

Civil Tax Procedure (LL.M.) (LAW 7640)

Wednesday 1:00 – 3:00 p.m.

Room 360 for in-person meetings and Zoom for remote students and meetings
Fall 2020 Syllabus

Prof. Chuck Hodges

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Office hours: One hour before each class (the Zoom link will be distributed by the first week of classes); or by appointment

I plan to be in Gainesville during the first two weeks of classes and two additional times TBA toward the end of the semester.

I ask for your patience and your constructive feedback as I teach in the new hybrid modality. If something about the technology and/or room setup is not working, your early feedback will allow me to resolve issues.

The classroom and Zoom protocols described below may need to be adjusted to take into account changing circumstances and your feedback. Please be sure to check your email and the class Canvas site regularly.

Course Description and Preparation Time:

All tax lawyers need to know federal tax procedure—the process by which the IRS can and does question or challenge a taxpayer’s reporting position and/or tax payments. Why? Because every transaction reported by a taxpayer on a tax return is subject to IRS scrutiny (i.e., deficiency procedures). Every unpaid federal tax liability is subject to collection tactics by the IRS (i.e., collection procedures). These rules are directly or indirectly based on due process rights of taxpayers. This course focuses on the federal tax procedures for how the IRS challenges a reporting position or collects unpaid tax liabilities for all types of taxpayers—individuals, partnerships, C-corporations, S-corporations, exempt organizations, and multinational corporations. This course is 2 credits.

The material consists of building blocks to take the student from the first contact with the IRS through the entire deficiency and/or collection process. Thus, class attendance is extremely important. The class time will not only consist of lecture but actually utilizing the learned procedures in hypothetical situations in dealing with the IRS from audits through litigation. This class will take a practical approach to assist the student for how to deal with the IRS or work for the IRS.

You should spend at least 4.0 full hours preparing for each class meeting since the class times are longer. You will not need to be familiar with any prior tax concepts.

Because this course is about learning civil tax procedure, we will focus more on the actual tax procedures and then tie it back to the statutes and other rules that create the procedures, so please concentrate more on the materials assigned from the course book and do not be concerned with memorizing the Code sections until the end of the course where it will all come together. For each chapter I will tell you whether to “read”, “skim”, or “quickly skim” the Code sections mentioned in the course book. We will discuss the Internal Revenue Manual as much as we will 26 U.S.C. sections. I will emphasize the most important Code sections during class.

Course Expectations and Learning Outcomes:

- Apply the federal tax procedures contained in Internal Revenue Code, Treasury Regulations, Internal Revenue Manual, and other authorities (again, focusing more on understanding the procedures rather than the wording of the Code sections).
- Explain how the IRS handles a deficiency proceeding from audit through litigation.
- Explain how the IRS tries to collect unpaid federal tax liabilities from notice through court proceedings.
- Instruct on best practices for dealing with the IRS on behalf of a taxpayer.
- Establish a base from which the student can build on how to advise a taxpayer on dealing with the IRS in all aspects of a tax dispute.

Course Prerequisite:

None.

Methodology & Course Materials:

As noted, the course will be taught through problem-solving and lecture. At the end of each class, each student should know how to handle the procedural issues addressed in class and how to spot the issue. Students are required to participate in class (see “Evaluation & Requirements” below). A slideshow review of the key concepts discussed during class will be made available for each course segment. The slides will not fully address the materials that will be on the exam. Thus, class attendance and participation is critical to doing well in this class, or any class, that focuses on procedures for representing clients.

The course book is *Tax Controversies Practice and Procedure* (and recent 2020 Supplement) (4th ed., Lederman & Mazza) (“*Tax Controversies*”). You may wish to have your Code available during class (we will focus on the Code sections in the 6000s), but you will not need your Treasury Regulations.

