

Taxation

Taxation

Law, Planning, and Policy

THIRD EDITION

Michael A. Livingston

PROFESSOR OF LAW
RUTGERS LAW SCHOOL—CAMDEN

David Gamage

PROFESSOR OF LAW
INDIANA UNIVERSITY AT BLOOMINGTON
MAURER SCHOOL OF LAW



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2019
Carolina Academic Press, LLC
All Rights Reserved

ISBN 978-1-5310-1277-9
eISBN 978-1-5310-1278-6
LCCN 2018954464

Carolina Academic Press, LLC
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

Dedications

There is not enough room to thank everyone who has helped me, directly or indirectly, on this project, but special mention must surely be made of my Deans, Rayman Solomon, John Oberdiek, and Michael Cahill; my research assistants, Travis Weitzel, Becky Lawnicki, Ann McDonough, and Jana Taylor on the first edition and Erica DiMarco, Shefali Jaiswal, Marissa Sharples, and Zoha Barkeshli on the second edition; my secretary, Kaeko Jackson on the first edition and Debbie Carr on the second edition; and all the others at Rutgers who have supported me throughout. My editors, Keith Moore at Anderson and Cristina Gegenschatz at Lexis, deserve special praise for their unfailing patience and understanding, as does Prof. Nancy Staudt who—although not claiming credit as a co-author—read several drafts and was instrumental in the conception and execution of the first edition. My wife, Anne Weiss, and my children, Benjamin and Daniel, are to be thanked for their constant encouragement and for providing the meaning in life that makes me want to learn new subjects and explore new territories. Finally, I wish to thank the Source of Life for creating and sustaining me and enabling me to reach this happy occasion. Without all of them nothing would matter.

—Michael A. Livingston

To my wife and daughter. Also, to my students, who endure first-hand my efforts to improve my teaching.

—David Gamage

Contents

Table of Cases	xv
Introduction	xxiii
Background and Basic Themes	3
A. Sources of Federal Tax Law	3
B. Tax Policy and Tax Reform	7
1. Alternative Tax Bases and “Big Picture” Tax Reform	7
2. The Goals of a Good Income (or Non-income) Tax	10
C. Practical Considerations: The Real-World Context for Tax Law	14
1. The Capitalist Economy and the Structure of Business Enterprise	14
2. Interest, Deferral and the “Time Value of Money”	16
3. The Significance of Accounting Methods	17
D. Personal Values and Ethics in Tax Practice	19
Chapter 1 · What Is Included in Income?	21
I. Employer-Provided Meals and Lodging: The “Convenience of the Employer” Doctrine	22
<i>Benaglia v. Commissioner</i>	22
Understanding <i>Benaglia</i>	26
Law and Planning	27
Politics and Policy	27
Section 119	28
<i>Commissioner v. Kowalski</i>	30
Understanding <i>Kowalski</i>	37
Law and Planning	38
Politics and Policy	38
The Section 119 Regulations	39
Using the Sources	39
Politics and Policy	40
II. Gratuitous Transfers: Windfalls, Prizes, and Gifts	40
A. Windfalls, Prizes, and Awards	42
<i>Cesarini v. United States</i>	42
Understanding <i>Cesarini</i>	44
Using the Sources	44
Law and Planning	45

Politics and Policy	45
<i>Turner v. Commissioner</i>	46
Understanding <i>Turner</i>	48
<i>Wade v. Commissioner</i>	48
Understanding <i>Wade</i>	52
Using the Sources	52
Law and Planning	53
Politics and Policy	53
B. Gifts and Section 102	54
<i>Commissioner v. Duberstein</i>	55
Understanding <i>Duberstein</i>	65
Using the Sources	66
Law and Planning	67
III. Damages for Personal Injury	67
Understanding Section 104	69
Why Civil Rights Lawyers Should Study Tax	70
Using the Sources	71
Law and Planning	72
Politics and Policy	72
IV. Noncash Compensation and Fringe Benefits	73
A. The Fringe Benefit Problem: Some Historical Background	74
B. The Fringe Benefit Statutory Provisions: Focusing on Section 132	75
Understanding Section 132	76
Using the Sources	77
Law and Planning	78
Politics and Policy	78
Chapter 2 · When Do Receipts, Gains, and Losses Affect Income?	81
I. Basis and Property Transactions	82
A. General Rules: Sales and Exchanges of Property	82
B. Special Rules: Gifts and Bequests	83
C. Section 1014 and the “Step-Up” of Basis at Death	85
Using the Sources	87
Politics and Policy	88
II. Return of Capital and Its Effect on Income Computation	89
<i>Clark v. Commissioner</i>	91
Understanding <i>Clark</i>	93
<i>Raytheon Production Corp. v. Commissioner</i>	94
Understanding <i>Raytheon</i>	98
<i>Reinke v. Commissioner</i>	99
Understanding <i>Reinke</i>	105
Using the Sources	106
Law and Planning	106
Politics and Policy	107

