STATE AND LOCAL TAXES: OTHER BUSINESS TAXES
SYLLABUS

GEORGETOWN UNIVERSITY LAW CENTER
2016 FALL SEMESTER

ADMINISTRATIVE MATTERS

Contact Information
Philip M. Tatarowicz
Professor, Graduate Tax Program

Class Location, Meeting Times, Final Exam
Class Location: McD 160
Meeting Time: Wed., 5:45 – 7:45 PM
Final Exam: Take-home exam

Securing Class Materials; Grades and Final Exam

Welcome to State and Local Tax: Other Business Taxes. Information concerning class content and links to reading assignments is available via “The West Education Network” (“TWEN”) system, which can be accessed via www.lawschool.westlaw.com. Contact Thanh Nguyen [REDACTED] if you did not receive instructions for setting-up and creating your OnePass username and password that will allow you access to the TWEN system.

The TWEN system should be visited before preparing for each class to ascertain there have been no changes to assigned reading assignments or content. Further, the TWEN system should be consulted before each class to verify no announcements or other administrative items have been posted concerning class changes.

Note: Class readings are parceled between “assigned” and “optional.” Students are not required to read, nor will they be called upon to discuss optional readings, which may be discussed by the professor during class. However, in advance of the relevant class, students should read and be prepared to discuss assigned readings.

Exam

Grades will be awarded based on a single take-home exam that can be taken on a date of the student’s choosing during the reserved exam period of December 6-17, 2016. Students will be allowed three hours to complete the exam. The primary objective of the exam will be to test students on their ability to identify and analyze issues, and apply the legal principles and rules that will be taught in this course to hypothetical fact patterns.
CLASS SCHEDULE AND ASSIGNMENTS

CLASS ONE – August 31, 2016

Taxonomy and Dynamics of State and Local Taxes (SALT); Course Overview

1. Welcome
   a. Why a Need for this Course?

   **Optional Readings:**

2. Factors Contributing to the Dynamics of SALT
3. Taxonomy of SALT

   **Assigned Readings:**

   a. Direct v. indirect taxes
   b. Inland v. border taxes
   c. Ad valorem v. excise taxes
   d. Taxes v. fees
   e. Other tax-like burdens
   f. States’ continuing experimentations

4. Overview of Semester
   a. Course Syllabus
   b. Administrative Matters

CLASS TWO – September 7, 2016

Unemployment Taxes

1. Definition and History

   **Assigned Readings:**

2. Computing State Unemployment Taxes
3. Managing State Unemployment Tax Costs

   **Optional Readings:**

   Appealing to the Board of Review, State of Illinois Department of Employment.
4. The Experience Based Tax Rate
   a. SUTA Dumping
5. Illustrative Factors that Can Influence an Employer’s Experience Based Rate
   a. Mergers, Acquisitions and Transfers
   b. Rate Management and Statutory Elections
   c. Policy
6. Implications of Recent Recession
   a. FUTA Credit
   b. Interest on Federal Loans
7. Concluding Observations

CLASS THREE – September 14, 2016

Tax Incentives

1. Introduction

Optional Readings:

2. Dynamics and importance in multistate cost management
   a. Statutory incentives
   b. Negotiated incentives
3. Tax Policy Arguments - Pros and Cons
4. Illustrative legal challenges
   a. Federal law
      i. Permissible incentive or discriminatory taxation?

    Assigned Readings:
    Cuno v. DaimlerChrysler, Inc., 386 F.3d 738 (6th Cir. 2004).

    ii. Establishment Clause

    Assigned Readings:

   b. State law
      i. Authority to award an incentive
ii. Standing to challenge

Assigned Readings:

iii. Business purpose

Assigned Readings:

iv. Impact of subsequent law changes

Assigned Readings:

v. Scope of clawback provisions

Assigned Readings:

5. Summary

CLASS FOUR – September 21, 2016

*Capital Stock Taxes*

1. Definition and history
2. Jurisdictional basis
3. Pro Forma computation and Issue Analysis
   a. Illustrative tax-base-scope issues

Assigned Readings:


b. Illustrative tax-base-valuation issues
c. Sourcing (“allocating”) the tax base

4. Conclusion

Illustrative Industry Specific Taxes

1. Premium and retaliatory taxes

   Assigned Readings:
   American Council of Life Insurers, *General Discussion of Premium Taxation*,

2. Severance taxes
3. Telecommunication taxes
4. Hospital and medical provider taxes

**CLASS FIVE** – September 28, 2016 (Guest Speaker: Kendall Houghton)

*Unclaimed Property (Part 1 of 2)*

1. Overarching policies and legal principles

   Assigned Readings:
   BNA Multistate Tax Management Portfolio 1600: Unclaimed Property
   (Introduction; History and Evolution of Current UP Law; Uniform Acts; Features
   of the Uniform Acts) (On TWEN).

   a. Uniform Acts
   b. Defining Intangible Property and Unclaimed Property
   c. “Holder”
   d. Derivative rights doctrine
   e. Windfalls
   f. Reuniting property with owners

2. Complex legal issues and unsettled questions

   Assigned Reading:


   thereto.

   a. Estimations of liability: how and why? Are estimations defensible?
   b. Defenses to UP claims:
i. Conditions precedent (property rights have not vested) v. “private escheat”

