Welcome!

This course will provide you with an understanding of the current state of civil tax controversies. It is intended to be a practical class, focusing on how things operate in “the real world” and arming you with what you need to understand IRS administrative process and the litigation of civil tax matters. (Note that this class will primarily focus on large corporate controversies.) We will also spend one session discussing practical ethics issues in representing clients before the IRS, and one session discussing the emerging global trends in tax disputes, and how revenue authorities across the world are viewing the administrative tax process and its effect on dispute resolution. (Yes, there will be some tax policy talk in this class as well.)

Course Materials

There is a fair amount of reading for this class. Some of it is required so that you can follow along and participate in the class discussion. Some of the reading is “good for you”, as it will provide a broader understanding of the material. I will indicate what is necessary and what is good for you. If somethings has the word “SKIM” after it, please do just that. As the semester goes on, you will have a good sense of what is vital and what is background. If you have questions, please ask me.

The required reading materials for this course are:

- Internal Revenue Code and Treasury Regulations (any current copy);
- The United States Tax Court Rules as applicable to our discussion (any current copy and available on-line from the Tax Court; a PDF copy is posted to the course website); and
- Readings contained in Unit Packets, which will be available on NYU Classes. (see comment above re skimming)

Please bring your Internal Revenue Code, (if we have a code section that week) and Unit Packets to each class session. Please bring the Tax Court Rules to class for session 5. We will be referring to these materials throughout the class discussions.

I do understand that you are taking a lot of classes, and that you have a lot of work for the other classes too. Some weeks will seem to have a lot of reading assigned but I think you will find it to be much “lighter” than the readings for a lot of your other classes. Please try and read through the materials and develop a basic familiarity with the concepts for class.

Syllabus

A list of the Units for the course is attached on page 3 of this course description. A “Unit Packet” for each Unit will be posted on NYU Classes under “Unit Materials”. Each packet will list assigned readings from the Internal Revenue Code and/or Tax Court Rules, additional required reading materials and anything else you might need for that class. It will also contain some “thought questions”; things for you to think about in advance of class and be ready to discuss when we meet. Set forth below in this course description, you will find the assignments for each Unit (these will also appear on the cover page of each Unit Packet on NYU Classes).
Class Assignments

At the end of each class, I will confirm the assignment for the next session. I also send emails out before each class, so please be sure to check. The assignments are also posted on NYU Classes under “Course Assignments.”

It is possible that some topics may take longer than anticipated and so may flow into the following week; we will all need to be flexible as there is a lot to talk about! I will be clear though at the end of each class, as to what needs to be prepared for the next session. Please note that as this area of law is constantly changing, I may revise/add/delete things from the Unit Packet assignment. I will announce any changes to the following week assignment during the previous class session or will send you an email letting you know. Last year I found myself sending lots of emails to the class, so please check your emails regularly!

I will send out the slides for each class before we meet, usually (though no always) on the Sunday evening before our session.

The assignment for our first class is to prepare the Week 1 assignment.

Class Sessions

Class will meet on Wednesday evenings at 6:10 pm. You are expected to attend (and participate in) all classes. I have to be in London for a meeting on February 14th, and so that class has been rescheduled to Friday, February 16th from 8 am-9:50 am. I am very sorry about this, but it was unavoidable. I will bring breakfast muffins; please bring your own coffee!

Final Exam and Grades

There will be a two-hour open book final exam. The exam will consist of two essay questions with short answers. The exam is straightforward and will test how well you understand and can apply the concepts and processes we discuss in class.

Class participation is absolutely taken into account when I determine final grades. So, it is in your best interest to prepare and participate in class discussions. Also, as scintillating as I am, (©) it is much more interesting for all of us if you talk too. So, PLEASE, come to class prepared to offer your thoughts and ideas.

Contact Info

You can call me anytime at (212) 872-6084 and please feel free to leave a message on my voicemail or with my assistant, Chris Sawusch, if I don’t pick up. You can also email me at skatzpearlman@nyu.edu OR skatzpearlman@kpmg.com. I return all calls and emails, and look forward to hearing from you and getting to know each of you. Like every lawyer, I am permanently attached to my smartphone (!), so you are more likely to get a quicker reply on email. BUT – I much prefer the old-fashioned approach of actually speaking to people, so if you email, please include a phone number.

I look forward to getting to know all of you, and to having a fun, productive, informative and useful course.
# CIVIL TAX CONTROVERSIES & LITIGATION

**PROFESSOR KATZ-Pearlman**

## Syllabus*

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<th>WEEK</th>
<th>Topic</th>
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<td>I (W-1/17)</td>
<td>Introduction; Practice Before the IRS</td>
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<td>II (W-1/24)</td>
<td>The Examination Function; IDR, Summonses, Case Development</td>
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<td>III (W-1/31)</td>
<td>The Traditional Appeals Process</td>
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<td>IV (W-2/7)</td>
<td>The Role of Alternative Dispute Resolution in the Tax Controversy Context</td>
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<td>V (F-2/16)**</td>
<td>Litigation: The Final Frontier</td>
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<td>VI (W-2/21)</td>
<td>Ethics in Tax Dispute Resolution Practice</td>
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<td>VII (W-2/28)</td>
<td>Global Tax Dispute Resolution Trends</td>
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* Assignments for each Unit are listed on pages 4 - 10 of this document.

