

Volume 19 (2022) | ISSN 1932-1821 (print) 1932-1996 (online)
DOI 10.5195/taxreview.2022.154 | <http://taxreview.law.pitt.edu>

TEACHING TAX THROUGH FILM: IT'S NOT AS CRAZY AS IT SOUNDS

Stephanie McMahon



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TEACHING TAX THROUGH FILM: IT'S NOT AS CRAZY AS IT SOUNDS

*Stephanie McMahon**

As all tax attorneys know, tax is a fascinating topic that touches all parts of our lives. Even students who do not aspire to be tax practitioners almost certainly benefit personally and professionally from understanding the basics of American taxation. Therefore, it is perplexing that students are not lined up to take tax courses in law school. One way to redress students' oversight is to make clear that the course is generally applicable and fun. Tax Through Film was one such attempt and introduced some of the fundamental concepts of the American tax system to otherwise reluctant students as they practiced applying tax concepts to the factual situations of films, a list of those films is provided below. Through this experience, students learned that almost every choice has tax consequences.

The idea for Tax Through Film, which I first offered in fall 2020, responded to three intersecting concerns. First, over the last decade I have noticed a downward trend in enrollment in my school's introductory tax course, Federal Income Tax.¹ Even though I believe everyone should take a tax course, I have proven unable to persuade many students who know that it is not tested on the Uniform Bar Exam.² Second, even for those students enrolled in Federal Income Tax, the issues many of them will face in practice and in their own lives is beyond federal income taxation. For students wanting only an introduction to taxation, Federal Income Tax is a narrow

* Professor of Law, University of Cincinnati College of Law. I would like to thank Tony Infanti for arranging this compilation, for participants at the 2021 meeting of the Association for Mid-Career Tax Law Professors, and for the future participants at the Law and Society 2022 annual meeting. Finally, this project could not have been completed without the financial assistance of the Harold C. Schott Foundation.

¹ Schools give the basic course many names, including Tax I, Federal Income Tax, and Basic Income Tax. For purposes of this Article, I use the title I use, which is Federal Income Tax.

² *Preparing for the MBE*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/mbc/preparing/> (last visited Apr. 7, 2022); *Preparing for the MEE*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/mec/preparing/> (last visited Apr. 7, 2022).

one. Third, pedagogy and traditional assessments, namely lecture with Socratic questioning and an exam, are good at imparting and measuring knowledge of the rules of law but are less good at developing and measuring other skills, such as writing and group work. I found it easier to experiment with pedagogy and assessments in a new course.

As one measure of the course, it was fun to teach and, from a survey completed by twenty-three of the twenty-eight enrolled students, they enjoyed being there.³ All the students stated they learned about a wide range of issues, and the course certainly covered a lot of ground. Discussions were lively, despite being forced into an online format because of COVID-19. However, if the course had many more than the twenty-eight students, it might not have been manageable—for me, because of the amount of student writing I had to give timely feedback on, and for students, to be able to engage in class discussions.

Although there was much that was successful about the course, there were things the course did not try to accomplish. Tax Through Film, unlike Federal Income Tax but akin to Tax Policy, is not a statutory course and requires no math. Therefore, this course does not work to improve these skills. Additionally, because of the heavy focus on applying the law to the facts and circumstances of the films, the course did not delve deeply into different alternative tax regimes. Instead, the course generally focused on the law as it currently operates. With these two caveats, I found that the course was a good blend for students who were interested in tax practice or tax policy in addition to those who understood they needed basic exposure to taxation.

From the course, both students and I learned about the way the United States taxes its residents. Through discussions and individual and group writing assignments, students demonstrated that they had accomplished the course's learning outcomes. Following the course, students were able to (1) demonstrate broad knowledge of prevailing concepts in American taxation at the local, state, and federal levels; (2) evaluate how taxes apply to a wide range of activities; and (3) support those interpretations of how the

³ From a survey, approximately eighty percent said they strongly agreed and everyone agreed at least somewhat that they liked the breadth of the course and eighty-seven percent said the course should be offered again.

law applied in oral and written forms. The course also stimulated my own thoughts in areas that I had never previously considered; for instance, the class's discussion of employment status in relation to *The Shawshank Redemption*⁴ led me to write the articles *Inmates May Work, But Don't Tell Social Security* and *Freed from Prison and Unemployed: What Happens After Your Prison Job Ends?*⁵ The robust discussion of how the law applied contextualized the theory of taxation in interesting ways.

I. PROBLEMS TO ADDRESS

Many law school courses have long histories, and tax is no different. Tax has long been taught, with the basic tax course covering the federal income tax treatment of individuals. This course has many names. For example, it may be called Federal Income Tax, Fundamentals of Tax, or Tax I. These courses have tremendous value, hence their longevity, but it is time to rethink tax offerings. Tax Through Film was created in reaction to three perceived problems of the established tax curriculum: (1) declining enrollment in tax-related courses; (2) the heavy focus on federal income taxation; and (3) a concern about the limited array of pedagogy and assessment in basic tax courses, often with lectures and an exam.

A. Declining Enrollments

Over the past decade, the number of students enrolled in the basic tax course at the University of Cincinnati College of Law (Cincinnati Law) appears to have declined, although fluctuations in the law school's annual enrollment and its small sample size makes it hard to prove a trend. The numbers indicate that a decade ago approximately half of a graduating class took the basic tax course and now it is about one-third. We cannot fully trust the perception of declining enrollment because of the significant fluctuations in our graduating class size over this period and the fact that the basic tax course is taken by both 2Ls and 3Ls. Nevertheless, the perception remains for me, the students, and the law school's administration.

⁴ THE SHAWSHANK REDEMPTION (Columbia Pictures 1994).

⁵ Stephanie Hunter McMahon, *Inmates May Work, But Don't Tell Social Security*, 72 S.C. L. REV. 757 (2021); Stephanie Hunter McMahon, *Freed from Prison and Unemployed: What Happens After Your Prison Job Ends?*, KY. L.J. (forthcoming 2022).

It is impossible to know for certain the cause of declining enrollment, although students have raised a few points repeatedly with me over the last several years, often conveyed via members of Cincinnati Law's tax club. One is the course's perceived difficulty and, two, that tax is not tested on most bar examinations. Not listed, but always possible, is that students just do not like me, and I am Cincinnati Law's only tax professor, although I did earn my law school's teaching award in 2017 and 2018. On a practical side, that I am the only person offering the course reduces students' flexibility for scheduling the course more than it might be in a larger school with more offerings.

