

## **MEMORANDUM**

TO: All State and Local Councils, Assemblies, and Chapters in the United States

FROM: John Marrella, Supreme Advocate

DATE: February 2017

SUBJECT: 2016 Federal Tax Returns

All Knights of Columbus subordinate units in the United States must file an annual informational tax return (IRS Form 990) with the Internal Revenue Service (IRS). This memorandum provides general guidance to help councils comply with their federal tax reporting requirements for 2015. Although the Knights of Columbus Legal Department is able to provide general guidance, we recommend that councils, assemblies, and chapters that have more complicated tax returns consult with a professional tax adviser.

### **New this year**

Effective February 29, 2016, the IRS launched a new website for submitting Form 990-N (e-Postcard). Please refer to the "Who Must File" section of this memo for more information.

### **I. General Information**

The Knights of Columbus is a fraternal benefit society, recognized by the IRS as a tax-exempt organization under Section 501(c)(8) of the Internal Revenue Code (IRC). In addition, pursuant to a group exemption, the IRS recognizes all councils<sup>1</sup> in the United States as "fraternal lodges." Each council may also claim an exemption from federal income tax under Section 501(c)(8), *provided that* the Financial Secretary has reported the council's Employer Identification Number (EIN) to the Knights of Columbus Legal Department, which in turn will report it to the IRS as part of the Knights of Columbus group exemption listing.

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<sup>1</sup> For the purposes of this document, the term "council" refers to all subordinate units of the Knights of Columbus, including state and local councils, assemblies, and chapters.

In order to be recognized under the Order's group exemption, a council must first obtain its own EIN from the IRS by accessing the EIN Assistant through the IRS website. Attachment 1 of this memorandum contains screenshots of what to expect when applying for an EIN online. To access the EIN Assistant, [click here](#). An EIN can also be applied for by submitting a Form SS-4 to the IRS. Attachment 2 to this memorandum includes: (1) a sample Form SS-4 for you to use as a guide; and (2) a blank copy for you to fill out and submit to the IRS. Once a council has received its EIN, it must submit to the Knights of Columbus Legal Department a copy of the letter from the IRS assigning it an EIN. In addition to the letter from the IRS, the council must also submit to the Legal Department an authorization letter (see Attachment 3), requesting that it be included in the Supreme Council's group exemption.

Attachment 4 to this memorandum includes three letters from the IRS: (1) a letter issued by the IRS to the Supreme Council in 1940, recognizing the federal income tax exemption for the Supreme Council and its subordinate units (the "group exemption"); (2) a letter issued by the IRS to the Supreme Council in 1998, confirming this exemption; and (3) a letter issued by the IRS to the Supreme Council in 2009 further confirming that the 1940 ruling recognizes the Supreme Council and its subordinate units as exempt from Federal income tax under section 501(c)(8) of the code.

Councils should file their returns *directly with the IRS* and should not submit originals or copies to the Knights of Columbus Legal Department. If a council fails to comply with the annual filing requirement, the IRS may impose monetary and other penalties, including revocation of the council's tax exempt status.

The Order's group exemption does not exempt councils from state and local taxes. For example, councils may be subject to state or local sales taxes, unless state or local laws specifically exempt these entities. Typically, states grant sales tax exemptions only to organizations that are recognized as charitable entities under Section 501(c)(3) of the IRC; as a fraternal benefit society under Section 501(c)(8), the Knights of Columbus would not be entitled to this exemption. Each council should consult its own tax adviser, accountant, or attorney to determine whether it is exempt from state and local taxes.

Finally, the Knights of Columbus group exemption recognized by the IRS does not extend to home corporations or home associations, which are independent legal entities.

## **II. Who Must File**

Every council, assembly, and chapter in the United States must file an annual return with the IRS. The type of return that is required to be filed will ordinarily depend on the amount of gross receipts generated by the council. Councils with annual gross receipts of \$50,000 or less must electronically file a Form 990-N with the IRS. Most councils will file the Form 990-N. (See Attachment 5, section entitled "Annual Electronic Filing Requirement for Knights of Columbus Subordinate Councils").

Effective February 29, 2016, the IRS launched a new website for submitting Form 990-N (e-Postcard) filings. The form 990-N (e-Postcard) can only be filed online and you may do so by [clicking here](#). All users must complete a onetime registration even if you were previously registered under the old system. IRS Form 990-N Electronic Filing System (e-Postcard) User Guide can be accessed by [clicking here](#). Links to frequently asked questions and annual filing requirements for small organizations are located at the end of the guide.

Councils with annual gross receipts of \$50,001 to \$199,999 should use Form 990-EZ. Councils with annual gross receipts equal to or greater than \$200,000 (or total assets of \$500,000 or more) should use Form 990. Councils that earned \$1,000 or more in gross income from an unrelated business must also file Form 990-T (Exempt Organization Business Income) to compute and pay the tax due.