III. Annual Accounting and Its Limitations	107
A. Scope and Origins of the Annual Accounting Concept	107
B. Claim of Right Doctrine	109
<i>North American Oil Consol. v. Commissioner</i>	109
<i>United States v. Lewis</i>	111
Understanding Claims of Right	113
C. The Tax Benefit Rule	114
<i>Hillsboro National Bank v. Commissioner</i>	114
Understanding <i>Hillsboro</i>	126
Statutory Fixes: Net Operating Losses and Income Averaging Rules—	
Net Operating Losses (NOLs) and Fairness for Businesses	127
Income Averaging and Fairness for Individuals	129
Using the Sources	130
Law and Planning	131
Politics and Policy	132
IV. Realization: What Is, and Isn't, a Realization Event?	132
A. Gains	133
<i>Helvering v. Bruun</i>	133
Understanding <i>Bruun</i>	136
<i>James v. United States</i>	138
Understanding <i>James</i>	143
Using the Sources	143
Law and Planning	144
Politics and Policy	144
B. Losses	144
<i>Corra Resources, Ltd. v. Commissioner</i>	145
Understanding <i>Corra Resources</i>	148
<i>Cottage Savings Association v. Commissioner</i>	148
Understanding <i>Cottage Savings</i>	158
Using the Sources	160
Law and Planning	160
Politics and Policy	161
V. The Nonrecognition Provisions: Like-Kind Exchanges	162
Using the Sources	165
Law and Planning	166
Politics and Policy	167
Chapter 3 · How to Treat Loans and Borrowing?	169
I. Loan Proceeds and Discharge of Indebtedness	169
<i>Zarin v. Commissioner</i>	172
Understanding <i>Zarin</i>	181
<i>Rood v. Commissioner</i>	182
Understanding <i>Rood</i>	191
Using the Sources	192

Law and Planning	192
Politics and Policy	193
II. Deductions for Interest Payments	193
A. Section 163	193
Using the Sources	196
Politics and Policy	197
B. Student Loans and Section 265	198
<i>Wisconsin Cheeseman, Inc. v. United States</i>	199
Understanding <i>Wisconsin Cheeseman</i>	203
III. Sales of Debt-Encumbered Property: <i>Crane</i> and <i>Tufts</i>	203
<i>Crane v. Commissioner</i>	205
Understanding <i>Crane</i>	211
<i>Commissioner v. Tufts</i>	214
Understanding <i>Tufts</i>	222
Using the Sources	224
Law and Planning	225
Politics and Policy	225
 Chapter 4 · What Expenses and/or Taxpayer Characteristics Can Reduce or Exempt Tax on Income?	 227
I. Travel and Entertainment: Classic Cases and the Impact of Subsequent Legislation	229
A. “My Business Is My Pleasure”: What Is a Deductible Business Expense?	230
<i>Moss v. Commissioner</i>	230
Understanding <i>Moss</i>	233
B. Section 274: Substantiation Problems and the “Three Martini Lunch”	234
<i>Cohan v. Commissioner</i>	236
Revenue Act of 1962	237
Understanding Section 274	238
Using the Sources	239
Politics and Policy	239
II. Increased Personal Expenditures Resulting from Business Employment: The Distinction Between “Home” and “Office” and the Relevance of Social Change	240
A. Commuting and “Away from Home” Travel Expenses	241
<i>Commissioner v. Flowers</i>	241
Understanding <i>Flowers</i>	247
<i>Andrews v. Commissioner</i>	249
<i>Yeates v. Commissioner</i>	254
Understanding <i>Andrews</i> and <i>Yeates</i>	256
Using the Sources	257
Law and Planning	257
Politics and Policy	258
B. Child-Care and Housework Expenditures	258

<i>Smith v. Commissioner</i>	258
Understanding <i>Smith</i>	260
Sexism in the Code: A Comparative Study of Income Taxation of Working Wives and Mothers	261
Taxing Housework	264
Statutory Compromises: Sections 21 and 129	267
Using the Sources	268
Law and Planning	269
Politics and Policy	269
C. Home Offices and Section 280A	269
<i>Commissioner v. Soliman</i>	270
Understanding <i>Soliman</i>	280
<i>Popov v. Commissioner</i>	281
Understanding <i>Popov</i>	285
Using the Sources	285
Law and Planning	286
Politics and Policy	286
III. Education and the “Inseparable Aggregate” Problem	286
<i>Greenberg v. Commissioner</i>	288
Understanding Educational Costs	293
Using the Sources	294
Law and Planning	294
Politics and Policy	295
IV. Charitable Contributions: Policy and Practice	295
A. Tax Exemptions and Public Policy: What Is a Charitable Organization?	295
Revenue Ruling 69-545	296
Understanding the Public Benefit Concept	300
Law and Planning	302
Politics and Policy	302
B. Reciprocal Benefits and Quid Pro Quos: What Is a Charitable Contribution?	302
<i>Hernandez v. Commissioner</i>	303
Understanding <i>Hernandez</i>	317
C. Appreciated Property and Charitable Tax Planning	319
Using the Sources	320
Law and Planning	321
Politics and Policy	322
V. Other Itemized Deductions, Exemptions, and Credits	322
Using the Sources	324
Politics and Policy	325
Chapter 5 · When Can Expenses Reduce Taxable Income?	327
I. The Question of Current Deduction or Capitalization	329

