

**LAW 7640 Sec. 089G –  
Civil Tax Procedure  
Fall 2018**

Class Meetings:	Monday & Tuesday, 9:00-9:50 AM
Location:	HH – 382
Office Hours:	To be discussed in first class.
Instructor:	Professor Fred Murray
Phone:	352-273-0896
E-mail:	<a href="mailto:f.murray@law.ufl.edu">f.murray@law.ufl.edu</a>

**LEARNING OBJECTIVES AND OUTCOMES**

First, Civil Tax Procedure is not about tax litigation. We do spend some time on tax litigation subjects, but not much. It's more about the procedural tax law matters that come across most tax lawyers' desks just about every day. Students who did not take CTP often don't know how to deal with them. In fact, I've had numerous conversations with students over the years who finished their "substantive tax program" but did not take CTP, telling me that they wish they had taken procedure courses. Even more telling, they call me for guidance on a CTP subject.

Second, in our world, disagreements with the IRS are referred to as tax controversy not tax litigation. That's because, as you may know, the overwhelming majority of those disagreements are settled administratively, well short of litigation. But we study much more than tax controversy. We spend time on the various statutes of limitations, mitigation, refunds, innocent spouse issues, the deference to be afforded administrative pronouncements, including regulations, the penalty regime, interest and more. Each of these can arise in a tax litigation scenario, but frequently arise in normal dealings with clients in every day matters, often in the context of some substantive matter. The clients expect a tax lawyer to know the answers to these (basic) questions.

Further, tax controversies arise in many scenarios in jurisdictions other than the U.S., or in addition to those on related issues in the U.S. Given recent developments in many countries around the world growing from the OECD BEPS projects, we are entering a time in which tax controversies in many jurisdictions will be much more commonplace, and the ability to foresee and evaluate and deal with them is more and more important. The course is U.S.-focused but we will spend some time looking at basic international issues.

Students in the course will learn various procedures employed in the determination and assessment of U.S. federal income taxes, including tax refund procedures and the statutes of limitations and exceptions. The course will also cover special procedures for partnerships, innocent spouse procedures, litigation in the U.S. Tax Court and other courts, penalties and collection procedures.

By the end of this course, students will acquire a working knowledge of important practice concepts and rules that all tax lawyers, including those who expect to do only planning activities, should know to properly evaluate tax positions and anticipate how those positions will be addressed by tax authorities acting upon them.

As a result of taking this course, students will be able know:

- The relevant structure of the applicable legal processes relevant to assessing tax positions and controversies arising from them.
- The implications of tax advice containing those tax positions and how to prepare and render it to clients (including informal advice, formal opinions (and opinions in securities offerings), tax positions that are reported in tax returns, and other contexts)
- Relevant reporting obligations, including required disclosures that must be placed in tax filings to avoid penalties.
- How the tax examination process works, and what are the relevant considerations in determining exposures.
- How a final determination of tax is made, and how much time may the IRS or other tax authority may have to adjust a return.
- How partnerships are examined and how partners are affected by that examination.
- If an adjustment is taxpayer favorable, how a refund is obtained.
- If an adjustment is not taxpayer favorable, what penalties and interest may be applicable.
- If there is no agreement with the examination results, how the matter is resolved.
- How tax is collected from a taxpayer, and whether others may be responsible for its payment.

These objectives will be accomplished through:

- Review and study of the relevant authorities, particularly the Internal Revenue Code.
- Discussion of the operation of the processes created by those authorities.
- Working and discussion of hypothetical problems posed by examples.

### **Course Approach:**

There is an ancient Chinese proverb attributed to Confucius (551–479 BCE) that is roughly translated: “*Teachers open doors, but you must enter by yourself.*” I will do my best to help you succeed, to provide you with knowledge, at least at an overarching level that is high enough that we may fit it in the time we have together but sufficient to give you the framework and principles that guide further scrutiny and action. But, as in any

work setting, you must accept that knowledge and apply the necessary effort to fully comprehend it and then to apply it.

