

# BUS 225A

Spring 2022

C. DAVID SPENCE



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<b>Class Dates</b>	
Tuesday Evenings 6:00 - 10:00 p.m.	April 19, April 26, May 3, May 10
Saturday All-day Session 9:00a.m. - 5:00 p.m.	May 14
Tuesday Evenings 6:00 - 10:00 p.m.	May 17, 24, 31; June 7
<b>Office Hours:</b>	
By Appointment:	To schedule a 45 minute session, please contact my Secretary, Carol Langdon (who manages my calendar) at 408-938-2452 or by email at <a href="mailto:carol.langdon@berliner.com">carol.langdon@berliner.com</a>
Phone:	Direct Dial: 408-938-2574; Cell: 408-478-1468
Email:	
Me	<a href="mailto:david.spence@berliner.com">david.spence@berliner.com</a>
My Secretary:	<a href="mailto:Carol.langdon@berliner.com">Carol.langdon@berliner.com</a>
About me:	<a href="https://www.berliner.com/professionals/c-david-spence">https://www.berliner.com/professionals/c-david-spence</a>

## COURSE DESCRIPTION

From the Official San Jose State University Catalogue:

*Excise and transfer tax treatment of estates, gifts, trusts, creators, beneficiaries, and fiduciaries. Distinguishes between revocable and irrevocable trusts, including proper trusts to achieve desired goals. Reviews taxation of asset sales and dissolution or liquidation of estates or trusts. Analyzes estate evaluation, family limited partnerships, GRATs, GST, and planning opportunities.*

In this course, we will study federal taxation of estates, gifts, and trusts, including the effects of estate tax, gift tax, generations-skipping transfer tax, and income taxes upon donors, beneficiaries, and fiduciaries. The course will provide the student tools necessary to begin advising clients about complying with federal estate, gift, generation-skipping transfer tax, and income taxation of fiduciaries and beneficiaries. The course will also incorporate discussions of tax policy, as well as relevant estate planning, tax planning, and philanthropic concepts. Family wealth preservation, asset protection and planning strategies, and family business succession planning will be introduced.

Throughout our study, we will integrate the broad MST Learning Objectives:

### Integration of MST Program Learning Objectives:

1. *Global Economy*: Students will consider and evaluate the tax compliance and planning issues within the context of our global economy.
2. *Research*: Students will prepare tax research reports based on primary authority.

3. *Communication*: Students will demonstrate effective written and oral communication skills for tax compliance and planning. Your class participation will be a component of your grade.
4. *Tax Policy*: Throughout the course, students will discuss and explain policy principles for existing tax law and proposals for change.
5. *Ethics*: Students will evaluate appropriate approaches to the ethical issues of tax compliance and planning through discussions of the interplay between planning and compliance in the context of legal and ethical duties of tax professionals.
6. *Professional Development*: Students will demonstrate skills for effective and inclusive tax practice to excel in the tax profession.

### GRADING

Class Participation Points	50
Four, <i>tiny, minimal-warning</i> quizzes (worst score is tossed out)	30
Two, Mid-sized, Mid-Terms	120
One, Fun, Tax Return Project	100
One, <i>itty-bitty, easy peasy</i> Final Exam (Open-Book)	<u>200</u>
<b>TOTAL "POSSIBLE" POINTS</b>	<u><b>500</b></u>

Letter Grades will be assigned based upon the following standards for each student's earned percentage of the total points possible:

Grade	Percentage
<i>A plus</i>	98 to 100%
<i>A</i>	92 to 97%
<i>A minus</i>	90 to 91%
<i>B plus</i>	88 to 89 %
<i>B</i>	82 to 87%
<i>B minus</i>	80 to 81%
<i>C plus</i>	78 to 79%
<i>C</i>	72 to 77%
<i>C minus</i>	70 to 71%
<i>D plus</i>	68 to 69%
<i>D</i>	62 to 67%
<i>D minus</i>	60 to 61%
<i>F</i>	Below 60%

The class will be curved, however, based upon the following standard:

Although the theoretical "total points possible" as stated above is 500, no one has ever earned all 500 points. For purposes of assigning letter grades, therefore, the above percentages will be applied to the highest total points achieved by any student for the class as if that number were the total points possible. Thus, for example, if the highest total by any student is 465 points, any student who achieves 456 (which is 98% of 465) or more points will get an A+. I reserve the right in rare circumstances to further adjust the highest score (but only downward) in the event of certain other special circumstances which we can discuss.

