

# Federal Income Taxation

M/T/Th 9:30-10:45am

Professor Michael Kirsch

[mkirsch@nd.edu](mailto:mkirsch@nd.edu)

Room 3116

[mkirsch.nd.edu/fedtax](http://mkirsch.nd.edu/fedtax)

# 4 FUNDAMENTAL INCOME TAX QUESTIONS

- **What** is taxed?

- Threshold question: what is “gross income”
- What amounts are deductible, excludible, or otherwise not subject to tax?

- **When** is it taxed?

- When is item included in gross income?
- When is taxpayer allowed to claim deduction?

# 4 QUESTIONS (cont'd)

- **How** is it taxed?
  - Character of item (e.g., ordinary vs. capital gain)
  - Tax Rates
- **Who** is taxed?
  - Who is the taxpayer with respect to the item?

# Constitutional Issues

Article 1, § 8 – “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises ....”

Article 1, § 9 – “No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.”

16<sup>th</sup> Amendment (1913):

“The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration”

# SOURCES OF FEDERAL TAX LAW

- Internal Revenue Code of 1986 (a.k.a. Title 26 of U.S.C.)
- Treasury Regulations
  - Proposed / Temporary / Final
- Other IRS Administrative Guidance
  - Revenue Rulings
  - Revenue Procedures
  - Private Letter Rulings
  - Technical Advice Memoranda
  - etc.
- Judicial Opinions

# TAX POLICY CRITERIA

- Equity (Fairness)
  - Vertical
  - Horizontal
- Efficiency (Neutrality)
- Simplicity/Administrability
  - Ability of TPs to understand the law
  - Costs to TPs to comply with the law
  - Ability of government to administer the law
  - Costs to government to administer the law

# CHOICE OF FORUM

## Selected Factors

### **Tax Court:**

- Prepayment forum
- Interest keeps accruing
- Judges are tax law experts
- Informal procedures for small TPs
- Golsen Rule (re Ct of Appeals)

### **Fed District Ct:**

- Pay & sue for refund
- Interest stops accruing
- Jury trial
- Applicable Ct of Appeals

### **Ct of Fed Claims:**

- Pay & sue for refund
- Interest stops accruing
- Judges have some technical expertise (hear many tax cases)
- Ct of Appeals for Fed Cir