

**Title:** FEDERAL SECTION 501(C)(8) TAX EXEMPT STATUS

Grand Lodge and Subordinate Lodges of Benevolent and  
Protective Order of Elks of the United States of America

**Date Approved:** May 6, 2020 (Entire document received from Grand  
Lodge Secretary)

**References:** Background/Conclusions  
Attachments: A, B, C, D, E, F, G

**Remarks:** Attachment F is the letter that confirms the “Grand Lodge  
and its subordinate Lodges will continue to be recognized  
under section 501(c)(8) of the Internal Revenue Code.”

**Author:** Various

### **DISCLAIMER**

The Business Practice Committee of the B.P.O. Elks of the State of Florida has prepared this information to assist the Local Lodges of this Fraternal Order. The FSEA Business Practice Committee is neither responsible nor empowered to be responsible for the establishment of such procedures. The Business Practice Committee acts as a resource to assist Local Lodges. You should always consult your Lodge's tax and legal advisors before engaging in any endeavors or transactions to ensure compliance with Federal, State, and Local Laws.

**FEDERAL SECTION 501(c)(8) TAX EXEMPT STATUS**  
**GRAND LODGE AND SUBORDINATE LODGES OF BENEVOLENT AND**  
**PROTECTIVE ORDER OF ELKS OF THE UNITED STATES OF AMERICA**

Background

1. Benevolent and Protective Order of Elks of the United States of America ("BPOE") is a fraternal order operating under the lodge system, consisting of a central organization (Grand Lodge) and more than 2,000 subordinate lodges chartered by the Grand Lodge. BPOE has been in existence since June 1885.

2. By letter dated February 21, 1939, to BPOE from John H. Kirk, Deputy Commissioner of Internal Revenue, the ruling was issued that: "In view of the foregoing, it is held that you come within the exemption provisions of Section 101(3) of the Revenue Act of 1938 and similar provisions of prior revenue acts. You will accordingly be relieved of the duty of filing returns of annual income so long as your purposes and actual activities remain unchanged." [Section 101(3) was the predecessor of present Section 501(c)(8), re-numbered in Internal Revenue Code of 1954].

3. By letter dated October 18, 1951 to BPOE from E. I. McLarney, Deputy Commissioner of Internal Revenue, it was stated that: "It is the opinion of this office, based upon the evidence presented that your subordinate lodges appearing in your 1951-1952 Directory are entitled to exemption from Federal income tax under the provisions of Section 101(3) of the Code." Accordingly, a group exemption was issued under Section 101(3). [Group number 1156.]

4. The Grand Lodge has annually provided to the Internal Revenue Service in the prescribed form a list of all additions and deletions in its subordinate lodges.

5. The determinations dated February 21, 1939 and October 18, 1951 issued by the Internal Revenue Service remain in effect and have not been modified. Those rulings establish that that the BPOE Grand Lodge and all listed subordinates are exempt from Federal income tax under Section 501(c)(8) of the Internal Revenue Code.

6. The exempt status of Grand Lodge and subordinate lodges was not changed by enactment of Section 501(c)(10) by Tax Reform Act of 1969. BPOE tax attorney Edward W. McCabe had a meeting on February 5, 1970 with four representatives of Internal Revenue Service Exempt Organizations Office. As reported by Mr. McCabe, "It was the consensus of those attending the conference that the Elks should continue to be exempt under Section 501(c)(8) rather than change to 501(c)(10)."<sup>1</sup>

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<sup>1</sup> Mr. McCabe reported those in attendance for Internal Revenue Service as Mr. Dunn, John Barber, Robert Maginnis, and Ed Coleman.

7. That position was confirmed by Exempt Organizations Office as shown by letter dated June 17, 1981 from Donald E. Bergherm, District Director, Internal Revenue Service which stated as follows:

Our National Office has advised us that since the benefits provided by the Grand Lodge are available to the members of the individual lodges, those benefits are considered other benefits to the members under I. R. C. 501 (c) (8)(B).

