

LAW 649 – TAXATION I

Fall 2021

Instructor Information

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Office Hours: After class and by appointment

Course Information

Meetings: Monday & Wednesday, 8:30-10:30 a.m.
Location: Moot Courtroom
Credit Hours: 4 credits

Required Texts

JOHN A. MILLER & JEFFREY A. MAINE, THE FUNDAMENTALS OF FEDERAL TAXATION: PROBLEMS AND MATERIALS (Carolina Academic Press, 5th ed. 2018). The 2021 Update Memorandum will be posted on Brightspace.

FEDERAL INCOME TAX: CODE AND REGULATIONS—SELECTED SECTIONS (CCH, 2021-2022 Edition)...or access to an online version of the Code and Regulations.

NOTE: Students should have access to the Internal Revenue Code and Treasury Regulations. Several online versions are available, such as Legal Information Institute's frequently updated Code (<http://www.law.cornell.edu/uscode/text/26>) and Regulations (<http://www.law.cornell.edu/cfr/text/26/chapter-I>). If you wish to purchase a hardcopy of selected sections, which can be brought into the "open book" exam, I recommend FEDERAL INCOME TAX CODE & REGULATIONS SELECTED SECTIONS (CCH 2021-2022 edition), which is listed above.

Study Aids

Students often ask me for Study Aid recommendations. I don't think you will need study aids, as the Miller & Maine textbook for the course is so amazing! Occasionally, I may post certain materials from study aid books that I have published. Here is a list if you are interested in purchasing any of them:

JOHN A. MILLER & JEFFREY A. MAINE, PROBLEMS AND SOLUTIONS FOR FEDERAL INCOME TAXATION (Carolina Academic Press, 2nd ed. 2019)

I. RICHARD GERSHON & JEFFREY A. MAINE, A STUDENT'S GUIDE TO THE INTERNAL REVENUE CODE (Carolina Academic Press, 7th ed. 2019)

JEFFREY A. MAINE, FEDERAL INCOME TAX LOGIC MAPS: A COLLECTION OF LOGIC MAPS DESIGNED TO ASSIST IN THE UNDERSTANDING OF THE INTERNAL REVENUE CODE (West, 2011)

Course Management System

We will use Brightspace, our learning management system, for the course. I post on Brightspace this Syllabus (including any revisions), other documents, assignments, class discussion questions, announcements, web links, and other information. I recommend that you take some time before the semester begins to become familiar with how the platform works generally and how our course site is set up. Please be sure that you check the site frequently and/or set up your notifications to receive alerts about updates to the site and particularly new Announcements.

Why Take This Course?

For many reasons, the study of tax is an important, if not essential, part of a lawyer's formal legal education. Like it or not, tax pervades the practice of law. A lawyer who knows no income tax law runs the risk of committing malpractice every day.

Beyond the fear factor is another perspective. Studying the income tax gives you a unique view into the world of money and property. Every time either of those things changes hands, the income tax has something to say about it. Sometimes tax is owed, and sometimes it is not. In either case, there are always some interesting twists and turns to get to the answer. Getting the answer right is fun, satisfying, and rewarding.

Course Description

This course will provide an in-depth study of federal income taxation. Some of the fundamental concepts covered include the definition of income, exclusions from income, deductions available for individuals in computing taxable income, the computation of tax liability, basis in property, gains and losses from sales of property, family taxation, assignments of income, capital gains and losses, and timing issues. The course will emphasize tax planning and tax policy; more significantly, however, it will provide the framework in which you can develop enduring analytical skills necessary to work with ever-changing bodies of statutory and regulatory law.

Pedagogy

More than anything else, this course is designed to improve your skills in reading complex Code and regulation provisions. Although we will focus on current law in our analysis, this is not a course designed to teach you only the current rules and regulations. Many of the rules you will learn in the course will change over the course of your career. For that reason, I think it would be bad judgment on my part to teach this subject as if it were a CLE program on the current state of the law.

