

UNIVERSITY OF BALTIMORE GRADUATE TAX PROGRAM

SYLLABUS FOR TAX EXEMPT ORGANIZATIONS

SECTIONS: LAWT/983/491; TAXA/665/185; LAW/983/512

Summer 2015

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Class Meeting Time and Location

The class is scheduled to meet in **Room 608** (law school building) on **Monday evenings**, beginning May 18, 2015 through July 20, 2015, from 6 p.m. to 9:10 p.m. The class will not meet Memorial Day, May 25. The **examination** will be given during the last class session on Monday evening, **July 20, 2015**.

Tax Exempt Organizations Course Description

Analysis of provisions relating to the qualification for exemption from federal income tax, with emphasis on section 501(c)(3) organizations, private foundations, and the treatment of unrelated business income.

Required Casebook and Materials

Fishman and Schwarz, Taxation of Nonprofit Organizations, Cases and Materials (Foundation Press)(3d ed. 2010)(referred to as "F&S"), plus 2014 Student Update Memorandum (referred to as "SUM")(distributed with syllabus);

AND:

Fishman and Schwarz, Selected Sections, Nonprofit Organizations States, Regulations and Forms (Foundation Press)(4th ed. 2010)

Reference Books for Supplemental Reading (if desired)

Hopkins, The Law of Tax Exempt Organizations (Wiley, 10th ed. 2011) and current supplement

Hill & Mancino , Federal and State Taxation of Exempt Organizations, (Warren, Gorham & Lamont, 2002, as supplemented)

These reference books are on reserve at the law school library. Most students will find these treatises helpful in furthering their understanding of the subject matter.

Class Objectives and Content

The principal objective of the course is to study the fundamental federal tax provisions governing tax-exempt organizations. Subjects to be covered include qualification for tax-exempt status with particular emphasis on I.R.C. § 501(c)(3) organizational and operational requirements and limitations, including excise tax for excess benefit transactions or “intermediate sanctions”; the distinction between private foundations and public charities; private foundation excise taxes; the limitations on legislative and political activities; certain operational considerations such as the use of tax-exempt and for-profit subsidiaries and participation in partnerships or joint ventures; and the tax on unrelated business income. While the primary focus of the course will emphasize charitable organizations under I.R.C. § 501(c)(3), other types of tax exempt organizations will be discussed. Students will become familiar with the organizational and operational standards for tax exempt organizations, filing requirements, the applicable excise taxes that may be imposed on organizations and their managers, as well as liability for unrelated business income tax.

Grades/Exam

The grade for the course will be based upon (1) your performance on a final exam given at the end of the semester (90%) and (2) class participation (10%). **The final exam is scheduled for Monday, July 20, 2015, 6 – 9 p.m.** The exam will be open book. You may bring in your own outlines, notes, textbook, Fishman/Schwarz statute and regulations book or a current edition of Internal Revenue Code and Treasury Regulations. You may not bring in treatises or Tax Management Portfolios. You may not use electronic research sources; including those for the Code or regulations, via your laptop during the examination. You will have three (3) hours for the exam.

Assignments/ Preparation/Participation

Students are expected to come to class having read the assigned materials and being prepared to discuss them. **During the class sessions substantial time will be devoted to the problem-solving exercises which accompany the text material in the casebook.** Reading the assigned material is essential to analyzing these problems successfully. **Students should**

attempt to outline the solutions to these problems in conjunction with reading the assigned materials. Students should expect that over the course of the semester they will be assigned specific problems in order to facilitate class participation and discussion. Students may also be assigned responsibility for case presentations.

The weekly allocation of reading assignments set forth on the following pages is intended to be approximate. You are encouraged to complete the assignment for a particular class even if (as is likely) the class discussion falls slightly behind this schedule. Due to the shortness of the summer session the reading assignments, by necessity, are lengthy. Do your best to complete them, however. Assignments marked with an asterisk (*) will be given accelerated overview treatment and you may skim those. **Please take particular care to read the Code and Regulations referred to in the headings in the casebook and the syllabus.** In many instances, citations to the Code and regulations have been expanded in the syllabus to provide students an opportunity to further their agility in working through the Internal Revenue Code provisions applicable to the subject matter. Prior to the beginning of the summer semester I suggest that (1) you print out a copy of the 2014 Forms 990, 990-PF, 990-T, as well as the Form 1023 (Application for Exemption) and the instructions accompanying these forms; and (2) you keep these forms with your notebook for easy reference during class. These forms/instructions can be obtained via Internet at www.irs.gov.

