

Civil Tax Procedure (LL.M.) (LAW 7640)

Wednesday 1:00 – 3:50 p.m.

The class will meet 8/23, 8/30, 9/06, 9/13, 9/27, 10/11, 10/18, 10/25, 11/08

Holland Hall, Room 359

Fall 2023 Syllabus

Prof. Chuck Hodges

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Office hours: One hour before each class (the Zoom link will be distributed by the first week of classes); or by appointment

Course Description and Preparation Time:

All tax lawyers need to know federal tax procedure—the process by which the IRS can and does question or challenge a taxpayer’s reporting position and/or tax payments. Why? Because every transaction reported by a taxpayer on a tax return is subject to IRS scrutiny (i.e., deficiency procedures). Every unpaid federal tax liability is subject to collection tactics by the IRS (i.e., collection procedures). These rules are directly or indirectly based on due process rights of taxpayers. This course focuses on the federal tax procedures for how the IRS challenges a reporting position or collects unpaid tax liabilities for all types of taxpayers—individuals, partnerships, C-corporations, S-corporations, exempt organizations, and multinational corporations. This course is 2 credits.

The material consists of building blocks to take the student from the first contact with the IRS through the entire deficiency and/or collection process. Thus, class attendance is extremely important. The class time will not only consist of lecture but actually utilizing the learned procedures in hypothetical situations in dealing with the IRS from audits through litigation. This class will take a practical approach to assist the student for how to deal with the IRS or work for the IRS.

You should spend at least 4.0 full hours preparing for each class meeting since the class times are longer. You will not need to be familiar with any prior tax concepts. Because this course is about learning civil tax procedure, we will focus more on the actual tax procedures and then tie it back to the statutes and other rules that create the procedures, so please concentrate more on the materials assigned from the course book and do not be concerned with memorizing the Code sections until the end of the course where it will all come together. For each chapter I will tell you whether to “read”, “skim”, or “quickly skim” the Code sections mentioned in the course book. We will discuss the Internal Revenue Manual as much as we will 26 U.S.C. sections. I will emphasize the most important Code sections during class.

Course Expectations and Learning Outcomes:

- Apply the federal tax procedures contained in Internal Revenue Code, Treasury Regulations, Internal Revenue Manual, and other authorities (again, focusing more on understanding the procedures rather than the wording of the Code sections).
- Explain how the IRS handles a deficiency proceeding from audit through litigation.
- Explain how the IRS tries to collect unpaid federal tax liabilities from notice through court proceedings.
- Instruct on best practices for dealing with the IRS on behalf of a taxpayer.
- Establish a base from which the student can build on how to advise a taxpayer on dealing with the IRS in all aspects of a tax dispute.

Course Prerequisite:

None.

Methodology & Course Materials:

As noted, the course will be taught through problem-solving and lecture. At the end of each class, each student should know how to handle the procedural issues addressed in class and how to spot the issue. Students are required to participate in class (see “Evaluation & Requirements” below). A slideshow review of the key concepts discussed during class will be made available for each course segment. The slides will not fully address the materials that will be on the exam. Thus, class attendance and participation are critical to doing well in this class, or any class, that focuses on procedures for representing clients.

The course book is *Tax Controversies Practice and Procedure* (4th ed., Lederman & Mazza) (“*Tax Controversies*”). You may wish to have your Code available during class (we will focus on the Code sections in the 6000s), but you will not need your Treasury Regulations.

Outline of Topics and Assignments:

For the first class meeting, please read the following from *Tax Controversies* plus skim the supplemental materials for the sections listed below):

Ch. 3: only 3.01, 3.02(A) (skip *Beard* case), 3.03(A), 3.03(B)[1] & [2], 3.04[A], problems 2 & 3

Skim quickly Code sections referenced

Ch. 1: only 1.01, 1.02(A), 1.03, 1.04, problems 2 and 3

Read sections 6212 & 6213 and skim the remaining Code sections referenced

Ch. 2: only 2.02(A) (read *Mayo* and skip *American Express*), 2.03, 2.04(A) & (B) (skip Rev. Proc. 2017-1), 2.05, problem 1.

The topics to be covered for each future class will be assigned at the end of class to reflect the pace of class discussion and/or any new procedural developments. Unless otherwise advised, you should assume that the problem will be covered per class session, and you should prepare accordingly. These problems will serve as a guideline for the final exam.

Evaluation & Class Attendance Policy

Grade

15 percent: Participation

85 percent: Final Exam (open book)

Class Participation & Attendance

You are expected to attend class and to be prepared to respond to questions about the assigned problems and reading; attendance will be taken each day. Use of a laptop or similar device is acceptable for note taking. Participation in this course is especially important as each student will learn how to approach issues as if they are representing taxpayers or representing the IRS.

