

# CONTENTS

<i>Preface</i>	xxix
<i>Acknowledgments</i>	xxxiii

<b>Chapter 1 AN INTRODUCTION TO THE INCOME TAX</b>	<b>1</b>
<b>A. The Goals of This Course</b>	<b>1</b>
<b>B. Introductory Problem</b>	<b>2</b>
<b>C. Some Basic Concepts and Issues</b>	<b>13</b>
<b>1. Exclusions, Deductions, and Credits</b>	<b>13</b>
<b>2. The Importance of Deferral</b>	<b>15</b>
<b>3. Taxing Income, and the Elusive Concept of Ability to Pay</b>	<b>17</b>
David Foster Wallace, <i>The Pale King</i>	<b>18</b>
<b>4. The Tax Expenditure Budget</b>	<b>22</b>
Staff of the Joint Committee on Taxation, <i>Estimates of Federal Tax Expenditures for Fiscal Years 2016–2020</i>	<b>22</b>
<b>5. Sources of Tax Law and the Basics of Tax Litigation</b>	<b>29</b>

<b>Cell: UNDERSTANDING TAX RATES: AVERAGE RATES, MARGINAL RATES, AND PHASEOUTS</b>	<b>32</b>
<b>A. Average Rates and Marginal Rates</b>	<b>32</b>
<b>B. Phaseouts</b>	<b>36</b>
Problems 1.1-1.2	<b>40</b>
<b>C. Payroll Taxes and the Net Investment Income Tax</b>	<b>37</b>
<b>Cell: INFLATION AND THE INCOME TAX</b>	<b>40</b>
<b>A. Bracket Creep</b>	<b>40</b>
<b>B. Inflation and Income Measurement</b>	<b>42</b>
<i>Hellermann v. Commissioner</i>	<b>43</b>
<b>Cell: COMPLIANCE AND ENFORCEMENT</b>	<b>48</b>
<b>A. The Case of Tips</b>	<b>48</b>
Joint Committee on Taxation, <i>General Explanation of the Revenue Provisions of the Tax Equity and Fiscal Responsibility Act of 1982</i>	<b>48</b>
<b>B. The Big Picture</b>	<b>52</b>
Joel Slemrod & Jon Bakija, <i>Taxing Ourselves</i>	<b>52</b>

<b>Cell: TAX RETURN PREPARATION STANDARDS AND PENALTIES</b>	<b>60</b>
<b>A. ABA and Treasury Return Preparation Standards</b>	<b>60</b>
American Bar Association Formal Ethics Opinion 85-352	60
<b>B. Statutory Penalties for Inaccurate Tax Returns and Treasury Standards of Practice</b>	<b>64</b>
Problem 1.3	65
<b>C. Why Not a Higher Standard?</b>	<b>66</b>
<b>D. The Special Case of Tax Shelters</b>	<b>67</b>

<b>Chapter 2 THE SCOPE OF GROSS INCOME</b>	<b>69</b>
<b>A. Cash Receipts: Does Source Matter?</b>	<b>69</b>
<b>1. Generally, No</b>	<b>69</b>
<i>Commissioner v. Glenshaw Glass Co.</i>	69
<i>Cesarini v. United States</i>	73
<b>2. But Tax-Free Recovery of “Capital” Is Allowed</b>	<b>76</b>
<b>3. Source Matters When Congress Says Source Matters: Statutory Exclusions</b>	<b>79</b>
a. Gifts and Bequests	79
<i>Commissioner v. Duberstein</i>	79
b. Damages on Account of Personal Physical Injuries	92
<i>Amos v. Commissioner</i>	95
Problems 2.1-2.4	100
c. Life Insurance	101
d. Other Source-Based Exclusions for Cash Receipts	107
<b>B. Is It Taxable If It Isn’t Cash?</b>	<b>108</b>
<b>1. Generally, Yes, as Far as §61 Is Concerned</b>	<b>108</b>
<i>Rooney v. Commissioner</i>	108
<i>Rev. Rul. 57-374</i>	112
<i>Benaglia v. Commissioner</i>	113
<b>2. The Two Great Non-Statutory Exclusions of Non-Cash Economic Benefits</b>	<b>116</b>
a. Imputed Income	116
Problems 2.5-2.7	119
This Week with David Brinkley	122
Problem 2.8	123
b. Unrealized Appreciation	123
Problem 2.9	123
<b>3. Statutory Exclusions Based on the Non-Cash Nature of the Benefit, or on the Required Use of Cash</b>	<b>125</b>
a. Employer-Provided Health Insurance	126

Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986	128
b. Group-Term Life Insurance	130
c. Scholarships and Other Tax Benefits for Higher Education Expenses	132
<i>Rev. Proc. 76-47</i>	133
Problems 2.10-2.14	139
<b>C. Income Inclusions as Mistake-Correcting Devices</b>	<b>140</b>
<b>1. The Annual Tax Accounting Period</b>	<b>140</b>
<b>2. The Uses of Hindsight</b>	<b>143</b>
a. Loans and Cancellation of Indebtedness Income	143
<i>United States v. Kirby Lumber Co.</i>	143
b. Proceeds of Embezzlement and Other Illegal Income	149
<i>Collins v. Commissioner</i>	149
c. Debt Relief Associated with the Disposition of Property	158
<i>Commissioner v. Tufts</i>	161
<i>Rev. Rul. 90-16</i>	170
d. The Inclusionary Tax Benefit Rule	175
<i>Hillsboro National Bank v. Commissioner</i>	175
<i>Rosen v. Commissioner</i>	180
e. A Final Note	182

Cell: THE LIMITS OF TAX-FREE RECOVERY OF CAPITAL	183
<i>Garber v. United States</i>	183
Cell: DISTINGUISHING GIFTS FROM COMPENSATION FOR SERVICES	193
<i>Goodwin v. United States</i>	193
Cell: ACCELERATED DEATH BENEFITS	198
Notice of Proposal Rulemaking, Qualified Accelerated Death Benefits Under Life Insurance Contracts	198
Cell: THE PERPLEXING CASE OF THE EXTREMELY VALUABLE BASEBALL	202
<i>Internal Revenue Service Press Release IR-98-56</i>	202
Cell: FREE PARKING, SECTION 132, CONSTRUCTIVE RECEIPT, AND THE IRS	205
Charles Davenport, Being at the Top of the IRS Is Not So Taxing	206
Cell: SECTION 132 FRINGE BENEFITS	209
Problems 2.15-2.28	209
Cell: FREQUENT FLIER MILES AND THE BETTER PART OF VALOR: A DE FACTO ADMINISTRATIVE EXCLUSION	213
Technical Advice Memorandum 9547001	213
Lisa Miller and Tom Herman, IRS Plan to Tax Frequent Fliers Falters Again	218
Announcement 2002-18	220

<b>Cell: RESTRICTED PROPERTY AND STOCK OPTIONS</b>	<b>222</b>
Problem 2.29	225
<i>Alves v. Commissioner</i>	226
Problems 2.30-2.31	229
<b>Cell: ANNUAL ACCOUNTING AND RESCISSIONS</b>	<b>232</b>
<i>Rev. Rul. 80-58</i>	232
<b>Cell: DEFINING DEBT CANCELLATION INCOME</b>	<b>235</b>
<i>Bradford v. Commissioner</i>	235
<b>Cell: DISCHARGE OF GAMBLING DEBTS</b>	<b>241</b>
<i>Zarin v. Commissioner</i>	241

<b>Chapter 3 PROPERTY TRANSACTIONS</b>	<b>251</b>
<b>A. The Realization Doctrine</b>	<b>251</b>
1. <b>The Great Case of <i>Eisner v. Macomber</i></b>	<b>251</b>
<i>Eisner v. Macomber</i>	251
2. <b>Unrealized Appreciation, Stock Dividends, and Cash Dividends</b>	<b>258</b>
3. <b>The Constitutional Issue</b>	<b>260</b>
<b>B. Manipulation of the Realization Rules</b>	<b>263</b>
1. <b>The Substance of a Sale Without Realization of Gain</b>	<b>263</b>
Senate Report 105-33	264
2. <b>The Substance of Continued Ownership with Realization of Loss</b>	<b>268</b>
<i>Cottage Savings Association v. Commissioner</i>	268
Problems 3.1-3.3	275
3. <b>“Cherry Picking” and the Capital Loss Limitations of §1211</b>	<b>276</b>
<b>C. Nonrecognition</b>	<b>277</b>
1. <b>The Concept of Nonrecognition</b>	<b>277</b>
2. <b>Like-Kind Exchanges</b>	<b>280</b>
Problems 3.4-3.7	284
3. <b>Involuntary Conversions</b>	<b>285</b>
Problems 3.8-3.9	286
4. <b>Permanent Exclusion of Gain on the Sale of a Principal Residence</b>	<b>286</b>
House Report 105-148	286
5. <b>Other Nonrecognition Provisions</b>	<b>291</b>
<b>D. Installment Sales</b>	<b>291</b>
Problem 3.10	294
<b>E. Annuities</b>	<b>294</b>
Problems 3.11-3.12	297