A. The Capitalization Question for Tangible Assets	330
<i>Midland Empire Packing Company v. Commissioner</i>	331
<i>Mt. Morris Drive-In Theatre Co. v. Commissioner</i>	336
Understanding <i>Midland Empire</i> and <i>Mt. Morris</i>	339
The Repair Regulations and Other Capitalization Code Provisions	340
B. The Capitalization Question for Self-Created Intangible Assets	343
<i>INDOPCO, Inc. v. Commissioner</i>	344
Understanding <i>INDOPCO</i> and the “Separate and Distinct Asset” Test	350
The <i>INDOPCO</i> Regulations	351
C. The Capitalization (and Depreciation) Question for Acquired Intangible Assets	354
Using the Sources	355
Law and Planning	356
Politics and Policy	356
II. The Depreciation Question	357
A. Section 168 and Accelerated Cost Recovery	358
B. Recapture, Characterization, and the Seeds of the Tax Shelter Problem	360
Using the Sources	361
Law and Planning	361
Politics and Policy	362
III. Tax Shelters and Anti-Tax Shelter Mechanisms	362
A. Tax Shelters and Tax Avoidance	362
<i>Frank Lyon Co. v. United States</i>	366
Understanding <i>Frank Lyon</i>	381
B. The Passive Activity Loss Rules	383
Using the Sources	384
Law and Planning	385
Politics and Policy	386
Chapter 6 · What Is the Character of Gains and Losses?	389
I. Understanding the Rules: The Capital Gain and Loss Provisions	390
Capital Gain	390
Capital Loss	391
II. Tax Policy: Why Should Capital Gain Qualify for a Lower Tax Rate?	392
Proposals and Issues Relating to Taxation of Capital Gains and Losses	395
Capital Gains Tax Policy Toward Entrepreneurship	400
Using the Sources	400
Law and Planning	401
Politics and Policy	401

III. The Case Law: Delineating the Boundaries of the Capital Gain Preference	402
A. Basic Principles and the Inventory Exception	402
<i>Malat v. Riddell</i>	402
<i>Suburban Realty Company v. United States</i>	404
Understanding the Section 1221 Cases	417
Using the Sources	419
Law and Planning	419
Politics and Policy	419
B. Everyday Business Operations and the Hedging Problem	420
<i>Corn Products Refining Co. v. Commissioner</i>	420
Understanding <i>Corn Products</i>	423
<i>Arkansas Best Corporation v. Commissioner</i>	425
Understanding <i>Arkansas Best</i>	431
Using the Sources	432
Law and Planning	432
Politics and Policy	433
C. Sale of a Business	433
<i>Williams v. McGowan</i>	434
Understanding <i>Williams v. McGowan</i>	438
Using the Sources	439
Law and Planning	439
Politics and Policy	440
IV. Inflation, Indexing, and the Consumption Tax: Alternate Perspectives on the Capital Gain Problem	440
Chapter 7 · Who Is the Taxpayer and What Tax Rates Apply?	443
I. Assignment of Income and the “Who Is the Taxpayer” Problem	444
A. The Motivation for Income-Shifting and the Anti-Assignment Rule	444
<i>Lucas v. Earl</i>	445
Understanding <i>Earl</i>	446
<i>Poe v. Seaborn</i>	446
Understanding <i>Seaborn</i>	451
B. Joint Returns and Marriage Penalties and Bonuses	452
Law and Planning	453
Politics and Policy	454
C. “Slices” of Income and the Fruits and Trees Problem	454
<i>Blair v. Commissioner</i>	455
<i>Helvering v. Horst</i>	458
Understanding <i>Blair</i> and <i>Horst</i>	462
Using the Sources	464
II. Tax Issues Accompanying Divorce	464
<i>United States v. Davis</i>	465
Understanding <i>Davis</i>	470

<i>Young v. Commissioner</i>	472
Understanding <i>Young</i>	480
Using the Sources	481
Law and Planning	482
III. The Estate and Gift Taxes	482
The Uneasy Case for Wealth Transfer Taxation	483
The Uneasy Liberal Case against Income and Wealth Transfer Taxation: A Response to Professor McCaffery	485
The Twentieth-Century Revolution in Family Wealth Transmission	488
Politics and Policy	490
IV. An Introduction to Business Entity Taxation	491
A. Corporate Taxation and the Choice of Entity Problem	491
LLCs and the “Check a Box” Problem	495
The 2017 Tax Law Overhaul	497
Using the Sources	499
Law and Planning	499
Politics and Policy	500
B. Capital Structure and the Debt/Equity Issue	501
Using the Sources	503
Politics and Policy	503
Index	505

