

伊曼纽尔法律精要影印系列

Basic Federal Income Tax

[美] 格温德林·格里菲思·利厄艾伦 / 著
(Gwendolyn Griffith Lieuallen)

联邦所得税法



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联邦所得税法

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总 序

吴志攀

加入世界贸易组织表明我国经济发展进入了一个新的发展时代——一个国际化商业时代。商业与法律的人才流动将全球化，评介人才标准将国际化，教育必须与世界发展同步。商业社会早已被马克思描绘成为一架复杂与精巧的机器，维持这架机器运行的是法律。法律不仅仅是关于道德与公理的原则，也不单单是说理论道的公平教义，还是具有可操作性的精细的具体专业技术。像医学专业一样，这些专业知识与经验是从无数的案例实践积累而成的。这些经验与知识体现在法学院的教材里。中信出版社出版的这套美国法学院教材为读者展现了这一点。

教育部早在2001年1月2日下发的《关于加强高等学校本科教学工作提高教学质量的若干意见》中指出：“为适应经济全球化和科技革命的挑战，本科教育要创造条件使用英语等外语进行公共课和专业课教学。对高新技术领域的生物技术、信息技术等专业，以及为适应我国加入WTO后需要的金融、法律等专业，更要先行一步，力争三年内，外语教学课程达到所开课程的5%—10%。暂不具备直接用外语讲授条件的学校、专业，可以对部分课程先实行外语教材、中文授课，分步到位。”

引进优质教育资源，快速传播新课程，学习和借鉴发达国家的成功教学经验，大胆改革现有的教科书模式成为当务之急。

按照我国法学教育发展的要求，中信出版社与外国出版公司合作，瞄准国际法律的高水平，从高端入手，大规模引进畅销外国法学院的外版法律教材，以使法学院学生尽快了解各国的法律制度，尤其是欧美等经济发达国家的法律体系及法律制度，熟悉国际公约与惯例，培养处理国际事务的能力。

此次中信出版社引进的是美国ASPEN出版公司出版的供美国法学院使用的主流法学教材及其配套教学参考书，作者均为富有经验的知名教授，其中不乏国际学术权威或著名诉讼专家，历经数十年课堂教学的锤炼，颇受法学院学生的欢迎，并得到律师实务界的认可。它们包括诉讼法、合同法、公司法、侵权法、宪法、财产法、证券法等诸多法律部门，以系列图书的形式全面介绍了美国法律的基本概况。

这次大规模引进的美国法律教材包括：

伊曼纽尔法律精要 (Emanuel Law Outlines) 美国哈佛、耶鲁等著名大学法学院广泛采用的主流课程教学用书，是快捷了解美国法律的最佳读本。作者均为美国名牌大学权威教授。其特点是：内容精炼，语言深入浅出，独具特色。在前言中作者以其丰富的教学经验制定了切实可行的学习步骤和方法。概要部分提纲挈领，浓缩精华。每章精心设计了简答题供自我检测。对与该法有关的众多考题综合分析，归纳考试要点和难点。

案例与解析 (Examples and Explanations) 由美国最权威、最富有经验的教授所著，这套丛书历

经不断的修改、增订，吸收了最新的资料，经受了美国成熟市场的考验，读者日众。这次推出的是最新版本，在前几版的基础上精益求精，补充了最新的联邦规则，案例也是选用当今人们所密切关注的问题，有很强的时代感。该丛书强调法律在具体案件中的运用，避免了我国教育只灌输法律的理念与规定，而忽视实际解决问题的能力培养。该丛书以简洁生动的语言阐述了美国的基本法律制度，可准确快捷地了解美国法律的精髓。精心选取的案例，详尽到位的解析，使读者读后对同一问题均有清晰的思路，透彻的理解，能举一反三，灵活运用。该丛书匠心独具之处在于文字与图表、图例穿插，有助于理解与记忆。

案例教程系列 (Casebook Series) 覆盖了美国法学院校的主流课程，是学习美国法律的代表性图书，美国著名的哈佛、耶鲁等大学的法学院普遍采用这套教材，在法学专家和学生中拥有极高的声誉。本丛书中所选的均为重要案例，其中很多案例有重要历史意义。书中摘录案例的重点部分，包括事实、法官的推理、作出判决的依据。不仅使读者快速掌握案例要点，而且省去繁琐的检索和查阅原案例的时间。书中还收录有成文法和相关资料，对国内不具备查阅美国原始资料条件的读者来说，本套书更是不可或缺的学习参考书。这套丛书充分体现了美国法学教育以案例教学为主的特点，以法院判例作为教学内容，采用苏格拉底式的问答方法，在课堂上学生充分参与讨论。这就要求学生不仅要了解专题法律知识，而且要理解法律判决书。本套丛书结合案例设计的大量思考题，对提高学生理解概念、提高分析和解决问题的能力，非常有益。本书及时补充出版最新的案例和法规汇编，保持四年修订一次的惯例，增补最新案例和最新学术研究成果，保证教材与时代发展同步。本丛书还有配套的教师手册，方便教师备课。