<b>F. Basis Rules for Property Transferred by Gift or Bequest</b>	<b>298</b>
<b>1. Property Transferred by Inter Vivos Gift</b>	<b>298</b>
Problems 3.13-3.15	<b>300</b>
<b>2. Property Transferred at Death</b>	<b>300</b>
Problem 3.16	<b>301</b>
<b>3. Part Gift–Part Sale Transactions</b>	<b>302</b>
Problems 3.17-3.19	<b>302</b>
<b>G. Basis Allocation: Piecemeal Asset Dispositions and Other Contexts</b>	<b>302</b>
<i>Gamble v. Commissioner</i>	<b>302</b>

<b>Cell: DETERMINING THE AMOUNT OF A LOSS AND THE DEDUCTIBLE PORTION OF A LOSS</b>	<b>308</b>
<b>A. Loss Limited to Basis</b>	<b>308</b>
<b>B. No Deduction for Losses in Transactions Not Entered into for Profit</b>	<b>309</b>
Problems 3.20-3.21	<b>310</b>
<b>Cell: A LIFE INSURANCE-ANNUITY COMBINATION</b>	<b>311</b>
<i>Rev. Rul. 65-67</i>	<b>312</b>
<b>Cell: SELECTED TOPICS IN LIKE-KIND EXCHANGES</b>	<b>316</b>
<b>A. Another Way of Determining the Basis of Qualified Property Received in an Exchange</b>	<b>316</b>
<b>B. Two Ancillary Basis Rules</b>	<b>317</b>
<b>C. Triangular Exchanges</b>	<b>319</b>
1. In General	<b>319</b>
2. Deferred Exchanges	<b>321</b>
3. Deferred Like-Kind Exchanges, Installment Sales, and Constructive Receipt	<b>322</b>
<i>Smalley v. Commissioner</i>	<b>322</b>
4. “Reverse” Deferred Exchanges	<b>328</b>
<i>Rutherford v. Commissioner</i>	<b>328</b>
<i>Rev. Proc. 2000-37</i>	<b>330</b>
<b>E. Problems</b>	<b>334</b>
Problems 3.22-3.24	<b>334</b>
<b>Cell: THE PERSONAL RESIDENCE GAIN EXCLUSION</b>	<b>335</b>
<b>A. Fun and Games with §121</b>	<b>335</b>
1. Personal Residence Churning	<b>335</b>
2. Section 121 as an Exclusion for Labor Income	<b>336</b>
<b>B. A Drafting Error and a Dilemma for the IRS</b>	<b>336</b>
<b>Cell: THE INSTALLMENT METHOD OF §453</b>	<b>339</b>
<b>A. The Installment Method and Debt Relief</b>	<b>339</b>
Problem 3.25	<b>342</b>

