PERSONAL INCOME TAX
276-001
FALL 2008

COURSE SYLLABUS

Class Assignments:

You will need three types of material, all available from the bookstore –

1. A set of photocopies, in 3 parts: (a) this Syllabus; (b) Materials, consisting of cases, IRS rulings, other primary sources, and various secondary sources and explanatory essays; and (c) a Problem Set, containing a mixture of examples and questions.


3. TaxProf 7.01™ (the 2004 version; I will alert you to the few places where the law has changed), a computer-based tutorial. The Syllabus tells you which of these questions to prepare for each class. These questions are a fundamental – and time-consuming – component of your class assignments; don’t wait until you’re studying for the exam! You are not responsible for questions I don’t assign.

Notes: TaxProf is available on CD. If you do not have a computer with a CD-ROM reader, the school will give you access to the tutorial (for the same purchase price). Full disclosure: The program (in its seventh edition and sold around the country) is written by my husband.

Unlike your first-year classes, a tax course is a statutory rather than a case-based class. The most important material you can read before class is the statute. So why do I include numerous cases? Because the facts are so juicy, and because cases illustrate the many transactions that taxpayers engage in. Contrary to popular opinion, the study of tax law is not about numbers, but rather about money and greed and power!

We meet Mondays and Wednesdays from 4:00 to 5:25 p.m. This Syllabus contains 40 numbered topics, broken down into one class hour each. Please be prepared to cover one-and-a-half topics each time we meet. We’ll make adjustments to the schedule as necessary.

Buddy System:

Students often have a high anxiety level about tax classes. What might make this course difficult or confusing is not “numbers” in the math sense (we rarely do calculations) but rather
“numbers” in the administrative law sense. *Everything* is numbered, from Internal Revenue Code sections, to regulations sections, to IRS rulings. And we tax lawyers tend to “talk in Code” rather than in English; hang in there, you’ll soon be babbling away about “section 61” or “section 162.” You might also be baffled by the variety of business or other activities covered. We spend a lot of time discussing why people are doing what they’re doing. That’s what’s so much fun about a tax course: you get to see life in all its fullness.

To help make this class less threatening and more of a cooperative effort, you must form into groups of two or three. Sort out soon (I can help pair you off), so that you can sit together with co-counsel. You and your co-counsel and ask/answer questions in class together. Work together, too, on the assigned problems.

**Attendance, Preparation and Grade:**

I will not take attendance, but try to come to class even if you’re unprepared. **PLEASE ARRIVE AND BE SEATED ON TIME. I reserve the right to hold up late-comers and seat them after a few minutes** (talk to me if you have scheduling problems).

Your grade will be based solely on the exam. The exam will be entirely objective (multiple choice, fill-in-the-blank, and/or short answer). The exam will be fully open-book, but you may not bring in TaxProf or any printouts from TaxProf (for details, see the end of this Syllabus under “Exam”). You may elect pass/fail, but you’ll probably study so hard you might as well go for the grade.

Get organized; *keep up* (set the right foundation); and call (906-5276), e-mail (ebrody@kentlaw.edu), or see me (Room 841) with questions (preferably with your co-counsel).

**Income Tax in a Nutshell:**

How do you make sense of all this stuff? Even tax experts with many years’ experience often don’t know the answer to what might seem to be a fairly basic question. The Code and regulations are just too lengthy and complex (and they change all the time). Rather, in approaching a novel question, we know where to look for an answer (even if we don’t find one!). As you work your way through the assignments, you are building a framework. Thus you can reason by analogy: *Where does this issue fit into the framework I already know?* Ask: “Which of the following four questions does this fit into?” –

- What is income? (Or, often, what is deductible?)
- When is it income? (Or, when is it deductible?)
- Whose income is it?
- At what rate should the income be taxed?
1. **THE INCOME TAX SYSTEM**


   **Problems:** Handout Problem 1-1. Why don’t we replace our $2-plus trillion complex of income and payroll taxes, estate and gift taxes, and customs and excise duties, and just assess $7,000 per person? What are the tradeoffs between *fairness*, *efficiency*, and *administrability* (complexity and cost)?

