

TAX COURSE SELECTION ADVICE (JD LEVEL COURSES)

General Advice

1. What is the value of Federal Income Taxation?

Federal Income Taxation is, both conceptually and practically, the foundational course in the set of tax law offerings. It is generally recommended as an introduction to the field, and for most students it is a functional prerequisite to the business tax courses (Corporate Taxation, Partnership Taxation, and International Taxation), as further explained below. The course is a valuable starting point for all students, even those who have some prior knowledge of the subject matter (whether from undergraduate course work or a background in business or accounting), because it's not merely a course about the current set of rules governing individual income tax obligations, but rather an overview of the concepts and methods underlying the modern U.S. income tax system as a whole.

In addition, Federal Income Taxation is both an important skills course and a core course on public policy.

Federal Income Taxation is a skills course because one of its objectives is to develop students' proficiency in working with complex statutory and regulatory materials. The Internal Revenue Code is perhaps the longest and most complicated statute ever enacted, and the volume of the corresponding Treasury Regulations is far greater still.¹ Yet the tax laws have a distinctive drafting style, organizational structure, and (within limits) logical coherence. If students can learn to work with the Code, they will be well positioned to master the comprehensive statutes that undergird many other fields of law, including environmental law, corporate and securities law, welfare law, commercial law, and social insurance programs.

Federal Income Taxation is a course on public policy because, at base, the individual income tax addresses the question of who should be required to contribute to the support of our social, political, and economic system, and how much. As a result, the federal income tax constantly grapples with questions of fairness (distributive justice) and the compromises that must sometimes be made in the interests of economic efficiency or administrative feasibility. Many students who enroll in Federal Income Taxation because they have been advised that it's a course they will need, find themselves fascinated by the pervasive tax policy underpinnings of the subject.

2. Which courses can be taken without prior or concurrent study of federal income tax?

The tax faculty strongly recommends that students have taken or enroll concurrently in Federal Income Taxation to be adequately prepared for the study of Corporate Taxation, Partnership Taxation, or International Taxation. Students who have not taken Federal Income Taxation but are familiar with the subject matter of the course are advised to speak with the instructor before enrolling in any of the three listed business tax courses.

¹ Faculty members who teach Federal Income Taxation differ in the extent to which they make use of the Treasury Regulations in the basic course. Regulations are used extensively in all the upper-level tax courses.

In contrast, a student who has not taken Federal Income Taxation could take either Estate and Gift Taxation or Employee Benefits: ERISA & Tax without being disadvantaged.

3. If I like Federal Income Taxation, which other tax courses should I take?

Identifying the courses that make the most sense for you will depend on your particular interests and career plans. Students have many upper-level tax course options (see the course descriptions below). The tax faculty has no uniform, one-size-fits-all recommendations for particular courses—or sequence of courses—for students continuing their studies beyond the introductory federal income tax class. The best advice is to consult a member of the full-time tax faculty.

Many tax professors advise JD students who are interested in tax not to pursue tax law courses to the exclusion of other upper-level subjects in which they are interested. Don't pass up a well-rounded legal education; a good tax lawyer is one who has a strong set of overall legal skills. Students interested in a more detailed study of specific fields within tax will have opportunities to specialize later, either on the job, via CLE programs, or by pursuing an LLM in taxation.

The tax faculty does affirmatively recommend that students who are contemplating specializing in tax consider taking either Corporate Taxation or Partnership Taxation. These are the two courses focused on the tax treatment of business entities, making them relevant to almost any transactional practice. Taking one of the business tax courses should allow a student to better gauge whether she would find real-world transactional tax practice engaging. If a favorable reaction to Federal Income Tax was predominately based on its overt tax policy (distributive justice) component, exposure to corporate or partnership tax can clarify whether the student's interest carries over to the more detailed business tax aspects of tax practice.