<b>B.</b>	Exploiting the Inconsistent Treatment of Installment Buyers and Sellers	342
	Problems 3.26-3.27	343
<b>C.</b>	Assorted Issues	344
	1. Limitations on the Availability of the Installment Method	344
	2. Recapture	345
	3. A Legislative Frolic	345
	4. Combining §§1031 and 453	346
	Problems 3.28-3.29	346
	5. Charging Interest on Deferral	346
	6. Electing Out	347
<b>Cell:</b>	<b>ORIGINAL ISSUE DISCOUNT, §483 UNSTATED INTEREST, AND MARKET DISCOUNT</b>	<b>348</b>
<b>A.</b>	Original Issue Discount	348
	1. The Basic Idea	348
	2. A Little History	350
	3. Debt Issued for Hard-To-Value Property	351
<b>B.</b>	Section 483 Unstated Interest	353
<b>C.</b>	Market Discount	353
<b>Cell:</b>	<b>CRYPTOCURRENCIES</b>	<b>355</b>
	<i>Notice 2014-21</i>	355
	<i>United States v. Coinbase</i>	358
<b>Cell:</b>	<b>FEDERAL WEALTH TRANSFER TAXES</b>	<b>362</b>
<b>A.</b>	The Federal Estate Tax	363
<b>B.</b>	The Federal Gift Tax	364
<b>C.</b>	The Federal Generation-Skipping Transfer Tax	366

<b>Chapter 4</b>	<b>PERSONAL DEDUCTIONS</b>	<b>369</b>
<b>A.</b>	<b>Charitable Contributions Under §170</b>	<b>372</b>
	1. The Rationale	372
	2. Contributed Services	373
	3. The Amount of the Deduction—Appreciated Property	373
	<i>Lary v. United States</i>	374
	4. Amount of the Deduction—Introduction to Quid Pro Quo Issues	376
	<i>Rolfs v. Commissioner</i>	376
	5. Eligible Recipients of Charitable Contributions	382
	6. Limitations on Deductions and Carryovers	382
	Problems 4.1-4.4	384
<b>B.</b>	<b>Interest Expense</b>	<b>385</b>
	1. History and Rationale	385

2.	<b>Overview of the Interest Deduction Rules</b>	<b>387</b>
a.	In General	387
b.	Qualified Residence Interest	387
	Problems 4.5-4.6	388
	<i>Voss v. Commissioner</i>	389
c.	Business Debt	395
	<i>Redlark v. Commissioner</i>	396
d.	Investment and Passive Activity Interest	400
e.	Educational Loan Interest	401
C.	<b>State and Local Taxes</b>	<b>402</b>
1.	<b>History and Rationale</b>	<b>402</b>
2.	<b>What Taxes Are Deductible?</b>	<b>403</b>
3.	<b>What Counts as Taxes?</b>	<b>404</b>
4.	<b>Who Can Claim the Deduction?</b>	<b>405</b>
	<i>Loria v. Commissioner</i>	406
D.	<b>Casualty Losses</b>	<b>409</b>
1.	<b>History and Rationale</b>	<b>409</b>
2.	<b>Computing the Casualty Loss Deduction</b>	<b>411</b>
	Problem 4.7	414
3.	<b>Interpretive Issues: Notes on Developments in the Case Law and Elsewhere</b>	<b>414</b>
4.	<b>Theft Losses from Ponzi Schemes</b>	<b>415</b>
	<i>Rev. Rul. 2009-9</i>	415
E.	<b>Medical Expenses</b>	<b>420</b>
1.	<b>History and Rationale</b>	<b>420</b>
2.	<b>What Is “Medical Care”?</b>	<b>421</b>
	<i>Commissioner v. Bilder</i>	421
	<i>O'Donnabhain v. Commissioner</i>	426
3.	<b>Mechanics of the Deduction</b>	<b>433</b>
4.	<b>Health Savings Accounts and Health Flexible Spending Arrangements</b>	<b>434</b>
F.	<b>Miscellaneous Itemized Deductions</b>	<b>436</b>
G.	<b>Reduction of Itemized Deductions for High Income Taxpayers</b>	<b>436</b>
H.	<b>Limiting Deductions</b>	<b>436</b>
I.	<b>Personal Credits as a Legislative Alternative to Personal Deductions</b>	<b>437</b>

Cell:	<b>RATIONALE FOR THE CHARITABLE CONTRIBUTIONS DEDUCTION</b>	<b>439</b>
	Auten, Clotfelter & Schmalbeck, Taxes and Philanthropy Among the Wealthy	439
Cell:	<b>QUID PRO QUO ISSUES</b>	<b>448</b>
A.	The College Football Saga	448

