Student's Guide to The Leading Cases and Concepts* (14th ed. 2018, Concepts & Insights Series)
- Katherine Pratt, Thomas D. Griffith, and Joseph Bankman, *Federal Income Tax: Examples & Explanations* (8th ed. 2019, Wolters Kluwer)

Course Description:

The federal income tax laws touch the lives of every attorney and his or her clients. Whether you become a litigator, a transactional attorney, a general practitioner, an in-house counsel, or some other type of attorney, the advice you give your clients may have federal tax consequences (whether you are aware of them or not!).

The purpose of this course is to give you a general understanding of the basic structure and concepts of the federal income tax laws. The basic questions we will address are:

- What is subject to tax – this involves the threshold question of “what is gross income,” and also examines what amounts are deductible, excludible, or otherwise not subject to tax
- When is income subject to tax – this inquiry focuses on the concept of “realization”; the timing of taxation is almost as important as whether something is subject to tax, and attempts to delay the inclusion of income in the tax base (or attempts to accelerate deductions) play an important role in tax planning
- Who is taxed – this involves attribution of income to particular taxpayers
- How is income taxed – this focuses on the more favorable treatment accorded certain types of income (e.g., capital gains)

After examining these topics, you should be able to recognize basic tax issues that arise in practice (as well as in your personal life), and have a general understanding of how to resolve them.

The course will also help you develop skills in reading and interpreting statutes. Unlike many of your other classes, the relevant law in this area is governed by detailed statutory provisions. The Internal Revenue Code of 1986, as amended (the “Code”), is the inordinately complex collection of those provisions. Although we will address only a small fraction of the sections in the Code, by the end of the course you should feel confident in your ability to parse the provisions of a Code section and, with the aid of income tax regulations issued by the Treasury Department (“Regulations”) and other administrative guidance, as well as relevant case law, make some sense of the provisions.

Finally, the course will give you a basic understanding of some of the policies (or lack thereof) underlying many provisions of the Code. This understanding not only may help you in interpreting what Congress meant by the statutory language it chose, but also will make you a more informed observer of future legislative debates in the tax area.

Reading Assignments and Preparation

The reading assignments for the course will be distributed in multiple parts. The first set of reading assignments will be posted on the course website during the week before classes begin (See *Web Page* section, below).

The assignments generally will consist of Code and Regulation sections, as well as material from the casebook (including problems). In addition, supplemental material may be assigned from time to time (see *Web Page* section, below). In preparing for class it is important that you read and focus on the specific language of the assigned Code and Regulation sections—the casebook summary alone often will not provide you with enough information to answer the assigned problems. While time limitations may prevent class discussion of some materials, you are responsible for assigned materials in their entirety. Reading assignments are subject to change to reflect current developments or time constraints.

Because of the subject matter of the class, I generally will use a problem-method approach in the classroom – i.e., the discussion will focus on problems that are in the casebook or that have been distributed previously. In order for you to benefit from this approach, it is important that you take time to read the assigned materials and **prepare answers to the problems prior to class**. In doing so, you should be prepared to discuss your reasoning, not merely your numerical answer. As discussed below, I expect that the substantive knowledge and skills you develop by regular advance preparation of answers to the problems will serve as valuable preparation for the final exam (See *Examination* section, below).

Schedule

The class will meet Monday, Tuesday, and Thursday, from 12:30-1:45pm. Because we are scheduled for 225 minutes per week (rather than the 200 average expected of a 4-credit course), four class sessions will not be held during the semester. In this regard, we will **not meet on September 28 (Monday)**. The other three dates to be cancelled will be announced later in the term. In the unlikely event that any classes need to be rescheduled, I will attempt to give as much advance notice as possible and I will arrange a recording of the make-up class for those students who have conflicts.

Health & Safety Protocols

Facemasks that completely cover your nose and mouth must be worn at all times in the classroom (both by you and by me). Also, at the end of each class, I plan to dismiss students by row or in another staged fashion in order to further health and safety.

Also, as stated on the University's [here.nd.edu](http://www.nd.edu) website:

[C]ompliance with [health and safety] protocols is an expectation for everyone enrolled in this course. If a student refuses to comply with the University's health and safety protocols, the student must leave the classroom and will earn an unexcused absence for the class period and any associated assignments/assessments for the day. Persistent deviation from expected health and safety guidelines may be considered a violation of the University's "Standards of Conduct," as articulated in *du Lac: A Guide for Student Life*, and will be referred accordingly.

