

Preface	xxiii
Editorial Notice	xxv
Chapter 1 Introduction	1
A. The Importance of Income Taxes	2
1. Income Taxes and Economic Inequality	2
2. Impact on the Practice of Law	6
3. Economic Consequences	6
4. A Note on Race and the Federal Income Tax	8
B. The Income Tax in U.S. History	9
C. Fundamental Tax Terminology and Concepts	11
1. The Tax Base: From Gross Income to Tax Payable	11
2. Deduction, Exemption, Exclusion, and Credit	15
3. Tax Brackets, Progressive Tax Structures, and Effective and Marginal Tax Rates	16
4. Capital Gain and Dividend Income, Ordinary Income, Losses and Expenses	19
5. Tax Accounting	20
6. Recovery of Cost, Depreciation, and Basis	21
7. Realization and Recognition	22
8. Types of Business Entities	22
9. Inflation	23
D. Conversion and Deferral	24
E. Compliance and Administration	27
1. Self-Assessment, Audits, and Tax Litigation	27
2. Penalties for Noncompliance	29
F. The Sources of Federal Tax Law in a Nutshell	30
Chapter 2 The Why and the What of Taxing Income	33
A. Why Tax Income?	33
1. The Tax Base and Ability to Pay	33

2. Alternative Measures of Ability to Pay	34
B. What Is “Income” Anyway?	36
<i>Commissioner v. Glenshaw Glass Co.</i>	38
Notes and Questions	40
<i>Cesarini v. United States</i>	41
Notes and Questions	43
C. Noncash Benefits	44
1. Meals and Lodging Provided to Employees	45
<i>Benaglia v. Commissioner</i>	46
Notes and Questions	49
Statutory Aftermath to <i>Benaglia</i>	50
<i>Silicon Valley’s Mouthwatering Tax Break</i>	52
Notes and Questions	53
<i>United States v. Gotcher</i>	54
Notes and Questions	56
2. Other Fringe Benefit Statutes	57
Section 132 Fringe Benefits	57
Questions	58
Further Notes on Fringe Benefits	59
Questions	62
3. Health Insurance	63
4. Another Approach to Valuation	63
<i>Turner v. Commissioner</i>	63
Notes and Questions	65
D. Recovery of Capital	66
1. Sale of Easements	67
<i>Inaja Land Co. v. Commissioner</i>	67
Notes and Questions	68
2. Gains and Losses from Gambling	69
3. Recovery of Loss	71
<i>Clark v. Commissioner</i>	71
Current Legal Status of <i>Clark</i>	73
Notes and Questions	73
Hypothetical	75
E. Recoveries for Personal and Business Injuries	75
1. The Basic Rules	75
<i>Murphy v. United States</i>	77
Notes and Questions	85
<i>Perez v. Commissioner</i>	87

Contents	xi
2. Deferred Payments and Structured Settlements	92
F. Illegal Income	92
<i>Gilbert v. Commissioner</i>	93
Notes and Questions	96
G. Gain on the Sale of a Home	97
Notes and Questions	98
H. Gain on the Sale of Timber from Tribal Land	99
<i>Squire v. Capoeman</i>	100
Notes and Questions	103
Chapter 3 The Private Sphere and the Public Sphere	109
A. Value Outside The Marketplace	109
1. Imputed Income, Psychic Income, In-Kind Income	110
Questions	113
2. Drawing the Line	114
<i>Revenue Ruling 79-24</i>	114
Questions	114
3. Imputed Income, Implicit Taxes, Substitute Taxation	115
B. Gifts	116
1. Gift: The Basic Concept	116
Notes and Questions	118
<i>Commissioner v. Duberstein</i>	120
Notes and Questions	126
2. Gift: Some Applications	128
Questions	130
3. Transfer of Unrealized Gain by Gift While the Donor Is Alive	130
<i>Taft v. Bowers</i>	131
Notes and Questions	133
4. Transfers at Death	135
Questions	136
C. Transfers Incident to Marriage and Divorce	137
1. Introduction	137
2. Property Settlements	138
a. Transfers Incident to a Divorce or Separation Agreement	138
<i>United States v. Davis</i>	138
Notes and Questions	142
Problems	142
b. Antenuptial Settlements (“Prenups”)	143