	<i>Rev. Rul. 84-132</i>	448
	<i>Announcement 84-101</i>	450
	<i>Tax Reform Act of 1986, §1608</i>	451
<b>B.</b>	<b>The Special Case of “Intangible Religious Benefits”</b>	<b>453</b>
	<i>Rev. Rul. 70-47</i>	453
	<i>Rev. Rul. 78-189</i>	454
	<i>Hernandez v. Commissioner</i>	455
	<i>Rev. Rul. 93-73</i>	461
	<i>Sklar v. Commissioner</i>	463
<b>Cell:</b>	<b>CASUALTY LOSSES—MATERIALS AND PROBLEMS</b>	<b>471</b>
<b>A.</b>	<b>What Constitutes a Casualty?</b>	<b>471</b>
	<i>Chamales v. Commissioner</i>	471
	<i>Rev. Rul. 63-232</i>	474
<b>B.</b>	<b>Casualty Loss Problem Set</b>	<b>478</b>
	Problems 4.8-4.12	478
<b>Cell:</b>	<b>DOUBLE TAX BENEFITS</b>	<b>480</b>
<b>A.</b>	<b>Permissible and Impermissible Double Tax Benefits</b>	<b>480</b>
	1. Parsonage Allowances, Property Taxes, and Home Mortgage Interest	480
	<i>Rev. Rul. 83-3</i>	480
	2. The Analytical Framework	481
<b>B.</b>	<b>The Personal Injury Damage Exclusion and the Medical Expense Deduction: Enforcing the Double Benefit Prohibition</b>	<b>484</b>
	<i>Rev. Rul. 75-230</i>	485
	<i>Niles v. United States</i>	487

<b>Chapter 5</b>	<b>BUSINESS EXPENSE DEDUCTIONS</b>	<b>493</b>
<b>A.</b>	<b>What Is an “Ordinary and Necessary” Expense?</b>	<b>495</b>
	1. <b>Necessary?</b>	495
	<i>Palo Alto Town &amp; Country Village, Inc. v. Commissioner</i>	495
	2. <b>Ordinary?</b>	496
	<i>Commissioner v. Heining</i>	497
<b>B.</b>	<b>What Is a “Trade or Business”?</b>	<b>499</b>
	<i>Commissioner v. Groetzinger</i>	501
<b>C.</b>	<b>Public Policy Limitations</b>	<b>508</b>
	<i>Tank Truck Rentals, Inc. v. Commissioner</i>	508
	<i>Californians Helping to Alleviate Medical Problems, Inc. v. Commissioner</i>	515
	<i>Mayo v. Commissione</i>	521



<b>D. Lobbying Expenses</b>	<b>524</b>
<i>Geary v. Commissioner</i>	<b>525</b>
<b>E. Travel and Entertainment</b>	<b>529</b>
<b>1. Travel</b>	<b>529</b>
<i>Hantzis v. Commissioner</i>	<b>531</b>
Problems 5.1-5.2	<b>539</b>
<b>2. Entertainment</b>	<b>540</b>
<i>Cohan v. Commissioner</i>	<b>540</b>
<b>F. Patrolling the Business-Personal Borders</b>	<b>545</b>
<b>1. Hobby Losses</b>	<b>546</b>
<i>Keanini v. Commissioner</i>	<b>546</b>
Problem 5.3	<b>554</b>
<b>2. Education Expenses</b>	<b>555</b>
<i>Namrow v. Commissioner</i>	<b>555</b>
Problem 5.4	<b>560</b>
<i>Allemeier v. Commissioner</i>	<b>560</b>
<b>3. Work-Related Clothing</b>	<b>565</b>
<i>Pevsner v. Commissioner</i>	<b>565</b>
<b>G. Qualified Business Income Deduction</b>	<b>569</b>

Cell: REASONABLE COMPENSATION	<b>572</b>
<i>Exacto Spring Corp. v. Commissioner</i>	<b>574</b>
<i>Mulcahy, Pauritsch, Salvador &amp; Co. Ltd. v. Commissioner</i>	<b>581</b>
Cell: VACATION HOMES	<b>586</b>
<b>A. The §280A Remedy</b>	<b>588</b>
<b>B. Use as a Residence</b>	<b>588</b>
<b>C. The Limitations on Deductibility</b>	<b>589</b>
<i>Bolton v. Commissioner</i>	<b>589</b>

