

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

PROF. WILLIS

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OFFICE HOURS: Tuesday 11:00 – 12:00; 3:00 – 4:30

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### 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).

### COURSE 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:
  - You should learn how:
    - 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. The ABA and the University require a statement to this effect, although it does not comport exactly with Distance Learning. Essentially, you should spend three hours for each credit hour (2 times 13 (the allotted number of weeks) for a total of 78 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.

### 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 your absence may be excused.

#### ACADEMIC HONESTY AND INTEGRITY:

- Academic honesty and integrity are fundamental values of the University community. Students should understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>
- You may not work with other persons on the exam, quizzes (other than for installation of materials) or assignments to be submitted unless clearly authorized otherwise.
- Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University's Office of Student Conduct and Conflict Resolution.

#### STUDENT COURSE EVALUATIONS:

- Students should provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click here for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may 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 here.

#### EXAM AND 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. You **must** pay attention to Canvas deadlines for QUIZZES/ASSIGNMENTS.
- The law school policy on exam delays and accommodations can be found here.


#### UF LAW GRADING POLICIES:

<u>Grade</u>	<u>Points</u>	<u>Grade</u>	<u>Points</u>	<u>Grade</u>	<u>Points</u>
A (Excellent)	4.0	C+	2.33	D-	0.67
A-	3.67	C (Satisfactory)	2.00	E (Failure)	0.0
B+	3.33	C-	1.67		
B (Good)	3.00	D+	1.33		
B-	2.67	D (Poor)	1.00		


- 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>. **The grading policy generally does not apply to LL.M. courses.**


**COURSE CONTENT:**

- Topic I:
  - Charitable Contributions
  - Charitable Solicitation
  - Charitable Formation

Weeks 1, 2 and part of 3
  
- Topic II:
  - Exempt Purposes
  - Illegality Doctrine
  - Private Inurement
  - Commerciality Doctrine
  - Private Benefit Doctrine

Weeks 3, 4, 5, and 6
  
- Topic III:
  - Lobbying and Political Activity

Week 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

**Weeks One and Two:**

Topic:

- Charitable Contributions.

Book: Chapter 26. Also, read Chapter 1.

Slides: **Chapter 1 Slides; Chapter 26 Slides.** (they will be available on Canvas).

Code: 170; 1011(b).

We will work the problems in class. 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.

Be careful with the rules on carryovers, as they are quite complicated. We may not have class time to work through the carryover complications; however, you are responsible for them on the exam. I will be available in my office to work through as many problems as you wish (well, within reason).

We will likely work the problem on Bargain Sales *in Class Two*; you may see one on the exam, so work the problem and compare 1011(b) to Treas. Reg. 1.1015-4. We will work the "Very Complicated Problem" in class. We may begin it in the first class, but we will mostly work it during the second class.

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

Topic:

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

Book: Chapter Eight for Formation

Slides, Chapter 28 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.

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: Chapter Seven.

Note: We will not be able to cover all the material in this long chapter. We will concentrate more on pages 166 through 213. 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 Nine and Ten.

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 Eleven and Twelve

We will spend most of our time on Chapter Eleven, 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 Eleven, 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 21. We will begin Chapter 22.

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 22 and 23

Code: 511-13.

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

Chapter Twenty-two 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.

Chapter Twenty-three will take about half the class. Read section 512(b)(13) carefully.

**Week Eleven:**

Topic: Unrelated Debt Financed Income

Book: Chapter 24

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 Thirteen.

Code: 509; 4946.

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

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

Book: Chapters Fourteen and Fifteen

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

Read Chapter Fifteen.