I encourage you to participate fully and meaningfully because it will enhance your own experience and the quality of the class. Note that the class participation portion of your grade will suffer if you do not attend class regularly.

Attendance Policy

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 [Attendance Policy <http://law.ubalt.edu/template.cfm?page=267>]. A 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. A student who is compelled to withdraw or is barred from sitting for the final exam may receive an "F" in the course. Attendance will be taken at the beginning of each class. A student who is present but unprepared for class may be treated as absent.

Computers

Students may use laptop computers for class related purposes.

Class Cancellation

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If 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 not closed, 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; use of another's book or study materials without consent; unapproved multiple submissions; material misrepresentation of one's academic history or standing; misrepresentation of any academic matter; intentionally giving another student false or inaccurate information about class requirements; inappropriate discussion of exams; and misrepresenting or falsifying class attendance reports.

Disability Policy

If you are a student with a documented disability who requires an academic accommodation, please contact Leslie Metzger, Director for Student Support in the Office of Academic Affairs at 410-516-5623 or via email at lmetzger@ubalt.edu.

Class Assignments are set forth on the following pages. They include references to the Internal Revenue Code, Treasury Regulations and pages in the Fishman & Schwarz casebook. For all reading assignments, you should also refer to the corresponding sections of the 2014 Student Update Memorandum which is referenced to the pages in the text book.

May 18, 2015

OVERVIEW [Note: we will move quickly through this material—]

I. Introduction to Tax Exempt Organizations

- **Rational for Exemption**
- **Advantages in Operating as an Exempt Entity**
- **Types of Tax-Exempt Organizations**

I.R.C. §§ 170(c); 501(a); 501(c)(3) through 501(g); 501(j); 501(l); 501(m)

pp. 2-76* (skim) (all page references are to F&S casebook,)

II. Section 501(c)(3) Affirmative Requirements

- **Qualification as a Section 501(c)(3) Organization: Organizational and Operational Tests**
- **Public Policy Considerations**

I.R.C. §§170; 501(a); 502*; 501(c)(3); 501(r)*; 508*;

Treas. Regs. §§ 1.501(a)-1; 1.501(c)(3)-1(a) through 1(e); 1.502-1(b)*; 1.508-1 and -3*;

pp. 77-105 Affirmative Requirements for Charitable Tax Exemption

TYPES AND CHARACTERISTICS OF SECTION 501(c)(3) ORGANIZATIONS

The Concept of Charitable and Charitable Organizations

I.R.C. §§ 170(a) and (c); 170(b)(1)(A); 501(c)(3); 501(m)*

Treas. Regs. §§1.501(c)(3)-1(d)(1) through (1)(d)(2); 1.170A-9(c)

pp. 77-81	General Principles
pp. 81-85	Scope of Charity
pp. 85-105	Health Care and Community Benefit Standard
pp. 105-106	Problems
pp. 106-112	Public Interest Law Firms/Legal Services (skip problems)
pp. 113-119	Community Development/Low-Income Housing (skip problems)
pp. 119-124	Protection of the Environment (skip problems)
pp. 124-131	Disaster Relief
pp. 131-159	Public Policy Limitations
pp. 159-160	Problems

Educational and Religious Organizations

I.R.C. §§ 170(b)(1)(A)(i) and (ii); 501(d); 508(c)(1)*; 6033(a)(1) through (2)(A) and (a)(2)(C) and 6033(b)*; 7611

Treas. Regs. §§1.170A-9(a), (b); 1.501(c)(3)-1(d) (2) and (3), -1(e); 1.6033-2(g)(5)*;
Treas. Reg. §1.6033-2(h)

pp. 160-176 Educational Organizations
pp. 176-177 Problems
pp. 177-192 Religious Organizations
pp. 192-3193 Problems

Other Charitable Purposes/Organizations*

I.R.C. §§ 501(e), (f), (j), (k); 509(a)(4); 512(b)(9)
Treas. Regs. §§1.501(c)(3)-1(d)(4), (5); 1.501(e)-1

pp. 193-201 Other Charitable Purposes*
pp. 201 Problems (if time)
pp. 202-207 State and Local Tax Exemptions*