Table of Cases

- A.J. Industries, Inc. v. United States, 147
- Aguilar v. Felton, 308, 310
- Alabama Mineral Land Co. v. Commissioner, 408
- Alice Phelan Sullivan Corp. v. Comm’r, 117, 127
- American Bar Endowment, United States v., 306, 307, 310
- American Bemberg Corporation, 335, 338, 339
- American Realty Trust v. United States, 372, 381
- Andrews v. Commissioner, 249
- Archer v. Commissioner, 191
- Arkansas Best Corporation v. Commissioner, 425
- Arnett v. Reade, 449
- Arnold Namrow, 289
- Atlas Life Insurance Co., United States v., 201
- Babin v. Commissioner, 186
- Baie v. Commissioner, 277
- Baker v. Commissioner, 51
- Baker v. Texas & Pacific R. Co., 60
- Ballard, United States v., 308, 316
- Bank & Trust Co. of Arlington Heights v. Cullerton, 115
- Bank v. Commissioner, 98
- Barnhill v. Commissioner, 244
- Barnum v. Commissioner, 474
- Bear Manufacturing Co. v. United States, 117, 123
- Benaglia v. Commissioner, 22
- Beres v. Beres, 467
- Biedenharn Realty Co., Inc. v. United States, 407, 408, 409, 410, 413
- Billings v. United States, 451
- Bishop v. Commissioner, 458
- Blackmer v. Commissioner, 259
- Blair v. Commissioner, 455, 460, 461, 462
- Blair, Commissioner v., 455, 456, 457
- Blatt v. Commissioner, 476
- Board of Governors v. Agnew, 403
- Board v. Commissioner, 111
- Bogardus v. Commissioner, 58, 59, 62, 64
- Booth Newspapers, Inc. v. United States, 427
- Borchers v. Commissioner, 103
- Bowers v. Kerbaugh-Empire Co., 459
- Breece Veneer & Panel Co. v. Commissioner, 380
- Brountas v. Commissioner, 147
- Brown v. Fletcher, 457, 458
- Brown, Commissioner v., 377
- Browne v. Thorn, 422
- Burke, United States v., 68
- Burket, United States v., 411
- Burnet v. Harmel, 422, 423
- Burnet v. Leininger, 456, 458, 459, 460, 461, 462
- Burnet v. Logan, 111
- Burnet v. Sanford & Brooks, 108, 111, 116, 120
- Burnet v. Wells, 457, 459, 460, 461
- C.A. Hawkins, 93
- Cafe Angelo in Chicago, 230
- Cammack v. Commissioner, 434

- Campbell Taggart, Inc. v. United States, 427
- Cannon v. University of Chicago, 152
- Centennial Sav. Bank FSB v. United States, 157
- Central R. Co. of New Jersey v. Commissioner, 96
- Central Texas Savings & Loan Assn. v. United States, 349
- Cesarini v. United States, 42
- Chandler v. Commissioner, 253
- Charles A. Frueauff, 24, 25
- Charles Hutchison, 259
- Chicago B. & Q. R. Co., United States v., 377
- Church of Scientology of California v. Commissioner, 303
- Citizens' Acceptance Corp. v. United States, 120
- Clarke v. Haberle Crystal Springs Brewing Co., 436
- Coburn v. Commissioner, 244
- Cohan v. Commissioner, 48, 104, 236
- Colonial Sav. Ass'n v. Commissioner, 177, 186
- Commercial Electrical Supply Co. v. Commissioner, 96
- Commissioner v. (See Name of Defendant)
- Comstock v. Group of Investors, 422
- Coombs v. Commissioner, 251
- Corliss v. Bowers, 140, 373, 380, 445, 450, 456, 457, 458, 459, 461, 462
- Corn Products Co. v. Commissioner, 403, 416, 417, 420
- Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos, 315
- Corra Resources, Ltd. v. Commissioner, 145
- Correll, United States v., 31, 36, 37, 151, 222, 231, 232
- Cottage Savings Association v. Commissioner, 148, 149, 150, 157
- Court Holding Co., Commissioner v., 156
- Cozzi v. Commissioner, 186
- Crane v. Commissioner, 205, 214, 215, 216, 217, 218, 220, 221, 273, 403
- CRC Corp. v. Commissioner, 147
- Dahood v. United States, 256
- David Sonenblick, 260
- Davis v. Commissioner, 147
- Davis, United States v., 465
- Deamer v. Commissioner, 252
- DeJong v. Commissioner, 310
- Delman, Estate of, v. Commissioner, 222
- Denise Coal Co. v. Commissioner, 104
- Deputy v. Du Pont, 347, 372, 373
- Devine v. Commissioner, 414
- Dickey v. Burnet, 458, 459
- Dilley v. Commissioner, 250
- Dobson v. Commissioner, 211, 244
- Doran v. Commissioner, 33
- Douglas v. Willcuts, 32, 43, 456, 457, 459
- Doyle v. Commissioner, 435
- Drucker v. Comm'r, 283, 284
- Drybrough v. Commissioner of Internal Revenue, 202
- Duberstein, Commissioner v., 55, 291, 373
- Duncan v. Commissioner, 252
- Eisner v. Macomber, 45, 136, 152
- Eline Realty Co., 413, 414
- Ellis Banking Corp. v. Commissioner, 347
- Ellwein v. United States, 255, 256
- Estate of (See Name of Deceased)
- Exchange Sec. Bank v. United States, 186, 189, 190
- Fahs v. Crawford, 413
- Farid-Es-Sultaneh v. Commissioner, 467, 482

