Class Day, Time and Place: Wednesdays, 11:10 am - 1:10 pm, Room Hotung 5013

Course Description: This workshop uses both case studies and simulated exercises to introduce students to common controversy and litigation issues in representing individual taxpayers, particularly those of low-income. The workshop follows case studies throughout the administrative and judicial phases of tax disputes with the IRS. The course begins with an overview of substantive and procedure income tax issues that commonly affect individual taxpayers and produce a large share of the tax litigation in the federal courts. One or more case studies will be used so students can (1) role play as lawyers for the parties; (2) engage in client interviews, (3) draft Tax Court documents, including petitions, stipulations and briefs; (4) examine witnesses at trial; and (5) conduct other exercises designed to teach the skills of effective advocacy and to convey a practical understanding of the tax controversy process. The course is designed to combine both theory and practice.

Reading Materials: Readings will be drawn from various sources, including Internal Revenue Code provisions, Treasury Regulations and case law. These materials will be accessible on the Canvas web site for this course (see below).

Class Attendance: Students are expected to take part actively in class discussions and to keep up with assignments. Regular attendance at class sessions is essential to comply with the policies of the Law School and to get the most benefit from the course. The simulation exercises connected with the course may need to be done outside of class at hours that students and role players agree on within the time frames set by the professors.

Office Hours: Students are welcome to contact the professors at the email addresses and phone numbers listed above. Office hours can be scheduled at a mutually convenient time.

Grades: Grades will be determined by performance on writing assignments and on exercises in class, with possible adjustment for participation in class discussions. There is no final exam.

Course Web Site: The course has a Canvas site in which students are to enroll. Internal Revenue Code provisions, Treasury Regulations, case law and other authorities cited in this syllabus are accessible by links from the web site. Documents relating to the hypothetical cases, including a summary of the factual background of each, are also
available on the web site. Additional materials will be posted to the site from time to time. Students need to check it regularly throughout the term.

Class No. 1 January 18, 2017 Introduction to the Course

At this session, the framework of the workshop will be outlined. The workshop is aimed at teaching students how a case begins with an examination of a return by the IRS, followed by administrative appeal rights and processes, and culminating in the litigation of a case before the United States Tax Court under the Small Tax Case procedures.

To accomplish this, the workshop will begin with introduction to several substantive areas of law that are common to many cases that are litigated as Small Tax cases. Specifically, in this class and next we will learn about the substantive law of: (1) dependency exemptions; (2) the earned income credit; (3) innocent spouse relief for married spouses; and (4) innocent spouse relief for divorced or separated spouses.

It is important for students to read the assigned materials. To assist students, we have posted or linked on Canvas power point presentations, Pitkocharts and Prezi presentations for the substantive areas of law involved in the case studies. Students may find it useful to first read and listen to the PowerPoint, then read the statutes, regulations and cases, and the reread and re listen to the PowerPoint.

Class time during the first and second class will be spent reviewing the proposed simulation cases that will form the basis of the workshop simulation exercises and applying the substantive law to them.

Assigned Materials for This Class:

Review posted
PowerPoint on Family Status Issues
Review Form 8332
Read:
Internal Revenue Code, §§ 2(b), 24, 32, 151, 152
Treasury Regulations on Income Tax, § 1.152-4
Katz v. Commissioner, T.C. Summary Opinion 2013-98
Hall v. Commissioner, T.C. Summary Opinion 2013-82

Review case studies for dependency exemption cases

Class No. 2 January 25, 2017 Introduction to the Course (continued)

This class will continue with reviewing the proposed simulation cases involving Innocent
Spouse Relief for married spouses and Innocent Spouse Relief for divorced or separated spouses.

At the end of the class, each student will be assigned a case study in which the student will role play the lawyer for a taxpayer. For Class No. 3, a student should read through the case study to which the student has been assigned. The student should read the assignment for Class 3 and our in-class work will involve trying on interview techniques for your case studies. We will have sign-up sheets at the class for students to sign up for the out of class interviews that will take place during the period February 1-5, 2017.

Assigned Materials for This Class:

PowerPoint for Innocent Spouse Relief. Note that there are several different forms of relief: (1) Sec. 6105(b) that is available if the spouse is still married; (2) Sec. 6105(c) that is available only if the spouses are divorced or separated for more than 12 months; and (3) section 6015(f) that is available if the spouse does not otherwise qualify for relief under section 6015(b) or (c) (if there is an understatement of tax) or if there is an underpayment of tax.

