

---

State of South Carolina  
**Department of Revenue**  
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

---

SC PRIVATE LETTER RULING #97-3

TO: XYZ University

SUBJECT: Taxation of land owned by a public university but leased to a greek fraternity corporation for construction of greek letter housing and the taxation of any fraternity housing constructed thereon

REFERENCE: S. C. Code Ann. Section 12-37-10 (1976)  
S. C. Code Ann. Section 12-37-220(A)(2)(1996 Supp.)  
S. C. Code Ann. Section 12-37-220(B)(12)(1996 Supp.)  
S. C. Code Ann. Section 12-37-610 (1996 Supp.)  
S. C. Code Ann. Section 12-43-220(e)(1996 Supp.)  
S. C. Code Ann. Section 12-43-230(b)(1996 Supp.)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1996)  
SC Revenue Procedure #94-1

SCOPE: A Private Letter Ruling is an **official advisory opinion** issued by the Department of Revenue to a specific person.

NOTE: A Private Letter Ruling may only be relied upon by the person to whom it is issued and only for the transaction or transactions to which it relates. A Private Letter Ruling has no precedential value.

Question(s):

Are XYZ University and a Greek Housing Corporation both exempt from ad valorem property taxes on land and the improvements constructed thereon when the land is owned by XYZ University but leased to the Greek Housing Corporation for construction of fraternity housing?

Conclusion(s):

S.C. Code Ann., Section 12-37-220(A)(2), provides that “all property of all schools, colleges, and other institutions of learning . . . [is exempt from ad valorem taxation], except where the profits of such institutions are applied to private use.” Because XYZ

University meets the parameters of this statute, as discussed below, XYZ University is exempt from ad valorem taxes on the land leased to the Greek Housing Corporation [hereinafter GHC].

If the improvements to the land constructed by GHC belong to XYZ as an improvement to XYZ's land, such improvements are also exempt from ad valorem property taxes under Section 12-37-220(A)(2). However, pursuant to the lease agreement between XYZ and GHC, such improvements are owned by GHC during the period of the lease.

S.C. Code Ann., Section 12-37-220(B)(12), provides that the "property of any fraternal society, corporation, or association, when the property is used primarily for the holding of its meetings and the conduct of its business and no profit or benefit therefrom . . . inure[s] to the benefit of any private stockholders or individuals," is exempt from ad valorem property taxes. Because GHC is a fraternal organization and meets the other requirements of Section 12-37-220(B)(12), GHC is exempt from ad valorem property taxes on the improvements made by GHC to the property leased from XYZ University.

#### Facts:

XYZ University is a state-supported school, the profits of which are not applied to any private use. The Board of Trustees of XYZ University will provide on-campus land for the construction of Greek Letter Housing to be used by XYZ University students. The University will either utilize existing land, which it owns, or will purchase land to be used for this purpose.

The University will hold title to the land and will lease lots on a long term basis to individual GHC's. Each GHC will be a non-profit tax exempt organization for federal income tax purposes. No profit or benefit from membership in a GHC will inure to the benefit of any individual member. Students residing in Greek Letter Housing will pay for room and board.

The initial lease on each lot will be for 40 years, renewable upon the joint agreement of XYZ and the GHC's. Structures on the land will be built by the GHC using GHC funds and owned by the GHC during the period of the lease with XYZ. Title to the improvements to the land including the housing constructed thereon will transfer to XYZ upon termination of the lease.

#### Discussion:

S.C. Code Ann., Section 12-37-220(A)(2) provides that "all property of all schools, colleges, and other institutions of learning . . . [are exempt from ad valorem property taxes], except where the profits of such institutions are applied to private use." Under

Section 12-37-220(A)(2), XYZ University is exempt from ad valorem property taxes on the land it proposes to lease to GHC under Section 12-37-220(A)(2). If any profits of XYZ University are applied to private use, XYZ will lose this exemption and be taxed on an assessment equal to six percent of the fair market value of the property. See S.C. Code Ann., Section 12-43-220(e).

The housing to be built on the leased land by each GHC requires further discussion since such housing will be owned by the GHC rather than XYZ University.

S.C. Code Ann., Section 12-43-230(b) provides “all improvements to leased real property made by the lessee shall be considered real property and shall be classified and assessed for ad valorem taxation in accordance with the provisions of Section 12-43-220.”<sup>1</sup> “Personal property” means all things, “other than real estate . . . .” S.C. Code Ann., Section 12-37-10(2). Real property means not only land but also “all structures and other things therein contained or annexed or attached thereto . . . .” S.C. Code Ann., Section 12-37-10(1).

S.C. Code Ann., Section 12-37-610 provides that “[e]very person is liable to pay taxes and assessments on the real estate which he owns or may have the care of as guardian, executor, trustee, or committee.”