The foremost reason I have heard is that the U.S. tax system is considered difficult,⁶ and students expect the course also to be difficult.⁷ In addition to a general fear of tax, introductory tax courses are almost always taught as statutory courses. Statutes are a form of law that, if a law school does not have a first year Legislation-Regulation course, is less familiar to students who may have only seen the Model Penal Code in their first year. Tax is also a highly regulatory area and students may have only studied rules in Civil Procedure. Therefore, it is an intellectual hurdle that students have not spent much time reading and deciphering complex statutes, copious regulations issued thereunder, and a bevy of other forms of regulatory materials.

Moreover, Federal Income Tax often requires math. It is oft lamented that Americans are afraid of math.⁸ It would be odd for that sentiment not to carry over to law students. That the math required in Federal Income Tax is simple addition, subtraction, multiplication, division, and percentages, which can be completed with a fourth-grade education, does not eliminate the fear.

⁶ See *Why Are Taxes So Complicated?*, TAX POL'Y CTR., <https://www.taxpolicycenter.org/briefing-book/why-are-taxes-so-complicated> (last updated May 2020); see also Monica Prasad, *Filing Your Taxes Is an Expensive Time Sink. That's Not an Accident.*, ATLANTIC (Apr. 4, 2019), <https://www.theatlantic.com/ideas/archive/2019/04/american-tax-returns-dont-need-be-painful/586369/>.

⁷ A stream on Reddit asked "How Hard Is a Taxation Class?" u/SunBake1, *How Hard is a Taxation Class?*, REDDIT (Aug. 13, 2014, 1:08 PM), https://www.reddit.com/r/Accounting/comments/2dgbrt/how_hard_is_a_taxation_class/.

⁸ See Sian Beilock, *Americans Need to Get Over Their Fear of Math*, HARV. BUS. REV. (Oct. 23, 2019), <https://hbr.org/2019/10/americans-need-to-get-over-their-fear-of-math>; see also Sarah D. Sparks, *The Myth Fueling Math Anxiety*, EDUC. WK. (Jan. 7, 2020), <https://www.edweek.org/teaching-learning/the-myth-fueling-math-anxiety/2020/01>.

Basic math is still math for students who have spent their academic careers avoiding the subject.

Compounding these concerns is a worry for students without prior business experience that they are competing for grades against students who are accountants or have specialized business knowledge. Even though Cincinnati Law students have the opportunity to take a Business Basics for Lawyers course⁹ and the fact an undergraduate business degree often does not expose students to the material covered in the basic tax course, the fear lingers. I have never tracked students closely enough to determine if their undergraduate major has a relationship to their tax grades, but, anecdotally, I have seen students do tremendously well in the course and as tax professionals with majors in the Classics and Literature. Nevertheless, it is understandable that students would see a business and accounting background as advantageous in Federal Income Tax.

This fear is not mitigated by a grade curve. As do many law schools, Cincinnati Law has a mandatory curve for courses with more than twenty students.¹⁰ There is the perception that this leads students to prefer small courses that might have a higher curve. Additionally, students might choose larger courses for which they expect to be higher in the grade dispersal because of their own prior knowledge. It may be insufficient to adopt pass-fail to ameliorate this concern. Students have told me they choose electives that do not require much work so that they can devote more attention to courses in their field or to employment opportunities. Particularly as students are bound up in a reasonable concern about grades and class rankings, the perceived difficulty and other disadvantages of Federal Income Tax almost certainly affect students' choice in enrollment.

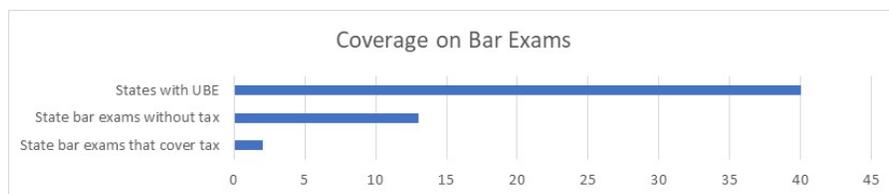
With these difficulties, it is unsurprising that when students find that tax is rarely tested on bar examinations, they may be disinclined to take the course. As of 2022, tax is not tested on the Uniform Bar Exam¹¹ nor all but

⁹ *Business and Entrepreneurship Law*, UNIV. OF CIN. COLL. OF L., <https://law.uc.edu/education/areasofstudy/businessentrepreneurshipplaw.html> (last visited Mar. 22, 2022).

¹⁰ *JD Academic Rules: Section 8.02*, UNIV. OF CIN. COLL. OF L., <https://law.uc.edu/student-life/student-handbook/jd-academic-rules.html#grades> (last visited Mar. 20, 2022).

¹¹ See *supra* note 2.

two of the remaining state bar exams, one of which offers a diploma privilege.¹² Currently, there are fifty-five different jurisdictions within the United States and the territories that require a bar examination to become an attorney,¹³ but only the bar exams of Mississippi and Wisconsin include questions on tax, and in the latter only thirty percent of newly admitted attorneys took the bar exam in 2020.¹⁴



This fact signals the subject matter's relative importance compared to tested material. Consequently, to the extent students are focused on bar passage in the choice of their electives, particularly electives outside of their intended area of practice, it is rational not to include a course on tax.

B. Narrow Focus on Income Tax

A second concern for this course was to expand the scope and types of taxes presented to students. In politics and discussions in the press, the federal income tax retains a central place, and the individual income tax does raise a little more than fifty percent of federal revenue.¹⁵ Nevertheless, taxpayers and their legal representatives deal with many types of tax. State and local governments impose taxes, only some of which are an income tax and many state income taxes do not mirror the federal system. Tax-exempt entities are not required to pay income and other taxes but must comply with

¹² *Admission to the Practice of Law in Wisconsin*, WIS. CT. SYS., <https://www.wicourts.gov/services/attorney/bar.htm> (last visited Mar. 22, 2022).

¹³ See *Jurisdiction Information*, NAT'L CONF. BAR EXAM'RS, <https://www.ncbex.org/jurisdiction-information/> (last visited Mar. 22, 2022).

¹⁴ *Mississippi Bar Exam Details*, BARBRI, <https://www.barbri.com/states/mississippi-bar-exam/> (last visited Apr. 10, 2022); *Wisconsin Bar Exam Details*, BARBRI, <https://www.barbri.com/states/wisconsin-bar-exam/> (last visited Apr. 10, 2022); WIS. BD. OF BAR EXAM'RS, 2020 ANNUAL REPORT 9 (2020), <https://www.wicourts.gov/courts/offices/docs/bbe20.pdf> (this calculation excludes those who were admitted on proof of practice in another jurisdiction).

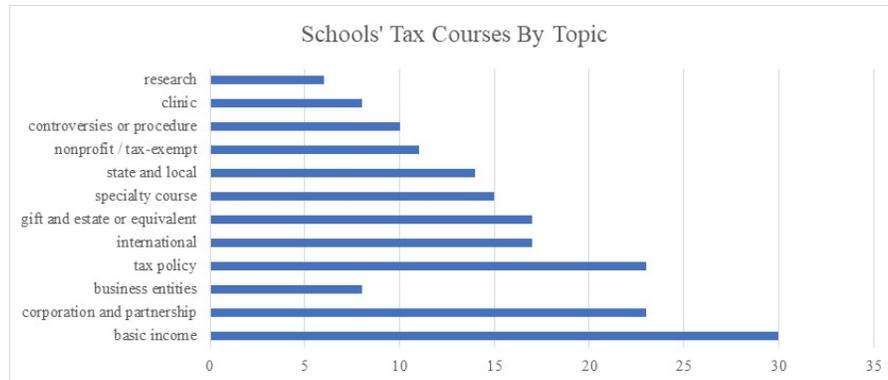
¹⁵ *Taxes*, CONG. BUDGET OFF., <https://www.cbo.gov/topics/taxes> (last visited Mar. 20, 2022).

tax rules to do so. Even within the income tax, many issues are unable to be covered in an introductory tax course, such as the taxation of businesses and international tax issues. These many tax issues are relevant to the practice of law; but many students, even those who take Federal Income Tax, may not see them in school.

The limited subject matter is made clear from the title of most introductory tax courses. A faculty member may choose to refer to how states and local governments interpret similar issues but that is certainly not indicated by Federal Income Tax's title. That limit may be made up for in some schools with other tax-related courses, such as state and local taxation (hopefully not limited to the income tax), international tax, nonprofit entities, and employment taxes. All of these topics have singular courses offered at some schools, but one thing that may be lost from this siloed approach is a recognition of the interrelatedness of the different taxes. It also may not be feasible for smaller law schools to consistently offer a broad array of these courses.

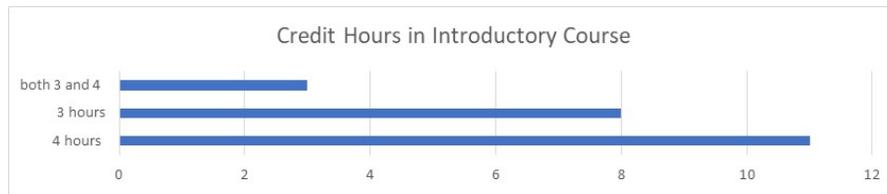
I surveyed course offerings as listed on thirty law schools' websites.¹⁶ This was not a scientific study and is not necessarily accurate as some schools list courses that have been taught but are not regular offerings. Additionally, some courses that might be tax-related were not included because their titles left coverage unclear.

¹⁶ Surveyed schools were ranked 20 through 50 in the 2022 *U.S. News & World Report* Law School Rankings: Boston University School of Law, University of Florida College of Law, University of Minnesota Law School, Notre Dame Law School, University of North Carolina School of Law, Arizona State College of Law, University of Alabama School of Law, George Washington Law School, Boston College Law School, Brigham Young University Law School, Emory University School of Law, University of Illinois College of Law, University of Iowa College of Law, University of Wisconsin Law School, Fordham University School of Law, UC Davis School of Law, UC Irvine School of Law, Washington and Lee University School of Law, William and Mary Law School, Ohio State University College of Law, Wake Forest University Law School, George Mason University Law School, Indiana University School of Law, University of Utah College of Law, University of Washington School of Law, Pepperdine Caruso School of Law, University of Arizona College of Law, Florida State University College of Law, UC Hastings College of Law, and University of Maryland School of Law.



From the survey, it is clear that schools devote significant resources to teaching tax. Every school offered at least basic income tax plus a business-focused tax offering, whether as independent corporate and partnership tax courses or as a combined business entities tax course. Additionally, every school has specialized tax courses, although the choice of offerings varies. Therefore, students have many opportunities to learn about taxation, although generally as isolated issues. That isolation may be overcome in more generalized capstone courses; for example, a mergers and acquisition course might cover many different types of tax in addition to many different types of corporate law matters.

The amount that can be covered in each course is limited by the number of hours professors have. The survey showed variation in the number of credit hours for the introductory course; however, for many schools it is impossible to tell the number of hours in any particular course from their website.



Of twenty-two schools for which I could find the information, fifty percent required four hours, thirty-six percent required three hours, and the remaining fourteen percent offered both three and four hours. With more credit hours it is possible to accomplish more; however, there are practical limitations on the ability to require more credit hours with faculty availability and student interest. Each of faculty and students may or may not prefer more hours devoted to one tax course.

Accepting that a basic tax course will continue to be the framework around which taxation is taught with either three or four credit hours, the question remains what tax courses try, and should try, to accomplish. For example, a course with the same title might try to teach the practice of tax law or, alternatively, teach the theory behind congressional tax choices. It is difficult, however, to combine the practical application of tax as a lawyer would do with larger theoretical discussions of the choices because of the limited time available in any one course. Smaller theoretical questions (for example, why exclude or include lottery winnings as gross income) are more feasible than larger ones (for example, should we have an income tax as opposed to a consumption tax) because the discussion has a narrower frame.

Even with a broader inclusion of practical tax and theoretical tax in the same course, this would still not expose students to a broader range of taxes. With the importance of different taxes, such as the sales tax and tariffs, it is arguably more important for non-tax specialists to have some exposure to these many different types of taxes and the issues they involve rather than depth in one area. Of course, this is an issue of trade-offs for which reasonable minds may differ.

C. Pedagogy and Assessments

It is impossible to determine from course titles how professors cover particular material or how they assess whether or not students have learned that material. As introductory tax courses are often larger courses, I would be unsurprised if most professors use some form of lecture or Socratic

method to cover lots of material for lots of students. Assessments are likely through the standard examination format. However, there are ways to incorporate additional assessments and additional forms of pedagogy in traditional courses;¹⁷ however, I have often found that expectations for traditional courses are set. Radical changes from traditional teaching and testing methods tends to provoke some student resistance.

