

Corporate Taxation
LAWS 6157/ACCT 6450
Course Syllabus
Fall 2012

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Required Course Materials

1. *Federal Income Taxation of Corporations and Partnerships*, Doernberg, Abrams, and Leatherman, Fourth Edition (2009), Aspen Publishers, ISBN 978-0-7355-3993-8.
2. A current Internal Revenue Code and access to applicable Treasury Regulations. I suggest using *Selected Federal Taxation Statutes and Regulations*, Daniel J. Lathrope, 2013 Edition, West Publishing, ISBN 978-0-314-281869. If you have last year's edition, that should work for the most part, with minor supplementation as necessary.

The West Education Network ("TWEN")

My course home page can be accessed on TWEN at **lawschool.westlaw.com**. I have posted a copy of this syllabus on TWEN. As I will communicate with you by email from time to time during the semester, please register your email address on my course home page.

Course Requirements and Grading

Class Attendance and Participation: Class attendance and participation are vital elements of the course. Your attendance and participation will greatly enhance your knowledge of federal corporate tax law. In addition, the American Bar Association (as the accrediting body for the Law School) requires that I record attendance for this class. Starting Wednesday, August 29, I will begin taking daily attendance by distributing a class list for you to sign. You are required to attend at least 80 percent of our classes, which means 22 of our 27 regularly scheduled classes (I assume that everyone is present for the first day). If you do not, I will lower your final course grade by at least five (5) points (or on a letter grade scale, one "step"—for example, from a B+ to a B.). However, in addition to the reduction described in the preceding sentence, I reserve the right also to impose in cases of excessive absenteeism: (i) an additional 2-point per absence reduction in your final course grade for each absence in excess of five (5); or (ii) the "20% Rule" prescribed by Law School Rule § 3-3-1, with the result that you would be unable to take the final examination for the course and will receive a failing grade for the course. Please note that

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the absences record begins with the second class, even if you add this course to your schedule after that date. I may also raise grades for sustained and exceptional class participation throughout the semester.

The attendance requirement applies regardless of your other commitments such as to dependents, family deaths, jobs, brief illness, job interviews, weddings, legal aid clinic appointments, or religious observance. The five (5) permitted absences (i.e., two and one-half weeks of class) provide adequate flexibility to reasonably accommodate for those other commitments. This means you must plan ahead and save your permitted absences for when you need them, as well as keep some “in reserve” for life’s unexpected and unplanned events.

The responsibility for good recordkeeping is primarily on you, as I don’t tabulate total absences on a regular basis. However, if you have a concern as to the number of recorded absences, please contact me and I will be happy to run a subtotal at that point.

Optional Writing Assignment: If there are fewer than thirty-five (35) students enrolled in the course, Law School rules require that I offer a writing assignment, optional or required. In this case the assignment is optional. It is my practice to usually choose topics for which we don’t have time to cover in the course, but which I believe are very important. This year there are two projects from which you can choose: (1) Is to provide a typewritten solution to Problems 17-1 & 17-3, dealing with S corporation issues; and (2) to provide a typewritten solution to Problems 13-1 & 13-2, dealing with net operating loss carryovers. Either will be due at the beginning of class on October 3. Either is worth ten (10) points of the final grade. Don’t put your name or student ID number on the paper; instead, make up an alphanumeric identifier.

Internal Revenue Code and Treasury Regulations: Be prepared to discuss applicable Code sections and Regulations in class. I suggest bringing *Selected Federal Taxation Statutes and Regulations* to every class.

Final Exam: A final 3-3 ½ hour exam will be administered during the final exam period and will be comprehensive in nature. The exam will be partially restricted. You may use only the Code and applicable Regulations (annotated as you wish), the casebook, your class notes, and an outline prepared by you. Please bring a simple calculator. You cannot use any other materials or resources, whether in print or in electronic version. **Only students who appear on the seating chart are eligible to take the final exam.**

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Point Distribution: The elements of your final grade are weighted as follows:

Class Attendance and Participation	5 points
Optional Writing Assignment	10 points
Final Exam	<u>85 points</u> (95 points if the writing assignment is not elected)
Total	100 points

Religious Accommodations: Campus policy regarding religious observances requires that faculty make every effort to reasonably and fairly deal with all students who, because of religious obligations, have conflicts with scheduled exams, assignments, or required attendance. See full details at http://www.colorado.edu/policies/fac_relig.html. Please email me if you have any such conflict.