The Grand Lodge and its subordinate Lodges will continue to be recognized under section 501 (c) (8) of the Internal Revenue Code if they meet the requirements of (A) and (B) as mentioned above.

#### Conclusions

A. There can be no question that each subordinate lodge of BPOE, listed in the group exemption, is exempt under Section 501(c)(8). As stated in Internal Revenue Manual, 25.7.3.1 (09-20-2006), "A central organization that is tax exempt under IRC 501(c) may obtain recognition of exemption, on a group basis, for subordinate organizations that are under its general supervision and control. The purpose of the group exemption is to relieve subordinate organizations from filing their own exemption applications." (Also stated in Publication 557, "Tax-Exempt Status for Your Organization," at page 6: If there is a central organization group exemption letter, "you do not have to file a separate application unless your organization no longer wants to be included in the group exemption.")

B. Determination of tax exempt status and group exemption is the responsibility of TE/GE Headquarters (HQ) in Cincinnati, Ohio or the Area Office (AO) which has jurisdiction for the area in which the central organization's principal place of business is located. (Internal Revenue Manual 25.7.3.1.2 (12-01-2002))

C. BPOE Grand Lodge and its subordinate lodges have been granted exemption under Section 501(c)(8) of the Internal Revenue Code by the Internal Revenue Service officials having the responsibility and authority for examining and issuing tax exemption determinations. These rulings establish that that BPOE Grand Lodge and all its listed subordinates are exempt from Federal income tax under Section 501(c)(8) of the Internal Revenue Code.

D. The Section 501(c)(8) benefits remain substantially the same as when the exemption was initially recognized in 1939 and the group exemption issued in 1951. Those recognitions pre-dated the enactment of Section 501(c)(10) by Tax Reform Act of 1969. To seek to mandate that BPOE subordinate lodge request exemptions under Section 501(c)(10) instead of Section 501(c)(8) would result in wasteful and confusing actions, and would impinge upon the activities of those lodges. It has been stated that:

Unlike organizations exempt under IRC 501(c)(8), organizations exempt under IRC 501(c)(10) are not "beneficiary" societies; that is, they may not provide for the payment of life, sick, accident, or other

benefits to their members. [Barnett and Thomas, *2004 EO CPE Text - IRC 501(c)(8) Fraternal Beneficiary Societies and IRC 501(c)(10) Domestic Fraternal Societies.*]

Conversion to Section 501(c)(10) status therefore would appear to preclude the ability of BPOE and subordinate lodges to provide the present benefits to BPOE members.

## ATTACHMENTS

- A. February 21, 1939 IRS letter ruling granting tax exemption
- B. September 12, 1951 IRS letter re group exemption
- C. October 18, 1951 IRS letter granting group exemption
- D. February 17, 1976 IRS letter to assign group exemption number
- E. January 30, 1981 "Position Paper" of BPOE tax attorney Edward W. McCabe
- F. June 17, 1981 IRS letter continuing recognition of 501c8 exemption
- G. Benefits to BPOE members.

Copy prepared from original

February 21, 1939

Benevolent and Protective Order of Elks of the United States of America  
Chicago, Illinois

An examination of the evidence at hand discloses that you were incorporated in June, 1895, under the laws of the District of Columbia. Your original charter expired by limitation in 1915 and you were reincorporated with corporate powers perpetual and not subject to the lapse of time. You have no capital stock and are not organized or operated for profit. Your objects were stated in your original charter as follows:

'Third. Its objects shall be and are benevolent, social and altruistic to promote and encourage manly friendship kindly intercourse, and to aid and protect and assist its members and their families.'

Your renewal of your charter contains the following provision:

'That the business of such corporation, is benevolent and charitable and to inculcate the principles of Charity, Justice, Brotherly Love and Fidelity to promote the welfare and enhance the happiness of its members to quicken the spirit of American patriotism to cultivate good fellowship to perpetuate itself as a fraternal organization, and to provide for its government.'

