

## LAW 7633: 2 CREDIT HOURS TAX EXEMPT ORGANIZATIONS SYLLABUS

PROF. WILLIS

PROF. BRENNEN

OFFICE: 331 (WILLIS)

PHONE: 352-514-1394 (WILLIS) (This is my cell. If I do not answer, it is because you are not yet in my contacts. Leave a message, please). If you call, please do so after 8 am and before 11 pm (unless you have a tax emergency).

OFFICE HOURS: Tuesday 11:00 – 1:00; 3:40 – 5:00. These are for Willis and for TEO. I will also be in my office on W 1:30-4:00. Appointments are fine if you prefer (I tend to be forgetful, so if you have an appointment, please remind me).

Email: willis@law.ufl.edu; best way to contact is through Canvas.

**MEETING TIME:** 1:45-3:45 on Tuesday.

**LOCATION:** Room 359

### REQUIRED:

- Internal Revenue Code and Regulations.
- Darryll K. Jones, Steven J. Willis, David A. Brennen, & Beverly I. Moran, THE TAX LAW OF CHARITIES AND OTHER EXEMPT ORGANIZATIONS (4th Ed. CAROLINA PRESS).
- Please be sure to register for the Canvas course and have any required materials with you in print or easily accessible electronic form in class. You are responsible for checking your Canvas page and the e-mail connected to the page on a regular basis for any class announcements or adjustments.

### COURSE DESCRIPTION AND OBJECTIVES:

- The Objective of this course is for you to learn the tax law governing public charities and private foundations. We will also cover social welfare organizations, social clubs, and to a lesser extent political organizations. We will cover some state laws regarding charitable solicitation.
- Student Learning Outcomes:
  - At the end of the course, you should be able:
    - To calculate the charitable contribution deduction.
    - To form a charity.
    - To advise someone regarding charitable solicitation laws.
    - To determine whether an organization qualifies for exempt status.
    - To evaluate the lobbying and political activities of a charity.
    - To evaluate and to plan the related and unrelated business activities of a charity.
    - To evaluate whether an activity constitutes an excess benefit transaction.
    - To advise a donor advised fund or controlling organization.
    - To evaluate whether a charity is a private foundation.
    - To avoid the private foundation excise taxes.

### PREPARATION:

- Students should expect to spend, on average, approximately two hours preparing for every hour of class, according to ABA and University guidelines. ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom

hour” of in-class instruction. Essentially, you should spend two hours for each credit hour (2) times 13 (the allotted number of weeks) for a total of 52 hours.

- As a student, I preferred to spend about one-third of my study time preparing for class, and two-thirds reviewing. I strongly recommend you do the same. If you are under-prepared, for a particular class, please attend anyway. At a minimum, you should review:
  - All class slides for the class.
  - All code sections for the class.
  - Ideally, you should:
  - Read the assigned cases, regulations, and text.

#### **PARTICIPATION AND ATTENDANCE:**

- I enjoy questions and try to answer all. Canvas has easy-to-use ways to communicate with me: please use them.
- Canvas may have DISCUSSION topics. Strong participation can affect your grade.
- Students requesting classroom accommodation must first register with the Office of Disability Resources. The UF Office of Disability Resources will provide documentation to the student who must then provide this documentation to the Law School Office of Student Affairs when requesting accommodation.
- Both the ABA and the College of Law require class attendance. If you miss more than six classes, your semester grade may be adversely affected. If you have a legitimate reason for missing class, you should contact me so that you absence may be excused.

#### **UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICIES:**

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>

#### **COURSE EXPECTATIONS AND GRADING EVALUATION:**

The Final Examination is open book, which includes anything written (printed or electronic). You may not work with another person. If you copy something from a source, you must cite or link to it.

- Your grade will be based 90% on the final exam and 10% on class participation and Canvas QUIZZES/ASSIGNMENTS (**these are announced on Canvas and may not be on the Syllabus as I may add new ones**). You are expected to read ANNOUNCEMENTS and to regularly look at Canvas for QUIZZES/ASSIGNMENTS. I expect most students will receive most participation and QUIZ points based on reasonable attempts, as well as responses to my comments. Exceptional participation may result in a half-letter grade bump.

