

CHAPTER 1

**AN INTRODUCTION TO TAXATION
AND UNDERSTANDING THE FEDERAL TAX LAW**

LECTURE NOTES

OVERVIEW

The primary objective of this chapter is to provide an overview of the Federal tax system. Among the topics discussed are the following:

- The importance and relevance of taxation.
- A brief history of the Federal income tax.
- The types of taxes imposed at the Federal, state, and local levels.
- Some highlights of tax law administration.
- Tax concepts that help explain the reasons for various tax provisions.
- The influence the Internal Revenue Service (IRS) and the courts have had in the evolution of current tax law.

SUMMARY OF CHANGES IN THE CHAPTER

The following are notable changes in the chapter from the 2018 Edition. For major changes, see the Preface of the text.

- Updated Exhibit 1.1 (Federal Tax Revenues) and Exhibit 1.4 (IRS Audit Types and Rates) with current data.
- Revised text to reflect the Tax Cuts and Jobs Act (TCJA) of 2017 and revised various inflation-adjusted information in the chapter.
- Identified critical thinking questions and problems.
- Added a new Research Problem to analyze a soda tax or sweetened beverage tax proposal against the AICPA's *Principles of Good Tax Policy*.

THE BIG PICTURE

The Big Picture discussion in Chapter 1 addresses several situations commonly encountered by taxpayers that also create taxable income consequences. For example, students may not be familiar with the concept that gift giving (even in families) creates tax consequences for the gift giver or that working in another state subjects a taxpayer to tax in more than just his or her home state.

While students may not yet have significant exposure to all the tax issues raised in the Big Picture scenario, the exercise provides an opportunity to help students think about why tax consequences might arise and how to go about expanding their knowledge of tax law. For example, employing children in a family business raises questions about FICA withholding as well as what constitutes reasonable compensation. The student might make the link to FICA

withholding after reading the chapter. However, a quick search on the IRS's web page results in a page that provides information about tax consequences that arise when hiring family members (<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Family-Help>). The FICA withholding discussion might lead to a discussion of incentives related to family members' salaries which could nicely lead into a discussion of why the IRS might be interested in auditing a family business/closely held business.

The scenario could also be integrated into a discussion of what is the "best" tax system, especially because the Carters are currently employed while the Walkers are retirees. The instructor could use this fact to address why differently situated taxpayers may have varying preferences about what type of tax system is the "best" tax system.

APPROACHING THE STUDY OF TAXATION

What Is Taxation?

1. "Taxes are what we pay for civilized society." – Oliver Wendell Holmes, Jr.
2. The primary purpose of taxation—to raise revenue for government operations.
3. Taxation is often used as a tool to influence the behavior of individuals and businesses.
 - a. Income tax credits are designed to encourage people to purchase a fuel-efficient car.
 - b. A tobacco excise tax may discourage individuals from smoking.

Taxation in Our Lives

4. Individuals are affected most directly by taxes when they need to pay them.
 - a. Direct tax is paid to the government by the person who pays the tax (i.e., personal income tax and property taxes).
 - b. Indirect tax includes things such as a state sales tax on the purchase of tangible goods such as clothing. The tax is collected and remitted to the government by the seller. The buyer is charged the tax along with the purchase price of the goods or services or it may be embedded in the price charged.
5. Ultimately, all taxes are paid by individuals.
6. Federal, state, and local elections often include initiatives that deal with taxation, such as whether state income taxes should be raised (or lowered), whether a new tax should be imposed on soda, or whether the sales tax rate should be changed.

The Relevance of Taxation to Accounting and Finance Professionals

7. Accounting and finance professionals must understand the various types of business taxes to assist effectively with: compliance, planning, financial reporting, controversy, and cash management.
8. The level and depth of tax knowledge needed for any accounting or tax professional depends on his or her specific job.
9. Much of taxation is transaction-based. How a transaction is structured has varying tax consequences that must be considered.

How to Study Taxation

10. The goal of studying taxation is being able to recognize issues (or transactions) that have tax implications and, when possible, trying to understand the justification for them.
11. Taxation is an important and exciting topic due to constant change by the three branches of our Federal government (as well as changes by state and local governments), the significance of taxes to the bottom line of a company's and an individual's finances, and the impact on our economy and society.
12. In studying taxation, focus on understanding the rules and the why(s) behind them. Also consider how the rules apply to different types of taxpayers and to taxpayers of varying income levels and sophistication of transactions.

A BRIEF HISTORY OF U.S. TAXATION

13. Constitutionality and type of taxpayer. Emphasize the difference between the income tax on individuals and that imposed on corporations in terms of whether such taxes were allowed under the Constitution prior to the passage of the Sixteenth Amendment.

Early Periods

14. The tax imposed on individuals was broad enough to tax income from real and personal property. As such, it was a direct tax and required apportionment under the Constitution.
 - a. In *Pollock v. Farmers' Loan and Trust Co.*, the Supreme Court found the income tax applicable to individuals unconstitutional.
 - b. However, the Court did not hold that a tax on income from personal services was unconstitutional.
 - c. The corporate income tax, enacted in 1909, was held to be constitutional, because it was deemed to be an excise tax. In essence, it was considered to be a tax on the right to do business in corporate form. It was likened to a form of franchise tax.