You operate under the lodge system as a fraternal organization with a Grand Lodge and subordinate lodges. Your income is derived from membership dues, dispensation fees, charter fees, supplies sold to subordinate lodges, remittances from the magazine published for the benefit of your members, permits to Antlers Lodges (for the benefit of boys under twenty-one years of age), donations, etc. You maintain an Elks' home. Each subordinate lodge having members in the home must pay one-third of the cost of maintenance of such member or members in the home. No part of your income inures to the benefit of any private share-holder or individual.

In view of the foregoing, it is held that you come within the exemption provisions of Section 101(3) of the Revenue Act of 1938 and similar provisions of prior revenue acts. You will, accordingly, be relieved of the duty of filing returns of annual income so long as your purposes and actual activities remain unchanged.

John H. Kirk  
Deputy Commissioner of Internal Revenue

Copy prepared from original

September 12, 1951

Benevolent and Protective Order of Elks of the United States of America  
Chicago, Illinois

The records of the Bureau disclose that on February 21, 1939, you the national organization, were held to be exempt from Federal income tax under the provisions of Section 101(3) of the Revenue Act of 1938 and corresponding provisions of prior revenue acts, that on June 26, 1940, this ruling was affirmed under the Internal Revenue Code, and that individual rulings have been issued holding some of your Grand Lodges and many of the subordinate lodges to be exempt under Section 101(3) of the Code.

However, a group ruling has not been issued covering your Grand and subordinate lodges. Since you have under your jurisdiction a number of subordinate lodges, the Bureau will give consideration to the issuance of such a ruling if you so desire.

E. I. McLarney  
Deputy Commissioner of Internal Revenue

Copy prepared from original

October 18, 1951

Benevolent and Protective Order of Elks of the United States of America  
Chicago, Illinois

It is the opinion of this office, based upon the evidence presented that your subordinate lodges appearing in your 1951-1952 Directory are entitled to exemption from Federal income tax under the provisions of Section 101(3) of the Code.

Accordingly, it will not be necessary for your subordinate lodges appearing in your 1951-1952 Directory to file income tax returns so long as there is no change in their character, purposes or method of operation. Any such changes should be reported immediately to this office in order that their effect upon the exempt status of your subordinate lodges may be determined.

It will not be necessary for you and your subordinate lodges referred to above to file the annual returns of information, Form 990, generally required of organizations exempt under Section 101 of the Code as you come within the specific exemptions contained in Section 54(f) of the Code.

You should furnish the Bureau annually, on the calendar year basis, lists, in triplicate, showing only the names, numbers and addresses of any subordinate lodges chartered by you during the year, and the names, numbers and addresses of any lodges which for any reason have ceased to exist. Such annual lists should be accompanied by a statement sworn to by one of your principal officers as to whether the information heretofore submitted by you and on which this ruling is based, is applicable in all respects to the new subordinate lodges appearing on the lists and should be forwarded so as to reach this office not later than February 15 of the following year.

E. I. McLarney  
Deputy Commissioner of Internal Revenue

Internal Revenue Service  
Washington, D.C. 20224

Department of the Treasury

D

Date:

Person to Contact:

Mr. Charles E. McLaughlin

Telephone Number:

(202)964-6197

Refer Reply to:

E:EO:O:R

Date:

February 17, 1976

Group Exemption Number:

> 36-0793011 1156 03 00 08  
BPOE  
2750 LAKE VIEW AVENUE  
CHICAGO IL 60614

**1156**

Dear Officer or Trustee:

We are contacting all group central organizations because the 1975 Form 990 and instructions require each central organization and its subordinates to show their group exemption number (GEN) in Part I, item 18(b), of Form 990.

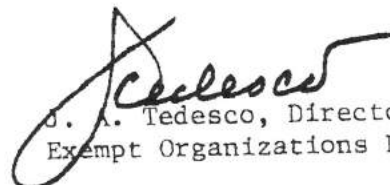
Your group exemption number is shown above. Please advise any of your subordinates that are required to file an annual information return, Form 990, to place your group exemption number on their return.