In Tax Through Film, the two skills that I wanted students to practice were group work and writing. First, it has long confounded me how much students resist working in groups. Although lawyers rarely work alone, if only working with their clients, my law school students have generally been reluctant to adopt that method of cooperative learning in their schoolwork. I believe much of the reluctance stems from the pressure of grades and the fear that not all members will contribute equally.

Nevertheless, in order to develop this important lawyerly skill, students need to be put in groups for which there is a project that is assessed. From experience, I have learned that group work is more effective when the work demands individual contributions. One successful tool was requiring students to negotiate tax provisions in teams against each other. Being forced to depend on the group to create a written product was important to the group's success.

Second, many of my colleagues and I have noted that our students' writing is not at the level we would like. It is difficult for students to find the time to write and difficult for faculty to find the time to give feedback on that writing. This creates a circular problem when students fail to devote sufficient attention to writing and, then, faculty fail to give them enough feedback for students to understand any problems with their final product. Despite recognizing the need for more attention to writing, the fact remains that increasing students' writing obligations is difficult for both students and faculty.

I have found ways to incorporate written projects in other tax courses. For two years of Federal Income Tax, I had students respond to problem sets in groups and gave detailed feedback on the writing to make the amount of commenting manageable and to incorporate group exercises. However, I learned that many groups simply divided the problems amongst themselves

¹⁷ Heather M. Field, *A Tax Professor's Guide to Formative Assessment*, 22 FLA. TAX REV. 363 (2019).

and did not collaborate. Today, I require students to submit an answer to a review problem for each class meeting, and their response must be in the form of professional emails. When the class is large, I often do not give detailed, individual feedback on the writing but, instead, post model answers and grade based on effort. However, when I grade based on effort, students learn the law better than without the problems but they do not develop their writing skills. In courses for which I grade the review problem, including as a component the effectiveness of the writing, students make tremendous improvement in writing concise communications to the intended audience.

My desire to increase the focus on group work and writing in Tax Through Film was facilitated by the shift online during the COVID-19 pandemic. My law school's administration called on faculty to think of ways to increase students' collegiality and sense of community. We were asked to shape our courses to reduce the isolation many students felt, which justified small group work. Also, because students did not speak as easily online, the increase in writing was more readily accepted than it might otherwise have been. It is my hope that COVID-19's isolation will remain behind us; nevertheless, the need to increase the use of group work and student writing will continue.

II. COURSE STRUCTURE

As offered in fall 2020, Tax Through Film was a three-credit course with five components: handouts and video lectures, discussion groups with a writing component, films watched outside of class, reaction papers to the films, and online synchronous discussions of the films. First offered during the COVID-19 quarantine when all Cincinnati Law courses were moved online, some of the components were adapted to fit the online format but a similar structure had been planned for an in-person course.

The requirement that students watch a two-hour film determined the sequencing of the course's requirements. I wanted students to have the weekend to watch the film and, therefore, needed to introduce material before the weekend. As the course met on Tuesdays and Thursdays, students discussed the law on Thursdays in discussion groups and applied the law to the films on Tuesdays in a large, synchronized meeting.

A. Change to Online Format—Flipping the Classroom

After learning that the course was going to be online early in the summer, I had the time to fully consider the structure of the course in the new format. Although I retained much of the planned structure, some parts were tweaked for the online offering. In particular, I almost entirely flipped the classroom, so that much of the substantive law was introduced to the students outside of the classroom.

What added difficulty more than the online format was that enrollment was higher than I had anticipated, which increased the complexity of coordinating the flipped classroom, especially as I had never had many of these students before. Often with new courses, and in particular with new tax courses, enrollment at Cincinnati Law is low. Many courses have around the ten-student minimum that the University generally requires of courses. Instead, twenty-eight students enrolled in the first offering. With the move online this increased the complexity of coordinating groups and ensuring students understood the material.

In order to accomplish as much as possible with less contact time with students, I embraced the flipped structure. I had learned from the prior semester that some students would have technological and Internet difficulties that meant some students would be unable to participate online at any given time. Therefore, maximizing student flexibility was important. Moreover, larger sessions of synchronized meetings were less effective because students had difficulty knowing when or how they should speak. For many students, raising their electronic hand was never as comfortable as participating in an in-person meeting.

In this context, a flipped classroom was one in which students learned the substantive law outside of class sessions. I introduced this material through ten-page handouts and a recorded thirty-minute lecture explaining the concepts with examples. Then, instead of a large group meeting to go over problems, the students met in small discussion groups to discuss what they had learned. Therefore, meetings were to apply the law and to clarify their understanding, as needed. These discussions of the law were conducted on Thursdays to prepare students to use that law when watching the films over the weekend.

It was through this self-directed reading and listening, followed by group discussions, that students gained their initial understanding of the law. Adopting this approach required significant faith in the students and their

ability to ensure each other understood the law. The faith proved well placed with this group of students. By introducing the law outside of the classroom, students could use their meeting times to develop their legal skills and understanding of how the law applied.

B. Group Work: Discussions and Written Assignments

Much of the initial work ensuring students parsed the law occurred in discussion groups. Because students understood that these discussions must result in a graded written product, the groups helped ensure all students developed a baseline understanding of the concepts. Groups met for thirty to sixty minutes each Thursday at assigned times, and they turned in their written responses to four questions by Sunday evening.

I admit that I was concerned that some students would not pull their weight, but I did not find that to be a significant problem. I adopted several structural tools to reduce the likelihood of free riding: (1) The groups were small. (2) Attendance was required, and I listened in to the beginning of groups to answer questions and to keep attendance. (3) The groups had to turn in written answers that were graded for the group. (4) I gave the groups detailed feedback within the week. (5) I switched up the groups three times over the course of the semester and required students to evaluate their group's members.

First and foremost, it was good that the groups were small, with four or five students in each. The small number of people meant everyone should have an active role and reduced the chance that students got lost or dominated the discussion. There was little room to shirk responsibility, especially as they were told in the syllabus and introductory meeting that if they missed more than three discussion group meetings, their grades would be adversely affected. I think the groups with five students initially worked better than those with four because there were four questions each week. Having five members forced the group to think of roles in the discussion and writing process rather than dividing the questions among the members. Although students could divide the work in any way that they liked, I heard many groups assign roles, such as one student would take notes during their discussions, two would write initial drafts of answers, and one or two would proofread.

I found my participation at the beginning of each group meeting to be useful, with most groups asking procedural or legal questions every session

or so. At times my presence seemed a distraction, leaving me to feel their relief when I left the meeting to go to the next group. From their surveys, some students really appreciated my making myself available and other students would have preferred if I had not.