<i>Farid-Es-Sultaneh v. Commissioner</i>	143
Questions	146
3. Alimony, Child Support, Property Settlements	146
4. Child-Support Obligations in Default	146
<i>Diez-Arguelles v. Commissioner</i>	147
Notes and Questions	148
 Chapter 4 When Is It Income?	 151
A. Annual Accounting and its Consequences	154
1. The Use of Hindsight	154
<i>Burnet v. Sanford & Brooks Co.</i>	154
Notes and Questions	156
Problem	158
2. Capital Expenditures, Depreciation, and Expensing	158
Note	159
3. Claim of Right	159
Note	160
B. Cash and Accrual Methods of Accounting for Income	161
1. Introduction to Accounting Methods	161
Notes and Questions	163
2. Delay in Receiving Cash	163
<i>Georgia School-Book Depository v. Commissioner</i>	163
Notes and Questions	166
3. Prepaid Income	166
<i>American Automobile Association v. United States</i>	167
Notes and Questions	171
C. The Realization Doctrine: “Achilles Heel” of the Income Tax?	173
1. Legal Origins of the Realization Doctrine	174
<i>Eisner v. Macomber</i>	174
Notes and Questions	181
2. Some Implications of the Realization Doctrine in Practice	184
3. Realization as a Constitutional Requirement?	185
<i>Helvering v. Bruun</i>	186
Notes and Questions	189
<i>Moore v. United States</i>	192
Notes and Questions	197
4. Realization Without a Sale or Disposition?	198
<i>Woodsam Associates, Inc. v. Commissioner</i>	198

Contents	xiii
Notes and Questions	200
<i>Joint Committee on Taxation: General Explanation of Tax Legislation Enacted in 1997</i>	203
Questions	203
5. Realization and Loss Property	204
<i>Cottage Savings Association v. Commissioner</i>	205
Notes	211
Questions	213
Problems	214
D. Statutory Nonrecognition Provisions	214
1. Introduction to Nonrecognition Rules	215
2. Exchanges of Real Property Used in a Trade or Business or Held for Investment	216
a. The Like-Kind Requirement	216
<i>PLR 200203033</i>	216
Notes and Questions	218
b. Boot and Basis in Like-Kind Exchanges	219
E. Open Transactions and Installment Sales	221
1. Open Transaction Doctrine	221
<i>Burnet v. Logan</i>	221
Notes and Questions	222
2. Executory Contract or Completed Sale?	226
<i>Lucas v. North Texas Lumber</i>	226
Notes and Questions	227
<i>Commissioner v. Segall</i>	227
Notes	228
3. The Installment Method	229
F. Constructive Receipt and Related Doctrines	231
1. Basic Principles	231
<i>Amend v. Commissioner</i>	231
Notes and Questions	235
<i>Pulsifer v. Commissioner</i>	235
Question	237
G. Nonqualified Deferred Compensation	237
1. Background	237
<i>Minor v. United States</i>	239
Notes	242
2. Nonqualified Deferred Compensation: Overview	242
Problem	246

3. Nonqualified Deferred Compensation: Constructive Receipt and §409A	247
4. Nonqualified Deferred Compensation: Stock Options	249
5. Nonqualified Deferred Compensation: Qualified Equity Grants	250
6. Nonqualified Deferred Compensation: Policy	250
H. Qualified Employee Plans	252
1. Basic Choices and Rules	252
2. Amount of Tax Benefit	253
3. Antidiscrimination Rules	255
4. Individual Plans	255
5. Penalty for Early Withdrawal	256
6. Mandatory Distributions	257
7. Limitations on Contributions and Benefits	257
Chapter 5 Debt and Certain Other Financial Instruments	259
A. Financial Instruments and the Income Tax	259
B. Loans and Cancellation of Indebtedness Income	260
1. The Exclusion of Loan Proceeds from Income	260
2. Defining Cancellation of Indebtedness Income (CODI) That Is Taxable Unless §108 Applies	262
3. Relief Provisions	263
a. Insolvent Debtors	263
b. Solvent Farmers	264
c. Adjustment of Purchase Money Debt	264
d. Student Loan Forgiveness	265
e. Mortgage Forgiveness	265
4. Contested or Uncertain Liabilities	265
<i>Zarin v. Commissioner</i>	265
Notes	273
C. Transfers of Property Subject to Debt	275
1. The Basic Rules	275
2. Nonrecourse Debt, Part I: <i>Crane</i> and <i>Tufts</i>	277
Notes and Questions	279
<i>Commissioner v. Tufts</i>	281
Notes and Questions	287
3. Nonrecourse Debt, Part II: Property Worth Less at Acquisition Than the Face Amount of the Debt	289
a. Seller Financing	289
b. Midstream Acquisition of “Distressed” Property	290

