

**UNIVERSITY OF BALTIMORE GRADUATE TAX PROGRAM/SCHOOL OF LAW
SPRING 2020**

General Information and Syllabus

Course: Fundamentals of Federal Income Tax II
LAWT/957/491; TAXA/678/185; LAW/957/512

Instructor: Prof. Walter Schwidetzky
Telephone: 410-837-4410
Email: wswidetzky@ubalt.edu
Office Hours: by appointment

Days/Time: Wednesday, 6:15 to 9 pm

Location: Room assignments are available through MyUB.

Course Description:

Continuation of basic tax concepts including cash and accrual methods, capital gains and losses, 1231 transactions, recapture, original issue discount and imputed interest, below-market loans, installment sales, like kind exchanges, involuntary conversions, the at-risk rules, and passive loss rules.

Required Course Materials:

Internal Revenue Code (“Code”) and Regulations (“Regs”). JD students can use Bank and Stark Selected Sections, Federal Income Tax Code and Regulations, Foundation Press, 2019-2020. ISBN 978-1-64242-915-2

Freeland, Lathrope, Lind and Stephens, Fundamentals of Federal Income Taxation (19th Edition) (“Freeland”) ISBN 978-1-64020-852-0

Student Learning Outcomes:

- Explain Federal income tax rules governing the timing and characterization of income and deductions.
- Make use of the policy underlying these rules.
- Identify legal issues related to the timing and characterization of income and deductions.
- Apply and analyze statutory and regulatory provisions governing the timing and characterization of income and deductions in the context of factual situations.

Grades:

There will be one time pressured, three hour exam given at the end of the semester. **The exam will be completely open book.** Your grade primarily will be based on the final exam, but can be adjusted for class participation. Class participation includes my evaluation of your preparedness when called upon (either very prepared, prepared, or unprepared), along with your responses when you volunteer to answer questions.

Course Expectations:

American Bar Association Standards for Law Schools establish guidelines for the amount of work students should expect to complete for each credit earned. Students should expect approximately one hour of classroom instruction and two hours of out-of-class work for each credit earned in a class, or an equivalent amount of work for other academic activities, such as simulations, externships, clinical supervision, co-curricular activities, and other academic work leading to the award of credit hours.

You are expected to complete all reading and problem assignments before class and to participate consistently in class discussion to demonstrate that you have read and reflected on the material in the assignment. This course involves difficult tax rules and concepts, and thus it is very important that you prepare for class, which includes working through the assigned problems in the textbook. It is important to keep your class preparation current. Much of the course will be built on subjects previously discussed, and the various Code and Regs sections work in conjunction with one another. If you miss and/or do not prepare for one class, the next class may use terms and concepts you do not understand, which will compound the difficulty of understanding this complex area of the tax law. Moreover, as discussed above, part of your grade will be based on class participation.

Please be sure to raise any unaddressed questions you still have after class, or during my office hours by appointment, or through e-mail: wschwidetzky@ubalt.edu, 410 837-4410.

Attendance Policy for J.D. Students:

Class attendance is a primary obligation of each J.D. student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. A J.D. student who exceeds the maximum allowed absences may be compelled to withdraw from the course, or may be barred from sitting for the final exam. J.D. students who are forced to withdraw for exceeding the allowed absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with American Bar Association Standards for Law Schools. In this course, J.D. students are allowed a maximum of two absences. Attendance will be taken at the beginning of each class. Attending a class online counts as being present, but watching the class after the fact on Panopto does not.

While LL.M. and M.S. students should endeavor to attend each class, there is no attendance policy applying to these students.

Course Website:

You are required to register for this course on TWEN. You are responsible for all information posted on or disseminated from TWEN. To register, you will need a "Westlaw ID." If you do not yet have one, please contact either Law Library Director Adeen Postar at apostar@ubalt.edu or Law Librarian Harvey Morrell at hmorrell@ubalt.edu.

Computers:

Students may use laptop computers for class related purposes, as well as on the exam (with the School-provided exam software).

Class Cancellation:

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web site or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.

Academic Integrity:

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or the School of Law. Violations of academic integrity include, but are not limited to: cheating; plagiarism; misuse of library materials; use of another's book or study materials without consent; unapproved multiple submissions; material misrepresentation of one's academic history or standing; misrepresentation of any academic matter; intentionally giving another student false or inaccurate information about class requirements; inappropriate discussion of exams; and misrepresenting or falsifying class attendance reports.

LL.M. and M.S. students must adhere to the University of Baltimore's Academic Integrity Policy, which can be found at http://www.ubalt.edu/campus-life/student-handbook.cfm#Academic_Integrity.