Each group was required to submit, as a group, written responses to questions posed at the beginning of the handout. Because the questions were at the beginning of their reading, students could read the handout, watch the video, and then discuss the material with an eye to the questions, which may have reduced their overall learning but focused their work. Having them write answers forced students to work as a group, and students had to divide the work to ensure they made progress. Because of the grade component, at least a few students in each group cared greatly that the group's answers were well reasoned and well written. Therefore, when someone within the group gave explanations that did not make sense or that were off topic, other group members would rein the student in.

Moreover, because groups received prompt feedback, after the first week groups began to learn my expectations in ways that my instructions failed to accomplish. These included that groups needed to have someone proofread their responses. My goal was to give detailed feedback on the group writing for depth of discussion and clarity, which included proper grammar, within four days. Over the course of the semester, the groups' writing greatly improved, and the grading element became easier.

The discussion groups were assigned, and the assignments changed over the course of the semester to ensure that students practiced working with new group members. I would like to claim the change was not random and that I moved stronger personalities around. However, I had four students who had taken Federal Income Tax before and an additional five who were enrolled in Federal Income Tax in fall 2020, and I tried to ensure these students were evenly distributed among groups. Otherwise, I focused on ensuring group membership changed. Nevertheless, with the change, students had the opportunity to remake their group personality and to assume different roles within groups.

When the groups changed, students were required to evaluate their prior discussion group's dynamics and give scores out of five to each group member. My hope was that students would tell me if group members did not live up to the group's expectations. In some instances, one or two of the four or five members would share when someone regularly left early or did not have a professional demeanor on Zoom. Several students commented on how

hard it was in the first week of a new group but that their group increased effectiveness and efficiency with practice. Some groups' individual feedback appeared more honest than other groups' feedback. For some groups, members gave everyone a five out of five, which may have been an accurate reflection of equality, the desire not to draw distinctions among classmates, or an unwillingness to devote the time to thoughtfully fill out the chart. I was not particularly disturbed by this latter choice because group members had the opportunity to share their views.

In some instances, the feedback students gave each other was particularly useful for their classmates. For example, one student had a private meeting with me because she was concerned that her classmates would report that she dominated her group and she was concerned this would negatively affect her grade. Group personality was not a graded factor, but I was happy to report to her after the evaluation that she had received higher marks from her classmates than any other member of the group. In fact, some group members wrote that she was an extremely effective group leader; so, what she thought was dominating, they thought was leading.

This past year I told students that I would not share their specific comments in order to encourage honesty. Going forward, I will make clear that I might offer composite feedback from the group to individual members as long as a particular view was shared by more than one member. In other words, I would not want to tell a student what was one person's complaint, but it would be helpful to tell them about shared comments. Providing this type of feedback in a small community such as at Cincinnati Law might be hard; therefore, I will try to reduce the chances students can tell from whom any critiques originated.

From the course surveys completed at the end of the semester, I was unsurprised to find that most students do not, in fact, like to work in groups. Several students complained about the time that the group work required, especially because of the graded written assignments. Students disliked the need to get group members who were less engaged to work harder and to control the domineering members of the group. However, as one of the purposes of the group assignments was to make students aware of the time commitment required for creating group projects, I was prepared for the need to educate students about the importance of learning how to make groups effective. I can only hope students recognized their improved group skills.

Overall, I found the group work effective; however, it was sometimes painful for me and the students. The graded written component necessitated

significant work for students and myself and produced some student complaints about grades. Students may claim that they like midsemester assessments, but it was untrue when they received a lower grade than they wanted—made more necessary because of the curve and the midterm bonus feature described below. Because many students have received feedback on rubrics, they expect to mathematically deduce where they lost points. Thus, the comparative feature inherent in grading was not something students seemed to expect. It frustrated some when their grades were partly the result of their answers not being as well argued or as persuasive as other groups'. This was particularly troubling for students in the A- and B+ grade range.

In the future, I might frame their grades on a rubric so they can see the value of original thought, the need to be concise, and the relative value of grammar issues, but I am worried about the change of optics. What troubles me with reducing feedback to a rubric is that I doubt many students read the comments after looking at the blocks (especially as some students told me at the end of the semester that they had not read the comments after seeing their grade). Because young attorneys should not expect feedback to be so mathematical, I also question if it helps them to continue with an undergraduate practice or whether it is better to transition them to professional feedback.

C. Individual Reaction Papers

While watching one film per week, students were to consider questions I had posted that asked about the application of the new law introduced on Thursday to the week's film. Thus, the questions involved the substantive law that students had learned about in the handout and video and that had been discussed in the groups, but the questions were fact-specific to the film. The goal of this exercise was for students to practice applying the facts and circumstances tests prevalent in tax law. Instead of using cases for the factual background and the facts deemed relevant by a particular judge, students acted as the judge evaluating the facts displayed in the films.

Additionally, over the course of the semester students were required to write four papers responding to the questions posed on the films. At the beginning of the semester, students signed up for their four films to ensure a relatively even distribution of papers for me to comment on over the semester. Unlike the weekly writing, students were not to work in groups or collaborate on these reaction papers. The papers were short—each had to be between three and five pages long. The goal was for them to turn in individual

writing projects that were graded and received feedback both as to their thoughts and their writing styles. The papers were due before the Tuesday class meeting.

One difficulty for this first offering was the need for precise movie-based questions. As I had produced all the materials for this course over one summer, I did not learn until the semester started that some questions were too broad and some had too many elements. Unfortunately, I had posted all of the materials up front or I would have revised them. My expectation was that the questions were a baseline for discussion. However, several students seemed to think there was magic in the wording. Consequently, they were sometimes frustrated when there were ambiguities in questions.

The ambiguity in questions became particularly difficult for students as they wrote reaction papers. As included in the syllabus and repeated throughout the semester, students were to take a question or part of a question as a springboard for an analysis of the tax implications of the films. I was particularly interested in the tax elements we had covered that week. The question itself was unimportant to me; nevertheless, students did not seem to accept that. Some students insisted on breadth of coverage, leading to shallow analysis.

Going forward, I recognize the problem so I can help correct it with better drafting of questions. I will also only distribute a few weeks' questions at a time so that I can see if there are new problems. Additionally, I will try to make clearer what I intend and do not intend students to do with the questions, and I might post the best answer for each movie paper as an example. The downside of posting model answers is that, because each movie is different and many different approaches would work well, it would be problematic if students shoehorn their analysis into the form of the first model paper. The question for me is whether the risk to creativity is better than the stress for students who are unsure what I am asking.