Because a corporation is an entity created under state law, jurisdictions possess the right to tax its creation and operation. Note that many states still impose franchise taxes on corporations under this rationale.

15. Tests of constitutionality. The income tax imposed during the Civil War period came and went without ever being successfully challenged under the U.S. Constitution. Only when the income tax was reenacted in 1894 was the issue of constitutionality raised again and successfully pursued in the courts.
16. Criticism of income tax. One of the reasons the income tax evoked such criticism was that many regarded it as an invasion of privacy. At the turn of the century, financial affairs were regarded as highly personal and only concerned the party involved, not the business of the U.S. government.
17. Ratification of Sixteenth Amendment. The timing of the ratification of the Sixteenth Amendment to the U.S. Constitution (1913) was instrumental in the financing of U.S. participation in World War I.

Revenue Acts

18. Tax law prior to the 1939 IRC: The tax practitioner or the tax professor of past years must have encountered difficulty prior to the enactment of the Internal Revenue Code of 1939.
 - a. For example, the resolution of a particular problem might have required reference to dozens of different statutes.
 - b. What was established as the law in one statute could have been rescinded or modified by a later statute.
 - c. The code approach solved such problems by bringing all of these statutory materials together in one place (i.e., codification) and provided the practitioner with the latest word on any one issue (since changes are codified).

Historical Trends

19. The income tax is a major source of revenue for the Federal government (see Exhibit 1.1 in the text). The need for revenues to finance World War II converted the income tax into a mass tax.
20. The complexity of current tax laws forces taxpayers to seek assistance in preparing returns: more than one half pay a preparer and one third purchase tax software.

TAX SYSTEM DESIGN

Legal Foundation

21. The U.S. Constitution gives Congress the power to “lay and collect taxes” and also provides some limits on this taxing power, which led to enactment of the Sixteenth Amendment to allow for an income tax.
22. The jurisdiction’s underlying governing documents must be reviewed to determine whether they impose any restriction relevant to taxation.

The Basic Tax Formula

23. Basic tax formula is: Tax base \times Tax rate = Tax liability
24. Tax Base. The tax base is the amount to which the tax rate is applied.
25. For Federal income tax, the tax base is taxable income.
26. Tax Rates. A tax is *proportional* if the rate of tax remains constant for any given income level. A tax is *progressive* if a higher rate of tax applies as the tax base increases.

Tax Principles

27. Adam Smith’s (*The Wealth of Nations*) canons of taxation.
 - a. Equity. Each taxpayer enjoys fair and equitable treatment by paying taxes in proportion to his income level (ability to pay).
 - b. Certainty. A tax structure is “good” if the taxpayer can readily predict when, where, and how a tax will be levied.
 - c. Convenience of payment. A tax should be easily assessed and collected with its administrative costs being low.
 - d. Economy in collection. A “good” tax system involves only nominal collection costs by the government and minimal compliance costs by the taxpayer.
28. The American Institute of Certified Public Accountants (AICPA) has issued *the Guiding Principles of Good Tax Policy: A Framework for Evaluating Tax Proposals*. It identifies 12 principles that are commonly used as indicators of desirable tax policy. See Exhibit 1.2 in the text for an application of these principles to a proposed tax law change.

MAJOR TYPES OF TAXES

29. In introducing the discussion of the various components of the U.S. tax system, Figure 1-1 at the end of the Lecture Notes for this chapter may be a useful resource.

Property Taxes

30. Ad valorem taxes on realty look to the value of the property as the base for the imposition of the tax. How such value is determined varies and often is subject to controversy between the property owner and the taxing authority.
31. Property taxes fall into two categories: those imposed on real property (land and buildings) and those imposed on personal property (assets other than land and buildings).
32. Whether a property tax is based on value (i.e., ad valorem) could be important for income tax purposes.
33. Ad Valorem Taxes on Real Property. Realty is land and anything permanently attached to land.
34. Ad valorem taxes are exclusively within the province of the states and their local political subdivisions.
35. Ad Valorem Taxes on Personal Property. Personalty encompasses all assets that are not realty. Both realty and personalty can be either business use or personal use.
36. Personal property can also be classified as tangible property or intangible property. For ad valorem tax purposes, intangible personalty includes stocks, bonds, and various other securities (e.g., bank shares).

Transaction Taxes

37. Transaction taxes include Federal and state excise taxes and state and local general sales taxes, severance taxes, death taxes, and gift taxes.
38. Federal Excise Taxes. Examples of Federal excise taxes include those imposed on tobacco, gasoline, telephone usage, air travel, and alcohol.
 - a. Excise taxes deal with the transfer of a specified commodity (e.g., tobacco or alcohol).
 - b. In the past, Federal excise taxes were imposed on entertainment admissions, jewelry, leather goods, cosmetics, boats, aircraft, and luxury automobiles.
39. State and Local Excise Taxes.
 - a. All states tax the sale of gasoline, liquor, and tobacco products. However, the rates vary significantly.
 - b. Excise taxes found at some state and local levels include those on admission to amusement facilities, on the sale of playing cards, and on prepared foods.