   **TaxProf:** *INSTRUCTIONS*; *TAX LAW 101*.

2. **ECONOMIC CONCEPTS AND THE IDEA OF INCOME**

   **Code:** § 61 and § 74.

   **Regs:** § 1.61-1 & -14.

   **Materials:** Pages 13-31: *Cesarini*; *Glenshaw Glass*; IRS, IR-98-56 (record home-run baseballs); Academy of Motion Pictures, *Academy and IRS Reach Gift Basket Accord*, IR-2006-128; *James*.

   **Problems:** Handout Problems 2-1 through 2-3.


3. **INCOME FROM DEALINGS IN PROPERTY: INTRODUCTION**

   **Code:** §§ 61(a)(3); 1001(a) & (b); 1011; 1012; and 165(c).

   **Regs:** § 1.61-6.

   **Problems:** Handout Problems 3-1 through 3-5.


4. **THE TIME VALUE OF MONEY: INTRODUCTION**

   **Code:** § 61(a)(4) & (7).4.

   **Regs:** Skim §§ 1.61-7 (interest) and -9 (dividends).

   **Materials:** Future Value and Present Value Tables (in Appendices A and B).
Problems: Handout Problems 4-1 through 4-4.

5. RECEIPT OF INCOME “IN KIND” (OTHER THAN CASH)

Code: § 119.
Regs: §1.61-1 and -2(a) & (d)(1). Skim § 1.119-1.
Materials: Pages 35-48: Benaglia; Old Colony Trust; Maremont, Tax Free Income for Executives; Gotcher; Rev.Rul. 79-24; Stamper, Virtual Economies.
Problems: Handout Problems 5-1 through 5-3.
TaxProf: DEFINING INCOME, General Concepts: Q.1, Q.3 (no, you are not responsible for this formula!), Q.4, Q.18 and Q.22.
DEFINING INCOME, Meals and Lodging: Q.2 through Q.4; skim Q.5 through Q.8.

6. EXCLUSIONS FROM INCOME: GIFTS AND INHERITANCES

Code: § 102; see also § 274(b) (we look at deductions in detail later, starting with Assignment 16).
Note: The 2008 annual gift-tax exclusion is $12,000 per donee.
See Appendix F.
Regs.: § 1.102-1 and Proposed Reg. § 1.102-1.
Problems: Handout Problems 6-1 through 6-5.
DEFINING INCOME, Crimes and Politics: Q.4 through Q.6.
DEFINING INCOME, Damages: Q.16.

7. STATUTORY FRINGE BENEFITS.

Code: Skim § 132(a) through (f) and (j)(1) (you are not responsible for the details of § 132; just learn the points made in the Handout Problems).
Note: The monthly pre-tax transit commuter benefit limit increased from $110 to $115 effective the January 2008 benefit month.
Regs.: § 1.61-2(d)(2); § 1.61-21(a) & (b), and skim the rest of the reg.
§ 1.132-3(e); and skim § 1.132-6.
Materials: Pages 60-63: CBO, Restrict the Tax Exclusion for Qualified Parking;
RTA Transit Pass brochure.

Problems: Handout Problem 7-1 through 7-5.
DEFINING INCOME, Meals and Lodging: Q.1, and Q.9 through Q.11.

8. HEALTH BENEFITS AND PERSONAL INJURY

Code: § 105(a) & (b) and § 106(a).
§ 104(a)(2) and the last two sentences of § 104(a).
Regs: § 1.105-2.
Materials: Pages 63-67: CBO, Reduce the Tax Exclusion for Employer-Paid Health Insurance; Pear, Bush Health Proposal; tax professors’ e-mail exchange on evidence; Counsel Connect discussion of § 104.
Problems: Handout Problems 8-1 through 8-4.
TaxProf: PERSONAL DEDUCTIONS, Medical Expenses: Q.16; skim Q.17 (we cover the medical-expense deduction in Assignment 23) and Q.18.
DEFINING INCOME, Damages: Q.1 through Q.10, Q.17, and Q.18.