Legal practice in the area of civil tax procedure requires a combination of knowledge of technical rules to evaluate a tax position and its prospects for success on the merits, but in many cases requires the refined ability of a lawyer to argue his or her position. As stated by Daniel Webster:

*“Accuracy and diligence are much more necessary to a lawyer than great comprehension of mind, or brilliancy of talent. His business is to refine, define, split hairs, look into authorities, and compare cases. A man can never gallop over the fields of law on Pegasus, nor fly across them on the wing of oratory. If he would stand on terra firma, he must first descend. If he would be a great lawyer, he must first consent to become a great drudge.”*

The final exam will test your grasp of what we do together in class. We will discuss that in the first class, and in a Review session in the last class.

**Class Preparation and Participation:** Come to class having completed the assignments to the best of your ability and prepared to discuss the assignment. You are expected to attend class and to be prepared to respond to questions about the assigned problems and reading; attendance will be taken each day.

Students should expect to spend, on average, approximately two hours preparing for every hour of class. Reading assignments are posted on the “Modules” link on the Canvas site (located on the left side of the Canvas site).

Participation is important to you, your classmates, and your professor. Below-average participation means no contributions to class and/or comments that detract from the discussion; average participation includes comments that contribute positively to the discussion; above-average participation means comments that contribute positively to the discussion and display some insight, analysis, creativity, and/or synthesis; and excellent participation means comments that contribute positively to the discussion and display significant insight, analysis, creativity, and/or synthesis.

Repeated lack of preparedness may be counted as an unexcused absence. Repeated class disruption (e.g., excessive noise, texting, personal internet use, arriving late, leaving early) may be counted as an unexcused absence. You will be notified each time you accrue an unexcused absence on account of lack of preparedness and/or disruptive behavior.

Absences taken for observance of religious holidays will be excused with completion of a makeup assignment. If you are planning to miss class for a religious holiday, please let Prof. Murray know. If you are absent because of a special situation (sickness, family emergency, job interview, etc.), the absence **may** be excused at Prof. Murray’s discretion after you have provided any documentation of the situation requested by Prof. Murray and you have completed a make-up assignment. If you are dealing with a personal

situation of high difficulty and prolonged duration, please seek assistance from Student Affairs as soon as possible.

**If you have more than four unexcused absences from regularly scheduled classes, your participation grade will be 0, you *may* be barred from taking the final exam, and you *will* be barred from participating in the retesting process (see below).**

**Course Structure:**

The course will be divided into modules of material, some of which may be discussed in more or less than one class.

**Grades:**

There will be a 4-hour take home final exam that will be open to Limited Materials (see discussion below). We will discuss the permissible materials in class. The format of the exam will be essay and problems. Your grade will be based approximately 95% on the final exam and 5% on attendance and class participation.

The final examination will be four hours in length, and will consist of three essay-type questions. Each of the questions will be weighted equally for grading purposes. Each question will include a statement of facts followed by some specific questions based on the facts. I will expect you to answer each question and provide a summary of what you considered in reaching your answer. I do not want an essay addressing everything you know about what you think the subject of the question is. I will give you credit for your answer only if it correctly relates the facts to the law in reaching the answer.

Questions from previous final examinations will not be available for your review. You must turn in your final examination questions along with your answers when you are done.

The Exam instructions will state:

This is an OPEN book exam. Users are permitted to access other documents, outlines, notes, files, etc. on their hard drives, or other materials in their possession. iPads, e-readers and other electronic devices that store information may be used. Calculators may be used.

**Notwithstanding the foregoing, students may not access the Internet, except as necessary to use the Online Exam Management System, during the examination and to submit their examination. Doing so is a disciplinary violation of the Honor Code. Students may not consult one another or any other person by computer or other electronic device or otherwise, and may not consult any materials not specifically permitted.**

The final exam will be given as a take-home examination during the examination period specified by the College of Law.