Disability Accommodations: If you qualify for accommodations because of a disability, please submit to me a letter from Disability Services in a timely manner so that your needs can be addressed. Disability Services determines accommodations based on documented disabilities. Contact: 303-492-8671, Center for Community N200, and <http://www.colorado.edu/disabilityservices>. If you have a temporary medical condition or injury, see guidelines at <http://www.colorado.edu/disabilityservices/go.cgi?select=temporary.html>

Discrimination and Harassment: The University of Colorado at Boulder Discrimination and Harassment Policy and Procedures, the University of Colorado Sexual Harassment Policy and Procedures, and the University of Colorado Conflict of Interest in Cases of Amorous Relationships policy apply to all students, staff, and faculty. Any student, staff, or faculty member who believes s/he has been the subject of sexual harassment or discrimination or harassment based upon race, color, national origin, sex, age, disability, creed, religion, sexual orientation, or veteran status should contact the Office of Discrimination and Harassment (ODH) at 303-492-2127 or the Office of Student Conduct (OSC) at 303-492-5550. Information about the ODH, the above referenced policies, and the campus resources available to assist individuals regarding discrimination or harassment can be obtained at <http://www.colorado.edu/odh>

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Modifications: The instructor reserves the right to alter, modify, supplement, and/or delete course assignments.

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Class Schedule: The class assignments are set forth below. In addition to reading the text and the Code, you should also read the applicable Regulations.

<u>Date</u>	<u>Description</u>	<u>Pages</u>	<u>Code §§</u>	<u>Problems</u>
August 27	Corporation as separate Entity; corporate classification;	3-5; 473-494;	<p>11, 7701(a)(3), 7704, 1361(a) & (b), 1371(a), 482 (read the casebook's discussion of 482 pricing rules from the regulations, but our learning objective is to grasp just the gist of those rules), & 269A.</p> <p>In terms of regulations, read only the check-the-box regulations, but read them carefully.</p>	<p>1. Why, from the standpoint of the Code's structure, are public corporations almost always taxed as C corporations?</p> <p>2. Under check-the-box, what are the possible income tax treatments of a corporation formed under the Colorado Corporations Code?</p> <p>3. Why are LLCs relevant to public corporations? Skim the IRC §1504(a) affiliation rules to determine the degree of ownership necessary to unlock the section 1502 consolidated return election. Note that LLCs play roles in corporation reorganizations. Skim Treas. Reg. §§ 1.368-2 (a), (b)(1) (particularly Example 2).</p> <p>4. Aside from the 60-month flip-flop limitation, are the consequences of checking (or unchecking) the box otherwise benign? I.e., what if an LLC elects association treatment? What if an LLC elects association treatment, but later elects back to partnership status? What is the impact of these</p>

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				<p>elections?</p> <p>5. Is <u>Bollinger</u> unique law, or are other agency relationships routinely recognized for income tax purposes?</p> <p>6. Why are the facts of <u>Bollinger</u> easier conceptually for the taxpayer than the facts of <u>National Carbide</u>?</p> <p>7. From an administrability standpoint and protecting the corporate tax base, is <u>Bollinger</u> a good decision?</p> <p>8. In light of 269A, is the use of “loan-out corporations” (an example is the arrangement in <u>Sargent</u>) a dead letter? In considering that question, is 11(b)(2)/448(d)(2) an additional obstacle?</p>
August 29	Corporate formation; property; stock	7-18	<p>351, 1032, 1223, 358, 362, 83</p> <p>Read only the 351 regulations at this point.</p>	<ol style="list-style-type: none"> 1. What are alternatives to contributing property in exchange for stock (i.e., how else can the corporation gain use of the asset)? 2. Do service contributors always “bust” a 351? 3. How could IRC §83

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				<p>be employed in <u>James</u>? Would it help? What about a nonqualified stock option?</p> <p>4. Could two classes of stock help with the <u>James</u> facts?</p> <p>5. Who was the biggest “victim” in <u>James</u>?</p> <p>6. Is 351(g) a concern for the typical VC investor?</p> <p>2-1 (a)-(c); 2-3 (p. 33)</p>
September 5	Corporate formation; control;	18-33	<p>Read Rev. Rul. 79-194 & Rev. Rul. 70-40 posted on TWEN.</p> <p>368 plays a direct role in 351 only in terms of defining “control” under 368(c). However, we will be dipping our toes in reorganizations, so this is a good time to read the rest of 368, which provides the definitions unlocking tax-deferred reorganization treatment. Don’t expect to understand much of 368 at this point.</p>	<p>1. How could the Campex shareholders have structured matters to qualify under §351?</p> <p>2. Could a 368(a)(1)(A)/(a)(2)(D) (forward triangular A) or 368(a)(1)(B) reorganization been used in <u>Kamborian</u>?</p> <p>3. It is said that, in reorganizations, a whale can swallow a minnow. For example, Cisco Systems can acquire a smaller target using a tax-deferred reorganization under 368 using a merger.</p>