Contents	xv
4. Gift Tax Liability Created by the Transfer	292
<i>Diedrich v. Commissioner</i>	293
Notes and Questions	295
D. Interest Income and Original Issue Discount	296
1. Compounding and the Economic Accrual of Interest Income	296
2. When and Why It Matters: Counterparty Effects	297
3. Mechanics of the OID Rules	299
E. Interest on State and Local Bonds	302
1. Basic Concepts	302
Notes and Questions	304
2. Limitations on Exempt Status	305
3. Tax Arbitrage	306
F. Certain Other Financial Instruments	307
1. Life Insurance	308
2. Annuities	311
 Chapter 6 Tax Progressivity and the Assignment of Income	 315
A. Assignment of Income	317
1. Income from Services	318
<i>Lucas v. Earl</i>	318
Notes and Questions	319
<i>Poe v. Seaborn</i>	321
Notes and Questions	323
2. Income from Property	324
<i>Blair v. Commissioner</i>	325
<i>Helvering v. Horst</i>	326
Notes and Questions	330
3. Services Transformed into Property	332
<i>Helvering v. Eubank</i>	332
<i>Heim v. Fitzpatrick</i>	333
Notes and Questions	335
4. Shifting Income Through Legal Entities	336
a. Family Partnerships and S Corporations	336
b. Income Splitting Through Corporations	337
B. The Tax Unit	338
1. The Joint Return	339
2. Married Filing Separately	341
3. Head of Household Filing Status	341

C. Tax Credits and Progressivity	342
1. Background on Income Distribution and Poverty in the United States	342
2. The Earned Income Tax Credit	343
a. Overview of the EITC	343
b. Understanding §32	344
c. Efficiency of the EITC	346
d. EITC Administration	347
3. The Child Tax Credit	348
4. Defining the Qualifying Child Problems	349
	350
D. Universal or Guaranteed Basic Income	351
 Chapter 7 Expenses of Earning Income	 353
A. Introduction	353
1. Deducting Expenses and the Net Income Concept	353
2. Deduction Mechanics	354
B. Current Expenses Versus Capital Expenditures	355
1. The Uniform Capitalization (UNICAP) Rules	356
2. The <i>INDOPCO</i> Decision and the Capitalization Regulations	356
3. Advertising and Other Exceptions to the Capitalization Requirement	357
C. Repair and Maintenance Expenses	358
<i>Midland Empire Packing Co. v. Commissioner</i>	358
Notes and Questions	360
Problem	361
<i>Treatment of Environmental Remediation Expenses Under Section 263A</i>	361
D. Inventory Accounting	363
E. Deducting Business Expenses	365
1. “Ordinary and Necessary”	365
<i>Welch v. Helvering</i>	365
Notes and Questions	367
<i>Gilliam v. Commissioner</i>	368
Notes and Questions	373
2. “Trade or Business”	375
<i>Groetzinger v. Commissioner</i>	375
Notes and Questions	380
Problem	380

Contents	xvii
3. Special Rules	381
a. Reasonable Compensation	381
4. Sexual Harassment Settlements	382
F. Cost Recovery	382
G. Depreciation	383
1. The Building Blocks of Depreciation Rules	383
2. Real Property and Certain Long-Lived Property	385
3. Other Tangible Personal Property	385
H. Amortization	385
I. Depletion and Intangible Drilling Costs	387
J. Other Loss Deduction Issues	389
1. Timing of Loss Allowance	390
2. Was the Taxpayer Seeking to Earn Income?	393
3. Determining the Amount of Allowable Loss	394
K. The Pass-Through Deduction for Qualifying Business Income	394
 Chapter 8 Tax Shelters and Tax Planning	 397
A. The Nature of the Problem	397
B. The Origin of Substance-Over-Form Doctrine	399
1. The <i>Gregory</i> Case	399
Notes and Questions	402
2. <i>Gregory v. Helvering</i> on Appeal	402
Notes and Questions	403
C. Requiring Economic Substance in Response to Loss-Generating Tax Shelters	404
<i>Knetsch v. United States</i>	405
Notes and Questions	408
1. The Development of the Economic Substance Doctrine	410
D. Tax Shelters More Generally	411
1. Definition and Elements of a Tax Shelter	411
Questions	412
2. Real Estate and Other Tax Shelters of the 1970s and Early 1980s	412
3. The Congressional Response to the Tax Shelters of the 1980s	413
Notes and Questions	417
4. The Alternative Minimum Tax	418
5. More Recent Corporate and Individual Tax Shelters	418
<i>Winn-Dixie Stores, Inc. v. Commissioner</i>	419
Notes and Questions	421