Read:
IRC Sec. 6015 (b), (c), (e), (f) and (g) (2)
Treas. Regs. §§ 1.6015-1, -2, -3 (and proposed amendments)
Treas. Reg. § 1.6015-4 (and proposed amendments)
Treasury Reg. § 1.6015-5(a) (2) as amended, 2013-1 C.B. 191, 2013 IRB LEXIS 450
Mitchell v. Commissioner, 292 F.3d 800 (D.C. Cir. 2002) (knowledge standard)
Wilson v. Commissioner, 705 F.3d 980 (9th Cir. 2013) (Tax Court can consider new evidence outside the administrative record)
Review IRS Form 8857
National Taxpayer Advocate Annual Report 2015, Most Litigated Issue #10 Relief form Joint and Several Liability Under IRC § 6015
Class No. 3   February 1, 2017   Interviews of Clients

Several techniques for interviewing clients are considered. Using your case studies, we will discuss how you might approach the interview of your “client.” The actual interview of your client will take place out of class and the client will be played by a volunteer. We will have sign-up sheets in class

**Assigned Materials for This Class:**

Diana Leyden, *Advocating for Low Income Taxpayers* pp. 267-285 (Chapter 6)

**Workshop Assignment #1 for Next Class:** During the period February 1-5 you will need to arrange an interview with your assigned “client.” This interview will be videotaped and you will be required to review your videotaped out of class client interview and to write a memo about the client interview using the template provided on Canvas under Assignment #1. The memo should assess the strengths and weaknesses of the client’s position considering the facts disclosed during the interview and identify any difficulties you experienced in interviewing your client. Students will make oral presentations summarizing their memos at the next class session. **These memos are due NO LATER THAN 12pm February 6, 2017.**

Class No. 4   February 8, 2017   Interviews of Clients (continued)

Please bring two hard copies of your memo for the professors and one for you to refer to. Each student will present a 5-10 minute oral summary of the student’s memo. The presentation should briefly discuss challenges you may have had in interviewing the client (what techniques did you try and what worked and didn’t work), a summary of the “facts” you obtained from the interview, and your evaluation of your client’s case based on your understanding of the law and the facts developed in the interviews.

**Workshop Assignment for Next Class:** Counsel for Ruth and Sofia will prepare a request for innocent spouse relief (Form 8857). Counsel for George and Isabella will complete a questionnaire for the non-requesting spouse (Form 12508). The lawyers in the dependency exemption cases will draft written appeals protests supporting the claims of their respective clients.

In the next two classes, you will practice preparing to defend your position at a hearing
before an IRS appeals officer and then attend an out of class Appeals Conference to be conducted by a role player Appeals Officer.

At the end of the class we will have sign-up sheets for the future appeals hearings, to be conducted outside of class.

**Class No. 5       February 15, 2017       Appeals Office Hearings- Practice**

The written protests and Forms 8857 and 12508 are due.

We will discuss in each of the case studies approaches to representing your client at the appeals office hearing. You should consider the following: (1) should I bring my client or not? (2) What are the benefits or detriments to bringing my client? (3) What information must I give to the appeals officer? (4) What information can I not provide the hearing officer and what might be the pros and cons of not providing it? and (5) Should I take charge of the hearing or wait to respond to the hearing office?

Outside of class you will be asked to attend an appeals hearing during the period February 15-23, 2017, that will be videotaped. You must conduct the hearing and review the videotape before next class. You must prepare a one page critique of the exercise using the template posted on Canvas for Assignment #2 and submit it to the professors **NO LATER THAN 12pm February 25, 2017.**

**Assigned Materials for This Class:**

- PowerPoint on Appeals Conferences.
- Diana Leyden, *Advocating for Low Income Taxpayers* pp. 267-285 (Chapter 6)
- Treasury Regulations on Income Tax, §§ 1.6015-5, -6 (and proposed amendments)

**February 22, 2017   No Class (Faculty Retreat)**

**Class No. 6       March 1, 2017       Appeals Office Hearings (continued)**

Bring two hard copies of your critique, one for each professor, and one for yourself to class. Each student will be asked to be a short 5-10 minute oral presentation that summarizes his or her experience of the appeals conference and his or her critique. You will have conducted the appeals conference as a team and each member of the team will be responsible for one of the two issues in the case. Your critique should be focused on your issue.

