

San Jose State University

Master's in Tax Program

BUS 225B Syllabus

Taxation of Corporate Reorganizations

Late Spring, 2021

First Class April 20, 2021 (6pm – 10 pm)

Adjunct Instructor Zachary M. Nolan, Esq., LL.M

Class meetings	Ten 4-hour Classes. Wednesdays April 20 to June 8 (6 pm – 10 pm). Saturday May 15 (two class sessions; 9 am to 5 pm).
Office hours	By appointment only
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Course Description / Student Learning Objectives

Income tax treatment of corporate reorganizations and amalgamations, including acquisitions, tax-free and taxable as well as corporate division. Tax treatment of net operating losses, earnings and profits, property basis and other corporate attributes. Prerequisite: BUS 223A, BUS 223G

- To understand the income taxation tax-free reorganizations and planning options related to each of the various types of reorganizations.
- To understand the income taxation of taxable acquisitions.
- To understand the income taxation of corporate separations.
- To understand the income taxation of liquidations
- To understand the affect to a corporation's tax attribute as a result of reorganizations, split-ups, and acquisitions.
- To understand practical applications of mergers and acquisitions, and many common business processes around these activities for Silicon Valley corporations.

Course Materials

There is no course book. Rather, each topic will have its own assignment, typically reading the relevant primary authority: IRC Statute, Treasury Regulations, and Revenue Rulings and court cases. In addition, some articles and/or a BNA Portfolio segment will be assigned at least one

week prior to the lesson. Generally, the instructor will lecture with a slide deck, which will be placed in the Canvas system on or before the date of the lecture at <http://sjsu.instructure.com>. You are responsible for regularly checking with the messaging system through MySJSU at <http://my.sjsu.edu> and via the announcements tab on the Canvas website for this class. In addition, current articles and commentary may be assigned as homework preparations, in which case internet links will be provided, or e-copies placed in the Canvas system.

Summary of Course Activities

From time to time, professional tax experts in specific issues will co-instruct with the class instructor. Students are requested to be professional and courteous to all instructors. Moreover, students are requested to ask questions, reply to open discussion points, and enhance the learning environment for the entire class.

Students will be asked to participate in a Small Group. Each Small Group will be focused on one High Tech sub-industry (Networking Equipment; Semiconductors; Software-as-a-Service, etc.), chosen by the end of Lesson #1. Each Small Group will have 3 representative companies which the Small Group will study, as models for business analyzing M&A activity for that sub-industry.

Each Small Group will be assigned a presentation, which will be made to the entire class. The Small Group presentation will be approximately 15 to 20 minutes in length. Each Small Group presentation must be accompanied by a 3 to 10-page outline (typically, PowerPoint) of the materials to be presented, provided to the Instructor prior to the presentation. The class presentation must be oral and should include all Group members.

The midterm and final exams will contain items assigned for reading as homework and discussion topics presented by the Instructor, guest instructors, and the Small Groups during class.

Grading

Assignment	Points
Small Group Student Presentation	30
Midterm	120
Final exam	120
TOTAL	270

Notes: Grades will follow A-90%; B-80%, C-70%; however, grades may be made on a curve if necessary. Grades will include a + or – within 2 points of the breaks.

MST Program Learning Objectives:

1. To identify, understand and resolve complex and multijurisdictional tax issues within the context of our global economy and society.
2. To learn and acquire research skills for exploring both familiar and novel areas of the tax law and to communicate the findings using clear terms.
3. To develop conceptual and critical analytic skills with real world applications.
4. To appreciate tax policy issues and foundations of the tax law.
5. To understand the ethical implications of tax practice.
6. To develop skills for effective tax practice including keeping current, interacting with others, and career advancement.

University Policies

Academic Integrity

Per University Policy S16-9, university-wide policy information relevant to all courses, such as academic integrity, accommodations, etc. will be available on Office of Graduate and Undergraduate Programs' [Syllabus Information web page](http://www.sjsu.edu/gup/syllabusinfo/) at <http://www.sjsu.edu/gup/syllabusinfo/>. Be sure to review these university policies and resources.