- c. Some counties impose a transaction tax on the transfer of property that requires the recording of documents (e.g., real estate sales).
 - d. Over the last few years, two types of excise taxes imposed at the local level have become increasingly popular: the hotel occupancy tax and the rental car “surcharge.”
40. **General Sales Taxes.** The difference between an excise tax and a general sales tax is tied to the scope of the transaction covered by the tax.
- a. **Sales tax.** Sales taxes cover a wide range of products or transactions. Some states exempt certain transactions (e.g., sales of food to be consumed off the premises and sales of certain medicines and drugs).
 - b. **Use tax.** Every state that has a general sales tax also imposes a use tax. The purpose of the use tax is to prevent the avoidance of the sales tax through the purchase of items in other states that have no sales taxes or that provide for lower rates. A use tax is an ad valorem tax, usually at the same rate as the sales tax, on the use, consumption, or storage of tangible property. Alaska, Delaware, Montana, New Hampshire, and Oregon impose neither a sales nor a use tax.
 - c. **Sales tax holidays** are becoming more popular. Many states schedule the holiday for August back-to-school buying or to encourage the purchase of energy-conserving appliances and hurricane preparedness items.
41. **Severance Taxes.**
- a. Transaction taxes that are based on the notion that the state has an interest in its natural resources
 - b. Imposed when natural resources are extracted.

Taxes on Transfers at Death

42. These taxes are a type of excise tax and fall under the classification of transaction taxes.
- a. **Estate tax versus inheritance tax.** If a tax is imposed at death on the right of a decedent to pass property at death, it is classified as an estate tax. If it taxes the right to receive property from a decedent, it is termed an inheritance tax.
 - b. **Federal taxation versus state taxation.** The Federal government does not impose an inheritance tax and relies exclusively on an estate tax. However, state governments can levy both inheritance taxes and estate taxes.
43. **The Federal Estate Tax.** The Federal estate tax does not apply to all estates; only estates over a certain value are taxed. To accomplish this, the unified transfer tax credit is

applied against the value of the estate. To the extent that the credit does not reduce the value of the estate to zero, the estate tax applies.

44. State Taxes on Transfers at Death. May include an inheritance tax, an estate tax, or both. The taxes will differ according to whether the tax is imposed on the heirs or on the estate. Some states completely exempt from taxation amounts that pass to a surviving spouse.

Gift Taxes

45. A gift tax is an excise tax levied on the right to transfer property. The tax is imposed on transfers made during the owner's life and not at death.
46. The Federal Gift Tax. The purpose of the Federal gift tax is to preclude avoidance of the Federal estate tax.
- In this regard, note that the Federal estate tax preceded the Federal gift tax.
 - In 2018, the Federal gift tax allows each donor an annual exclusion of \$15,000 for gifts to each donee (\$14,000 in 2017).
 - Apparently, most states do not consider the tax avoidance potential as being significant, given that only a few have seen fit to enact a state gift tax.
47. Gift splitting effectively allows the annual exclusion to double.
48. The gift tax and estate tax rate schedules are the same. The schedule is commonly referred to as the unified transfer tax rate schedule.
49. The Federal gift tax is cumulative in effect. What this means is that the tax base for current taxable gifts includes past taxable gifts.
50. Making lifetime gifts of property carries several tax advantages over passing the property at death.
- If income-producing property is involved, a gift may shift subsequent income to donees in a lower income tax bracket.
 - If the gift involves property that is expected to appreciate in value, future increases in value will be assigned to the donee and will not be included in the donor's estate.
 - Due to the annual exclusion (\$15,000 per donee in 2018; \$14,000 per donee in 2017), some of the gift can escape tax.

Income Taxes

51. Income taxes are levied by the Federal government, most states, and some local governments. Most jurisdictions attempt to ensure the collection of income taxes by requiring pay-as-you-go procedures.
52. Federal Income Taxes. With reference to income taxes, the following observations would be useful:
- a. Exhibit 1.3 in the text illustrates the formula for the Federal income tax imposed on individuals.
 - b. The Federal corporate income tax is progressive in nature. However, it does not include the computation of adjusted gross income (AGI) and does not provide for the standard deduction and personal and dependency exemptions.
53. State Income Taxes. Some characteristics of state income taxes include:
- a. “Piggyback” concept. The trend as to state income taxes is to use the Federal tax base for income determination. Most states have gone with the “piggyback” concept whereby the state income tax liability is calculated as a flat rate applied to an adjusted Federal taxable income amount.
 - b. Some states “decouple” from selected Federal tax changes passed by Congress. The purpose of the decoupling is to retain state revenue that would otherwise be lost.
 - c. Many state income tax returns provide checkoff boxes for donations to various causes. Many are dedicated to medical research and wildlife programs, but special projects are not uncommon.
 - d. Some states have occasionally instituted amnesty programs that allow taxpayers to pay back taxes (and interest) on unreported income with no (or reduced) penalty. In many cases, the tax amnesty has generated enough revenue to warrant the authorization of follow-up programs covering future years. Amnesties usually include other taxes as well (e.g., sales, franchise, and severance).
54. Local Income Taxes. The imposition of income taxes by local jurisdictions (e.g., cities such as Cleveland, Kansas City (Missouri), and New York), though not uncommon, is more the exception than the rule.