Because of the course's focus on improving student writing, at the end of the semester I gave all students the opportunity to revise one of their reaction papers after they had received comments and a grade. This opportunity for improving their grade motivated all but five students to revise a paper. In the process, students were asked to pay particular attention to how to write effective arguments and what is required for good writing, including correct grammar. Somewhat surprising to me, two students did not improve their writing in the process of the revision. However, most students in the

course made significant improvements in their writing over the semester generally and with the revision in particular.

D. Synchronous Film Discussions

Full-class, synchronous meetings were held each Tuesday in which students applied the tax concepts introduced the prior Thursday to the assigned film. As with the group sessions, attendance was required, and active participation counted toward students' grades. Although I had feared we would run out of discussion in an hour and twenty-five minutes, in each meeting we ran out of time with people still talking. I was particularly happy when students told me they continued the discussion after class and held similar discussions with family and friends about other movies over the course of the semester.

Using films as the factual basis for the discussions had many positive effects. In class, students tended to remember the facts of the movies, so their incorporation of facts into their arguments was robust. It was also easier for students to explain their thought process because, when they had difficulty explaining the relevance of a particular fact, they could incorporate the entire scene, and thereby explain the importance they attached to a particular fact. The downside was that students could use knowledge of the film as a crutch when they had difficulty isolating facts. This did give them the opportunity to practice how they would tease out particular facts to include in a brief or memo when they are unable to detail the entirety of the situation.

Practically, I struggled to facilitate large group discussions online. Although students could raise their real or electronic hands to prevent themselves from interrupting each other, this did not engender spontaneous conversations. I tried to have students pose a follow-up question for the group after their own comments, but the artificial construct did not catch on. It was best when I took an active role facilitating the discussion, thereby giving up on the attempt for organic conversation. Naturally quieter students seemed to especially fear interrupting each other, so I called on students who would otherwise remain quiet to ensure a more balanced discussion. This concern would be mitigated but not eliminated by an in-person class as many students find it easier to engage in the give-and-take of a conversation.

E. Midterm

As one goal of the course was to show that tax is fun and because this was a film course, I required each group create a five to ten minute movie of their own as a midterm. I am not a filmmaker and did not expect students to have any filmmaking experience. Therefore, this was not intended to produce Sundance-winning shorts but was to be a fun experience to help stymie any quarantine blues. This also had the advantage of taking up one class meeting which would have otherwise messed up my Thursday to Tuesday arrangement.

Grades for this project were set at an automatic receipt of the points with the submission. Moreover, if a group correctly identified three tax consequences in their film, either obviously or discretely, each member of the group received a bump in their lowest reaction paper score (i.e., from B to B+, from B+ to A-, etc.). Additionally, the group with the best movie (based on the professor's entertainment while finding the three tax consequences) was given an A+ on one of their reaction papers.

Because I had anticipated a small enrollment course, the opportunity for higher grades was not a concern because Cincinnati Law's mandatory curve does not start until enrollment hits twenty students. However, once enrollment passed twenty students, I was required to put them on a curve with a B+ median.¹⁸ With the grading implications of the curve, one student in a losing group complained about the amount of the increase. To be frank, the grading implications were starker than I had intended. In the future, I would reduce the bonus values to preserve greater flexibility for grading.

With the mandatory curve, elements of the course that were intended to give students security in their grades, such as the midterm (as well as the revision of a paper) meant that I had to give lower grades as a starting point than I otherwise might to ensure I could keep them on the curve. I am not sure if students understood this consequence. Interestingly, all of the students in the winning group chose to write all of their reaction papers, likely in the hopes of getting the best possible grade.

Despite my low grading threshold, many of the films were clever and well executed. It also seemed to give students an opportunity to shine. I was

¹⁸ See *JD Academic Rules*, *supra* note 10.

particularly pleased that groups delegated the work among each other and thought of interesting ways to accommodate a range of quarantine restrictions and to use different peoples' skills. Their ability to put together their different strengths should serve them well in their future legal practices.

III. THE COURSE'S COVERAGE

The course was designed to give students a broad perspective on taxes, although limited to U.S. taxation. It discussed everything from state and local taxes to international income and tariff taxation and of everyone from individuals to businesses to tax-exempts. This resulted in a trade-off of breadth of coverage over depth in any particular issue. As the goal of the course was to show students the interrelation of different taxes for different types of taxpayers, this trade-off seemed necessary.

A. Choice of the Taxes to Cover

The choice to cover a breadth of taxes was made to allow students to learn the interconnectedness of tax issues. This was to fill a gap because Cincinnati Law, as do most law schools, offers an array of specialized tax courses but no capstone experience that brings the different types of tax together. Thus, one goal of the course was to link the various taxes. While each topic was introduced on a particular week, the film discussions were expected to bring in ideas discussed in previous weeks in a section of the synchronized session I called "Let's Not Forget." Students soon learned to integrate older topics into discussions earlier each week.

This structure ensured that Tax Through Film worked in conjunction with Federal Income Tax and Tax Policy. As designed, Tax Through Film explored the application of the law to factual circumstances and how best to apply facts and circumstances tests in a granular way. Federal Income Tax as taught at Cincinnati Law focuses on statutory interpretation and reading regulations, thereby developing the skills to figure out what the law is, and, as I teach it, Tax Policy is a course that focuses on the choice of tax structures, looking at the current system compared to what it might otherwise be. Therefore, students were permitted to take some or all of these three courses. In fact, one student enrolled in all, and ten students took at least one other tax course.

Nevertheless, despite my acceptance that we would not cover any topic in depth, there remained only twelve weeks to introduce new material. To

choose topics, I thought of the big ideas that I wanted students to remember for the long-term about the tax system. When I first began teaching, I was told that you can expect students to retain three core ideas per course when they are not actively using the material after graduation. With that humbling thought, I distilled my three core ideas as:

- 1) The tax system touches almost every choice and activity that individuals, businesses, and other groups engage in. The fact that tax impacts everything means that lawyers need to understand the tax implications of their clients' activities themselves or find someone who does.
- 2) The tax system's impact is not always consistent or fair. For example, issues of family taxation, race and class, and interstate and international business have consequences for particular taxpayers that may be unexpected and, depending on one's perspective, unjust.
- 3) The tax system has been, and can be, changed to make it more consistent with society's goals. Therefore, once we recognize an issue of unfairness in the tax system, with sufficient effort and political will, the unfairness can be mitigated.

