INCOME TAXATION OF TRUSTS AND ESTATES—LAWG-868-10
GEORGETOWN UNIVERSITY LAW CENTER
Fall 2016—Professors Hood and Kirk

COURSE SYLLABUS

TIME/PLACE: 5:45 pm – 8:45 pm, Tuesdays and Thursdays
September 1 – September 27, 2016
Room 109, McDonough Hall

1. Course Description

This course covers the principal federal income tax rules applicable to trusts and estates, including simple and complex trusts, grantor trusts, charitable trusts and income in respect of a decedent. The use of problems for illustrative purposes, planning points, and other practical considerations are emphasized in the course.

In Classes 1, 2, Professor Kirk will cover grantor trusts. In Classes 3, 4, 5, and 6, Professor Hood will cover estates and non-grantor trusts, including simple and complex trusts. In Class 7, Professor Kirk will cover charitable trusts, and in Class 8 he will cover trusts and estates as S corporation shareholders.

2. Required & Optional Texts

For Classes 1-2, other than specific citations listed below, the primary reference material will be


  TMP 819-1st, which is not required, may downloaded online.

For Classes 3, 4, 5, 6 and 7, other than specific citations listed below, students will read:

- All You Really Need to Know About Subchapter J You Learned from This Article, 63 Mo. L. Rev. 1 (1998) by Jeffrey G. Sherman and


  For these classes, students may find it helpful to consult BNA’s Tax Management Portfolio 852-4th, Income Taxation of Trusts and Estates, written by Alan S. Acker and published by Tax Management, Inc. (2014). TMP 852-4th is available to students online if they wish to refer to it, but it is not required reading.

For Class 7, other than the specific citations listed below, the primary reference material will be:


  TMP 865-2nd and TMP 866-1st, which are not required, may be downloaded online.
COURSE SYLLABUS (Continued)

For Class 8, other than the specific citations listed below, the primary reference material will be


TMP 730-3rd, which is not required, may be downloaded online.

3. Canvas

The professors will establish a course webpage using Canvas that will provide an electronic copy of this syllabus and certain materials described above.

4. Grading & Exam

Your entire grade for the course will be determined by a take-home final exam. The exam will be an open book exam. The Take-Home exam will be available for pickup on or after 9:00 am on Friday, October 7 and is due by 5:00 p.m. on Tuesday, October 11.

5. Professors & Contact Information

H. Carter Hood
Ivins, Phillips & Barker, Chtd.

David H. Kirk
Private Client Services (National Tax)
Ernst & Young LLP
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<td>Class 1</td>
<td><strong>Income Taxation of Estate, Trusts and Beneficiaries</strong></td>
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<td>Sept 1 (Thurs)</td>
<td><strong>Kirk</strong></td>
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**Topic:** Introduction

- Overview of Course and Subchapter J (Code §§ 641-691)
- Characteristics of an Estate or Trust
- Income Taxation v. Transfer Taxation
- Grantor v. Non-grantor Trusts
- Fiduciary Accounting Income
- Trusts as Tax Entities

**Topic:** Grantor Trusts

**Assignment:**

a. **Grantor Trusts Generally**
   - Section 671 & Treas. Reg. §§ 1.671-1, -2, -3, -4
   - Treas. Reg. § 301.6109-1(a)(2)
   - Helvering v. Clifford, 309 US 331 (1940)
   - Mallinckrodt v. Nunan, 146 F.2d 1 (8th Cir. 1945)

   Skim (Not Required, but useful) (Available on Courseware)
   - 1954 Trust Review, 54 Colum. L. Rev. 1237

b. **Section 672: Grantor Trust Definitions**
   - Treas. Reg. § 1.672(a)-1
   - Treas. Reg. § 1.672(b)-1
   - Treas. Reg. § 1.672(c)-1
   - Treas. Reg. § 1.672(d)-1
   - Treas. Reg. § 1.672(f)-1

c. **Section 673: Reversionary Interests**
   - Treas. Reg. § 1.673(a)-1
   - Treas. Reg. § 1.673(b)-1
   - Treas. Reg. § 1.673(c)-1
   - Treas. Reg. § 1.673(d)-1
COURSE SYLLABUS (Continued)

