

## WEALTH TRANSFER TAX

Fall 2016

SYLLABUS

Law 606, Section 1

**Professor Geoff Weaver**  
**Cleveland-Marshall College of Law**

### **REQUIRED TEXT:**

Dodge, Gerzog, & Crawford, FEDERAL TAXES ON GRATUITOUS TRANSFERS LAW AND PLANNING (1st ed. 2011)

### **RECOMMENDED TEXT:**

Lathrope, SELECTED FEDERAL TAXATION, STATUTES AND REGULATIONS (2017 ed.)

You are responsible for reading the assigned sections of the Internal Revenue Code and Regulations, and you should always have a copy of them at hand during class. As such, it is advisable to purchase a hard copy of the Code and Regulations if you do not already own one. However, you may choose to save the money and print out the assigned sections from Lexis or Westlaw.

### **CLASS MEETINGS:**

Monday & Wednesday, 1:00 p.m. to 2:40 p.m., Room LB 202

### **AVAILABLE BY APPOINTMENT:**

Although I do not have an office on campus, I want you to succeed in this course and I will make myself available by appointment. Please call or e-mail me if you have any questions, and we can talk on the phone or arrange a time to meet.

Cell Phone: (440) 479-9214

E-mail: [gww Weaver2004@yahoo.com](mailto:gww Weaver2004@yahoo.com)

### **COURSE OVERVIEW & OBJECTIVES:**

Wealth Transfer Tax is a four-credit course designed to survey the taxation of gratuitous wealth transfers and the income taxation of estates and trusts. This course will provide you with a working knowledge of the mechanics of the estate, gift, and generation-skipping taxes. We will also consider the basic policy, history, and estate planning implications of those taxes. Lastly, this course will provide you with an overview of the taxation of post-transfer income under Subchapter J of the Code.

## **CLASS ATTENDANCE & PREPARATION:**

The accreditation rules of the American Bar Association provide that law schools must announce and adhere to attendance requirements, which are examined for compliance during the septennial accreditation visits. I require that students miss no more than 2 weeks of a 14-week semester. Thus, for this class, students may miss no more than 4 classes without consequence. I consider “attendance” to encompass “adequate preparation” as well as physical presence. Thus, a failure to prepare adequately can constitute an absence.

Absence (or its equivalent—a failure to prepare) for more than 2 weeks of classes may result in a lower final grade (including the grade of “F” in egregious instances) or administrative withdrawal from the course **in my sole discretion**, depending on my evaluation of the equities of the situation that caused the excessive absences or lack of preparation.

The 2-week period is intended to account for the range of true emergencies that might arise, including personal and family illnesses, child-care problems, moot court and law review deadlines, outside work responsibilities, and employer interviews. Because such things inevitably arise unexpectedly, I highly encourage you to save what many students come to think of as “free days” for these purposes. You need not report to me the reason for an absence; the function of the two-week period is to allow you to miss class, when necessary, without the need for me to evaluate the merits of the reason for your absence. I assume good faith on the part of students and that, when you are not in class, you have a good reason for the absence, such as illness or job interviews. You need not use the free days to observe religious holidays; such absences will constitute additional excused days if you give me notice in writing before the holiday. Please see me if absences or instances of lack of preparation begin to mount and put you at risk.

I will take attendance at the beginning of each class. **Please be in your seat ready to begin class promptly.** Attendance will be taken by roll call or by circulating the class roster for your signature. If you fail to reply during the roll call or if you fail to sign the attendance roster within the first fifteen minutes of the class, as applicable, you will be counted as absent. You will not be permitted to reply or sign the roster after class has been completed. Replying or signing the roster for another student is an Honor Code violation.

## **CANCELLED CLASSES:**

I will make every effort to adhere to the scheduled class times. In the event I have to cancel a class, I will notify you by email.

## **TAPE RECORDING OF CLASSES:**

Tape recording of classes is **not** permitted unless advance permission is obtained from me.

## **EXAMINATION & GRADING:**

There will be one final examination at the end of the course. **The examination will be in-class, open book, and 3 hours in length.** We will discuss the examination in more detail later in the semester.

The examination grade normally will count for 100% of your final grade. Class participation, however, can move your grade to a higher grade category. As noted above, absences (including a failure to prepare) beyond the 2-week period may lower your final grade.

## **DISABILITY ISSUES:**

If you have a disability for which you are or may be requesting an accommodation, please contact the law school administration.

