

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
FRATERNAL ORDER OF POLICE,	:	DECISION
EMPIRE STATE LODGE, INC.	:	
	:	
for Redetermination of Exempt Organization	:	
Status under Articles 28 and 29 of the Tax Law.	:	

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Petitioner, Fraternal Order of Police, Empire State Lodge, Inc., c/o Solerwitz, Solerwitz & Leeds, 170 Old Country Road, Mineola, New York 11501, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 48511).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 13, 1984 at 9:15 A.M., with all briefs to be submitted by January 10, 1985. Petitioner appeared by Solerwitz, Solerwitz & Leeds, Esqs. (Michael J. Vollbrecht, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether the Audit Division properly denied petitioner's application for exempt organization status.

FINDINGS OF FACT

1. On or about March 8, 1982, Robert N. Lucente, as trustee of Fraternal Order of Police, Empire State Lodge, Inc., submitted to the Audit Division an Application for an Exempt Organization Certificate, seeking exemption from sales and use taxes under Tax Law section 1116(a)(4).

2. By letter dated April 27, 1982, the Audit Division denied petitioner's application, stating the basis for such action as follows:

"The information presented discloses that, although some of your organization's purposes and activities may be for exempt purposes, a substantial part of its activities and purposes are civic, professional and fraternal in nature. Such purposes are not among those specified in the statute for which sales tax exemption may be granted. Further, we note that the Federal group exemption received by Fraternal Order of Police and its subordinate units is under section 501(c)(8) of the Internal Revenue Code, as fraternal beneficiary society organizations, rather than under section 501(c)(3), as charitable organizations, which is identical to the Sales Tax Law."

3. Petitioner, a Type A corporation under section 201 of the New York Not-for-Profit Corporation Law, is an organization comprised of separate lodges; at the time of its application, there existed 20 lodges representing 32 police departments throughout New York and three professional lodges. Membership is open to any regularly appointed, full time law enforcement officer permanently employed or temporarily assigned within the boundaries of this state.

4. According to its Certificate of Incorporation, filed with the Department of State on July 21, 1981, the purposes for which petitioner was organized are set forth below.

"The purposes for which the corporation is formed shall be exclusively charitable, educational, scientific, and literary, within the meaning of Section 501(c)(4) of the United States Internal Revenue Code of 1954, as the same may be amended. Subject to the limitations of the foregoing, the corporation shall have the following purposes:

- (a) To support and defend the Constitution of the United States.
- (b) To inculcate loyalty and allegiance to the United States of America.
- (c) To promote and foster the enforcement of law and order.
- (d) To improve the individual proficiency of our members in the performance of their duties.
- (e) To encourage social, charitable and educational activities among law enforcement officers.

(f) To advocate and strive for uniform application of the civil service merit system for appointment and promotion.

(g) To create a tradition of esprit de corps insuring fidelity to duty under all conditions and circumstances.

(h) To cultivate a spirit of fraternalism and mutual helpfulness among our members and the people we serve.

(i) To increase the efficiency of the law enforcement profession and thus move firmly to establish the confidence of the public in the service dedicated to the protection of life and property.

(j) None of the purposes or activities of the corporation are designed or intended to authorize the proposed cooperation (sic) or any of its members, in any form whatsoever, to participate in collective bargaining, the regulation of wages, hours and working conditions.

(k) To do any other act or thing incidental to or concerned with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors, or officers except as permitted under Article 5 of the Not-For-Profit Corporation Law."

5. Annual membership dues are in the amount of \$5.00; \$2.00 thereof are submitted to the national organization (the Grand Lodge), and the remainder is deposited in petitioner's Treasury for the payment of its expenses and the making of charitable contributions. A treasurer's report for the period September 3, 1981 through December 31, 1981, submitted with petitioner's application for exemption, detailed the receipts and disbursements for such period as follows:

Disbursements	
meeting expenses	\$159.50
postage	143.70
office telephone	109.38
printing	50.00
	<u>\$462.58</u>
Receipts	
deposit (source unknown)	\$ 76.00
dues	96.00
raffle proceeds	253.00
	<u>\$425.00</u>

6. In its application, petitioner described its activities to include: the conduct of a "Police Day" and two dinner-dances each year; the publication of a quarterly newsletter disseminating to its membership relevant legislative proposals and court decisions and other information of interest to law enforcement officers; and the making of contributions to charitable organizations such as the Easter Seals Society.

7. The Internal Revenue Service has granted petitioner an exemption from federal income tax.

#### CONCLUSIONS OF LAW

A. That Tax Law section 1116(a)(4) provides an exemption from the sales and compensating use taxes imposed under Article 28 to "[a]ny corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes...". In ascertaining whether an organization is organized exclusively for one or more of the enumerated exempt purposes, the focus is on the provisions of the organizing documents. The documents must limit the purposes of the organization to one or more exempt purposes and cannot expressly empower the organization to participate, other than as an insubstantial part of its activities, in activities which are not in furtherance of one or more exempt purposes (20 NYCRR 529.7[c][1][i]). On the other hand, in determining whether the organization is operated exclusively for one or more exempt purposes, the focus is on the organization's activities. Nearly all of its activities must accomplish one or more exempt purposes; or stated in a different way, an organization will not be regarded as exempt if more than an insubstantial part of its activities is not in furtherance of an exempt purpose (20 NYCRR 529.7[d][2]).

B. That it is clear from an examination of petitioner's Certificate of Incorporation and its description of its activities that a substantial part of the activities in which it is empowered to engage and in which it does engage is not in furtherance of one or more of the statutorily exempt purposes. Petitioner is apparently exempt from federal income taxation by virtue of paragraph (8) of Internal Revenue Code section 501(c), and not paragraph (3) after which Tax Law section 1116(a)(4) is patterned.

C. That the petition of Fraternal Order of Police, Empire State Lodge, Inc. is hereby denied in all respects.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 28 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER