

TAX PROCEDURE SEMINAR  
Spring 2008  
**Office hours:** by appointment or TBA.

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## COURSE DESCRIPTION

The study of federal tax controversies focuses primarily on tax administration and the resolution of disputes between taxpayers and the IRS. Issues that we will discuss include reform of the IRS; tax compliance; and issues in tax litigation, such as “secret” factfinding in the United States Tax Court and spousal relief from joint and several liability for tax debts.

The two goals of this course are for you to learn about important issues in tax procedure and for you to write a paper that explores in depth an area of particular interest and make a presentation on that topic to the class. There are a variety of resources available to you that should facilitate the selection of an interesting topic, researching it, and writing a high-quality paper. I have listed some possible paper topics at the end of this syllabus and I have placed on library reserve two reference books that should be helpful in developing a topic, a thesis for the paper, and writing a draft. A class session early in the semester will introduce you to important tools of tax research. I will also provide timely feedback on your written submissions in writing and/or via a conference. Presenting the topic to the class should also be helpful in developing the ideas reflected in the final draft of the paper.

## COURSE MATERIALS

CASEBOOK: Lederman & Mazza, TAX CONTROVERSIES: PRACTICE AND PROCEDURE (3rd ed. 2008) (in process; chapters will be posted in the “Course Documents” area on Lexis webcourses site).

ADDITIONAL READINGS: Additional readings are listed on the syllabus with either a URL to obtain them on the web or *in italics*, meaning that they are in the “Course Documents” area of the LexisNexis webcourses site.

COURSE WEBSITE: The website for this class is located at [www.webcourses.lexisnexis.com](http://www.webcourses.lexisnexis.com).<sup>1</sup> In addition to posting readings there, I will sometimes use the webcourses site to post announcements, including announcements relating to the assignments.

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<sup>1</sup> Please note that you will need an IU-linked Lexis ID in order to enroll into the “web course” for this class. Transfer students and visiting students may not have one. Please e-mail me as soon as possible if you do not have an IU-linked Lexis ID.

Once you have an IU-linked Lexis ID, you may need to register it with Lexis (at [webcourses.lexisnexis.com](http://webcourses.lexisnexis.com)) and then you will need to “self-enroll” in the webcourse. (Unfortunately, I cannot enroll students in the webcourse.) The “Launch Web Courses” button will give access to the webcourses site. If you have technical problems using Lexis webcourses, please call Lexis customer service at 1-800-45-LEXIS.

## RECOMMENDED READING (ON LIBRARY RESERVE):

- Elizabeth Fajans & Mary R. Falk, SCHOLARLY WRITING FOR LAW STUDENTS
- Eugene Volokh, ACADEMIC LEGAL WRITING: LAW REVIEW ARTICLES, STUDENT NOTES, AND SEMINAR PAPERS

## STRUCTURE OF THE COURSE

During the initial weeks of the semester, we will examine selected materials as a class. After these initial class sessions, we will not have regular class meetings for a few weeks, to provide extra time to work on your papers and presentations. During that period, I will meet once with each of you to discuss your papers. During the final weeks of the course, you will each make an in-class presentation and be expected to participate in discussing your colleagues' presentations.

## CLASS POLICIES

Because this course is a seminar, my expectation is that we will all learn from one another. To this end, the following are the requirements for this course.

1. Because participation in class is such an important part of a seminar, attendance and preparation are required for this class. You are expected to attend each class prepared to fully engage in informed conversation about the assigned readings. Similarly, you are expected to participate in discussing the issues raised by your classmates during the in-class presentations. The following specific attendance and preparation policies apply to this course:
  - a. A student who attends all class sessions and demonstrates consistent, excellent participation will have his or her final course grade raised by one notch (e.g., from a B+ to an A-).
  - b. Absences and unprepareds will be taken into account in the class participation component of the grade. If you are unprepared for class, let me know at least 20 minutes prior to class by e-mail. In exceptional circumstances where e-mailing is not a possibility, submit an "unprepared" note with your name and the date on it to me before the beginning of class. Unpreparedness without notification is treated as an absence.
  - c. A student who is absent from 3 or more regularly scheduled class sessions will have his or her final grade lowered one notch (e.g., from an A- to a B+). A student who is absent from 5 or more regularly scheduled class sessions risks additional grade reduction or being dropped from the course.

2. For each class with assigned readings (other than the first class), you are expected to submit one or two substantive discussion questions raised by the readings that you think would be of interest to the class. These should be questions about policy or other issues on which there might be a difference of opinion. These questions should be submitted to me via e-mail at llederma@indiana.edu no later than 9:00am on the day of each class. These e-mailed questions will be taken into account in the class participation component of the grade.
  
3. This course requires a written research paper (25-35 pages, 10-12 point font, double spaced). During the course of the semester, you will be required to submit a description of the topic and thesis of your paper, a first draft, and a final draft. E-mail submission is preferred; when that is not possible, assignments can be left in my faculty mailbox. The grade on any written submission that is late may be reduced. If you anticipate difficulty in meeting the deadline for any submission, please contact me about it as much in advance as possible. The schedule for the written submissions is as follows:
  - a. Paper topic and thesis statement: due no later than **February 11 at 5pm**. It should consist of a one to two-page description of the topic and the thesis of your paper. The grade on this assignment will be based on how well the topic of the paper is developed and how clearly the thesis is explained. You may choose any topic within federal tax procedure, subject to my approval. I have included a general list of possible topics at the end of the syllabus. Please e-mail me in advance of the deadline if you have any questions about whether a paper topic you are interested in is viable.
  - b. First draft of paper: due no later than **March 17 at 5pm**. The grade on the first draft of the paper will be based on the following criteria: explanation of relevant technical provisions; analysis of current law or policy on the issue; explanation and persuasiveness of the main argument in the paper (such as a proposed change in law or policy); organization; and clarity.
  - c. Final draft of paper: due no later than **April 18 at 5pm**. The grade on the final draft of the paper generally will be based on the criteria listed above, as well as on the extent to which the final draft reflects feedback received on the first draft.
  
4. In the final weeks of the course, you will make an in-class presentation on the topic of your paper. Your presentation should take approximately 30 minutes. You should not plan to lecture for the whole time. Rather, you should describe to the class in no more than 10 or 15 minutes the thesis of your paper and any background context necessary to understand that thesis. You should be prepared to use the remaining time to generate discussion regarding specific issues or questions relating to your topic. I encourage presenters to provide the class with handouts (such as an outline, thesis statement, issues to consider, or a hypothetical for discussion) either in advance of the session or at the beginning of the presentation.

5. There will be no examination in this course. Your grade in the class will be based on the following elements:
  - Written explanation of the topic and thesis of the paper (10%)
  - First draft of the paper (20%)
  - Presentation (20%)
  - Class preparation and participation, which includes submission of thoughtful discussion questions; participation in the class discussion in the first part of the course; and participation in the discussion related to other students’ presentations in the last part of the course (25%)
  - Final draft of paper (25%)
  - Possible adjustment under the attendance and preparedness policy, as described above.
6. The syllabus is a guide to, not a guarantee of, the subjects and materials we will cover. Assignments are subject to change with advance notice.
7. You are responsible for checking the webcourses site at least twice each week for announcements.

**CLASS SCHEDULE, READING ASSIGNMENTS AND DEADLINES:**

The readings for this course consists of assignments in the Casebook and other materials posted on the webcourses site for this class or listed with a URL. The readings for each class are listed in the order in which I recommend reading them. All readings will be posted on the webcourses site (in the “Course Documents” area) unless they are listed with a URL to access them directly on the Internet. The statutes listed as assigned reading in the chapters are not assigned; only the statutes listed below in the assigned readings are assigned.

<u>Class date</u>	<u>Assigned Readings</u>	<u>Subject Matter</u>
Jan. 14	Brief excerpts from Chapters 1 (including Tax Controversy Chart), 4 (2 <sup>nd</sup> ed.) (Section B), 7, 9, 10 and 12 (2 <sup>nd</sup> ed.) of Tax Controversies: Practice & Procedure.	Introduction to the Course; Overview of Federal Tax Controversies
Jan. 28	Ch. 1 excerpt (to be posted); Current and Previous IRS Mission Statements; IRS Reform Act § 1203 (skim); “The Sixth Deadly Sin;” IRC §§ 6320, 6330(a)-(d); Camp Article on Inquisitorial Process; Camp Article on RRA ‘98; Excerpt from Camp Article on Partial Paradigm Shift, pp. 117-128.	IRS Reform and Tax Administration

Feb. 4	Ch. 1 “Tax Gap” excerpt; Tax Compliance Statistics; Tax Gap Map for Tax Year 2001 & related info at <a href="http://www.irs.gov/pub/irs-utl/tax_gap_update_070212.pdf">http://www.irs.gov/pub/irs-utl/tax_gap_update_070212.pdf</a> ; Interest and Penalties chapter excerpts (to be posted); Selected Penalty Provisions (IRC §§ 6662(a)-(d) (just skim (d)), 6663, 6672(a)); Cords Article on Tax Protestors, pp.1-9, 11-17, 23 (bottom)-27, 32 (bottom)-36.	The “Tax Gap” and Strategies for Reducing Tax Evasion
Feb. 11	Ch. 16 (2 <sup>nd</sup> ed.), pp.801-825 (to be posted).	Tax Research
<b>The written explanation of the topic and thesis of the paper is due at 5pm.</b>		
Feb. 18	Ch. 8 excerpt pp.1-17 (to end of § 8.06) (skim the Tax Court Petition), pp. 23-33 (§ 8.08-8.09); Tax Court Code Sections (IRC §§ 7443A, 7453, 7459(a)-(b), 7460-7461, 7482(a)(1), (c)(1)-(2)); Excerpt from Freytag Majority Opinion (skip section A on pp.878-880 and the beginning of section C on pp. 882 (bottom)-888 (through the carryover paragraph from p.887)); Tax Court Judges’ Clarifications; Chief Judge Gerber on <i>Ballard</i> ; Sample Tax Court Order Post- <i>Ballard</i> ; Press Release at <a href="http://www.ustaxcourt.gov/press/092105.pdf">http://www.ustaxcourt.gov/press/092105.pdf</a> , pp.1-2.	The United States Tax Court: Special Trial Judges, Secret Factfinding, and the Rulemaking Process
Feb. 25	Refund courts excerpt (to be posted); Ch. 8 excerpt pp.17-24 (§ 8.07); Ch. 11 excerpt; Excerpt from Egan Article Defending COA for Federal Circuit.	Tax Litigation and Choice of Forum
Mar. 3	Excerpts from IRC §§ 6013 and 6015; Ch. 17 excerpt.	Joint & Several Liability of Spouses; Innocent Spouse Relief
Mar. 10 is during spring break. Mar. 17 and 24: class does not meet; individual student conferences will be scheduled instead. <b>The first draft of the paper is due by 5pm on March 17.</b>		
Mar. 31		Student Presentations and/or TBA
Apr. 7		Student Presentations and/or TBA
Apr. 14		TBA

**The final draft of the paper is due by 5pm on April 18.**

The (nonexhaustive) list of possible paper topics is on the next page.

### Suggestions of Possible Paper Topics

- Does the IRS need further reform or restructuring? If so, for what purpose(s) (e.g., increasing service, enforcement, or efficiency) and in what way? Are there additional rights or protections taxpayers should have in the tax collection process?
- Should the administrative or judicial collection due process procedures be reformed? If so, should they be made more accessible to taxpayers or limited to certain types of cases?
- What techniques might Congress, the Treasury or the IRS use to increase compliance by individuals and/or corporations with the current federal income tax?
- Are the current types and levels of tax penalties appropriate; why or why not? Are there particular penalties that should be added to or removed from the Internal Revenue Code, and why?
- Are tax protestors a threat to the tax system and, if so, to what extent should procedures be designed to limit their activities? Alternatively, should certain types of tax protests be encouraged?
- To what extent should courts defer to published IRS positions? Should the type of judicial proceeding (deficiency, refund, collection due process, etc.) or the identity of the court issue matter in that regard?
- Should the Tax Court be reformed, and if so, how? For example, should it be eliminated? Alternatively, should it be made an Article III court? Should its jurisdiction be expanded or restricted?
- Should the system of Special Trial Judges in Tax Court be reformed? For example, should they become more like magistrate judges in Article III courts? Alternatively, should the use of Special Trial Judges be eliminated entirely or limited to certain types of cases?
- Should trial-level and or appellate-level tax litigation be reformed? For example, should the choice of trial-level fora be eliminated? Should tax appeals all go to a new a specialized court of tax appeals?
- Do the “innocent spouse” procedures of Code section 6015 appropriately balance the needs of each spouse and the federal government? Should the procedures or law in this area be reformed? If so, should the law enlarge or restrict protections to electing spouses or non-electing spouses?
- Is outsourcing of tax collection to private companies beneficial or more costly than helpful? What problems, if any, does it raise, and how might those be effectively addressed?