You may note that these three points are more consistent with a Tax Policy course than Federal Income Tax. However, unlike in Tax Policy, the way that students are taught to question the existence of problems is fact-specific to the circumstances of the film. In other words, it is not a theoretical issue of the application of the tax that is seen as problematic but how the tax applies to different people in the same film.

Within this metric, I made hard choices as to what issues would be discussed and how they would be framed. For example, I did not isolate feminist concerns with the Internal Revenue Code but integrated them within discussions of the family, which has some problematic implications for students' understanding of the material. These choices were not made reflexively but with thought as to possible coverage in the handouts and videos. Moreover, many additional issues were introduced in the discussions despite not being given a week's focus with the understanding that students' interest could direct the focus of the class meeting. In other words, as some issues were more interesting to the class, those issues received greater attention in discussions if not in the introduction of the law.

It is particularly pertinent that, unlike in Tax Policy, I did not have a week focused on race and class. The choice was made to integrate discussions of race and class throughout the course rather than putting several of these issues together as a study on the effectiveness of weaving these issues throughout the course. This was successful when we looked at the charts prepared by Jacob Goldin and Katherine Michelmore discussing the race and class implications of the child tax credit.¹⁹ It also worked well with respect to the implications of capital gains tax rates and the estate and gift tax. Nevertheless, I continue to be concerned with this approach in that students may feel like an issue has less significance when it is not included in a week's heading.

Some discussions also proved more difficult than others, often in ways that were unsurprising. For example, when we watched the 1982 version of *Annie*,²⁰ I pointed out that all of the children in the orphanage were white. We had a relatively brief discussion of this segregation and the implications thereof. We turned the discussion to whether the tax system can mitigate segregation or encourage integration, for example referencing *Bob Jones University v. United States*, decided the year after the film was released.²¹ However, I found this particular discussion forced with this group of students.

One lesson I drew from this was that I could have more effectively introduced the concepts in the handouts and in their group discussions so that students were better prepared. For issues that are difficult or sensitive, I have learned a greater need to ensure students have thought through the issues before the class meeting. Students did not feel any such reluctance discussing economic issues, even though several times they would add the caveat that they were not experts.

In some ways, the ability to choose topics permitted me to explore issues that I had not devoted significant attention to in the past. For example, I wanted students to focus one week on the use of tax incentives to encourage specific government-desired behavior. However, a purely theoretical

¹⁹ Jacob Goldin & Katherine Michelmore, *Who Benefits from the Child Tax Credit?*, tbl.1, tbl.2, tbl.3, fig.1 (Nat'l Bureau of Econ. Rsch., Working Paper No. 27940, 2021), <https://www.nber.org/papers/w27940>.

²⁰ ANNIE (Columbia Pictures 1982).

²¹ *Bob Jones Univ. v. United States*, 461 U.S. 574 (1983).

discussion was not consistent with the course. Therefore, I had an initial theoretical introduction but framed the incentives largely around federal antipoverty programs (of which I was familiar) as well as state and local credits for making films (of which I knew very little).

The ability to pick and choose topics, even narrowly from the various ways Congress uses tax incentives, allowed me to reduce the duplication from what we discuss in Federal Income Tax and in Tax Policy. As I am the only full-time tax professor at Cincinnati Law, I am in the position of ensuring that courses in tax work together to expand on concepts. Despite some initial duplication of ideas, it was important to minimize repetition so that students could take all the tax offerings. For example, in Federal Income Tax when we discuss gross income, we go in greater detail into stolen property, lottery winnings, and bartering; in Tax Policy, we focus on the evolution from the Haig-Simons definition of income as compared to alternatives; and in Tax Through Film, we discussed compensation for injuries, insurance proceeds, and treble damages. I cross-referenced the examples from the other courses for students who had taken many tax courses, but Tax Through Film was intended to stand alone.

B. Choice of Films

The films for this course were chosen for a breadth of genres and eras from the 1960s to last year. Some were animated; some were about superheroes; some were musicals. I aspired for every student to enjoy at least one film, and I hope they enjoyed many more. At the same time, an underlying need was to choose films that highlight specific tax topics. Although all films raise important tax issues, some are more clearly on point for the topics we covered.

Topic	Film
Income	<i>The Lego Movie 2: The Second Part</i> (Warner Bros. Pictures 2019)
Deductions from income	<i>Star Wars: Episode IV—A New Hope</i> (20th Century Fox Film Corporation 1977)
Credits (and targeted tax assistance)	<i>The Pursuit of Happyness</i> (Columbia Pictures 2006) ²²
Families and children	<i>Annie</i> (Columbia Pictures 1982)
Business forms	<i>Guardians of the Galaxy Vol. 2</i> (Marvel Studios 2017)
International tax	<i>Black Panther</i> (Marvel Studios 2018)
Employee v. independent contractor	<i>The Shawshank Redemption</i> (Columbia Pictures 1994)
Evasion v. avoidance	<i>The Firm</i> (Paramount Pictures 1993)
State and local tax	<i>Harry Potter and the Prisoner of Azkaban</i> (Warner Bros. Pictures 2004)
Estate tax/gift tax	<i>Brewster's Millions</i> (Universal Pictures 1985)
Research and development	<i>Big Hero 6</i> (Walt Disney Pictures 2014)
Tax administration	<i>The Untouchables</i> (Paramount Pictures 1987)
Review	<i>My Fair Lady</i> (Paramount Pictures 1964)

I disclosed in the syllabus and in the first meeting that many of these films have elements that I would change if I were their producer or director. Some had foul language, violence, stereotypes, and troubling subject matter. Some movies approached topics in ways that are insensitive or that we recognize as inappropriate today. For example, *My Fair Lady* has many troubling issues of abuse, but it also raises many opportunities for synthesis of tax issues: a dress imported from France is worn in England, Eliza Doolittle sells either stolen or waste flowers, Henry Higgins likely lives off an inherited estate and wins a wager, Alfred Doolittle inherits money from someone who died in another country. With so many tax issues in one movie,

²² A student in the course, Christi-Anne Beatty, attended the 1921 Tulsa Race Massacre Centennial in Oklahoma in connection with her summer 2021 employment at Mortar, an organization associated with Cincinnati Law's Entrepreneurship and Community Development Clinic, where she heard Chris Gardner, the person *The Pursuit of Happyness* was based on, speak. She admitted surprise when Tax Through Film proved relevant at work.

the choice seemed worth it. While I expected students to raise concerns about the nature of emotional and psychological abuse, I had not noticed the film did not have subtitles and the accents were problematic for at least one student.