Class 2
Sept 6 (Tues)
Kirk

**d. Section 674: Power to Control Beneficial Enjoyment**
Treasury Regulation § 1.674(a)-1
Treasury Regulation § 1.674(b)-1
Treasury Regulation § 1.674(c)-1
Treasury Regulation § 1.674(d)-1

Reading Reference:
TMP 819, Grantor Trusts: Income Taxation under Subpart E

**Income Taxation of Estate, Trusts and Beneficiaries**

**Topic:** Grantor Trusts, Continued

**Reading Assignment:**

a. **Section 674: Power to Control Beneficial Enjoyment, Continued**

b. **Section 675: Administrative Powers**
   Treasury Regulation § 1.675-1

c. **Section 676: Power to Revoke**
   Treasury Regulation § 1.676(a)-1
   Treasury Regulation § 1.676(b)-1

d. **Section 677: Income for Benefit of Grantor**
   Treasury Regulation § 1.677(a)-1
   Treasury Regulation § 1.677(b)-1
   *Corning v. Comm'r*, 104 F.2d 329 (6th Cir. 1939)
   *Weil v. Comm'r*, 3 T.C. 579 (1941)
   Compare PLR 8701007 with PLR 8839008

e. **Section 678: Person Other Than Grantor Treated as Substantial Owner**
   Treasury Regulation § 1.678-1
Topics: General taxation rules applicable to Trusts and Estates

Trust Accounting
- Fiduciary Accounting Income (§ 643(b))
- Distributable Net Income (§ 643(a))

Simple Trusts - Topics:
- Deduction for Distribution to Beneficiaries (§ 651)
- Amounts Included in Beneficiary’s Income (§ 652)

Reading Assignment:
- Sherman, Jeffrey G., All You Really Need to Know About Subchapter J You Learned from This Article, 63 Mo. L. Rev. 1 (1998) (Available on Courseware)

Related Sections of TMP 852-2nd (not required reading, but helpful)
- Section I. Scope of Portfolio and Subchapter J
- Section II [but not II.E] Theory and Overview

- Section IV
  A. Taxable Year (§ 644)
  B. Taxable Income of Estate and Non-Grantor Trust
     1. Gross Income and Exclusions (§§ 61, 641(b))
        a. Gains from Dealings in Property (§§ 61(a)(3), 1001, 1014)
        b. Income in Respect of a Decedent (§ 691)
     2. (Selections)
        a. Deductions in Context (§ 183)
           (1) Trade of Business Deductions (§§ 183, 162, 163(a), 165(c)(1), 167(a)(1), 168(d), 469, 642(c))
           (2) Deductions with Respect to Investments, Income Producing Activities (§§ 212(1), (2), 163(d), 164, 165(c)(2))
           (3) Other General or Personal Deductions (§ 212(3), 165(h), 163(h), 164, 642(b), (c))
        b. Nondeductibility of Expense Alloc. to Tax-Exempt Interest-§265
  C. Federal Income Taxes and Credits

- Section V
  A. Fiduciary Accounting Income Under State Law
  B. Distributable Net Income
  D. Classification of Trust as Simple or Complex
  E. (except V.E.7) Taxation of Simple Trusts
### Class 4
**Sept 13 (Tues)**
**Hood**

**Topics:**
- Simple Trusts - Continued

**Complex Trusts and Estates - Topics:**
- Deduction for Distribution to Beneficiaries (§ 661)
- Amounts Included in Beneficiary’s Income (§ 662)

**Reading Assignment:**
- Continue reading Sherman, All You Really Need to Know About Subchapter J You Learned from This Article (Available on Courseware)
- Relevant Code Sections, Lecture Slides and any Problem Sets or Handouts

**Related Sections of TMP 852-2nd (not required reading, but helpful):**
- Section V.F Taxation of Complex Trusts and Estates

### Class 5
**Sept 15 (Thurs)**
**Hood**

**Topics:**
- Estates and Complex Trusts (Continued)
  - Deduction for Distribution to Beneficiaries (§ 661)
  - Amounts Included in Beneficiary’s Income (§ 662)
  - Specific Gifts and Bequests (§ 663(a)(1))
  - 65-Day Election Rule (§ 663(b))
  - Separate Share Rule (§ 663(c))
  - Distributions in Kind (§ 643(e))
  - Charitable Distributions (§ 663(a)(2), § 642(c))

