

Federal Estate & Gift Taxation
Professor Miranda Perry Fleischer
Fall 2011

Description:

This course provides an introduction to the policies underlying the taxation of wealth transfers by gift and bequest as well as an in-depth analysis of the structure of the current federal wealth transfer tax system. Although the course primarily emphasizes how the current tax rules do or should work, some attention will be paid to basic estate planning techniques (that is, how tax advisors may use particular rules to their clients' advantage).

The course is taught largely using a problem-based method; the problems assigned for each unit provide a framework for us to discuss the applicable rules and policies. The assignments for each Unit are available on the class TWEN page. Please be sure to log on to Westlaw and add our class's TWEN page to your course list.

Required Materials:

1. Stephens, Maxfield, Lind, Calfee and Smith, *Federal Estate and Gift Taxation* (2002, Eighth Edition Abridged for Student Use, and the 2011 supplement thereto)
2. You will need a statutory compilation. You may use either of these:
 - CCH, *Federal Estate and Gift Taxes Code and Regulations*, March 2011
 - or
 - *Selected Federal Taxation Statutes and Regulations*, selected and edited by Daniel J. Lathrope (2012 edition) (This was published in July 2011 and has "2012" on the spine).

A note about our materials this semester. Due to substantial changes to the estate and gift tax system that were passed by Congress in December of 2010, very few books and statutory compilations are up to date. **I strongly recommend you buy the Stephens book new from the bookstore**, where it will come packaged with supplemental material that covers the recent changes. Beware of buying used versions on the internet, which probably do not come with the new material. Another internet pitfall is that you may inadvertently buy the unabridged version for practitioners, which is substantially more expensive. Luckily the abridged student version of the Stephens book, which is paperback, is somewhat less expensive than traditional casebooks.

About the statutory compilation. Which one you should buy will depend largely on whether you are a 2L or 3L. **You do not need both compilations**, even though the bookstore will identify both as being required.

If you are a 3L who already has a 2010 Lathrope compilation, I suggest buying the CCH compilation (but not a new Lathrope). Especially if you think you might be interested in going into estate planning. The CCH compilation has all the code sections

and regulations that apply, as well as some income tax sections that apply to the taxation of trusts. If you go into practice in this area you will refer to this often and it will not be a wasted investment. (The Lathrope compilation has most of the ones we use in class, but not all of the ones you would use in practice). This is what I would do if I were a student.

If you are a 2L concurrently taking income tax, or do not already have a Lathrope compilation for some reason, you should buy the new Lathrope compilation (published in 2011 and which reads “2012” on the spine). **DO NOT buy an old 2010 compilation from a friend or on the internet.** The new statutory compilation will serve you well in other tax classes. You should not shell out money for something that is out of date. The tax code is complicated enough.

Grading and class participation:

Ninety percent of your final grade will be based on a three-hour written final examination. The exam will be limited open book. You may refer to the statutory compilation, the textbook and its supplement, any additional materials that I hand out or post on TWEN, your class notes, and any outline you have prepared in whole or in part. You may not refer to commercial outlines or treatises (other than our textbook). You may use a calculator.

Ten percent of your final grade will be based on class attendance and participation. For each class, you are expected to have done the assigned readings carefully and to have attempted to work through the assigned problems in advance. When I call on you, I expect you to be able to explain how you approached each of the assigned problems. I also expect you to be able to discuss the assigned readings and any policy issues raised by the readings and the problems. Our schedule is tentative. If you miss class, it is your responsibility to ask a classmate how much material we covered and to prepare the appropriate material for the next class.

I will call on students randomly throughout the semester. This is not to embarrass you, but rather for your benefit. Over the years, I have found that cold-calling results in higher levels of class preparation and participation, which benefits not only the student “on call” but the rest of the class as well by ensuring a higher level of discussion. I understand, however, that sometimes life gets in the way and not everyone can be prepared every day. To that end, if you see me **before** class and request that I not call on you on a given day, I will honor that request. It is far better for you to come to class and ask me not to call on you than to miss class.

Attendance is mandatory. Due to the large amount of class discussion and the use of the problem method, in which we collaborate to work through the problems together, you are all learning from each other as well as from me. Failing to attend class and/or repeatedly failing to prepare for class harms not only yourself but the class’s overall experience. The fact that ten percent of your grade is based on preparation and participation does not render attendance optional or waive any of the law school’s attendance rules.

Schedule Change and Make-Up Assignment:

We will not have class on Thursday, October 27th. To “make-up” the class time, I will assign a homework problem later in the semester for which a written answer, handed in to me, is required. You may work in groups to complete it. Although the homework problem will not count toward your grade per se (meaning whether you get the answer right or wrong will not affect your final grade), it is mandatory. I will provide you with detailed feedback on your answer; such feedback during the semester provides you with more concrete guidance as to how well you are mastering the task of reading and applying the complicated statutes we study this semester.

Contact Information and Office Hours:

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When not teaching, I generally work in my office and welcome you to stop by or to make appointments to do so. In addition, I will have set office hours on Mondays from 2:30 to 4:00 so that there is a time when I am “guaranteed” to be there. In other words, Wednesday office hours are a “floor” and not a “ceiling.”

Tentative Schedule

A list of the topics we will cover this semester and the order in which we will cover them follows. Please note that the following schedule is *extremely* tentative and will almost certainly change depending upon our pace. Depending on what interests us as a class this semester, we will spend more or less time on certain units than predicted below. Every class moves at a different pace. To that end, beyond the first few class meetings, I have not indicated the exact date on which we will cover a given topic.

With that in mind, unless I state otherwise at the end of class, for the next class, you should go ahead and prepare the reading and problems for the next Unit. For Units projected to take more than one class, I will indicate to you how much to prepare for each class. If class ends and you are not sure what we are going to cover the next day, please ask me to clarify.

The readings and problems for each Unit will be posted on TWEN as the semester unfolds, with ample time for you to prepare for each class. (Because the assignment for each Unit includes not only an excerpt from the textbook but also statutes, regulations, a problem set, and occasional supplemental materials, it is impractical to list the assigned readings in this syllabus).

- I. Introduction (1/2 class; August 23)
- II. Overview of the Transfer Tax System (1 ½ classes; August 23 and 25)

- III. Scope of § 2033: What is an Interest in Property and How Do We Value One?
(2 classes, starting August 30)
- IV. Testamentary Substitutes: §§ 2036, 2037, 2038 (6 classes)
 - A. § 2036(a)(1)
 - B. § 2036(a)(2) & § 2038
 - C. § 2037
 - D. Exception for full and adequate consideration
- V. Powers of Appointment: § 2041 (2 classes)
- VI. Annuities: § 2039 (1 class)
- VII. Joint Interests in Property: § 2040 (1 class)
- VIII. Life Insurance: § 2042 (1 class)
- IX. Disclaimers: § 2518 (1 class)
- X. Deductions from the Gross Estate: §§ 2053, 2055 & 2056 (4 classes)
 - A. In General
 - B. Marital
 - C. Charitable
- XI. Introduction to the Gift Tax (2 classes)
- XII. Annual Exclusions, Life Insurance Trusts & *Crummey* Powers (2 classes)
- XIII. Valuation Issues (2 classes)
 - A. Transfers to Family Members and Retained Interests: § 2702
 - B. Family “businesses”
- XIV. Computational Problem/Review (1 class)