9. COMPLIANCE AND ETHICS (This will take more than one class hour.)

Materials: Pages 68-104: IRS, Fact Sheet on Confidentiality; IRS, Penalties and the Tax Gap; Cheek; Wesley Snipes news stories; Brody, Employment Tax Liability; employee classification news; Burman & Leiserson, Payroll Taxpayers; Bush’s FY 2009 compliance proposals; Kopytoff, eBay Sellers; TAM 9639001 [and see Form 8919 and SS-8 in Schedule C]; Buffalow; Rhodes v. Batilla; Counsel Connect exchange re payroll taxes.
TaxProf: MISCELLANEOUS, Penalties: Q.1, Q.4, and Q.17 through Q.20.

10. SELF-PRODUCED PROPERTY AND SERVICES; LIFE INSURANCE

Code: § 101 (note that paragraph (g) was added in 1996, after the Private Letter Ruling and news story in your Materials).
Materials: Pages 105-112: Garber; CBO Include Investment Income from Life
Insurance.

Problems: Handout Examples 10-1 through 10-4.
Defining income, Life Insurance: Q.1 through Q.7.

11. BASIS FOR GIFTS AND INHERITANCES

Code: § 1011; § 1012; § 1015; and § 1014. Skim § 1022.
Problems: Handout Problems 11-1 through 11-4.
TaxProf: DEFINING INCOME, Gifts: Q.5 through Q.8, and Q.17 through Q.19.

12 & 13. INTRODUCTION TO DEDUCTIONS AND CREDITS
(As noted, this topic will take two class hours.)

Code: Compare § 162(a) and § 212 with § 262; §§ 62 & 63; and (finally!) § 1 (except for subsections (g) and (h), which we’ll look at in later classes).

Note: This stuff is much easier to understand from the IRS Form 1040 (and Schedule A), in Appendices C, D, and E to the Materials. The McCains’ forms are for 2006, and the Obamas’ return is for 2007. Revenue Procedure 2007-66 (in Appendix F) has the 2008 inflation-adjusted rate tables and other indexed amounts that we will use in this course.

Materials: Pages 122-134A: TPC, Comparing Standard and Itemized Deductions; Brody, Rates vs. Base; TPC, Difference between Tax Deductions and Tax Credits; John McCain’s and Cindy McCain’s 2006 separate tax returns (in Appendix D), and the Obamas’ 2007 tax return (in Appendix E); Surrey, Tax Subsidies as a Device for Implementing Government Policy; Tax Expenditures Table, FY 2009 U.S. Budget; OMB, Income Tax Expenditures; CBO, Combine the Personal Exemption and Standard Deduction; CBO, Increase Individual Income Tax Rates and Limit the Tax Benefit of Itemized Deductions.

Problems: Handout Problems 12-1 through 12-4.
14. **CASH METHOD OF ACCOUNTING**

   **Code:** §§ 446, 451(a), & 461(a), and skim § 448.
   **Regs:** Skim § 1.446-1; read § 1.451-1 & -2; read § 1.461-1.
   **Materials:** Pages 135-141: McCormack; Rev. Rul. 78-38.
   **Problems:** Handout Problems 14-1 through 14-7.
   **TaxProf:** TIMING, *Cash Method*: skim Q.1 through Q.4; do Q.5 through Q.11; Q.13 through Q.18; and Q.22 through Q.25.

15. **RETIREMENT INCOME: CONSUMPTION TAX**

   **Code:** § 62(a)(7); § 275(a)(1)(A); § 401(a)(1) through (a)(4); § 402(a); and § 409A. Skim § 401(k). If you’re interested IRA rules, see §§ 219 and 408 (contributions deductible, but payouts taxable) and § 408A (“Roth” IRAs: no deduction, no income). You need only grasp the basic fundamentals of the tax rules on retirement accounts, as set out in the Handout Problems.
   **Materials:** Pages 142-165: Rev. Rul. 60-31.
   **Problems:** Handout Problems 15-1 through 15-4.
   **TaxProf:** TIMING, *Cash Method*: Q.19 through Q.21. 