As a result of the above cited sections, if the improvements to the land made by GHC [i.e., the fraternity housing] are taxable, they are taxable to GHC since GHC “owns” the improvements.

However, S.C. Code Ann., Section 12-37-220(B)(12) provides an exemption from ad valorem property taxes for certain fraternal organizations. That section reads, in part:

The property of any fraternal society, corporation or association, when the property is used primarily for the holding of its meetings and the conduct of its business and no profit or benefit therefrom [inures] to the benefit of any private stockholders or individuals, [is exempt from ad valorem property taxes].

For any fraternity to fall within the tax exempt status afforded by Section 12-37-220(B)(12), each GHC must satisfy the conditions enumerated therein as follows:

- (1) That it is a fraternal organization.

---

<sup>1</sup>Previously, S.C. Code Ann., Section 12-37-630, provided that “[w]hen the fee of the soil in any tract or lot of land is in one person and the right to any . . . structures thereon in another, . . . such structures shall be valued and taxed as personal property to the owners thereof, respectively.” Section 12-37-630 was repealed effective June 14, 1993.

- (2) That the improvements to the land leased from XYZ University are used primarily for the holding of fraternity meetings and the conduct of its business.
- (3) That no profit or benefit from such business shall inure to the benefit of any individual member.

A fraternal organization in the popular acceptance of the term is “[a]ny society organized for the accomplishment of some worthy object through the efforts of its members working together in brotherly union, especially if it be organized not for selfish gain, but for the benefit of the membership or for the benefit of the membership and men in general.” In Re Mason Tire & Rubber Co., 11 F.2d 556, 557 (C.A.D.C. 1926). In First Bank in Dallas v. C.I.R., 45 F.2d 509 (5th Cir. 1930), the court stated that fraternal organizations may be described generally as social in their nature, and designed not exclusively for charitable purposes but also for the enjoyment of the members.

In American colleges, a fraternity is a student organization, either a nationally chartered society comprising many affiliated chapters or a single chapter in one institution, formed chiefly to promote friendship and welfare among the members, and usually having a name consisting of Greek letters. Webster’s New International Dictionary, “fraternity,” 2d Edition, Unabridged.

From the nature of the lease between XYZ and GHC, it is clear the housing, once completed by GHC, will be owned and occupied by XYZ University fraternities and will provide a place for fraternity member students to meet, to socialize, to eat, to sleep, and to generally promote “friendship and welfare among the members.” As such, we conclude that each GHC is a fraternal organization within the meaning of Section 12-37-220(B)(12) of the S.C. Code Ann.

The next condition that must be satisfied is that the housing constructed by GHC must be used primarily for the holding of the fraternity’s meetings and the conduct of its business. “The word ‘primarily’ means ‘of first importance’ or ‘principally’.” Hibernian Soc. v. Thomas, 319 S.E.2d 339, 342-343 (S.C. App.)(1984). In holding the Hibernian Society’s building to fall within the ambit of ' 12-43-220(B)(12), the S.C. Appellate Court noted:

[T]he Hall is used to hold the Society’s meetings and to conduct the business of being a fraternal organization....The Hall is used 364 days a year for the fraternal and social purposes of the Society.

As in Hibernian, GHC would be used every day of the year for the fraternal and social purposes of the fraternity, to include providing a meeting area and eating and sleeping facilities for its members. As such, we conclude its facilities are used primarily for the holding of fraternity meetings and the conduct of its business.

The last requirement is that no profit or benefit from the [fraternity's] business can inure to the benefit of any individual member. Obviously, no member receives any direct financial benefit from belonging to the fraternity such as a salary or dividends. We recognize that "profit or benefit" may inure to an individual other than through the distribution of dividends. [Some argue] that having a place to socialize to the exclusion of the general public is sufficient "profit or benefit" to deny the exemption. We disagree.

There is bound to be some incidental, non-financial benefit resulting from membership in any type organization. In enacting this particular condition, the legislature intended . . . to stop the flow of any direct or indirect commercial benefits to the *individual members* of the Society . . . as opposed to the benefits which inherently and customarily flow to the members of a fraternal organization as a *group*.

Hibernian SOC. v. Thomas at 343.

Students residing in fraternity housing will pay for room and board. Based on the facts presented, no profit or benefit from membership in a GHC fraternity inures to the benefit of any individual member. Since GHC meets the requirements of Section 12-37-220(b)(12), it is exempt from ad valorem property taxes on the improvements made to the land leased from XYZ University.

If a profit or benefit from membership in GHC does inure to the benefit of any individual member, GHC will lose its exemption under Section 12-37-220(B)(12) and be taxed on an assessment equal to 6% of the fair market value of the improvements to the land. S.C. Code Ann., Section 12-43-220(e).