Councils that are required to file a Form 990 or Form 990-EZ<sup>2</sup> should send the completed return to:

Internal Revenue Service Center  
Ogden, UT 84201-0027.

Each council must file its own tax return; there is no group or consolidated Form 990 filing. The returns are due to be filed by the fifteenth day of the fifth month following the end of the council's annual accounting period.<sup>3</sup> Federal law imposes a penalty of \$20 per day, up to a maximum of \$10,000, for incomplete or late filings, unless reasonable cause can be shown. This applies only to paper filers.

### **III. Maintaining Tax Files**

Each council should, at a minimum, maintain a tax file that includes copies of the following:

- The council's by-laws and all amendments;
- The council's minutes for the last four years;
- IRS group exemption letters dated October 25, 1940 and October 15, 1998 (See Attachment 3);

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<sup>2</sup> If your council is required to file a return, but did not automatically receive the appropriate tax forms and instructions from the IRS, you may obtain them from the IRS, by calling the IRS forms number (1-800-829-3676), or by downloading forms from the IRS website at [www.irs.gov](http://www.irs.gov). Requests for an extension to file (Form 8868) should be sent to the Ogden Service Center at the above address.

<sup>3</sup> For example, if a council's accounting period ends on December 31, it must file by the following May 15; if its accounting period ends on June 30, it must file by November 15.

- Forms 990, Forms 990-EZ, or Forms 990-N filed for the last 10 years;
- The following forms filed by the council in the last 10 years: Summary Form 1096 and Information Return for Income Payments (Form 1099), if any; Summary Form W-3 and Income Tax Withheld on Wages (Forms W-2), if any;
- The council's application (Form SS-4) and approval letter from the IRS assigning its Employer Identification Number;
- Tax returns for the last five years filed under the Federal Insurance Contribution Act and the Federal Unemployment Tax Act, if any;
- Any prior revenue agent examination reports; and
- Forms 990 and 990-EZ worksheets for those years, if any, in which gross receipts were less than the \$50,000 threshold amount.

Faithful Comptrollers and Financial Secretaries should maintain, at the organization's principal place of business, a file that includes the above-mentioned group exemption letters, and Forms 990 and/or Forms 990-EZ filed in the previous three years. Under federal law, this file must be open to public inspection during regular business hours, and copies of the filings must be provided to anyone who requests them, at the cost to the requester.<sup>4</sup> Copies of most filed forms 990EZ and 990 can be located on the National Center for Charitable Statistics (NCCS) website. [Click here](#) to access NCCS. To search for your council, click "FIND A NONPROFIT", enter your EIN in the "FEDERAL EIN" box, and then click "SUBMIT". To view a pdf copies of your filings, click on the name of your council then click the "FORM 990" tab.

#### **IV. Home Corporations**

##### **A. Defined**

State law allows council members to establish home corporations as non-stock, non-profit corporations that may qualify as tax-exempt organizations under IRC Section 501(c)(2) (title holding company) or Section 501(c)(7) (social club). To qualify as a title-holding company under Section 501(c)(2), the home corporation's income must be earned solely from the rental of the real estate, or other passive sources. If a home corporation receives income from business sources, such as from the operation of a bar, or from gaming, then it must operate as a social club under Section 501(c)(7). Liquor licenses must be held in the name of the home corporation and not the council. Membership in the home corporation should be restricted to those council members in good standing; when a man's membership in the Knights of Columbus is terminated, his home corporation membership should terminate as well. Home corporations should maintain their own property/casualty and excess liability insurance coverage, as they are not covered by policies paid

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<sup>4</sup> Failure to comply with this requirement is punishable under Section 6652 of the IRC, by a fine of \$20 per day of non-compliance, up to a maximum of \$10,000. In addition, a \$5,000 penalty may be assessed against any person who willfully fails to provide access to these returns.

for by the Knights of Columbus or its subordinate units. The officers of a home corporation should consult with an attorney to ensure compliance with all federal, state, and local laws.

Funds contributed to a home corporation are not recognized by the IRS as charitable contributions and may not be deducted by the donor. Furthermore, the raising of such funds by the council is not considered a charitable activity (see Revenue Ruling 56-329). Each home corporation should maintain its own records and bank accounts.

## **B. Home Corporations Required to File Tax Returns**

Home corporations are required to file federal tax returns. Home corporations *are not* subordinate units of the Knights of Columbus and *are not* tax-exempt under the Order's group exemption. Each home corporation must obtain its own EIN, which is distinct from that of the council whose members formed the home corporation. To the extent that a home corporation is organized as a non-profit entity, it may apply to the IRS for tax exempt status under Section 501(c)(2) or Section 501(c)(7) of the Internal Revenue Code (IRC).

Home corporations may be subject to property tax and sales tax, unless specifically exempted by statute.