Students who receive a grade on the final exam lower than a **B** and who have accrued four or fewer unexcused absences (see above) will have the opportunity to be retested. The highest possible exam grade obtainable through the retesting process will be the lower of (1) a B or (2) one full grade increase from the initial grade on the exam. For example, a student receiving a B- on the initial final exam and who has met the attendance requirement would be eligible to retest for an exam grade no higher than a B. A student receiving a C- on the final exam and who has met the attendance requirement would be eligible to retest for an exam grade no higher than a B-. The retesting process will not be used to lower grades. Re-testing is scheduled through discussion between the individual student and Prof. Murray, but re-testing must be completed no later than 2 months after grades are posted (note, this is separate from any requirement imposed by UF for graduation).

Exam delays and accommodations must be arranged through the Student Affairs Office. See <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#12>; “Disability Accommodation,” below).

Grade Scale & Grading Policies:

<u>Grade</u>	<u>Points</u>
A (Excellent)	4.0
A-	3.67
B+	3.33
B (Good)	3.00
B-	2.67
C+	2.33
C (Satisfactory)	2.00
C-	1.67
D+	1.33
D (Poor)	1.00
D-	0.67
E (Failure)	0.00

The law school grading policy is available at <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>. **Note that the mandatory mean does not apply to LL.M. students.**

**Required Course Materials:**

1. Johnson, Borison and Ullman, Civil Tax Procedure, 3rd Ed. (Carolina Academic Press, Graduate Tax Series, 2016).
2. Internal Revenue Code and Regulations.

Materials (PowerPoint Decks, cases, rulings, and other interpretive material) will be supplied for particular topics by the professor. These readings (including current event

course related items), lecture slides, cases, and other handouts are available from the course web page with postings announced via the class email list.

All students must have access to the *Internal Revenue Code of 1986*, and *Income Tax Regulations*. (Note that this information also is available via the web using the RIA, CCH, or LEXIS Tax Research Services.)

**Class Web Page:**

The course materials are in the UF Canvas E-Learning system. You will need your GATORLINK USERID and PASSWORD to access the course information. If you don't have a GatorLink account, create your GatorLink account at [gatorlink.ufl.edu](http://gatorlink.ufl.edu).

**Web-based Information Resources:**

All students in the course have access to several electronic tax research libraries. These include Tax Analysts Tax Notes, CCH Tax Research Library, RIA Checkpoint Tax Research Service, LEXIS/NEXIS, and BNA Tax Management Portfolios. Although there is substantial overlap across these services, all provide useful and unique research tools, including complete versions of tax research services (commentary and explanation), Code, regulations, court cases, rulings, tax treaties, etc. You may access these libraries from anywhere you can access the internet. Both LEXIS/NEXIS and CCH require no password as long as you access the database via a UF computer account. There are several methods (e.g., proxy server or VPN) for making your computer think it is linked to a UF sever via a few special commands; if you need this information, see "<http://web.uflib.ufl.edu/ufproxy.html>" or the class web site.

Proxy info: <https://www.law.ufl.edu/library/library-information/remote-access>

For Checkpoint: Register on campus at <http://www.checkpoint-registration.riag.com/schools> (need to register on campus; use off campus through VPN)

For Tax Analyst: Register at <http://www.taxnotes.com> (need to register on campus; use off campus through VPN)

For Bloomberg (BNA): Register at <https://essential.bna.com/login/signin?msg=deny&url=https%3A%2F%2Fwsauth.bna.com%2Fwsauth%2Fblawauth%3Ftarget%3Dhttps%3A%2F%2Fwww.bloomberglaw.com%2Fstart&lddty=-518&pcv=> (can use off campus without going through VPN)

Note that these accounts last approximately a year and you may already have a valid account from a prior signup. For problems, see Sarah Lewis in the library or at [slewis@law.ufl.edu](mailto:slewis@law.ufl.edu).

**Class Policies:**

All University of Florida and Levin College of Law rules apply. Particularly note University policies regarding software use and the honor code.



