

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

May 2, 1984

Ben Hur Grand Lodge & Grand Encampment of the
Independent United Order of Mechanics Friendly
Society in America and the West Indies, Inc.
65 Putnam Ave.
Brooklyn, NY 11238

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Stephen Perlitsh
Cohen & Tucker
1501 Broadway
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ben Hur Grand Lodge & Grand Encampment of the :
Independent United Order of Mechanics Friendly :
Society in America and the West Indies, Inc. : AFFIDAVIT OF MAILING
for Redetermination of Exempt Organization Status :
under Articles 28 and 29 of the Tax Law. :

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 2nd day of May, 1984, he served the within notice of Decision by certified mail upon Ben Hur Grand Lodge & Grand Encampment of the Independent United Order of Mechanics Friendly Society in America and the West Indies, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ben Hur Grand Lodge & Grand Encampment of the
Independent United Order of Mechanics Friendly
Society in America and the West Indies, Inc.
65 Putnam Ave.
Brooklyn, NY 11238

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
2nd day of May, 1984.

David Parchuck

James A. H. H. H.
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BEN HUR GRAND LODGE & GRAND ENCAMPMENT	:	
OF THE INDEPENDENT UNITED ORDER OF	:	DECISION
MECHANICS FRIENDLY SOCIETY IN AMERICA	:	
AND THE WEST INDIES, INC.	:	
	:	
for Redetermination of Exempt Organization	:	
Status under Articles 28 and 29 of the Tax Law.	:	

Petitioner, Ben Hur Grand Lodge & Grand Encampment of the Independent United Order of Mechanics Friendly Society in America and the West Indies, Inc., 65 Putnam Avenue, Brooklyn, New York 11238, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 43320).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 15, 1983 at 1:15 P.M. Petitioner appeared by Cohen & Tucker, Esqs. (Stephen Perlitsh, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioner is entitled to exemption from sales and use tax under section 1116(a)(4) of the Sales and Use Tax Law.

FINDINGS OF FACT

1. On September 17, 1982, petitioner, Ben Hur Grand Lodge & Grand Encampment of the Independent United Order of Mechanics Friendly Society in America and the West Indies, Inc. (hereinafter referred to as "Grand Lodge"), filed an Application for an Exempt Organization Certificate seeking exemption under

section 1116(a)(4) of the New York State Sales and Use Tax Law. On its application petitioner designated the purpose for which it was formed as charitable.

2. The Technical Services Bureau of the Department denied petitioner's application for exemption by certified mail on January 17, 1983. The Bureau denied the application on the ground that petitioner is primarily organized and operated for fraternal purposes and that such purposes are not among those specified in the statute for which sales tax exemption may be afforded. Petitioner received a Federal exemption under section 501(c)(10) of the Internal Revenue Code as a domestic fraternal organization.

3. Petitioner has been incorporated since August 13, 1919 with the following objectives as indicated in its Certificate of Incorporation:

- 1: To promote the principles of friendship and brotherhood among its members, and to exercise control and oversight over the subordinate lodges of the Independent United Order of the Mechanics Friendly Societies already established in America and the West Indies.
- 2: To establish, organize, institute, control, manage and regulate subordinate lodges and encampments of the Independent United Order of Mechanics Friendly Society throughout the States and Territories of the United States and the West Indies.
- 3: To issue charters and dispensations to subordinate lodges instituted and set up by this corporation, and to revoke and cancel the same for cause, as shall be provided in and regulated by its by-laws.
- 4: To make, write, compile and promulgate a constitution, by-laws and ritualistic works, as shall be determined and decided upon by the representatives from the several subordinate lodges assembled in Grand Lodge Session or Session of Grand Encampment.
- 5: To exercise such other powers of a similar character, as may not be inconsistent with the Constitution and laws of the State of New York.

4. Rules and By-Laws of the Lodge adopted October 22, 1981 contain the following objectives:

The Grand Lodge shall govern and control all units that fall under its jurisdiction; it shall make sure that all widows and orphans of its members are assisted, and that the old and infirm members get the necessary aid.

It will also insure Assistance and Charitable Contributions to any such Organizations or Institutions. It shall promote the principles of Friendship and Brotherly Love, and inject programs and activities to benefit the elderly and youth in the community.