<b>Chapter 6 CAPITALIZATION AND COST RECOVERY</b>	<b>599</b>
<b>A. Capitalization and Depreciation: The Basics</b>	<b>599</b>
Problems 6.1-6.6	<b>607</b>
<b>B. What Is Depreciable?</b>	<b>607</b>
<b>1. Nondepreciable Assets</b>	<b>607</b>
Problem 6.7	<b>608</b>
<b>2. Section 197 Intangibles</b>	<b>608</b>
<b>3. Depletion</b>	<b>609</b>
<b>C. What Costs Must Be Capitalized?</b>	<b>610</b>
<b>1. Self-Produced Property</b>	<b>610</b>
<i>Commissioner v. Idaho Power Co.</i>	<b>610</b>

	Problems 6.8-6.9	615
2.	<b>INDOPCO: Taking Capitalization Seriously?</b>	616
	<i>INDOPCO, Inc. v. Commissioner</i>	616
	Rev. Rul. 92-80	620
	Department of the Treasury, Guidance Regarding Deduction and Capitalization of Expenditures	621
3.	<b>Repairs</b>	624
	Rev. Rul. 2001-4	624
	Problem 6.10	630
4.	<b>Expenses to Create or Maintain a Business Reputation</b>	630
	<i>Welch v. Helvering</i>	630
	<i>Jenkins v. Commissioner</i>	633
5.	<b>Job Hunting Expenses</b>	638
	Rev. Rul. 78-93	638
	Problem 6.11	640
Cell:	<b>SECTION 197 INTANGIBLES</b>	641
	<i>Frontier Chevrolet Co. v. Commissioner</i>	641
	Problems 6.12-6.13	644

<b>Chapter 7</b>	<b>TAX ACCOUNTING</b>	647
A.	<b>Cash and Accrual Accounting</b>	647
1.	<b>The Basic Methods</b>	647
	Problem 7.1	648
2.	<b>Mandatory Accrual Accounting</b>	648
3.	<b>Inventory Accounting</b>	648
	Problems 7.2-7.3	651
	<i>Thor Power Tool Co. v. Commissioner</i>	651
B.	<b>The Cash Method: Selected Topics</b>	658
1.	<b>Constructive Receipt</b>	658
	Staff of the Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in 1998	659
2.	<b>Prepaid Expenses</b>	660
	Problem 7.4	660
C.	<b>The Accrual Method: Selected Topics</b>	661
1.	<b>The All Events Test, Clear Reflection of Income, and Economic Performance</b>	661
	<i>Ford Motor Co. v. Commissioner</i>	661
	Problem 7.5	668
2.	<b>Early Cash Receipts of Accrual Method Taxpayers</b>	668
	<i>Schlude v. Commissioner</i>	668
3.	<b>Later Events Inconsistent with Accruals</b>	672
	Problems 7.6-7.8	673

<b>Cell: INVENTORIES AND MANDATORY ACCRUAL ACCOUNTING</b>	<b>674</b>
<i>Jim Turin &amp; Sons, Inc. v. Commissioner</i>	<b>674</b>

<b>Chapter 8 TAX PREFERENCES, TAX SHELTERS, AND THE ALTERNATIVE MINIMUM TAX</b>	<b>679</b>
<b>A. Tax Preferences and Implicit Taxes: The Case of Municipal Bonds</b>	<b>680</b>
1. The Economics of the Exclusion	680
2. What Qualifies as a Municipal Bond?	682
<i>United States Trust Co. of New York v. Anderson</i>	683
<b>B. Tax Shelters</b>	<b>685</b>
1. A Hypothetical Debt-Financed Shelter Using Municipal Bonds	685
2. Beyond Municipal Bonds: Tax Shelters Based on Other Tax Preferences	688
3. The Passive Loss Rules of §469	690
Staff of the Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986	690
<i>Hardy v. Commissioner</i>	700
Problems 8.1-8.5	705
4. Excess Business Loss Limitation	706
5. Judicial Anti-Abuse Doctrines	707
<i>Knetsch v. United States</i>	707
<i>Rice's Toyota World, Inc. v. Commissioner</i>	712
6. Post-1986 Tax Shelters	718
<i>ACM Partnership v. Commissioner</i>	720
<i>IES Industries, Inc. v. United States</i>	724
7. Codification of the Economic Substance Doctrine	727
Staff of the Joint Committee on Taxation, Technical Explanation of the Revenue Provisions of the "Reconciliation Act of 2010," as Amended, in Combination with the "Patient Protection and Affordable Care Act"	728
<b>C. The Alternative Minimum Tax</b>	<b>732</b>
<i>Klaassen v. Commissioner</i>	733