So how is this course designed to improve your analytical skills in taxation? For one thing, a substantial portion of each class session will be devoted to the assigned problems. The problem method is the most effective way to help you develop these skills. Of course, this method only works (and your skills only get better) if you actually work through the problems and discuss them with your colleagues before we discuss the answers in class. After class, you should re-work the problems to make sure you understand the correct approach in solving similar problems that would appear on the exam or in practice. In this regard, the course materials do not always provide you with step-by-step guidance. You must develop the ability to analyze and synthesize the material to create your own decision trees (or flow-charts, or ladders, or whatever you want to call them) for use in applying the rules to a given fact pattern. At some point in your career, you will come across a statute or regulation that no one before you has summarized or outlined.

It will be up to you to make sure the statute or regulation is interpreted and applied correctly. That is a unique skill of the lawyer, and it is what you are here to develop.

Each assignment will contain a list of Code and regulation provisions to read carefully, some supplemental materials, and several problems to prepare in advance of class. It is advised to write out detailed answers to the problems (complete with citations). You should review your answers to the problems with colleagues prior to class.

Each chapter is short and designed to be completed in one or, occasionally, two class sessions. We will march through the book in order, occasionally dropping a chapter. (See “Course Assignments” below.) Note that some chapters may be covered asynchronously.

Course Goals & Learning Objectives

GOALS	OBJECTIVES	ASSESSMENTS
To develop a wide-ranging knowledge of income tax law.	To develop a thorough understanding of the structure of the income tax. To understand the unique language of tax.	Assigned daily problems Review Problems 1 & 2 Participation/engagement in class discussions
To develop the ability to read and understand complex statutes.	To develop the ability to do your own meticulous dissection of lengthy, technical code provisions. To explain in plain English to a client complex statutes.	Participation/engagement in class discussions
To hone your problem-solving skills.	To develop your ability to apply the law to common tax problems and planning situations. To hone your ability to reason by analogy from one case to another in order to solve problems that a client might typically face. To develop the ability to explain your reasoning to another person.	Assigned daily problems Review Problems 1 & 2 Participation/engagement in class discussions
To engage in basic tax planning.	To engage in tax planning in multiple areas, including real estate sales and exchanges, family law, installment sales, and litigation.	Participation/engagement in class discussions Exam

Grading/Evaluation

- Your final grade will be based upon an anonymously graded final examination, which will be “open book.” Additional information regarding the exam will be announced in class.
- There will be two mid-semester assessment exercises (Chapters 16 and 21) that we will go over in class. These will not be factored into your final grade. However, if you choose to submit detailed answers to these, I will be happy to review them and provide my feedback.
- There will be one or two Class Discussion Questions for each class posted on Brightspace. Please answer these before the start of class. They help me assess course participation (discussed below) and the extent to which certain learning objectives are being achieved.
- I reserve the right to lower your final grade for poor course participation. Poor course participation includes (1) “passing” when called on or being unprepared when called on, and/or (2) regularly failing to answer Class Discussion Questions posted on Brightspace.

Studying for the Course

I am frequently asked about the best way to study for this course (and other tax courses). The exam process in tax courses is substantially the same as any law school course. First and foremost, you should keep up with the readings and complete assigned problems prior to class. Again, you should review the problems after we cover them in class to make sure you understand exactly how we got the correct answer and that you verify every authority cited for the correct answer. You should then consider how the answers would change if certain facts were changed. Based on the class problems and your own variation of the problems, you can develop a “checklist” or “flow chart” to help you identify the key issues to consider for each topic. You and your colleagues can develop your own sample questions and test each other’s synthesis of the material. Throughout the entire process, you should challenge each other to verify all solutions and come to me with questions or unresolved issues.

Communications

One of the highest priorities for me is to be available to students, so do not hesitate to contact me for additional help. I will do my best to be available to meet with students right after each class. In addition, I usually have availability each week to meet with students individually or with a study group. These meetings can be scheduled live or via Zoom. You are also encouraged to make use of email for questions. I find the e-mail method very effective at weeding out questions that you can solve yourself with some thought. By forcing yourself to write out your questions, you also develop an ability to articulate technical tax issues. Students also like having written answers to their questions so that they do not have to worry about forgetting an earlier conversation. Of course, there is often no substitute for one-on-one (or group) meetings, so feel free to request those if you want.