Commitment

“Success in this course is based on the expectation that students will spend, for each unit of credit, a minimum of 45 hours over the length of the course (normally three hours per unit per week) for instruction, preparation/studying, or course related activities, including but not limited to internships, labs, and clinical practical. Other course structures will have equivalent workload expectations as described in the syllabus.”

Campus Policy in Compliance with the American Disabilities Act

If you need course adaptations or accommodations because of a disability, or if you need to make special arrangements in case the building must be evacuated, please make an appointment with me as soon as possible, or see me during office hours. Presidential Directive 97-03 requires that students with disabilities requesting accommodations must register with the DRC (Disability Resource Center) to establish a record of their disability.

Consent for Recording of Class and Public Sharing of Instructor Material

University Policy S12-7, <http://www.sjsu.edu/senate/docs/S12-7.pdf>, requires students to obtain instructor's permission to record the course.

- Common courtesy and professional behavior dictate that you notify someone when you are recording him/her. **You must obtain the instructor's permission to make audio or video recordings in this class.** Such permission allows the recordings to be used for your private, study purposes only. The recordings are the intellectual property of the instructor; you have not been given any rights to reproduce or distribute the material.”
- **Course material developed by the instructor is the intellectual property of the instructor and cannot be shared publicly without his/her approval.** You may not publicly share or upload instructor generated material for this course such as exam questions, lecture notes, or homework solutions without instructor consent.
- You may request permission, either in writing or orally, at any time during the semester.
- **If students or guests may be on the recording, permission of those students or guests should be obtained as well.**

Lesson Topics, Including Reading & Homework

San Jose State University Master's in Tax Program

225B Syllabus Taxation of Corporate Reorganizations Late Spring, 2021

The schedule is subject to change with fair notice and how the notice will be made available.

Lesson 1 April 20, 2021, 6pm to 10 pm Introduction; Distributions

Topics:

Instructor and Student Introductions

Introduction to Taxable and Nontaxable Transactions

Choice of Form & Entity Selection

Distributions (§ 301 and § 311)

Earnings and profits (§312)

Pre-reading / Preparation for Lesson #1 Part 1 – Choice of Form & Entity Classification:

Read Code §§1(a) through (e), (h)(1), (h)(11), 11, 1201(a), 1211(a), 1212(a), 1361(a), (b)(1),(b)(2), 1363(a), 1366(a)(1), 1411, 7701(a)(1), through (5), (c).

Read Regulations §§301.7701-1, 2(a), -2(b)(1) through (8)(i) and (ii), -2(c)(1), (2)(i); -3(a), -3(b)(1), (2), -3(c)(1)(i), (ii), (iv) and (v)(C).

Read Authorities IRS Notice 2006-101, IRS Notice 2011-64, update of IRS Notice 2006-101

Pre-reading / Preparation for Lesson #1 Part 2 – Cash Distributions:

Read Code §§243(a), (c), 317(a), 301, 312(a) thru (d)(1), (d)(3), 312(f)(1), 312(k)(3), 316, 317(a)

Read Regulations §§1.301-1(a)-(f) (Ex 1) ;1.312-1, -6(a), (b), -7(a), (b)(1); 1.316-1(a)(1), (e) Ex 1, -2(a), (b), (c)

Read Authorities Rev. Rul. 74- 164, 69-440, 62-131

Pre-reading / Preparation for Lesson #1 Part 3 – Distributions of Property:

Read Code §§ 301(b), 311, 336(b)

Read Regulations §§ 1.312-3;1,312-4 (skip example 3);1.316-1(a)

Lesson 2 April 27, 2021, 6 pm to 10 pm Redemptions; Liquidations

Topics:

Redemptions (§ 302)

Taxable and Tax-Free Liquidations (§ 331/336 and 332/337)

Pre-reading / Preparation for Lesson #2 Part 1 – Redemptions “Not Essentially Equivalent to a Dividend” and Substantially Disproportionate” Redemptions:

Read Code §§ 302(a),(b),(d), 312(n)(7), 317(b),1059(e)

Read Regulations §§ 1.302-1, -2, -3

Read Authorities Rev. Ruls.75-502, 76-364, 76-385, 78-401, 81-289, 85-14

Pre-reading / Preparation for Lesson #2 Part 2 – Redemption, Attribution, and Complete Termination:

Read Code §§302(b)(3), (c)(1), (c)(2), (e); 318

Read Regulations §§1.302-4; 1.318-1 through -4 Prop Regs: Prop Reg. §1.302-5

Read Authorities Notice 2001-45. Rev. Ruls. 69-608, 75-447, 85-14.

Pre-reading / Preparation for Lesson #2 Part 3 – Liquidations General Rules (§331):

Read Code §§ 267(a)(1), (b)(2); 331; 334; 336; 346(a); (b); Glance at §6901(a)-(c), (h).

Read Regulations §§1.302-4; 1.318-1 through -4 Prop Regs: Prop Reg. §1.302-5

Pre-reading / Preparation for Lesson #2 Part 4 – Liquidations of Controlled Subsidiaries (§332):

Read Code §§§§332; 334(b); 337; 336(d)(3); 337; 381(a) & (c)(2);

Read Regulations §§1.332-1, -2, -5,-7;

Lesson 3 May 4, 2021, 6 pm to 10 pm
Reorganizations

Tax-Free Contributions; Tax-Free

Assignment of Student Presentations

Topics:

Section 351 Contributions

Reorganization Requirements

Control

Business Purpose

Continuity of Shareholder/Proprietor Interest

Continuity of Business Enterprise

Plan of Reorganization

Pre-reading / Preparation for Lesson #3 Part 1 – Section 351 Contributions:

Read Code §§83(a),(h), (b); 267(a)(1), (b)(2), (3), (10), (11), (12), (c); 351(a)-(c)(1),(d); 357; 358(a), (b)(1), (d),(h); 362(a),(e); 368(c); 1032; 1221(4); 1223(1), (2), 1239, 1245(a), (b)(3); 1250(d)(3)

Read Regulations §§ 1.368-1(d), -2(b)(2), -2(c), -2(f); -2(j), -2(k); 1.381(a)-1(b)(2); 1.358-6; 1.1032-2; Prop. Regs: §§ 1.351-2 (b); 1.358-2(g)(1)

Read Authorities Rev. Ruls. 68-55, 79-194, 95-74, 2003-51; Rev. Proc. 77-37, sec. 3.07, Notice 2001-17; Rev. Proc. 77-37

Pre-reading / Preparation for Lesson #3 Part 2 – Reorganization Requirements:

Read BNA Portfolios 4910.01.B-4910.01.F (A-F Reorganizations)

Pre-reading / Preparation for Student Presentations:

Review Student Presentation Assignment Requirements / Assemble Student Group

Topics:

Type “A” Reorganization (§ 368(a)(1)(A))

Type “C” Reorganization (§ 368(a)(1)(C))

Mid-term Review in-class

Pre-reading / Preparation for Lesson #4 Part 1 – A & C Reorganizations:

Read Code §§ 354(a); 356; 357; 358 [omit § 358(b), (c) & (g)]; 361; 362(b); 368(a)(1)(A) & (C), (a)(2)(A), (B), (G); 368(b), (c); 381(a), (c)(1) [skip A-C], (c)(2), 1032

Read Regulations §§ 1.368-1(a), (b), (c),(d)(1),(2),(3), (e)(1), (e) (2)(i),(ii),(iii),(v) ex 1 and 4, (e)(8) ex 1, 3, 4, 9; 1.368-2(a), (b)(1)(ii),-2 (d), (g); 1.368-3(a); 1.356-3, -6(a); 1.358-2(a)(1), -2(a)(2)(i),(ii), (vii), -2(c) ex 1 and 4; 1.354-1.

