

## ACC 384.4 and LAW 379M. Tax Planning for Business Entities - Fall, 2012

**Schedule:** Mon-Wed, 3:30-4:45pm (##02960 and 29435)  
**Classroom:** GSB 2.122  
**Office:** CBA 6.304G or, if the weather is pleasant, in the patio at the  
21st St Entrance to GSB.  
**Office Hours:** Mon-Wed, 5:00pm to 6:00pm and by appointment.  
**Instructor:** Stuart R. Singer  
**Email:** [stuart.singer@mcombs.utexas.edu](mailto:stuart.singer@mcombs.utexas.edu).

### Purpose of Course:

The class will cover various tax issues affecting mergers and acquisitions, including both tax-free reorganizations and taxable acquisitions. I expect everyone, at the end of the course, to be able to perform at the level of a professional with 5-6 years experience. This includes running the tax end of a deal, determining whether it should be taxable or tax-free, analyzing the variables for your client and both identifying and resolving the principal tax issues. This is one of the most challenging --- but also one of the most interesting --- areas of tax practice. This course is difficult and demands a great deal of thought, but I believe that there can be great benefits to your arsenal of skills as tax practitioners.

### Course Materials

The course materials will consist of readings in Bittker & Eustice, *Federal Taxation of Corporations and Shareholders*, which is available in RIA-Checkpoint. Go to Table of Contents, then Federal Library, then Federal Editorial Materials, then WG&L Federal Treatises, then Corporate Taxation, then B&E. There will be other materials, including cases, regulations and rulings, all available in the course packet available at the McCombs COPY CENTER on the Third Floor in GSB. **You should bring copies of the core code and regulation sections with you to every class.** There will be no outlines distributed. This means that you will have to take notes by hand.

### Classroom Department

Cell phones must be turned off while you are in class. Beverages are OK, but no food in class.

### Class Schedule

**There will be no class on Wednesday, October 17 or Wednesday, November 21.  
There will be a make-up class on Friday, October 5.**

### Evaluation and Grades

I will determine your final grade on the basis of two factors: written assignments during the course (70%), and your participation in our discussions during class (30%). There will be no exams.

## ***Reading Assignments***

The tax issues involved in mergers and acquisitions are difficult and complex, and even in a summary course such as this one the reading assignments are both detailed and long. Moreover, the knowledge in classes 1, 2 and 3 will form the base for understanding the material in classes 4, 5, and 6, and so on. You cannot fall behind in these assignments

## ***Written Assignments***

There will be three written assignments in the form which you, as professionals, would prepare for clients or employers. These may take the form of memoranda or drafting of sections of acquisition agreements. **The first two memorandum assignments will be given to you on Monday, October 8, and Monday, November 5, respectively, and you will have 3 days to turn them in. The third assignment will be given on the last day of class and you will have 2 days to turn it in.**

## ***Class Participation***

Just as I expect you to be able to communicate your analysis and conclusions in writing (in the memoranda discussed above), I also expect every student to participate regularly in our class discussion. **There will be no exceptions; you cannot succeed in this course unless you are prepared every day to recite in class.** It is far more important for each student to make efforts than to get the “right” answer. As professionals, all of the knowledge in the world will accomplish nothing unless it is coupled with the ability to express it clearly and to discuss it with your peers. I will grade each student each day on participation.

## **Missed Assignments and Attendance**

You will be excused from turning in work timely if you are deceased or if you become a parent during the semester. I am willing to entertain other excuses, but don't get your hopes up. A similar policy applies to taking an “incomplete” for the course.

## **Non-Tax Issues**

In some instances, you will determine that the tax issues under discussion raise certain non-tax issues, such as accounting treatment, securities regulation or simply sound business practice. You should feel free to add these to our discussion in class or in your written work --- bonus points may be available for these.

**Scholastic Dishonesty--Departmental Policy on Scholastic Dishonesty.** The Department of Accounting has no tolerance for acts of scholastic dishonesty. The responsibilities of both students and faculty with regard to scholastic dishonesty are described in detail in the department's Policy Statement on Scholastic Dishonesty. By teaching this course, I have agreed to observe all the faculty responsibilities described in that document. By enrolling in this class, you have agreed to observe all the student responsibilities described in that document. If the application of that Policy Statement to this class and its assignments is unclear in any way, it is your responsibility to ask me for clarification.

**Memoranda:** Each student is expected to complete the memoranda independently during the designated memorandum period. No student may refer to other students' memorandum solutions or discuss the memorandum with other students during the memorandum period.

**Professional Conduct.** The highest professional standards are expected of all members of the McCombs community. The collective class reputation and the value of the University of Texas experience hinges on this.

**Students with Disabilities:** The University of Texas at Austin provides upon request appropriate academic accommodations for qualified students with disabilities. For more information, you may call the Office of the Dean of Students at 471-6259, 471-4641 TTY.

