

TAX FRAUD AND EVASION

Course No. 7641

2 Credits

University of Florida
Master of Laws in Taxation (LL.M.)
Spring 2021
F 9a–11a

A. Brian Phillips, Esq. | A. Brian Phillips, P.A.
912 Highland Ave. Orlando, Florida 32803
Brian.Phillips@Phillips-Law-Firm.com
Phone: 407-872-0777
Office Hours by Appointment
Via F2F, Zoom, WebEx, Teams, FaceTime, or Skype

DESCRIPTION

This course will address a series of topics common to civil and criminal tax fraud matters. Subjects covered will include analysis of relevant statutory concepts and related case-law developments, methodologies of investigation, prosecution, and defense, as well as issues surrounding the resolution of certain types of cases. Emphasis will be on practical and high-level application of subject matter to all aspects of case handling.

Course Materials: Comisky, Feld, & Harris: Tax Fraud and Evasion Vol. 1 and portions of Vol. 2 will be of required. These materials are available to students via online access. Supplemental Materials noted below from the Internal Revenue Code, Regulations, case law are likewise mandatory, as well as the third-party materials to be provided by me in PDF format.

Course Objective: To provide students the opportunity to explore the issues and challenges involved in the investigation, prosecution and defense of tax matters involving fraudulent conduct by one or more of the actors involved.

Performance Evaluation: Student performance will be assessed on the demonstrated preparation for and in-class participation as well as a written, essay based final examination. Absent special and compelling circumstances not otherwise addressed herein, there will not be a make-up exam. The law school policy on exam delays and accommodations can be found at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form>.

Class Preparation, Attendance, & Comportment: Attendance is mandatory and will comprise a portion of the final grade. See Performance Evaluation, supra. You are required to attend at the times listed above in your chosen modality—i.e., in person or synchronous online—unless you have permission to attend remotely. Attendance will be taken each class meeting. If you are attending remotely, you will be required to participate just as if you were present in the classroom, including audio and video presence. Whether attending live or in person, repeated class disruption (e.g., excessive noise, texting, personal internet use, leaving early, or arriving late) may be counted as an unexcused absence.

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 me know. If you are absent because of a special situation (sickness, family emergency, job interview, etc.), the absence may be excused at my discretion (1) after

you have provided any documentation of the situation requested by me (please note I will respect your privacy—e.g., I may request a note from a doctor that your absence should be excused, but I will not ask to know the underlying issue), and (2) you have completed a make-up assignment.

If you have more than three unexcused absences, your participation grade will be 0, you *may* be barred from taking exams, and you *will* be barred from participating in the retesting process (see below).

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.

For students attending in person, you need to arrive at least 5 minutes before class starts and enter your assigned classroom through the entrance door; 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.) If you are in a second classroom, you still would not log in individually to Zoom. Instead, the classroom will be logged in. (Please provide feedback regarding how this is working; adjustments will be made if needed.)

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. You will not be able to approach the podium to ask questions or follow to my office. 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.

If 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.

If you are attending remotely, 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 required to turn on video of yourself during the entire class. 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>).

Classroom instruction will be comprised, primarily, of student responses to questions posed by the instructor as well as discussions of key topics and their application to real-world situations. As the conduct of the actors involved in fraud cases is often divergent from accepted social norms, the methods of detection, assessment, prosecution, and defense of the same will require a deep understanding of the legal and factual environments in which such actions take place, as well as the consequences of non-compliance by taxpayers, government actors, as well as those who advise both.

Timeliness, comportment, and the like will be governed as is attorney conduct, generally, in the United States District Courts. If you have questions, see me. Please note that, if you attend remotely, appropriate location, comportment, and the like are nevertheless required. See, e.g., Local Rule 5.03(e), M.D.Fl. In addition to the foregoing, our class sessions will be audio and visually recorded. By registering for this course you are agreeing to have your video, image, and voice recorded. I will provide access to all the recordings to all students through Canvas.

As are attorneys, students are expected to treat each other with respect at all times. Although opinions may differ and all perspectives are welcome, the dialogue will not be focused on the learning goals set forth herein. With this same respect for fellow participants in mind, students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Similarly, professors and TAs also will not take, circulate, or post photos or videos of class beyond the recording noted above for the benefit of the entire class. Students failing to follow these rules will be referred to the College of Law Honor Code Council and the University’s Office of Student Conduct and Conflict Resolution.

Preparation for class is essential to success in the course. It is that simple.

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. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.”

Students with Disabilities: Students requesting accommodation for disabilities must first register with the Dean of Students Office (<http://www.dso.ufl.edu/drc/>). The Dean of Students Office will provide documentation to the student who must then provide this documentation to the 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.

Work Load/Class Preparation: It is anticipated that you will spend approximately 2+ hours out of class reading and/or preparing for in class assignments for every 1 hour in class.

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>.

