

## MEMORANDUM

TO : State Tax Commission

FROM : Mr. Rook

SUBJECT: Trustees of the Eastern Star Hall and  
Home of the State of New York, Assignee  
of the Claim of Murphy Structural System  
for Sales Tax Refund.

This is a case involving the exemption of an organization under 1116 of the Sales Tax Law.

The Order of the Eastern Star (hereinafter referred to as "Order") for many years operated a charitable home and infirmary as its principal charity. As a result, it was not only exempt as a fraternal organization, but since 1940, it was ruled to be an organization to which charitable contributions might be made under 170(c)(4) so long as such gifts were used exclusively for religious, charitable, etc. purposes.

In 1970, the Order entered into a contract for additions and alterations to the Eastern Star Home with Murphy Structural Systems, Inc. The contract was a time and materials contract and would have been exempt from sales tax but for the question of the Order's exempt status. This is agreed to by Mr. Cuttler.

In April and May of 1971, the Order of the Eastern Star reimbursed Murphy \$8,404.06 for sales taxes paid on materials used in the construction.

By c.846 of Laws of 1971, the Trustees of the Eastern Star Hall and Home of the State of New York (hereinafter referred to as "Trustees") was reactivated and authorized to take over the property and management of the home. This corporation is clearly a §501(c)(3) I.R.C. corporation and thus clearly a §1116(a)(4) Tax Law exempt organization. Subsequently all of the Order's charitable funds and properties were transferred to the Trustees.

In May, 1972, the Trustees applied for a refund of the \$8,404.06 paid and a hearing was requested. The application was rejected on the grounds that the tax was not paid by the Trustees, but by the contractor. Thereafter, in the 1973 session, the Legislature passed a bill to confer jurisdiction on the Court of Claims, but at our request the bill was vetoed.

May 31, 1974


On July 12, 1973, Murphy made application for the refund and assigned its claim to the Trustees.

Mr. Cuttler and I have examined this case extensively and have obtained various documentary proofs. Mr. Cuttler would be willing to process the refund on the basis that the intent of the contract was to benefit the Trustees, on this authorization of the Commission or legal advice.

There is an even more sound basis for processing the refund. The funds held by the Order for the home as deductible gifts from individuals must be considered as held in a constructive charitable trust to be used exclusively for 1116(a)(4) purposes. Thus this Order was not one entity but two: The fraternal order and the charitable trust and the charitable trust was always entitled to the 1116(a)(4) exemption.

Especially in view of the fact that the refund will unquestionably be paid to the clearly exempt Trustees, I believe that the adoption of this view would work substantial justice and carry out both the letter and the intent of the exemption granted under the Tax Law.

I recommend the granting of the refund. If you agree, kindly note your approval hereon.

  
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EDWARD ROOK  
Secretary to the  
State Tax Commission

CC: Abram J. Cuttler

*Approved  
Whitton Kramer 6/4/74  
Approved  
Murphy 6/17/74  
Approved 6-20-74  
Maund Finacur*