Absences taken for observance of religious holidays will be excused with completion of a makeup assignment. If you are absent because of a special situation (sickness, family emergency, job interview, etc.), the absence **may** be excused at Prof. Hodges' discretion. Due to the length of the class, you can and should attend as much as you can. In general, the makeup assignments consist of (1) reviewing notes from a classmate for the day(s) missed; (2) completing the problems covered on the day(s) of absence and turning them in to Prof. Hodges; and (3) discussing with Prof. Hodges any questions you have about the material or problems covered on the day(s) of absence. All makeup assignments are due by 5:00 p.m. on the last day of the Fall semester reading days, but earlier completion is recommended. If you are dealing with a personal situation of high difficulty or of

prolonged duration, please seek assistance from Student Affairs and Prof. Hodges as soon as possible.

If you have more than two unexcused absences from regularly scheduled classes, your participation grade will be 0.

Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

Additional Expectations: Zoom Etiquette

Unless you have been accepted into the remote option for part-time students, you are required to attend in person in the designated classroom. With advance permission, in-person students may be permitted to attend through Zoom; permission will only be granted in situations, described below, that would warrant an excused absence after completion of a makeup assignment.

If you attend over Zoom (whether as a part-time remote option student or as a full-time student with advance permission), please ensure your Zoom name matches your preferred name and with your last name also shown. You are expected to turn on video of yourself while attendance is taken and when responding to or asking questions. You do not need to have video on when taking notes and listening to the class, but you need to be ready to

respond to questions, whether directed to you individually or in the form of class surveys. You are expected to keep your microphone on mute unless you have been called on to ask or answer a question. Please do not use the chat function to ask questions directed to me during class; it will not be monitored by me, and students attending in person will not be able to see it. If you are trying to ask a question, but your “virtual hand” is not being seen by me, please unmute yourself and indicate you have had your virtual hand raised if more than 5 minutes have passed without acknowledgement. If you have a technical problem during the class, please contact UF IT (<https://www.law.ufl.edu/technology-services>).

Final Exam

The final exam will be 4 hours and will consist of mix of short questions and longer essays. You will be required to use the software and process designated by the law school when taking the exam. The exam will be open book, but any form of communication about the exam contents with anyone or any interaction with AI will be prohibited and will violate the Honor Code.

Exam delays and accommodations must be arranged through the Student Affairs Office; please see “Other Policies” and go to the link.

Retesting Process

Students who receive a grade in the course lower than a B and who have a participation and attendance grade higher than 0 before the final exam period starts (see above) will have the opportunity to retest for a grade increase. The highest possible exam grade obtainable through the retesting process will be the lower of (1) a B or (2) one full grade increase from the initial grade earned in the course. For example, a student receiving a B- and who has met the participation/attendance grade requirement would be eligible to retest for a course grade no higher than a B. A student receiving a C- and who has met the participation/attendance requirement would be eligible to retest for a grade no higher than a B-. The retesting process will not be used to lower grades. Re-testing is scheduled through discussion between the individual student and Prof. Luke, but re-testing must be completed no later than 2 months after grades are posted (note, this is separate from any requirement imposed by UF for graduation).

Other Polices:

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link:

<https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>. You will need to log into UF e-learning to see the document. Note that the mandatory mean does not apply to LL.M. students.

Grade Scale & Grading Policies:

<u>Grade</u>	<u>Points</u>
A (Excellent)	4.0
A-	3.67
B+	3.33
B (Good)	3.00
B-	2.67
C+	2.33
C (Satisfactory)	2.00
C-	1.67
D+	1.33
D (Poor)	1.00
D-	0.67
E (Failure)	0.00

The law school grading policy is available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>. **Note that the mandatory mean does not apply to LL.M. students.**

Accommodation and Office of Disability Resources

Students requesting classroom and/or testing accommodations must first register with the Office of Disability Resources. The UF Disability Resource Center (<https://disability.ufl.edu/>) will provide documentation to the student who must then provide this documentation to the Law School Office of Student Affairs when requesting accommodation. Student Affairs will then communicate with me as needed to assure the accommodation is provided. (Note: for guidance on requesting exam delays for other reasons (e.g., accident), see “Final Exam” section above.)

Honor Code and Other Policies:

Students are required to follow the Honor Code. To review its requirements, see <http://www.law.ufl.edu/student-affairs/additional-information/honor-code-and-committee>. Students who fail to follow UF safety protocols or the prohibition on circulating or posting class material will be referred to the College of Law Honor Code Council and the University’s Office of Student Conduct and Conflict Resolution.

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.ua.ufl.edu/students/>. **Complete student anonymity is preserved during and after the evaluation process.** Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from

GatorEvals in their Canvas course menu under GatorEvals or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

List of Chapters from Tax Controversies to be covered over the semester

While we will not review any entire chapter, I hope to cover the following chapters from *Tax Controversies*:

Chapter 1 Introduction to Tax Controversies

Chapter 2 IRS Rulemaking

Chapter 3 Tax Returns and IRS Examinations of Tax Returns

Chapter 4 Summons & Privileges

Chapter 5 IRS Appeals (including changes under Taxpayer First Act of 2019)

Chapter 7 Statute of Limitations and Restrictions on Assessments

Chapter 8 The United States Tax Court

Chapter 12 Civil Tax Penalties

Chapter 14 Liens, Levies, & Other Collection Procedures

Chapter 15 Offers in Compromise

Chapter 16 Collection Due Process Procedures

Many of these chapters will be combined for discussion due to the overlap in topics