Grading information (what the final grade will consist of) and the grading scale: The Levin College of Law's mean and mandatory distributions are posted on the College's website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

Statement of Learning Outcomes: By the end of the course, each student will, *inter alia*:

have gained an understanding of what differentiates tax fraud from other forms of unlawful activities; have gained an understanding of the relevant provisions of Titles 26 & 18, United States Code; have gained the ability to differentiate the numerous *mens rea* elements of the offenses commonly encountered;

have acquired an understanding of the behavioral challenges facing those investigating, prosecuting, and defending behaviors involving tax fraud;

have come to understand the constitutional, statutory, and case law powers conferred on as well as the constraints applied to investigators, prosecutors, and defense counsel;

have acquired a more complete understanding of the reach and scope of the United States Department of Justice and the IRS;

be able to analyze the evidentiary and procedural challenges unique to tax offenses;

be able to assess the risks to counsel and client (whether public or private) inherent in conducting an investigation, prosecution, or defense of tax fraud;

be able to reasonably assess the consequences of conviction for tax fraud in Federal Court; and be able to

address the civil challenges of tax fraud matters from both US and taxpayer perspectives.

<u>Date</u>	<u>Materials for Preparation</u>
22 Jan 2021	Vol. 1, Chapter 2 - T26 Offenses 2.00-2.11 26 U.S.C. §§ 6064, 7201, 7206, 7212, & 7701 <u>Cheek v. United States</u> , 498 U.S. 192 (1991)
29 Jan 2021	Vol. 1. Chapter 2 & 3- T26 Offenses (continued) 3.00-3.02[2]; 3.02[4]-[8]; 3.03-3.05 18 U.S.C. §§ 1001, 287, 2, 371, 1341, & 1343; T.D. 128
05 Feb 2021	Cancelled
12 Feb 2021	Vol. 1. Chapters 2 & 3 – T16 & T18 Offenses (continued) See above
19 Feb 2021	Vol. 1 Chapter 4 - Criminal Investigative Techniques Supp. 4.01-4.02; 4.03-4.03[5]; 4.04-4.04[11], 4.04[13]-[15]; 4.07 <u>United States v. Ofshe</u> , 817 F.2d 1508 (11th Cir. 1987); <u>United States v. Kowalik</u> , 809 F. Supp. 1992 (S.D. Fla. 1992) <u>In re: Application</u> , 349 F.3d 1132 (9th Cir. 1992)
26 Feb 2021	Vol. 1 Chapter 5 - Federal Grand Jury Practice 5.00-5.06; 5.08 Rule 6, <u>Fed.R.Crim.P.</u> 18 U.S.C. §§ 1503, 1505, 1510, 1512, 1621-23 Grand Jury Subpoena CIPPA Proffer Letter Indictments
05 Mar 2021	Vol. 2 Chapter 14 & 15 - 4 th , 5 th , & 6 th Amendment 14.01-14.02[4][h][i][v]; 14.02[4][j]-[k]; 14.02[5]; 14.02[6][a]-[b][i], [c]-[e]; 14.02[7]-[8][f] <u>Georgia v. Randolph</u> , 547 U.S. 103 (2006) <u>United States v. Tweel</u> , 550 F.2d 297 (5th Cir. 1977)
12 Mar 2021	Cancelled
19 Mar 2021	Vol. 2 Chapter 14 & 15 - 4 th , 5 th , 6 th Amendment (continued) 15.01-15.02, 15.03-15.03[2][b]; 15.03[2][c], 15.03[3][a]-[b], [c][ii], 15.03[4]-[5] <u>United States v. Hubble</u> , 530 U.S. 27 (2000) <u>Doe v. United States</u> , 487 U.S. 201 (1988) <u>Lasalle Bank v. Seguban</u> , 54, F.3d 387 (7th Cir. 1995) <u>United States v. Stein</u> , 541 F.3d 130 (2d Cir. 2008)
26 Mar 2021	Vol. 1, Chapter 6 - Criminal Pre-Trial Procedure 6.00-6.04; 6.06[1]; 6.07 26 U.S.C. §§ 6513, 6531; 18 U.S.C. § 3290 Rules 7, 16, & 18, <u>Fed.R.Crim.P.</u> Plea Agreement;

and

Vol. 1, Chapter 7 - Criminal Trial Issues
7.01-7.10; 7.12; 7.14-7.15
Jury Instructions

02 Apr 2021 Vol. 2, Chapter 16 - Sentencing for Criminal Tax Offenses
16.02-16.02[2][b]; 16.02[3][a]; 16.02[4]-[4][b]; 16.02[5]-[5][a][ii]; 16.02[6][a]; 16.04-16.04[5][c]
18 U.S.C. § 3553; U.S.S.G. §§ 1B1.3, 2T1.1, & 2T4.1
Sentencing Materials

09 Apr 2021 Vol. 1, Chapter 8 - Civil Fraud Penalties
8.01-8.03; 8.05
26 U.S.C. § 6663, 11 USC § 727
Allen v. Commissioner, 128 T.C. 4 (2007)

16 Apr 2021 Vol. 1, Chapter 9 – Civil Trial Issues
9.01-9.09
Vol. 1, Chapter 10 - Civil Defense Strategies/Techniques
10.00-10.07

23 Apr - 06 May 2021 Exam Period