## **V. Pass-Through Charitable Fundraising**

Donations to Knights of Columbus councils for fraternal or social purposes are never deductible and most donations for charitable purposes are not deductible. However, the Internal Revenue Service permits a narrow exception to this general rule, which is codified at IRC Section 170(c)(4). Pursuant to Section 170(c)(4), a council may collect multiple individual donations, deposit them into a dedicated bank account, and then send a check for the cumulative amount to a charitable entity that is recognized by the IRS under Section 501(c)(3). This is known as "pass-through charitable fundraising."

Donations made in this manner may be tax-deductible by the individual donors as charitable contributions under certain conditions and restrictions, including the following:

- The council collects the donations and deposits them in a separate bank account, ensuring that the funds are totally segregated from any and all other funds of the council or assembly; this account may be designated as "[Council/Assembly] [No. xxxx] Charity Account."
- The council remits the accumulated donations directly to an entity that is recognized as a charity under Section 501(c)(3).
- The funds are not used in any manner for any social or fraternal purposes, including payment of expenses incurred in hosting the fundraising event.

- Only individual taxpayers, not non-person taxpayers (such as corporations or partnerships), are eligible to claim a tax deduction.

Councils may not issue receipts to donors who have made monetary contributions for the benefit of the charitable entity. Rather, the council should provide the charitable entity that receives the donations with a list of all donors' names and addresses, along with the amount of their respective donations; the charitable entity may then issue receipts and letters of acknowledgment, which the donors may retain for tax purposes. We strongly advise councils and assemblies to retain the services of a qualified accountant to ensure compliance with Section 170(c)(4).

If any Knights of Columbus council utilizes the pass-through charitable fundraising mechanism of Section 170(c)(4) and has annual gross receipts of more than \$50,000, excluding the pass-through receipts, it must report total pass-through contributions to the IRS on Schedule B, which is filed with its return (Forms 990 or 990-EZ). Individual contributions totaling \$1,000 or more must also be reported on Schedule B. *Councils may not issue tax receipts to donors;* instead, the council should arrange for the charitable entity that receives the funds to provide donors with a written acknowledgement of their contribution (See IRS Publication 1771).

If a council has annual gross receipts of \$50,000 or less, excluding pass-through receipts, it is required only to file Form 990-N, as set forth in Section II, above, unless its year-end assets are \$500,000 or more. If the council or assembly has year-end assets of \$500,000 or more, then it must file a Form 990 or 990-EZ.

## **VI. Licensed Gaming**

Many states allow non-profit, tax-exempt organizations, including fraternal benefit societies, to engage in charitable gaming activities in order to raise funds for charitable organizations and activities. Such charitable gaming may include instant tickets, lotteries, pull tabs, raffles and other gaming activities. The exempt organization conducting gaming must include gaming proceeds in its gross receipts on its annual Form 990. Councils that conduct gaming activities must do so in full compliance with all applicable local, state, and federal laws. The responsibility for such compliance rests with the officers of the council.<sup>5</sup>

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<sup>5</sup> IRS Publication 3079 covers tax exempt organizations and gaming and informs organizations of their potential liability for income, employment, and excise taxes. Depending upon the type of gaming activity, an organization may be required to file a monthly tax return (Form 730) and pay excise tax on its gross receipts. The organization may also have to include the net receipts in filing requirements for Form 990-T and possibly pay tax on unrelated taxable income resulting from the activity. There also may be other filing requirements concerning reporting income and withholding tax on winnings (Form W-2G), employment tax filings for employees, and excise taxes or occupational taxes (Form 11C) concerning the gaming.

The proceeds from certain bingo games may be exempt from the tax on unrelated business income if the games meet the requirements of IRC Section 513(f) and may be excluded from the wagering tax under IRC Section 4401. Income from the sale of "instant bingo" tickets or "bingo" pull-tabs does not qualify for the bingo exclusion. For further clarification of this issue, you should consult a professional tax adviser.

Councils engaged in charitable gaming activities should review, in consultation with their tax adviser, all relevant IRS forms and publications. Such forms and publications may be obtained from the IRS as indicated in footnote 3 above. Please note that gross receipts from gaming activities must be included under the EIN of the council actually conducting the activities.

## **VII. Conclusion**

In sum, although the Knights of Columbus is a tax-exempt organization, all subordinate units have a legal obligation to file annual returns with the IRS. In fulfilling this obligation, we strongly suggest that you consult with an accountant or tax attorney. If you have questions relating to your council's tax reporting obligations, please contact the Knights of Columbus Legal Department by email at [tax.ein@kofc.org](mailto:tax.ein@kofc.org).

**IMPORTANT NOTICE:** The guidance set forth in the Officers' Desk Reference does not constitute tax advice on which any individual member of the Knights of Columbus or any subordinate unit may rely in determining his or its obligations and liabilities under the tax laws of any jurisdiction. Council and assembly officers are responsible for ensuring compliance with all applicable tax laws and regulations and the accuracy of all returns filed with any taxing authority. We encourage all subordinate units with more complex returns or higher revenues to consult with a competent tax advisor if they have any questions or concerns about their obligations and liabilities under the tax laws.