CLASS SIX – October 5, 2016

Transfer Taxes

1. Definition and history
2. Real estate transfer taxes
   a. Purpose
   b. Current use and reliance
   c. Tax policy pros and cons
3. Controlling interest transfer taxes
   a. Overview
   b. Tax computation

Assigned Readings:

c. Special situations
   d. Exemptions

Assigned Readings:

4. Special situations in real estate transfer taxes
   a. Tiered structures
   b. Transfers of RE to a Newco or other tax avoidance transfers
5. Concluding remarks

CLASS SEVEN – October 12, 2016 (Guest Speaker: Kendall Houghton)

Unclaimed Property (Part 2 of 2)

c. Jurisdictional claims
   i. Texas v. New Jersey and Supreme Court jurisdictional precedent
   ii. Third Priority Rule
   iii. Foreign owner property
   iv. Place-of-purchase presumption
   v. Current litigation
3. Audit process
4. Audit defense best practices
5. Strategic/legal issues that arise in audit
6. Practical applications of UP theory (e.g., estimations, identification of “holder” in multi-party arrangements, etc.)
7. Settlement or litigation of UP disputes
8. Course/exam review for classes dealing with unclaimed funds.

CLASS EIGHT – October 19, 2016

Ad Valorem Property Taxes (Part 1 of 3)

1. Introduction
   a. History and Centrality of the U.S. Property Tax
2. Defining “Property” and “Tax”

   **Assigned Readings:**
   

3. Incidence of Tax v. Political Perceptions
4. General Classification of Property
5. Fairness Principle and its Political Challenges

   **Assigned Readings:**
   

6. Assessment Process
7. State-level Assessment
8. Calculation of Real Property Tax
9. Calculation of Personal Property Tax
10. Political Environment of Property Taxation
11. Property Tax-Related Organizations

CLASS NINE – October 26, 2016

Ad Valorem Property Taxes (Part 2 of 3)

12. Property Tax Issues that Typically Engage Lawyers
   a. Uniformity

   **Assigned Readings:**
   
b. Payments in Lieu of Taxes (PILOT)

**Assigned Readings:**


c. Equalization

**Assigned Readings:**


d. Split Tax Rolls

**Assigned Readings:**


---

**CLASS TEN** – November 2, 2016 (Guest speaker: David Fruchtman)

*Advising Foreign Businesses About American State and Local Taxation – And a Few Words About Tax Haven Legislation*

**Assigned Readings:**


CLASS ELEVEN – November 9, 2016

Ad Valorem Taxes (Part 3 of 3)

13. Thorny Problems
   a. Determining Fair Market Value
      i. Approach 1: Cost

      **Assigned Readings:**
      Nestle USA, Inc. v. Wisconsin Dep’t of Revenue, 795 N.W.2d (Wis. 2011).

      ii. Approach 2: Income

      **Assigned Readings:**
      St. Louis Cnty. v. Sec. Bonhomme, Inc., 558 S.W.2d 655 (Mo. 1977) (en banc).

      iii. Approach 3: Comparable Sales

      **Assigned Readings:**
      Noah’s Ark Family Park v. Bd. of Review of Lake Delton, 573 N.W.2d 852 (Wis. 1997).

   b. Distinguishing Real & Personal Property

      **Assigned Readings:**
      Sears Roebuck & Co. v. Seven Palms Motor Inn, Inc., 530 S.W.2d 695 (Mo. 1975).

   c. Transport & Utility Companies

      **Assigned Readings:**
CLASS TWELVE – November 16, 2016

Gross Receipts (aka “Turnover”) Taxes

1. Definition and History

**Assigned Readings:**


2. Legal Incidence and Basic Types of GRTs

**Assigned Readings:**


3. In a Nutshell: GRT v. VAT v. SUT

4. Tax Policy Pros and Cons

5. Common Issues that Engage Lawyers

   a. Nexus

   **Assigned Readings:**


   *Lamtec Corp. v. Wash. Dep't of Revenue*, 246 P.3d 788 (Wash. 2011).


   **Assigned Readings (cont.):**


   *Simpson Inv. Co. v. Wash. Dep’t of Revenue*, 3 P.3d741 (Wash. 2000).


   b. Sourcing
c. Select New Era GRTs and Illustrative Issues
   i. Ohio’s Commercial Activity Tax
   ii. Texas Margins Tax
   iii. Financial Statement Implications

Wednesday, November 23, 2016 – Thanksgiving Holiday – No Class

CLASS THIRTEEN – November 30, 2016 (Last Class)

Local and Select Excise Taxes; Course/Exam Review

1. Local taxes

   Assigned Readings:
   Bender’s State Taxation: Principles and Practice, Part 6, Special Issues in State Taxation, Chapter 29 LOCAL TAXES, sections 29.01 (State Law Limitations on Taxation by Political Subdivisions); 29.02 (Taxation by Political Subdivision); 29.03 (Local Income Taxes); and 29.05 (Miscellaneous Fees and Taxes) (On TWEN).

   State Government Tax Collections Summary Report: 2013, Governments Division Briefs (April 08, 2014)

2. Select excise taxes

   Assigned Readings:
   Jonathan Williams, Paying at the Pump: Gasoline Taxes in America, Tax Foundation Background Paper, No. 56 (Oct. 2007).


   Justin Higginbothom, Bag Taxes Disappointing in Debut, Tax Foundation Fiscal Fact No. 224 (May 7, 2010).

3. Course/exam review (except for classes dealing with unclaimed funds)