

Q&A About Your Chapter's Taxes

Every chapter which normally has gross receipts in excess of \$25,000 must file a form 990 or Form 990-EZ by the 15th day of the fifth month following the close of its fiscal year. For most chapters, the due date is November 15.

As a general proposition, chapters that derive less than \$1,000 of receipts (income) from non-members are not required to file a Form 990-T. Since most chapters do not receive more than \$1,000 in income from non-members during the fiscal year, the Form 990-T is not used very often; however, your particular set of circumstances may warrant its use. . However, should it be necessary to complete this form, contact the Offices of the Grand Chapter for assistance, or your Internal Revenue Service District Office; Or, visit www.irs.gov. Form 990 must be filed by the 15th day of the 5th month following the close of your chapter's fiscal year. A penalty of \$20 may be assessed for each day the return is late up to a total of the lesser of \$10,000 or 5% of the chapter's gross receipts. The penalty may also be assessed against your chapter for filing an incomplete return. As a service of the International Fraternity, a group exemption from federal income tax is provided for all TKE chapters. This is a service that is not provided to fraternities without national affiliation. **HOWEVER, THE LAW NEVERTHELESS REQUIRES EACH CHAPTER TO FILE ITS OWN FORM 990.** Required forms may be obtained from your local IRS office.

Exemption from Federal Income Tax

We are also concerned that some of our chapter corporations may not have taken the proper steps to make themselves tax exempt. An organization is not automatically exempt from federal income tax merely because it is a non-profit or not-for-profit corporation. The International Fraternity has obtained a group exemption for the local chapters. However, this exemption does not cover all chapter corporations. If your chapter corporation is not exempt, you should get in touch with Director of Finance/Controller, Kathy Cadwell.

Required Returns

Exempt corporations which normally have more than \$25,000 of gross income are required to file a Form 990 or Form 990-EZ by November 15 of each year. The penalty for late filing is \$20 for each day the form is late with a maximum penalty of the lesser of \$10,000 or 5% of the chapter's gross receipts for each form that is delinquent. These penalties are not assessed in cases where the failure to file was due to "reasonable cause." However, since this letter puts each corporation on notice of its duty to file, it is of extreme importance that past due returns now be filed. If your chapter normally has gross receipts of less than \$25,000 but nevertheless receives a Form 990 from the IRS, you

should attach the pre-addressed mailing label to the form, check the box indicating the gross receipts are less than \$25,000, sign the form and mail to the IRS.

Form 990-EZ is a shortened version of Form 990. It may be filed in lieu of Form 990 if a chapter meets the following two requirements: its gross receipts for the year are less than \$100,000 and its total assets at the end of the year are less than \$250,000.

An exempt organization may also be required to file a Form 990-T in each year during which it receives more than \$1,000 from sources other than dues, rents or similar amounts from fraters and candidates as compensation for providing goods, facilities or services in furtherance of the purposes constituting the basis of the exemption. Thus, if a chapter corporation's only source of income is rent from fraters and candidates, it need not file a Form 990-T. If a chapter corporation receives more than \$1,000 in rent from persons other than fraters and candidates, it may be required to file a Form 990-T.

The situation is different for chapter corporations which have not received a determination of exempt status. In that case, every corporation, regardless of income, must file a tax return on Form 1120 until it has applied for a declaration letter informing it of its exempt status. The regulations to the Internal Revenue Code provide only two exceptions to this obligation of non-exempt corporations: First, the regulations provide, if an organization has been formed "but has never perfected its organization and has transacted no business and has no income from any source, it may upon presentation of the facts to the district director be relieved from the necessity of making a return." Reg. 1.6012-2(a) (2). The same regulation provides that a corporation is not required to file a return "after it ceases business and dissolves, retaining no assets, whether or not under State law it may thereafter be treated as continuing as a corporation for certain limited purposes connected with winding up its affairs . . ." However, a corporation must file a return for any fractional part of a year for which it was in existence.