- Farmers & Merchants Bank of Catlettsburg, Ky. v. Commissioner, 93, 96, 97
- Fasken v. Commissioner, 105
- Fausner v. Commissioner, 231
- Fidelity & Deposit Co. v. Clark, 448
- Field, Commissioner v., 458
- Fielding v. Ketler, 447
- First Agricultural Nat. Bank v. Tax Comm'n, 369
- First Federal Savings & Loan Assn. of Temple v. United States, 157
- First Trust and Savings Bank of Taylorville v. United States, 115, 118
- Florida v. Mellon, 451
- Flowers, Commissioner v., 241, 251, 252
- Foley v. Commissioner, 307, 308, 312
- Francis v. McNeal, 436
- Frank Lyon Co. v. United States, 366
- Franklin, Estate of, v. Commissioner, 380
- Frederick v. United States, 256
- Freuler v. Helvering, 112
- Freytag v. Commissioner, 146
- Fulman v. United States, 222
- Galena Oaks Corporation v. Scofield, 411
- General Bancshares Corp. v. Commissioner, 348, 349, 350
- General Shoe Corp., United States v., 469
- Gibson Products Co. v. United States 218, 221
- Gilbertz v. United States, 104, 105
- Gillette Motor Co., Commissioner v., 403, 416, 427
- Gillette v. United States, 316
- Girouard v. United States, 141
- Glenshaw Glass Co., Commissioner v., 32, 33, 35, 43, 45, 50, 51, 58, 60, 96, 97, 98, 122, 139, 140, 141, 142, 153, 155
- GNLV Corp. v. Featherstone, 189
- Gotcher, United States v., 40
- Graff v. Commissioner, 156
- Graham v. Commissioner, 303, 304, 305, 307, 311, 312
- Grant Gilmore, 289
- Graver Tank & Mfg. Co. v. Linde Air Products Co., 61
- Greenberg v. Commissioner, 288
- Greenwald v. United States, 112
- Gulf Oil Corp. v. Commissioner, 147
- H. Liebes & Co. v. Commissioner, 96
- Haberkorn v. United States, 112
- Haberle Crystal Springs Brewing Company v. Clarke, Collector, 436, 445
- Hales-Mullaly v. Commissioner, 339, 466
- Hall, United States v., 177, 178, 179
- Halliwell v. Commissioner, 466
- Hankenson v. Commissioner, 233
- Hanover Bank v. Commissioner, 403
- Hansen, Commissioner v., 469
- Hantzis v. Commissioner, 248, 250, 251, 252, 256
- Harris v. Commissioner, 467
- Harvey v. Commissioner, 252
- Haynsworth v. Commissioner, 117
- Head Money Cases, 451
- Healy v. Commissioner, 140
- Heininger, Commissioner v., 60, 117, 119
- Helvering v. American Dental Co. 119, 140
- Helvering v. Clifford, 32, 43, 133, 140, 141, 373, 459, 461, 462, 467
- Helvering v. Coxey, 457
- Helvering v. Hallock, 141
- Helvering v. Horst, 150, 153, 156, 458
- Helvering v. Lazarus & Co., 374
- Helvering v. Midland Mutual Life Ins. Co. 32, 43
- Helvering v. Safe Deposit & Trust Co. of Baltimore, 97, 469
- Helvering v. Smith, 435

- Helvering v. Stockholms Enskilda
 Bank, 32, 140, 156
 Helvering v. Winmill, 243, 423
 Hendler, United States v., 218
 Hernandez v. Commissioner, 303, 304,
 305, 311, 312
 Hewitt Realty Co. v. Commissioner,
 134, 135
 Higgins v. Smith, 155
 Hillsboro National Bank v. Commis-
 sioner, 114
 Hobbie v. Unemployment Appeals
 Comm'n of Fla., 311
 Hornung v. Commissioner, 50
 Hort v. Commissioner, 423, 427
 Houston Endowment, Inc. v. United
 States, 408, 409, 415
 Huxford v. United States, 411
 Hyslope v. Commissioner, 36
- Idaho Power, Commissioner v., 341,
 347
 Illinois Merchants Trust Co., Executor,
 334, 339
 Illinois Terminal Railroad Company v.
 United States, 201, 202
 In re (See Name of Party)
 Inaja Land Co. v. Commissioner, 103
 INDOPCO, Inc. v. Commissioner, 344
 International Freighting Corp. v. Com-
 missioner, 469
 Interstate Transit Lines v. Commis-
 sioner, 347
 Ireland v. United States, 121
 Irwin v. Gavit, 32, 43, 66, 152, 153, 156,
 457
- J.H. Collingwood, 338, 339
 Jacobson, Commissioner v., 140
 James v. United States, 138
 John D. Biggers, 93, 119
 John R. Thompson Co. v. United
 States, 146
 Johnson, United States v., 140
- Joseph W. Powell, 259
 Kasun v. United States, 256
 Kieselbach v. Commissioner, 423
 Kirby Lumber Co., United States v.,
 170, 179, 186
 Knife River Coal Mining Co. v. Neu-
 berger, 104
 Knowlton v. Moore, 451
 Koons v. United States, 51
 Korell, Commissioner v., 403
 Kornhauser v. United States, 123, 335
 Kowalski, Commissioner v., 30, 152
 Koziara v. Commissioner, 105
 Kroll v. Commissioner, 250
 Kungys v. United States, 157
- Lake Shore Auto Parts Co. v. Korzen,
 115
 Laport v. Commissioner, 146, 147
 Larkin v. Grendel's Den, Inc., 310
 Larson v. Valente, 309, 317
 Lee, United States v., 308, 311
 Lemon v. Kurtzman, 309, 310
 Levine, Estate of, v. Commissioner,
 220, 222
 Lewis, United States v., 111, 112, 140
 Lincoln National Bank v. Cullerton,
 115
 Lincoln Savings & Loan, Commis-
 sioner v., 344, 346, 347, 348, 376
 LoBue, Commissioner v., 32, 58, 62
 Lockard v. Commissioner, 58
 LTV Corp. v. Commissioner, 380
 Lucas v. American Code Co., 111
 Lucas v. Earl, 139, 458, 460, 461
 Lutz & Schramm Co. v. Commissioner,
 219
 Lyde McDonald, 93
 Lyeth v. Hoey, 97, 134
 Lynch v. Donnelly, 316
- M & R Invs. Co. v. Hacker, 189
 Mabie v. Whittaker, 448

