Course Description: This workshop offers a guide to the representation of individual taxpayers, particularly those of low-income, throughout the administrative and judicial phases of tax disputes with the IRS. The course begins with an overview of income tax issues that commonly affect individual taxpayers and produce a large share of the tax litigation in the federal courts. Two such issues—one involving innocent spouse relief, the other dependency exemptions—will be the subject of hypothetical cases in which students acting as lawyers for the parties will engage in client interviews, draft Tax Court petitions, stipulations and briefs, examine witnesses at trial and conduct other exercises designed to impart the skills of effective advocacy and to convey a practical understanding of the tax controversy process.

Reading Materials: Readings will be drawn from various sources, including Internal Revenue Code provisions, Treasury Regulations and caselaw. These materials will be accessible on the Westlaw TWEN web site for this course (see below). The only text is Practitioner’s Guide to Innocent Spouse Relief, Second Edition, by Robert B. Nadler (ABA 2014), available at the law school bookstore.

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.

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 TWEN web site in which students are to enroll. Internal Revenue Code provisions, Treasury Regulations, caselaw 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 are asked to check it regularly throughout the term.
Class No. 1 January 20, 2016 Introduction to the Course

At this session the framework of the workshop will be outlined, followed by a review of provisions of the tax law that affect individual taxpayers and give rise to some of the most frequently litigated issues on the docket of the Tax Court.

Assigned Materials for This Class:

Nadler, pp. 1-31 (Chapters 1-3)
Internal Revenue Code, §§ 2(b), 24, 32, 151, 152 and 6015
Treasury Regulations on Income Tax, § 1.152-4
Treasury Regulations on Income Tax, §§ 1.6015-1, -2, -3 (and proposed amendments)
Armstrong v. Commissioner, 139 T.C. 468 (2012)
Katz v. Commissioner, T.C. Summary Opinion 2013-98
Hall v. Commissioner, T.C. Summary Opinion 2013-82
Mitchell v. Commissioner, 292 F.3d 800 (D.C. Cir. 2002)
Summaries of hypothetical cases, with collection notices and 30-day letters

Class No. 2 January 27, 2016 Introduction to the Course (continued)

The review of commonly litigated tax issues continues. Preparation starts for the client interviews to be conducted in the hypothetical cases at the next class session. Each student is assigned the role of lawyer for one of the taxpayers–either for Ruth Damon or George Damon in the innocent spouse case, or for Charles Hanson or Susan Hanson in the dependency exemption cases.

Assigned Materials for This Class:

Nadler, pp. 33-67 (Chapters 4-6 & Appendix A)
Treasury Regulations on Income Tax, § 1.6015-4 (and proposed amendments)
Wilson v. Commissioner, 705 F.3d 980 (9th Cir. 2013)
Nihiser v. Commissioner, T.C. Memo 2008-135

Workshop Assignment for Next Class: Prepare for client interviews.
Class No. 3  February 3, 2016  Interviews of Clients

Several techniques for interviewing clients are considered. Interviews of the taxpayers in the hypothetical cases are conducted, followed by critiques from the class.

Assigned Materials for This Class:

Nadler, pp. 69-73 (Chapter 7)
Diana Leyden, Advocating for Low Income Taxpayers  pp. 267-285 (Chapter 6)

Workshop Assignment for Next Class:  Each student is to write a memo about the client interview which the student conducted. The memo should assess the strengths and weaknesses of the client’s position in light of the facts disclosed during the interview. Students will make oral presentations summarizing their memos at the next class session.

Class No. 4  February 10, 2016  Interviews of Clients (continued)

The memos of client interviews are due. Students present oral summaries of their memos. The positions of the taxpayers in the cases are evaluated based on the facts developed in the interviews.

Workshop Assignment for Next Class: Counsel for Ruth will prepare a request for innocent spouse relief (Form 8857). Counsel for George will complete a questionnaire for the non-requesting spouse (Form 12508). The lawyers in the dependency exemption cases will draft written protests supporting the claims of their respective clients. Prepare to defend your position at a hearing before an IRS appeals officer during one of the next two class sessions.

February 17, 2016  No Class (Faculty Retreat)

Class No. 5  February 24, 2016  Appeals Office Hearings

The written protests and Forms 8857 and 12508 are due. Two appeals office hearings, one with Ruth’s counsel, the other with George’s, are held on the innocent spouse request, with students acting as the IRS appeals officers. At the hearing with Ruth’s counsel the presiding appeals officer discloses George’s questionnaire opposing Ruth’s claim for relief. The administrative procedures applicable to submissions by a non-requesting spouse are examined.

Assigned Materials for This Class:

Nadler, pp. 75-87 (Chapter 8 & Appendix B)
Treasury Regulations on Income Tax, §§ 1.6015-5, -6 (and proposed amendments)
Two appeals office hearings, one with Charles’s counsel, the other with Susan’s, are held regarding the claims to dependency exemptions, with students presiding as IRS appeals officers. At each hearing the appeals officer reveals that the taxpayer’s former spouse has taken the same dependency exemptions for the children of the marriage. We consider § 152 of the Code and the accompanying regulations as they relate to divorced parents who make conflicting claims to dependency exemptions.

March 9, 2016   No Class (Spring Break)

Class No. 7   March 16, 2016   Tax Court Pleadings and Stipulation of Facts

In light of 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—the procedures for bringing suits in the Tax Court are reviewed. Among the matters to be considered are the periods allotted by the Code for filing petitions; the choice between the Court’s regular and small case dockets; the form and contents of pleadings; and the process of stipulation.

Assigned Materials for This Class:

Nadler, pp. 89-97 (Chapters 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, Charles and Susan are to draft Tax Court petitions on behalf of their respective clients. George’s counsel prepares on George’s behalf a notice of intervention alleging that Ruth is not entitled to innocent spouse relief.
Class No. 8 March 23, 2016 Stipulations of Facts (continued)

The Tax Court petitions and notice of intervention are due. Review of the court’s pre-trial procedures continues. Lawyers for the parties negotiate stipulations of facts in the hypothetical cases.

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 30, 2016 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:

Nadler, pp. 99-104 (Chapter 11)
Tax Court Rules of Practice and Procedure, Rules 140-151, 325
King v. Commissioner, 115 T.C. 118 (2000)
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 6, 2016 Trial of Dependency Exemption Cases

Pre-trial memos are due. The cases involving dependency exemptions are tried to the Tax Court, with students performing the roles of witnesses and counsel. The former spouses testify in opposition to each other’s claims to the exemptions.

Workshop Assignment for Next Week: The lawyers for Charles and Susan draft post-trial briefs. Prepare for trial of the innocent spouse case.

Class No. 11 April 13, 2016 Trial of Innocent Spouse Case

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

Workshop Assignment for Next Week: Lawyers for the parties to the innocent spouse case prepare post-trial briefs.
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 of the appeals to be held at next week’s class.

Assigned Materials for This Class:

Nadler, pp. 105-107 (Chapter 12)
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 27, 2016 Moot Court

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