** Note day change – FRIDAY this week.
# WEEK I
## Introduction; Practice Before the IRS

| **Summary** | This week we will introduce some basic concepts of civil tax controversy and what it means to practice before the IRS. We will talk about the different types of tax advisors in the controversy space and the different rules which govern that practice. We will discuss the basic ethical obligations of a tax advisor, Circular 230 and “the rules of the road” in representing clients before the IRS. We will review the current, relatively new structure of the Large Business & International (“LB&I”) Division and begin a discussion of the Examination Process. Preparation for the Opening Conference, and rules applicable to the Coordinated Industry Case program will be covered. |
| **Additional Materials** | • Circular 230, Part 10 (sections 10.1-10.4; 10.20-10.23; 10.32-10.22) (skim this; we will revisit later in the semester)  
• Three PDFs: IRS Campaigns  
• Forms 2848 and 8821  
• Pub. 947  
• LB&I Org Chart  
• 14th Annual Tax Executives Institute/ LB&I PowerPoint  
• Tax Disputes & Litigation Review (Optional article) |
| **Thought Questions** | What are the most critical considerations in representing a client before the IRS? What makes an effective advisor? Given the new approach to IRS exams and the use of campaigns, how can a taxpayer prepare for an exam? Can a taxpayer prepare? Is this a viable approach to examination? Will resolution become easier? Will litigation proliferate? |
## WEEK II
### The Examination Function; Information Gathering Process

| **Summary** | Today we will discuss how IRS corporate exams unfold, how the exam team gathers information, the IDR Initiative, what tools (think summons) are available to the IRS, and to the taxpayer and their rep. We will also review the privileges which are applicable to civil controversies, as well as a bit about the Tech Advice process, voluntary disclosures and their interplay with the examination function. Pub 5125 will be discussed. |
| **Internal Revenue Code** | §§ 6694; 7521(a),(b)(2), (c); 7602; 7603; 7604; 7605; 7525; 982 * |
| **Additional Materials** | • IDR Initiative Directive  
• Pub 5125  
• IRM; Part 4 Examination process: 4.10.20; 4.46.4; 4.61.4 **  
• US v. Powell, 379 US 48 (1964) (review/skim: this should be familiar from your Practice & Procedure course)  
• US v. Microsoft Corp. et. al. (USDC, Western Dist. Washington) 9/12/2016 (Brief re privilege)  
• US v. Microsoft Corp. et. al. – Order granting enforcement of summons (November 20, 2015) |
| **Thought Questions** | What are the critical points within Pub 5125? Why was the IDR Initiative implemented? Are there benefits? How does the Acknowledgement of Facts requirement impact the exam/appeals resolution process? Tax accrual workpapers: Can they be requested? Should the IRS be able to obtain them? Compare and contrast IRC Section 7525 with attorney client; what are the critical differences? Do they matter? Should there be a different privilege for non-law firm attorneys? What are best practices for protecting privilege? What advice would you give a client regarding informal Q&A vs. summoned testimony? Any strategic considerations? |

*Code sections: informational only. (no need to dwell!)*  
**Please go on line for these to ensure most recent updates**
**WEEK III**  
The Appeals Process (including Collection Due Process)

<table>
<thead>
<tr>
<th>Summary</th>
<th>Today we focus on the IRS Appeals Division, and traditional ways of resolving controversies. 30 day letters; preparation of a protest; preparing for the initial appeals conference; ex parte rule; strategic considerations in making the arguments and answering rebuttals; and settling the case. How does Appeals consider litigation hazards? Can you settle a penalty? We will look briefly at Collection matters and CDP hearings which are part of Appeals Jurisdiction. If there is time, we may begin discussing some of the newer methods of resolution involving Appeals. (This discussion will continue next week.)</th>
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<tbody>
<tr>
<td><strong>Internal Revenue Code</strong></td>
<td>§§ 7121, 7123</td>
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</table>
| **Additional Materials** | • IRM, Part 8, Ch. 1, Sec. 10  
• Pubs 5 and 1660  
• Rev. Proc. 2012-18  
• Rev. Proc. 2014-63  
• ABA Comment Letters: November 16, 2015 and May 9, 2017  
• Rev. Proc. 2016-22  
• Letter from Chief, Appeals, dated November 4, 2016 |
| **Thought Questions** | What does “Appeals independence” mean? Given the recent IRM changes regarding Appeals process, and the new campaign/treatment approach in LB&I, can Appeals maintain its independence? Should exam be part of the Appeals resolution process? Why or why not? Why is there an Ex Parte Rule? Should there be such a rule? What is Collection Due Process? What is Appeals’ role? |
**WEEK IV**  
The Rise of Alternative Dispute Resolution in Tax Controversy