June 1, 2015

- Continuation of Discussion of Material from prior week

Private Benefit and Inurement

I.R.C. §501(c)(3); §§ 4958, 4961-4963; 6033(b)(11), (12)

Skim I.R.C. §4965

Treas. Reg. §§ 1.501(a)-1(c); 1.501(c)(3)-1(c); -1(d)(1); 53.4958-1 through -8;
regulations on excess benefit transactions and revocation standards in Treas. Reg.
§1.501(c)(3)-1(f)

pp. 207-240 Inurement/Private Benefit; Intermediate Sanctions

American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989)
(handout with syllabus)

pp. 240-243 Problems

June 8, 2015

OPERATIONAL CONSIDERATIONS

Limitation on Legislative and Political Activities

I.R.C. §§162(e); 170(c); 170(f)(9); 501(c)(3); 501(c)(4); 501(h); 504,* 527*; 4911; 4912; 4945; 4955; 6033(b)(8); 6852; 7409

Treas. Regs. §§1. 170A-1(h)(5); 1.501(c)(3)-1(b)(3), 1(c)(3); 1.501(h)-1(a) through -3(e); 1.527-1(a) through -9*; 1.501(c)(4)-1; 56.4911 (in their entirety); 53.4955-1(a)-(e)

pp. 243-245 Background
pp. 245-257 Lobbying Limitation: No Substantial Part
pp. 257-266 Constitutional Issues
pp. 266-275 Section 501(h) Expenditures Test Election
pp. 275-277 Problems
pp. 277-301 Political Campaign Limitations.
pp. 301-305 Section 501(c)(4) Alternative
pp. 305-306 Problems
pp. 305-308 Section 527 Organizations
pp. 308-314 Other Regulation of Political Activities*
pp. 314 Problem

Judicial Determinations of Exempt Status*

I.R.C. §§ 6212*; 6213*; 7422*; 7428

pp. 315-317 Judicial Determinations
pp. 336-351 Standing by Third Parties to Challenge Exempt Status*

Annual Reporting, Publicity and Disclosure Requirements; Penalties*

I.R.C. §§170(f)(8); 6011; 6012(a)(2); 6033; 6043(b); 6050I(a); 6072(e); 6104; 6113; 6115; 6501; 6651(a); 6652(c); 6655(g)(3); 6685; 6710; 6711

Treas. Regs. §§1.6012-2(e); 1.6033-1, -2, -3; 1.6043-3; 301.6104(a)-1 through (d)-3, -4, -5; 301.6652-2; 53.6011-1

pp. 317-320 Information Return and Disclosure Requirements

June 15 and 22, 2015

**COMMERCIAL ACTIVITIES AND UNRELATED BUSINESS INCOME
TAX**

Introduction

Treas. Reg. §1.513-1(b)

pp. 336-339 General Introduction

Impact of Commercial Activities on Exempt Status Organizations

I.R.C. §502

Treas. Regs. §1.502-1; §1.501(c)(3)-1(b)(1)(i), -1(c)(1), -1(e)

CRSO v. Commissioner, 128 T.C. 12 (2007) (handout)

pp. 339-341 Introduction
pp. 342-355 The Commerciality Doctrine
pp. 355-359 Commensurate-in-Scope
pp. 339-360 Problems

**Organizations and Activities Subject to Unrelated Business Income; Defining
Unrelated Business Income: The Elements and the Exclusions**

I.R.C. §§ 132(e)(1)*; 162*; 511(a), (b), (d); 513; skim 512

Treas. Regs. §§1.132-6T(b), (f); 1.511-1 through -4;
1.513-1, -5, -6; Treas. Reg. §1.513-4 and Treas. Reg. §1.513-7

pp. 360-372 History and Policy*
pp. 372-402 Imposition and Rates of Tax and Taxable and Excepted Activities
pp. 402-404 Problems

Exclusions and Modifications of Unrelated Business Taxable Income

I.R.C. §§512(a)(1), (b)(1)-(5), (7)-(9), (13),(15); (c)

Treas. Regs. §§1.512(b)-1(a), (b), (c)(2)-(5), (d)(1)

pp. 404-405	Passive Investment Income
pp. 405-406	Rents
pp. 406-408	Royalties
pp. 408-409	Research Income
p. 409	Monogrammed Exclusion
pp. 410	Problems

