

## ESTATE & GIFT TAXATION – Fall 2024

**Professor Michael Kirsch**

Office: Eck 3116

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Course Website: [mkirsch.nd.edu/egtax](http://mkirsch.nd.edu/egtax)

Office Hours Scheduling: [calendly.com/michaelkirsch](http://calendly.com/michaelkirsch)

### **Required Course Materials:**

- Lindsey, Campfield, Dickinson & Turnier, *Taxation of Estates, Gifts and Trusts* (26<sup>th</sup> ed., West – American Casebook Series, 2023)
- *Federal Estate & Gift Taxes – Code & Regulations Including Related Income Tax Provisions* (Wolters Kluwer, as of March 1, 2024)

Additional material will be assigned from time to time, as necessary to supplement casebook, statutory and regulatory materials. To the extent the material lends itself to online publication, it will be posted on the web site rather than being handed out in class (See *Web Page* section, below)

### **Course Description:**

The purpose of this course is to give you a general understanding of the Federal tax consequences that arise when a person transfers property to a family member or other person as a lifetime gift or upon death. The relevant law in this area is governed in the first instance by the Internal Revenue Code of 1986, as amended (the “Code”). These statutory provisions are supplemented by regulations and other administrative guidance issued by the U.S. Treasury Department and the Internal Revenue Service, as well as case law interpreting the statutes.

By the end of the semester, you will:

- Understand the Federal tax rules that apply to intrafamily transfers by lifetime gift and upon death.
- Understand basic planning techniques that are often used to minimize taxes with respect to intrafamily property transfers (while the focus will be on the relevant Code and regulatory provisions, we will use numerous examples to enable you to apply these provisions in real-life contexts).
- Become familiar with the basic policy issues underlying the Federal estate & gift tax and the legislative stakes as the 2017 statutory changes are scheduled to sunset after 2025.
- Gain experience in reading and interpreting Federal tax statutes.

The Federal Income Taxation and Trusts & Estates classes are not pre-requisites for this class. I will provide essential background material related to these areas as needed.

## Schedule

The class will meet Monday and Wednesday, from 2:00-3:15pm. We will **not meet on November 4 (Monday)**. I will schedule a make-up class, and will arrange a recording of the make-up class for those students who have conflicts. A similar procedure will apply in the unanticipated event that I must cancel any other class session.

## 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 web page before the first class (See *Web Page* section, below).

The assignments generally will consist of sections of the Code and Regulations, as well as material from the casebook (including problems that you should answer prior to class). 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 sometimes will not provide you with enough information to answer the assigned problems. Reading assignments are subject to change to reflect current developments or time constraints.

## Attendance & Preparation

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 often 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. 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 *Grades & Examination* section, below).

I intend to call on students in class on a regular basis, primarily to get the discussion of the problems and questions underway. While I prefer to solicit a broad range of volunteers, I will also randomly call on students in an attempt to give everyone the opportunity to participate during the semester. I expect that you will be prepared to engage in a meaningful and informed dialogue if called on. In the rare circumstance where you have been unable to prepare, please let me know by email at least 30 minutes before the start of class.

## 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 (Eck 3116) 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: 3:30-4:30pm

Tuesday: 2:00-3:00pm

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 excessive unexcused absences.

## Final Exam

Your grade will be based on a comprehensive final examination, which will test your understanding of, and ability to apply, the rules and principles set forth in the assigned materials. 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). I anticipate that the law school exam software will be in "blocked" format, meaning you will not be able to access the internet or any files on your computer during the exam. **Accordingly, I advise against relying on electronic copies of the casebook or statutory volume during the semester as you will not be able to access them during the exam.** 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.

### **Web Page and Email**

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

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

The web page will contain the reading assignments for the class, as well as administrative information. To the extent they lend themselves to online publication, I will also post supplemental assigned material on the web site.

I will communicate with you periodically by email, so you are responsible for periodically checking your Notre Dame email account.

I will also periodically post links on the course website 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.