16. **BUSINESS VERSUS PERSONAL EXPENDITURES; INVESTMENTS; HOBBY LOSSES**

   **Code:** § 165(a), (b), (c) & (d); § 183; § 172(a) and (b)(1) & (2). Reg. § 1.212-1(f).
   **Materials:** Pages 166-192B: Smith; Pevsner; Brody, *Leakage and Symmetry* (save part 4 for Assignment 23); Torpie; DOJ, “Lottery Ticket Schemers Sentenced”; Brody, *Roadmap for Deductions*; Storer.
   See John McCain’s Schedule C (Appendix D), and the Obamas’ Schedule C and Schedule C-EZ (Appendix E).
   **Problems:** Handout Problems 16-1 through 16-5.
   LOSS LIMITATIONS, *Hobby Losses*: Q.1 through Q.5; skim Q.6, Q.7 & Q.8.
17. **TRAVEL AND ENTERTAINMENT**

   **Code:** § 162(a)(2); § 274(a), (d), (e), (k) & (n).
   **Regs:** § 1.162-2.
   **Materials:** Pages 193-207: *Rudolph; Correll; Hantzis*..
   **Problems:** Handout Problems 17-1 through 17-5.
   **TaxProf:** BUSINESS DEDUCTIONS, *Travel and Entertainment*: Q.1 through Q.8, Q.11, Q.17 through Q.19, Q.21, Q.24, and Q.26 through Q.29, Q.31, and Q.34.

18. **“ORDINARY AND NECESSARY”**

   **Code:** § 162(a) (first clause); § 162(c), (f) & (g); § 162(m); § 280E.
   **Materials:** Pages 212-237: *Welch; Jenkins; Action on Decision on Jenkins; Tank Truck Rentals; Sullivan; Tellier; GAO, Deductibility of Civil Settlement Payments; Bush’s 2007 proposal (passed by SFC, but no further).*
   **Problem:** Handout Problem 18-1.
   **TaxProf:** BUSINESS DEDUCTIONS, *Ordinary and Necessary*: Q.1, Q.19, and Q.20 through Q.23.
   **DEFINING INCOME, Crimes and Politics:** Q.1.

19. **DEPRECIATION AND OTHER METHODS OF COST RECOVERY**

   **Code:** § 263(a); § 167(a); skim § 168(a) through (e).
   § 179; and § 197(a) through (e). § 1016(a)(1) & (2).
   For 2008, note temporary bonus depreciation and 179 allowance, described in the problem set.
   **Regs:** § 1.461-1(a); §§ 1.167(a)-1, -2 & -3.
   **Materials:** Pages 239-249: *Brody, Cost Recover (“Depreciation”); Action on Decision on Simon & Liddle; discussion on Counsel Connect; CBO, Extend the Period for Recovering Cost of Equipment.*
   **Problems:** Handout Problems 19-1 through 19-5.
   **TaxProf:** TIMING, *Cash Method*: Q.26.
   **DEFINING INCOME, Gifts:** Q.6.
   **MISCELLANEOUS, Time Value of Money:** Skim Q.36.
20. **CAPITALIZATION VERSUS DEDUCTION**

- **Code:** § 263; § 263A(a) & (b). § 1016(a)(1).
- **Regs:** Prop. Reg. § 1.263(a)-1 through -3 (excerpts) [in Materials at 259-270A].
- **Materials:** Pages 250-265: *INDOPCO*; Young, *Reproposed Tangible Asset Regs*; reproposed 162 and 263 regs (examples).
  
  Note: You are not responsible for the post-INDOPCO regs (on intangibles) – notably § 1.263-5 – issued in 2004.
- **Problems:** Handout Problems 20-1 through 20-6.
- **TaxProf:** *Business Deductions, Ordinary and Necessary*: Q.17, and Q.11 through Q.13.