## TEXT

All exams and quizzes will be “open book and open notes”

The textbook for the course will be the Internal Revenue Code and Regulations, plus selected readings—including cases, rulings, and articles which I will make sure are available to you online. There will also be occasional handouts for your readings which I will post on Canvas. The next course period’s reading assignment will be made available to you no later than at the end of each class period.

For purposes of exams and quizzes, “open book” will mean the Code, Treasury Regulations, and Rulings, and all assigned readings for the course, plus your own class notes and self-made, test prep materials. But, computers will NOT be allowed to be open during quizzes and exams, so I recommend that you print out all materials you would like to have available to you during the exams.

I will be using the following single-volume paperback as I find it even more convenient than electronic sources:

Federal Estate and Gift Taxes  
Code and Regulations  
Including Related Income Tax Provisions

Wolters Kluwer (CCH Publications).

It can be found here if you think you will find it helpful—but it is not mandatory:

<https://www.cchcpelink.com/book/fed-est-and-gift-taxescode-and-regs-incl-rltd-inc-tax-prov-as-of-march-2022-10024430-0009/21251/>

Note: You can access Code and regs using CCH AnswerConnect and RIA Checkpoint.

## MAP OF THE COURSE

There will be eight, four-hour evening class “sessions.” From 6:00 p.m. to 10:00 p.m. every Tuesday evening, from April 19<sup>th</sup>-June 7<sup>th</sup>, plus a “double session” from 9:00 a.m. to 5:00 p.m. on Saturday, May 14<sup>th</sup>. This is a very concentrated schedule, in which we have to fit each of our quizzes, midterms, final exam, and tax return project. The Course Map is outlined below, but I reserve the right to make modifications, depending upon the needs as we progress through the course.

I have outlined the first course session, and subsequent sessions in varying detail below. I’ll add more detail to the Map as we progress through the course. I will also be open to your suggestions and requests along the way, so if you have particular subjects or issues you feel are important or you would like to touch on, let me know, and I’ll try to touch on those at the appropriate time in the course.

### Phase I—Federal, Estate Tax and Generation-skipping Transfer (“GST”) Taxes

#### Session 1, Tuesday, April 19—Introduction to Estate Tax

- I. Non-Tax, Legal and Foundational Issues
  - a. Property Law
  - b. Trust Law
  - c. Probate Law
  - d. Non-probate, testamentary transfers
- II. Non-Tax, Estate Planning & Wealth Transfer Issues
  - a. Client Objectives

- b. Family Politics
- c. Wealth, Assets Management, and Business Management Issues
- d. Rule against Perpetuities
- III. History and Overview of the Estate Tax
  - a. Statutory Scheme of the Federal Estate, Gift, and GST Taxes (Title 26, Subtitle B, Chapters 11-15)
  - b. Mathematical and Reporting Scheme and Procedure of Estate Tax:
    - i. Form 706
    - ii. Transfer Tax Procedure—Overview
  - c. Current State of Volatility in the Law:
    - i. 2001 EGTRRA (12/31/2010 sunset)
    - ii. 2010 TRA (12/31/2012 sunset)
    - iii. 2012 ATRA (no sunset)
    - iv. 2017 Tax Cuts and Jobs Act (12/31/2025 sunset)
    - v. Build Back Better Act
    - vi. Proposed Regulations (Chapter 14 et al)
    - vii. Tax policy
- IV. Introduction to Chapter 11
  - a. Tax Imposed (IRC §§2001-2002)
  - b. Tax Base (IRC §§2051, 2031)
  - c. Introduction of Applicable Credit Amount (§2010)
- V. Introduction of the Tax Return Project