Computation of Unrelated Business Taxable Income

I.R.C. §§1; 11; 12(l); 512(a)(1); 512(b)(6), (10), (11), (12); 512(a)(2)*, (3)*, (4)*

Treas. Regs. §1.512(a)-1(a), (b), (c), (d), (e), (f)(1)

pp. 411-418	Allocation of Expenses
pp. 418-419	Other Computation Issues
pp. 419-420	Problems

Unrelated Debt Financed Income

I.R.C. §§514(a); (b); (c)(1)-(4), (7), (9)(A)-(D), (E)

Treas. Regs. §1.514(b)-1(a), (b), (d)

pp. 420-431	
pp. 431-432	Problems

Complex Structures and other Special Problems

I.R.C. § 512(c)(1), (e); 6031(b)*

Treas. Reg. §1.512(b)-1(h)(2)

pp. 432-433	UBIT Planning: Use of Controlled Subsidiaries
pp. 433-436	Payments from Controlled Organizations
pp. 436-448	Joint Ventures and Ancillary Joint Ventures
p. 458-459	Problem
pp. 459-464	Partnerships and S Corps
pp. 464-465	Special rules for Social Clubs: I.R.C. §512(a)(3)
pp. 465-471	Proposals for Reform*

June 29, 2015

DEFINITION OF A PRIVATE FOUNDATION

In General

I.R.C. §§507(d); 508, 509, 170(b)(1)(A); 170(b)(1)(F); 4946; 4958(c)(2) and (3); 4958(f)(7) and (8); §§ 4966 and 4967 look at I.R.C. § 4942(j)(3)*

pp. 472-481 Introduction*
pp. 481-489 Historical-- Distinction between Private Foundations and Public and Charities/Additional Background Materials*
pp. 489-506 Overview: Private Foundations and Public Charities
pp. 506-507 Problems

AVOIDING PRIVATE FOUNDATION STATUS

Disqualified Persons

I.R.C. §4946, §507(d)(2)
Treas. Regs. §§ 53.4946-1(a); 1.507-6(b)(1)
pp. 508-511 Disqualified Person Rules

Public Charities: I.R.C. § 509(a)(1)

I.R.C. §§509(a)(1), (d); 170(b)(1)(A)
Treas. Regs. §§1.509(a)-1, -2; 1.170A-9(a), (b) (c)(1), (d), (e)(1)-(4), (6)-(9)
pp. 511-513 "Per Se" Public charities
pp. 513-517 Publicly Supported

"Gross Receipts" and "Membership" Organizations: I.R.C. § 509(a)(2)

I.R.C. §509(a)(2), (d), (e); Review I.R.C. §507(d)(2); 4946
Treas. Regs. §§1.509(a)-3(a), (b), (c)(1)-(6), (f)(1), (g)(1)-(2), (h)(1)
pp. 517-518 Section 509(a)(2)
p. 519 Problems (see next page also)

Supporting Organizations: I.R.C. § 509(a)(3)

I.R.C. §§509(a)(3); 509(f)(3); 4958 (c)(3); 4966 and 4943(f)(5)(B); §6033(l)*

Treas. Regs. §§1.509(a)-4 [Try to relax!]

pp. 520-530 Supporting Organizations

pp. 530-532 Problems

Private Operating Foundations (skim)*

I.R.C. §4942(j)

Treas. Regs. §§53.4942(b)-1(a)(1), (b), (c); -2, -3(a), (b)(1)

pp. 532-533

July 6, 2015

EXCISE TAXES ON PRIVATE FOUNDATIONS

[Note: Our study of the private foundation excise taxes will be an overview, with emphasis on self-dealing and taxable expenditures and some discussion of excess business holdings. Please pay particular attention to reading the Regulations.]

