

TAX PROCEDURE
Final Examination

Student Examination Number _____

INSTRUCTIONS

1. **PERMITTED MATERIALS:** You may have with you a commercially published one or two volume copy of the Internal Revenue Code. As per instructions in the course syllabus, the Code may be tabbed, but pages cannot be added. You may have written in the code book.

2. **CITATIONS:** In answering each question, please provide as much authority as you deem necessary to convince the instructor that you understand the material. In your discussion, your answer should be concise, well written, logically thorough, and precise. Always strive to explain why. Make sure you use the correct Code section should you cite to a specific section.

3. **AMBIGUITIES:** If you find a question to be ambiguous or find the facts given to be insufficient to answer the question, state whatever additional factual assumptions consistent with the stated fact you deem necessary and answer the question as though your assumption were a part of it. Do not, however, make the mistake of changing the question by changing the facts.

4. **TIME ALLOCATION AND QUESTION WEIGHT:** You have three hours to complete the examination, which you may allocate in any manner you wish. The examination consists of five equally weighted sections: two sections being short answer questions and three sections being problem analysis questions.

5. **IDENTIFICATION:** Write your exam number on the front cover(s) of your blue book(s) and at the top of this examination copy. Also, if you expect to graduate this May, place a "To Graduate" on the space near your exam number. Neither your name nor any other identifying mark, other than your exam number, should appear anywhere on your answers, on this examination copy or on the exam book(s). When you have finished, please place your blue book(s) and this examination copy on the table in front of the room. Anyone failing to return both the answered exam bluebook(s) and this six page copy of the examination will be awarded an "E" for the course grade. If you use more than one blue book, place one inside the other, but remember to put your exam number on each book.

6. **FINAL COMMENTS:** Be sure to answer all the questions. Make certain your answers are legible. Typing is not necessary, but please sharpen your crayons or pencils if you use them. Do not crowd your answers into the least possible space. Organize your answers. Think before you write. Neatness counts. If I can't read it, you receive appropriate credit, i.e. none. You receive positive examination credit for correct answers and negative examination credit for incorrect answers.

ANSWERS TO SECTIONS ONE AND TWO (ESSAY QUESTIONS) MUST BE COMPLETED ON THIS EXAMINATION COPY, WHILE ANSWERS TO SECTIONS THREE, FOUR & FIVE (PROBLEM QUESTIONS) MUST BE PLACED IN THE BLUEBOOK. YOU ARE LIMITED TO THE SPACE PROVIDED ON THIS EXAMINATION COPY FOR ANSWERS TO SECTIONS ONE AND TWO, AND YOU ARE LIMITED TO TWO BLUEBOOKS FOR YOUR ANSWERS TO SECTIONS THREE, FOUR & FIVE.

SECTION ONE (ESSAYS)
(Complete answers below)

(1) What is the difference between a "docketed" and a "non-docketed" case?

(2) Comment on and explain the validity (or lack thereof) of the following statement made by an unnamed Tax Procedure student to another. "Appeals from Non-Docketed Cases are heard by the Appeals Office, while other appeals must be presented to and considered by the National Director of Appeals."

(3) Comment on whether protests are required to appeal a proposed deficiency assessment.

(4) Explain the relevance of the "Net Worth Method" and the "Bank Deposits Method".

SECTION TWO
(Complete answers below)

- (1) Briefly outline the duty of Internal Revenue Service District Counsel in a criminal tax matter.
- (2) Complete the following sentence, and insert after it any added explanation which would indicate you understand what the U.S. Department of Justice Tax Division's purpose is. "The United States Department of Justice (Tax Division) responsibility in Internal Revenue Code enforcement is to
- (3) Please describe the Department of Justice's policy relating to the acceptance of "No-Contest" pleas.
- (4) Briefly explain how federal tax liens are privileged in collection matters vis-a-vis other debts.

SECTION THREE
(Complete answer in bluebook)

Kert Biceps is the owner of Musslebound, Inc, a local gym. In January 1992, Musslebound owed about \$50,000 in corporate income taxes which were timely assessed in February 1991 for tax years 1987 and 1988. Assume that all tax returns have been filed in a timely manner and that all taxes other than those relating to 1987 and 1988 have been paid in a timely manner.

Kert has failed to respond to the 1987 and 1988 assessments and demands for payments as recent revenues have been quite low because of the current recession. The IRS has filed a lien on all the exercise equipment owned by Musslebound, and on April 1, 1993, the IRS seized the equipment intending to proceed with a tax sale. Musslebound rents space for the gym on a week-to-week basis (i.e. It does not own any interest in the real estate the gym uses), has no other intangible or tangible assets, but possess many liabilities.