Session 2, Tuesday, April 26—The Estate Tax—Deep Dive

- I. Quiz?
- II. Estate Tax Structure
  - a. Gross Estate
  - b. Deductions
  - c. Taxable Estate
  - d. Tax and Credits
    - i. Unified Credit
    - ii. Applicable Credit Amount
- III. Gross Estate Breakdown
  - a. “String Powers”
  - b. Jointly Owned Property
  - c. Life Insurance
  - d. Powers of Appointment
- IV. Deductions Breakdown
  - a. Debts, Expenses, Taxes, Administrative Expenses
  - b. Charitable
  - c. Marital Deduction
    - i. “Unlimited” (note the scare quotes)
      - 1. Terminable Interests
      - 2. Non-Citizen Spouse
    - ii. 2044 inclusion
    - iii. DSUE Concepts
- V. More discussion of Tax Return Project

Session 3, Tuesday, May 3—Special Estate Tax Problems

- I. Quiz?
- II. Subchapter B - Estate Tax Special Problems
  - a. Qualified Domestic Trust
  - b. Estates of Non-resident Non-Citizens
    - i. Situs of property
    - ii. Unified Credit
- III. Subchapter C – Miscellaneous Definitions and Special Rules (§§ 2201-2210)
  - a. Executor
  - b. Tax Liabilities
  - c. Right of Recovery
- IV. Introduction to GST Tax

Session 4, Tuesday, May 10— GST Tax Deep Dive

- I. Quiz?
- II. GST Tax Imposed
  - a. Skip Person
  - b. Liability for Tax and Reporting Issues
- III. Exemption
  - a. Direct Skip
  - b. Indirect Skips
  - c. Allocation
    - i. Applicable Rate
    - ii. Inclusion Ratio
  - d. Special Rules, Administration and Return Requirements

Sessions 5 and 6—The Saturday, May 14 Marathon 9:00-5:00

- I. Estate Tax and Testamentary GST Issues Mid-term Exam
- II. Discussion of Tax Return Project
- III. Introduction to Gift Tax
  - a. Imposition
  - b. Gross Gifts
  - c. Deductions
  - d. Credit
  - e. Return
- IV. Brief Introduction to Fiduciary Income Tax
- V. Discussion of Tax Return Project

Session 7—Tuesday, May 17, Gift Tax Deep Dive and GST Tax Issues with Gifts,

- I. Quiz?
- II. Gifts
  - a. Valuation Issues
    - i. Tables
    - ii. Interest Rate-based Valuation Issues
    - iii. DLOM/DLOC

- iv. Disclaimers
  - b. GST Issues/Interplay
  - c. Deductions
    - i. Marital
    - ii. Other
  - d. Non-Resident Non-citizens
- III. Fiduciary Income Tax-Interplay of Grantor Trusts with Gift Tax
  - a. Subpart E
  - b. Benefits & Detriments of Grantor Trust Status
- IV. Preparatory Discussion for Gift Tax Mid-term
- V. Introduction to Fiduciary Income Tax

Session 8—May 24 Gift Tax Mid-term and Intro to Fiduciary Income Tax

- I. Gift Tax Mid-term
- II. Fiduciary Income Tax Statutory Structure
  - a. Who Must File—Estates, Trusts, other?
    - i. Filing Rules, Periods & Methods, etc.
    - ii. Return Structure
  - b. Grantor Trust--Redux
    - i. Subpart E Deep Dive
    - ii. Incomplete Overlap of Ch. 11 and Ch. 12 “String Powers” with Subpart E
  - c. Introduction to Charitable Trusts

Session 8—May 31 Fiduciary Income Tax Deep Dive + Planning

- I. Quiz?
- II. Fiduciary Taxed
  - a. Three Types of Income
  - b. Deductions
    - i. Personal Exemption
      - 1. Estate
      - 2. Simple Trust
      - 3. Complex Trust
    - ii. Expense and Charitable Deductions
    - iii. Distribution Deductions—Distributable Net Income
      - 1. Simple Trust
      - 2. Complex Trust
- III. Beneficiaries Taxed
- IV. Practice DNI Allocations and Calculations
- V. Prepare for Final

Session 8—June 7, Final Exam

Exam + Pizza!