J.D. students must adhere to the School of Law Honor Code. The School of Law Honor Code and information about the process is available at https://law.ubalt.edu/academics/policiesandprocedures/honor_code/index.cfm

Title IX Sexual Harassment and Sexual Misconduct Policy:

The University of Baltimore's Sexual Harassment and Sexual Misconduct policies are compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the University any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB's nondiscrimination policies can be found at: <http://www.ubalt.edu/titleix>.

Disability Policy:

If you are a student with a documented disability who requires an academic accommodation, please contact Leslie Metzger, Director of Student Services at 410-837-5623 or via email at lmetzger@ubalt.edu.

Course Outline

- I. Fundamental Timing Principles
- II. Capital Gains and Losses
- III. Characterization under Section 1231
- IV. Recapture of Depreciation on the Sale of Depreciable

Property

V. Characterization under Section 1239

VI. Installment Sales

VII. Original Issue Discount and Imputed Interest

VIII. Below-Market Interest Loans

IX. Non-recognition Provisions

X. Disallowance of Losses

XI. At-Risk Rules

XII. Passive Activity Limitations and 461(l)

XIII. Bad Debts and Worthless Securities

XIV. Charitable Deductions

XV. Casualty and Theft Losses

First Class Assignment

Code: 441(a)-(e), 442, 446, 451(a), 461(a), (g)

Regs: 1.446-1(a)-(c)(1), 1.451-1(a), -2, 1.61-2(d)(4), 1.461-1(a)(1), 1.263(a)-4(d)(3), (f)(1)

Freeland: pp. 587-613 (before *Cathcart*)

Problems: pp. 617-618, # 1(a), (b), (c), (d), (g), # 2(a)-(c)

Syllabus

I. Fundamental Timing Principles

Code: §§ 441(a)-(e), 442, 446, 451(a), 461(a), (f), (g), (h), 448(d)(5),
267(a)(2), (b), (c), (*skim* §§ 448, 455, 456)

Regs: §§ 1.446-1(a)-(c)(1), 1.451-1(a), -2, 1.61-2(d)(4), 1.461-1(a), -4(a),
(e), (g)(3), -5(a), (b), 1.263(a)-4(d)(3), (f)(1)

Freeland: pp. 587-613 (before *Cathcart*), 619-647 (before *Section 467*)

Problems: pp. 617-618, # 1(a), (b), (c), (d), (g), # 2(a)-(c); pp. 645-646, # 1, # 2(a), (b), (c), (d), # 3; p. 649, # 1

II. Capital Gains and Losses

Code: 1(h), 1222, (*skim 1201, 1202, 1061*), 1211(b), 1212(b)(1), (2)(A)(i), (*skim 1211(a), 1212(a)*), 1221(a)(1)-(4), (*skim (a)(5), (a)(6)*) 1234(a) (*skim 1234(b), (c), 1236, 1237*), 1241, 1221(a)(7), (a)(8), (b)(2), (b)(3), 1271(a)(1), (b), (*skim 1234A, 1235, 1253*), 1223(1), (2), (9), (*skim 1014(a), 1015(a)*), read 1061 gently.

Freeland: pp. 683-735, 745 (starting with H. Statutorily Created ...) - 750 (before Section 1231 Characterization)

Problems: pp. 695-696, ## 1(a) and (b) (assume taxpayer in 33% tax bracket), 2 (assume taxpayer in maximum tax bracket), 3; p. 701, # 1; p. 717, # 1; pp. 722-723, ## 1, 2, pp. 735-736, ## 1, 3.

III. Characterization Under 1231

Code: 1231, 197(f)(7)

Freeland: pp. 750-761

Problems: pp. 761-763, ## 1, 3

IV. Characterization Under 1239

Code: 1239, 267(c), (*skim 267(b)(3), (10), (11), (12), 318(a)(3)(B)(i)*)

Freeland: pp. 765-771

Problems: p. 771, # 1

V. Recapture of Depreciation on the Sale of Depreciable Property

A. Section 1245

Code: 64, 1245(a), (b)(1), (2), (d), 1016(a)(2)
(skim 1041)

Regs: 1.1245-1(a)(1), (b), (d), -2(a)(1)-
(3)(i), (7), -6(a)

Freeland: pp. 771-777

Problems: p. 777, ## 1, 2

B. Section 1250

Code: 1(h)(1), (3), (6), 1250(a)(1)(A),
(B)(v), (b)(1), (3), (5), (c), (d)(1), (2),
(h), (skim 291(a)(1))