Employment Taxes

55. There are two major employment taxes: FICA (Federal Insurance Contributions Act) and FUTA (Federal Unemployment Tax Act). Both taxes can be justified by social and public welfare considerations. A limitation exists depending on the employment relationship (i.e., employee versus self-employed).

56. FICA Taxes.

- a. Uncertainty of future FICA rate and base amounts. The relevance of the increases in the rates and the base amounts. In this regard, mention the uncertainty that exists as to future increases.
- b. Employee income tax credit for excess FICA withholdings. Relief is provided an employee (i.e., an income tax credit) in the case of excess FICA tax withholdings.
- c. The Social Security tax rate is 6.2% (and generally does not change) and the Medicare tax rate is 1.45%. The base amount for Social Security is \$128,400 for 2018 (\$127,200 for 2017). There is no limit on the base amount for the Medicare tax. The employer must match the employee's portion for both Social Security tax and Medicare tax.
 - (1) An additional 0.9% is imposed on earned income (including self-employment income) above \$200,000 (single filers) or \$250,000 (married filing jointly).
 - (2) Unlike Social Security and the regular Medicare portion, an employer does not have to match the 0.9%.
- d. Taxpayers who are not employees (e.g., sole proprietors, independent contractors) are subject to a form of Social Security tax known as self-employment tax. The applicable rate is 12.4% for Social Security and 2.9% for Medicare tax, or twice that applicable to an employee.

57. FUTA Taxes.

- a. The purpose of the tax is to provide modest financial relief in the event of the unemployment of a covered employee. This should be contrasted with the retirement objective of the FICA tax.
- b. Unlike FICA, the incidence of FUTA falls solely on the employer.
- c. For 2018, FUTA applies at a rate of 6.0% of the first \$7,000 of covered wages. Merit rating credits may reduce the tax to a much lower percentage.
- d. Unlike FICA, FUTA requires compliance with both Federal and state provisions. Also, FUTA is paid entirely by the employer.

Other U.S. Taxes

58. View the summary of taxes in the United States in Concept Summary 1.2 in the text.

59. Federal Customs Duties. Customs duties are variously described as import taxes and tariffs.
- These levies served as the mainstay of the Federal revenue system until slightly after the turn of the nineteenth century. Tariffs and excise taxes alone paid off the national debt in 1835 and enabled the U.S. Treasury to pay a surplus of \$28 million to the states.
 - In recent years, tariffs have been an instrument for carrying out protectionist policies instead of a means of generating revenue.
 - History shows that tariffs often lead to retaliatory action on the part of the nation or nations affected.
60. Miscellaneous State and Local Taxes.
- Most states impose a franchise tax on corporations for the right to do business in that state.
 - Generally, the tax is based on the capitalization of the entity.
 - Similar to the franchise tax are occupational fees that apply to various trades or businesses (e.g., a liquor store license; a taxicab permit; or a fee to practice a profession such as law, medicine, or accounting). Most of these are not significant revenue producers, and the fees are used to fund the costs of regulating the business or profession in the interest of the public good.

Proposed U.S. Taxes

61. Considerable dissatisfaction with the U.S. Federal income tax has led to several recent proposals that are drastic in measure.
62. Flat Tax. Proposed to replace the current graduated income tax with a single rate of 19%.
- This proposal achieves some of the administrative advantages of a value added tax (VAT) relative to a sales tax, while also partially addressing concerns that consumption taxes impose a relatively heavier tax burden on lower-income taxpayers.
 - Wages, pension contributions, materials costs, and capital investments are deducted from the tax base.
 - Individuals (or households) are assessed a 19% flat-rate tax on wages and pension benefits above an exemption of \$25,500 for a family of four. No other income is taxable, and no other deductions are allowed.

63. National Sales Tax.
- a. Would operate similarly to most state sales taxes although the tax base would be larger. The rate would also be higher to generate the revenues needed to replace the Federal income tax.
 - b. The proposed “Fair Tax” is a type of national sales tax.
 - (1) 23% tax on all purchases, including food and medicine, real property, and many types of services.
 - (2) Exempt items are business expenses, used goods, and education costs.
 - (3) The “Fair Tax” would replace income tax (both individual and corporate), payroll taxes, gift, and estate taxes.
64. Value Added Tax. Imposed on the value added by each party in a production cycle.
- a. A system of credits results in the VAT ultimately only being paid by the final consumer. This form of VAT—a credit invoice VAT—is similar to a sales tax, but more efficient because assessment throughout the production process better ensures collection of the tax.
 - b. A VAT has been considered in the United States various times since the 1960s.
 - c. One challenge of implementing a VAT in the United States is that it is a regressive tax. As a result, adjustments need to be implemented to protect lower-income taxpayers. Another challenge is that the Treasury Department (and IRS) will have to learn how to implement and enforce the VAT.