Room and Seat Assignments

On Mondays and Tuesdays we will meet together in the McCartan Courtroom.

On Thursdays, half of you will be in Eck 1130 and the other half in Eck 1140. The Law School Registrar, Jenny Fox, assigned each of you to either 1130 or 1140 (based on the first letter of your last name), and that will be your Thursday room for the entire semester. On some Thursdays I will be located in Eck 1130 and on other Thursdays I will be located in Eck 1140, depending on which panel is on call that day (see *Panels* section, below). The room in which I am not located will be the "remote" room for that Thursday, and will be linked to my teaching room with the room's built-in A/V equipment. On the Thursdays that you are assigned to the remote room, you may either report to the remote room to join the class via the classroom A/V link, or you may join the class in real time via Zoom from your apartment or other location outside of the Law School (See *Illness and Zoom Procedures* heading below for information on joining via Zoom). On the Thursdays when I am teaching in your assigned room (i.e., you are not in the remote room), I expect you to attend in person, whether you are on call or not. Of course, on Mondays and Tuesdays, when we are together in the Courtroom, I expect you to attend in person.

In order to facilitate contact tracing if necessary, each student is required to sit in their assigned seat once the seating charts are finalized after the add/drop period ends. Prior to the first class, my Administrative Assistant Alicia Cummins will provide each of you with access to several Google Sheets via Sakai. One Sheet will be for the Courtroom

with separate tabs for Monday, August 10, and Tuesday, August 11. On each of those days, you should log onto the Sheet when you arrive in the Courtroom and record your name in the space corresponding to the seat number where you are sitting. Your seat location recorded for Tuesday, August 11, will be your permanent Courtroom seat for Mondays and Tuesdays during the semester.

You will also receive access to a Google Sheet that corresponds to your assigned Thursday room (either 1130 or 1140). You should log onto the Sheet when you arrive in your assigned room on Thursday the 13th and record your name in the space corresponding to the seat number where you are sitting. For those of you assigned to Room 1130, the seat you record in Google Sheets on Thursday, August 13, will be your permanent seat for Thursdays during the semester. For those of you assigned to Room 1140, you will also have access to the Google Sheet on Thursday, August 20, and the seat you record on that day will be your permanent seat for Thursdays during the semester.

Panels

I intend to call on students in class on a regular basis. I have assigned each student (alphabetically, based on last name) to one of 8 panels, as follows:

| <u>Panel #</u> | <u>Last Name Starting With</u> |
|----------------|--------------------------------|
| 1 | A – Ca |
| 2 | Cl – Gr |
| 3 | Gu – J |
| 4 | K |
| 5 | L – McD |
| 6 | McK – Re |
| 7 | Ri – T |
| 8 | V – Z |

The calendar showing when each panel is “on call,” is posted on the course website (at the *Panel Calendar* link). No panel will be on call for the first class. On Thursdays I will teach from the classroom (either Eck 1130 or 1140) in which the on-call panel for that day is located. The other classroom will be the remote room that day.

While you are expected to be prepared fully for each class, regardless of whether or not you are on call, I will rely primarily on the on-call panelists (of course, individuals who are not on call are welcome and encouraged to participate in the discussion). When called on, I expect that you will be prepared to engage in a **meaningful and informed dialogue regarding the assigned materials and problems**. In the *rare* event that unexpected circumstances prevent you from being fully prepared when on call, you must *let me know by email prior to the class*.

Microphone use in the Courtroom: Because the Courtroom seating area does not have built-in microphones, if you are on the panel on a Monday or Tuesday (*i.e.*, a day when we are in the Courtroom) you will need to use a microphone (so that students with an accommodation or illness that allows them to join remotely via Zoom or listen to a

recording will be able to hear panelists' comments). At the beginning of each Courtroom class there will be 6 portable microphones on a table at the front of the Courtroom. If you are on call for the day, pick up one of those microphones and take it to your seat before the class starts. Note that there will be disinfectant wipes on the microphone table, **so when you retrieve the microphone before class you should first wipe it down.** During the class session, you should not share or pass your microphone to other students. At the end of the day's class, please return the microphone to the front table and, for the safety of students in the next class, **wipe the microphone with the disinfectant wipes when you return it.**

Illness and Zoom Procedures

If you have a documented health condition that places you at high risk according to CDC COVID-19 guidelines, or you if you have other special circumstances that you believe necessitates an accommodation, you should make an accommodation request through the University's Sara Bea Accessibility Services office.

