

UNIVERSITY OF BALTIMORE SCHOOL OF LAW
SEMESTER YEAR: SPRING 2021

Course: State and Local Taxation

LAWT/979/491--LL.M.
TAXA/672/185--M.S.
LAW/979/512--J.D.

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Days/Time: Mondays from 6:15 – 9:00 p.m. beginning January 11, 2021 through April 26, 2021

Location: Room assignments are available through MyUB.

Course Description:

This course will explore various state taxes, as well as the federal and state constitutional and statutory limitations on state and local authority to tax individuals and multistate businesses. Topics will include Due Process, the Commerce Clause and federal immunity limitations on state and local taxation, personal and business income taxes, sales and use taxes, real and personal property taxes and procedural issues in challenging a state assessments or seeking a refund. Maryland state and local taxation also will be examined briefly.

Course Materials:

Hellerstein, Stark, Swain & Youngman, State and Local Taxation: Cases and Materials (Eleventh Edition 2019)

Course Objectives and Outcomes:

Expose the student to the far-reaching components of SALT (state and local taxes) and an awareness of the Federal and State law limitations on a subnational government's power to tax residents and nonresidents. The course will also present the student with an appreciation of how U.S. federalism reflects a system of disparate Federal, State and local tax laws, where frequently the tax and administrative compliance burdens of multijurisdictional taxpayers are higher and more complex at this subnational level than at the national level of government.

Grades:

There will be a single three-hour closed book, no notes exam at the end of the semester. Ninety percent of your grade will be based upon the exam. Ten percent will be based upon class participation, including analysis and discussion of materials and occasional homework writing assignments.

Assignments/Participation:

You are expected to complete all reading assignments and to regularly participate in class discussion in order to demonstrate that you have read and reflected on the issues raised in the assignment.

Attendance:

Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. In this course, J.D. students are allowed a maximum of two absences. A J.D. student who exceeds the maximum allowable absences may be compelled to withdraw from the course or may be barred from sitting for the final exam. J.D. students who are compelled to withdraw or are barred from sitting for the final exam may receive an "FA" (failure due to excessive absence) for the course. Attendance will be taken at the beginning of each class. Attending class online counts as being present.

While LL.M. and M.S. students should endeavor to attend each class, there is no attendance policy applying to these students.

Course Website:

This course has a TWEN page that links to this syllabus, announcements and other material. You are responsible for self-enrolling in the TWEN page and for checking it regularly for course information.

Computers:

Students may use laptop computers for class related purposes, as well as on the exam (with the School-provided exam software).

Food and Beverage:

If in class sessions resume during the semester, snacks and drinks are permitted during class provided that you avoid loud and messy items. Please clean up after yourself and save anything inappropriate for a break.

Class Cancellation:

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If in class sessions resume during the semester and there is inclement weather, students should visit the University of Baltimore web page or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.

Academic Integrity:

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or the School of Law. Violations of academic integrity include, but are not limited to: cheating; plagiarism; misuse of library materials; inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and impeding the Honor Code process.

LL.M. and M.S. students must adhere to the University of Baltimore’s Academic Integrity Policy, which can be found at: http://www.ubalt.edu/campus-life/student-handbook.cfm#Academic_Integrity.

J.D. students must adhere to the School of Law Honor Code. The School of Law Honor Code and information about the process is available at.

https://law.ubalt.edu/academics/policiesandprocedures/honor_code/index.cfm

Title IX Sexual Harassment and Sexual Misconduct Policy:

The University of Baltimore’s Sexual Harassment and Sexual Misconduct policies are compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the University any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB’s nondiscrimination policies can be found at: <http://www.ubalt.edu/titleix>.

Disability Policy:

If you are a student with a documented disability who requires an academic accommodation, please contact Karyn Schultz, Director, Center for Educational Access, Office of Disability and Academic Services at 410-837-4141 or via email at kschultz@ubalt.edu.

Assignments: These are the scheduled topics and preliminary reading assignments for each class, subject to any new relevant court decisions or administration pronouncements, if any. At least two weeks before that class, we will be updating the assigned reading and posting some items directly to the course website, so be sure to check TWEN. While many detailed citations have been provided in the syllabus for each discussion topic, students should at least skim the listed statutes, regulations, court decisions etc. to familiarize yourself with the topics.