21. **DEBT ASSOCIATED WITH PURCHASE AND SALE OF PROPERTY**

*(This will take less than one class hour.)*

[Note: In Assignments 21 and 22, ignore references to nonrecourse debt. I will explain this concept in class, but you are not responsible for it.]

- **Reg.:** § 1.1001-2(a).
- **Materials:** Pages 271-72: *Woodsam Associates*.
- **Problems:** Handout Problems 21-1 and 21-2.
- **TaxProf:** *Defining Income, General Concepts*: Q.17.
  *Sales and Exchanges, Taking Debt Into Account*: Q.1, Q.2, Q.6 and Q.7.

22. **CANCELLATION OF INDEBTEDNESS**

*(This might take more than one class hour.)*

- **Code:** § 61(a)(12); § 108(a)(1), (a)(3), (b)(1), (d)(1) through (3), (e)(5), & (h); and § 1017(a).
- **Materials:** Pages 273-277: Rev. Rul. 76-96; skim *Gehl*.
- **Problems:** Handout Problems 22-1 through 22-3.
- **TaxProf:** *Defining Income, Discharge of Indebtedness*: Q.1 through Q.3, Q.5, Q.9, Q.12 through 14, and Q.17 through Q.21.
23. **THE A.G.I. “FLOORS” UNDER CERTAIN ITEMIZED DEDUCTIONS:**

Employee Business Expenses and Investment Expenses; Medical Expenses; and 
Personal Casualty Losses

**Code:** § 67(a) & (b); skim § 213; and § 165(a) through (f) and (h) & (i) (and in 
(h), focus on the approach; you are not responsible for the calculation).

**Materials:** Pages 278-287: Rev. Rul. 97-9; Rev. Rul. 63-232; Joint Committee on 
Taxation, *Two-Percent Floor*; Brody, *Leakage and Symmetry* (part 4, on 
pages 176-77); Form 2106 (Employee Business Expenses) in John 
McCain’s 2006 tax return (Appendix D).

**Problems:** Handout Problems 23-1 through 23-6.

**TaxProf:** PERSONAL DEDUCTIONS, Miscellaneous Itemized Deductions: Q.1, Q.2, 
and Q.10 through Q.14.

**BUSINESS DEDUCTIONS,** Travel and Entertainment: Q.35 and 38.

**PERSONAL DEDUCTIONS,** Medical Expenses: Q.6 through Q.8, Q.12, Q.14 
(for now, ignore references to the 3% floor), and Q.15.

**LOSS LIMITATIONS,** Losses: Q.2.

**LOSS LIMITATIONS,** Casualty and Theft Losses: Q.1 through Q.4, Q.9 
through Q.13, and Q.17 through Q.22.

24. **CHARITABLE CONTRIBUTIONS**

*(This topic will take more than one class.)*

**Code:** Skim § 170 (a)(1), (b)(1)(A), (c), (d)(1), (e)(1), (f)(8), (11), (12), (16) & 
(17); (i), and (j); § 501(a), (b), & (c); and skim § 6115.

See Form 8283 in Appendix C.

**Materials:** Pages 288-301: IRS, *Charitable Contributions Can Lower Tax Bills* [note 
2004 change to car donations in § 170(f)(12) and 2006 change to 
household-goods donations in § 170(f)(16)]; Lyric Opera solicitation 
letter; Lipman, *$37-Billion in Noncash Gifts*; CBO, *Limit Deductions for 
Charitable Gifts of Property to Tax Basis*; AP, *New Rules Make Tax 
Deductions Harder*; CBO, *Limit Deductions for Charitable Giving to 
Excess Over 2% of AGI*; CBO, *Create an Above-the-Line Deduction*; 
Schwinn, *Government Releases Rules for Donations of Vehicles*; IRS, 
*Contributions to Charity*; Regulations on Deductibility, Substantiation, 
and Disclosure of Certain Charitable Contributions; Goodman Theatre 
solicitation material.