#### **COURSE CONTENT:**

- Topic I:
 

Charitable Contributions	}	Weeks 1, 2 and part of 3
Charitable Solicitation		
Charitable Formation		
- Topic II:

- Exempt Purposes
  - Illegality Doctrine
  - Private Inurement
  - Commerciality Doctrine
  - Private Benefit Doctrine
- } Weeks 3, 4, 5, and 6
- Topic III:
    - Lobbying and Political ActivityWeek 8
  - Topic IV:
    - Unrelated Business Taxable Income
    - Unrelated Debt Financed Income} Weeks 9, 10, and 11
  - Topic Five:
    - Alternatives to Private Foundations
    - Private Foundations
    - Private Foundation Excise Taxes} Weeks 11, 12, and 13

## **Week One**

Topic: Charitable Contributions.

Book: Chapter 31 (pages listed in Module One). Also, read Chapter 1.

Slides: **Chapter 1 Slides; Chapter 31 Introductory Slides.**

Code: 170; 1011(b).

Quiz: Take Quiz 1 prior to the First Class. (Note: the quizzes are designed to teach you something so that you do not forget it. **Most people miss many questions.** That will not hurt you. All I ask is that you try. If you miss something, think about it.)

Take Quiz 2 prior to the Second Class.

We will work the problems in class, but mostly in Class Two. The slides have answers to the problems. We will not be able to work them all. We will work a couple simple problems and then move on to the most complex.

Be careful with section 170(c). Compare the wording of (c)(2) to 501(c)(3): they are not quite identical.

The section 170 regulations are helpful, but they contain a great deal of old rules. For example, if a problem hypothetically considers a gift in 1955, it is applying the 1954 code, not the current statute. One important rule in the regulations is that cash contributions count first: see if you can find it.

## **Week Two:**

Topic: Charitable Contributions.

Book: Chapter 31 (see Canvas Modules One and Two).

Slides: Slides on Problem 1 (we likely will not do in class). Slides on Problem 2 (Carryovers). Slides on Problem 3 (reductions). Slides on Problem 4 (elections). Slides on Problem 5 (bargain sale).

Code: 170; 1011(b); 1221; 1211-12; 1231.

Quiz: Take Quiz 2 prior to the Second Class.

## **Week Three (or possibly beginning in week two):**

Topics:

- Solicitation of Contributions
- Formation of Exempt Organizations and some Procedural rules.

Book: Chapter Ten for Formation

Slides, for substantiation and solicitation (no corresponding chapter in the text).

Code: 6033; 6104; 7428

Florida Statutes: Chapter 496. ***For other states***, please check your own state statute, if any, regarding charitable solicitations. Most states follow a model act, but some have very different provisions. Check to see who must register, how much registration costs, and the penalties for

solicitation of contributions without registration: often they are criminal (in Florida, it is a third degree felony). Check for the disclosure rules and reporting requirements in your state, as well.

Examine a Form 1023 and 1023EZ. In particular, look at the income statement and balance sheet requirements for the 1023. Examine the Checklist. As of 7/15/16, the IRS page for the Form 1023 Electronic Submission does not yet work (keep checking), although the Form 1023EZ process works. Thus, you may need to examine the older Form 1023 available on irs.gov. If so, pay attention to the cautions (mostly involving advance ruling requests). Pay attention to the user fee.

Examine a Form 990 and 990EZ.

### **Week Four:**

Topic: Exempt Purposes and the Illegality Doctrine.

Book: Read Chapter Two, emphasizing the *Bob Jones* decision. You should look at chapters Three, Four, Five, and Six. We will survey them quickly in class. In Chapter Three, the *Walz* and *VIA* decisions are particularly noteworthy. Glance at the church audit rules. In Chapter Four, *Big Mama Rag* and Rev. Proc. 86-43 are most important. In Chapter Five, *Washington Research Foundation* and Rev. Rul. 76-296 deserve your attention. In Chapter Six, Rev. Ruls. 69-545 and 83-157 are most important (actually very important). The *Eastern Kentucky* case provides interesting background on hospitals and health care. If time permits, we will cover *Geisinger* and *Sound Health*, which deal with HMOs (but probably not – they are horribly complex).