GLOBAL TAX ISSUES

VAT in USA? Is the United States out of sync with other countries by not having a VAT? What are the advantages and disadvantages of VAT?

65. Carbon Tax. Aims to help reduce carbon emissions. The tax could be applied to fossil fuels based on their level of greenhouse gas emissions. Some people suggest a higher gasoline excise tax as a simple form of a carbon tax.
66. Financial Transaction Tax. A financial transaction tax can take many forms.
- a. For example, it could be imposed on the value of financial instruments purchased.
 - b. It could be restricted in some way (e.g., only applying to high-frequency trading).

- c. It could be imposed on the value of bank assets.
- d. Because the tax base is quite large, the tax rate would likely be low, perhaps even less than 1%.
- e. The primary concern with this type of tax is the possible adverse effects on financial markets.

TAX ADMINISTRATION

Internal Revenue Service

- 67. Treasury Department is responsible for administering Federal tax laws.
- 68. The IRS is responsible for enforcing the tax laws.
- 69. The Commissioner of the IRS is appointed by the president and is responsible for establishing policy and supervising IRS activities.

The Audit Process

- 70. Selection of Returns for Audit. Only a small number of tax returns are audited each year. The probability for audit increases for higher-income taxpayers. Tax returns are selected for audit in different ways:
 - a. A common technique for individuals is called information matching. For example, the IRS compares information returns it receives to an individual's tax return.
 - b. Certain groups of taxpayers are subject to audit much more frequently than others. These groups include individuals with large amounts of gross income, self-employed individuals with substantial deductions, and taxpayers with prior tax deficiencies.
 - c. If information returns are not in substantial agreement with reported income.
 - d. If an individual's itemized deductions are in excess of averages established for various income levels, the probability of an audit is increased.
 - e. Filing of a refund claim by the taxpayer may prompt an audit of the return.
 - f. Information obtained from other sources (e.g., informants and news items) may lead to an audit.
- 71. Types of Audits. Note the differences between the various types of audit (i.e., correspondence, office, and field).

- a. If the issue is minor, the matter often can be resolved by correspondence between the IRS and the taxpayer.
- b. An office audit usually is restricted in scope and is conducted in the facilities of the IRS.
- c. A field audit involves an examination of numerous items reported on the return and is conducted on the premises of the taxpayer or the taxpayer's representative.
- d. At the end of an audit, the examining agent issues a Revenue Agent's Report (RAR) that summarizes the findings. The RAR will result in a refund (the tax was overpaid), a deficiency (the tax was underpaid), or a no change (the tax was correct) finding.

72. Settlement Procedures.

- a. If an audit results in an assessment of additional tax and no settlement is reached with the IRS agent, the taxpayer may attempt to negotiate a settlement with a higher level of the IRS.
- b. If a satisfactory settlement is not reached in the administrative appeal process, the taxpayer can litigate the case in the Tax Court, a Federal District Court, or the Court of Federal Claims.

Statute of Limitations

73. A statute of limitations is a provision that requires any lawsuit to be brought within a reasonable period of time.
- a. Found at the state and Federal levels, such statutes cover a multitude of suits, both civil and criminal.
 - b. For the Federal tax law, there are two major categories: one applying to assessments by the IRS and one concerning claims for refunds by taxpayers.
74. Assessment by the IRS.
- a. The IRS may assess an additional tax liability against a taxpayer within three years of the filing of the income tax return.
 - b. If a taxpayer omits an amount of gross income in excess of 25% of the gross income reported on the return, the statute of limitations is increased to six years. This applies only to the omission of income.
 - c. There is no statute of limitations on assessments of tax if no return is filed or if a fraudulent return is filed.

Example: For 2018, Mark, a calendar year taxpayer, reported gross income of \$400,000 on a timely filed income tax return. If Mark had omitted more than \$100,000 ($25\% \times \$400,000$) in income, the six-year statute of limitations would apply to 2018 tax year. This presumes the absence of fraud on the part of Mark. If the omission was deliberate (i.e., due to fraud), the statute never starts to run.

75. Limitations on Refunds. Claims for refund are limited to within three years from the date the return was filed or within two years from the date the tax was paid, whichever is later. (Income tax returns that are filed early are deemed to have been filed on the date the return was due.)

