

**University of Baltimore • Graduate Tax Program  
Summer 2017**

**Course:** Bankruptcy Taxation  
LAWT/988/491; TAXA/682/185; LAW/988/512

**Instructor:** Larry Strauss  
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**Days/Times:** Wednesday, 6:00 - 9:10 p.m.

**Location:** Room AL608

**Course Description:**

An introduction to the basics of bankruptcy law and creditors' rights and analysis of tax issues that arise.

**Textbook:** Colliers on Bankruptcy Taxation,  
Sheinfeld, Witt, Hyman, Resnick and Sommer  
LexisNexis (*you can call Lexis Nexis directly and ask for student discount*)

Selected readings on TWEN

**Additional online**

**Materials:** Internal Revenue Code (Title 26 USC)  
Treasury Regulations  
<http://www.irs.gov/taxpros/article/0,,id=98137,00.html>

Bankruptcy Code (Title 11 USC) <http://www.abi.org/> under “member resources”

US Tax Courts  
<http://www.uscourts.gov/seervices-forms/bankruptcy>

You may wish print out relevant code sections and bring to class.

**Course Objectives and Outcomes:** (or Concepts and Goals)

Comprehensive analysis of individuals and various entity types who are insolvent or in bankruptcy through a tax perspective

**Grades:**

**Exams/Grading**

There will be one time pressured, three hour exam given at the end of the semester. Ninety percent of your grade will be based on the final exam. Ten percent of your grade will be based on class participation; this will include my evaluation of your preparedness when

called upon (either very prepared, prepared, or unprepared), along with your responses when you volunteer to answer questions.

**Attendance:**

Class attendance is a primary obligation of each J.D. 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. 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 forced to withdraw for exceeding the allowed absences should receive a grade of WA (withdrawal due to excessive absences), unless the faculty member believes that a grade of WF is warranted. In this course, J.D. students are allowed a maximum of two absences. Attendance will be taken at the beginning of each class.

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

**Course Web Page:**

This course has a TWEN webpage that links to this syllabus, announcements, the class assignments, helpful treatises, overheads, and other class materials. You are responsible for self-enrolling in the webcourse and you should check the webcourse regularly.

**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](mailto:lmetzger@ubalt.edu).

***First class assignment:***

Read numeral 1.c of the syllabus and attempt automatic stay problems (All problems and cases should be on TWEN. If you do not have access to Westlaw you will need to contact the WestLaw School Rep)

**Course Outline**

1. Overview of the Bankruptcy system and the Automatic Stay
  - a. Guest speaker: **Laura Margulies, US Bankruptcy Trustee** - overview of Bankruptcy system, Chapter 7 Liquidation
  - b. Chapter 7 versus Chapter 11 versus Chapter 13
  - c. Collier- TX1.01 – TX1.02; TX1.07 – TX1.09 (Nice background to understand the bankruptcy process and suggested reading).
  - d. See 11 USC §362 – complete problems posted on TWEN - Taxes and the 11 USC §362 automatic stay
  
2. The Taxation of Individuals in Bankruptcy
  - a. - 26 USC §1398; Tax provisions of noncorporate bankruptcy estate
  - b. Collier – TX2.03– Property of the Bankruptcy Estate
  - c. TX2.04; - Tax attributes of the estate
    - i. Cases where Bankruptcy law and Tax law collide – appreciate the theory
      1. *In re Russel* , 927 F.2D 413, NOL carryforward election
      2. *In re Bakersfield Westar, Inc.*, 226 B.R. 227 (9th Cir. BAP 1998)
      3. *In re Halle*, 132 B.R. 186 (Bankr. D. Colo. 1991)
  - d. TX2.04[4][d] Estate NOLs
    1. sample problems
  - e. TX2.04[4][b] Pass-Through Entities
  
3. Discharge of Individual taxes in Bankruptcy
  - a. Guest speaker: **Russ Haynes, Tax attorney**
  - b. Collier – TX4 - optional. (Russ hand feeds the information, real pro) website articles - skim **[www.bjhaynes.com](http://www.bjhaynes.com)**
    - i. U.S. vs. Craft, 535 US 274
  - c. Other tax liabilities/ general treatment of tax claims in Bankruptcy
  
4. The Taxation of Individuals in Bankruptcy – continued
  - a. 11 USC 507(a)(8) problems
  - b. Wage claims and compliance
  - c. Collier – TX2.05 Debtor's §1398 election
    - i. Short year election Treas Reg §301.9100-14T – problems
  - d. Collier – TX2.07 Individual chapter 11 Debtor in Possession
    - i. Internal Revenue Notice 2006-83
    - ii. Problem - Blair and Lee Makingit - should they file bankruptcy

- e. Filing Requirements of the Trustee
  - i. Collier – TX3.03 skim
  - ii. 11 USC §505(b) election - Rev Proc 2006-24
  
- 5. Litigation with the IRS in Bankruptcy Court
  - a. Guest speaker: **Brad C Plovin, Senior Attorney; Office of Chief Counsel for DOJ Tax division**
  - b. Collier TX5.06[7] IRS defenses seem unfair; TX5.07; TX5.08; TX5.09)
  
- 6. Cancellation of Debt Income
  - a. Collier – TX6.01; TX6.02[2][b];
  - b. TX6.02[6] – [7][d] Disposition of property, recourse vs. nonrecourse
  - c. TX6.03[3][c]; 26 USC 108 exclusions from COD
  - d. TX6.03[4] - TX6.03[5][f]; - Adjustment of tax attributes
  
- 7. Trustees and the Taxation of Individual Bankruptcies - compliance issues
  - a. IRS waiver request - Rev Proc 84-59; Rev Rul 84-123
  - b. Estimated tax payments requirement, penalties/ prepetition vs postpetition
  - c. Collier – TX14.03; TX14.05 Liquidating Creditor Trusts and Disputed Claims Reserve
    - i. Liquidating Trusts - Rev Proc.94-45
  - d. Collier – TX15.02[1] - TX15.02[3] Trust Fund Tax liabilities
  
- 8. IRC Sect 382 - NOL marketing limitations – G Reorg exception
  - a. Collier –TX11 less than skim
  - b. See posted material from RIA on TWEN which is much easier to understand
  - c. Debt for debt exchanges - Collier –TX9 less than skim. See posted article on TWEN called Tax Consequences of Modifying a Debt Instrument, AIRA Newsletter 2016 Q4