COURSE POLICIES

Academic Integrity Policy

Each student should know the standards of conduct and expectations of academic integrity. Violations of academic integrity include any actions that attempt to promote or enhance the academic standing of any student by dishonest means. Cheating on an examination, plagiarism, making statements known to be false or misleading, falsifying the results of one's research, improperly using library materials or computer files, or altering or forging academic records are examples of violations of this policy. Acts that violate academic integrity disrupt the educational process and are not acceptable.

Evidence of a violation of the academic integrity policy will normally result in disciplinary action, including referral to the UMS Student Conduct Code process. A copy of the complete Academic Integrity Policy is available on the University of Maine System website or the MyLaw Portal.

Class Attendance

The ABA Rules for accrediting law schools require that the Law School take steps to ensure that students attend classes regularly if they are to receive credit for a course. In my Tax I course, I require that students miss no more than 20 percent of total classes. Thus, for this class, students may miss no more than 5 classes without consequence. I consider “attendance” to encompass “adequate preparation” as well as presence on Zoom (if we are required to move to remote learning). Thus, a failure to prepare adequately can constitute an absence.

Absence (or its equivalent—a failure to prepare) for more than 20 percent of classes may result in a lower final grade (including the grade of “F” in egregious instances) or administrative withdrawal from the course in my sole discretion, depending on my evaluation of the equities of the situation that caused the excessive absences or lack of preparation.

Class Preparation

Class preparation is extremely important. The American Bar Association standards require that students spend a very significant amount of time in out-of-class academic activities, per credit that is awarded. Maine Law has adopted a policy, consistent with the ABA’s policy, that students are required to complete approximately 30 hours 20 minutes of out-of-class work per credit per semester. Therefore, you should spend approximately 2 hours 20 minutes on academic work out of class per credit per week. For this 4-credit class this means that you spend at least 9.5 hours per week outside of our full-class sessions completing reading assignments and other activities related to the course.

Classroom Etiquette

I encourage you to ask questions during class. Your questions are helpful to the learning process for all. However, I may defer answers to questions until after class or to the next class in the interests of time or for other reasons. Learning is a collaborative process. To increase the prospect that all of you will learn in a comfortable environment, I expect you to be in class on time, treat each other with respect, and avoid distractions from the subject matter at hand.

Laptop/Technology Policy

To minimize distractions from the subject matters at hand in class (a) all cell phones and similar electronic devices must be turned off, and (b) minimize your use of a laptop during class.

Laptops interfere with face-to-face connectivity, and a growing number of studies demonstrate that taking handwritten notes increases how much your brain processes information and thus increases how much you are likely to remember later. So bring those legal pads (they are called that for a reason). When using a laptop in class, you may not use it for email, chatting, internet searching or any non-class discussion uses; it is not only disrespectful and unprofessional, but also is distracting to your fellow classmates. Anyone found doing so will be penalized.

Zoom Classroom Engagement (for classes, if any, held online)

If any classes will be taught via Zoom, please note the following.

- Please log into Zoom prior to the scheduled class meeting time, and make sure your headsets, camera, and microphones are working properly. Please remain online for the entire class. (I will arrange for short breaks from time to time to reduce screen fatigue.)
- Make sure your background is appropriate for sharing video, along with how your image is displayed to the rest of the class.
- To maximize human connectedness and the learning experience for both you and your classmates, please use and keep on your video during class, not just a blank square (if you have connectivity issues or other concerns, notify me before class). This will better replicate a live residential classroom experience.
- To minimize distractions, (a) please do not use your cell phone or similar electronic device unless you need it to call into a Zoom session due to Wi-Fi connectivity problems, *AND* (b) please do not use your laptop during class for applications other than our class discussions and work (for example, no checking email or news in another window).
- To ask questions during class, you may use the “raise hand” function in Zoom or you may actually raise your hand physically on screen as if in person. I encourage you to ask questions during class, which can be helpful to the learning process for all.
- Please avoid text chats or “side conversations” that will distract students from the ongoing conversation.