Interest and Penalties

76. With refunds, no interest is allowed if the overpayment is refunded to the taxpayer within 45 days of the later date the return is filed or is due.
77. The tax law provides various penalties for lack of compliance by taxpayers. Some of these penalties are summarized as follows:
- a. For a failure to file a tax return by the due date, a penalty of 5% per month up to a maximum of 25% is imposed on the amount of the tax shown as due on the return. Any fraction of a month counts as a full month.
 - b. A penalty for failure to pay the tax due as shown on the return is imposed in the amount of 0.5% per month up to a maximum of 25%. Any fraction of a month counts as a full month. During any month in which both the failure to file penalty and failure to pay penalty apply, the failure to file penalty is reduced by the amount of the failure to pay penalty.
 - c. A negligence penalty of 20% is imposed if any of the underpayment was for intentional disregard of the rules and regulations with intent to defraud.
 - d. Various fraud penalties may be imposed. Fraud is a deliberate action on the part of the taxpayer evidenced by deceit, misrepresentation, concealment, etc. In the case of civil fraud, the penalty is 75% of the underpayment attributable to fraud. In the case of criminal fraud, the penalties can include large fines as well as prison sentences.

GLOBAL TAX ISSUES

Outsourcing of Tax Return Preparation. Outsourcing is being applied to the preparation of tax returns and will likely increase in volume in the coming years. Practitioners justify outsourcing as a means of conserving time and effort that can be applied toward more meaningful tax planning on behalf of their clients. What are other advantages? What are some potential disadvantages of this outsourcing?

Tax Practice

78. Ethical Guidelines. The AICPA's "Statements on Standards for Tax Services" (SSTs) are a part of the Code of Professional Ethics and are enforceable by the AICPA and most state's licensing statutes.
- a. Tax professionals should not advocate questionable positions. Simply because a return might not be audited is not a good reason to advocate a particular tax return position.
 - b. A practitioner can use a client's estimates if they are reasonable under the circumstances.
 - c. A practitioner does not have to audit all the information provided by a client. The practitioner should verify that the client-provided information makes sense and should verify that information where it is questionable. A practitioner can use a client's estimates if they are reasonable under the circumstances.
 - d. Upon learning of an error on a past tax return, advise the client to correct it. Do not inform the IRS of the error.
79. Statutory Penalties Imposed on Tax Return Preparers.
- a. Various penalties involving procedural matters.
 - b. Penalty for understatement of a tax liability based on a position that lacks any realistic possibility of being sustained.
 - c. Penalty for any willful attempt to understate taxes.
 - d. Penalty for failure to exercise due diligence in determining eligibility for, or the amount of, an earned income tax credit.

UNDERSTANDING THE FEDERAL TAX LAW

80. The Federal tax law reflects the three branches of our Federal government.
- a. The primary objective of Federal tax law is the raising of revenue. The tax law does not have as its sole objective the raising of revenue.
 - b. Other considerations (economic, social, equity, and political factors) also play a significant role. The Treasury Department, the IRS, and the courts also have significant impacts on the evolution of Federal tax law.

Revenue Needs

81. When enacting tax legislation, a deficit-conscious Congress often has been guided by the concept of revenue neutrality so that changes neither increase nor decrease the net revenues received by the government.
82. When tax reductions are involved, the full impact of the legislation can be phased in over a period of years. Or as an alternative, the tax reduction can be limited to a period of years. When the period expires, the prior law is reinstated through a sunset provision.

Economic Considerations

83. Control of the Economy.
 - a. Congress has used the tax depreciation rules as a means of controlling the economy.
 - b. Longer asset lives and the use of straight-line depreciation should discourage capital outlays.
 - c. Congress also uses incentives like immediate expensing (§ 179) and bonus depreciation to stimulate the economy when needed.
 - d. Lowering of tax rates. If, however, Congress is using the concept of revenue neutrality, these rate reductions may be offset by a reduction or elimination of deductions or credits. As a result, lower tax rates do not always mean lower taxes.
84. Encouragement of Certain Activities. In connection with encouragement of certain activities, mention could be made of the following:
 - a. Research and development expenditures can be either deducted in the year incurred or capitalized and amortized over a period of 60 months or more. Inventions are also encouraged by tax law. Patents can qualify as capital assets, and under certain conditions, their sale results in long-term capital gain treatment.
 - b. Tax law addresses the nation's energy policy—in terms of both our reliance on carbon-based fuels and the need to ease the problem of climate change.
85. Encouragement of Certain Industries.
 - a. Historically, agricultural activities have been favored under Federal tax law.
 - b. The tax law favors the development of natural resources by permitting the use of percentage depletion and a write-off (rather than a capitalization) of certain exploration costs.

- c. The railroad and banking industries also receive special tax treatment under Federal tax law.
86. Encouragement of Small Business. Small business development is encouraged under the tax law.
- a. The shareholders of a small business corporation can make a special election that allows the profits (or losses) of the corporation to flow through to its shareholders, avoiding the corporate income tax.
 - b. Another provision allows a shareholder in a small business corporation to take an ordinary deduction (rather than a capital loss) for any loss recognized on the stock investment.

