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LESSONS FROM TEACHING TAX ONLINE

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LESSONS FROM TEACHING TAX ONLINE

*Margaret Ryznar**

I. INTRODUCTION

Teaching tax law has its challenges, being described as “bewildering” and “virtually unteachable.”¹ The daunting task of tax professors is to “introduce students to a hugely complex area of the law (a subject matter that has numerous terms of art), overcome students’ trepidations about the perceived difficulty and boredom of tax law, and teach students the art of statutory interpretation.”² Tax courses also are policy-heavy and interdisciplinary, resulting in complex and nuanced material.³ Tax laws change often, and sometimes dramatically.⁴ Of course, none of this makes teaching tax law less enjoyable.⁵

* Professor of Law, Indiana University McKinney School of Law. Many thanks to the participants of this symposium as well as those of the Global Meeting on Law and Society in Lisbon, Portugal, in 2022 for their helpful feedback on earlier drafts.

¹ Paul L. Caron, *Tax Myopia, Or Mamas Don’t Let Your Babies Grow Up to Be Tax Lawyers*, 13 VA. TAX REV. 517, 522 (1994).

² Scott A. Schumacher, *Learning to Write in Code the Value of Using Legal Writing Exercises to Teach Tax Law*, 4 PITT. TAX REV. 103, 105 (2007). Meanwhile, “[m]ost students approach tax with trepidation, and are relieved when the course is not as bad as they had feared.” Caron, *supra* note 1, at 522.

³ One does not need to be teaching a tax policy class to heavily touch on tax policy. Even the most fundamental federal income tax course requires considering tax policy. “Governments enact tax legislation to do much more than raise revenue. They set out to alter taxpayers’ behaviours, redistribute wealth, stimulate the economy, and produce public goods and services.” Adrian Sawyer, Comment, *Who Cares About Tax Theory and Why?: The Place of Tax Disciplines Within Academia*, 24 N.Z. J. TAX’N L. & POL’Y 221, 222 (2018). In addition to being policy-heavy, tax is interdisciplinary. *Id.* It borrows “from the disciplines of economics, history, philosophy, psychology, public policy and sociology.” *Id.*

⁴ See Martin D. Ginsburg, *Teaching Tax Law After Tax Reform*, 65 WASH. L. REV. 595, 618 (1990).

⁵ See *Interview with Martin D. Ginsburg*, 12 ABA SEC. TAX’N NEWSL. 6, 6 (1992) (“Teaching basic tax is, I think, the most fun because it is an enormous challenge.”); Gail Levin Richmond, *A Tax Professor’s Journey into Law and Popular Culture*, 28 NOVA L. REV. 787, 787 (2004) (“Many tax professors remember a time when it was fun to be a tax professor . . .”).

Online teaching has its own challenges. From motivating students to learning new technology, teaching online falls somewhere between being an art and a science.⁶ Furthermore, updating the course materials in an online course, such as lecture videos, is cumbersome, especially in a rapidly changing field like tax law.⁷ Online teaching in law schools is also relatively new, with less infrastructure and support than traditional teaching.⁸

Teaching tax law online, therefore, would seem especially challenging. As a result, it is not something that many law professors attempted before the COVID-19 pandemic caused them to do so in an unexpected experiment,⁹ even though online tax classes have existed in other contexts, such as business schools, accounting programs, and MOOCs.¹⁰

As it turns out, there are certain advantages to teaching tax law online.¹¹ In the study presented in this Article, many students found online teaching

⁶ The online teaching and learning environment is a unique one requiring the professor to capture the student's attention remotely. For more information on motivating students in online teaching and its importance, see Margaret Ryznar & Yvonne M. Dutton, *Lighting a Fire: The Power of Intrinsic Motivation in Online Teaching*, 70 SYRACUSE L. REV. 73 (2020).

⁷ See *supra* note 4 and accompanying text.

⁸ The earliest online law school courses were offered in the 1997–1998 school year after the ABA's Accreditation Committee passed the Temporary Guidelines on Distance Learning, which first allowed law schools to offer online courses. See Laura N. Gasaway, *Distance Learning Survey*, 29 SYLLABUS 16 (1998).

⁹ See, e.g., Charletta A. Fortson, *Now Is Not the Time for Another Law School Lecture: An Andragogical Approach to Virtual Learning for Legal Education*, 65 ST. LOUIS U. L.J. 505, 505 (2021) (“COVID-19 forced nearly every institution of higher learning, as well as others, to quickly pivot from a traditional face-to-face teaching model to an online teaching model.”); Heather K. Gerken, Foreword, *Will Legal Education Change Post-2020?*, 119 MICH. L. REV. 1059, 1059 (2021) (“During the early days of the pandemic, every school put a centuries-old teaching tradition online, often within the space of a single week.”).

¹⁰ See, e.g., EDUCAUSE, 7 THINGS YOU SHOULD KNOW ABOUT . . . MOOCs II (2013), <https://library.educause.edu/~media/files/library/2013/6/eli7097-pdf.pdf> [<https://perma.cc/XN2Z-BWAT>]. But see Bridget J. Crawford & Michelle S. Simon, *Law Faculty Experiences Teaching During the Pandemic*, 65 ST. LOUIS U. L.J. 455, 457 n.5 (2021) (“Bridget Crawford has been teaching both Federal Income Taxation and Wills, Trusts & Estates in partial distance formats since 2009.”); Sawyer, *supra* note 3, at 223 (noting that tax teaching differs based on the audience). Massive open online courses (MOOCs) are a form of a fully online course that is “built around pre-recorded video presentations, often by professors who are famous in their fields, which may incorporate still images, audio recordings, or other videos.” Philip G. Schrag, *MOOCs and Legal Education: Valuable Innovation or Looming Disaster?*, 59 VILL. L. REV. 83, 85 (2014).

¹¹ For example, “[o]nline teaching may help to address the needs in legal education that the Carnegie Report identified and the revised Standards have now institutionalized.” Max Huffman, *Online*

particularly effective.¹² They confirmed that they learned as much online as in an in-person class. In addition, online teaching fit their learning styles and needs. Students appreciated the ability to complete the material on their own time and to review lecture videos. Online coursework also enabled them to be more efficient.¹³ Students were surprised by how much they liked the online tax course, predicting that online teaching was the next move for education and that it would become mainstream.¹⁴ The vast majority of surveyed students indicated that they would take another asynchronous online class and that they would like to see more online programming.

The results from this survey are consistent with those from other studies on online teaching in both the undergraduate and graduate settings. Elements of online instruction that students appreciate include respectful faculty,¹⁵

Learning Grows Up—And Heads to Law School, 49 IND. L. REV. 57, 65 (2015) (emphasis omitted). “This provides law schools . . . with an opportunity to cultivate the potential benefits of online pedagogy . . . while mitigating the negative aspects of remote learning . . .” Christian Sundquist, *The Future of Law Schools: COVID-19, Technology, and Social Justice*, 53 CONN. L. REV. ONLINE 1, 4–5 (2020); see also Julia Puschunder & Martin Gelter, *The Law, Economics, and Governance of Generation COVID-19 Long-Haul*, 19 IND. HEALTH L. REV. 47, 91 (2022) (noting that online teaching innovation can help alleviate inequality); Lael Weinberger, *Keep Distance Education for Law Schools: Online Education, the Pandemic, and Access to Justice*, 53 LOY. U. CHI. L.J. 211, 211 (2021) (suggesting that distance education can advance justice). “The debate about whether we should teach law online is over. Indeed, it has been over for some time, but the Covid crisis has made this even more clear.” David I.C. Thomson, *Elements of Effective Online Instruction in Law*, 65 ST. LOUIS U. L.J. 703, 704 (2021).

¹² See *infra* Part IV.

¹³ Several students in this study said that this online course kept them on track so they started outlining sooner than usual and that this added efficiency allowed them to enjoy weekends and breaks instead of deciphering notes and outlining. Another student added that this online course was the same amount of work as an in-person course but was more efficient. Yet another student said that choosing the pace allowed for efficiency.

¹⁴ Studies of online education have reached similar conclusions. See, e.g., Victoria Sutton, *Asynchronous, E-Learning in Legal Education: A Comparative Study with the Traditional Classroom*, 70 SYRACUSE L. REV. 143, 166 (2020) (“[T]his 100% asynchronous law, e-learning course, proved to be comparable to a traditional course . . .”); William K.S. Wang, *The Restructuring of Legal Education Along Functional Lines*, 17 J. CONTEMP. LEGAL ISSUES 331, 354 n.50 (2008) (citing studies showing no difference between traditional teaching and online learning); Katharine T. Schaffzin, *Learning Outcomes in a Flipped Classroom: A Comparison of Civil Procedure II Test Scores Between Students in a Traditional Class and a Flipped Class*, 46 U. MEM. L. REV. 661, 672–73 (2016) (describing comparisons of various teaching methods).