案例举要 (Casenote Legal Briefs) 美国最近三十年最畅销的法律教材的配套辅导读物。其中的每本书都是相关教材中的案例摘要和精辟讲解。该丛书内容简明扼要，条理清晰，结构科学，便于学生课前预习、课堂讨论、课后复习和准备考试。

除此之外，中信出版社还将推出教程系列、法律文书写作系列等美国法学教材的影印本。

美国法律以判例法为其主要的法律渊源，法律规范机动灵活，随着时代的变迁而对不合时宜的法律规则进行及时改进，以反映最新的时代特征；美国的法律教育同样贯穿了美国法律灵活的特性，采用大量的案例教学，启发学生的逻辑思维，提高其应用法律原则的能力。

从历史上看，我国的法律体系更多地受大陆法系的影响，法律渊源主要是成文法。在法学教育上，与国外法学教科书注重现实问题研究，注重培养学生分析和解决问题的能力相比，我国基本上采用理论教学为主，而用案例教学来解析法理则显得薄弱，在培养学生的创新精神和实践能力方面也做得不够。将美国的主流法学教材和权威的法律专业用书影印出版，就是试图让法律工作者通过原汁原味的外版书的学习，开阔眼界，取长补短，提升自己的专业水平，培养学生操作法律实际动手能力，特别是使我们的学生培养起对法律的精细化、具体化和操作化能力。

需要指出的是，影印出版美国的法学教材，并不是要不加取舍地全盘接收，我们只是希望呈现给读者一部完整的著作，让读者去评判。“取其精华去其糟粕”是我们民族对待外来文化的原则，我们相信读者的分辨能力。

是为序。

BASIC FEDERAL INCOME TAX

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Aspen Law & Business is proud to welcome Emanuel Publishing Corporation's highly successful study aids to its list of law school publications. As part of the Aspen family, Steve and Lazar Emanuel will continue their work on these popular titles, widely purchased by students for more than a quarter century. With the addition of the Emanuel titles, Aspen now offers the most comprehensive selection of outstanding publications for the discerning law student.

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**Dedicated
to
Peyton, with love**

Preface

Thank you for buying this book!

In my many years in the classroom, and now as a practicing tax lawyer, I have spent countless hours listening to students and tax professionals alike describe the study of tax law as both fascinating and frustrating.

It's a fascinating subject, not only because it touches almost everyone's life in a very real and direct way, but also because it serves as a pretty good mirror for our society's beliefs and values. But learning tax law can be frustrating as well. It requires learning a whole new language—the language of the Internal Revenue Code and its seemingly endless pages of regulations. It requires faith that what may seem to be a jumble of obscure statutes is really a coherent system whose parts work together in a sensible fashion. Finally (and this is what keeps tax practitioners up at night) Congress changes these laws *every year*—creating new challenges for both taxpayers and their advisors.

This book offers some of the techniques I've developed over the years to help students and practitioners overcome these frustrations. Chapter 1 begins with the basics, including a method for reading the Internal Revenue Code *and* understanding it. (I recently received an email from a long-lost student, who now is a tax lawyer with a large accounting firm. He found himself using this “parsing” technique years after taking my course and wanted to let me know that he still “parses” statutes when he finds himself in unfamiliar tax territory. So do I.) I hope this approach works for you as well.

The succeeding chapters of this book describe in detail the five basic issues of individual taxation: what is “income”; what expenses are deductible; the character of income or loss; what tax rates apply; and what tax credits are available. Chapter 16 summarizes the well-established themes and issues of basic income tax, collecting the “families” of tax statutes that govern these issues. We'll never prevent Congress from tinkering with the Code (nor should we), but these essential themes will remain as long as there is an individual income tax.

This book can't substitute for the hard work of tax study: understanding the Code and regulations, working through example after example, and participating in the discussion in your tax class. What it can do is supplement those sources and help explain the concepts you encounter in class. To make the best use of this book, I suggest that you:

- Skim the appropriate sections of this outline before the material is covered in class (you will find a casebook correlation chart at the front of the book).
- Review the material in this book in detail after it is discussed in class. Note in the margins of this outline the emphasis that your particular professor places on the various aspects of the material.
- Work through the examples and “Quiz Yourself” questions. Make sure you can explain the result in each example, using the Code and case law. Consider creating new examples to work through alone or in your study group.
- Use the outline material to supplement the notes or your own outline that you prepare to study for the exam.
- Use the “Capsule Summary” as a review just prior to your exam.

My warmest thanks to Aspen's Carol McGeehan and Barbara Roth for their optimism and sensible suggestions—and to my family for their infinite patience—during the writing of this book.

I wish you the best in your first tax course and hope most of all that you will discover that tax can be interesting and even fun. Good luck!

Gwendolyn Griffith Lieuallen
Speer, Hoyt, Jones, Poppe, Wolf & Griffith, P.C.
Eugene, Oregon

Casebook Correlation Chart

Note: general sections of the outline are omitted for this chart. NC = not directly covered by this casebook.