For the significant majority of you without a formal accommodation, while the University's objective is for students to be on campus and present in person, I understand that there might be days when you are not able to attend in-person due to health-related issues. This situation is most likely to occur if the online daily health check instructs you to not come to campus that day. If the online system instructs you to not come to campus, or if you otherwise reasonably believe that you are sick or present a risk of infecting others, you should stay home and not come to the classroom that day. Under the circumstances, it is better to err on the side of caution.

Except in the case of a formal accommodation from Sara Bea Accessibility Services that provides otherwise, if on any day you cannot come to class due to the above-mentioned health-related issues, you should do the following:

- 1) Notify me via email (mkirsch@nd.edu) at least 20 minutes prior to the start of class that you are not attending class in person that day due to health-related issues. If your illness prevents you from meeting this time deadline, please notify me as soon as you are feeling well enough to do so.
- 2) Unless your illness prevents you from doing so, I expect that you will join that day's class remotely in real-time via Zoom. There will be a permanent Zoom link that will remain the same for the entire semester (unless security concerns require me to change it). Rather than post that link in this syllabus (which is viewable on the course website by the public), I will send an email to the class prior to the start of the semester containing that Zoom link. **Please save that email, as it contains the Zoom link you will need if your health circumstances require you to join remotely on a particular day.** If you are on the panel on a day when a health-related issue prevents you from attending in person, you will still be on the panel when you join remotely via Zoom. However, if you are not feeling well enough to participate in the panel that day, please indicate that in the notification email you send me before class (in which case you can still join via Zoom if you are able, but I will not call on you).

3) As a general matter, I do not plan to make class recordings available to students for asynchronous viewing. Instead, as discussed above, I expect students who are unable to come to class due to a health-related issue to notify me in advance and join the class synchronously via Zoom. However, if your illness prevents you from joining synchronously via Zoom on a particular day, I anticipate allowing students to have access to a class recording on a case-by-case basis. If your illness prevents you from participating synchronously via Zoom on a particular day, please inform me as soon as you are able (preferably in the pre-class email described in step 1, above) and I will arrange for you to access relevant recordings. If your illness lasts for an extended period of time, we can coordinate through Christine Holst-Haley regarding appropriate options.

My principal objective is to facilitate your health and safety along with the health and safety of your classmates and the rest of the Law School community. I plan to be flexible in administering these issues, but reserve the right to modify them (whether with respect to the entire class or a particular student) if I believe that my flexibility is being taken advantage of in a manner not intended.

In the event that I am unable to come to campus to teach on any specific day (whether due to my daily health screening or otherwise), I will attempt to email the class as soon as I can. In that email, I will inform you of how we will proceed that day. If possible, I will teach remotely from home via Zoom (in which case you can either participate by reporting to that day's classroom or by joining via Zoom from outside of the Law School building). If teaching via Zoom is not possible, the email will inform you of my plans, which may involve the use of asynchronous recordings in place of that day's class. In the (unlikely, I hope) event that I become ill and am unable to teach for an extended period of time, an alternate instructor might teach a portion of the class. If in-person classes are suspended by the University or Law School, I intend to continue teaching the course via synchronous Zoom sessions at our regularly scheduled times, although I might substitute asynchronous recordings (or other approaches) for some of our sessions.

Restrictions on Use of Video and Recordings

This course is a community built on trust; in order to create the most effective learning experience, our interactions, discussions, and course activities must remain private and free from external intrusion. As members of this course community, we have obligations to each other to preserve privacy and cultivate inquiry. We are also obliged to respect the individual dignity of all and to refrain from actions that diminish others' ability to learn. Please note the following course policies, adapted from the University's here.nd.edu website:

Using learning materials

Course materials (videos, etc.) are for use in this course only. You may not upload them to external sites, share with students outside of this course, or post them for public commentary without my written permission.

Recordings

Although you are allowed to synchronously participate in the course via Zoom under circumstances outlined in this syllabus, you are not authorized or permitted to record any class session in any format, whether you are attending live in person or participating via Zoom. As noted above, under limited circumstances I may arrange for the IT department to make recordings to be used by authorized students for a limited period of time. The University strictly prohibits anyone from duplicating, downloading, or sharing class recordings with anyone outside of this course, for any reason.