Outline of Topics and Assignments:

For the first class meeting, please read the following from *Tax Controversies* plus skim the supplemental materials for the sections listed below):

Ch. 3: only 3.01, 3.02(A) (skip *Beard* case), 3.03(A), 3.03(B)[1] & [2], problem 2
Skim quickly Code sections referenced

Ch. 1: only 1.01, 1.02(A), 1.03, 1.04, problems 2 and 3
Read sections 6212 & 6213 and skim the remaining Code sections referenced

Ch. 2: only 2.02(A) (read *Mayo* and skip *American Express*), 2.03, 2.04(A) & (B) (skip Rev. Proc. 2017-1). No problems assigned.

The topics to be covered for each future class will be assigned at the end of class to reflect the pace of class discussion and/or any new procedural developments. Unless otherwise advised, you should assume that the problem will be covered per class session, and you should prepare accordingly. These problems will serve as a guideline for the final exam.

Evaluation & Class Attendance Policy

Grade

10 percent: Participation

70 percent: Final Exam (open book)

20 percent: short paper (5 pages on topic of your choosing). The paper will focus on an aspect of tax procedure involving the type of taxpayers you expect (or hope) to represent. For example, if you plan to work with “large” taxpayers, then your paper will discuss some aspect of the IRS procedures for the taxpayers that fall into the IRS Large Business & International Division (“LB&I”).

Class Participation & Attendance: All Students

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. Use of a laptop or similar device is acceptable for note taking.

Absences taken for observance of religious holidays will be excused with completion of a makeup assignment. If you are absent because of a special situation (sickness, family emergency, job interview, etc.), the absence **may** be excused at Prof. Hodges’ discretion. Due to the length of the class, you can and should attend as much as you can. In general, the makeup assignments consist of (1) reviewing notes from a classmate for the day(s) missed; (2) completing the problems covered on the day(s) of absence and turning them in to Prof. Hodges; and (3) discussing with Prof. Hodges any

questions you have about the material or problems covered on the day(s) of absence. All makeup assignments are due by 5:00 p.m. on the last day of the Fall semester reading days, but earlier completion is recommended. If you are dealing with a personal situation of high difficulty or of prolonged duration, please seek assistance from Student Affairs and Prof. Hodges as soon as possible.

If you have more than two unexcused absences from regularly scheduled classes, your participation grade will be 0.

Additional Expectations: In Person Students

You are required to follow UF Law safety protocols at all times in the classroom, including wearing a mask that meets UF Health guidelines at all times and maintaining physical distance. You need to follow my direction and the TA's direction with respect to physical distancing. If you forget to bring a mask, we will have some available; please contact me or the TA.

You need to arrive at least 5 minutes before class starts, and you will be asked to take the most distant open seat available from the entry door. You may sit only in seats that have been designated as open through placement of the plexiglass shields. You are not to move these shields. Sanitizing supplies will be available in the classroom if you wish to wipe down your desk prior to sitting down. Please place your name plate where it will be visible as these protocols will prevent the use of a seating chart.

You need to stay in your assigned classroom during the entire scheduled time for each block. If you have an emergency, please gather your belongings and exit quietly and carefully; you will not be able to re-enter the classroom during the time block (this is to avoid as much as possible students crossing the paths of other students).

Eating and drinking will not be permitted in the classroom because masks must be worn at all times.

Do not log in to the Zoom feed for the classroom; only remote students should be using the Zoom feed. (This will ensure that I am able to see who is in attendance remotely.)

When class ends, I will exit first through the exit door. Students should follow with rows nearest the designated exit row going first and maintaining physical distance. You will not be able to linger in the classroom. Unfortunately, you will not be able to approach the podium to ask questions or follow me to my office—however, I am available to discuss your questions over the phone. You will need to attend virtual office hours or email to ask questions, and I will work to ensure you have many opportunities to do that. In short, your questions and concerns will be addressed.

If you determine you are experiencing COVID-19 symptoms (<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>), do not come to campus or, if you are already on campus, please immediately leave campus. Use the UF Health screening system and follow the instructions about when you are able to return to campus. <https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/>. If you learn from UF Health that you have been in contact with someone who has tested positive (with contact generally defined as exposure for longer than 15 minutes at less than 6 feet apart), you should return to campus only when instructed to do so by UF Health. If you have been notified by a different health department that you have been in contact with someone who has tested positive, you should reach out to UF Health for instruction.