Emanuel's Basic Federal Tax Outline (by chapter and section heading)	Burke & Friel: <i>Taxation of Individual Income</i> (5th Ed. 1998)	Dodge, Fleming, & Geier: <i>Federal Income Tax</i> (2nd Ed. 1999)	Freeland, Lind, Stephens, & Lathrope: <i>Fundamentals of Federal Income Taxation</i> (12th Ed. 2002)	Guerrin & Postlewaite: <i>Problems and Materials in Federal Income Taxation</i> (6th Ed. 2002)	Klein, Bankman, & Shaviro: <i>Federal Income Taxation</i> (12th Ed. 2000)
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Capsule Summary

This Capsule Summary is intended for review at the end of the semester. Reading it is not a substitute for mastering the material in the main outline. Numbers in brackets refer to the pages in the main outline where the topic is discussed.

CHAPTER 1

GETTING STARTED IN FEDERAL INCOME TAX

I. UNDERSTANDING THE BIG PICTURE

The process of computing tax liability is summarized below and can be traced in the Form 1040, included in the Outline. [4-5]

Gross Income - Certain Deductions = Adjusted Gross Income (AGI)

AGI - Personal Exemptions - *either* Standard or Itemized deduction = Taxable Income

Taxable Income \times Tax Rate = Tentative Tax

Tentative Tax - Tax Credits = Tax Due (if positive number) or Refund (if negative number)

A. Gross income—§61

Gross income includes all income from whatever sources derived. IRC §61(a). Income from compensation, dividends, gains from dealings in property, and discharge of debt are common types of income. However, particular Code sections exclude certain types of income from gross income.

B. Deductions

Deductions are subtractions from income in computing taxable income. There are two types of deductions available in computing taxable income:

1. **Deductions from gross income in computing adjusted gross income:** Certain expenditures are deducted (subtracted) from gross income in computing adjusted gross income (AGI).
2. **Deductions from adjusted gross income in computing taxable income:** The taxpayer subtracts his or her personal exemptions and then takes the larger of either the standard deduction or the itemized deduction. The standard deduction is a statutorily set amount, and the itemized deduction is the sum of all allowable itemized deductions.

C. Multiply taxable income by the tax rate

The taxpayer's tax rate, which depends on his or her filing status, is multiplied by taxable income to produce the "tentative tax." The tax rates applicable to individuals range from 10% to 38.6%. IRC §1.

D. Subtract available tax credits

A tax credit is a dollar-for-dollar reduction in the amount of tax due. Available tax credits are subtracted from the tentative tax to produce the actual tax due.

II. SOURCES OF TAX LAW

Title 26 of the United States Code is the statutory base for all federal tax law, including the federal income tax. The Department of the Treasury, through the Internal Revenue Service (IRS), and the courts offer guidance on ambiguous provisions of the Code. [6-7]

A. Administrative interpretation

The Department of the Treasury issues regulations (temporary, final, or proposed) interpreting various Code provisions as well as revenue rulings, revenue procedures, notices, announcements, private letter rulings, and technical advice memoranda on various issues. [7-9]

B. Judicial interpretation

The U.S. Tax Court, the U.S. District Court, the U.S. Court of Federal Claims, and the U.S. Bankruptcy Courts are trial courts for tax matters. Cases are appealed to the appellate court for the circuit in which the taxpayer lives and then to the U.S. Supreme Court. [9-11]

1. **U.S. Tax Court—Litigate without first paying tax:** A taxpayer may adjudicate tax matters in the U.S. Tax Court without first paying the tax, if the taxpayer files a petition within 90 days of the date of the Statutory Notice of Deficiency (90-day letter).
2. **U.S. Bankruptcy Court:** A bankruptcy court has jurisdiction over tax matters of the debtor, and may stay proceedings in the U.S. Tax Court regarding tax matters.
3. **Other courts—Pay first, then litigate:** In order to litigate in the U.S. District Court or the U.S. Court of Federal Claims, the taxpayer must first pay the tax and file a claim for refund. If that claim is either denied or ignored, the taxpayer can sue for refund.

C. Deference to IRS interpretation

The courts interpret ambiguous statutory material in cases properly brought before them. The courts will properly give deference to an IRS-published, prelitigation interpretation of a Code provision. This means that the court will adopt the IRS's interpretation of a Code provision if it is a "reasonable" interpretation of the statute. The IRS's interpretation need not be the only reasonable interpretation or even the most reasonable interpretation. It need only be a reasonable interpretation. If, however, there is no published, prelitigation interpretation by the IRS, the courts need not give deference to the IRS's interpretation, and may select the interpretation that seems most reasonable. [11-12]

III. TAX ETHICS

A taxpayer has a responsibility to file an accurate tax return, and a lawyer can advise a client to take a return position only if it has a "realistic possibility of success on the merits if litigated." Certain civil and criminal penalties attach to an inaccurate tax return. [13-14]