Code: 501(c)(3).

We will not cover the problems in any of these chapters.

### **Week Five:**

Topic: Commerciality Doctrine.

Book: Chapters Seven, Eight, Nine

Note: We will not be able to cover all the material in these chapters. Of particular importance are the *Federation Pharmacy*, *Presbyterian, D.A.V.*, *Golden Rule*, and *Orton Cone* cases.

The slides on sections 1381 et seq. are also important.

### **Weeks Six and Seven:**

Topic: Private Inurement and Private Benefit Doctrines

Book: Chapters Eleven and Twelve.

Code: 4958; 6684

Note: This is a huge area. We will not be able to cover it all in one week. We will deal more with Chapter Nine than Chapter Ten, which may not be covered in class at all.

*United Cancer Council* is very important. The *Wendy Parker* case is quite interesting and surprising to many people. Rev. Rul. 69-545 is also important and has been covered in prior chapters. The materials on art groups are important – *Goldsboro Arts League* and Rev. Rul. 71-395, especially as they compare to each other. *Easter House* and *Anclote Psychiatric Center* are good examples of what not to do – the results are somewhat predictable.

We will spend about half the class on section 4958, so be familiar with it. The slides should guide you through it. It is horribly complex and deceptively so; thus, be very careful.

Examine a Form 990 and look for the questions regarding 4958 transactions and corrections. This is how it applies to the TEO.

### **Week Eight:**

Topics: Lobbying and Political Activity

Book: Chapters Thirteen and Fourteen

We will spend most of our time on Chapter Thirteen, which deals with lobbying. Political Activity is an interesting topic, but what is most important is that a charity can do none of it – so you need to know what little politically related activities do not constitute forbidden “political activity.”

In Chapter Thirteen, the cases are not particularly important . . . the slide coverage is probably sufficient (although, if you have time, please read them). Concentrate on sections 501(h) and 4911. We will work the problems. The regulations cited in the slides are very important.

### **Week Nine:**

Topic: Unrelated Business Income Tax.

Book: Chapter 25/26. We will begin Chapter 27.

Code: 511-13.

The *American Bar Endowment* and *American College of Physicians* cases are important – the *ABE* case has arisen in a prior chapter. The *NCAA* case is also important. Within the regulations, concentrate on the corporate sponsorship rules. Read sections 511, 512, and 513.

### **Week Ten:**

Book: Chapters 27 and 28

Code: 511-13.

Note: The topics from Weeks Eight and Nine may spill over into Week Ten.

Chapter Twenty-seven will take about half the class. The *Sierra Club* case is important. Otherwise, concentrate on the modifications listed in 512(b) as well as the provisions of section 513, especially 513(a)(1),(2), and (3). The regulations dealing with exploited activities are very important.

Read section 512(b)(13) carefully.

### **Week Eleven:**

Topic: Unrelated Debt Financed Income

Book: Chapter 29

Code: 514

The *Clay Brown* decision is historically important and may help you understand the purpose of section 514. Mostly, you should concentrate on section 514. Read it very carefully. The slides should guide you through it.

### **Weeks Twelve and Thirteen:**

Topic: Private foundations

Book: Chapter Fifteen. We will fit in Chapter 19.

Code: 509; 4946.

For Chapter Fifteen, mostly be familiar with the Code and Regulations provisions. Concentrate on 1.170A-9 plus section 509 plus section 4946 (which is extremely complicated).

**Week Fourteen: (if we have one)**

Topic: Private Foundation Excise Taxes and Alternatives to Private Foundation Status.

Book: Chapters Sixteen to 18

For Chapter Fourteen, mostly be familiar with the code sections 4940 through 4945.

Read Chapter Fifteen.

I have a substitute article on Supporting Organizations, Sponsoring Organizations and Donor Advised Funds. That will replace those topics from the text.