Note: The Pension Protection Act of 2006 requires documentation 
for all charitable gifts, not just those over $250.

**Problems:** Handout Problems 24-1 through 24-4.

**TaxProf:** PERSONAL DEDUCTIONS, Charitable Contributions: Q.2 through Q.6, Q.8
(we study the capital gains rates in Assignments 27 & 28), Q.11, Q.14, Q.15, Q. 17 through Q.26, Q.30, and Q.31.

**FILING, EXEMPTIONS, AND RATES, Tax Rates:** Q.8.

25. **TAXES: INTEREST EXPENSE**

Code: § 164(a) and (b)(1) & (5). § 163(a) and (h) (skip (3)(D), the treatment of pre-1987 debt); skim § 163(d); § 461(g); § 265.


PERSONAL DEDUCTIONS, *Interest Expense:* Q.1 through Q.5 (for now, ignore the reference in the Explanation to Code section 68), Q.6 (we cover capital gains rules later), Q.7 through Q.13, Q.15, Q.17, Q.20, Q.32, and Q.39 (ignore the “passive activity” part of this question).


26. **EDUCATION**

(This topic might take more than one class.)

Code: § 117; § 25A; § 221; § 222 [extended through 2007]; § 529.

Regs: § 1.162-5. See Form 8863 in Appendix C; see Appendix F for 2008 credit amounts.


Problems: Handout Problems 26-1 through 26-7.


PERSONAL DEDUCTIONS, *Education Incentives:* Q.1 through Q.17.
27. & 28. **CAPITAL GAINS AND LOSSES**
(Although we will take 2 class hours, prepare both assignments up front.)

What is a capital asset? How are gains and losses taxed?

**Code:**
- § 1221; § 1237; and § 1231(a) & (b).
- § 1222; § 1223(2); § 1(h); § 165(c) & (f); § 1211; and § 1212(a) & (b)(1).

**Materials:**

  Note: See Schedule D in the Obamas’ tax return (Appendix E) for an illustration of the net capital loss limitation rule.

**Problems:**
- Handout Problems 27-1 through 27-6.

**TaxProf:**
- **CHARACTERIZATION, Capital Assets**: Q.1 through Q.6; Q.9 through Q.16.
- **SALES AND EXCHANGES, Realization**: Q.2 and Q.4.
- **LOSS LIMITATIONS, Losses**: Q.4.
- **CHARACTERIZATION, Capital Gain Rates**: Q.1 through Q.9, Q.14 through Q.21, and Q.28.
- **CHARACTERIZATION, Holding Period**: Q.1 through Q.8.
- **PERSONAL DEDUCTIONS, Charitable Contributions**: Q.8 and Q.9.

Why the tax preference for capital gains?

**Materials:**
- Pages 341-343: *Hellerman*.

**Problem:**
- Handout Problem 28-1.

**TaxProf:**
- **CHARACTERIZATION, Policy**: Q.1 through Q.5 (we cover like-kind exchanges in Assignment 32); Q.6 through Q.10; and Q.12 through Q.14.
- **CHARACTERIZATION, Capital Assets**: Q.7 and Q.8.
- **SALES AND EXCHANGES, Realization**: Q.3 and Q.4.

29. **SECTION 83: COMPENSATION WITH RESTRICTED PROPERTY**

**Code:**
- § 83(a), (b), (c)(1), & (h).

**Material:**
- Pages 344-347: AICPA Recommendations.

**Problems:**
- Handout Problem 29-1 through 29-3.

**TaxProf:**
- **DEFINING INCOME, Restricted Compensation**: Q.1 through Q.9.
- **MISCELLANEOUS, Tax Ethics**: Q.26.

30. [CATCH-UP FROM PRIOR CLASSES]
31. **RECAPTURE**

   Code: Skim § 1231; read § 1245(a).
   Problems: Handout Problem 31-1.
   CHARACTERIZATION, Section 1231 Assets: Q.1 through Q.4, Q.6, Q.9, and Q. 12 through Q.15.
   CHARACTERIZATION, Capital Gains Rates: Q.5.