¹⁵ Kelly Bergstrand & Scott V. Savage, *The Chalkboard Versus the Avatar: Comparing the Effectiveness of Online and In-Class Courses*, 41 TEACHING SOCIO. 294, 294 (2013).

substantial interpersonal communications,¹⁶ an ability to easily share information¹⁷ and ask questions,¹⁸ flexibility in learning the material,¹⁹ and a course design that keeps students from falling behind in the course.²⁰

When returning to in-person teaching, it makes sense to implement such lessons if possible.²¹ The question thus becomes how to import into traditional courses the aspects of online learning that students found helpful.²² If continuing to teach online or hybrid, such lessons can be directly applied.²³

Accordingly, this Article seeks lessons for teaching tax from a survey of online federal income tax students. Part II begins by surveying the relevant literature, while Part III explains the research design of the study and the relevant online tax course. Part IV presents the results from the study of

¹⁶ *Id.* at 296.

¹⁷ Jeremy I. Tutty & James D. Klein, *Computer-Mediated Instruction: A Comparison of Online and Face-to-Face Collaboration*, 56 EDUC. TECH. RSCH. & DEV. 101, 118 (2008).

¹⁸ Andrea L. Porter et al., *Instructional Design and Assessment: Comparison of Online Versus Classroom Delivery of an Immunization Elective Course*, 78 AM. J. PHARM. EDUC. 1, 1, 8 (2014).

¹⁹ *Id.*

²⁰ *Id.*

²¹ This is especially true where the lessons of online teaching were significant. *See, e.g.*, Kia H. Vernon, *Zooming Through Law School: Lessons Learned from Remote Learning During the COVID-19 Pandemic*, 65 ST. LOUIS U. L.J. 717, 719 (2021) (“[T]eaching law online made me a better teacher, and more importantly, a better person.”).

²² “For many years, the question of how to use technology to teach the law has been a minor concern of the legal academy.” Michele Pistone, *Law Schools and Technology: Where We Are and Where We Are Heading*, 64 J. LEGAL EDUC. 586, 586 (2015).

²³ Teaching online is a spectrum, and teaching hybrid is the large middle of that spectrum—it can range from having one percent of the course material online to ninety-nine percent. The flipped classroom is an example of hybrid online teaching, for example, where students watch video lectures at home and do problems in class. *See, e.g.*, Heather M. Field, *How the Pandemic Flipped My Perspective on Flipping the Tax Law Classroom*, 19 PITT. TAX REV. 267 (2022). Importantly, however, the ABA starts to define a course as online for purposes of the thirty-credit Juris Doctor cap if the professor is physically separated from the students for more than one-third of the course. Memorandum from Maureen A. O’Rourke, Council Chair, Am. Bar Ass’n Section of Legal Educ. & Admissions to the Bar, & Barry A. Currier, Managing Dir. of Accreditation & Legal Educ., Am. Bar Ass’n, to Interested Persons & Entities (Feb. 22, 2018), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20180222_notice_and_comment.authcheckdam.pdf [<https://perma.cc/EV6H-9DN2>]. Thus, even a traditional in-person course can implement some online course materials, which is particularly useful in scenarios such as adverse weather.

online tax students regarding content delivery and student assessments. Finally, Part V offers lessons from online tax teaching, including how to help students learn and engage with the course material. Appendix A includes a sample quiz and answer key as well as a discussion board question.

II. BACKGROUND

Much scholarly attention has focused on the goal of effective teaching. This has spanned subjects such as teaching tax law as well as teaching online, both of which are considered next.

A. Teaching Tax

Various theories have existed about the best teaching approaches to tax law. For example, Professor Michael Oberst has distinguished between the “Passive Approach” and the “Active Approach.”²⁴ The Passive Approach introduces students to basic concepts, while the Active Approach “requires students to examine and apply statutes and regulations.”²⁵

Meanwhile, having compared tax teaching methods in Australia, New Zealand, and the United States, one professor concluded that tax teaching methods can include: “(1) dissemination of the basic legal principles based on case law, that is, technical-rational knowledge; (2) inductive application of legal principles to given scenarios; and (3) practicum exercises to address everyday problems of legal practice, which draw on tacit, as well as explicit, knowledge.”²⁶

In certain ways, teaching tax law is similar to teaching other law subjects.

[T]ax professors have adopted the pedagogical methods of other law professors who teach large classes. Many basic tax courses, and most basic tax course books,

²⁴ Michael A. Oberst, *Teaching Tax Law: Developing Analytical Skills*, 46 J. LEGAL EDUC. 79, 80–81 (1996).

²⁵ *Id.*

²⁶ Sawyer, *supra* note 3, at 225 (citing Diane Kraal, *Legal Teaching Methods to Diverse Student Cohorts: A Comparison Between the United Kingdom, the United States, Australia and New Zealand*, 47 CAMBRIDGE J. EDUC. 389, 394–95 (2017)).

employ the usual mix of heavily-edited caselaw, a sprinkling of Code and Regulation provisions, and problems or talking points that will form the basis of class discussion.²⁷

Sometimes, “[c]asebooks on federal income tax . . . play second fiddle to the Internal Revenue Code. They differ among themselves more in matters of style than of substance, covering the same ground with substantially the same emphases and leading cases.”²⁸ “To help students understand this complex law and to teach students the art of statutory construction, tax faculty use some form of the Socratic method, putting one or more students through a series of questions designed to plumb the intricacies and mysteries of the Code.”²⁹

In tax law especially, however, problems are a staple. The problem method, in contrast to the case method, is when “students learn the law by wrestling with how to apply the law to a particular set of facts (a ‘problem’). . . .”³⁰ “The problem method allows instructors to cover a vast amount of the Code, while at the same time emphasizing the skill of statutory interpretation.”³¹ Furthermore, the problem method may “us[e] sets of problems composed by the text’s author and/or the instructor as the basis for class discussion. These problems require the students to read and digest the Code and Regulations and to become adept at parsing complex statutory and regulatory provisions.”³²

In addition, “[a]n emerging issue in the teaching of law, including tax law, is requiring inclusion of experiential education. . . .”³³ Specifically, experiential approaches “help students connect the content of the substantive

²⁷ Schumacher, *supra* note 2, at 105.

²⁸ John Lowenthal, *Book Review*, 84 HARV. L. REV. 1052, 1052 (1971).

²⁹ Schumacher, *supra* note 2, at 106. Meanwhile, “students prepare for class by reading assigned texts or completing other assignments, then attend class where the teacher leads a Socratic dialog, facilitates a discussion, or presents a lecture.” Gerald F. Hess, *Blended Courses in Law School: The Best of Online and Face-to-Face Learning?*, 45 MCGEORGE L. REV. 51, 52 (2013).

³⁰ Sarah B. Lawsky, *Teaching Algorithms and Algorithms for Teaching*, 24 FLA. TAX REV. 587, 589 (2021).

³¹ Schumacher, *supra* note 2, at 134.

³² *Id.* at 106.

³³ Sawyer, *supra* note 3, at 223.

material with the use of the substantive material, thereby fostering active student learning and further developing students' abilities to be critical and creative thinkers."³⁴ "[E]xperiential exercises, especially if paired with a written component, give faculty an additional technique for assessing what students are actually learning."³⁵

Finally, "[w]henver practicable, tax professors should include writing assignments in their substantive courses that will necessitate each student to fully analyze the relevant Code provisions and create a written product that would be appropriate for their future practice."³⁶ This is partly because "[g]ood legal writing is not only inseparable from good legal analysis, the writing process itself can contribute to the understanding of the legal concepts involved."³⁷ During the COVID-19 pandemic, these theories had to be applied in online tax teaching.³⁸

B. Teaching Tax Online

There has been an increasing amount of literature devoted to online law teaching recently, particularly since the onset of the pandemic that propelled

³⁴ Heather M. Field, *Experiential Learning in a Lecture Class: Exposing Students to the Skill of Giving Useful Tax Advice*, 9 PITT. TAX REV. 43, 54 (2012) (emphasis omitted).