Office Hours & Contacting Me

Due to COVID-19 restrictions, I will not be able to utilize my regular open door policy this semester. Instead, all office hours must be scheduled in advance. While virtual meetings via Zoom are preferred, I can also meet with you in-person in my office. For in-person office hours, only one student is allowed in my office at a time, and we will both be wearing facemasks. In contrast, multiple students can participate in a Zoom meeting if desired (the wearing of facemasks in a Zoom meeting will be dictated by the safety requirements in the location from which you join the Zoom meeting).

In order to schedule a meeting with me, you should use the Calendly website at [Calendly.com/michaelkirsch](https://calendly.com/michaelkirsch). At that site you will have the choice between scheduling an in-person meeting or a virtual Zoom meeting. Remember, no drop-in office meetings are allowed (and no lining up in the office suite is allowed).

The Calendly website will allow you to schedule a meeting during any open time on my calendar during the following time periods:

Monday, 2:00-4:00pm (in-person or Zoom)

Tuesday, 2:00-4:00pm (in-person or Zoom)

Wednesday, 2:00-4:00pm (Zoom only)

If none of these times fits with your schedule, please email me and we can arrange a different time.

I will respond to e-mail questions that lend themselves to brief answers and as time permits.

Out-of-class exchanges, while welcome, will not be taken into consideration in determining whether a student receives a grade adjustment based on class participation (see *Grades* section, below).

Grades

Your grade in the class will be based primarily on a final exam. (See *Final Exam* section, below). However, on rare occasion I may increase a student's final grade by one step (e.g., from a B to a B+, or from a B+ to an A-) for exceptional class participation (based primarily on quality, not quantity). I also may decrease a student's final grade by one step in the event of lack of preparedness or for unexcused absences, particularly when you are on call.

Final Exam

The final exam will be comprehensive and primarily will test your understanding of, and ability to apply, the rules and principles set forth in the assigned materials and in class discussion. Moreover, because of the course's focus on statutory analysis, one of the exam questions may require you to read and apply an Internal Revenue Code provision that we have not studied in the course. In addition, a relatively minor part of the examination may raise issues of tax policy. As noted above, I may adjust a student's final grade by one step up or down based on factors discussed in the *Grades* section, above.

The final exam will be "open book." At a minimum, you definitely should bring your Code and Regulations volume to the exam. In addition, you may bring any other non-electronic materials that you desire (e.g., casebook, notes, outlines, commercial outlines, etc.). You may not, however, share materials with other students during the exam, and the only electronic devices you may use are a simple stand-alone calculator and a computer running the official law school exam software (see below). Keep in mind that the exam, like the course itself, will cover a significant number of issues, and you probably will not have enough time during the exam to look at materials beyond your notes/outline. Moreover, the exam grading will be based solely on the materials in the required reading assignments and/or materials discussed in class (you will not, for example, receive credit for citing Code sections, cases, or other authority from commercial outlines that are not in the required readings and are not discussed in class).

You will be required to take the exam on a computer running the official law school exam software. If you do not have a laptop, please arrange to borrow one from a friend or from the law school. If you believe that your circumstances prevent you from taking the exam in this manner, you must request an exemption from the law school's student services office. Exemptions will be granted only in rare circumstances.

Numerical Amounts

The Internal Revenue Code includes many dollar figures that are adjusted annually for inflation (the inflation-adjusted amounts for the current year are not reflected in the statute, but are instead published each year in administrative guidance issued by the Internal Revenue Service). For the sake of simplicity, you should use the figures printed in the actual Code sections without any inflation adjustment, both when preparing class problems and on the final exam, unless otherwise indicated. (In case you are interested, the actual 2020 inflation-adjusted amounts are printed beginning on p. 1854 at the back of the statutory volume).

Web Page

I will maintain a web page for this course, which you are responsible for checking periodically. The URL is:

<http://mkirsch.nd.edu/fedtax>

The web page will contain the reading assignments for the class (and any modifications thereto), as well as the on-call panel calendar and other administrative information. To the extent they lend themselves to online publication, I will also post supplemental assigned material on the web site.

I will also periodically post links to various tax-related web sites. I hope that at least some of you will find those links useful and/or interesting. Viewing those sites is purely optional.