Inclement Weather Policy

For information on campus closings, please call the storm line at 207-780-4800 or sign up for USM text alerts. If the University of Southern Maine closes the campus or cancels classes, this always applies to the Law School. In rare circumstances, the Law School closes before USM. In this situation, an email about closings will be sent to students through the email listserv.

If the Law Building is (1) closed for the day, (2) open late and our class is scheduled to start before the law school opening, or (3) closed early and our class is scheduled to end after the building closes, then classes may be held remotely. If this is the case, students will be notified and sent a ZOOM link. If you are unable to attend class due to the inclement weather, you should notify me.

If class is canceled, I will let you know about scheduling a make-up.

Class Recording Policy

As a general rule, the recording of all classes is prohibited without permission. If a student will be absent from class and wishes to record a missed class session, the student must first contact the course professor for permission. If permission is granted, the student must arrange for a classmate to facilitate the recording. All class recordings are for personal use only and may not be uploaded to the internet or otherwise shared, transmitted, or published without the prior consent of the professor. If a professor denies a request to record a class, then a student must find an alternative method for making up the missed material.

Students should note that the Law School does not provide recording services for occasional absences. Suggested mobile apps and a listing of devices available to students for self-directed audio recording can be found in the MyLaw Portal. Recording classes without permission will be viewed as a violation of the Student Conduct Code.

Students who are requesting the recording of classes pursuant to the Americans with Disabilities Act or in the case of exceptional circumstances, such as hospitalization, must contact the Associate Dean for Student Services.

MAINE LAW POLICIES AND RESOURCES

Disability Accommodations

The Law School is committed to providing students with disabilities equal access to all programs and services. If you think you have a disability and would like to request accommodations, please contact the Disability Services Center (DSC). Timely notification is essential. The Disability Services Center can be reached by calling 207-780-4706 or by email dsc-usm@maine.edu. If you have already received an accommodation letter from the Disability Services Center and would like to discuss your accommodations for this course, please contact Associate Dean Sherry Abbott Niang who serves as the liaison to the DSC. If you would like to discuss your accommodations with me, you can email me directly.

Wellness Resources for Maine Law Students

Maintaining your physical and mental health is essential to learning the law and succeeding in law school. Law school is a setting where mental health or substance use struggles can be exacerbated. If you ever find yourself struggling, do not hesitate to ask for help. Maine Law is committed to promoting wellness for all students. I encourage all of you to review the Health & Wellness Resources listed on the MyLaw Portal. The resources include confidential counseling through USM Counseling Services (207-780-4050) and the Maine Assistance Program for Lawyers and Law Students (207-266-5951). You can also contact the Maine Law Office of Student Affairs. Please let me know if you have any questions.

If you are facing illness, injury, the birth of a child, death in the family, or other extraordinary circumstances that may impact your participation in this course, you should contact me in advance of missing classes or any assignment deadlines. Stressful situations like these may lead to diminished academic performance or may reduce your ability to participate in daily classroom activities. Law School services are available to assist students with handling these stressful events. In an emergency situation and in cases of unforeseen circumstances, you should contact

the Associate Dean for Student Affairs as soon as possible. *For examination conflicts or emergency situations during the examination period, please see the Registrar.*

Statement on Religious Observance for Maine Law Students

Maine Law respects the religious beliefs of all members of the community, affirms their rights to observe significant religious holy days, and will make reasonable accommodations, upon request, for such observances. If your religious observance is in conflict with the academic experience, you should inform me of the class or other functions that will be affected. It is your responsibility to make the necessary arrangements and follow our agreed upon accommodation.

Title IX Statement

The University of Maine School of Law is committed to making our campuses safer places for students. Because of this commitment, and our federal obligations, faculty and other employees are considered mandated reporters when it comes to experiences of interpersonal violence (sexual assault, sexual harassment, dating or domestic violence, and stalking). Disclosures of interpersonal violence must be passed along to members of the University of Maine System's Title IX team who can help provide support and academic remedies for students who have been impacted. More information can be found online at <https://mainelaw.maine.edu/student-life/title-ix/>. You may contact USM's Deputy Title IX Coordinator, Sarah E. Holmes at usm.TitleIX@maine.edu or 207-780-5767 or the UMS Title IX Coordinator, Liz Lavoie at titleix@maine.edu or 207-581-5866. You can also reach out to Maine Law's Office of Student Affairs for support and referrals.