³⁵ *Id.* at 57.

³⁶ Schumacher, *supra* note 2, at 104–05.

³⁷ *Id.* at 109.

³⁸ However, the modality of the course does not necessarily implicate the quality of the course.

Our myths about in person and online teaching have distorted our thinking. Unquestionably, many in person law school classes meet and even exceed our preconceptions about optimal in person classes. Many fall short, and a significant number fall far short of the ideal. Likewise, online classes can be excellent, mediocre, and poor. The modality, however, plays an insignificant role. Rather, factors including professors' course and class session design, class preparation, connection with their students, communication of high expectations, engagement of students, and assessment and feedback practices are much more significant to student learning.

Michael Hunter Schwartz, *Towards A Modality-less Model for Excellence in Law School Teaching*, 70 SYRACUSE L. REV. 115, 141 (2020).

so many faculty online.³⁹ This has been helpful for those designing and building new online courses.

There are two types of online teaching—asynchronous and synchronous. Asynchronous online teaching is a pre-built course in a learning management system, such as Canvas or Blackboard, without live meetings.⁴⁰ Some professors estimate that it takes between 200 and 300 hours to build a quality asynchronous online course.⁴¹ Asynchronous online teaching is time-shifted, with everyone logging onto the learning management system at different times during the week.⁴² This marks a dramatic departure from traditional classroom teaching.

Asynchronous online teaching offers more flexibility because it is essentially an on-demand course.⁴³ It “can alter the place, time, and method of learning, offering multiple benefits to both teachers and students.”⁴⁴ This schedule flexibility allows students to complete course work late at night and

³⁹ For example, *Miami Law Review*, *Saint Louis University Law Journal*, *Syracuse Law Review*, and the *Journal of Legal Education* devoted entire issues to online teaching in 2020–2021. See, e.g., Nina A. Kohn, *Online Learning and the Future of Legal Education: Symposium Introduction*, 70 SYRACUSE L. REV. 1 (2020). Some literature on online teaching predated the pandemic. For example, *Indiana Law Review* published a symposium in 2018 hosted by Indiana University McKinney School of Law. Andrew Klein & Max Huffman, *Upward! Higher: How a Law Faculty Stays Ahead of the Curve: Introduction*, 51 IND. L. REV. 415 (2018). A 2018 review of the websites of the top one hundred law schools revealed that at least thirty of them were offering online courses as part of their law school curriculum. In 2018, the ABA, the regulator of law schools in the United States, increased the number of permissible online course to one-third of the credit hours required for the Juris Doctor degree. *How Online Learning is Revolutionizing Legal Education: A Discussion with Ken Randall of iLaw*, ABOVE THE L. (Nov. 26, 2019, 4:16 PM), <https://abovethelaw.com/2019/11/how-online-learning-is-revolutionizing-legal-education-a-discussion-with-ken-randall-of-ilaw/>.

⁴⁰ See *Amplifying Awesomeness: You. To the Power of the Canvas by Instructure.*, INSTRUCTURE, <https://www.instructure.com/canvas> [<https://perma.cc/66FF-AMQ3>] (last visited Apr. 10, 2022); *Combining Best-in-Tech Solutions to Power Your Success*, BLACKBOARD, <https://www.blackboard.com/> [<https://perma.cc/5QDQ-65V2>] (last visited Apr. 10, 2022).

⁴¹ Yvonne M. Dutton & Seema Mohapatra, *COVID-19 and Law Teaching: Guidance on Developing an Asynchronous Online Course for Law Students*, 65 ST. LOUIS U. L.J. 471, 490 (2021).

⁴² For further information and guidance on online teaching, see Margaret Ryznar, *A Brief Guide to Online Teaching*, 11 HOUS. L. REV.: OFF THE REC. 69, 71 (2021).

⁴³ The literature on online programming highlights flexibility as a key advantage of asynchronous online classes. See, e.g., M.J. Le Brun, *On Becoming a Techie: Making Technology Work for Law*, 52 SYRACUSE L. REV. 1103, 1117 (2002).

⁴⁴ Steven C. Bennett, *Distance Learning in Law*, 38 SETON HALL LEGIS. J. 1, 2 (2014).

on weekends to accommodate other commitments, the flexibility to do the course work on students' own time, the flexibility to go at their own pace, the geographic flexibility of not needing to commute to school, the flexibility to do the coursework during the times that they feel they are at peak performance, and the flexibility in the amount of time allotted to course assignments. For these reasons, students often prefer asynchronous online courses, especially if they have jobs or families.

An asynchronous online course is divided into individual modules that can correspond to a single in-person class or another amount of course material. Each module contains preplanned content and assessments. The main content delivery methods in asynchronous online courses are pre-recorded lectures, other supplemental videos, PowerPoints, messages, pictures and animations, and written text (for example, describing learning outcomes for the material) arranged in the school's learning management system.⁴⁵ The asynchronous online format allows for the integration of supplemental material, and relies on chunking material, especially lecture videos. "In terms of developing actual online content, it's worth noting that ten to twenty-minute lectures seem to be today's 'sweet spot' for length."⁴⁶ It is even possible to combine content and assessments by embedding quizzes in the video lectures. Meanwhile, course organization, achieved through course design, is particularly important when it comes to organizing asynchronous online content. Several law schools now have templates or course shells for asynchronous online courses in their learning management

⁴⁵ In such courses:

[q]uizzes must be completed, discussion board prompts answered, and other projects submitted. The professor can immediately identify disengaged students by checking for missed deadlines, unopened assignments, and unwatched videos. And each student's understanding can be gauged through assessing substantive performance on course activities. What is lost in physical presence is counteracted by active learning experiences and prompt feedback.

Agnieszka McPeak, *Adaptable Design: Building Multi-Modal Content for Flexible Law School Teaching*, 65 ST. LOUIS U. L.J. 561, 567 (2021). For excellent guidance on building an asynchronous online course, see Dutton & Mohapatra, *supra* note 41.

⁴⁶ Jacqueline D. Lipton, *Distance Legal Education: Lessons from the *Virtual* Classroom*, 60 IDEA: L. REV. FRANKLIN PIERCE CTR. FOR INTELL. PROP. 71, 95 (2020).

system, created by their Teaching and Learning Center or other online teaching experts.

Increasingly, assessments have been encouraged in legal education. For example, the ABA has increased its emphasis on assessment.⁴⁷ Additionally, the Carnegie Report has noted that a single final exam at the end of the semester may be inadequate for learning.⁴⁸ Assessments can have an important role in all modalities of teaching because they allow the professor to measure student learning,⁴⁹ however, they are especially important in asynchronous online courses given the relative lack of live interaction between the students and professor in an asynchronous online course compared to traditional and synchronous online courses.

Assessments can be graded (summative assessments) or ungraded (formative assessments).⁵⁰ They can include quizzes or discussion boards linked in the module that check students' understanding of the content.⁵¹ There are many possible types of quiz questions, including simple true/false questions and short answer questions.⁵² Professors can create the quiz

⁴⁷ See AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2021–2022: STANDARD 314, at 24 [hereinafter ABA STANDARDS] (“A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.”); Mary Crossley & Lu-in Wang, *Learning by Doing: An Experience with Outcomes Assessment*, 41 U. TOL. L. REV. 269, 271–73 (2010) (giving an overview of the American Bar Association’s consideration of standards regarding assessment).

⁴⁸ WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 167 (2007) [hereinafter CARNEGIE REPORT].

⁴⁹ Connie M. Moss, *Research on Classroom Summative Assessment*, in SAGE HANDBOOK OF RESEARCH ON CLASSROOM ASSESSMENT 235, 238 (James H. McMillan ed., 2013); see MICHAEL HUNTER SCHWARTZ ET AL., TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM 19 (2d ed. 2017) (“Formative feedback is an essential part of the learning loop . . .”); Rogelio A. Lasso, *Is Our Students Learning? Using Assessments to Measure and Improve Law School Learning and Performance*, 15 BARRY L. REV. 73, 79 (2010).

⁵⁰ See Olympia Duhart, “It’s Not for a Grade”: *The Rewards and Risks of Low-Risk Assessment in the High-Stakes Law School Classroom*, 7 ELON L. REV. 491, 494–98 (2015) (explaining that summative assessments are graded while formative assessments are ungraded).

⁵¹ For some best practices in asynchronous online teaching, see Kenneth R. Swift, *The Seven Principles for Good Practice in [Asynchronous Online] Legal Education*, 44 MITCHELL HAMLINE L. REV. 105 (2018). See *infra* Appendix A for a sample federal income tax quiz and discussion board assessments.