## READING ASSIGNMENTS

The attached assignment sheet lists the chapter in the textbook and additional materials that will be covered during each class. The textbook (at the beginning of each chapter), and in some cases the assignment sheet, list other resource materials. I strongly suggest that you study the assigned chapter and the resource materials very carefully before each class. I may also assign other materials that should be studied as well.

Each chapter has problems at the end of the chapter. The assignment sheet lists the problems that will be covered in each class. You should be prepared to discuss the problems in class. We will spend substantial time in class discussing these and hypothetical problems that I will present in class.

I expect you to be prepared and to participate in the discussion. I will call on students to join in the discussion and encourage you to ask questions. I strongly recommend that you attend all classes and pay careful attention to the discussion. The assigned problems are typical of the problems that will be on the final examination.

You should bring to class whatever you will need to discuss the assignment for that day. I strongly suggest that you also bring the Internal Revenue Code and Treasury Regulations, or copies of the provisions that we will be studying that day. You may not record any class.

Topic	Assignment
<p><b><u>Class 1</u></b> Structure of Tax Administration and Sources of Tax Law</p>	<p>Chapter 1 (Omit Problem); <i>Chevron U.S.A., Inc.</i>, 467 U.S. 837 (sec. II); (1984); <i>Smiley</i>, 517 U.S. 735 at 740-744 (1996); <i>Auer</i>, 519 U.S. at 452, 461-3 (1997); <i>United States v. Dominion Industries, Inc.</i>, 522 U.S. 822, 838 (2001 ); Brand X, 545 U.S. 967, 980-3 (2005); <i>Mayo</i> 131 S.Ct. 704, 713 (2011); <i>Loving</i>, 742 F.3d 1013 (D.C. Cir. 2014); <i>King v. Burwell</i>, 135 S. Ct. 2480, 2488-89, (2015) (reproduced in text at pages 41 - 42).</p>
<p><b><u>Class 2</u></b> Reporting Obligations</p>	<p>Chapter 2 (Problems 2, 4, 6, 7, 8, 9, 11, 13 and 14); (NOTE: The year in problem 14 should be 20x9, not 20x4). IRC §§7502(a), (b), (e)(2) and (f) and 7503; IR 2002-135 (12/11/02); Treas. Regs. §301.7502-1(a)-(d) and (2); IRC §6061.</p>
<p><b><u>Classes 3 and 4</u></b> Spousal Obligations and Relief</p>	<p>Chapter 3 (All problems); Notice 2011-70, 2011-32 I.R.B. 135 (7/25/11); Treas. Regs. § 1.6015-5; Rev. Proc. 2013-34, 2013-2 C.B. 397.</p>
<p><b><u>Classes 5 and 6</u></b> Examination of Returns</p>	<p>Chapter 4 (All problems); Treas. Regs. § 601.103 (a), (b) and (c)(1) and Treas. Regs. § 601.106(b)-(c), (f)(1)-(3).</p>
<p><b><u>Classes 7 and 8</u></b> Assessment Procedures and Matters Relating to the Statutes of Limitations on Assessment</p>	<p>Chapter 5 (All problems); <i>Lorin G. Sloan</i>, 102 T.C. 137 (1994); <i>Colony, Inc. v. Comm'r</i>, 357 U.S. 28 (1958); Treas. Regs. § 1.451-1 (a) (last two sentences); Treas. Regs. § 301.6501 (e)-1(a)(i)-(iv); Rev. Rul. 81-269, 1981-2 C.B. 243.</p>
<p><b><u>Classes 9 and 10</u></b> Examination of Partnerships (including the new BBA rules)</p>	<p>Chapters 6A and 6B (Omit problems).</p>



