REQUIRED COURSE MATERIALS:


2. A current Internal Revenue Code (the "Code") and access to the applicable Treasury Regulations (a one-volume CCH or West abridged Code and Regulations volume would work). The bookstore should stock for this course the one-volume West Publishing abridged *Selected Federal Taxation Statutes and Regulations* (2007 Edition, Daniel J. Lathrope, Editor), ISBN 0-314-16858-3; and

3. Supplementary materials that may be available from time to time at the CU Bookstore or provided by the instructor.

The West Education Network ("TWEN"):

I have created a course home page on TWEN at lawschool.westlaw.com. I have posted a copy of this syllabus on TWEN. I will send messages to you from time to time during the semester, so please register your e-mail address on the course home page. If you do not have a Westlaw access number, please see me.

GRADING:

Class Attendance
Five (5) points of the final grade will be based upon class attendance and performance.

Optional Memorandum
By law school rules I am required to require a writing project or offer it as an option, if the course enrollment does not exceed 35 students. If that applies, I would offer a writing project as an option, worth 20 points (such that the final examination would be worth 75 points). A copy of the problem is posted on TWEN at “Syllabus.”

Final Exam
A final 3-31/2 hour exam will be administered during the final exam period and will be comprehensive in nature. The total possible points will be ninety-five (95). The exam will be partially restricted. A student may use the book, Code and regulations volume, TWEN materials and emails from me, notes, and outlines prepared by the student (all annotated as you wish). However, a student cannot use commercial outlines, hornbooks, or study aids, materials obtained from the School of Law library and computer-aided, Internet-based, or other electronic resources.
Office Hours:

My office is 403 (Wolf) and my telephone is (303) 492-7013. My office hours are Tuesdays and Thursdays, 2:30-3:30 PM. I am also available by appointment. If I am not in, leave a note or send an e-mail proposing a time. Please feel free to discuss questions by E-Mail. My address is wayne.gazur@colorado.edu.

1. Introduction (January 16, 2007)

Read text, pp. 1-24 and the code sections referred to therein (do this for every assignment), particularly I.R.C. §§ 11, 199 (a) & (b), 448 (d)(2), 53, 55-57, 441, 1361, 1561 (a), & 1563(a). Do the problem on pp. 23-24. In light of the rates under I.R.C. § 11, why would anyone choose a C corporation for a closely held business? If one did so, how would the rate structure impact planning for multiple businesses? Is Boots, Inc. subject to the alternative minimum tax?

1.a Affiliated Corporations & Consolidated Returns (January 18, 2007) (important factors in structuring the business group)

Read text, pp. 625-646. In part 3 below we consider the status of a one-member LLC. Consider the implications of a one-member LLC (which can be treated as an unincorporated division for income tax purposes) as a substitute for a wholly owned subsidiary.

2. Corporate Tax Shelters and Integration (January 23, 2007) (one practical response to double taxation and a de jure response)

Read text, pp. 24-43 and I.R.C. § 1(h)(11), 881, 882, and 482. Consider why a U.S. corporation should be the choice of entity. Tyco International, Ltd., for example, is formed under the laws of Bermuda. To see how it is taxed, see I.R.C. § 11 in tandem with 881 and 882.

3. Classification as a Corporation and Recognition of the Corporate Entity (January 25, 2007) (the fine line between LLCs, corporations, and trusts; agency issues)

Read text, pp. 43-55, with particular attention to the “check-the-box” regulations noted in the book. I will pose some hypotheticals in class to test your understanding of these regulations. In light of Rev. Proc. 2002-69 (fn. 11, page 47), how would a Colorado LLC owned by two spouses be treated?

4. Formation (the aggregation of investment and business assets, primarily in start-up situations, but also in mid-stream aggregations of existing businesses, as well as mundane formation of operating subsidiaries)

a. (January 30, 2007) Read text, pp. 58-62; do problem on p. 62 (this is the only exercise where we will do all of the collateral aspects of the transaction such as shareholder and corporate basis, holding periods, etc.). Watch out for the impact of section 362(e)(2). If you have taken partnership taxation, consider analogies to Section 704(c) and how the different treatment should affect the valuation of the shareholders’ contributions. Read text, pp. 62-68 and do problem 1 on p. 71.