Read Authorities Rev. Ruls. 66-224, 76-385, 2004-78, 81-25, 99-58, 57-518, 88-48; Rev Proc. 77-37 sections 1-3.

Pre-reading / Preparation for Lesson #4 Part 2 – Mid-term Review

Review all previous lessons, code sections, treasury regulations, and other authorities.

Lesson 5 Saturday, May 15, 2021, 9 am to 1 pm Student Presentations

Topics:

Student Presentations

Continue Previous Lessons

Pre-reading / Preparation for Lesson #5

None

Lesson 6 Saturday, May 15, 2021, 1 pm to 5 pm

Midterm Exam

Topics:

Midterm Exam

Pre-reading / Preparation for Lesson #6

Study for Midterm Exam

Lesson 7 May 18, 2021, 1pm to 5 pm Continuation of Reorganizations

Topics:

Type “B” Reorganization (§ 368(a)(1)(B)).

Type “D” Reorganization (§ 368(a)(1)(D)).

Continue Previous Lessons

Pre-reading / Preparation for Lesson #7 Part 1 – B Reorganizations:

Read Code §§ 351(a), (b), (g); 354(a); 356; 358; 361; 362; 368(a)(1)(B), (b) & (c); 1001(c); 1032

Read Regulations §§ 1.354-1(d) ex 3 and 4; 1.368-1(e)(1), -1(e)(8), Ex. (9); 1.368-2(c); 1.368-2(j)(6) Ex. 4 & 5.

Read Authorities Rev. Ruls. 67-275; 68-285; 68-435; 68-562; 69-91; 69-443; 70-172; 72-354; 72-522; 73-54; 75-360; 84-42; 85-139; 98-10.

Pre-reading / Preparation for Lesson #7 Part 2 – Acquisitive D Reorganizations:

Read Code §§ 304(c)(1); 354(b); 357(a),(c)&(d); 368(a)(1)(D); 368(a)(2)(A) & (H); 368(c).

Read Regulations §§ 1.354-1(a)(2).

Lesson 8 May 25, 2021, 6 pm to 10 pm Continuation of Reorganizations

Topics:

Continue Previous Lessons

Triangular Reorganizations (§368(a)(2)(C), (a)(2)(D), and (a)(2)(E)).

Type “F” Reorganization (§ 368(a)(1)(F))

Pre-reading / Preparation for Lesson #8 Part 1 – Triangular Reorganizations:

Read Code §§ 368(a)(1)(B) & (C), 368(a)(2)(C), (D) & (E); 368(b) flush language, 358(e)

Read Regulations §§ 1.368-1(d), -2(b)(2), -2(c), -2(f); -2(j), -2(k); 1.381(a)-1(b)(2); 1.358-6; 1.1032-2.

Read Authorities Rev. Rul. 67-448, 2001-25, 2001-26.

Pre-reading / Preparation for Lesson #8 Part 2 – F Reorganizations:

Read Code §§ 368(a)(1)(F); 381(b)

Read Regulations §§ 1.381(b)-1(a)(2); 1.368-1(b); 1.368-2(m)(1)

Read Authorities Rev. Rul. 2008-18, 64-250, 2001-26, 73-526; PLR 201724013

Lesson 9 June 01, 2021, 6 pm to 10 pm
Transactions for M&A

Due Diligence; Other Non-Recognition

Topics:

Due Diligence – Functions and Reactions

Tax treatment of costs and expenses related to mergers and acquisitions (Rev. Proc. 2011-29).

Final Exam Review in-class

Pre-reading / Preparation for Lesson #9 – Tax Treatment of Costs & Expenses:

Read BNA Portfolio 4910.04 (Reporting Requirements)

Pre-reading / Preparation for Lesson #9 – Final Exam Review:

Review all previous lessons, code sections, treasury regulations, and other authorities.

Lesson 10 June 08, 2021, 6 pm to 10 pm

Careers in M&A; Final Exam

Topics:

Careers in M&A

Final Exam

Pre-reading / Preparation for Final Exam:

No preparation required for Careers in M&A

Study for Final Exam.