REQUIRED COURSE MATERIALS:


3. 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* (2005 Edition, Daniel J. Lathrope, Editor), ISBN 0-314-15357-8; and

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

RECOMMENDED COURSE MATERIALS:

The law library has several copies of Boris Bittker & James Eustice, Federal Income Taxation of Corporations and Shareholders, without question, the leading reference on this subject.

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). If this applies, and if you are interested, please contact me by February 1 so that I may prepare a topic.

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 "open" and all materials may be used by a student, with the exception of materials obtained from the School of Law library and computer-aided, Internet-based, or other electronic resources.

OFFICE HOURS:

My office is 501 (Law School) and my telephone is (303) 492-7013. My office hours are Tuesdays and Thursdays, 11:00-noon. 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

Read text, pp. 1-21 (plus applicable portions of any text supplement — do that for every assignment) and the code sections referred to therein (do this for every assignment), particularly I.R.C. §§ 11, 448 (d)(2), 53, 55-57, 441, & 1361. Do the problem on pp. 20-21 (for Emil and Betty use the 40%/20% rates, and then use the current 35%/15%/15% rates that would resemble those applicable under JGTRRA of 2003). 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? Try to compute a corporate AMT for Boots, Inc. (this will be our only tax form exercise) by printing the 2003 Form 4626 and the instructions from IRS.gov. An “ACE” worksheet is page 11 of the instructions, and you need the ACE figure to complete Form 4626. To do this correctly as a matter of first impression could take you 3-4 hours; I don’t expect that, just try to get the gist of the calculation. Assume that Boots, Inc. does not necessarily qualify for the small corporation exemption from the AMT (do you see why?).

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

Read text, pp. 21-37 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 (the fine line between LLCs, corporations, and trusts; agency issues)

Read text, pp. 37-49, 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.

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. Read text, pp. 51-55; do problems on pp. 54-55 (these are the only problems where we will do all of the collateral aspects of the transaction such as shareholder and corporate basis, holding periods, etc.).

b. Read text, pp. 55-64. Do the problems on pp. 62-64 (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.

c. Read text, pp. 64-73. Do part (a) of the problem on pp. 72-73.

d. Read text, pp. 73-91. Do the problems on pp. 90-91.

e. Read text, pp. 91-111. Do the problems on pp. 101. The problems on pp. 110-111 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 on pp. 110-111?
5. **Debt & Equity** (an inquiry with few clear-cut answers, but with the new 15% tax rate twist)

   Read text, pp. 112-133. Also skim Code sections 482, 7872, 279, 163(e)(5), and 163(l). Do the problems on pp. 132-133.

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

   Read text, pp. 133-143. In particular, read Code Sections 165, 166, 1044, 1045, 1091, 1202, and 1244, and the regulations under 1244. Do the problems on pp. 142-143. Section 1244 is seen as a “no brainer” but it presents some traps.

7. **Earnings and Profits; Cash Dividends** (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. 144-154. Do the problems on pp. 150 (you need to come to bottom line numbers for these so we can then move on) & 154.

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

   Read text, pp. 154-161. Do the problems on pp. 158-159 (omit parts (d) & (e)). Do the problem on p. 161 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** (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. 161-166. Read 1.7872-4(d).

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

    Read text, pp. 166-173. Do the problems on pp. 172-173.

11. **Bootstrap Transactions** (exploiting the dividends received deduction)

    Read text, pp. 173-186, reviewing the problem on p. 186 which is essentially a restatement of TSN Liquidating—or is it?

12. **Redemptions and Attribution** (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. 187-191. Do the problems on p. 191 (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** (a mathematical test, but rarely seen)

   Read text, pp. 191-196. Do the problems on pp. 195-196. The exceptions referred to in the footnotes are important.

14. **Complete Terminations** (a common problem for closely held corporations when shareholders exit upon death or retirement)

   Read text, pp. 196-213. Do the problems on pp. 211-213.

15. **Redemptions Not Essentially Equivalent to Dividends** (uncertain waters)


16. **Partial Liquidations** (a relatively rare occurrence)

   Read text, pp. 226-231. Do the problem on pp. 230-231. Read I.R.C. §§ 332 & 337 in connection with the problem to understand how the liquidation of a subsidiary is treated.

17. **Consequences to Corp.** (some details to know)

   Read text, pp. 231-235. Do the problem on p. 233 (on your own). Does Section 162(k) prohibit a deduction for income tax advice concerning a corporate redemption?

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


19. **304 Redemptions** (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. 262-274. Do the problems on p. 274. The language of section 304 is very subtle.

20. **303 Redemptions** (a rare species)

   Read text, pp. 275-276. Do the problem on pp. 276-277 (on your own).

21. **Stock Dividends & Recapitalizations**

    a. Read text, pp. 278-289 (somewhat obscure except for dividend reinvestment programs, but can offer some traps). Do the problems on pp. 288-289. The 305 regulations are the key to unraveling these problems.

    b. Read text pp. 560-571 (Recapitalizations--an alternative to stock dividends). Do problem 1(a), 2, 3, & 4 on p. 571.
22. **306 Stock** (an anti-avoidance section, rarely seen, but perhaps more popular after JGTRRA of 2003)

   Read text, pp. 289-309. Do problem 1 on p. 308.

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

   b. Read text pp. 315-329. Do the problems on pp. 328-329 (a lot of painful, tedious detail for something rarely seen, but need to be aware of these provisions).

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

   b. Sales of Stock and 338: Read text, pp. 350-366. Do problem 1 on pp. 364-365; become acquainted with the facts and the issues, but don’t get immersed in all of the numbers, particularly in parts (a)-(d).
   c. Acquisition Expenses, Leveraged Deals: Read text, pp. 383-404.

25. **Accumulated Earnings Tax** (obscure, but it can arise for some closely held clients)


26. **Personal Holding Company Tax** (obscure, but one needs to be aware of it)


27. **Collapsible Corporations** (really, really obscure and repealed by JGTRRA of 2003)

   Skim text, pp. 679-681 to see what the uproar was about. It is now (thankfully) repealed.

**Special Topics**

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

   a. Read text, pp. 405-434.
   b. Do problems on pp. 433-434.

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

   a. Read text, pp. 434-453.
   b. Do problems on pp. 453-455.

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

   a. Read pp. 455-469.
b. Do problems on p. 458

D. Simple Triangular Reorganizations


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

Read text pp. 471-491; 493-500.

D. Divisive Reorganizations (a potential tax-free alternative to liquidations in some situations)

Read text, pp. 507-539; 539-548.

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

Read text, pp. 548-558.

G. The Non-Divisive D and the F Reorganizations

Read text, pp. 572-587,

H. Limitations on Carryovers of Tax Attributes: Read text, pp. 594-614.

I. Affiliated Corporations & Consolidated Returns (a complex area, but the rule for publicly held groups)

Read text, pp. 615-644.