6. Codification of Economic Substance	422
7. Rules Versus Standards	423
8. Rules Aimed at the Tax Lawyer	424
Chapter 9 Mixed Business and Personal Expenses	429
A. The Significance of Employment Status for Business Expense Deductions	430
B. Clothing Expenses	432
<i>Peusner v. Commissioner</i>	432
Note	434
Questions	435
C. Home Offices and Vacation Homes	435
1. Home Offices	436
<i>Popov v. Commissioner</i>	436
Notes and Questions	439
2. Vacation Homes	440
D. Child-Care Expenses	441
<i>Smith v. Commissioner</i>	442
Notes and Questions	443
E. Educational Expenses	447
1. Defining Deductible Educational Expenses	448
<i>Carroll v. Commissioner</i>	448
Notes and Questions	449
<i>Kopaigora v. Commissioner</i>	450
Notes and Questions	452
2. Other Tax Benefits for Education	453
F. Commuting Expenses	454
<i>Commissioner v. Flowers</i>	454
Notes and Questions	459
<i>Hantzis v. Commissioner</i>	460
Notes and Questions	466
Problems: Testing the Rationale	468
G. Travel and Entertainment Expenses	469
1. The Deductibility of Business Travel	469
<i>Rudolph v. United States</i>	470
Notes and Questions	473
2. Business Meals	474
<i>Moss v. Commissioner</i>	475
Questions	477

Contents	xix
3. Limitations Under §274	478
H. Legal Expenses	480
<i>United States v. Gilmore</i>	480
Notes and Questions	484
 Chapter 10 Personal Deductions	 487
A. Introduction	487
B. Casualty Losses	488
C. Medical Expenses	489
1. Overview	489
2. What Is “Medical Care”?	490
a. Expenses That Involve Both Medical and Other Consumption	491
<i>Taylor v. Commissioner</i>	491
<i>Ochs v. Commissioner</i>	492
Notes and Questions	494
b. The Boundaries of “Medical” Under §213	496
Notes and Questions	500
D. Charitable Contributions and Treatment of Nonprofits	501
1. Overview	501
2. Rules Governing Charitable Contributions	502
Comparative Focus: Canada’s Charitable Contribution Credit	504
Notes and Questions	505
3. Rules Addressed to Donors	506
a. Gifts with Private Objectives or Benefits	506
<i>Ottawa Silica Co. v. United States</i>	506
Notes and Questions	509
4. Treatment of Nonprofit Organizations	513
a. What Sorts of Organizations Qualify Generally?	513
b. Public Policy and Charitable Purpose	514
<i>Bob Jones University v. United States</i>	514
Notes and Questions	520
5. Loss of Exemption Due to Private Inurement	522
6. Excise Tax on Investment Income of Colleges and Universities	523
E. Interest	523
1. The Rules	523
2. Asymmetrical Treatment of Interest Income and Expenses	524
3. Policy Justification and Transition Issues	525
4. Race and the Home Mortgage Interest Deduction	525

5. Tracing Issues	526
6. Interest on Student Loans	526
F. Taxes	527
1. Rationale for the SALT Deduction	527
2. The Basic Structure of U.S. State and Local Taxation	528
G. Tips and Overtime Pay	529
H. Personal Exemptions	529

Chapter 11 Capital Gains and Losses 531

A. Background and Statutory Framework	531
1. Net Capital Gain	531
2. Statutory Tax Rates for Net Capital Gain	533
3. Net Capital Loss	534
B. The Definition of “Capital Asset”	534
C. Policy Considerations	536
1. Rationale for Favorable Treatment of Capital Gain	536
2. Rationale for Limiting the Deductibility of Capital Losses	537
D. Property Held “Primarily for Sale to Customers”	538
1. Sale to “Customers”	538
<i>Bielfeldt v. Commissioner</i>	538
Notes and Questions	541
2. “Primarily for Sale”	542
<i>Biedenharn Realty Co. v. United States</i>	542
Notes and Questions	548
E. Hedging Transactions	549
F. Substitutes for Ordinary Income	551
1. Payment for Cancellation of a Lease	551
<i>Hort v. Commissioner</i>	551
Notes and Questions	553
2. Sale of Interest in a Trust	555
<i>McAllister v. Commissioner</i>	555
Notes and Questions	558
3. Lottery Winnings	559
<i>Womack v. Commissioner</i>	559
Questions	562
4. Oil Payments	563
<i>Commissioner v. P. G. Lake, Inc.</i>	563
Notes and Questions	566

Contents	xxi
G. Other Claims and Contract Rights	567
1. Termination Payments	567
<i>Baker v. Commissioner</i>	567
Notes and Questions	574
2. Intellectual Property	574
H. Correlation with Prior Related Transactions	575
<i>Merchants National Bank v. Commissioner</i>	575
<i>Arrowsmith v. Commissioner</i>	576
Notes	578
I. Requirement of a Sale or Exchange	579
 Table of Cases	 581
Table of Internal Revenue Code Sections	587
Table of Treasury Regulations	593
Table of IRS Revenue Rulings	595
Table of Miscellaneous IRS Pronouncements	597
Index	599