⁵² For assistance on writing quizzes, see Heather M. Field, *A Tax Professor’s Guide to Formative Assessment*, 22 FLA. TAX REV. 363, 393–419 (2019).

questions themselves so that they are tailored to the reading assignments, or rely on existing CALI quizzes or adapting questions from the casebook being used in the course.⁵³

Discussion boards can also vary. They might pose the more theoretical questions that professors ask in a traditional classroom to stimulate class discussion, or more practical problems for students to solve. They can be intended not only for student interaction, but also as a way to allow students to practice making and supporting arguments. To facilitate original work, it is possible for discussion board posts to become available for viewing to students only upon posting. Professors can also require students to reply to other discussion posts in addition to posting their own.

Additional assessment methods include problem and answer sets, writing assignments with grading rubrics, and peer- and self-evaluations that promote reflection and knowledge identification and sharing. It is also possible to ask students to share their own recorded video presentation or to complete practical exercises such as drafting legal documents. In sum, there are many options available to assess students.⁵⁴

Assessments in asynchronous online courses particularly should have a feedback mechanism to inform both students and the professor of performance.⁵⁵ Feedback is not only useful to students, but also now required

⁵³ *How Do I Give My Students a QuizWright Quiz?*, CALI, <https://www.cali.org/faq/16762> (last visited Apr. 10, 2022). Another resource for quizzes is Professor Lawsky's Practice Problems <https://www.lawskypracticeproblems.org/>. It is important to note that "[c]ourses are effectively designed if the teaching, assessments, reading and other assignments, and learning objectives are congruent with each other, and if the delivery of instruction is efficient, effective, and appealing." Schwartz, *supra* note 38, at 132.

⁵⁴ Another option is polls. For additional types of assignments, see McPeak, *supra* note 45, at 577–78, 583 (describing minute papers and experiential activities).

⁵⁵ Feedback on assessments can motivate students to learn.

Besides providing meaningful feedback to students, live critiquing also builds confidence and motivation, which are keys to successful learning. Students gain insights into how the professor views and evaluates their work. These insights can demystify the grading process and help students see how to improve. With increased understanding of the professor's expectations, and confidence that they can meet those expectations, students may intensify their efforts and deepen their learning.

by the American Bar Association (ABA), the regulator of American law schools.⁵⁶ “Specifically, formative assessment should, in a positive and timely manner, give students specific and concrete information about what they have learned and what they have not, noting that studies suggest that a key to helping students improve is providing ‘an explanation of *why* an answer was correct or incorrect.’”⁵⁷ Due to assessments throughout the semester, in a well-designed asynchronous online course, students do not have to wait until the final exam and the receipt of their grade to find out that they did not really understand the reading or lectures, or how to apply the course material.

Often, even the process of completing assignments provides students feedback on how well they are understanding the subject matter or how well they are mastering course-level or professional skills. Professors should also provide feedback. Some of this feedback can be automated and built during the course design process—online quizzes that self-grade, sample answers, and rubrics. Some of this feedback can be given to the class as a whole once the semester begins, such as through weekly announcement or reviews of performance trends. Finally, some of this feedback can be individualized and tailored to each student, such as providing written comments on certain submitted student work, whether by brief responses on the discussion boards or individual commentary on other written student work.

Amanda L. Sholtis, *Say What?: A How-To Guide on Providing Formative Assessment to Law Students Through Live Critique*, 49 STETSON L. REV. 1, 8 (2019); see Ryznar & Dutton, *supra* note 6, at 77.

⁵⁶ ABA Standard 314 (“Assessment of Student Learning”) provides: “A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.” ABA STANDARDS, *supra* note 47. In addition, a 2005 U.S. Department of Education meta-analysis of online education studies found professor involvement in online courses to be the determinative factor in whether the online course was just as effective, if not more so, than the traditional face-to-face setting. It found that “[w]hen instructor involvement was ranked as low, such as courses where students interact with the computer alone, face-to-face instruction was significantly more effective than distance instruction. Conversely, when instructor involvement was rated as medium or high, distance education was significantly more effective.” Hess, *supra* note 29, at 82.

⁵⁷ Field, *supra* note 52, at 378.

In contrast to asynchronous online teaching, synchronous online teaching is live teaching, but through an online platform like Zoom.⁵⁸ Given that a synchronous online class is meeting in real time, the content delivery will mostly be done verbally by the professor in live online sessions, either through a real-time lecture or discussion. Synchronous online classes can feature lectures or even Socratic dialogue, which is the traditional method of delivering content to students in law school.⁵⁹ The only flexibility offered by synchronous online courses, however, is geographic flexibility—everyone can log onto the conferencing system from a different location.⁶⁰

In terms of assessing students synchronously online to ensure they are learning, professors can call on students, poll them, or quiz them.⁶¹ In Zoom, professors can do break-out groups and enter into each one to assess student

⁵⁸ *Zoom for Education*, ZOOM, https://zoom.us/docs/en-us/education.html?_ga=2.1140723.332564126.1649655175-889767899.1584550441 (last visited Apr. 10, 2022). For suggestions on online teaching in Zoom, see Paolo Butturini & Susan L. DeJarnatt, *Teaching Transactional Skills: Zooming from the Classroom to Breakout Rooms*, 23 *TRANSACTIONS: TENN. J. BUS. L.* 115, 118 (2021). See also Colleen P. Graffy, *Pandemic Pedagogy and Its Applications for International Legal Education and the HyFlex Classroom of the Future*, 46 *S. ILL. U. L.J.* 45, 49–58 (2021) (outlining the pros and cons of teaching on Zoom). Professors can also use nonvideo platforms for synchronous online teaching such as instant messenger, online chat-room technology, phone conferences, and audio conferences to teach their online synchronous online course, but they miss the visual element that video provides.

⁵⁹ Huffman, *supra* note 11, at 61.

Some faculty concluded, as a matter of first impression, that online teaching was surprisingly “more genuinely Socratic” than the traditional classroom. The exchanges were more private and personal, and participation felt like less of a performance and more of a dialogue. Particularly, compared to a large lecture hall where the room’s spacing and layout are hierarchical and distant, in an online format, students and faculty are more equally positioned in side-by-side dialogue with equal space allotted to students and faculty alike. There is no front seat, no digital professor podium, no microphone to amplify certain voices, and everyone’s Zoom box is equal in size.

Jamie R. Abrams, *Legal Education’s Curricular Tipping Point Toward Inclusive Socratic Teaching*, 49 *HOFSTRA L. REV.* 897, 916 (2021) (emphasis omitted).

⁶⁰ This does allow courses to be held across multiple schools. See Ellen S. Podgor, *Teaching a Live Synchronous Distance Learning Course: A Student Focused Approach*, 2006 *U. ILL. J.L. TECH. & POL’Y* 263, 263 (2006) (detailing the author’s experience of teaching international criminal law in a synchronous course from Georgia State University College of Law with Georgia State law students participating along with Brandeis School of Law students in Louisville, Kentucky).

⁶¹ See *supra* Part II.B.

learning and discussion.⁶² As in the traditional classroom, seeing students' reactions in a synchronous online course helps the professor determine learning and understanding. To the extent that the online classroom makes it difficult for the professor to fully determine student learning, synchronous online courses may benefit from the same supplemental student assessments as asynchronous online courses, such as quizzes in the learning management system.⁶³

In sum, synchronous and asynchronous online teaching differ, but both must deliver content and assess student learning. Professors may use both synchronous and asynchronous elements in their courses—for example, a synchronous online course might have at-home quizzes through the school's learning management system, while an asynchronous online course may have Zoom office hours or other online meetings. Alternatively, a professor can run a flipped classroom, with synchronous meetings reserved for discussions or problem sets.⁶⁴ Nonetheless, the bulk of an online course typically will be either synchronous or asynchronous.

⁶² *Enabling Breakout Rooms*, ZOOM, <https://support.zoom.us/hc/en-us/articles/206476093-Enabling-breakout-rooms> [<https://perma.cc/KT9B-LUEQ>] (last updated Mar. 31, 2022).

