

**FEDERAL INCOME TAXATION – Fall 2021**  
**Professor Michael Kirsch**  
mkirsch@nd.edu, Room 3116  
Course Website: [mkirsch.nd.edu/fedtax](http://mkirsch.nd.edu/fedtax)  
Office Hours Scheduling: [calendly.com/michaelkirsch](http://calendly.com/michaelkirsch)

**Course Materials:**

Required:

- Freeland, Lathrope, Lind & Stephens, *Fundamentals of Federal Income Taxation[:] Cases and Materials* (19<sup>th</sup> ed., Foundation Press 2018)
- *Selected Federal Taxation Statutes and Regulations, 2022 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* (14<sup>th</sup> ed. 2018, Concepts & Insights Series)
- Katherine Pratt, Thomas D. Griffith, and Joseph Bankman, *Federal Income Tax: Examples & Explanations* (8<sup>th</sup> 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.

### **Schedule**

The class will meet Monday, Tuesday, and Thursday, from 9:30-10:45am. 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 7 (Tuesday) and September 16 (Thursday)**. The other two 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**

I do not anticipate requiring students to wear masks in the classroom, although any student required to wear a mask under University health and safety protocols must do so. Of course, even if not required, you are free to wear a mask if you prefer to for health and safety purposes. The health and safety protocols (including mask requirements) for the class are subject to change during the semester as circumstances warrant.

### **Reading Assignments**

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.

## Attendance, Preparation, and Panels

You are expected to attend each class session having read the assigned materials and having prepared the assigned problems.

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).

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 2 panels, as follows (subject to change):

<u>Panel #</u>	<u>Last Name Starting With</u>
1	A – I
2	J – Z

The calendar showing when each panel is “on call,” will be posted on the course website (at the *Panel Calendar* link). No panel will be on call for the first class. 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*.

Your grade in the class will be based primarily on a final exam. (See *Examination* section, below). However, 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 (measured by quality, not just 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.

## **Office Hours & Contacting Me**

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. The Calendly website will allow you to schedule a meeting during any open time on my calendar during the following time periods (if these times don't fit your schedule, feel free to email me and we can arrange a different time):

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

Tuesday, 2:00-3:00pm (Zoom only)

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 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).

I will provide additional information regarding the format of the exam in class later in the semester. Please note that NDLS students taking this course in the past have not been authorized to retain any copies of past exams, **and current students are not allowed to be in possession of any of my past exams during the semester** (with the exception of an old exam in the Library's exam bank website).

**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 2021 inflation-adjusted amounts are printed beginning on p. 1867 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.