| Summary | Recent years have brought a huge increase to and focus on the use of alternative dispute resolution ("ADR") techniques in settling civil tax matters. This session will cover the use of Pre-Filing Agreements, Fast Track Mediation, and Early Referral to Appeals, Competent Authority, Simultaneous Appeals Competent Authority and Post Appeals Mediation. Each of these tools can provide great opportunities to close a case and resolve an issue. We will discuss when to consider each of these options and what to be aware of. |
| Internal Revenue Code | §7123 |
| Additional Materials* | - IRM Ch. 8; RAP  
- Rev. Proc. 99-28  
- Rev. Proc. 2015-40  
- Rev. Proc. 2016-30  
- Pub. 4167  
- Pub. 4539 |
| Thought Questions | Are there any benefits to early resolution of a case? What are they? Why does the IRS seem to strongly encourage these early resolution options? What is their fate with the advent of campaigns and treatments? Will there be an impact? Compare and contrast Early Referral and Fast Track. Are there key differences? Where does RAP fit into this? What strategic consideration should be given to the Ex Parte Rule? When might you choose to pursue a PFA? Are there reasons not to? |
### Summary

With the rise of ADR, there has been a corresponding fall in the number of cases going to litigation. While this is generally a good result for both the taxpayer and the government (efficiencies of early resolution and early certainty), there are some situations where litigation is the only option. This session will focus on the U.S. Tax Court, its jurisdiction, and TC process. We will cover the path to Tax Court, Statutory Notices of Deficiency (the 90 Day Letter), Designation of Place of Trial, and Entry of Appearance, Petitions, Replies and the Stipulation of Facts process.

### Internal Revenue Code

§§ 6211(a) and (b)(1); 6212; 6213 (a)-(d), (g); 6214(a) and (b); 7441 -7446; 7457 - 7459

### Additional Materials

- Sadler, Alex E. & Kim, Daniel G., *Scope of Pre-Trial Discovery; A Key Difference in Litigating Tax Cases in the Tax Court and Refund Tribunals*, Journal of Tax Practice & Procedure, April-May 2009 (SKIM THIS)
- IRM: Counsel Settlement Process
- US Tax Court: One page summary
- U.S. Tax Court Rules – please skim through.
- Sample 90 Day Letter
- Sample Tax Court Entry of Appearance
- Sample Tax Court Subpoena
- Sample Tax Court Certificate of Service
- Petition, answer and motion to quash filed in *Amazon v. Commissioner*

(SKIM this – just provided to give you an idea of pleadings, etc.)

### Thought Questions

Why litigate? How is TC litigation different from other federal litigation? What are the benefits of going to TC vs other forums? How would you decide where to file? What are some of the considerations in deciding to litigate?
## UNIT VI
Ethics in Tax Dispute Resolution Practice

### Summary
Today’s session will consider ethics - an area of critical importance to the practice of law. Given the nature of tax practice and a tax attorney’s ability to practice in so many different venues, it is absolutely imperative that you are familiar with the various sets of rules which govern. This session will look at the interplay between Circular 230, the ABA rules, and the AICPA rules. We will discuss what is expected, and then **apply the rules to various fact patterns.**

### Internal Revenue Code
§§ 6694(a), (b); 6700; 6701(a);

### Additional Materials**
- Circular 230
- Circular 230 – Disciplinary Case Info
- OPR FY16 Report
- PTIN FAQs
- Office of Professional Responsibility ("OPR") – FAQs
- TEI Standards of Conduct
- Relevant Terms pdf
- ABA Formal Opinion 85-352

### Thought Questions
How should a tax representative manage all of the various standards which do/may apply? Should there be only one standard? Should attorneys be held to a different standard than a CPA? Should it matter in which tax environment you practice? (law firm, Big 4, in-house)
### WEEK VII
Global Disputes and Controversy

#### Summary
The tax world has become much smaller as the various revenue authorities come together to address issues of concern in tax compliance and tax controversy. BEPS, the OECD’s Forum of Tax Administrators (“FTA”), JITSIC, FATCA, the European Union, the United Nations Committee on Tax Experts and the resulting, continual increase in information sharing has drastically changed the landscape for multinationals. This final session will discuss trends around the world in civil tax matters and the similarities between what we are seeing in the US and what is developing elsewhere. We will also discuss Advance Pricing Agreements (“APA”), the Mutual Agreement Process (“MAP”) and their role in the resolution of US controversies for a US multinational.

#### Additional Materials
- BEPS Action Item 14 Report
- BEPS Action Item Peer Review document ([SKIM](#))
- JITSIC Day 4 document
- IRS International Practice Units (Two documents: Types of EOI Exchanges AND Field Procedures for Handling Foreign Initiated Requests)
- Global Forum Handbook on Transparency ([INFORMATIONAL/SKIM](#))
- European Commission Memo dated June 2016
- The Multilateral Instrument Memo dated November 2016 ([SKIM](#))
- Tax Inspectors Without Borders document dated April 2016; updated April 2017
- KPMG EMA BEPS document (Helpful overview)

#### Thought Question
The global disputes landscape has changed dramatically in recent years, as revenue authorities come together as never before. Is this a positive development? Are there limitations on this “unity” which should be considered? Which countries stand to benefit the most from this? How does one reconcile the various agencies or groups which are developing their own approaches? Can it be done? Is this too confusing to make sense of?