⁶³ “[W]ithout a live classroom in which to observe students, a professor teaching online must constantly review student work to ensure progress in the course.” Margaret Ryznar, *Reaction to Shope, Real World Problem-Solving in the Digital Classroom*, 51 IND. L. REV. 461, 461 (2018). “The least time-intensive approach to using extra problems for formative assessment is to write the problems and then post the problems and answers on the course webpage. Thus, students can do the problems and get formative feedback by self-assessing their work with reference to model answers.” Field, *supra* note 52, at 429. Another technique is having students give each other feedback on their work. Andrew Noble, *Formative Peer Review: Promoting Interactive, Reflective Learning, or the Blind Leading the Blind?*, 94 U. DET. MERCY L. REV. 441, 446 (2017). Meanwhile, “[t]here are many free, online platforms that allow teachers to effortlessly build questions and track score while gaming.” Renee Nicole Allen & Alicia R. Jackson, *Contemporary Teaching Strategies: Effectively Engaging Millennials Across the Curriculum*, 95 U. DET. MERCY L. REV. 1, 28 (2017).

⁶⁴ Some of the earliest online teaching enabled a “flipped classroom,” where students were able to do activities in the live classroom after reviewing instructional materials online. Much has been written about flipping the classroom. *E.g.*, Perry Binder, *Flipping a Law Class Session: Creating Effective Online Content and Real World In-Class Team Modules*, 17 ATL. L.J. 34 (2015); William R. Slomanson, *Blended Learning: A Flipped Classroom Experiment*, 64 J. LEGAL EDUC. 93 (2014); Field, *supra* note 23.

III. DESIGN

Before turning to the lessons on online tax law teaching from students, it is helpful to briefly outline the course design, as well as the research design for its study. These are considered next.

A. Course Design

The federal income tax course that is the subject of the survey presented in this Article, was an asynchronous online course run in Canvas during the Fall 2020 semester.⁶⁵ This course was prepared in response to the pandemic.⁶⁶ However, IU McKinney Law School implemented an asynchronous online law program several years before the COVID-19 pandemic, which introduced interested faculty to online course building and teaching.⁶⁷ Those new to creating online courses may want to consult with their university's Teaching and Learning Center or eLearning Design & Services, or third parties such as Quality Matters.⁶⁸

The build of this asynchronous online federal income tax course followed the best practices in online teaching as outlined in the literature.⁶⁹ In accordance with this literature, each course module included several elements.

First, the beginning of each module contained a short summary text of the lesson and bulleted learning outcomes for the module. For example, the learning outcomes listed in the first module of the course include being able to “identify the role of gross income in determining federal income tax liability” and being able to “distinguish between a deduction and a credit.”

⁶⁵ See *Amplifying Awesomeness*, *supra* note 40.

⁶⁶ Peter H. Huang & Debra S. Austin, *Unsafe at Any Campus: Don't Let Colleges Become the Next Cruise Ships, Nursing Homes, and Food Processing Plants*, 96 IND. L.J. SUPPLEMENT 25, 30 (2020) (“According to the Centers for Disease Control and Prevention (CDC), the lowest risk is for students and faculty to ‘engage in virtual-only learning options, activities, and events.’”).

⁶⁷ Klein & Huffman, *supra* note 39, at 415.

⁶⁸ *Helping You Deliver on Your Online Promise*, QUALITY MATTERS, <https://www.qualitymatters.org/> [<https://perma.cc/N6CA-YRXN>] (last visited Apr. 11, 2022).

⁶⁹ See *supra* Part II.

Recently, learning outcomes have received much attention in legal education. The ABA has released a set of Guidance Memos on learning outcomes and assessment programs in the last few years.⁷⁰

Next, each module linked to a copy of the PowerPoints for the lecture, as well as ten-minute video lectures narrating the PowerPoints. The literature has shown that students learn best with short, chunked video lectures. Studies confirm that video lectures are more engaging when they are short and topical because of the relatively short human attention span.⁷¹ This section of the module also occasionally included any supplementary videos that enhanced the material covered in the lecture.

Finally, most modules had an ungraded assessment, either in the form of quizzes (mostly multiple choice, but also fill-in-the blank, matching, and true/false), discussion boards, or sample essays & answers. Occasionally, there would be two such assessments in a module because of the complexity of the course material. Experiential exercises and writing assignments most often took the form of discussion boards, while problem sets most often took the form of quizzes. Samples of a quiz and answer key, as well as a discussion board question, are included in Appendix A.

Often, student work received feedback either individually or as a class. Quizzes automatically generated a score and answer key upon submission, while discussion posts received individual comments.⁷² This regular

⁷⁰ See, e.g., AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, MANAGING DIRECTOR'S GUIDANCE MEMO STANDARDS 301, 302, 314 AND 315 (2015) [hereinafter MANAGING DIRECTOR'S GUIDANCE MEMO].

⁷¹ See, e.g., Philip Guo, *Optimal Video Length for Student Engagement*, EDX BLOG (Nov. 13, 2013), <https://blog.edx.org/optimal-video-length-student-engagement> ("The optimal video length is 6 minutes or shorter—students watched most of the way through these short videos. . . . The take-home message for instructors is that, to maximize student engagement, they should work with instructional designers and video producers to break up their lectures into small, bite-sized pieces."). *But see* Karen Wilson & James H. Korn, *Attention During Lectures: Beyond Ten Minutes*, 34 TEACHING PSYCH. 85, 85 (2007) ("Many authors claim that students' attention declines approximately 10 to 15 min into lectures. To evaluate this claim, we reviewed several types of studies including studies of student note taking, observations of students during lectures, and self-reports of student attention, as well as studies using physiological measures of attention. We found that the research on which this estimate is based provides little support for the belief that students' attention declines after 10 to 15 min.").

⁷² See *infra* Appendix A for sample assessments.

feedback is in line with best practices on both teaching and online teaching.⁷³ Even before the pandemic, assessments were becoming increasingly important in both online and in-person classes.⁷⁴ The ABA has released guidance on learning outcomes and assessment programs in recent years.⁷⁵ However, the ABA does not require professors to use any particular assessment method.⁷⁶

To maximize flexibility during the pandemic, the modules in this course were open all semester so that students could review old material and work ahead on new material. While students appreciate this kind of flexibility, faculty have the option to open and close modules according to a schedule that they prefer.⁷⁷

B. Research Design

To make recommendations on online tax law teaching, this Article draws on evidence from mid-semester anonymous survey responses from law students enrolled in the above-described asynchronous online federal

⁷³ See *supra* Part II.B.

⁷⁴ Particularly in asynchronous online classes, the ABA requires that law schools ensure “interaction” equivalent to that of live courses. See AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2019–2020: STANDARD 306, at 19 (stating that asynchronous courses must offer an “opportunity for regular and substantive interaction between [the] faculty member and student and among students; [and include] . . . regular monitoring of student effort by the faculty member and opportunity for communication about that effort”).

⁷⁵ See, e.g., MANAGING DIRECTOR’S GUIDANCE MEMO, *supra* note 70.

⁷⁶ ABA STANDARDS, *supra* note 47.

⁷⁷ Other faculty who have taken the approach of opening all modules received similarly positive feedback from students. See, e.g., Esther Barron & Stephen F. Reed, *A Closer Look at Distance Learning: The Law and the Entrepreneur MOOC*, 19 LEWIS & CLARK L. REV. 395, 398 (2015) (“[W]e made a strategic decision to release all six weeks’ material on the first day of the class, which allowed our students to take the course one week at a time or at whatever speed worked best for their schedules. Our thought in taking this approach was that [our students] have demanding and unpredictable schedules, so we wanted to be flexible enough so the course could work given their time constraints. We received positive feedback on this attribute of the course from students and had the sense that they appreciated this recognition and accommodation.”). Nonetheless, professors can decide to keep open each module for shorter time periods, such as for one or two weeks.

income tax course.⁷⁸ In total, sixty-eight of the seventy enrolled students returned an anonymous survey.

The surveys to which students responded were administered mid-semester in an effort to receive feedback from students about the class in time to adjust the class delivery and content if necessary. All student responses were anonymous.

The survey questions were:

- 1) What about this course is working well for you?
- 2) What about this course is not working well for you?
- 3) What is your most AND least favorite type of online activity—discussion boards, quizzes, or sample essays & answers? Please explain.
- 4) Would you take another online class in the future? Why or why not?

The questions were open-ended so that students could elaborate on their answers. Student responses to these survey questions are paraphrased and presented next.

IV. STUDY RESULTS

This Part presents the results of the survey from online tax students. It is divided between the results on content delivery and assessments, then further grouped along several themes that include short lecture videos, course organization, quizzes, and discussion boards.

