

Transaction Planning and Real Estate
Time 2 hours meeting once a week
Spring 2026 Syllabus

Jim Sowell

Phone: 202-746-8800

Email: jamessowell@ufl.edu

Office Hours: 3:00-4:30 Tuesdays and by appointment

Spring 2026 Syllabus

Course Description and Preparation Time:

This course will involve a transaction-based approach to learning about the analysis and execution of transactions and structures involved in a tax practice that focuses on real estate. While the topics for this class relate to real estate, a large part of this class will focus on practical skills that are used in a broader transactional tax practice. The class will convey substantial technical learning, but the intention is that there will be at least equivalent learning relating to the practical skills necessary to convert technical knowledge into effective client representation.

Early classes will focus on the acquisition, financing, and disposition of real estate in various contexts ranging from residential to multi-use commercial projects. Leasing and sale-leaseback transactions also will be discussed. After laying this groundwork, we will spend multiple classes discussing the formation of a real estate investment fund and the issues that must be considered in addressing the needs of both investors and the sponsor of such a fund. This exercise will develop an understanding of the tax sensitivities of various types of investors (e.g., tax-exempt, non-US, high-net worth individuals, etc.) and structures that accommodate the various sensitivities (e.g., REITs, “blocker” corporations, etc.). Sponsor economics, including carried interests and fees for services, also will be considered. Because real estate tends to go in cycles, understanding how to address distressed scenarios involving debt workouts is important, and we will spend two classes discussing these transactions in different contexts. The final substantive class will involve a discussion of contributions of property to what is referred to as an “UPREIT Operating Partnership.” Such a transaction involves numerous issues that are integral to the taxation of partnership transactions involving real estate, and these issues will be discussed in the context of a transaction that may be encountered in a sophisticated tax practice.

The material for this class is complex, and the more time spent in preparing for class, the more you will gain from the class itself. ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. Transaction Planning and Real Estate will consist of one two-hour class each week, thus requiring at least four hours of outside preparation for each class.

Course Expectations and Learning Outcomes:

- Apply a selection of Internal Revenue Code provisions to a variety of real estate transactions involving (1) the acquisition and disposition of property in both recognition and nonrecognition transactions, (2) formation of real estate investment funds, and (3) debt workouts with respect to distressed properties.
- Understand dynamics at play in working for clients and negotiating with other parties in carrying out tax representation in real estate transactions.
- Understand the work product that should be prepared in representing a client in connection with real estate transactions.
- Recognize professional and ethical obligations and confront and resolve conflicts in representing clients in real estate transactions.
- Establish a base from which to acquire further expertise as part of a transactional tax practice involving real estate.

Methodology & Course Materials:

Class meetings will be spent analyzing and discussing hypothetical transactions. A slide deck will be provided through Canvas in advance of each class describing the transaction[s] and some of the issues that will be discussed. You should be familiar with the transaction terms and issues and should be prepared to engage in discussion relating to the transaction[s] in class. The classes will be taught live, and unless you have registered to take the class online, you will be expected to attend in person. Given the nature of the material and the method of learning, it will be difficult to make up for a missed class, so regular attendance is expected.

There will be no casebook, and instead sections of the Internal Revenue Code and Regulations, as well as cases and IRS administrative guidance, will be assigned in connection with each class. Articles (or portions thereof) also will be assigned. These materials may be accessed online and/or through Canvas.

If you wish to consult supplementary material in preparing for the classes, I recommend for real estate-specific issues Robinson, *Federal Income Taxation of Real Estate* (6th ed.) and for partnership specific issues Cunningham and Cunningham, *The Logic of Subchapter K* (6th ed.). This material can be accessed through Canvas.

Evaluation

Students will be evaluated primarily based on the final examination, which will be graded anonymously. In calculating the final grade for the course, the grade awarded on the final examination may be raised by one grade level to reflect active, voluntary participation of consistently high quality in class discussion.

Class Attendance and Makeup Policy: Attendance in class is required by both the ABA and the Law School. Attendance will be taken at each class meeting. Students are allowed one absence during the course of the semester. Students are responsible for ensuring that they are not recorded as absent if they come in late. A student who fails to meet the attendance requirement will be dropped from the course. The law school's policy on attendance can be found [here](#).