If students want to speak with someone confidentially, the following resources are available on and off campus: University Counseling Services (207-780-4050); 24 Hour Sexual Assault Hotline (1-800-871-7741); 24 Hour Domestic Violence Hotline (1-866-834-4357).

COURSE SCHEDULE

Date	General Topic	Reading Assignment/Other Assignment
1. Aug. 30	Introduction	Read Ch. 1; <i>Lecture (no assigned problems)</i>
2. Sept. 1	Gross Income	Read Ch. 2; <i>Problem 1</i>
Sept. 6	Labor Day – No Class	
3. Sept. 8	Gains from Dealings in Property	Read Ch. 3; <i>Problems 1-3</i>
4. Sept. 13	Gifts and Inheritances	Read Ch. 4; <i>Problems 1-2</i>
5. Sept. 15	Discharge of Indebtedness	Read Ch. 5; <i>Problems 1-2</i>
6. Sept. 20	Fringe Benefits	Read Ch. 6; <i>In-class hypotheticals</i>

7. Sept. 22	Business and Investment Expenses Deductions	Read Ch. 7; <i>Problems 1, 3</i>
8. Sept. 27	Capital Expenditures	Read Ch. 8; <i>Problem 1</i>
9. Sept. 29	Depreciation and Amortization	Read Ch. 9; <i>Problems 1-4</i>
10. Oct. 4	Deductible Losses Deductible Personal Expenses	Read Ch. 10; <i>Problem 1</i> Read Ch. 11; <i>Problems 1(a)-(b), 2-4</i>
11. Oct. 6	The Deduction Hierarchy Timing Rules and Related Principles	Read Ch. 12; <i>Problems 1, 3(a)</i> Read Ch. 13; <i>Problem 1</i>
Oct. 11	Indigenous Peoples' Day – No Class	
12. Oct. 13	Ordinary Tax Rates & Taxpayer Classification Tax Credits	Read Ch. 14; <i>Problem 1</i> Read Ch. 15; <i>Lecture</i>
13. Oct. 18	First Review Problem (NOTE: If you type out detailed answers, I will be happy to review and provide feedback)	Read Ch. 16; <i>Parts I.-V.</i>
14. Oct. 20	Capital Gains and Losses	Read Ch. 17; <i>Problems 1- 3, 4(a)</i>
15. Oct. 25	Quasi-Capital Assets	Read Ch. 18; <i>Problems 1-2</i>
16. Oct. 27	Recapture of Depreciation	Read Ch. 19; <i>Problem 1</i>
17. Nov. 1	The Charitable Contribution Deduction	Read Ch. 20; <i>Problems 1(a)-(c), 2</i>
18. Nov. 3	Second Set of Review Problems (NOTE: If you type out detailed answers, I will be happy to review and provide feedback.)	Read Ch. 21, <i>Problems 1 (Part I only), and 2</i>
19. Nov. 8	Residential Real Estate Hobby Losses	Read Ch. 22; <i>Problems 1, 3</i> Read Ch. 23; <i>Problem 1</i>
20. Nov. 10	Like Kind Exchanges Involuntary Conversions	Read Ch. 24; <i>In-class hypotheticals</i> Read Ch. 25; <i>Problems 1-2</i>

21. Nov. 15	Installment Sales	Read Ch. 26; <i>Problem 1</i>
22. Nov. 17	Assignment of Income	Read Ch. 30; <i>Problems 1-2</i>
23. Nov. 22	Alimony and Support Transfers of Property Between Spouses	Read Ch. 31; Problem 1 Read Ch. 32; <i>Problem 1</i>
Nov. 24	Thanksgiving Holiday – No Class	
24. Nov. 29	Personal Injury Recoveries & Punitive Damages	Read Ch. 34; <i>Problems 1-2</i>
25. Nov. 30	Review (NOTE: We will work through past exam questions in class.)	Review past exam questions (posted on Brightspace)
26. Dec. 1	Review (NOTE: We will work through past exam questions in class.)	Review past exam questions (posted on Brightspace)