32. **NONRECOGNITION EVENTS: LIKE-KIND EXCHANGES**

   Code: §§ 1001(c); 1031(a) through (e); 1223(1).
   Regs: §§ 1.1031(a)-1; 1.1031(b)-1(a) & (b); 1.1031(d)-1(a) & (b).
   Materials: Pages 348-353: CBO, Eliminate Like-Kind Exchanges; Rutherford
   NON-RECOGNITION, Like-Kind Exchanges: Skim Q.1 to see the economics; Q.2 through Q.7, and 29 through Q.31.

33. **IN VOLUNTARY CONVERSIONS; SALE OF PRINCIPAL RESIDENCE**

   Code: Skim § 1033; read § 121.
   Problems: Handout Problems 33-1 through 33-4.
   TaxProf: NON-RECOGNITION, Involuntary Conversions: Q.1 through Q.6, Q.8, Q.10, and Q.14 through Q.17.
   NON-RECOGNITION, Principal Residences: Q.1 through Q.8; and Q.14.
   LOSS LIMITATIONS, Losses: Q.4 and Q.5.

34. **WHAT IS THE TAXABLE UNIT? SINGLE AND MARRIED**

   Code: § 1 (but see the 2008 inflation-adjusted dollar amounts in Rev. Proc. 2007-66, in Appendix F);
   §§ 6013(a); § 7703(a); § 151(a) & (b).
   Materials: Pages 362-391: Seaborn; Boyter; CBO, Advance the Marriage Penalty Provisions; Law Profs on marriage penalties; CBO, Potential Budgetary Impact of Recognizing Same-Sex Marriages; Senators Seek Domestic
Partner Tax Reform; McCormally, Tax Savings for Domestic Partners; CBO, Marriage and the Federal Income Tax.

Note: Chief Counsel Advice No. 200608038 (Feb. 24, 2006) opined that Poe v. Seaborn does not apply to registered domestic partners under California’s Domestic Partner Rights and Responsibilities Act of 2003 because the relationship is not marriage under California law.

Problems: Handout Problem 34-1 and 34-2.

35. TAX RATES AND GAMES CONGRESS PLAYS: EXERCISES

[NOTE: We will do this assignment the Wednesday before Thanksgiving.]

Materials: Pages 392-399F: Brody, Tax Rates and Games Congress Plays (note: we look at the “kiddie tax”, mentioned at end of Part A, in Assignment 37; and we look at the “alternative minimum tax,” discussed in Part D, in Assignments 36 and 40); CBO, Permanently Extend EGTRRA; Obama and McCain tax proposals.

To see how “married, filing separately” works, go to John McCain’s and Cindy McCain’s 2006 tax returns, in Appendix D. Note that Arizona is a community property state; see Statement A to John McCain’s return (on page D-8) for the allocation of their tax items.

Problems: Prepare answers to the questions in Brody, Tax Rates and Games Congress Plays. Use the 2008 inflation-adjusted amounts in Appendix F.

36. THE TAX TREATMENT OF DEPENDENTS

Code: § 151(c); skim § 152; skim § 21; § 24.
Problems: Handout Problems 36-1 through 36-3.
37. **INCOME SHIFTING**

**Code:** § 73; § 102(b); skim § 1(g) [note May 2007 amendment, described in the Materials, re student dependents]; § 63(c)(5) (as adjusted in Appendix F).

**Materials:** Pages 405-413B: *Earl; Eller; Horst*; see *Games* (from assignment 35), “Kiddie Tax,” at bottom of p. 3; Herman & Silverman, *Congress Closes “Kiddie Tax” Loophole*.