Some tax faculty recommend that a student who takes one of the business tax courses (Corporate Taxation or Partnership Taxation) and continues to be interested in tax should take the other course as well. The tax regime applicable to business income differs dramatically according to whether the income is earned by a regular corporation, on the one hand, or a partnership or limited liability company on the other. Consequently, most tax advisors routinely deal with both systems, and optimal business planning decision-making demands an understanding of the alternatives.

4. Do I need to get an LLM to get a job in tax or be an effective tax practitioner?

An LLM is not required to find a tax-related legal position or to be an effective tax practitioner. An LLM does permit the additional time necessary to undertake an intensive study of the tax laws, however. For this reason, students in the modern legal practice environment sometimes find that a tax LLM makes them more marketable for certain positions. If you are interested in pursuing a career in tax, you should consult with a full-time tax faculty member to discuss your LLM options within the context of your personal interests and career objectives.

Course Descriptions

[Regularly offered² JD-level³ tax courses, seminars, and clinics]

Federal Income Taxation

This course is a survey of the federal income taxation of individuals, with consideration of the nature of income, when and to whom income is taxable, exclusions from the tax base, deductions, credits and the tax consequences of property ownership and disposition. The instructor emphasizes tax policy and statutory interpretation. The course is typically taught from a casebook and a statutory pamphlet, by a combination of the case and problem methods. Students work extensively with the Internal Revenue Code.

Corporate Taxation

This course involves an intensive study of the statutory, regulatory and case material governing corporate taxation. Topics covered include the tax consequences of: corporate organization, corporate capital structures, distributions to shareholders, redemptions of stock, corporate liquidations, and taxable and tax-free dispositions of a corporate business (both stock sales and asset sales). The course will focus primarily on problem sets, with discussion of statutory, regulatory, and case materials incorporated into class discussion as appropriate in response to particular problems. Although Federal Income Taxation is not a formal prerequisite for this course, it is not recommended for students who have not previously taken Federal Income Taxation, unless the student has substantial federal income tax experience. Students who have not taken the introductory tax course are advised to speak with the professor before enrolling.

Partnership Taxation

This course provides an introduction to, and overview of, the federal income tax treatment of partnerships, limited liability companies, and similar pass-through entities. These entities are referred to as pass-through because they are not subject to federal income tax at the entity level but rather the owners of the entities are taxed on the income as it is earned, whether or not it is distributed. For this reason, partnership tax law focuses on insuring that one level of tax is paid with respect to such income, no more and no less. Pass-through entities provide significant flexibility in the structuring of a business and thus are used extensively in the real world for privately-held businesses, professional entities such as law and accounting firms, and investment firms such as venture capital funds and hedge funds, among other things. The course will provide a detailed overview of the tax issues related to the formation of such entities, capital contributions, operation and management of the entity, allocations and distributions of income, liquidating distributions, and termination and acquisition of the business. In addition, the course will discuss recent events related to partnership taxation such as the taxation of so-called carried interest in private investment funds. Students will work extensively with Subchapter K of the Internal Revenue Code and the regulations thereunder. The course will be

² The courses described below are offered regularly, but some are not available every year. International Taxation, Partnership Taxation, and Employee Benefits: ERISA & Tax, are courses which have been absent from the curriculum in some recent academic years. The basic tax course, Federal Income Taxation, is taught every year, ordinarily with at least one section available each semester.

³ Additional tax courses are offered as part of the curriculum of the LLM in Taxation. These specialized courses are generally taught by adjunct faculty who are experienced tax practitioners. A JD student may be allowed to take these courses, but in some circumstance the permission of the Director of the Graduate Tax Program must be obtained. Because graduate tax courses do not have a mandatory mean, a JD student enrolled in such a course receives a letter grade that does not count toward his/her GPA; the units do count toward the credits required to earn the JD degree.

taught from a casebook and a statutory supplement, primarily by the problem method. Federal Income Taxation is not a prerequisite for this course but is strongly recommended.