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			Read only the following 368 regulations: 1.368-2(b)(2); 1.368-2(c)	<p>This is common. See 368(a)(1)(a) & 368(a)(2)D). <u>Why</u> is it difficult for a whale to swallow a minnow, using 351 as an acquisition technique?</p> <p>Reconsider your answer to 2-1(a) in light of the reading.</p>
September 10	Corporate formation; cash boot; liabilities	33-56	<p>1001, 357, 358, 362, 83(h), 1032</p> <p>Don't read the 1001 regulations, but read the others. For 358 read only 1.358-1 & 1.358-3.</p> <p>Read Rev. Rul. 74-477 posted on TWEN.</p> <p><i>Big Picture: Assuming that the 351 qualifies as such (we have property, control, etc.), then there are only three ways by which shareholders can recognize income:</i></p> <ol style="list-style-type: none"> <i>1. Explicit boot received under 351(b);</i> <i>2. Debt assumptions that run afoul of 357(b) or</i> 	<ol style="list-style-type: none"> 1. If a corporation purchases its stock in the open market and later resells it at a higher price, does it recognize income? 2. If a corporation issues its stock for services, does it recognize income? Can it take a deduction for the value of the stock? 3. In light of <u>Peracchi</u>, how would you advise a client with an excess debt problem? Indeed, did the doctrine of <u>Peracchi</u> survive the subsequent addition of 357(d)? <p>2-1(d), 2-2 (use Rev. Rul. 68-55 method), 2-5</p>

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			<p><i>357(c); or</i></p> <p>3. Possible application of the tax benefit rule if previously deducted items are contributed.</p>	
September 12	Corporate formation; transactional and doctrinal overlap	57-75	<p>118, 248, 1239</p> <p>Don't read the 1239 regulations.</p>	<p>1. If the taxpayers in <u>Bradshaw</u> were selling an apartment house to the corporation as a prelude to a condo conversion, would you have other concerns?</p> <p>2-6, 2-7</p>
September 17	Corporate operation	77-87; 494	<p>11, 1561, 1563(a), 1201, 1211, 162(m), 469(a), 469(e)(2), 53-57 (skim the AMT to get the gist of what items are delayed or denied for AMT or accelerated for AMT);</p> <p>Read no regulations for any of these sections.</p>	<p>1. Try plotting a graph of the corporate tax rates (on a Y axis) versus corporate income (on an X axis); do you see the rate "bubbles"?</p> <p>2. What precludes the formation of "alphabet" corporations owned by the same shareholders to split income among multiple corporations to exploit the stair</p>

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				<p>step rates of §11?</p> <p>3. Who pays for an increase in the tax on corporations?</p> <p>4. Skim Chapter 8 which deals with the integration of the corporate and individual income taxes. There are many approaches to this issue: a shareholder exclusion for dividends; a corporate deduction for dividends; a shareholder credit for the corporate taxes paid, taken by the shareholder on dividend distributions (this is similar to the operation of the foreign tax credit with repatriation of profits from foreign subsidiaries under section 902; an elimination of the interest deduction at the corporate level, and a shareholder/creditor exclusion for dividends or interest payments. The unresolved issue is</p>
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				<p><u>why</u> corporate earnings should or should not be subject to double tax in the first instance. Consider this question.</p> <p>3-1, 3-2</p>
September 19	Corporate operation	87-102	<p>385, 163(j) 11(d), 7701(a)(4), 7701(a)(5), 881 (skim), 882 (skim), 884 (skim), 7701 (l) and (o).</p> <p>Don't read any regulations for any of these sections.</p> <p>Read <u>Delta Plastics & United Parcel Service</u> posted on TWEN.</p> <p>The U.S. taxes the worldwide income of U.S. corporations, subject to the rule of deferral for foreign subsidiaries (no U.S. income until the earnings are repatriated), which is in turn subject to an exception for certain potentially abusive activities of controlled</p>	<p>1. A U.S.-based company can be formed in a foreign country. Why do this? 2. A foreign company can operate in the U.S. as a "branch" or using a U.S. subsidiary. In the former structure, 882 and 884 work in tandem. 882 deals with operating profits, and 884 accounts for repatriations to the parent. In the latter, 11 and 881 work in tandem. The U.S. subsidiary is like any U.S. corporation and subject to section 11. Section 881 and treaties govern the repatriation of dividends to the foreign parent. Problem 3-4 is an example of the latter structure. 3. In connection with the United Parcel Service case, consider whether it would come out differently under the new section 7701(o). Also, appreciate the</p>