b. (February 1, 2007) Read text, pp. 68-71 and. do problem 2 on pp. 71-72 (you will need to refresh your knowledge of I.R.C. § 83 and the applicable regulations). As a further alternative (f) under the
problem, consider if an NQSO, ISO, SAR (stock appreciation right), phantom stock, or a simple bonus plan would work better. Also, skim I.R.C. § 409A recently added to the Code to curb some of the abuses of deferred compensation plans and so-called “rabbi trusts.”


d. **(February 8, 2007)** Read text, pp. 100-111 and 122-124. Do the problems on pp. 110-111. The problems on pp. 123-124 are primarily an exercise in reading the I.R.C. § 248 regulations and we won’t spend much time on those aspects. However, what is the potential I.R.C. § 351(b) or 357(c) aspect of those problems?

e. **(February 8, 2007)** Read text pp. 116-122. In connection with Fink read I.R.C. §§ 165(g) and 1244. Why are those sections relevant? This is a preview of part 6 below.

5. **Debt & Equity (February 13, 2007)** (an inquiry with few clear-cut answers, but with the new 15% tax rate twist)

   Read text, pp. 125-147. Also skim Code sections 279, 163(e)(5), and 163(l) (we deal with sections 482 and 7872 in part 9 below). Do the problems on pp. 146-147. We will discuss Delta Plastics, Inc., 85 T.C.M. (CCH) 940, T.C.M. (RIA) 2003-054, 2003 WL 648856 (there is a link on TWEN at course materials) a recent case in which the debt to equity ratio decreased from 26:1 in 1993 on formation, to 4:1 in 1996, the year being litigated.

6. **Gains & Losses on Investment Transactions (February 15, 2007)** (when good and bad things happen)

   Read text, pp. 147-157. In particular, read Code Sections 165, 166, 1044, 1045, 1091, 1202, and 1244, and the regulations under 1244. Do the problem on p. 157. Section 1244 is seen as a “no brainer” but it presents some traps.

7. **Earnings and Profits; Cash Dividends (February 20, 2007)** (somewhat tedious material, but we need to do this, particularly with the new interest in dividends produced by the 15% tax rate introduced by JGTRRA of 2003)

   Read text, pp. 158-173. Do the problems on pp. 168 (you need to come to bottom line numbers for these so we can then move on) & 172-173.

8. **Distributions of Property Other Than Cash (February 22, 2007)** (very tedious material and something not very attractive to most corporations)

   Read text, pp. 173-179. Read Treas. Reg. 1.301-1(g). Do the problems on p. 177 (omit parts (d) & (e)). Do the problem on p. 179 on your own. It is an example of a dividend earnings and profits “strip out” described in the legislative history excerpt and essentially repeats it.

9. **Constructive Distributions (February 27, 2007)** (a very common problem for closely held corporations with many possible facets; does EGTRRA of 2003 shift the standard IRS litigating position?)
Read text, pp. 179-186. Read I.R.C. §§ 7872 (a)-(c) and 482, 1.7872-4(d) and 1.482-2(a)(4), Example 3. In connection with Nicholls, North, Buse Co., consider how much the corporation could deduct with respect to the boat under today’s law. See I.R.C. §§ 274(a)(1)(B) & 274(e)(2).

10. **Dividends Received Deduction (March 1, 2007)** (integration for corporate-owned stock, but opening some loopholes)


11. **Bootstrap Transactions (March 1, 2007)** (exploiting the dividends received deduction)

   Read text, pp. 193-206, reviewing the problem on p. 206 which is essentially a restatement of *TSN Liquidating*—or is it?

12. **Redemptions and Attribution (March 6, 2007)** (some essential mental gymnastics in reading the Code; some argue that in the aftermath of JGTRRA of 2003, redemption treatment is not as critical—do you agree?)

   Read text, pp. 207-213. Do the problems on p. 213 (we will work through these quickly in class, and if you don’t prepare them in advance you will be lost). If you master Section 318 once, you will not forget it.

13. **Substantially Disproportionate Redemptions (March 8, 2007)** (a mathematical test, but rarely seen)

   Read text, pp. 213-217. Do the problems on pp. 217-218. The exceptions referred to in the footnotes are important.

14. **Redemptions Not Essentially Equivalent to Dividends (March 8, 2007)** (uncertain waters)


15. **Complete Terminations (March 13, 2007)** (a common problem for closely held corporations when shareholders exit upon death or retirement)

   Read text, pp. 218-233. Do the problems on pp. 233-235. Lynch, if it arose today, would produce the same amount of tax whether it was treated as a dividend or a redemption. Do you see why?