| <u>UNIT</u>  | <u>TOPIC</u>  | <u>TEXT READING</u>                          | <u>CASES, REGS, CODE</u>  |
|--------------|---|--|---|
| 8-29         | Precedent: Statutory, Administrative and Judicial                                 |  | Excerpt from Saltzman, <i>IRS Practice &amp; Procedure</i>  |
| 8-29         | Tax-Deferred Reorgs; Statutory Framework  | B&E ¶¶ 12.01 and 12.02                       | Code Sections 354 and 368 (Excerpts).<br><i>Gregory v. Helvering, Tribune Company</i>   |
| 9-5 & 9-10   | Tax-Deferred Reorgs; A-Type   | B&E ¶12.22                                   | Reg. §1.368-2(b) [Excerpts].<br>Rev Ruls <b>55-305, 69-6, 70-223, 72-464, 77-428, 79-250, 2000-5, 2007-8.</b><br><i>Southwest Natural Gas, King Enterprises</i><br>PLR 9105017. |
| 9-12 & 9-17  | Tax-Deferred Reorgs; B-Type   | B&E ¶12.23                                   | Rev Ruls <b>56-613, 72-522, 76-223, 77-271, 79-4, 75-123.</b><br><i>Howard v. Comm., Turnbow v. Comm. Chapman v. Comm., Heverly v. Comm. West Coast Marketing</i>               |
| 9-19         | Tax-Deferred Reorgs; C-Type   | B&E ¶12.24                                   | Reg. §1.368-2(d).<br>Rev Ruls <b>57-518, 69-48, 70-224, 73-54, 73-102, 74-457, 78-47, 88-48</b><br>Rev Proc 77-37 (excerpt)<br><i>Everett v. US</i>                             |
| 9-24         | Tax-Deferred Reorgs; Step Transaction and Business Purpose Doctrines              | B&E ¶¶ 12.03, 12.61[1] & [3], 12.64[1] & [3] | Section 357[b]<br><i>Weller, Wortham</i><br><i>McDonald's Restaurants of Illinois, Penrod v. Comm.</i>  |
| 9-26         | Tax-Deferred Reorgs; Continuity of Interest and Continuity of Business Enterprise | B&E ¶12.21, 12.61[2]                         | Reg. §1.368-1(d) & (e) [Excerpts]<br>Rev Ruls <b>70-223, 76-528, 78-142, 84-71, 99-58.</b><br><i>Minnesota Tea Co. May B. Kass, J.E. Seagram</i>                                |
| 10-1 & 10-3  | Tax-Deferred Reorgs; Tax Treatment of Parties to the Reorg                        | B&E ¶¶ 12.42, 12.43                          | Code § 354.<br>Rev Ruls <b>69-91, 72-72, 72-327, 73-427, 74-515</b><br><i>Vermont Hydro-Electric, Southwest Consolidated</i>  |
| 10-5         | Tax-Deferred Reorgs Triangular Reorgs   | B&E ¶¶ 12.25                                 | Code §368(a)(2).<br>Regs. §§1.368-2(j), 1.1032-2<br>Rev Ruls. <b>72-576, 74-565, 77-428, 78-397, 79-155, 2001-26, 2001-46.</b>  |
| 10-8 & 10-10 | Tax Deferred Reorgs The Role of Section 351                                       | B&E: ¶¶ 3.19                                 | <i>American Bantam Car Culligan Water Conditioning Intermountain Lumber</i><br>Rev Ruls <b>70-140, 79-70, 79-194, 2003-51</b>   |

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|---------------|--|--|---|
| 10-15 & 10-22 | Tax-Deferred Reorgs; E- and F-Type   | B&E ¶¶ 12.27, 12.28  | Reg. §1.368-2(e)<br><i>Bazley v. Comm., Daisy Seide Newmarket Mfg v. U.S. Pridemark, Inc. v. Comm. Davant v. Comm., Role v. Comm. Rev Ruls 70-241, 72-265, 77-238</i>               |
| 10-24         | Corporate Divisions- Section 355   | B&E ¶¶ 11.01[1], 11.02, 11.03, 11.04, 11.10                              | Section 355 (Excerpt)<br><i>Rev Ruls 56-655, 57-492, 66-204, 69-293, 73-44, 86-125, 2002-49, 2003-18. Estate of Lockwood, W. E. Gabriel Fabrication</i>                             |
| 10-29         | Corporate Divisions- D-Type  | B&E ¶ 12.26  | Rev Ruls <i>77-191, 78-442, 2002-85, 2004-83</i> , former appendix-to Rev Proc 96-30  |
| 10-31 & 11-5  | Taxable Acquisitions Treatment of Acquirer, Target and Selling Shareholders                        | Bittker & Lokken: ¶¶ 43.1-4  | Code Sections 311, 336 and 1001<br><i>Burnet v. Logan Indopco, Commercial Security Bank</i>   |
| 11-7 & 11-12  | Taxable Acquisitions; Mechanics and Statutory Framework; Allocation of Consideration; Intangibles  | B&E: ¶¶ 10.40  | Code §§ 1060, 197(a)-(d)<br>Code § 338(a), (g) & (h)(10)<br><i>East Ford, Inc. Bemidji Distributing Co., Inc. Rev Rul 90-95 Fulton Container, Particelli, Baldarelli, Danielson</i> |
| 11-14         | Net Operating Losses and Other Tax Attributes  | B&E: ¶¶ 14.01, 14.03, & 14.42[3]   | Code §381(a), (b) and (c)(1).<br>Code § 382(a)-(g).<br><i>The Clare Company, S.F.H. Inc. Samson Investment Co., Garber Industries</i>   |
| 11-19 & 11-26 | Compensation Issues, including Golden Parachutes, Stock Options and Deferred Compensation          | Bittker & Lokken: NSOs ¶¶ 60.4, 60.5                                     | Code §§ 83, 280G<br>Reg. §1.280G-1, Excerpts<br>Rev Rul 2005-39<br>PLRs <i>8506001, 9737001, 200021008 Richard G. Cline Centel, Rupprecht</i>                                       |
| 11-28         | Documentation, Tax Opinions, Covenants, Warranties and Representations, Examination of the Target. | Excerpts: Sample Asset Purchase Agt, Due Diligence Checklist, Merger Agt | Sample tax opinion<br>Sample tax effects disclosure   |
| 12-3          | Non-Tax Issues   |  | S.E.C. Regulation S-K, Subpart 229.1000 (Mergers and Acquisitions)<br>HSR Disclosure Filing (excerpt)   |
| 12-5          | International Transactions   |  | Sections 367 and 7874   |