Freeland: pp. 778-780

VI. Installment Sales

Code: §§ 453 (omit (h), (l)(2), (l)(3)), 453A, 453B(a)-(c), (g), 1001(a)-(d)

Regs: §§ 1.453-9(a), (b), 15A.453-1(a), (b)(1)-(3)(i), (4), (5), Examples
(1)-(3), -1(c)(1), (c)(2)(i)(A), (c)(3)(i), (c)(4), 1.453-12(a), (d)
(example 1), 1.1001-1(a), (g)(1), (3), (4)

Freeland: pp. 835-850

Problems: pp. 850-853, # 1(a)-(j), (m), # 3, # 2;
p. 858, # 1 (answer with numbers assuming open transaction
reporting applies, without numbers if it does not); p. 921, # 1
(since there is adequate interest, focus on stated principal amount)

VII. Original Issue Discount and Imputed Interest (give up all hope ye who enter here)

Code: §§ 1272(a) (omit (a)(6), (a)(7)), (d)(2), 1273(a), (b), 163(e)(1),
(e)(2), (e)(4), 1274, 1274A, 1275(a)(1), 483 (skim 1258, 1271,
1275(b), (c), 1276, 1277, 1278, 1281, 1282, 1283), 467(a), (b),
(skim (c)), (d), (e)

Regs: §§ 1.1272-1(a), (b)(1), 1.1273-1(a), (b), (c)(1), -2(a), (b), (c), (d),
1.1274-1(a), (b)(1), (c) (ex. 1, ex. 3), -2(a), (b), (c), 1.483-1(a),
(b)(1), -2(a), (b), 1.446-2(a), (b), (c), (d), (e)(1), (h)
Freeland: pp. 861-870, 646-649 (*Section 467*)
Problem: OID Problems (available on TWEN).

VIII. Below-Market Interest Loans

Code: § 7872 (*skim (g), (h)*)
Regs: §§ 1.7872-5(a), 1.7872-5T(c)(3), (*skim 1.7872-5T(b)*)
Freeland: pp. 478-486
Problems: pp. 494-495, ## 1, 2

IX. Non-recognition Provisions

Code: §§ 1001(c), 1031 (*skim (f), skim (g), (h)*), 1223(1), 357(d)(1),
1033(a), (b)(1), (2), (g)(1), (2), (4), 121(a), (b)(1), (b)(2), (d)(5),
(*skim 1033(i), 1038, 1044, 1045*)
Regs: §§ 1.1031(a)-1, -2(a), 1.1031(b)-1(b), Example (1), -1(c),
1.1031(d)-1, -2, 1.1031(k)-1(a), (b), (c)(1), (4)(i), (f), 1.1033(b)-
1(b), 1.121-4(d)
Freeland: pp. 895-898, 959 (before *Leslie Co.*), 906 (starting with Three-
Cornered Exchanges) - 926
Problems: pp. 912-914, ## 2, 4, 5; pp. 923-924, ## 1, 2, 3, 4

X. Disallowance of Losses

Code: §§ 267(a)(1), (b), (c), (d), (g), 1091(a), (d), 1223(3)
Regs: §§ 1.267(d)-1(a), (c)(3), 1.1091-2
Freeland: pp. 883-891
Problems: pp. 889-890, ## 1 and 4

XI. At-Risk Rules

Code: § 465(a), (b), (c)(1), (2), (3), (d), (e)

Freeland: pp. 524-527

Problems: pp. 527-528, ## 1, 2

XII. Passive Activity Limitations and 461(l)

Code: § 469(a), (b), (c)(1), (2), (4), (7), (d), (e)(1), (2), (3), (f), (g), (h),
(i)(1)-(3)(A), (6), (j)(1), (2), (6), (8), 172, 461(l)

Regs: §§ 1.469-4(a)-(c), (e), (f), (g), -5T(a), (b)(2)(ii), (iii), (c), (d), (e),
(f)(2), (4), -5(f)(1)

Freeland: pp. 5528-541, 677-679

Problems: pp. 541-542, ## 1(except g), 2,3,4, 6, 7 and Bonus 469 Question

XIII. NOLs, Bad Debts, Worthless Securities

Code: §§ 172, 166, 165(g)

Regs: §§ 1.166-1(c), (d)(1), (e)-(g), -2(a) and (b), -5(a) and (b).

Freeland: pp. 677-679, 783-796

Problems: pp. 796-797 ## 1 and 2

XIV. IRC 199A

Code: § 199A (skip “g”)

Regs: Skim final 199A Regs

Freeland: pp. 941-944

Problems: pp. 944-945 ## 1 and 2