With several of the films, we discussed many of the things that may make students cringe and tied those issues to tax. With *My Fair Lady*, we discussed if the tax system could, or should, offer remediation for private abuse. Several times throughout the semester students proposed or discarded tax as a solution to the societal problems that were raised. However, before the semester I did tell students that if they ever had particular difficulty with an issue raised in a film, to talk to me before class to discuss how best to handle the difficulty and whether we should fashion them a personal accommodation.

In the end of semester survey, only three students felt the films were not on topic, one arguing that films needed realistic plots to be the basis of legal discussions. When asked for suggestions, students offered some great choices that showed they had learned tax could be found everywhere: *Airplane!*, *War Dogs*, *Mr. Deeds*, *The Accountant*, *Willy Wonka and the Chocolate Factory*, *Iron Man*, *Indiana Jones and the Raiders of the Lost Ark*, *Elf*, *How the Grinch Stole Christmas*, *The Dark Knight*, *Les Misérables* (albeit noting it was a little lengthy), *Happy Gilmore*, *Good Will Hunting*, and *The Intouchables*.²³ I was particularly pleased when students told me they could not watch a movie after the course without thinking of its tax implications as the ability to see tax everywhere was the course's first goal.

IV. SAMPLE WEEK

As an example of how the course worked, one week we focused on the distinction among employees, independent contractors, and the self-employed and the tax consequences that follow. Therefore, students were to understand the differences in classification and how the tax system enforces

²³ AIRPLANE! (Paramount Pictures 1980); WAR DOGS (Warner Bros. Pictures 2016); MR. DEEDS (Columbia Pictures 2002); THE ACCOUNTANT (Warner Bros. Pictures 2016); WILLY WONKA AND THE CHOCOLATE FACTORY (Paramount Pictures 1970); IRON MAN (Marvel Studios 2008); INDIANA JONES AND THE RAIDERS OF THE LOST ARK (Paramount Pictures 1981); ELF (New Line Cinema 2003); HOW THE GRINCH STOLE CHRISTMAS (Universal Pictures 2000); DARK KNIGHT (Warner Bros. Pictures 2008); LES MISÉRABLES (Universal Pictures 2012); HAPPY GILMORE (Universal Pictures 1996); GOOD WILL HUNTING (Miramax Films 1997); INTOUCHABLES (Gaumont 2011).

that distinction. Moreover, the course looked at the benefits and burdens associated with each status for the workers and the business. These benefits and burdens were not limited to the income tax and the tax incentives operated through the income tax but included payroll taxes and the benefits of Social Security, Medicare, and unemployment. I made only passing reference to employment law benefits.

Students started the week by reading a handout that laid out the relevant law. The handout was relatively short, approximately ten pages. Therefore, it only introduced the various issues that lawyers would face. For example, it provided the basic factors the IRS and courts use to distinguish between workers and independent contractors but did not give a nuanced evaluation of those factors. Additionally, students watched a thirty-minute video that applied the law in various contexts as examples of the facts and circumstances application of the law. Additionally, the videos challenged students to think about ambiguities in the law and the cost those ambiguities might have on workers and businesses. The video also contained examples of when workers are carved out of some of these systems, such as prisoners generally not qualifying as workers for purposes of the Social Security, Medicare, and unemployment taxes.

Students then watched *The Shawshank Redemption* focusing on four questions:

1. Assuming Congress eliminated the special exclusion for inmate labor, would Andy properly be classified as an employee, independent contractor, or something else when performing accounting work for the warden? If he would be an employee (albeit forced), what would be the result? What tax/benefits should result for forced laborers if they are freed?
2. Was shining the warden's shoes in Andy's job description? Were the stolen shoes, suit, and paperwork taxable compensation?
3. Assuming Congress eliminated the special exclusion for inmate labor, how should Andy's work performing accounting services for other prisons' employees be classified? How should Red's bartering be classified? Should the results be the same for both people and regardless of their incarceration?
4. What is the current and your preferred tax result for prison labor on public works? Should inmates be employees, independent contractors, volunteers, or something else?

Our synchronized discussion then analyzed those questions. Students used the facts from the movie in this discussion. For example, students argued whether or not Andy should be treated as an independent contractor for his accounting business and the extent to which his inmate status was fairly used in that determination. In this way, issues of tax policy often entered into the debates as students discussed whether what they believed was the proper legal interpretation of the facts should be the proper application of the law.

In addition to policy considerations, we often altered the facts of the movie to compare different situations and explore how changed facts could alter the result. For example, how would Andy's business be taxed if he was not incarcerated? What if he worked for an accounting firm and did some services on the side? What if he was coerced outside of prison? In this way, students were able to use facts they could literally visualize to decide which facts and what part of the circumstances mattered under current law and, if students are ever in the position to change the law, what facts they would want to be considered.

Ten students chose to write a reaction paper to the movie, and the paper was due before our group discussion. One of the questions was the basis of each student's paper, and they each chose different aspects of the movie to write about, such as looking at the various jobs that Andy might be said to own and on the details of the various relationships that illustrate what might or might not signify Andy's power despite being an inmate. I had wanted to ensure a subset of students had well-thought-out views before the class discussion, but the concern was unnecessary for this group. Each week all of the students were largely prepared for the synchronized session.

V. CONCLUSION

Although the title Tax Through Film might have led students to expect the course to be a fluff course, it was not intended to be and students said it was a lot of work participating in groups and writing so much. I tried to create a learning opportunity that required students to practice applying the law to the factual situations raised in the assigned films in groups and in writing. There was the risk, however, that if students expected the course to be a fluff course, their reactions would be more negative regarding the level of work required than if the course had a more serious title, such as Practical Application of Taxation. It might also be hard for future employers to recognize the value of the course on transcripts based on the current title.

That the title was fun and drew higher enrollment was good for student outreach regarding taxation, but the course's current structure would not work for large classes without assistance in commenting on papers. More students meant more work giving feedback on writing and grading that was an integral part of this course. With seven groups of students, each week I had to respond to seven groups' discussion responses. And each student was required to complete four movie response papers, for 112 papers plus revisions, for a total of 219 writing assignments to give feedback. This is a number of assignments I still do not like to think about. But if law professors are committed to teaching students the lawyerly skills of group work and writing, someone will have to do the work. Tax Through Film showed me that this can be accomplished while still having fun.