## **READING ASSIGNMENTS:\***

I distributed (with your syllabus) a brief summary of the tax provisions of the American Taxpayer Relief Act of 2012, which permanently set the maximum rate for the estate, gift, and generation-skipping taxes at 40% with a \$5,000,000 exemption equivalent for 2011, indexed for inflation for future years. With indexation, the exemption equivalent is \$5,430,000 for 2015. Throughout the semester, I will distribute a handful of other handouts to supplement your reading. I will periodically direct your attention to these handouts and you should refer to them whenever you have questions as to how the current law was amended.

All citations to “Dodge” refer to your required text, and all citations to statutes and regulations refer to the Internal Revenue Code of 1986, as amended, and the Regulations thereunder.

### **1. INTRODUCTION: THE BASICS OF GRATUITOUS TRANSFERS**

Skim the Preface and §§ 1.1 through 1.3 of Dodge. Read §§ 1(e), 101, 102, 262, 1014, 1015.

### **2. OVERVIEW OF THE FEDERAL TRANSFER TAXES PART I: ESTATE TAX**

Read §§ 2.1 through 2.5 of Dodge. Read §§ 2001(b), (c); 2010; 2053; 2503; 2511(a); 2512(b); 2513; 2516; 25.2512-8; 25.2511-2.

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\* Rather than assign material for specific days, this schedule is built around topics to be covered. This will provide flexibility in the schedule since some topics will take more time to cover than others. I will announce the next reading assignment at the end of each class. Lastly, I reserve the right to amend this schedule and assign supplemental readings as the class goes forward.

3. **OVERVIEW OF THE FEDERAL TRANSFER TAXES PART II: GIFT TAX, MARITAL DEDUCTIONS, RELATIONSHIP BETWEEN ESTATE TAX AND GIFT TAX**

Work the problems at the end of §§ 2.3, 2.4, 2.5.C of Dodge.

4. **OVERVIEW OF THE FEDERAL TRANSFER TAXES PART III: CREDITS FOR PRIOR TRANSFERS, GST**

Read §§ 2.7 through 2.9 of Dodge and work the problems at the end of §§ 2.7 and 2.8. Read §§ 2013, 2601, 2611, 2612, 2613, 2631, 2632, 2641, 2642, 2515.

5. **GIFT TAX BASICS: TRANSFERS SUBJECT TO GIFT TAX PART I**

Read § 3.1.A of Dodge and work the problem at the end of that section. Read §§ 2501, 2502(c), 2503(b), 2511, 2512(b), 2034, 2043(b), 7872, 267, 1011(b), 1014(c), 1.1001-1(e), 20.2031-4.

6. **GIFT TAX BASICS: TRANSFERS SUBJECT TO GIFT TAX PART II**

Read § 3.1.B of Dodge and work the problems at the end of that section. Read §§ 2501(a)(1), 2503(e), 2516, 2522, 2043(b)(1), 2053(a)(3), 2053(c)(1), 2611(b)(1), 25.2503-6(c), 25.2511-1(c)(1), 25.2511-1(g)(1), 25.2512-8.

7. **GIFT TAX BASICS: IDENTIFYING THE DONOR**

Read § 3.2 of Dodge and work the problems at the end of the section. Read §§ 2518; 2046; 2056(b)(4)(B); 2652(a); 2503(f); 25.2511-1(g), (h); 25.2518-3; 20.2056(b)-4(b), Ex. (3).

8. **GIFT TAX BASICS: WHEN DOES THE GIFT OCCUR?**

Read § 3.3 through A of Dodge and work the problems at the end of the section. Read §§ 671- 672, 674-677, 2511, 2053(c)(1)(A), 25.2511-2, 25.2512-1, 25.2512-2(f), 25.2512-6(a).

9. **GIFT TAX BASICS: VALUATION AND THE ANNUAL EXCLUSION**

Read §§ 3.4.A and B, and 3.5.A and B of Dodge. Read §§ 7520; 2503(b); 2513; 25.2503-3(b); 25.2512-1, -2, -5; 25.2513-2; 20.7520-3(b)(2)(v), Exs. 1 & 2.

10. **GIFT TAX COMPUTATION AND PROCEDURE**

Read §§ 3.4.C and D and 3.5.C and D of Dodge and work the problems at the end of the section.

11. **THE BASIC ESTATE: PROPERTY PASSING BY WILL OR INTESTACY**

Read § 4.1 of Dodge and work the problems at the end of this section. Read §§ 2033, 2053(c)(1), 20.2031-5, 20.2033-1(b), 20.2041-1(b)(1).