Overview

pp. 534-535 Excise taxes

Tax on Investment Income: I.R.C. § 4940*

I.R.C. § 4940(a), (b), (c), (d), (e), (f)

Treas. Regs. §§53.4940(a)-1(a), (b)(skim), (c), (d), (e), (f) (skim)

pp. 535-537 Tax on Net Investment Income (skip problems)

Self-Dealing: I.R.C. § 4941

I.R.C. §§ 4941; 4946; 507(d)(2); for procedural rules skim 6212; 6213(e); 6214(e); 6501(l); 6503(g); 4961; 4962; 4963; 6684; 7454(b)

Treas. Regs. §§ 53.4941(a)-1, (b), (c), 53.4941(d)-1(a), (b)(1), (2), (4)-(8); 53.4941(d)-2(a), (b)(1) and (2), (c), (d), (e), (f), (g); 53.4941(d)-3.

pp. 538-549 Self-dealing

pp. 549-550 Problems

Distributions of Income: I.R.C. §4942*

I.R.C. §§ 4942(a), (b), (c), (d), (e), (g)(1)-(3),(h), (j); 4963 (Skim)

Treas. Regs. §§ 53.4942(a)-2(c) (skim) [keep in mind that the statute has been amended several times]

pp. 550-556 Charitable Distribution Requirements (skip problems) (see next page also)

Excess Business Holdings: I.R.C. § 4943

I.R.C. § 4943(a), (b), (c), (c)(1)-(3), (4)(skim), (5)-(7), (d), (e), (f)

Treas. Regs. §§53.4943-1, -2(skim), -3, -5, -6, -8, -9, -10

pp. 558-562 Excess Business Holdings
p. 562 Problem

Jeopardy Investments: I.R.C. § 4944*

I.R.C. § 4944 (skim)

Treas. Regs. § 53.4944-1, -3 (skim)

pp. 563-564 Jeopardy Investments (skip problems)

Taxable Expenditures: I.R.C. §4945

I.R.C. §§4945, 4946(c)

Treas. Regs. §§ 4945-1, -2, -3, -4, -5, -6

pp. 564-572 Taxable Expenditures
pp. 572-573 Problems

MISCELLANEOUS CONSIDERATIONS*

Miscellaneous (skim)*

I.R.C. § 6033; 6104(d); I.R.C. §§ 507; 508(e); 170(b)(1), (d)(1) [(vii)*, (b)(1)(E)(ii)*, (iii)*

Treas. Reg. §§ 1.170A-9(e)(5); 1.509(a)-3(d), (e); Treas. Reg. §1.507

pp. 533-534 Reporting and Disclosure
pp. 573-592 Terminations;
pp. 645-648 Percentage Limitation and Carryovers*

July 13, 2015

**MISCELLANEOUS ORGANIZATIONS AND ISSUES--OTHER TYPES
OF TAX-EXEMPT ORGANIZATIONS**

Social Welfare Organizations: I.R.C. § 501(c)(4)

I.R.C. § 501(c)(4); Skim § 527

Treas. Regs. §1.501(c)(4)-1

Mutual Benefit Organizations in General

I.R.C. § 501(c)(5)

Treas. Reg. § 1.501(c)(5)-1

pp. 688-697 Rationale for Tax Exemption*
p. 698 Social Welfare Organizations
pp. 699-704 Labor, Agricultural and Horticultural
Organizations

Trade Associations: I.R.C. § 501(c)(6)

I.R.C. §§162(e); 501(c)(6); 6033(e)

Treas. Regs. § 1.501(c)(6)-1; §1.162-28 and -29

pp. 704 Trade Associations
pp. 705-708 Line of Business Requirement
pp. 708-7714 Conduct of Business for Profit
pp. 714-718 Lobbying and Other Political Activities
pp. 718-719 Problems

**Social Clubs (I.R.C. § 501(c)(7)) and Special Computational Rules, Including UBTI
Rules for Social Clubs**

I.R.C. §§501(c)(7); 512(a)(3); 277; Treas. Reg. § 1.501(c)(7)-1

(continued on the next page)

pp. 719-734 Introduction

pp. 734-737 Discrimination

pp. 737-738 Nonmember Activities

pp. 738-739 Problems

Other Mutual Benefit Organizations (skim)*

I.R.C. §§ 170(c)(3); 501(c)(19); 527; 501(c)(2) and (25)

pp. 739-742*

CHARITABLE CONTRIBUTIONS (Getting to these will depend on time so skim these)

For these segments, please read the code sections and regulations set forth in the casebook for each segment

Charitable Contributions - Basic Principles

pp. 615-645 Donees, Gifts, Timing and Benefits

pp. 645-648 Limitation and Carryovers (skim as review)

pp. 648-652 Substantiation and Compliance Rules

pp. 654-675 Noncash Contributions

pp. 677-683 Planned Giving Techniques

COURSE REVIEW AND QUESTIONS (some time will be set aside for review -- please bring your last minute questions to this class)