- Maddux Construction Co., 411, 413, 414
- Magness v. Commissioner, 36
- Malat v. Riddell, 273, 276
- Markey v. Commissioner, 251, 253, 254
- Marr v. United States, 152
- Marshman, Commissioner v., 466
- Marston v. Rue, 448
- Matton Oil Transfer Corp. v. The Dynamic, 61, 96
- Mayfair Minerals, Inc. v. Commissioner, 117
- McClellan v. Commissioner, 435
- McCoy v. Commissioner, 50, 51
- McGowan v. Maryland, 316
- Megargel v. Commissioner, 97
- Meiers v. Commissioner, 272
- Mendham Corp. v. Commissioner, 219
- Merchants Loan & Trust Co. v. Smietanka, 93
- Merchants' Loan & Trust Co. v. Patterson, 457
- Merrill v. Fahs, 467
- Mesta v. Commissioner, 466
- Mesta, Commissioner v., 466
- Midland Empire Packing Company v. Commissioner, 331, 338, 339
- Midland-Ross Corp., United States v., 427
- Millar v. Commissioner, 215, 219, 222
- Miller v. Gearin, 134
- Mills Estate, Inc. v. Commissioner, 350
- Mississippi Chemical Corp., United States v., 348
- Montgomery v. Commissioner (6th Cir. 1976), 254
- Montgomery v. Commissioner (T.C. 1975), 186
- Morelan, United States v., 36
- Moss v. Commissioner 230
- Mt. Morris Drive-In Theatre Co. v. Commissioner, 336
- Mutual Loan & Savings Co. v. Commissioner, 156
- N. Sobel, Inc. v. Commissioner, 176, 177, 179, 186, 190, 258
- Nash v. United States, 120
- National Alfalfa Dehydrating & Milling Co., Commissioner v., 375
- National Lead Co. v. United States, 450
- National Muffler Dealers Assn. v. United States, 151, 220, 222
- National Starch & Chemical Corp. v. Commissioner, 346, 349
- Nay v. Commissioner, 105
- New Colonial Ice Co. v. Helvering, 347
- New York Coffee & Sugar Exchange, United States v., 422
- New York v. Illinois, 450
- Newi v. Commissioner, 273
- Newman v. Commissioner, 253
- Norgaard v. Commissioner, 104
- North American Oil Consol. v. Commissioner, 109, 112
- North American Oil Consolidated, United States v., 110, 140, 153
- Old Colony R. Co. v. Commissioner, 376, 457, 459
- Old Colony Trust Co. v. Commissioner, 58, 92, 456, 459
- Oppewal v. Commissioner, 310
- P.G. Lake, Inc., Commissioner v., 373, 427
- Park v. Gilligan, 96
- Parker v. Parker, 448
- Peninsula Properties Co., Ltd. v. Commissioner, 222
- Peurifoy v. Commissioner, 252, 256
- Pevsner v. Commissioner, 282, 283
- Phellis, United States v., 152, 153, 156
- Philadelphia Park Amusement Co. v. United States, 469
- Pierce v. Underwood, 152
- Poe v. Seaborn, 446, 459, 468
- Pomarantz v. Commissioner, 272
- Popov v. Commissioner, 281

- Presbyterian Church in U.S. v. Mary
 Elizabeth Blue Hull Memorial Pres-
 byterian Church, 310
 Putoma Corp. v. Commissioner, 119
- Quock Ting v. United States, 191
- R.B. George Machinery Co. v. Com-
 missioner of Internal Revenue, 202
 Ralph Kitchen, 24, 25
 Raytheon Production Corp. v. Com-
 missioner, 94
 Regan v. Commissioner, 253
 Reinke v. Commissioner, 99
 Resorts Int'l Hotel, Inc. v. Salomone,
 174
 Rexnord, Inc. v. United States, 146
 Rice, Barton & Fales Inc. v. Commis-
 sioner, 93
 Ridgewood Land Co., Inc. v. Commis-
 sioner, 413, 414
 Robbins, United States v., 450
 Robertson v. United States, 58, 138
 Rochelle, United States v., 179
 Rochez Bros. v. Duricka, 104
 Roemer v. Comm'r, 68
 Rosa E. Burkhart, 259
 Rosenspan v. United States, 251, 252
 Rudolph v. United States, 52
 Rutkin v. United States, 139
- S.S. White Dental Mfg. Co., United
 States v., 111, 140
 Safety Car Heating & Lighting Co.,
 United States v., 93, 96
 Saunders v. Commissioner, 31, 35
 Schramm v. Steele, 448
 Scottish American Investment Co.,
 Ltd., Commissioner v., 211, 244
 Scrimgeour v. Internal Revenue, 478
 Senior v. Braden, 457, 458
 Shanley v. Bowers, 458
 Shapiro, Commissioner v., 435
 Sharon v. Commissioner, 293
- Sherman v. Commissioner, 254
 Sherman, Commissioner v., 179
 Shoenberg v. Commissioner, 156
 Sibla v. Commissioner, 233
 Simon v. Eastern Kentucky Welfare
 Rights Organization, 299
 Singer Co. v. United States, 306
 Six v. United States, 252
 Smith v. Comm'r, 19, 91
 Soliman, Commissioner v., 270, 282,
 283, 284, 285
 Sonora Community Hospital v. Com-
 missioner, 298
 South Dakota Concrete Products Co. v.
 Commissioner, 119
 South Lake Farms, Inc., Commissioner
 v., 116
 Starker v. United States, 167
 Steadman v. Commissioner, 427
 Sterling v. Commissioner, 97
 Sternberg v. Commissioner, 96
 Stidger, Commissioner v., 251
 Stilgenbaur v. United States, 435
 Strother v. Commissioner, 97
 Suburban Realty Company v. United
 States, 404
 Sullivan, Commissioner v., 276
 Sun Oil Co. v. Commissioner, 374, 378,
 381
 Sunnen, Commissioner v., 373
 Sutter v. Commissioner, 232
 Swastika Oil & Gas Co. v. Commis-
 sioner, 96
- T.G. Nicholson 93
 Taft v. Bowers, 84
 Tellier, Commissioner v., 347, 402, 404,
 413, 414
 Temple, United States v., 411
 Tennessee-Carolina Transportation,
 Inc. v. Commissioner, 116, 118
 Theodate Pope Riddle, 93
 Thomas v. Commissioner, 412

