FEDERAL TAX PRACTICE AND PROCEDURE (ADMINISTRATIVE) SYLLABUS

Fall 2015       Professors Carney & Rizek

This course will cover tax practice and procedure before the Internal Revenue Service, during the administrative phase of tax controversies (i.e., up through the commencement of litigation).

Classes are scheduled for Monday evenings from 7:55 p.m. through 9:55 p.m. in Room 164 McDonough. (There is no class on Columbus Day, Monday, October 12, but that class will be made up on Tuesday, Oct. 13, at the same location and time, 7:55 p.m. through 9:55 p.m.)

The classes will cover the materials in the sequence set forth below. We try to keep to it fairly strictly, and discuss only the material that is identified for each class, but inevitably there are some overlaps in classes, and likewise some materials will be discussed in more than one class. These overlaps should be apparent, and they are identified below and will be mentioned in class. There is a final “review” class (Class 13) in which we will go over the materials again in summary and answer any questions. There is also a final examination, which we will be discussing throughout the semester; but no subject will be on the final examination unless it has previously been discussed in class.

The professors for this course are:

Robert T. Carney

Christopher S. Rizek

We may be available by phone during business hours, but email is ordinarily the most convenient way to communicate with us outside of the classroom.

The course materials are:

- Current edition of the Treasury Regulations (26 C.F.R.), and selected other provisions of the Code of Federal Regulations.
- Selected cases and other materials.

All materials other than the casebook are easily available online. LEXIS and the IRS website (www.irs.gov) for instance, include databases of all the relevant Code and
Treasury Regulations provisions, as well as the Revenue Rulings, Revenue Procedures, Publications, and other similar materials cited below. We will also make available our Powerpoint slides outlining the material to be covered in each class.

Materials described below as “required reading” should be read by everyone, preferably before the class in which they are discussed. They are the core materials upon which the examination will be based. Please note, however, that we will not necessarily discuss in class all of the material that is in the Lederman and Mazza book; if in our view a case or ruling is important, we have separately identified it below. As noted, several topics, and the related provisions of the Code and other materials, are discussed in more than one class session. To reiterate, however, nothing will be on the final examination unless it has been discussed in class.

Reading materials labeled “Further reference” below are, by definition, not required. They are simply listed as potential references or for your further independent reading in the subject areas. In particular, Michael I. Saltzman, IRS Practice and Procedure, may be mentioned throughout the class, and reviewing it may be very useful if you are unclear about a particular subject; but there is a vast amount of material in that book, and you certainly do not need to read all the suggested pages. The 2d revised student edition of the Saltzman text (to which the further reference citations are given below) is available at most legal bookstores, including Georgetown’s. (The supplements should be read along with the pages identified below.) Alternatively, your library may have a copy of the unabridged text, which covers the same material in the same order. But to reiterate, you do not need to review the “further reference” materials unless you want to, or you find a particular topic especially interesting, or you are confused about it, etc. They are entirely optional.

Class One: Overview of the tax system and guidance process (Monday, Aug. 31)

The roles of the different entities involved in tax administration: Congress, Joint Committee on Taxation, Treasury Department, IRS (Examination and Appeals Office), Chief Counsel’s Office, Department of Justice, Tax Court, District Courts, and the Court of Federal Claims.

Overview of the administrative process within the IRS: Divisions, Service Centers, Examination, Appeals, Counsel, collection, litigation, forum selection.

Required Reading: Lederman & Mazza, pp. 1-10.

IRC §§ 7801, 7802(a) and (c), 7803(a)-(c)
7805, 7441-7442, 8021-8023

Further reference: Saltzman, pp. 1-1 through 1-33
IRS Publication 1 (“Your Rights As A Taxpayer”)
Class Two: Guidance and deference; return filing rules (Monday, Sept. 14)

Types of authority. The regulations process. Revenue Rulings and Revenue Procedures. Chief Counsel Advice, IRC § 6110. The ruling process: Published rulings and private rulings. Other types of informal guidance.

Deference: what weight should be attached to regulations, rulings, and other pronouncements of the IRS?

Freedom of Information Act and § 6110. Confidentiality and §6103.

Administrative and Judicial procedures to prevent or require disclosure.

The “voluntary self-assessment system.” Kinds of returns and return filing obligations. “FBARs.”

Pre-Filing Agreements and the Compliance Assurance Process.

IRC §§ 6001, 6011-6012, 6018, 6019, 6031, 6051, 6103, 6110, 7203, 7805
FOIA, 5 U.S.C. § 552
Treas. Reg. §§ 1.6001-1, 1.6011-1, 1.6662-4, 1.6664-4, 601.601
Mayo Foundation v. United States, 131 S. Ct. 704 (2011)

Further reference: Saltzman, pp. 1-67 through 1-82, 2-1 through 2-48, 3-1 through 3-37, 3-91 through 3-135

Treas. Reg. § 601.201
Altera Corp. v. Comm’r., 145 T.C. No. 3 (July 27, 2015)

Class Three: The examination process (Monday, Sept. 21)

[Note that Classes Three and Four cover a lot of the same issues, and the materials may be discussed in either or both classes.]


Discovery from taxpayers and third parties. Tax accrual workpapers. IDRs and summonses. Third party summonses, “John Doe” summonses, and “dual purpose” summonses. Summons enforcement.
Preservation and waiver of privileges. The “policy of restraint” and reporting of
“uncertain tax positions” (Schedule UTP).
Duties of confidentiality (practitioners and IRS).

**Required reading:**
Lederman & Mazza, pp. 79-100, 119-167.
IRC §§ 6103(a)-(i), 6104, 6110, 6201-05, 6211-6213,
6221-6231, , 7213, 7213A, 7216, 7431, 7525,
7601-7605, 7602, 7604, 7609
FOIA, 5 U.S.C. § 552
Treas. Reg. § 601.105
United States v. Powell, 379 U.S. 48 (1964)
United States v. Clarke, No. 13-301 (U.S.Sup.Ct. June 19,
2014)
Schedule UTP
United States v. Textron, Inc., 577 F.3d 21 (1st Cir.
2009) (en banc)
United States v. Deloitte LLP, 610 F.3d 129 (D.C.
Cir. 2010)

**Further reference:**
Saltzman, pp. 4-1 through 4-62, 4-117 through 4-156, 8-1
through 8-125, 8-146 through 8-199, Chapter 13.
Tiffany Fine Arts v. United States, 469 U.S. 310 (1985)
Treas. Reg. § 601.702
United States v. Frederick, 182 F.3d 496 (7th Cir. 1999)
United States v. Adlman, 134 F.3d 1194 (2d Cir. 1998)
Kraus, Attorney-Client Privilege Under Fire, 104
Tax Notes 1447 (Sept. 20, 2004)
McMahon & Shepard, Privilege and the Work Product
Doctrine in Tax Cases, 58 Tax Lawyer 405 (2005)
IRS Publication 3498 (“The Examination Process”)

**Class Four: The examination process (cont’d) (Monday, Sept. 28)**

Continuation/review of examination procedures (from prior class).
Conclusion of the examination. Notices of proposed adjustment, Revenue
Agent’s Reports, agreed/unagreed issues, statutory notice of deficiency (including the
definition of “deficiency”). TEFRA procedures.
Statutes of limitations on assessment and the mitigation provisions

**Required reading:**
Lederman & Mazza, pp. 95-96 (again), 257-293, 325-330,
345.
IRC §§ 1311-1314, 6211-6213, 6221-6231, 6501
Treas. Reg. § 601.105


Class Five: Post-examination procedures - Appeals (Monday, Oct. 5)

[Note that Classes Five and Six cover a lot of the same issues, and the materials may be discussed in either or both classes]

Review conclusion of the examination, notices of proposed adjustment, Revenue Agent’s Reports, agreed/unagreed issues, statutory notice of deficiency. Form 870.
Protests to 30-day letters (Revenue Agent Reports) and the conduct of Appeals Office proceedings. Ex parte rules.
Review statute of limitations issues and the mitigation provisions.

Required reading: Lederman & Mazza, pp. 171-205, 257-293 (again), 325-330 (again), 345 (again).
IRC §§ 1311-1314, 6201-05, 6211-6215, 6501, 6503, 6513, 7121

Further reference: Saltzman, pp. 9-1 through 9-103
Form 906
Forms 870 and 870-AD
IRS Publication 5 (“Your Appeal Rights and How to Prepare a Protest if You Don’t Agree”)
FPL Group Inc. v. Commissioner, T.C. Memo. 2009-144 (May 28, 2009)
Class Six: Post-examination procedures: Appeals (cont’d) and refunds (Tuesday, Oct. 13)

Claims for refund and the statutes of limitations applicable to them. Tentative refunds. Review the mitigation provisions. The variance doctrine. Joint Committee review of refunds. Credits and offsets.

IRC §§ 1311-1314, 6401-6402, 6404-6405, 6411, 6511-6514, 6531-6532, 7422, 7502  
Treas. Reg. §§ 301.6402-2, 301.6501(e)-1  
Lewis v. Reynolds, 284 U.S. 281 (1932)

Further reference:  Saltzman, Chapters 5 and 11.  
Treas. Reg. § 601.108  
United States v. Kales, 314 U. S. 186 (1941) (informal refund claims)  
Intermountain Ins. Service v. Commissioner, 650 F.3d 691 (D. C. Cir. 2011)

Class Seven: The collection process (Monday, Oct. 19)


Required reading:  Lederman & Mazza, pp. 541-566, 593-621, 627-637.  
IRC §§ 6502, 6320-6323, 6325, 6326, 6330-6332, 6334, 6337, 6342-43, 6159, 6901, 7122  
Aquilino v. United States, 363 U.S. 509 (1960)  

Further reference:  Saltzman, Chapters 14, 15, and 16  
Starnes v. Commissioner, T.C. Memo. 2011-63 (March 15, 2011)  
Treas. Reg. §§ 301.6320-1, 301.6323(b)-1, 301.6323(f)-1, 301.6325-1, 301.6330-1, 601.203  
IRS Publication 594 (“The IRS Collection Process”)  
IRS Publication 1660 (“Collection Appeal Rights”)  
IRS Publication 908 (“Bankruptcy Tax Guide”)
Class Eight: Tax practice and regulation (Monday, Oct. 26)

Circular 230. What is practice before the IRS? Who are practitioners?
Written advice and due diligence standards. Introduction to penalties applicable to practitioners (discussed further in Class 9).

Required reading: Lederman & Mazza, pp. 703-717, 725-727.
31 U.S.C. § 330
5 U.S.C. § 500
Circular 230 (31 C.F.R. Part 10), §§ 10.1 – 10.52 (June, 2014)
Director, OPR v. Sykes, No. 2006-1 (Jan. 29, 2009)
Loving v. IRS, 742 F.3d 1013 (D.C. Cir. 2014)
Ridgely v. Lew, No. 1:12-cv-00565, 2014 WL 3506888
(D.D.C. July 16, 2014)

Further reference: Saltzman, pp. 1-82 through 1-129
Treas. Reg. §§ 601.501- 601.509
ABA Formal Opinion 346 (rev. 1/29/82) (shelter opinions)
ABA Opinion 85-352 (7/7/85) (“realistic possibility of success” standard)
Form 2848, Power of Attorney and Declaration of Representative
Form 8821, Tax Information Authorization

Class Nine: Penalties applicable to practitioners (Monday, Nov. 2)

The role of practitioners as adjuncts to the self-reporting system, and related ethical issues.

Required reading: Lederman & Mazza, pp. 497-506.
IRC §§ 6011, 6111, 6112, 6694-6696, 6700, 6701, 6707, 6707A, 6708
Treas. Reg. §§ 1.6011-4, 1.6694-1 and 1.6694-2

Further reference: Saltzman, pp. 4-66 through 4-117, 7B-176 through 7B-201.
Class Ten: Penalties applicable to taxpayers (Monday, Nov. 9)

[Note that Classes Ten and Eleven cover a lot of the same issues, and the materials may be discussed in either or both classes]


Defenses to penalties. Reasonable cause (e.g., reliance on advice of tax professionals) and “strengthened reasonable cause.”

Required reading: Lederman & Mazza, pp. 469-497.
IRC §§ 6011, 6662-6665 (including new § 6662A), 6676, 6707A, 7701(o)
Treas. Reg. §§ 1.6662-4, 1.6664-4
Canal Corp. v. Commissioner, 135 T.C. 199 (2010)

Further reference: Saltzman, pp. 7B-1 through 7B-175

Class Eleven: Taxpayer penalties (continued) and interest (Monday, Nov. 16)

Continuing discussion of accuracy-related penalties. Other penalties (failure to file, failure to pay, failure to pay estimated taxes, failure to deposit withheld taxes).

Required reading: Lederman & Mazza, pp. 469-497 (again), 509-538.
IRC §§ 6651, 6654-6655, 6656, 6601, 6603, 6611, 6621-6622, 6672
Treas. Reg. §§ 301.6601-1, 301.6611-1, 301.6651-1

Further reference: Saltzman, pp. 7B-1 through 7B-175, Chapter 6
IRC § 6721-6724
Treas. Reg. §§ 301.6621-2, 301.6621-2T, 301.6621-3, 301.6622
Rev. Proc. 84-58, 1984-2 C.B. 501
Class Twelve: Criminal tax issues (Monday, Nov. 23)


Required reading: IRC §§ 6531, 7201, 7206, 7207, 7602(d)

Further reference: Saltzman, pp. 7B-1 through 7B-175, 13-181 through 13-214
Treas. Reg. § 601.107

Class Thirteen: Review (Monday, Nov. 30)