Class	TITLE	DATE
1	Overview; Jurisdiction to Tax	January 11
	Topics: Course Administrative Matters Overview of Topics and Issues to be Covered The Impact of State and Local Taxation (“SALT”) on State and Local Public Finance Constitutional Limitations on State Taxing Power Due Process Nexus and Commerce Clause Nexus Residence and Source as a Basis for Taxing Income Federal Statutory Limitations on State Tax Jurisdiction: Public Law 86-272	
	Reading: Text: 1-15; 25-68 and 75-98	

	<p>Key Cases to Discuss:</p> <p><i>Miller Bros. Co. v. State of Maryland</i> <i>South Dakota v. Wayfair, Inc.</i> <i>Geoffrey, Inc. v. South Carolina Tax Commission</i> <i>Wisconsin Department of Revenue v. Wrigley, Jr. Co.</i></p>	
	Martin Luther King Day –No Classes	January 18
2	<p>Jurisdiction to Tax (Continued) Limitations on State Taxes as Part of the Regulation of Interstate and Foreign Commerce—Part 1</p>	January 25
	<p>Topics:</p> <p>The Historical Background of the Commerce Clause and the Changing Tests for Compliance The <u>Complete Auto</u> Framework for Commerce Clause Challenges</p>	
	<p>Readings:</p> <p>Text: 99-127; skim 140-148; 149-167; 177-190</p>	
	<p>Key Cases to Discuss:</p> <p><i>Complete Auto Transit, Inc. v. Brady</i> <i>Tyler Pipe Industries, Inc. v. Washington State Dept. of Revenue</i> <i>Norfolk and Western Railway Company v. Missouri State Tax Commission</i> <i>Comptroller of the Treasury of Maryland v. Wynne</i> <i>Commonwealth Edison Co. v. Montana</i></p>	
3	<p>Limitations on State Taxes as Part of the Regulation of Interstate and Foreign Commerce--Part 2</p>	February 1
	<p>Topics:</p> <p>Restrictions on State Taxation of Foreign Commerce The Role of Congress in Regulating Interstate/Foreign Commerce The Import-Export Clause Limitations on State Taxation of Imports The Tonnage Clause Limitations on State Taxation of Exports</p>	
	<p>Readings:</p> <p>Text: 190-214; 215-245</p>	
	<p>Key Cases to Discuss:</p> <p><i>Goldberg v. Sweet</i> <i>Japan Line, Ltd. v. City of Los Angeles</i> <i>Michelin Tire Corp. v. Wages</i> <i>Department of Revenue of the State of Washington v. Association of Washington Stevedoring Companies</i></p>	

4	The Requirements of Equality and Uniformity as a Limitation Upon SALT; Other Constitutional Limitations	February 8
	<p>Topics</p> <p>The Constitutional Requirements of Equality and Uniformity</p> <p>State Constitutional Uniformity and Equality Restrictions</p> <p>Equal Protection of the Laws as Involving SALT</p> <p>Privileges and Immunities from State Taxation (for Persons Other Than Federal Instrumentalities)</p>	
	<p>Readings:</p> <p>Text: 247-257; 257-290; 303-319; skim 319-331</p>	
	<p>Key Cases to Discuss</p> <p><i>In re Opinion of the Justices</i></p> <p><i>Armour v. City of Indianapolis</i></p> <p><i>Nordlinger v. Hahn</i></p> <p><i>Austin v. New Hampshire</i></p> <p><i>Lunding v. New York Tax Appeals Tribunal</i> (skim)</p>	
5	Immunity of Federal Instrumentalities from State Taxation	February 15
	<p>Topics</p> <p>Federal Immunity From Sales, Use and Property Taxes</p> <p>Federal Statutory Rules Governing Federal Immunity From State Taxation</p> <p>State Taxation of Federal Obligations</p> <p>State Taxation of National Banks</p> <p>Other Areas of Federal Immunity</p> <p>State Taxation of Indian Tribes</p>	
	<p>Readings:</p> <p>Text: 333-369</p>	
	<p>Key Cases to Discuss:</p> <p><i>United States v. New Mexico</i></p> <p><i>Davis v. Michigan Department of the Treasury</i></p>	
6	State and Local Personal Income Taxes	February 22
	<p>Topics</p> <p>Conformity of State Income Taxes to the Federal Income Tax</p> <p>Determination of Residence for State Tax Purposes</p> <p>Taxing the Income of Residents</p> <p>Taxing the Income of Nonresidents</p> <p>Changes of Residence</p> <p>Taxation of Income from Partnerships</p> <p>Taxation of Income of Trusts and Estates</p> <p>Credit Allowances for Taxes Paid to Other States</p>	
	<p>Readings:</p> <p>Text: 373-438</p>	
	<p>Key Cases to Discuss:</p>	