12. **THE BASIC ESTATE: NEGATIVE ASSETS**

Read § 4.2 of Dodge and work the problems at the end of this section. Read §§ 2053, 2054, 2058, 67(e), 162-164, 212, 213(c), 275(a)(3), 642(g), 691(a)-(d), 6075(a), 1.642(g)-1, Prop. Reg. § 20.2053-1(b)(1).

13. **INCOME TAXATION OF SUBCHAPTER J TRUSTS**

Read § 7.5 of Dodge and work the problems at the end of this section. Read §§ 1(e); 67(e); 103; 212(1), (2); 265(a)(1); 267(a)(1), (b)(6); 641(b); 642(c); 643; 644; 651; 652; 661; 662; 663; 6034A; Prop. Reg. § 1.67-4(b); 1.643(a)-3; 1.643(d)-2(a)(2); 1.652(b)-2.

14. **INCOME TAXATION OF ESTATES**

Read § 4.3 of Dodge and work the problem at the end of this section (omit questions and notes). Read §§ 267(a)(1), (b)(13); 642(h); 643(a), (e)(3); 661(a); 662(c); 663(a), (b); 6013(a)(2), (3); § 1.643(a)-3.

15. **THE BASIC ESTATE: ESTATE TAX VALUATION**

Read § 4.4 of Dodge. Read §§ 2031; 2031(c); 2032; 2033; 2044; 2032A; 170(f), (h); 2703; 6166; 6662(g), (h); 2035(c)(1)(B); Prop. Reg. § 20.2032-1(c)(2), -1(1)(f)(3), -2(i); 20.2031-2, -3, -6, -8; 25.2512-6.

16. **THE BASIC ESTATE: ESTATE TAX VALUATION (cont' d) AND ESTATE TAX PROCEDURE**

Read notes at end of § 4.4 of Dodge and work the problems at the end of that section. Read § 4.5 of Dodge and the notes at the end of that section.

17. **NON-PROBATE TRANSFERS: REVOCABLE TRUSTS AND JOINTLY-OWNED PROPERTY**

Read §§ 5.1 and 5.2 of Dodge (including all notes) and work the problems at the end of both sections. Read § 2040.

18. **NON-PROBATE TRANSFERS: ANNUITIES AND SURVIVOR BENEFITS**

Read §§ 5.3 and 5.4 of Dodge (including all notes). Read § 2039.

19. **NON-PROBATE TRANSFERS: LIFE INSURANCE**

Read §§ 5.5.A through 5.5.D.3 of Dodge (including all notes) and work the problems at the end of § 5.5.D of Dodge. Read §§ 2042, 20.2042-1.

20. **NON-PROBATE TRANSFERS: LIFE INSURANCE (cont' d)**

Read the remainder of § 5.5 of Dodge. Read §§ 2035, 2042, 20.2042-1.

21. **LONG-TERM TRUSTS: POWERS OF APPOINTMENT**

Read §§ 7.1.A through C of Dodge. Read §§ 2041, 2514.

22. **LONG-TERM TRUSTS: POWERS OF APPOINTMENT (cont' d)**

Read the remainder of § 7.1 of Dodge (including notes) and work the problems at the end of this section.

23. **GIFTS WITH RETAINED INTERESTS AND POWERS: SECTIONS 2036, 2037 AND 2038**

Read §§ 8.1 through 8.1.C.3 of Dodge (including notes) and work the problems at the end of § 8.1.C.3 of Dodge. Read §§ 2036, 2037, 2038.

24. **GIFTS WITH RETAINED INTERESTS AND POWERS: SPECIAL VALUATION RULES**

Read §§ 8.1.C.4 through 8.1.D.2 of Dodge (including notes) and work the problems at the end of § 8.1.D.2 of Dodge. Read §§ 2036, 2037, 2038.

25. **GIFTS WITH RETAINED INTERESTS AND POWERS: SPLIT-INTEREST CHARITABLE TRANSFERS**

Read §§ 8.1.D.3 through the end of 8.2 of Dodge (including notes) and work the problems at the end of § 8.3.D of Dodge.

26. **MARITAL TRANSFERS**

Read § 6.1 of Dodge. Read §§ 2056, 2523.

27. **MARITAL TRANSFERS (cont' d)**

Read § 6.2 of Dodge.

28. **MARITAL TRANSFERS (cont' d)**

Read § 6.3 of Dodge.