**Reading Assignment:**
- Relevant Code Sections, Lecture Slides and any Problem Sets or Handouts

**Related Sections of TMP 852-2nd (not required reading, but helpful):**
- Section V.C Specific Gifts and Bequests -- § 663(a)(1)
- Section V.G Distributions in Kind
- Section IV.B.2 Deductions (selections)
  - Charitable Contribution Deduction -- §642(c)
- Section V.F.5 65-Day Election Rule -- § 663(b)
- Section V.I Separate Share Rule -- § 663(c)
## Class 6
### Sept 20
### (Tues)
### Hood

**Topics:** General taxation and deduction rules applicable to Trusts and Estates
- Trade or Business Expenses – § 162
- Income-Producing Activities, Costs of Admin. and Tax Advice – §212
- Depreciation, Depletion & Amortization–§§167, 611, 169, & 642(e), (f)
- Losses from Sales or Exchanges of Capital Assets – §§1211(b), 1212(b)
- State, Local, and Foreign Taxes – §164
- Deduction for Estate Taxes Paid – §691(c)
- Personal Exemption – §642(b)
- Miscellaneous Itemized Deductions – § 67(e)
- Passive Activity Losses – § 469
- Disallowance of Double Deductions -- §642(g)
- Carryovers and Excess Deductions -- §642(h)

**Reading Assignment:**
- Relevant Code Sections, Lecture Slides and any Problem Sets or Handouts

**Related Sections of TMP 852-2nd (not required reading, but helpful)**
- Section IV.B.2 Deductions (selections)
  - Trade or Business Expenses – § 162
  - Income-Producing Activities, Costs of Admin. and Tax Advice – §212
  - Depreciation, Depletion & Amortization–§§167, 611, 169, & 642(e), (f)
  - Losses from Sales or Exchanges of Capital Assets – §§1211(b), 1212(b)
  - State, Local, and Foreign Taxes – §164
  - Deduction for Estate Taxes Paid -- §691(c)
  - Personal Exemption – §642(b)
  - Adjusted Gross Income – §62(a)
  - Miscellaneous Itemized Deductions – §§67(e), 212
  - Disallowance of Double Deductions -- §642(g)
  - Carryovers and Excess Deductions -- §642(h)
### Course Syllabus (Continued)

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<td>a. Section 664: Charitable Remainder Trusts Treas. Reg. §§ 1.664-1, -2, -3,</td>
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<td>b. Charitable Lead Trusts Section 642(c) &amp; Treas. Reg. § 1.642(c)-1, -2, -3</td>
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<td>TMP 865-2nd: Charitable Remainder Trusts and Pooled Income Funds</td>
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<td>Introduction to Trusts &amp; Estates as S Corporation Shareholders Section 1361(c)(2) &amp; Treas. Reg. § 1.1361-1(h)</td>
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### Class 8  
**Sept 27 (Tues)**  
**Income Taxation of Estate, Trusts and Beneficiaries**  

**Topic:** Trusts & Estates as S Corporation Shareholders  

**Reading Assignment:**  

- a. Trusts & Estates as Shareholders, Generally  
  Section 1361(c)(2) & Treas. Reg. § 1.1361-1(h)  
  Optional -- PLR 201226019 &  
  *After Death, the Voting Trust and S Corporation Can Survive*  
  (Tax Notes, 7/8/2013 - 2013 TNT 131-7)  

- b. Qualified Subchapter S Trusts (QSSTs)  
  Treas. Reg. § 1.1361-1(j)  
  Optional – CCA 201327009 (released 7/5/13)  

- c. Electing Small Business Trusts (ESBTs)  
  Treas. Reg. § 1.1361-1(m) & Section 641(c)  

**Reading Reference:**  

**Time Permitting ---**  
Section 1411 (Net Investment Income Tax) for Estates & Trusts  
See Preamble & Reg Text Excerpt on Courseware  

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**Oct 7 - Oct 11**  
**Income Taxation of Estate, Trusts and Beneficiaries**  
**TAKE-HOME FINAL EXAM**