We will begin talking about Tax Court jurisdiction and procedure after the presentations.
Class No. 7 March 8, 2017 Tax Court Pleadings

The procedures for bringing suit in the Tax Court will be discussed based on adverse actions by the IRS—a notice of determination denying the request for innocent spouse relief; and statutory notices determining income tax deficiencies based on disallowance of all claims to dependency exemptions or the earned income credit. Among the matters to be considered are the periods allotted by the Code for filing Tax Court petitions; the choice between the Tax Court’s regular and small case dockets; the form and contents of pleadings; and the process of stipulation.

Assigned Materials for This Class:

Nadler (Ch. 9 and 10)
Internal Revenue Code, §§ 6212-6214 and 6015(e)
Treasury Regulations on Income Tax, § 1.6015-7 (and proposed amendments)
Rules of Practice and Procedures of the United States Tax Court,
Rules 1-41, 91, 170-174, 320-325, and Forms 1, 2, 4, 5 and 13
Dressler v. Commissioner, 56 T.C. 210 (1971)
Notice of Determination (innocent spouse case)
Notices of Deficiency (dependency exemption cases)

Workshop Assignment for Class No. 8: Counsel for Ruth, Sofia, Charles and Susan are to draft Tax Court petitions on behalf of their respective clients. George’s and Isabella’s counsel prepares a notice of intervention alleging that their spouse or ex-spouse is not entitled to innocent spouse relief.

March 15, 2017 No Class (Spring Break)

Class No. 8 March 22, 2017 Stipulations of Facts

The Tax Court petitions and notice of intervention are due. We will review the Tax Court’s pre-trial procedures, including the Branerton case and Rule 91, Stipulation of Facts. Students will be presented with Stipulations of Facts that Respondent’s Counsel has prepared for their case and we will discuss in class what to consider in reviewing the stipulation, how to object, evidentiary considerations, and the process for finalizing the stipulations. At the beginning of the next class, bring a copy of the stipulation of facts that you propose and if they are not different from the draft, explain why. We will also review the Tax Court rules for Pre-Trial memoranda.

Workshop Assignment for Class No. 10: Each student is to prepare, on behalf of his or her client, a pre-trial memo, due April 1st.
Class No. 9  March 29, 2017  Tax Court Trial Procedures

The class visits the Tax Court, to take a tour of the courtrooms, attend a trial or motions hearing if one is in session, and take part in simulated calendar calls in the hypothetical cases. Trial procedures of relevance to those cases will be discussed, including the right of intervention granted to a non-requesting spouse in a § 6015 proceeding and the strategy applicable to exemption cases in which the IRS as a protective measure disallows the claims of both parents.

Assigned Materials for This Class:

- Tax Court Rules of Practice and Procedure, Rules 140-151, 325
- http://www.ustaxcourt.gov/ustc_video_welcome.htm

Workshop Assignment for Next Class: Prepare for trial of the dependency exemption cases.

Class No. 10  April 5, 2017  Trial of Dependency Exemption Cases

Pre-trial memos are due. The cases involving dependency exemptions and earned income credit are tried to the Tax Court, with students performing the role of petitioner’s counsel. The former spouses testify in opposition to each other’s claims to the dependency exemption(s) or the earned income credit.

Workshop Assignment for Next Week: The lawyers for Charles and Susan draft post-trial briefs. Students representing Ruth, Sofia, George and Isabella- Prepare for trial of the innocent spouse cases.

Class No. 11  April 12, 2017  Trial of Innocent Spouse Case

Post-trial briefs in the dependency exemption cases are due. The innocent spouse case is tried. George and Isabella as intervenors testify in opposition to Ruth’s and Sofia’s eligibility for relief.

Workshop Assignment for Next Week: Lawyers for the parties to the innocent spouse case prepare post-trial briefs.

Class No. 12  April 19, 2017  Post-Trial Considerations

Post-trial briefs are due in the innocent spouse case. The Tax Court files opinions and decisions in the hypothetical cases, prompting appeals. Preparation begins for oral arguments at the U.S. Court of Appeals to be held at next week’s class.
Assigned Materials for This Class:

Tax Court Rules of Practice and Procedure, Rules 160-163, 190-193

Workshop Assignment for Next Week: Prepare for moot court.

Class No. 13        April 26, 2017        Moot Court

The cases are orally argued, with students as advocates and as judges on the panels.