<b>Cell: DELVING DEEPER INTO THE ALTERNATIVE MINIMUM TAX: THE AMT CREDIT</b>	<b>737</b>
Problems 8.6-8.7	<b>737</b>

<b>Chapter 9 TAXATION OF THE FAMILY</b>	<b>739</b>
<b>A. Tax Allowances for Family Responsibilities</b>	<b>739</b>
<b>1. Allowances for Child Care Expenses</b>	<b>739</b>
a. Child Care as a Business Expense	739
b. The §21 Child Care Credit	740
Problems 9.1-9.8	741
c. The §129 Dependent Care Assistance Exclusion	742
Problems 9.9-9.11	743
<b>2. Child Tax Benefits Not Based on Expenditures</b>	<b>744</b>
a. Exemptions	744
b. The Child Credit	744
Problems 9.12-9.13	746
c. Head-Of-Household Status	746
<b>B. The Income Tax Treatment of Marriage</b>	<b>748</b>
<i>Lucas v. Earl</i>	748
<i>Poe v. Seaborn</i>	749
<i>Boyer v. Commissioner</i>	753
<b>C. The Income Tax Consequences of Divorce</b>	<b>759</b>
<b>1. Who Gets the Child Tax Credit?</b>	<b>759</b>
<b>2. Transfers of Property Between Spouses and Former Spouses: §1041</b>	<b>759</b>
Problems 9.14-9.16	759
<b>D. Tax Issues Relating to Unmarried Couples</b>	<b>760</b>
<i>Reynolds v. Commissioner</i>	761
<b>E. The Earned Income Tax Credit</b>	<b>766</b>
<b>1. An Idealized Version of the Credit</b>	<b>766</b>
<b>2. The Real Thing</b>	<b>767</b>

<b>Cell: A COMPARATIVE PERSPECTIVE ON CHILD CARE AS A BUSINESS EXPENSE</b>	<b>769</b>
<i>Symes v. Canada</i>	769
<b>Cell: FAMILY INCOME-SPLITTING BY STATUTE</b>	<b>782</b>
<b>Cell: INCOME TAX MARRIAGE PENALTIES: CAUSES AND CURES</b>	<b>785</b>
<b>A. The Dilemma</b>	<b>785</b>
<b>B. The Cure?</b>	<b>787</b>
1. Return to 1948	788
2. Optional Separate Filing	789
3. A Two-Earner Deduction	789
4. Mandatory Separate Returns	790
5. A Truly Flat Tax	790
6. Significant Marriage Penalty Relief	791
<b>C. The Stacking Effect</b>	<b>791</b>
<b>D. Other Marriage Penalties</b>	<b>793</b>

Cell: WHEN IS A TRANSFER “INCIDENT TO THE DIVORCE”?	794
<i>Craven v. United States</i>	794
Cell: ALIMONY	800
A. Alimony: The Basic Strategy	800
B. Fun and Games with the Alimony Deduction?	802
Problems 9.17-9.18	802
C. Distinguishing Alimony from Other Transfers	802
Problems 9.19-9.22	803
Cell: THE EARNED INCOME TAX CREDIT AND PROBLEMS OF ANTI-POVERTY PROGRAM DESIGN	806
A. The EITC and Marginal Tax Rates	806
Problems 9.23-9.24	807
B. The Accuracy of EITC Delivery: Cheating and Nonparticipation	809
Treasury Inspector General for Tax Administration, Without Expanded Error Correction Authority, Billions of Dollars in Identified Potentially Erroneous Earned Income Credit Claims Will Continue to Go Unaddressed Each Year	809
Problem 9.25	811
C. The EITC and Marriage Penalties and Bonuses	811
Problems 9.26-9.27	812
D. The Excessive Investment Income Rules	812
Problem 9.28	812
E. Alternatives to the EITC: Four Basic Models of Cash Transfer Programs	812
Chapter 10 IDENTIFYING THE PROPER TAXPAYER	815
A. Introduction	815
B. Earned Income	817
1. The Basic Rules	817
2. Exploring the Limits of the Doctrine: The Case of Contingent Attorneys’ Fees	818
<i>Commissioner v. Banks</i>	818
<i>Commissioner v. Banaitis</i>	818
3. The Effect of the Taxpayer’s Inability to Receive Income He Earns	825
<i>Teschner v. Commissioner</i>	825
Problem 10.1	829
C. Income from Property	829
1. Unrealized Appreciation in Gifted Property	829
<i>Taft v. Bowers</i>	829
2. Income Streams from Income-Producing Property	831

