TAX FRAUD AND EVASION

Course No. 7641

2 Credits

University of Florida
Master of Laws in Taxation (LL.M.)
Spring 2022
F 8:45a-11:45a

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

Note:

***This syllabus may need to be adjusted to take into account changing circumstances; please refer to*** [***https://coronavirus.ufl.edu/***](https://coronavirus.ufl.edu/) ***for the latest on UF’s ongoing response to the pandemic. Please be sure to check your email and the class Canvas site regularly.***

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 required. These materials are available, gratis, 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).**

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).

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.)

**Notice of Recording and Conduct Rules Relating to Photos and Recordings**

Students are allowed to record video or audio of “class lectures.” The entirety of our class sessions will also be audio visually recorded using Zoom and/or MediaSite, access to these recordings may be had through Canvas. However, the purposes for which student recordings and Zoom/MediaSite recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture **does not** include student presentations, academic exercises involving solely student participation, assessments (quizzes, tests, exams), private conversations between students in the class, or between a student and the faculty or lecturer during a class session. Please note that the Zoom and/or MediaSite recordings will record conversations with students in the class as those will record the entirety of a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third-party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

You are required to attend at the times listed below. Unless you have been accepted into the pilot, part-time program, you are required to attend in person. With **advance** permission, in-person students may be permitted to attend through Zoom; permission will only be granted in situations, described below, that would warrant an excused absence after completion of a makeup assignment. You are expected to be prepared to respond to questions about the assigned problems and reading.  Attendance will be taken each day and spot checks for attendance may be taken. Unless you are in the pilot, part-time program (or have permission for a particular day), do not log in to the Zoom feed for the classroom during class time; this will ensure that I am able to see who is in attendance remotely and will help limit technology issues. As noted above, Zoom recordings of class will be made available to all students.

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., LR 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.

**Accommodation and Disability Recourse Center**

Students requesting classroom and/or testing accommodations must first register with the Office of Disability Resources. The UF Disability Resource Center (<https://disability.ufl.edu/>) 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 me as needed to assure the accommodation is provided.

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: : <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>

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.

**Date                            Materials for Preparation**

21 & 28 Jan                  Vol. 1, Chapter 2 - T26 Offenses

                                                2.00-2.11

                                                26 U.S.C. §§ 6064, 7201, 7206, 7212, & 7701

                                                Cheek v. United States, 498 U.S. 192 (1991)

                                                Vol. 1. Chapters 2 & 3- T26 & T18 Offenses

                                                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

11 Feb                         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

United States v. Ofshe, 817 F.2d 1508 (11th Cir. 1987);

United States v. Kowalik, 809 F. Supp. 1992 (S.D. Fla. 1992)

In re: Application, 349 F.3d 1132 (9th Cir. 1992)

18 Feb                         Vol. 1 Chapter 5 - Federal Grand Jury Practice

                                             5.00-5.06; 5.08

Rule 6, Fed.R.Crim.P.

18 U.S.C. §§ 1503, 1505, 1510, 1512, 1621-23

Grand Jury Subpoena  | CIPPA | Proffer Letter | Indictments

25 Feb & 04 Mar         Vol. 2 Chapters 14 & 15 -  4th, 5th, & 6th 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]

Georgia v. Randolph, 547 U.S. 103 (2006)

United States v. Tweel, 550 F.2d 297 (5th Cir. 1977)

                                            Vol. 2 Chapters 14 & 15 - 4th, 5th, 6th 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]

United States v. Hubble, 530 U.S. 27 (2000)

Doe v. United States, 487 U.S. 201 (1988)

Lasalle Bank v. Seguban, 54, F.3d 387 (7th Cir. 1995)

United States v. Stein, 541 F.3d 130 (2d Cir. 2008)

25 Mar                         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, Fed.R.Crim.P.

Plea Agreement;

Vol. 1, Chapter 7 - Criminal Trial Issues

7.01-7.10; 7.12; 7.14-7.15

Jury Instructions

01 Apr                         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][e]

18 U.S.C. § 3553; U.S.S.G. §§ 1B1.3, 2T1.1, & 2T4.1

Sentencing Materials

08 Apr                         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)

15 Apr                         Vol. 1, Chapter 9 – Civil Trial Issues

                                             9.01-9.09

22 Apr                         Vol. 1, Chapter 10 - Civil Defense Strategies/Techniques

10.00-10.07

29 Apr - 12 May          Exam Period