5. Activities of the Grand Lodge include but are not limited to the following:

- a.) Anniversary religious services for each of the ten subordinate units under the Grand Lodge. Each of these units has their own religious church that they attend.
- b.) Mechanics Day Service and Banquet.
- c.) Conferring of Priesthood degrees and banquet.
- d.) Visitation of Chapters and Lodges
- e.) Banquet and ceremony conferring Rose Degrees on Sisters.
- f.) Organizational meeting to discuss various issues, including fundraising and orientation of members.
- g.) Assistance to widows whose husbands were members of the Order at the time of their death. Assistance is in the form of annual donations, flowers and house services where necessary.

6. Petitioner maintained that the objective of promoting principles of friendship and brotherhood among its members is an attribute of a religious and charitable organization and that the other objectives stated in the Certificate of Incorporation are merely incidental and a means to achieve the religious and charitable goal. Further, it was argued that the mere fact that a charitable or religious organization carries out its activities as a fraternal benefit association should not bar it from qualifying for New York State sales and use tax exemption.

7. During the year 1981, of the total expenditures of \$1,755.00 made by Ben Hur Grand Lodge, \$200.00 constituted contributions made to outside charitable

organizations. Upon dissolution, the assets of the individual units under the Grand Lodge would pass to the Grand Lodge. The assets of the Grand Lodge upon dissolution would pass to the Council of the Independent Order of Mechanics, the national head of the order.

CONCLUSIONS OF LAW

A. That section 1116(a)(4) of the Tax Law exempts from sales and use taxes any corporation or association organized and operated exclusively for religious, charitable or other purposes set forth, no part of the net earnings of which inures to the benefit of any private shareholder or individual and which does not engage in proscribed legislative or political activities.

B. That 20 NYCRR 529.7(b) sets forth qualifications for exemption under Tax Law §1116(a)(4) as follows:

"(2) In addition to the formal organization requirement, an organization must prove that it is both organized and operated exclusively for one or more of the purposes specified... If an organization fails to meet either the organizational test or the operational test, it is not exempt."

C. That pursuant to 20 NYCRR 529.7(c)(1) an organization is organized exclusively for one or more exempt purposes only if its organizing documents:

"(a) limit the purposes of such organization to one or more exempt purposes; and

(b) do not expressly empower the organization to participate, other than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

(ii) In no case will an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its organizing documents, the purposes for which such organization is created are broader than the purposes specified in section 1116(a)(4) of the Tax Law. The fact that the actual operations of such an organization have been exclusively in the furtherance of one or more exempt purposes is not sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in the furtherance of one or more exempt purposes."

The operational test under 20 NYCRR 529.7(d)(2) relating solely to activities provides that "[a]n organization will be regarded as 'operated exclusively' for one or more exempt purposes only if almost all of its activities accomplish one or more exempt purposes specified in section 1116(a)(4) of the Tax Law... An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."


D. That although petitioner's activities largely encompass religious and charitable aspects, petitioner is primarily organized and operated for fraternal purposes, such purposes not being among those specified under section 1116(a)(4) of the Tax Law.

E. That the petition of Ben Hur Grand Lodge & Grand Encampment of the Independent United Order of Mechanics Friendly Society in America and the West Indies, Inc. is denied.

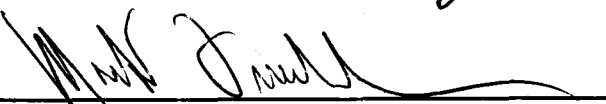
DATED: Albany, New York

MAY 02 1984

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

P 470 315 489

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

Handwritten: Bender, Robert J. Jr.

Sent to *Grand Encampment of the*
Street and No. *Independent United Order*
P.O., State and ZIP Code *of Mechanics Friendly*
Postage *Society in America &*
Certified Fee *the Order, Indian In-*
Special Delivery Fee *65, Putnam Ave.*
Restricted Delivery Fee *Brooklyn, NY 11238*

Return Receipt Showing to whom and Date Delivered

Return Receipt Showing to whom, Date, and Address of Delivery

TOTAL Postage and Fees \$

Postmark or Date

PS Form 3800, Feb. 1982

P 470 315 490

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Handwritten: Stephen Perlustal

Sent to *Stephen Perlustal*
Street and No. *Robert O. Tucker*
P.O., State and ZIP Code *1301 Broadway*
Postage *New York, NY 10036*
Certified Fee
Special Delivery Fee
Restricted Delivery Fee
Return Receipt Showing to whom and Date Delivered
Return Receipt Showing to whom, Date, and Address of Delivery

TOTAL Postage and Fees \$

Postmark or Date

PS Form 3800, Feb. 1982