<b><u>Class 11</u></b> Termination and Jeopardy Assessments	Chapter 7 (All problems)
<b><u>Classes 12, 13 and 14</u></b> Tax Court Litigation of Deficiency Determination	Chapter 8 (All problems); <i>Branerton Corp.</i> , 64 T.C. 191 (1975).
<b><u>Classes 15 and 16</u></b> Overpayment – Claims for Refund	Chapter 9 (Problems 1 (a), (d), (f) (g), (h) and 2); <i>Flora</i> 362 U.S. 145 (1960), <i>aff'g on reh'g</i> , 357 U.S. 63 (1958); 28 U.S.C. § 2401 (a).
<b><u>Classes 17, 18, 19 and 20</u></b> Judicial and Statutory Rules That Override the Statutes of Limitation	Chapter 10 (All problems).
<b><u>Classes 21 and 22</u></b> Penalties for Failure to File or Pay Timely	Chapter 11 (Part A) (All problems); <i>Vaira</i> , 52 T.C. 986 ((issues 6 and 7) (1969); but see IRM 1.2.12.1.16 (2011) ); <i>Boyle</i> , 469 U.S. 241 (1985).
<b><u>Classes 23 and 24</u></b> Accuracy-Related and Fraud Penalties	Chapter 11 (Part B) (All problems); Code §§ 6694(a) and (b) and 7701(a)(36); Treas. Regs. § 301.7701 -15 (a) and (b).
<b><u>Class 25</u></b> Interest	Chapter 12 (Problems 1, 2, 3, 5, 6, 7 and 8); <i>Johnson</i> , 602 F.2d 734 (6 <sup>th</sup> Cir. 1979).
<b><u>Class 26</u></b> Collection of Tax	Chapter 13 (All problems); <i>National Bank of Commerce</i> , 472 U.S. 713, 722, 105 S. Ct. 2919 (1985).
<b><u>Class 27</u></b> The Section 6672 “Trust Fund Recovery Penalty”	Chapter 14 (Problems 1, 2, 5, and 6) <i>Slodov</i> , 436 U.S. 238, 98 S. Ct. 1778 (1978).
<b><u>Class 28</u></b> Transferee and Fiduciary Liability	Chapter 15 (Omit Problems); Rev. Rul. 69-211, 1969-1 C.B. 305, Rev. Rul. 72-436, 1972-2 C.B. 643

## Syllabus Addendum

**Attendance:** Attendance will be taken at every class, and students are expected to attend and participate in class. Students should prepare for all classes even if they miss and are responsible for material covered in their absence. Students may not attend a class unless they are officially registered for the course. The Levin College of Law does not approve requests to audit its courses. Students who do not attend at least one of the first two class meetings of a course or laboratory in which they are registered, and who have not contacted the School to indicate their intent, may be dropped from the course. The instructor adheres to all UF attendance policies.

**Honesty:** Academic dishonesty will not be tolerated. Students are required to know and comply with the university's policy on academic honesty. Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

**Civility:** This course will be conducted in a courteous and professional manner. Inappropriate classroom behavior of any form will not be tolerated. At the instructor's discretion, students acting in an uncivil manner will receive a grade reduction commensurate with the infraction. Students can be withdrawn from the course for excessive unacceptable behavior.

**Disabilities:** The University of Florida is committed to providing academic accommodations for students with disabilities. Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, [www.dso.ufl.edu/drc/](http://www.dso.ufl.edu/drc/)) by providing appropriate documentation. Once registered, the Dean of Students Office will provide documentation to the student who must then provide this documentation to Dean Rachel Inman when requesting accommodation. You must submit this documentation prior to submitting assignments or taking the quizzes or exams. Accommodations are not retroactive, therefore, students should contact the office as soon as possible in the term for which they are seeking accommodations.

If your accommodation regards special testing arrangements, you must then submit an Accommodated Test Request (ATR) online for each exam/quiz. Students with disabilities are encouraged to follow these procedures as early as possible within the semester. If you do not follow the Disability Resource Center procedures or meet the deadline for requesting accommodations or for submitting your ATRs, you will have to take the exam with your class without accommodations.

**Evaluation:** Students are expected to provide feedback on the quality of instruction in this course based on 10 criteria. These evaluations are conducted online at <https://evaluations.ufl.edu>. Students will be given specific times when they are open. Summary results of these assessments are available to students at <https://evaluations.ufl.edu/results/>.