The fact that a corporation has failed to file a required return does not necessarily mean that it owes tax or penalties. For example, a corporation which holds the chapter house and receives rent from the chapter as its only source of income might be entitled to deductions for depreciation and interest in excess of that income. Thus, no tax would be owed. Simply, a non-exempt corporation which has never received income would not be liable for tax. The penalties for non-exempt corporations are assessed only against tax owed assuming the failure to file was not willful; therefore, if no tax is due, no penalties will be owed. However, as previously indicated, this letter puts each chapter corporation on notice of its duty to file. The continued failure to file an 1120 return could result in criminal as well as civil penalties.

If a chapter corporation has not filed the returns required of it by law, those returns must be filed. The best approach to take, if faced with this situation, will depend upon the specific facts of each case. If you are delinquent in filing returns or have not received a declaration of your exempt status, you may wish to discuss the matter with Director of Finance/Controller Kathy Cadwell, or local counsel. Whatever course of action you choose to take, you should act promptly.

The following information should be helpful to you in completing the revised Form 990 or Form 990-EZ.

1. Chapters with less than \$25,000 of gross receipts should attach the IRS label, check box "K" (Form 990) or "J" (Form 990-EZ), and complete only the portion of the return above Part I.
2. Enter on line 3 only social dues. Amounts charged for room and board should be entered on line 2.
3. No chapter should show depreciation on its chap chapter house or other assets unless those assets are used to generate income from non-members.
4. Be sure to complete all lines. If a part or line does not apply, enter "N/A" or if a dollar amount is zero, enter "0". Remember that the \$20 per day penalty can be assessed for incomplete returns as well as for delinquent returns.
5. Be sure that an officer of the chapter signs the return on page 5 (Form 990) or page 2 (Form 990-EZ). The person signing the return should indicate his chapter office and the date the return was signed.
6. The completed return must be mailed to the "In Internal Revenue Service Center" at the following Applicable address on or before the due date.

When and Where to File

File Form 990 by the 15th day of the 5th month after the organization's accounting period ends. If the regular due date falls on a Saturday, Sunday, or legal holiday, file on the next business day. A business day is any day that is not a Saturday, Sunday, or legal holiday.

Only chapters that receive at least \$1,000 of "unrelated trade or business income during the fiscal year" are required to file a Form 990-T. "Unrelated trade or business income" includes all gross receipts except "dues, fees, charges or similar amounts paid by members," as conation for providing members or their guests goods, facilities or service in furtherance of the social, educational or fraternal purposes for which the Fraternity was organized. Generally, money received from members will not constitute "unrelated trade or business income." If your chapter is required to file form 990-T, it should be necessary to complete lines 1 through 13 in column (A), lines 13 of columns (B) and (C), lines 29 through 34 of Part II, and Parts III through V. Any chapter whose "unrelated trade or business income" requires it to complete more than these specific parts should contact Director of Finance/Controller Kathy Cadwell.

The amount of unrelated trade or business income is calculated in Part I of the form. From this amount, each chapter is entitled to a \$1,000 deduction which is entered on line

33 of Part II. A chapter may also be entitled to deduct a portion of the expenses directly incurred to produce the income received on Form 990-T. It is impossible to be more specific without knowing the particular facts involved. Questions should be directed to Director of Finance/Controller Kathy Cadwell at the Fraternity's Offices of the Grand Chapter in Indianapolis.

Final way to avoid paying tax and filing Form 990-T is to set aside or use the income from non-members in excess of \$1,000 for scholarships, student loans, or reduction of loans on the chapter house. Several technicalities are involved in this procedure, and Kathy Cadwell should be contacted if the chapter thinks it may be able to take advantage of this possibility.

Chapters required to file a Form 990-T should be careful to note that these forms must be filed by the 15th day of the 5th month following the end of each fiscal year. If your chapter is required to file a Form 990-T and hasn't done so, it should be immediately filed. A penalty of 5% on the unpaid tax may be imposed for each month the return remains unfilled, to a maximum of 25%. However, the fact that a Form 990-T is filed does not relieve the chapter of the obligation of filing a Form 990.

If detailed instructions are needed for Form 990 or 990-EZ, please contact the IRS by looking them up in your local phone directory, or visit the web site at www.irs.gov.