Additional Information

Additional information about law school policies concerning grades, accommodations, class recordings, makeup exams, course evaluations, and honor code compliance can be found at <https://ufl.instructure.com/courses/427635/files?preview=98226140>.

UF Academic Policies and Resources:

Other information about UF academic policies and resources can be found at [this link](#).

Outline of Topics and Assignments

Each topic refers to specific materials, including Code provisions, Treasury Regulations, cases, IRS administrative materials, and articles. You are required to read these materials and also familiarize yourself with the slides that will be provided in advance of each class. We will strictly adhere to the schedule provided below.

1. Introduction –

a. Broad-based discussion of practicing in the real estate area; client expectations; work product; documents expected; financing, etc.

b. Be familiar with the syllabus and prepare to ask questions about the transactions and materials that will be discussed in the class. Also review R. Wood, *The Uneasy Topic of Tax Opinion Standards*, 2020 TNTF 1-7 (Dec. 16, 2019); *Marsh Tax Insurance Document*.

2. Subdivider of Real Estate

a. Discussion related to long-time owner of property who has determined to subdivide and develop a portion of its property. Will discuss dealer issues, *Bramblett* structure, section 453 installment sale rules, and related party rules.

b. IRC 267, 453, 707(b), 1221, and 1231. *Bierdenharn Realty Co. v. U.S.*, 526 F.2d 409 (5th Cir. 1976); *Buono v. Commissioner*, 74 T.C. 187 (1980); *Bramblett v. Commissioner*, 960 F.2d 526 (5th Cir. 1992); *Phelan v. Commissioner*, T.C. Memo 2004-206; *Pool v. Commissioner*, T.C. Memo 2014-3; B. Sonnier, *How to Preserve Predevelopment Appreciation of Real Estate*, J of Real Est. Tax'n 19 (4th Qtr. 2014).

3. Developer of multi-use real estate project (apartment, retail, office)

a. Analysis of dealer issues for commercial property and importance of documentation of intent; allocation of basis among parcels; infrastructure development, deductibility of interest in financing.

b. IRC 163(j); Reg. 1.61-6 and 1.163(j)-9; *Suburban Realty Co. v. Commissioner*, 615 F.2d 171 (5th Cir. 1980); *Jersey Land & Development Corp. v. U.S.*, 539 F.2d 311 (3rd Cir. 1976); *Victory Housing No. 2 v. Commissioner*, 205 F.2d 371 (10th Cir. 1953); *Cousins Properties, Inc. v. U.S.*, 77-2 USTC ¶19508 (Ct. Cl. 1977); *Byrum v. Commissioner*, T.C. Memo 1975-135; J. Williford & T. Sinnett, *Tax Planning for the Developer: Allocating Costs Among Land and Improvements*, 103 J. of Tax'n 335 (Dec. 2005).

4. Leases and sale/leaseback transactions

a. Analysis of lease transactions, including leases with uneven and contingent payments; discussion of sale/leaseback transactions and lease vs financing transactions.

b. Reg. 1.467-1, -2, and -4; *Frank Lyon Co. v. Commissioner*, 435 U.S. 561 (1977); Rev. Proc. 2001-28 2001-1 C.B. 1156; A. Leitner and J. Stein, *Tax Aspects of Modern Sale-Leaseback Transactions*, 176 Tax Notes Federal 1691, pp. 1691-1694 (Sept 12, 2022); K. Juran and S. Chen, *Transfers and Assignments Related to Sec. 467 Leases*, 90 Taxes 33 (2012).

5-6. Like Kind Exchanges

5. Like Kind Exchange – Forward Exchange

a. Analysis of gain deferral under section 1031; deferred exchange; use of qualified intermediaries; netting of liabilities.

b. IRC 1031; Reg. 1.1031(b)-1; Reg. 1.1031(j)-1; Reg. 1.1031(k)-1; *Starker v. U.S.*, 602 F.2d 1341 (9th Cir. 1979); *Christensen v. Commissioner*, T.C. Memo 1996-254; PLR 200842019; H. Belanger, *It's a Matter of Form: Structuring Like Kind Exchanges under Section 1031*, 28 BNA Real Est. J. 300 (Dec. 5, 2012).