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			foreign corporations (IRC §§ 951 et seq.). A recurring topic is whether the U.S. should instead adopt a “territorial” system of taxing global profits. For a very good overview of the issues involved in a territorial system, you can read (at your option if you are interested in this topic) a recent Joint Committee on Taxation report, JCX-33-11 (Google JCX-33-11 to find a PDF of the report).	international tax mechanics of the arrangement, understanding that an obscure revenue ruling treats income from insuring U.S. risks as not income effectively connected with the conduct of a U.S. trade or business (882), nor income subject to 881 withholding. 3-3, 3-4
September 24	Distributions of cash and property; E&P allocations and computation	103-117	Read Rev. Rul. 62-131 posted on TWEN. 301, 316, 317	4-1, 4-2 NOTE: The optional writing assignment is due on October 3. See the syllabus above for details.
September 26	Distributions of cash and property; non-cash property	117-124	311, 312	4-3 (a), (b) & (c)
October 1	Distributions of cash and property	124-142	Read Rev. Rul. 69-115 posted on TWEN. 7872(c); Treas. Reg. §1.482-2(a)(3) (not in the supplement; please find on some	1. In considering the broad array of possible constructive dividends and whether one exists, is it helpful to look to the value of what

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			electronic service) Read no other regulations.	was relinquished by the shareholder in comparison with the value furnished by the corporation? 4-4, 4-5, 4-6
October 3	Distributions of cash and property Optional Writing Assignment Due	142-150	Read Rev. Rul. 88-66 posted on TWEN. 243, 246A, 1059 Read no regulations.	1. In connection with <u>Litton</u> , also focus on the mechanics of the note distribution. E.g., what is the amount of the dividend? What is the basis of the note? What is the reduction in E&P? Does the corporation recognize gain or loss on the distribution? 4-8
October 8	Redemptions and partial liquidations	151-159	302(skim), 302(b)(3), 317, 318, 1059 Don't read the 1059 regulations.	5-1
October 10	Redemptions and partial liquidations	159-177	Rev. Rul. 81-41 and Rev. Rul. 81-289 posted on TWEN. 302(b)(2), 302(b)(1), 303, 318	5-3(a), (b), (c), (d), (e),(i), (e)(ii), (e)(iii)
October 15	Redemptions and partial liquidations	177-183	302(b)(4), 302(e), 311(b), 312(n)(7), Treas. Reg. §1.346-1, -2; Treas. Reg. §1.355-3	5-6
October 17	Redemptions and Cross Purchases; <u>Zenz</u>	183-190; 205-210;	Read Rev. Rul. 69-608 posted on TWEN.	5-8

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	bootstraps; capital contributions; Section 304	190-205.	118,304 Skim the 304 regulations.	Section 304 is one of the more complex corporate provisions in the Code, yet somewhat obscure. We will do just a basic overview. 5-11 (a)-(c) (ignore the alternate facts in (a) where P Corporation is a shareholder)
October 22	Distributions of stock	211-227	305	6-1 (a), b(i) & (iii), & (c)
October 24	Distributions of stock	227-231; 238-245	306	6-3(a), (b), (d)
October 29	Liquidations	247-266	331, 336, 334, 165(g), 166, 1244	7-1(a) & (e)
October 31	Liquidations	266-279	332,334, 337, 381(a)(1)	7-2 (a) & (b)
November 5	Taxable acquisitions	297-307	1060, 338 Don't read the 338 regulations.	
November 7	Taxable acquisitions	297-307; 431-434	1060, 338 Don't read the 338 regulations. Read 382(a)-(g), (k) (just the gist of 382)	9-1, 9-3, 9-4, 9-6, 9-11
November 12	Acquisitive reorganizations	327-341; 341-356	Skim 368(a)(1)(A)-(F), 368(a)(1)(A), 368(a)(1)(B), read 1.368-1(b), (d)(1), (e) Read Rev. Rul. 72-354 posted on TWEN. Read Treas. Reg. 1.368-1(e)(8) posted on TWEN.	10-2 (c), 10-3, 10-4
November 14	Acquisitive	356-360;	368(a)(1)(C),	10-5 (a) & (b), 10-7(a), (b)

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	reorganizations; drop-downs and triangulars	367-372	368(a)(1)(D), 368(a)(2)(C), 368(a)(2)(D), 368(a)(2)(E)	
November 19	No Class-Fall Break			
November 21	No Class-Fall Break			
November 26	Acquisitive reorganizations	372-382	354, 356, 358, 361, 362, 1032, 1223	
November 28	Divisive reorganizations	389-405	355, 368(a)(1)(D)	
December 3	One-party reorganizations	423-430	Read Rev. Rul. 96-29 posted on TWEN. 368(a)(1)(E) & (F)	12-1 (a)
December 5	Catch-up, Q&A, Review Session			