Social Considerations

87. Some provisions of the Federal tax law, particularly those dealing with individuals, can be explained by social considerations. Examples:
- a. Accident and health plans financed by employers.
 - b. Group term life insurance coverage for employees.
 - c. Qualified pension or profit sharing plans for employees.
 - d. Deduction for charitable contributions.
 - e. The credit for child and disabled dependent care.
 - f. The earned income credit provides relief for low-income taxpayers.
 - g. Credits made available to elderly and disabled persons. Credits allowed to businesses that incur expenditures to make their facilities more accessible to the disabled.
 - h. Various tax credits, deductions, and exclusions to encourage additional education.
 - i. The disallowance for certain expenditures that are contrary to public policy.

Equity Considerations

88. The concept of equity is relative. Equity is not what appears fair or unfair to any one taxpayer or group of taxpayers. The concept of equity appears in tax provisions that

- alleviate the effect of multiple taxation and postpone the recognition of gain when the taxpayer lacks the ability or wherewithal to pay the tax.
89. **Alleviating the Effect of Multiple Taxation.** In connection with alleviating the effect of multiple taxation, the text discusses the deduction/credit alternative permitted in the case of foreign income taxes. Other possibilities are summarized below.
- a. Relief from possible triple taxation is provided to a corporate shareholder via the dividends received deduction (§§ 243 to 247).
 - b. The low tax rate on qualified dividend income should be noted. Although double taxation is not eliminated, its effect is lessened by allowing taxation at preferential capital gain rates.
 - c. Some state income tax laws allow a deduction for Federal income taxes.
 - d. The Federal estate tax allows a deduction (§ 2058) for the state death taxes paid.
90. **The Wherewithal to Pay Concept.** Regarding the wherewithal to pay concept (recognizes the inequity of taxing a transaction when the taxpayer lacks the means with which to pay the tax), the text illustrates its application with an involuntary conversion situation. By and large, most wherewithal to pay provisions in the tax law do not permanently avoid gain or loss recognition but operate on a deferral principle (e.g., like-kind exchanges and involuntary conversions). Because of the basis carryover rules, gain or loss recognition merely is postponed to some further disposition that does not meet the requirements of a nontaxable exchange.
- a. Involuntary conversion. If all of the proceeds from an involuntary conversion are invested within the required statutory time period in property that is similar or related in service or use, none of the realized gain is recognized.
 - b. Transfer of property to a controlled corporation. A transfer of property to a controlled corporation results in no recognition of gain or loss to the transferor if solely common stock is received in exchange.
91. **Mitigating the Effect of the Annual Accounting Period Concept.** In addition to the items mentioned in the text (e.g., net operating losses and installment sales), other examples where the tax law mitigates the effect of the annual accounting period concept include the following:
- a. Crop insurance proceeds. Section 451(d) permits a cash basis taxpayer to defer the recognition of income from the receipt of crop insurance proceeds to the year in which he or she normally would have sold the crop that was destroyed.
 - (1) This deferral is elective.

- (2) By making the election, the taxpayer avoids the concentration in the same tax year of the income from two harvests (i.e., sale proceeds from the crop grown the previous year and sold in the current year plus the insurance proceeds from the destruction of the crop in the current year that would have been sold next year).
 - b. Claim of right and § 1341. On occasion, income may be received in one tax year and have to be repaid in a subsequent year. Because it appears that the taxpayer has an unrestricted right to such an item when received, the income is taxable. When such an item received under a claim of right is later restored, § 1341 offers the taxpayer a choice of tax treatment.
 - (1) The taxpayer either may claim as a credit the amount of tax restored or may claim as a credit the amount of tax that the prior inclusion in gross income generated.
 - (2) In no event is the finality of the annual accounting period concept disturbed by allowing the taxpayer to file an amended return for the year of inclusion.
 - (3) The approach permitted by § 1341 merely mitigates the effect of the variations in tax brackets that might exist between the year of inclusion and the year of repayment.
 - c. Disaster area losses. Normally, casualty losses are deductible in the year incurred. Section 165(i), however, permits certain disaster area losses to be claimed as deductions in the prior taxable year.
 - (1) This accelerates the benefit of the deduction, all of which might come at a time when the taxpayer has suffered severe economic loss.
 - (2) The disaster area loss provision represents an exception to the annual accounting period concept and can be justified as a relief measure.
92. Coping with Inflation.
- a. Because of the progressive nature of the income tax, a wage adjustment to compensate for inflation could place the employee in a higher income tax bracket. Known as bracket creep, its overall impact is an erosion of purchasing power.
 - b. Congress recognized this problem and began to adjust various income tax components, such as tax brackets, standard deduction amounts, and personal and dependency exemptions, through an indexation procedure. Indexation is based on the rise in the consumer price index over the prior year.
 - c. Explain how indexation would benefit a person with a fixed income (e.g., retiree).