A. Content Delivery

Content delivery is the essential purpose of every course, with effective content delivery helping student learning. Student comments in the surveys presented in this Article focused on two things when it came to content delivery: the appeal of short lecture videos and strong course organization.

⁷⁸ The IRB granted approval for this study. As part of the approval, the study collected the survey data anonymously. All data is on file with the author.

1. Short Lecture Videos

Students found the short (approximately ten-minute) lecture videos helpful to their learning. Several students liked that the lectures were concise and to the point. One student appreciated that the lectures did not overcomplicate the material. Another liked that they discussed the importance of each topic without much filler. Others pointed out that heavy video lectures of forty to fifty minutes were more confusing and less preferable to short lectures that made the same points. One student clarified that short videos broke down issues and made the course material understandable and manageable.

Students also found the short lecture videos engaging. Several students mentioned that the short videos kept their attention. One student noted feeling accomplished after finishing each video. Another student said it was easier to digest the material in short videos.

Additionally, short lecture videos allowed for the inclusion of other materials. Several students mentioned appreciating supplemental videos for context.

Finally, shorter videos were useful for reviewing the material. One student liked being able to rewatch exactly the sections needed. Another student rewatched videos as a quick refresher on the material. Students said they would rewatch the videos multiple times, pause them, and rewind them, without feeling constrained by any allotted class time.

2. Course Organization

Students emphasized that good course organization facilitated their learning. Specifically, several students noted that the course organization made it easier for them to follow along and learn the material. One student credited good organization with better material recall. Another student appreciated the flow of material created by the course organization.

Strong course organization also made the course more predictable for students, particularly when it came to assignments and their deadlines, thereby lowering their stress and increasing their learning. For example, one student mentioned organization as a factor that helped make online education appealing, saying that the course organization created predictability, allowing the student to know what to expect each week. Many students liked that the organization of the course allowed them to keep track of their assignments, schedules, and goals of the course. Students were also better

able to plan their own work load. For example, one student noted that the course structure made it easier to hold oneself accountable.

In sum, strong course organization makes for easier learning and a predictable course experience that allows students to stay on track. In turn, this leads to greater student enjoyment of the course.

B. Assessments

In their survey responses, students liked that the assignments did not count toward their final grade, showing the importance of formative assessments in courses, particularly as a feedback mechanism. Several students mentioned that they preferred assessing themselves to find areas needing improvement without worrying about the impact on their grades. According to one student, ungraded assignments resulted in a learning experience rather than a stressful graded exercise.

Students appreciated that regular assessments created accountability for them. They suggested that the weekly due dates and quizzes were helpful in keeping them on task as well as making sure they understood the readings.

In regard to the type of assignments they liked, some students liked all of them. They particularly enjoyed any exercises that allowed them to apply the material either to hypotheticals or real-world situations. They appreciated receiving feedback no matter what the assignments, as well as the opportunity to assess themselves. According to one student, the variety of assignments established a thorough learning environment parallel to that of an in-person class.

Most students, however, had a strong preference for the quizzes. Specifically, most students preferred quizzes of all the assignments because they provided a review of the material and immediate feedback through an automatic answer key provided upon submission of the quizzes.⁷⁹

⁷⁹ These results are similar to those in another study of an asynchronous online law course. See Margaret Ryznar, *Assessing Law Students*, 51 IND. L. REV. 447, 452 (2018) (“Empirical data from approximately 280 students in three semesters of online Trusts & Estates at McKinney suggest that students prefer quizzes due to their immediate feedback. Students least prefer discussion boards because of repetition in student responses and the lack of immediate feedback.”).

1. Quizzes

Over half of the tax students surveyed preferred quizzes when compared to other types of assessments. Many students found the quizzes to be particularly effective in learning the course material. Students also liked when they could apply the material through the quizzes, which helped them to learn it. One student noted that quizzes worked well to gauge understanding of the tax rules. Several students credited the quizzes with helping their comprehension. One student liked that they did so in a low stakes way. Another felt that the quizzes held students accountable for learning the material. Other students noted that the quizzes directly tested learning and were straightforward.

When it came to quizzes, particularly helpful to student learning was the answer key delivered to the students upon submission of a quiz, which provided automatic feedback. For example, this feature in the learning management system Canvas scores each student quiz immediately upon submission, highlighting incorrect student answers in red and correct answers in green, while also providing explanatory comments and the reasons for the correct answer by the professor.⁸⁰ Several students mentioned particularly learning from their missed answers. This was especially true when the quizzes derived from the casebook problems.

The immediacy of this feedback had significant appeal to students. They wanted to see how they performed upon submission of the quiz so that they could compare their work to the answer key. Given the quick quiz results, one student felt motivated to work on getting the answers correct in the first place. Another said that the prompt feedback paralleled the classroom experience, where professors can see signals of the students' learning while teaching and respond accordingly.

2. Discussion Boards

Less than a quarter of online tax students favored discussion boards. One student described the discussion board as a quick way to think through a problem without doing a full discussion essay. Another student liked discussion boards because they resulted in critical engagement with the material.

⁸⁰ See *Amplifying Awesomeness*, *supra* note 40.

Students particularly appreciated when they could apply the tax material through the discussion boards. They said that discussion boards made them think about how to apply tax rules to real life, how to apply the tax law to facts, and how to put the course material into action. Several students found the discussion boards interesting precisely because they focused on real world issues and scenarios. According to one student, discussion boards were the best opportunity of all the assignments to apply the material to real life situations. Students mentioned finding the discussion boards to be thought provoking, interesting, and challenging so that they were not just busy work.

Other students raised the negative aspects of discussion boards. They did not like that their answers were memorialized on the discussion board. Some students were also concerned about whether their answers were correct, especially because their peers could view them. One student wanted more concrete feedback on which posts were correct, despite the more subjective nature of discussion boards compared to quizzes. A few students also described the discussion boards as tedious, particularly when added to other assignments.

Despite their intended purpose, discussion boards did not foster a sense of discussion and collaboration for some students. One student commented that without interaction, the discussion boards feel more like a short answer question. Another student said that the discussion board facilitated engagement with the professor but not the full class, suggesting a discussion board structure that requires students to respond to each other and make the case for both sides of an argument.

After reading other students' discussion posts, some students worried about the adequacy of their own answers. On the one hand, students mentioned overthinking the discussion board questions and overanalyzing the adequacy of their responses. Several students worried about their posts as compared to others. On the other hand, one student mentioned feeling more motivated to submit better work after seeing other posts. Some students, in contrast, did not read other students' discussion posts. One student blamed this on the time-delay of discussion posts.

Nonetheless, students particularly liked receiving professor feedback on their discussion posts. One student appreciated the promptness of such feedback. Another student did not find the discussion posts helpful except for the feedback from the professor to the various student posts. One student mentioned that in addition to being beneficial, the professor's feedback and

acknowledgement of posts showed that the professor was invested in student learning.

V. ANALYSIS

In reflecting on their online federal income tax course, students offered several lessons for tax teaching in terms of both content delivery and student assessments. These insights are useful when thinking about teaching tax either online or in the traditional classroom.

For example, one lesson from the student responses is to have a strong organization of the course and its content.⁸¹ This can be done online by chunking the material in the modules and videos to allow better organization and break up any monotony of the online material. While online courses need good organization, in-person courses benefit from it as well.⁸² In organized courses, students know what to expect throughout the course and can more easily focus on the course material. Professors may therefore decide to schedule regular communications to students, follow a course plan, and have consistent deadlines for students—such as required submissions on the same day of each week.

In terms of content delivery, the surveys showed that students liked short lecture videos and extra background supplemental material.⁸³ The lesson from online teaching for in-person lectures is to make them multi-dimensional with illuminating extra content, along policy and interdisciplinary lines. In tax, there are many background stories that can help contextualize commonly used cases.⁸⁴ Contextualizing difficult and

⁸¹ See *supra* Part IV.A.2.

⁸² This has been documented in the literature, as well. See, e.g., Lawrence E. Singer, *Leadership in Online “Non-Traditional” Legal Education: Lessons Learned & Questions Raised*, 94 U. DET. MERCY L. REV. 43, 55 (2017) (“Teaching a wholly online course is different than classroom teaching. Sound organization in lectures is imperative . . .”).

⁸³ See *supra* Part IV.A.1.