**Problems:** Handout Problems 37-1 through 37-4.

**TaxProf:** BUSINESS DEDUCTIONS, *Ordinary and Necessary*: Q.2.

**Identifying the Taxpayer, Assignment of Income:** Q.1 through Q.4, Q.6, Q.12, Q.13, Q.16 (ignore references to Code section 1286); Q.19, Q.21, and Q.23.

**Identifying the Taxpayer, Kiddie Tax:** Q.1 through Q.13 [note that these questions were written before Congress increased the age from under 14 to under 18, and to dependents who are under 24].

38. **DIVORCE AND CHILD SUPPORT**

**Code:** § 71 (but not the computations in (f)); § 215; § 1041; § 6015.

**Materials:** Pages 414-425: Bill Wilkins, *I'm an Innocent Spouse*; IRS information on innocent spouse relief; *Ferrarese*.

**Problems:** Handout Problems 38-1 through 38-3.

**TaxProf:** IDENTIFYING THE TAXPAYER, *Divorce*: Q.1 through Q.13, and Q.15 through Q.19.

**Filing, Exemptions, and Rates, Filing Status:** Q.3, Q.4, Q.6, Q.7, and Q.11 through Q.13.

**Filing, Exemptions, and Rates, Dependency Exemptions:** Q.6.

**Sales and Exchanges, Realization:** Q.6 through and Q.10.

**Non-recognition, Principal Residences:** Q.12 and Q.13.

**Miscellaneous, Tax Ethics:** Q.19.
39. **ACCOUNTING FOR PROPERTY SALES: Installment sales; Stock; Mutual Funds**

- **Code:** § 1060; § 197(d); § 453(a) through (d), and (i) & (k)(2).
- **Problems:** Handout Problems 39-1 through 39-7 (see Glossary in the TaxProf assignment for a definition of “applicable Federal rate”).
- **TaxProf:**

40. **A LAST LOOK AT THE ALTERNATIVE MINIMUM TAX**

- **Materials:** Pages 426-437: *Games* (from Assignment 35), AMT at 397-98; Klaassen; Andrews, *Democrats Seek Tax Overhaul*; Herman, *Marriage Penalty in AMT*; Steuerle, *Fixing the AMT by Raising Rates*.
  - See Form 6251 in John McCain’s 2006 tax return (in Appendix D).
- **TaxProf:**
  - MISCELLANEOUS, *AMT*: Q.1, Q.3 through Q.7, and Q.10 through Q.13 (don’t worry about the calculations – just see the result).

**BONUS Q & A SESSION DURING READ PERIOD**

A few days before the exam, I will hold a Q&A session. This will NOT be a review session in the sense that I will present material – it will be up to you to ask questions. You are welcome to come to all, a portion, or none of the time. Of course, I will be otherwise available to answer your questions (preferably with co-counsel), but you might also want to see what questions your classmates have.

**Caveat:** As you go over old exams that I hand out, be aware that the law might have been different for the year of that exam! In addition, break points and other dollar amounts might have changed with inflation – that’s why I always use the second page of the instructions to set forth the tax tables, personal exemption amounts, and standard deduction amounts for you to use.
**FINAL EXAM**

Thursday, December 11, at 6:00 p.m. This will be a 3-hour, open-book exam. The format will be objective – multiple-choice, fill-in-the-blank answer, and/or short-answer. The answers must be written out by hand on the answer sheet provided or typed in a similar format. (It’s generally not worth it to take the exam on computer.) I will distribute old exams near the end of the semester (but I reserve the right to vary the format of the questions).

Take into the exam your Code and Regs, your Materials and problems, your notes, and a calculator – and feel free to take in any other written material (including commercial outlines, although you won’t need these!). Some of you might be living out of your notebook computers. You **may** bring your computer into the exam, including your notes and outlines. However, you **may not** bring TaxProf into the exam, or any printouts from TaxProf, and you may not use your computer to email or check the Web. I do not believe that the computer-users will have an advantage in taking the exam. Anyone who prepares for class, attends regularly, and studies the material should be able to do well on the exam; by contrast, anyone who does not keep up should not be able to do well on the exam simply by having an electronic outline.