- Thomas v. Review Bd. of Indiana
Employment Security Div., 308, 311
- Thompson v. Commissioner, 408, 409,
411, 412
- Thor Power Tool Co. v. Commissioner,
146
- Tony and Susan Alamo Foundation v.
Secretary of Labor, 310
- Tower, Commissioner v., 373
- Trauger v. A.J. Spagnol Lumber Co., 189
- Tri-S Corp., Commissioner v., 411
- Trust of Bingham v. Commissioner,
434
- TSC Industries, Inc. v. Northway, Inc.,
157
- Tufts, Commissioner v., 6, 179, 214,
300, 316
- Turner v. Commissioner, 50
- Unger v. Commissioner, 285
- United Mine Workers of America,
United States v., 201
- United States Catholic Conference, In
re, 301
- United States Gypsum Co., United
States v., 61, 291
- United States v. (See Name of
Defendant)
- Van Meter v. Commissioner, 458
- Van Rosen v. Commissioner, 32, 34, 35
- Vest v. Commissioner, 105
- Vukasovich, Inc. v. Commissioner, 179
- W.W. Windle Co. v. Commissioner,
427
- Wade v. Commissioner, 48
- Wallace v. Commissioner, 244
- Wallace v. Jaffree, 309
- Walraven v. Commissioner, 255, 256
- Warburton v. White, 448
- Weiss v. Stearn, 152, 156
- Weissman v. Commissioner, 271, 272,
306
- Welch v. Helvering, 259, 275, 281, 335,
347, 354
- Wells v. Commissioner, 232
- Widmar v. Vincent, 308
- Wilcox, Commissioner v., 112, 138
- Williams v. McGowan, 434
- Winthrop, United States v., 407, 408,
409, 411, 415
- Wisconsin Cheeseman, Inc. v. United
States, 199
- Wisconsin Gas & Electric Co. v. United
States, 121
- Wisconsin v. Yoder, 311
- Wiseman v. Commissioner, 145
- Woodsam Associates, Inc. v. Commis-
sioner, 220, 224
- Yeates v. Commissioner, 252, 254
- Yellow Cab Co., United States v., 60
- Young v. Commissioner, 472, 473, 474
- Zarin v. Commissioner, 172, 173, 174,
175, 178, 186, 190, 191

Introduction

A primary reason for studying taxation has always been its inherent importance as an area of law. Taxes—most notably, the Federal income tax—are the lifeblood of democratic government. They affect virtually all business transactions and an astonishing variety of personal decisions, from buying a home to marriage and divorce. Even nontax practitioners are expected to know, if not the answers, then at least the questions posed by tax law in these areas, so that their clients will not be unpleasantly surprised or (even worse) tempted to consult another law firm for these matters. Tax policy is likewise a matter of broad public concern, raising basic questions of fairness, efficiency, and ultimately of the very nature of government and its role in our everyday lives. No legal education is complete without considering these subjects.

Another reason for studying tax law is less parochial in nature. A good tax course provides an incomparable introduction to statutory reasoning and interpretation and, more generally, to the nature and function of statutory law. Most of your courses to date have likely been in common law subjects, that is, subjects (e.g., torts, contracts, property) in which the law originally developed in judicial decisions and was only later, if ever, codified in statutes or scholarly treatises. By contrast, tax law is statutory in origin and application. The principal tax statute, the Internal Revenue Code, did not even exist until 1913, and many of its important provisions are much more recent in origin, enacted in response to demands for additional revenue or other social and political goals. Although there is by now a large body of tax judicial decisions, all of these decisions eventually lead back to the statutory language itself, and to the large body of legislative and administrative materials that explain and expand on that language.

Learning to deal with these materials—statutes, regulations, and sometimes also committee reports and other legislative documents—is a large part of learning to be a tax lawyer. Tax students learn quickly that the statute is sometimes dispositive, but other times contradictory or unclear, requiring one to look at the underlying intent or policy of the provision in question in order to provide an answer to a client's problem. The skills acquired in a tax course are thus useful in all the areas of law—antitrust, environmental law, employment law, civil rights and anti-discrimination law, and so forth—that are statutory in origin and raise many of the same theoretical and practical issues. Since the great majority of new law (and especially Federal law) is statutory in nature, these lessons are vital indeed.