⁸⁴ See, e.g., PAUL CARON, *TAX STORIES* (2d ed. 2009). “It may be asked whether it is worthwhile for students to spend significant time . . . to examine a single decision. And yet, examining such important cases in depth can yield significant insights.” Reuven S. Avi-Yonah, *Tax Stories and Tax Histories: Is There a Role for History in Shaping Tax Law?*, 101 MICH. L. REV. 2227, 2229 (2003) (reviewing *TAX STORIES*, *supra*); see Leandra Lederman & Allison Christians, *Break Into Tax*, YOUTUBE, <https://www>

unfamiliar material can help students learn better.⁸⁵ Active learning, supplemental readings, more practical approaches, and engaging material help make content delivery more engaging and effective for students.

When it comes to assessments, students focused on quizzes and discussion boards in their surveys.⁸⁶ While one might think that students would not appreciate weekly ungraded assignments, the survey responses indicate that many students felt that the regular assessments helped keep them motivated and on track with course material.⁸⁷ Students liked the low stakes nature of ungraded assignments, which have advantages,⁸⁸ but some professors may prefer to award nominal participation points to quizzes or count them as part of the final grade, easily facilitated by tools such as the automatic grading of quizzes by the learning management system.

Although there are benefits to including a variety of assignment types in online courses,⁸⁹ students' preference for quizzes is the most notable

.youtube.com/channel/UCGEYoF757EOI-FXi0iyuqOw [https://perma.cc/69UB-T2AN] (last visited Apr. 8, 2022).

⁸⁵ See John A. Bogdanski & Samuel A. Donaldson, *Teaching Tax and Other Tedious Topics*, 17 PERSP. 102, 103–04 (2009).

⁸⁶ See *supra* Part IV.B.

⁸⁷ The motivating feature of formative assessments has been documented in the literature. See, e.g., Sholtis, *supra* note 55, at 8 (“Besides providing meaningful feedback to students, live critiquing also builds confidence and motivation, which are keys to successful learning.”).

⁸⁸ “Formally grading every item submitted, on the other hand, is unnecessary and can be counterproductive. To begin with, if a professor needs to provide a score and detailed feedback on every written submission, the result is going to be for fewer written assignments within the course.” Kenneth R. Swift, *Five Truths Learned After a Dozen Years of Asynchronous Online Teaching*, 65 ST. LOUIS U. L.J. 691, 697 (2021). Ungraded assignments also help students become self-regulated learners. See *id.* at 696; Ian Clark, *Formative Assessment: Assessment Is for Self-regulated Learning*, 24 EDUC. PSYCH. REV. 205, 210–11 (2012). Self-regulating behaviors include, among others, goal setting, time-management strategies, structuring one’s environment so as to best complete tasks in a timely manner, and seeking out help with completing required tasks. See Lucy Barnard-Brak et al., *Profiles in Self-Regulated Learning in the Online Learning Environment*, 11 INT’L REV. RSCH. OPEN & DISTANCE LEARNING 61, 61–62 (2010). For example, students might set a goal to read a certain number of pages each day or to devote a certain number of hours each day to studying. This type of self-regulation has been linked to improved academic performance. *Id.*; see Roger Azevedo et al., *Does Adaptive Scaffolding Facilitate Students’ Ability to Regulate Their Learning with Hypermedia?*, 29 CONTEMP. EDUC. PSYCH. 344, 362 (2004) (finding that students who engaged in self-regulating processes and strategies in a hypermedia environment performed better than those who used less or no self-regulation).

⁸⁹ Research shows that everyone learns differently. “Some students learn verbally; some aurally; some physically; and some visually.” John Sonsteng et al., *Learning by Doing: Preparing Law Students*

finding on assessments, as is their appreciation of feedback on their work.⁹⁰ By taking a quiz, students learned whether they mastered course concepts. If they did not do well on the quiz, students receive an early warning that their understanding was faulty or incomplete. Students therefore particularly appreciated receiving automatic answer explanations of their quizzes upon submitting them, suggesting professors should enter their reasoning for the correct answers in the answer key if possible when creating online quizzes in platforms such as Canvas.⁹¹ The online learning platform then automatically grades quizzes and offers students immediate feedback by revealing the correct answers and explanations upon the student's submission of the quiz. Meanwhile, the professor receives a computer-generated report on each student's performance on the quiz as well as class averages, allowing the professor to monitor students' efforts at mastering course material and to provide additional feedback addressing the quiz results.

While discussion boards aim to encourage discussion and interaction among students, their benefits ended up being that students could practice making and supporting arguments as well as applying tax law to both real and hypothetical scenarios.⁹² Furthermore, all students were required to participate in the discussion boards to address the common problem of uneven participation in the in-person classroom.⁹³ Nonetheless, most

for the Practice of Law, 21 WM. MITCHELL L. REV. 111, 137 (1995). "In order to create an effective asynchronous assignment, professors teaching online courses should have an array of activities that, collectively, work to engage all types of learners." Jacob D. Skousen & Spencer C. Weiler, *Aligning Educational Objectives with Educational Activities: Examination of Student Perceptions on Two Asynchronous Learning Activities*, 25 J.L. BUS. & ETHICS 1, 6 (2019). In addition, providing a variety of assignment types helps students to work on the various skills necessary in the practice of law, such as writing, advocating, and recalling rules.

⁹⁰ See, e.g., Christine Rienstra-Kiracofe, *Legal Education in the Digital Age: Online Degree Programs*, 25 J.L. BUS. & ETHICS 25, 30 (2019) (noting the educational importance of professor-student interaction online and in traditional classrooms).

⁹¹ See *infra* Appendix A (providing a sample answer key).

⁹² See *supra* Part IV.B.2.

⁹³ The fact that some students do not regularly participate in classroom discussions can have deleterious effects on the classroom and their own development, making them less prepared for the practice of law. See Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524, 532 (1998). By failing to participate, they are missing the opportunity to practice analytical and communication skills that are necessary for the successful lawyer. *Id.* Cass Sunstein explains that "self-silencing is everywhere" when students believe that their views are out of step with those of their peers, on topics such as politics, religion, gender, and race. Cass R. Sunstein, *Self-Silencing*

students preferred quizzes to discussion boards for learning the material because they preferred the immediate and detailed feedback as well as the broader coverage of the quizzes.

These student preferences can readily be incorporated into teaching. For example, in an in-person course, quizzes can be printed out and distributed for completion during class time. Alternatively, quiz questions can be displayed to the class with students voting on the correct answers with clickers.⁹⁴ Online quizzes can also run alongside a traditional or hybrid course for an online component.⁹⁵ The key is to allow students to practice and develop course content or skills in a low stakes environment, but also to provide the professor with information about student performance and the effectiveness of instructional techniques.

Online teaching lends itself to the inclusion of formative assessments, particularly in a manner that generates concrete student performance data. If professors in traditional classrooms want similar written and clear performance data on each student in the class, one method is to borrow the assessment methods of an online course by setting up some quizzes or other learning activities in their school's learning management system. Professors could then examine the quiz results outside of class and tailor a short in-class lecture to re-teach the misunderstood material. Professors should also craft assessments that are appropriately challenging to motivate students to learn

and Online Learning, J. LEGAL EDUC. (forthcoming) (manuscript at 2), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3663208.

⁹⁴ See, e.g., Roger C. Park, *Reflections on Teaching Evidence with an Audience Response System*, 75 BROOK. L. REV. 1315, 1327 (2010) ("I was pleased with my experience with an audience response system. It provided active learning and feedback without much time or trouble. Judging from the results of the attitude surveys that I have described, students also liked this method of teaching.").

⁹⁵ For an example of a successful use of an online discussion board in an in-person course, see Bridget J. Crawford et al., *Reflections on Feminism, Law & Culture: Law Students' Perspectives*, 41 PACE L. REV. 105, 112 (2020) ("The online discussion board functions as a natural extension of the classroom. Very often, students refer to course material and to comments made by a classmate during the weekly live seminar meeting or in prior discussion boards. During the Spring 2020 semester, from the very first week of the online component of the class, the tone of the discussion board was welcoming and encouraging. Students did not necessarily agree with each other, but disagreement was expressed professionally, politely, and with mutual appreciation.").

and create flow.⁹⁶ Meanwhile, discussions can remain in the live classroom, given the student feedback on discussion boards in this study. These sorts of mix-and-match approaches to teaching help provide “the pathway forward to designing and delivering state-of-the-art legal education.”⁹⁷ Given the challenging material covered, tax courses can benefit from these types of efforts.

