

ASPEN CASEBOOK SERIES

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FEDERAL
INCOME TAXATION

*Third
Edition*



Wolters Kluwer
Law & Business

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FEDERAL INCOME TAXATION

Third Edition

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*We dedicate this book to our wives, Linda Schmalbeck and Jeanne Moskal, and to
our daughters, Suzanne and Sabine Schmalbeck, and Alice Zelenak.*

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PREFACE

Most law school casebooks, including most income tax casebooks, contain far more material than can be covered in a course of standard length. The books typically give no indication of which material, if any, is optional; the implicit message seems to be that the class should be able to give careful, and roughly proportional, attention to the entire book. Faced with the unreasonableness of that implicit message, a teacher must make hard choices about which sections of a book to omit or cover lightly. The default approach, of which the authors have been guilty on occasion, is to start the course with unfounded optimism about the ability to cover the entire book, and to march through the book without omissions until the semester ends—an approach that leaves forever unstudied whatever the author happened to put at the end of the book. Our experience is that these editing choices are difficult to make well, and that even when they are made well the omissions may raise student doubts about the casebook, the teacher, or both.

This book does not altogether abandon the tradition of including more material than can be covered in an income tax course of the usual duration. We have attempted, however, to provide more than the usual amount of guidance to the teacher trying to decide what material should be covered, and what material may be in good conscience omitted, through the division of the book into a core text and more specialized “cells.” The core text consists of twelve chapters, providing reasonably succinct coverage of the fundamental topics of an introductory income tax course. Following almost all chapters are one or more cells, consisting of deeper examinations of narrower selected topics.

The depth of coverage in selected areas—made possible by the cells—distinguishes this book from other income tax casebooks, which typically provide coverage of approximately uniform depth in all or most of the topics they explore. While even coverage has its virtues, it has an important drawback in an area as complex as federal income tax: Uniform coverage provides few opportunities for students to achieve significant depth of understanding of the materials, and little opportunity to hone the interpretive and problem-solving skills tax lawyers must bring to their work. The cells address this problem by replicating what we, and most other experienced teachers, have learned to do over time: They supplement the core text with materials and exercises intended to give students deeper and more direct experiences with the tax law as it is encountered by lawyers and policymakers.

The cells have a variety of emphases. Some feature problem sets designed to develop students' ability to read and apply moderately complex statutory provisions; some examine policy issues from perspectives informed by legislative dynamics or public finance economics; some focus on the interpretation of ambiguous statutes; and others are case studies in the development of the law over time. While we do not consider any of the substantive material covered in the cells to be essential to an introductory income tax course, we do think it essential that students have the experience of dealing with some material in more-than-survey-course fashion, and of approaching the tax law from the various perspectives embodied in the cells. Accordingly, we encourage every teacher to use at least a few cells, reflecting several different approaches to the law.

The core text is concise enough, we believe, to be covered in its entirety in a four-hour-per-week one-semester course, with enough time left over for some of the cells. We hasten to add that the process of dividing material between main text and cells is more art than science, and that no two teachers have exactly the same set of priorities. Thus, we would expect that many—perhaps most—teachers using the book will decide to skip a few portions of the main text. (This includes the authors themselves, since our decisions about what to include in the main text were driven to some degree by our sense of majority opinion among income tax teachers, rather than solely by our idiosyncratic preferences.)

We recognize as well that many teachers will have developed their own “cells,” by whatever name they may call them, to supplement the casebooks they currently use. The core materials in this book should leave ample time for exploration of those teacher-produced materials, instead of or in conjunction with the cells we have provided. Our object has been to provide a flexible package of materials that can be easily customized to provide emphasis in those areas that each teacher finds most useful, interesting, and effective.

The core text, as much as the cells, reflects our conviction that income tax is best taught by a highly eclectic approach. One topic might be approached through the traditional case method, another might present an opportunity to read and apply statutory and regulatory provisions, a third might lend itself to economic analysis, a fourth might call for an exploration of history and politics, and so on. The book includes material using all these approaches (and a few others besides). The problems—more than 150 of them, counting both main text and cells—should be particularly helpful in developing the skills of statutory interpretation and application.

The book also reflects our lack of enthusiasm for full-bore Socratic methodology in teaching tax. While teaching that allows insights to emerge synthetically from class discussion certainly has its merits, our sense is that the complexity of the material in the federal income tax course is such that a “hide the ball” approach isn't generally appropriate. The tax ball is difficult enough to comprehend when it is in plain view. Accordingly, we

have tried to explain concepts and rules as clearly as possible throughout this book. When material could be explained more clearly or more efficiently through the use of author-written text than through the presentation of cases, we have not hesitated to use text. We have also made liberal use of notes following cases to reveal what may have been hidden by the opinions themselves. The result is an income tax casebook with a relatively high ratio of author-written pages to case pages.

Despite the considerable extent of explanatory text, the book can still, with more than 75 cases, rulings, and similar materials, be fairly described as a casebook. We have included most of the classic cases, and have made an effort to include as well a fresh selection of interesting cases of more recent vintage. No book can, by itself, create a lively and productive course. But we believe that we have provided materials of sufficient variety, depth, and insight to enable enthusiastic teachers to offer very stimulating experiences to their introductory federal income tax students.

Finally, we are greatly indebted to several tax scholars who reviewed various drafts of this work, and provided a number of helpful comments. To assure the reviewers' candor, this part of the editorial process was designed to be opaque to the authors. As a consequence, we do not know who the reviewers were, and so can thank them only in this anonymous way. We are also grateful to those who adopted the first and second editions of our book—for that fact itself, of course, but also for the helpful comments they have offered. Wayne Gazur, Donald Tobin, Roberta Mann, and Darryll Jones have been particularly helpful in this way. Finally, we acknowledge with gratitude the assistance of our faculty support staff, especially Tiffany Cervi and Mykou Thao.

June 2011

R.S.

L.Z.

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