Kert informs you that without the equipment he will be unable to generate enough income to feed and house he and his family. He also indicates that the seized equipment was moved from the gym pursuant to IRS directions and now is stored in a warehouse at 444 Highrisk Ave. Kert's drinking buddy happens to have a key to that warehouse, which he would probably let Kert "borrow" to enable Kert to retake the equipment.

Please provide to Kert an explanation of what he appropriately might do to block the sale of this equipment or to otherwise handle this problem?

SECTION FOUR
(Complete answer in bluebook)

Johnson Corporation, a calendar year corporation, timely files its 1988 tax return claiming a large deduction for a loss. In connection with the preparation of its 1989 tax return it discovers that this loss should have been deducted on the 1989 return, not the 1988 return; however, as the loss was already deducted and the 1988 return has been audited by the IRS with no changes suggested, Johnson determines to do nothing about it in connection with the 1989 return. By March 15, 1993, the assessment statute of limitations for 1988 has expired. The statute of limitations for 1989 is still open and thus on March 16, 1993, Johnson files with the IRS an amended return for 1989 taking the loss mentioned above and claiming a refund of the 1989 taxes. The IRS examining agent looking into the 1989 refund claim has indicated to you that she proposes to disallow the loss. She has not informed you of her rationale for this disallowance, but you suspect that the proposed disallowance does not relate to Johnson having taken the loss on its 1988 return.

Your supervisor, the Vice-President for Corporate Tax, has asked you to advise him whether and when Johnson should file a refund suit to obtain a refund in 1989? The Vice-President also wants your candid evaluation of the most probable outcome should this refund claim be litigated. Explain.

SECTION FIVE
(Complete answer in bluebook)

Jane Good, an IRS examiner, is preparing her recommendations for penalty assessment in connection with an IRS examination involving Oily Crude. Basically the facts disclose that:

(a) Oily's 1991 income tax return was filed on 7/1/1992 late without his having requested an extension. He reported \$45,000 of adjusted gross income from dividends and utilizing itemized deductions, personal exemptions and credits he figured the resulting tax at \$2,000. He had paid estimated taxes during 1991 of \$1,000. He sent a check to the IRS on 12/1/92 for \$1,000 marked "payment in full for all debts owed for 1991 income taxes." The IRS cashed the check, applying it to the 1991 tax due.

(b) Jane's examination reveals that he had received \$82,000 of dividends from his IBM stock, \$75,000 for his share in a limited partnership he owned, and \$3,000 as a director in an oil and gas venture investment interest. Thus, his total "correct" gross income was \$160,000. She is aware prior IRS audits in 1988, 1989 and 1990 have revealed substantial unreported income. The tax liability for 1988 and 1990 has been satisfied, though the 1989 tax, penalty and interest liability is currently in litigation in the Tax Court.

(c) It appears that with the proper itemized deductions, personal exemptions, and credits for Oily's 1991 return the tax should have been \$28,500 rather than \$2,000.

Jane is relatively new and has asked you (the old timer she assumes to have great wisdom and expertise, as well as possessing outstanding academic credentials) for advice as to the appropriate penalties to recommend. Please provide her with your suggestions, along with your thoughts why these might be appropriate. Jane (and also this instructor) does not want you to spend your efforts or your time calculating the exact amounts of possible penalties because she informs you that these type calculations are done through the computer process.

ANSWERS - May 1995 TAX PROCEDURE EXAM

SECTION 1

(No answer on Library copy)

SECTION 2

(No answer on Library copy)

SECTION 3

Answer:

Could stop sale by paying taxes.

May seek to release lien and stop payment by agreeing with IRS for an installment payment schedule.

If not above, might try to seek protection of Bankruptcy court. File petition and this automatically stays any further action by the IRS to collect the taxes. Furthermore, since the tax was not assessed within 240 days from the bankruptcy filing nor did it relate to a return which was due within 3 years of the bankruptcy filing (we are assuming the 1987 & 1988 returns timely filed on March 15), the tax due is subject to discharge in bankruptcy.

Definitely not retake by borrowing key to get equipment as committing a federal crime. Also, will be subject to civil tax penalty.

SECTION 4

Answer: Claims for Refund - Statute of Limitations 6511/6532

Mitigation Provisions. If deny and file suit then Sec. 1311-15 will deny as a determination, a double deduction, etc.

Mitigation will apply.

Should not file suit for refund, as will probably only lose.

If lose, will have to pay for court costs and attorneys fees.