If you are in quarantine because of a contact or if you are feeling well enough to attend remotely, you are expected to attend synchronously remotely and should contact me or the TA to let us know you request remote participation to count as attendance for those dates (please note that there is no need to disclose to me or the TA your private medical details; we will follow student and health privacy rules, although I may ask you to reach out to UF Health and/or Student Affairs). You will need to follow the same procedures outlined below in “Additional Expectations: Remote Students.”

These protocols are intended to foster a safe environment. Failure to follow these protocols, including failure to wear a mask, will count as an unexcused absence. Failure to correct behavior will also lead to a report to the Office of Student Conduct and Conflict Resolution, and you also will no longer be permitted on the UF Law campus. Finally, noncompliance will be reported to the relevant state board of bar examiners. The health and well-being of students, faculty, and staff is of paramount concern and we all need to follow appropriate guidelines.

Additional Expectations: Remote Students

You need to ensure your Zoom name matches your preferred name and with your last name also shown. If you are attending class remotely, you are expected to turn on video of yourself until after attendance is taken and when responding to or asking questions. You do not need to have video on when taking notes and listening to the class, but you need to be ready to respond to questions. You are expected to keep your microphone on mute unless you have been called on to ask or answer a question.

Do not use the chat function to ask questions directed to me during class; it will not be monitored by me, and students attending in person will not be able to see it. If you are trying to ask a question but your “virtual hand” is not being seen by me, please contact the TA. If you have a technical problem during the class, please contact UF IT (<https://www.law.ufl.edu/technology-services>).

Final Exam

The final exam will be 3 hours and will be given on the day scheduled by the law school. The exam will be given remotely and you will be required to use ExamSoft or the current software used by the law school. The exam will be open book, but you will not be permitted to communicate with others or access the Internet more broadly.

Students who receive a grade on the final exam lower than a B **and** who have accrued two 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. Hodges.

Exam delays and accommodations must be arranged exclusively 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.**

Disability Accommodation

Students requesting classroom and/or testing accommodations 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. Student Affairs will then communicate with Prof. Hodges as needed to assure the accommodation is provided. (Note: for guidance on requesting exam delays for other reasons (e.g., accident), see “Final Exam” section above). If you are seeking additional time because English is not your first language, please contact Student Affairs directly.

Honor Code and Other Polices:

Students are required to follow the Honor Code. To review its requirements see: <http://www.law.ufl.edu/student-affairs/additional-information/honor-code-and-committee>. Students who fail to follow UF safety protocols or the prohibition on circulating or posting class material will be referred to the College of Law Honor Code Council and the University’s Office of Student Conduct and Conflict Resolution.

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. **Complete student anonymity is preserved during and after the evaluation process.** Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

List of Chapters from Tax Controversies to be covered over the semester

While we will not review any entire chapter, I hope to cover the following chapters from *Tax Controversies*:

Chapter 1 Introduction to Tax Controversies

Chapter 2 IRS Rulemaking

Chapter 3 Tax Returns and IRS Examinations of Tax Returns

Chapter 4 Summons & Privileges

Chapter 5 IRS Appeals (including changes under Taxpayer First Act of 2019)

Chapter 7 Statute of Limitations and Restrictions on Assessments

Chapter 8 The United States Tax Court

Chapter 12 Civil Tax Penalties

Chapter 14 Liens, Levies, & Other Collection Procedures

Chapter 15 Offers in Compromise

Chapter 16 Collection Due Process Procedures

Many of these chapters will be combined for discussion due to the overlap in topics

Finally, I have had one job for over 22 years—dealing with every aspect of civil tax procedure. I promise you will enjoy this very important class if you put in the work, pay attention, and appreciate that within 60 days after graduation, you will have to deal with the due process rules we will discuss.