International Taxation

This course considers the principles and underlying policies of the United States tax system related to: (1) income earned by United States citizens and residents from business and investment activities abroad and (2) income earned by nonresident alien individuals and foreign corporations from business and investment activities in the United States. The course will examine basic international tax jurisdiction issues; source of income and allocation and apportionment of deduction rules; the taxation of foreign persons' United States trade or business income, non-business income from United States sources, the sale of United States real property interests; the role of tax treaties; an introduction to the foreign tax credit provisions; and an introduction to Subpart F and other "anti-deferral" mechanisms. Pre/co-requisite: Federal Income Tax (although the professor will entertain requests for a waiver of this requirement from students who believe that special circumstances warrant an exception for them).

Employee Benefits: ERISA & Tax

This course explores the treatment of employer-sponsored fringe benefits, including retirement savings arrangements, health care benefits, life and disability insurance programs, under federal labor law and the federal income tax. The structure, scope, and objectives of labor law regulation of employee benefit plans, both pension and welfare, under the Employee Retirement Income Security Act of 1974 (ERISA) will be studied in depth. The tax treatment of contributions to, earnings of, and distributions from qualified (i.e., tax-subsidized) and non-qualified deferred compensation arrangements will be compared. The rules governing the terms and operation of qualified deferred compensation plans, such as 401(k) plans, will be examined, including workforce coverage, allocation of contributions and benefits, funding, fiduciary responsibility, vesting, and the timing, forms and taxation of distributions. In addition to fiduciary oversight, ERISA's disclosure regime and civil enforcement mechanism will be introduced. The course will be taught from a casebook and a statutory pamphlet, by a combination of the case and problem methods. Students will work extensively with ERISA, related provisions of the Internal Revenue Code, and corresponding regulations. Federal Income Taxation is not a prerequisite for this course; students who have not taken Federal Income Taxation would not face a disadvantage.

Estate and Gift Taxation

This course is a study of the federal wealth transfer tax system, including the estate tax, the gift tax, and (to a lesser extent) the generation-skipping transfer tax. The relationship between these three donative transfer taxes, and between the transfer taxes and the income tax, will be emphasized. The policy underpinnings of wealth transfer taxation, and the reasons for the recent erosion in its political support, will be explored. Fundamental principles and some common techniques of estate planning will be introduced. Students will work extensively with Subtitle B of the Internal Revenue Code and the regulations thereunder. The course will be taught from a casebook and a statutory pamphlet, predominately by the case method. Neither Trusts & Estates nor Federal Income Taxation is a prerequisite for this course, but while those courses are not essential, both provide helpful background information.

Tax Policy Seminar

This seminar will include both a classroom component and an individual writing project component. Major seminar objectives are: 1) to develop an understanding of basic tax policy considerations necessary to any serious consideration of major tax reform; and 2) to develop and

enhance research and writing skills. The first several weeks of the seminar will include assigned readings on selected tax policy topics, which may include: definition of income, equitable distribution of tax burden among taxpayers, progressivity of tax rates, comparison of income and consumption tax, the relationship between federal tax and federal budget, and analysis of current tax reform proposals.

Low Income Taxpayer Clinic

The Low Income Tax Clinic (LITC) provides students with the opportunity to develop real-life lawyering skills as they work as student attorneys under faculty supervision on tax-related legal issues. Students will assist low-income taxpayers in disputes with the Internal Revenue Service (IRS), including possible appearances before the Tax Court. The LITC students' primary experience will be to work, perform, or directly assist other lawyers performing, the tasks of advising or advocating on behalf of low-income taxpayer clients. Students will also be exposed to the legal and ethical problems that attorneys face in practice. In this clinic, students can expect to engage in: problem solving; legal analysis and reasoning; legal research; factual investigation; client interviewing and counseling; oral and written communication; negotiation; litigation; organization and management of legal work; and recognizing and resolving ethical dilemmas.