Finally, tax law is exciting because it emphasizes practical as well as legal concerns. A good tax lawyer tries to reduce her client's taxes, but must do so in a way that achieves the client's business or personal goals, too. (Imagine the fate of a lawyer who counseled her clients to reduce taxes by refusing to make any money.) To accomplish these goals, the tax lawyer must be a planner as well as a litigator, striving to arrange her client's affairs so that the client will reduce taxes without ever seeing the inside of a courtroom or IRS office. Of course, this planning element is important in all areas of law, but law school tends to obscure it, emphasizing judicial decisions that are based upon fixed factual circumstances and that typically pay little attention to business or other practical concerns. The tax course hopes to be an antidote to this problem, emphasizing planning and practical considerations and beginning the students' transition from passive observers to active participants in legal practice.

To accomplish the goals above, this casebook does things a little differently from many of its competitors. First, the book emphasizes the acquisition of skills as much as or more than information. The first of these skills involves the understanding and application of tax and (by extension) other forms of statutory law. Right from the start, students are challenged to read the statute and regulations, sometimes without additional explanatory material, determining which questions are answered by the statutory language and, when it is necessary, to look beyond the "four corners" of the statute, where that search should begin. When posing questions ("Using the Sources"), the book challenges students to identify the authority for their answers, whether it be the Code, Regulations, or case law, avoiding the usual law school notion that it is possible to argue almost any position if one does so with a straight face. (It isn't, or at any rate, not in tax practice.) The skills acquired in these exercises—weighing the "plain meaning" of the statute against other interpretive sources—are relevant even for the student who will never take another tax course.

Together with questions on law and legal sources, the book includes numerous questions on tax planning and policy. Along with the usual judicial perspective, these questions aim to familiarize the students with the perspective of the real-world tax practitioner, who must balance tax and nontax concerns in planning business transactions, and of the tax policy-maker, who may be influenced by political and practical, as well as more purely technical, issues. In addition to "livening up" the classroom discussion—even tax lawyers don't want to parse Code sections 24 hours a day—these materials combat the isolation of most tax courses by enabling students to see the relationships between taxation and the other subjects they have studied or will study in law school. To prevent confusion, the questions are labeled "Law and Planning" or "Politics and Policy," as appropriate; it should be clear at the outset which questions have a "right" or "wrong" answer and which involve the exercise of professional judgment at a more sophisticated level.

The paragraphs above may make the course sound more serious and heavy-handed than it actually is. In fact, tax is an enjoyable subject, and with a little bit of effort

should be one of the most entertaining courses in the legal academy. Everything is here: logic and illogic; high-minded ideals and cynical manipulation; sublime concepts and ridiculous or near-ridiculous exceptions to those concepts. Unlike many areas of law, which sometimes strike students as no more than judicial politics, tax involves a systematic, logical framework, the deviations from which only heighten the excitement of uncovering the framework and (just as quickly) discovering its many limitations. Learning to comprehend that framework, and to appreciate those limitations, is one of the premier experiences of law school. By adopting a practice-oriented perspective, and emphasizing the materials most likely to be useful to a general practitioner, this book aims to make the experience all the more pleasant.

An additional note, especially for students who suffer from “numbers anxiety” and similar phobias. Tax is an unavoidably quantitative subject. One cannot understand progressive tax rates without doing a little bit of multiplication, or recognize the significance of tax avoidance without knowing how much tax one would otherwise pay. But the numerical aspect of tax law is often exaggerated. Accountants, not lawyers, fill out tax returns; even for them, most computations are relatively simple, and the most important work is qualitative rather than quantitative in nature. The day-to-day fare of tax lawyers involves planning, litigation, and the evaluation of difficult legal issues in a manner not terribly different from other practitioners. In our many decades of combined tax teaching and practice, only rarely can we recall seeing a tax lawyer use a calculator and, with one exception, never have we seen a tax lawyer keep a pencil behind his or her ear. (That one exception may have also had an accounting degree.) A fear of numbers may deter some people from pursuing tax law, but the reality of the subject need not, and an English major is no less likely to succeed in this course than her colleague who has a computer in every room of the house.¹

One final note about studying for a tax course. Students often ask which aspects of the course—statutes, cases, problems—are most important, and whether they will benefit from participating in a student-run study group. The answers to these questions are, essentially, “yes, yes, and yes.” All course materials are important; the best indication of what you should emphasize is what your professor emphasizes in class, or has chosen to test on in previous courses. (It is (s)he, after all, who will be writing your final exam.) Study groups are frequently quite valuable, although they are obviously not a substitute for individual preparation, attentiveness to class discussions, and so forth. The best study method, although not necessarily the most pleasant, is probably to review one’s class notes, together with statutes, cases, etc., at the end of each week, trying to “digest” that week’s materials and figure out where they fit in with the rest of the course. A good review book is sometimes, although not always, helpful in this process. In these dynamics, as in others, tax is not especially different from other courses; only more challenging, and more enjoyable.

1. To make sure of this point, the next section includes a brief introduction to business and economic terms.

Enough background material. Good luck, and as the Italians say, “Buon divertimento.” Don’t forget to have fun.

The Third Edition of this book was revised to incorporate a number of major legal changes, and also to condense the book as compared to the prior two editions. In the age of the Internet, we have found that most professors wish to supplement their primary casebook with their own choices as to supplementary materials, making it less important for a casebook to be comprehensive and more important for a casebook to be succinct. (Any professors wishing to supplement their course with materials that we have removed from this edition have our permission to take excerpts from the prior editions of the book. We will also gladly provide additional suggested supplementary materials, on a variety of topics, upon request.)