a. In General	831
Problems 10.2-10.5	833
b. Stripped Bonds	833
c. Labor Embodied in Property	834
d. The “Kiddie Tax”	834
e. Interest-Free Gift Loans and §7872	835
Problems 10.6-10.8	836
f. Grantor Trusts	836
g. Controlled Corporations	838

<b>Cell: INTEREST ON CLIENT TRUST ACCOUNTS: OF TECHNICAL RULES AND PUBLIC RELATIONS</b>	<b>840</b>
<i>General Counsel Memorandum 38374</i>	840
<i>Rev. Rul. 81-209</i>	845

## **Chapter 11 RETIREMENT SAVINGS AND CONSUMPTION TAXATION** **849**

<b>A. Individual Retirement Accounts and Qualified Plans</b>	<b>849</b>
<b>1. Individual Retirement Accounts, Deductible and Roth</b>	<b>849</b>
Problems 11.1-11.3	852
<b>2. Income Tax or Consumption Tax?</b>	<b>852</b>
<b>3. Employer-Sponsored Retirement Savings</b>	<b>854</b>
<b>4. Limiting Consumption Tax Treatment to     Retirement Savings</b>	<b>855</b>
<b>B. “Nonqualified” Deferred Compensation</b>	<b>856</b>
<i>Albertson’s, Inc. v. Commissioner</i>	858

## **Chapter 12 CAPITAL GAINS AND LOSSES** **867**

<b>A. Introduction</b>	<b>867</b>
<b>B. Mechanics of Net Capital Gain Computation</b>	<b>872</b>
<b>1. Capital Gain: The Long and Short of It</b>	<b>872</b>
<b>2. Netting of Long and Short Gains and Losses</b>	<b>873</b>
<b>3. The Several Capital Gains Rates</b>	<b>875</b>
<b>4. Netting the Special Rate Categories</b>	<b>877</b>
<b>C. Limitations on Deductions of Capital Losses</b>	<b>877</b>
<b>1. Rationale</b>	<b>877</b>
<b>2. The Capital Loss Limitation Rule</b>	<b>877</b>
<b>3. A Big Exception for Small Business Stock</b>	<b>878</b>
<b>4. Capital Loss Carryback and Carryover</b>	<b>878</b>
Problems 12.1-12.5	878

<b>D. Definition of a Capital Asset</b>	<b>879</b>
Problem 12.6	<b>880</b>
<b>1. Property Held for Sale to Customers</b>	<b>881</b>
<i>United States v. Winthrop</i>	<b>881</b>
Problem 12.7	<b>888</b>
<b>2. Property Used in a Trade or Business</b>	<b>888</b>
<i>Corn Products Refining Co. v. Commissioner</i>	<b>888</b>
<i>Arkansas Best Corp. v. Commissioner</i>	<b>893</b>
<b>E. Substitutes for Future Ordinary Income</b>	<b>897</b>
<i>Hort v. Commissioner</i>	<b>898</b>
<i>United States v. Maginnis</i>	<b>902</b>
<i>Table of Cases</i>	<b>909</b>
<i>Table of Internal Revenue Code Sections</i>	<b>913</b>
<i>Table of Treasury Regulation</i>	<b>923</b>
<i>Table of Revenue Rulings</i>	<b>925</b>
<i>Table of Miscellaneous IRS Pronouncements</i>	<b>927</b>
<i>Index</i>	<b>929</b>