	<p><i>Zelinsky v. Tax Appeals Tribunal of the State of New York</i> <i>Wheeler v. State of Vermont</i> <i>Weil v. Chu</i> <i>North Carolina Department of Revenue v. Kimberly Rice Kaestner</i> <i>1992 Family Trust</i></p>	
7	State and Local Corporate Income Taxes—Part 1	March 1
	<p>Topics: The Aggregate State Corporate Income Tax Base How That Base is Divided Among the Involved States Federal Constitutional Limitations as Applied to Both Multistate and Multinational Enterprises The “Unitary Business Principle”</p>	
	<p>Readings: Text: 439-506 (exclude Note C, pp. 506-507); 507-534</p>	
	<p>Key Cases to Discuss <i>Fargo v. Hart</i> <i>Exxon Corporation v. Wisconsin Department of Revenue</i> <i>Allied Signal, Inc. v. Director, Division of Taxation</i> <i>Underwood Typewriter Co. v. Chamberlain</i> <i>Butler Bros. v. McColgan</i> <i>Norfolk and Western Railway Company v. Missouri State Tax</i> <i>Commission</i> <i>Moorman Manufacturing Co. v. Bair</i> <i>Mobile Oil Corporation v. Commissioner of Taxes of Vermont</i></p>	
8	State and Local Corporate Income Taxes—Part 2	March 8
	<p>Topics: The Unitary Business Principle Combined Reporting The Uniform Division of Income for Tax Purposes Act (“UDITPA”) The Multistate Compact Distinguishing Apportionable from Allocable Income Under State Statutes The Apportionment Formula: Delineating the Factors Relief Provisions for Varying Statutory Formulas</p>	
	<p>Readings: Text: 534-561; 567-581 (skip the Proposed MTC Amendments on pp. 578-581); 581-587; 589-594; 607; 611—658</p>	
	<p>Key Cases to Discuss <i>Container Corporation of America v. Franchise Tax Board</i> <i>Cincinnati, New Orleans and Texas Pacific Railway Co. v. Kentucky</i> <i>Depart of Revenue</i> <i>Corporate Executive Board Company v. Virginia Department of</i> <i>Taxation</i> <i>Microsoft Corporation v. Franchise Tax Board</i></p>	