16. **Partial Liquidations (March 15, 2007)** (a relatively rare occurrence)

   Read text, pp. 248-253. Do the problem on pp. 252-253. Skim I.R.C. §§ 332 & 337 in connection with the problem to understand how the liquidation of a subsidiary is treated.

17. **Consequences to Corp. (On Your Own)** (some details to know)
Read text, pp. 253-257. Do the problem on p. 255 (on your own). Does Section 162(k) prohibit a deduction for income tax advice concerning a corporate redemption?

18. **Zenz, Buy-Sell Agreements, Planning (March 20, 2007)** (several traps for untrained corporate counsel)

   Read text, pp. 258-274. Do the problem on p. 266. Also, read I.R.C. § 2703. With respect to Arnes we need to look at the 1.1041-1T and 1.1041-2 (finalized January 13, 2003) regulations.

19. **304 Redemptions (March 22, 2007)** (easy material conceptually, difficult in implementation—the challenge is being able to even identify when the section applies, particularly when it overlaps with Section 351)

   Read text, pp. 283-295. Do the problems on p. 295. The language of section 304 is very subtle.

20. **303 Redemptions (On Your Own)** (a rare species)


**Spring Break**


   a. (Read text, pp. 298-309 (somewhat obscure except for dividend reinvestment programs, but can offer some traps). Do the problems on pp. 308-309. The 305 regulations are the key to unraveling these problems.

   c. Read text pp. 570-574; 577-581 (Recapitalizations--an alternative to stock dividends). Do problems 1(a), 2, 3, & 4 on pp. 581-582.

22. **306 Stock (April 5, 2007)** (an anti-avoidance section, rarely seen, but perhaps more popular after JGTRRA of 2003)


23. **Complete Liquidations** (death of the corporation when the full General Utilities bill becomes due)


   b. *(April 12, 2007)* Read text pp. 332-345. Do the problems on pp. 344-345 (a lot of painful, tedious detail for something rarely seen, but one needs to be aware of these provisions).

   c. *(April 17, 2007)* Read text pp. 345-357. Do the problems on pp. 356-357.

24. **Taxable Dispositions** (sometimes one needs to cash out and reorganizations won’t do)

   a. *(April 19, 2007)* Asset Sales: Read text, pp. 358-366.
b. (April 24, 2007) Sales of Stock and 338: Read text, pp. 366-381. Do problem 1 on pp. 380-381; become acquainted with the facts and the issues, but don’t get immersed in all of the numbers, particularly in parts (a)-(d).

   c. (On Your Own) Acquisition Expenses, Leveraged Deals: Read text, pp. 381-385; 400-421.

25. Accumulated Earnings Tax (April 26, 2007-Last Day of Class) (obscure, but it can arise for some closely held clients)


26. Personal Holding Company Tax (April 26, 2007-Last Day of Class) (obscure, but one needs to be aware of it)


End of the Course

Special Topics (topics may be selected from this list if time permits, which is unlikely to any significant degree)

A. Introduction to Simple (non-triangular) Mergers (the aggregation of investment and business assets, primarily in mid-stream situations)

   a. Read text, pp. 422-446.

   b. Do problems on pp. 445-446.

B. B Reorganizations (tax-free acquisition of a subsidiary; solely means solely—kind of)

   a. Read text, pp. 446-466.

   b. Do problems on pp. 466-467.

C. C Reorganizations (often referred to as a “practical merger”)

   a. Read pp. 467-471.

   b. Do problems on pp. 470-471

D. Triangular Reorganizations

   Read pp. 471-482. Do problem 1 on pp. 482.

E. Treatment of Parties to a Reorganization (including carryover of tax attributes)

   Read text pp. 483-506.

F. Divisive Reorganizations (a potential tax-free alternative to liquidations in some situations)
Read text, pp. 512-557.

G. **Divisive Reorganizations in Corporate Acquisitions** (the *Morris Trust* issue)

Read text, pp. 558-569.

H. **The Non-Divisive D and the F & G Reorganizations**

Read text, pp. 582-603.

I. **Limitations on Carryovers of Tax Attributes**: Read text, pp. 604-624.