6. Like Kind Exchange – Reverse Exchange

a. Analysis of gain deferral under section 1031; reverse exchange; use of exchange accommodation transferee.

b. Rev. Proc. 2000-37, 2000-2 C.B. 308; Rev. Proc. 2004-51, 2004-2 C.B. 294; *Est. of Bartell v. Commissioner*, 147 T.C. 140 (2016); PLR 201410016; P. Genz, *Selected Topics Involving Tax-Free Exchanges of Real Property under Section 1031*, SN023 ALI-ABA 1069 at pp. 28-46.

7-9. Fund formation (multiple classes)

7. Fund Formation Class 1 – Types of Investors and Entities Used

a. Discussion of the types of investors that may participate in a real estate fund and a description of their tax sensitivities; discussion of entities used in a fund structure.

b. IRC 512, 514, 856, 857, and 897(a)-(c), (h)(2) and (4), and (l); KPMG White Paper, "Investment Structures for Real Estate Investment Funds"; S. Schneider, et al., *REITs 101 – A Guide to Real Estate Investment Trusts*, BNA Real Estate Journal (4/20-22).

8. Fund Formation Class 2 – Structuring Real Estate Fund

a. Discussion of fund structures taking into account different types of investors; considerations in balancing complexity and facilitation of specific needs for diverse investors.

b. W. Taylor, "Blockers", "Stoppers", and Entity Classification Rules, 64 Tax Law. 1 (2010).

9. Fund Formation Class 3 – Designing Sponsor Interests and Compensation

a. An analysis of structuring carried interest and management fees for the fund sponsor.

b. IRC 1061; *Campbell*, 943 F.2d 815 (8th Cir. 1991); Rev. Proc. 93-27; Rev. Proc. 2001-43; J. Sowell, *Carried Interest: Line Drawing and Fairness (or Lack Thereof)*, 141 Tax Notes 617, pp. 618-620 (Nov. 11, 2013); J. Sowell, *Concepts and Context in Partnership Capital Shifts*, 101 Taxes 113, pp. 139-143 (Mar. 2023); L. Sheppard, *New Analysis: Why are Fee Waivers Like Deep-Fried Twinkies?*, 2139 Tax Notes 107 (Apr. 8, 2013).

10-11. Debt Workouts

10. Debt Workout for Individual Debtors

a. Discussion regarding lender negotiations in connection with distressed real estate held by individuals; consideration of income characterization and COD income exclusions.

b. IRC 108 & 1017; Reg. 1.1001-2; *Commissioner v. Tufts*, 461 U.S. 300 (1983); 2925 Briarpark Ltd. v. *Commissioner*, 163 F.3d 313 (5th Cir. 1999); J. Sowell, *Debt Workouts: The Partnership and The Partners*, 14-24, 26-43, and 47-48.

11. Debt Workout for Partnership Debtors

a. Discussion regarding lender negotiations in connection with distressed real estate held by partnerships; consideration of income characterization and COD income exclusions and dynamics when partners with different priorities are involved.

b. Reg. 1.1001-3 and 1.1273-2; *Great Plains Gasification Associates v. Commissioner*, 92 T.C.M. (CCH) 534 (2006); CCA 201525010; Rev. Rul. 92-97, 1992-2 C.B. 124; J. Sowell, *Debt Workouts: The Partnership and The Partners*, 1-14, 47-49, 52-61, and 101-104.

12. Contribution to UPREIT Operating Partnership

a. Analysis of property contribution transaction in the context of an UPREIT partnership; class will focus on allocations of built-in gain related to contributed assets, disguised sales, liability allocations, strategies for avoiding gain recognition in connection with such transactions, and the partnership anti-abuse rules.

b. Sections 465(a), (b), and (e), 704(c), 707(a)(2)(B), and 752; Regs. 1.701-2(d), Ex. 4; 1.704-3; 1.707-4 & 5, and 1.752-2 & 3; M. Carnevale, et al, *A Primer on Umbrella Partnership Real Estate Investment Trusts*, BNA Real Estate Journal (Nov. 7, 2007).

13. Recap – Summarize what has been learned and discussion regarding the exam.