Political Considerations

93. A large segment of the Federal tax law is made up of statutory provisions. Because these statutes are enacted by Congress, political considerations often influence tax law.
94. Special Interest Legislation. The classic example of special interest legislation is the special treatment allowed prepaid subscription and dues income.
- a. Although other types of prepaid income (e.g., rents) are taxed when received, dues and subscriptions are taxed as earned.
 - b. Historically, the special relief was the work of the American Automobile Association which desired relief from having to recognize income on the receipt of multiyear dues income.
95. Special interest legislation is not necessarily to be condemned if it can be justified on economic, social, or some other utilitarian grounds.
96. Political Expediency Situations. Various tax reforms rise and fall in favor with the shifting moods of the American public.
- a. Measures that deter more affluent taxpayers from obtaining so-called preferential tax treatment have always had popular appeal. Examples include:
 - (1) Imputed interest rules.
 - (2) Limitation on the deductibility of interest on investment indebtedness.
 - b. Some provisions phase out tax breaks as income rises. These phaseouts are called “stealth taxes.” Examples include the phaseout of the child tax credit and education tax credits.
97. State and Local Government Influences. Another change that the community property system has brought to the Federal tax law is the marital deduction allowed for estate and gift tax purposes.
- a. In a case where one of the spouses predeceases the other, the surviving spouse’s share of the community property is not included in the gross estate and, therefore, is not subject to the Federal estate tax. The marital deduction tries to extend this advantage to noncommunity property (i.e., common law jurisdictions) situations by allowing (within limits) property to pass to the survivor free of tax.
 - b. In a community property jurisdiction, the motivation to make gifts between spouses to balance their potential estates is not as severe as in common law

jurisdictions, given that each spouse already owns one-half of any community property.

Influence of the Internal Revenue Service

98. The IRS as Protector of the Revenue. Examples of the “loophole” closing procedure initiated by the IRS include the following:
- a. Disallowance as a deduction certain excess investment interest expense [§ 163(d)].
 - b. The imputed interest rules (§§ 483 and 7872).
 - c. The hobby loss disallowance rules (§ 183).
 - d. The virtual elimination of the deduction for prepaid interest by cash basis taxpayers (§ 461).
 - e. At-risk limitations (§ 465).
 - f. Limitations on passive activity losses (§ 469).
 - g. For partnerships, S corporations, and personal service corporations, a requirement that they utilize a calendar year for tax purposes [§§ 441(i), 706, and 1378] under certain circumstances.
 - h. Except for certain financial institutions, unavailability of the reserve method for deducting bad debts (§ 166).
 - i. The right to make adjustments to a taxpayer's method of accounting in order to clearly reflect income [§ 446(b)].
99. Administrative Feasibility. Many provisions in the tax law simplify the audit function of the IRS.
- a. The IRS long ago realized the importance of placing taxpayers on a pay-as-you-go basis. Withholding procedures apply to wages, while the tax on other types of income may have to be paid via quarterly estimated payments.
 - b. Congress has passed many provisions that impose interest and penalties on taxpayers if they don't comply with the tax law.
 - c. The audit process conducted by the IRS is key to an effective administration of our tax system. To carry out this function, the IRS is aided by provisions that reduce the chance of taxpayer error or manipulation, thus simplifying the audit effort.

Influence of the Courts

100. Judicial Concepts Relating to Tax. A leading tax concept developed by the courts deals with the interpretation of statutory tax provisions that operate to benefit taxpayers.
- a. If a taxpayer wants a relief provision to apply, the taxpayer has the responsibility to meet the provision's requirements (i.e., no exceptions).
 - b. The arm's length concept is important here. Particularly in dealings between related parties, transactions may be tested by asking this question: Would unrelated parties have handled the transaction in the same way?
101. Judicial Influence on Statutory Provisions.
- a. Some court decisions have been so important that Congress incorporated them into the Internal Revenue Code.
 - b. On occasion, Congress reacts negatively to judicial interpretations of the tax law.

ETHICS AND EQUITY FEATURES

Solutions to Ethics & Equity features are located in the Solutions Manual.

RESEARCH PROBLEMS

Solutions to end-of-chapter Research Problems are located in the Solutions Manual.

Figure 1-1
Summary of Taxes in the United States

<u>Type of Tax</u>	<u>Imposed by Jurisdiction</u>		
	<u>Federal</u>	<u>State</u>	<u>Local</u>
Property taxes:			
Ad valorem on realty	No	Yes	Yes
Ad valorem on personalty	No	Yes	Yes
Transaction taxes:			
Excise	Yes	Yes	Few*
General sales	No	Most	Some
Severance	Yes **	Most	No
Estate	Yes	Some	No
Inheritance	No	Some	No
Gift	Yes	Few	No
Income taxes:			
Corporations	Yes	Most	Few
Individuals	Yes	Most	Few
Employment taxes:			
FICA	Yes	No	No
FUTA	Yes	Yes	No
Customs duties	Yes	No	No
Franchise taxes	No	Yes	No
Occupational taxes	Yes ***	Yes	Yes

* An example of a local excise tax might be a tax on hotel occupancy, typically referred to as a transient occupancy tax (TOT).

** For Federal public lands and continental-shelf areas.

*** An example is a fee to operate a beauty salon or barbershop.