VI. CONCLUSION

Despite a long history of online teaching in other fields, law schools have traditionally delivered tax classes to their students through the traditional face-to-face classroom setting.⁹⁸ It took a pandemic for many tax

⁹⁶

Mihaly Csikszentmihalyi, a pioneer in the field of positive psychology, . . . is credited with discovering that people find genuine satisfaction during a state of consciousness he called “flow.” While in this state, people are completely absorbed in an activity, and feel “strong, alert, in effortless control, unselfconscious, and at the peak of their abilities.” . . . [F]low states are generated by activities in which a person feels challenged, but not to the point of being stressed or bored (i.e., it’s a good “fit”).

Scott E. Friedman et al., *Advising Family Businesses in the Twenty-First Century: An Introduction to Stage 4 Planning™ Strategies*, 65 BUFF. L. REV. 425, 484 (2017).

⁹⁷ Hilary G. Escajeda, *Legal Education: A New Growth Vision Part III—The Path Forward: Being Both Human and Digital*, 97 NEB. L. REV. 1020, 1049 (2019). “[E]ducators must employ a variety of methods to engage student learners.” Jason S. Palmer, “*The Millennials Are Coming!*”: *Improving Self-Efficacy in Law Students Through Universal Design in Learning*, 63 CLEV. ST. L. REV. 675, 702 (2015). Online teaching technology will continue to improve with time. “[I]n the multi-billion dollar market for fully online courses and degrees, a variety of powerful new platforms and technologies have emerged, grounded in cloud computing, enormous datasets, and artificial intelligence.” Sean Gallagher & Jason Palmer, *The Pandemic Pushed Universities Online. The Change Was Long Overdue.*, HARV. BUS. REV. (Sept. 29, 2020), <https://hbr.org/2020/09/the-pandemic-pushed-universities-online-the-change-was-long-overdue> [<https://perma.cc/S346-DSCH>]. Scholars have predicted the same in recent years. E.g., Jeffrey A. Van Detta, *The Law School of the Future: How the Synergies of Convergence Will Transform the Very Notion of “Law Schools” During the 21st Century from “Places” to “Platforms,”* 37 U. LA VERNE L. REV. 103 (2015); see W. Warren H. Binford, *Envisioning a Twenty-First Century Legal Education*, 43 WASH. U. J.L. & POL’Y 157, 157 (2013) (“The Digital Age provides an opportunity to revitalize and modernize legal education and to make it more individualized, relevant, human, and accessible.”).

⁹⁸ “Although distance learning has been a component of undergraduate education for several decades, its adoption by American law schools has been a relatively recent phenomenon.” Ronald J. Colombo, *Teaching a Synchronous Online Business Organizations Course to J.D. Students: A Case Study*, 48 HOFSTRA L. REV. 873, 876 (2020). The University of Chicago pioneered distance education back in 1892, almost a century before the internet became publicly available, which involved mailing course

professors to try online teaching. Tax professors then had to reimagine a traditional in-person class as an online course, which required rearranging the puzzles of a tax course and putting them back together. It is natural to never see a traditional tax course the same after teaching it online.⁹⁹

Student feedback is helpful to highlight what lessons could be taken from online teaching.¹⁰⁰ Many of the survey responses offered insight into how to help students learn the material, engage with it, and review it for the final exam, as well as how to make the learning experience rewarding. In the end, what started as a great experiment in online teaching can enhance traditional tax teaching as well.

materials and traveling lecturers. *Breakthroughs*, UNIV. OF CHI., <https://www.uchicago.edu/breakthroughs/1890s/> [https://perma.cc/H69L-FFAU] (last visited Apr. 8, 2022); see Jenna Hentoff, *Compulsory Licensing of Musical Works in the Digital Age: Why the Current Process Is Ineffective & How Congress Is Attempting to Fix It*, 8 J. HIGH TECH. L. 113, 113 (2008) (noting that the internet became publicly available in the early 1990s).

⁹⁹ This may be especially true given that

[m]any reformers agree that the prevailing law school model developed in the nineteenth century does not adequately prepare students to become effective twenty-first century lawyers. Langdell’s case method, designed around private domestic law, appellate cases, and the Socratic method, increasingly fails to teach students “how to think like a lawyer” in the world students will occupy.

Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 515–16 (2007); see Sheila F. Miller, *Are We Teaching What They Will Use? Surveying Alumni to Assess Whether Skills Teaching Aligns with Alumni Practice*, 32 MISS. COLL. L. REV. 419 (2014).

¹⁰⁰ It is helpful to understand the student perspective in designing courses. Law schools seek their input on other important aspects of the curriculum. For example, law schools seek student input on every course by asking students to submit course evaluations. For the role of student feedback in course design, see Yvonne M. Dutton et al., *Assessing Online Learning in Law Schools: Students Say Online Classes Deliver*, 96 DENV. L. REV. 493, 496–97 (2019).

APPENDIX A**SAMPLE ASSESSMENTS FOR FEDERAL INCOME TAX*****Sample Quiz on Introductory Material***

1. Adjusted gross income is gross income minus:
 - A. Above-the-line deductions
 - B. Below-the-line deductions
 - C. Standard deduction
 - D. Tax credits
2. A private letter ruling may be relied on as precedent by all taxpayers.
 - A. True
 - B. False
3. Instead of hiring professional landscapers at an annual cost of \$500 or hiring some neighborhood kids with a lawnmower at an annual cost of \$300, Daniel mows his own lawn. How much gross income does he have from these facts?
 - A. \$0
 - B. \$300
 - C. \$500
 - D. \$800
4. Gladys pays \$500 for Apple stock at the beginning of this year and it appreciates to \$800 by the end of the year, but she never sells it. How much gross income does she have this year from this appreciation?
 - A. \$0
 - B. \$300
 - C. \$500
 - D. \$800
5. Bruno finds a \$100 bill tucked in an old guitar case that he purchased at an estate sale many years ago. How much gross income does he have from this discovery? [Fill in the blank]

6. Which is true of federal income tax rates?
 - A. They depend on marital status
 - B. They are progressive
 - C. Both of the above
 - D. Neither of the above

Sample Answer Key Provided to Students—Quiz on Introductory Material**1. The correct answer is A, above-the-line deductions.**

Adjusted gross income is gross income minus above-the-line deductions. From adjusted gross income, the taxpayer subtracts either below-the-line deductions or the standard deduction to arrive at the taxable income. As a last step in calculating tax liability, tax credits are applied dollar-for-dollar against tax due.

2. The correct answer is False.

A private letter ruling, which considers a specific taxpayer's represented set of facts, may not be relied on as precedent by other taxpayers. A taxpayer might request a private letter ruling when contemplating a specific action for which it would be useful to know how the IRS would treat the tax implications. Contrast this to revenue rulings, on which all taxpayers with similar facts may rely.

3. The correct answer is A, \$0.

This scenario is an example of non-taxable imputed income, which is an accession to wealth attributed to the taxpayer's performance of services himself that would otherwise cost money if someone else were hired to do those services. Another example of imputed income is if taxpayer Tina painted the walls of her kitchen herself, saving herself the money that she would otherwise pay a professional painter to do it—this money is not considered gross income to her.

4. The correct answer is A, \$0.

Given that Gladys still holds the Apple stock at the end of the year, there is no realization event that triggers income taxation. When she finally sells the stock, she will be taxed on her gains. More on calculating stock gains (and losses) later in the course.

5. The correct answer is \$100.

Finding money in an old guitar case is an example of a treasure trove, which is considered gross income. See *Cesarini v. United States*, 296 F. Supp. 3 (N.D. Ohio 1969) for a similar scenario.

6. The correct answer is C, both of the above.

Federal income tax rates both depend on marital status (e.g., married filing jointly) and are progressive. Some commentators have suggested that the tax

rates should not be linked to the taxpayer's marital status—what do you think and why?

Sample Discussion Board Question on Business Expenses

Many years ago, the IRS disputed \$43,291 in business deductions that rock star Stevie Nicks tried to take for the concert clothing that she wore to maintain a particular persona on stage. Please look up her concerts online (for example, in Google images or YouTube) and carefully observe her clothing.

Then, if your last name begins with A-L, imagine that you are an IRS lawyer—make your best arguments for denying Stevie Nicks a business deduction for her concert wardrobe. Explain your answer under both the objective and subjective tests for the deductibility of clothing as a business expense.

If your last name begins with M-Z, imagine that you are Stevie Nicks's tax lawyer—make the best arguments for taking a business deduction for her concert wardrobe. Explain your answer under both the objective and subjective tests for the deductibility of clothing as a business expense.