	Spring Break—No Class	March 15
9	Sales and Use Tax -- Part 1	March 22
	<p>Topics</p> <ul style="list-style-type: none"> Introduction <ul style="list-style-type: none"> The Nature of the Sale Tax The Fiscal Importance of State and Local Sales Taxes The Distribution of the Burden of Retail Sales and Use Taxes Defining a Taxable Sale <ul style="list-style-type: none"> Distinguishing Tangible Personal Property from Services or Intangibles Computer Software and Digital Products Cloud Computing Sales of a “Bundle” of Distinct Property and Services in a Single Contract Retail Sales and Retail Sale Exemptions Taxable Services Internet Access and the Internet Tax Freedom Act 	
	<p>Readings:</p> <p>Text: 659—690; 690-717; 717-732; 733-744; 751 (beginning with Note B) -776.</p> <p>Skim the Table of Contents of the Tax-General Article of the Maryland Annotated Code: Title 11--Sales and Use Tax</p>	
	<p>Key Cases to Discuss</p> <p><i>Washington Times-Herold v. District of Columbia</i></p> <p><i>City of Boulder v. Leanin’ Tree, Inc.</i></p> <p><i>Mass. Letter Ruling 12-10</i> (skim)</p> <p><i>New Mexico Ruling 401-12-2</i> (skim)</p> <p><i>Dell, Inc. v. Superior Court</i></p> <p><i>Cincinnati Reds v. Testa</i></p> <p><i>Kaiser Steel Corporation v. State Board of Equalization</i></p> <p><i>Covington Pike Toyota, Inc. v. Cardwell</i></p> <p><i>Conn. Ruling 95-10</i></p>	
10	Sales and Use Tax—Part 2	March 29
	<p>Topics:</p> <ul style="list-style-type: none"> Real Estate Construction and Repair Miscellaneous Exemptions and Exclusions Measuring the Amount Subject to the Sales or Use Tax Collection of the Tax by the Vendor The Taxation of Interstate Sales Sales Tax Reform and the Streamlined Sales and Use Tax 	
	<p>Readings</p> <p>Text: 779-824; 832-862; 870-873</p>	
	<p>Key Cases to Discuss:</p>	

	<p><i>Normand v. Walmart.com USA, LLC</i> <i>Commissioner of Revenue v. J.C. Penney Company, Inc.</i> <i>Oklahoma Tax Commission v. Jefferson Lines, Inc.</i></p>	
11	Ad Valorem Property Taxes—Part 1	April 5
	<p>Topics: Property Taxation and Property Rights Assessing and Collecting Property Taxes Uniformity and Equality in Property Tax Assessments Approaches to the Valuation of Property</p>	
	<p>Readings Text: 887-908; 920-929; 930—944 Skim the Table of Contents of the Tax-Property Article of the Maryland Annotated Code</p>	
	<p>Key Cases to Discuss <i>People ex. rel. Schlaefer v. Allyn</i> <i>CSX Transportation, Inc. v. Georgia State Board of Equalization</i> (skim) <i>Rosbroc Associates v. Assessor and Board of Review of the City of New Rochelle</i> <i>Board of Assessment Appeals v. Colorado Arlberg Club</i></p>	
12	Ad Valorem Property Taxes—Part 2	April 12
	<p>Topics: Special Issues in Land Valuation Valuation of Contaminated Land Non-Market Adjustments to Value The Valuation of Special Purpose Property Property Subject to Easements and Use Restrictions The Valuation of “Big Box” Retail Stores Property Tax Exemptions</p>	
	<p>Readings: Text: 944-997; 997-1017</p>	
	<p>Key Cases to Discuss: <i>Joseph E. Seagram & Sons, Inc. Tax Commissioner of the City of New York</i> (skim both trial court and appellate opinions) <i>In the Matter of Merrick Holding Corp. v. Board of Assessors Village of Ridgewood v. Bolger Foundation</i> <i>Twin Lakes Golf and Country Club v. King County</i> <i>Menard, Inc. v. City of Escanaba</i> <i>Christian Home for the Aged, Inc. v. Tennessee Assessment Appeals Commission</i> <i>Dove Lewis Memorial Emergency Veterinary Clinic, Inc. v. Department of Revenue</i></p>	
13	State Tax Procedure: Assessments, Collections, Refunds and Judicial	April 19

	Remedies	
	<p>Topics:</p> <ul style="list-style-type: none"> How State and Local Taxes are Assessed How State and Local Taxes are Collected Challenging Tax Assessments in Administrative Proceedings Suits to Recover Taxes Paid Prospective or Retroactive Relief and Other Legal Remedies Injunctions and Other Equitable Relief 	
	<p>Readings</p> <p>Text: 1019-1066</p> <p>Skim the Table of Contents of the Tax General Article of the Maryland Annotated Code: Title 13--Procedure</p>	
	<p>Key Cases to Discuss:</p> <p><i>McKesson Corporation v. Division of Alcoholic Beverages and Tobacco</i></p>	
14	Review Class	April 26
	Examination Period	May 3-12