Church central organizations are not required to file an annual information return. However, any of their subordinates that do not qualify as "integrated auxiliaries" of a church are required to file an information return, Form 990, and should include on that return the appropriate group exemption number. We are preparing a proposed amendment to the Income Tax Regulations which will define an integrated auxiliary of a church. When that amendment is published, we will send an information copy to holders of group exemption rulings under section 501(c)(3) of the Internal Revenue Code. (Organizations exempt under other provisions will not receive a copy.)

If you have any questions, please contact the person whose name and telephone number are shown above.

Thank you for your help in this matter.

Sincerely yours,

  
J. A. Tedesco, Director  
Exempt Organizations Division

January 30, 1981

## POSITION PAPER

On February 21, 1939, John H. Kirk, Deputy Commissioner of Internal Revenue, stationed in Washington, advised the Benevolent and Protective Order of Elks of the United States of America, Chicago, Illinois, the following:

"An examination of the evidence at hand discloses that you were incorporated in June, 1895, under the laws of the District of Columbia. Your original charter expired by limitation in 1915 and you were reincorporated with corporate powers perpetual and not subject to the lapse of time. You have no capital stock and are not organized or operated for profit. Your objects were stated in your original charter as follows:

"'Third. Its objects shall be and are benevolent, social and altruistic to promote and encourage manly friendship kindly intercourse, and to aid, protect and assist its members and their families.'

"Your renewal of your charter contains the following provision:

"'That the business of such corporation, is benevolent and charitable and to inculcate the principles of Charity, Justice, Brotherly Love and Fidelity to promote the welfare and enhance the happiness of its members to quicken the spirit of American patriotism to cultivate good fellowship to perpetuate itself as a fraternal organization, and to provide for its government.'

"You operate under the lodge system as a fraternal organization with a Grand Lodge and subordinate lodges. Your income is derived from membership dues, dispensation fees, charter fees, supplies sold to subordinate lodges, remittances from the magazine published for the benefit of your members, permits to Antlers Lodges (for the benefit of boys under twenty-one years of age), donations, etc. You maintain an Elks' home. Each subordinate lodge having members in the home must pay one-third of the cost of maintenance of such member or members in the home. No part of your income inures to the benefit of any private share-holder or individual.

"In view of the foregoing, it is held that you come within the exemption provisions of Section 101(3) of the Revenue Act of 1938

and similar provisions of prior revenue acts. You will, accordingly, be relieved of the duty of filing returns of annual income so long as your purposes and actual activities remain unchanged."

This decision was reaffirmed in letter dated June 26, 1940, from Guy T. Helbering, then Commissioner of Internal Revenue.

On September 21, 1951, Deputy Commissioner E. I. McLarney advised that:

"The records of the Bureau disclose that on February 21, 1938, you the national organization, were held to be exempt from Federal income tax under the provisions of Section 101(3) of the Revenue Act of 1938 and corresponding provisions of prior revenue acts that on June 26, 1940, this ruling was affirmed under the Internal Revenue Code and that individual rulings have been issued holding some of your Grand Lodges and many of the subordinate lodges to be exempt under section 101(3) of the Code.

"However, a group ruling has not been issued covering your Grand and subordinate lodges. Since you have under your jurisdiction a number of subordinate lodges, the Bureau will give consideration to the issuance of such a ruling if you so desire. In which event, it will be necessary that you submit the following information:"

On the basis of letter of September 21, 1951, information requested was submitted to the Washington office which prompted the issuance of a letter from Deputy Commissioner McLarney dated October 18, 1951:

"It is the opinion of this office, based upon the evidence presented that your subordinate lodges appearing in your 1951-1952 Directory are entitled to exemption from Federal income tax under the provisions of Section 101(3) of the Code.

"Accordingly, it will not be necessary for your subordinate lodges appearing in your 1951-1952 Directory to file income tax returns so long as there is no change in their character, purposes or method of operation. Any such changes should be reported immediately to this office in order that their effect upon the exempt status of your subordinate lodges may be determined.

"It will not be necessary for you and your subordinate lodges referred to above to file the annual returns of information, Form 990, generally required of organizations exempt under Section 101 of the Code as you come within the specific exemptions contained in Section 54(f) of the Code.

"You should furnish the Bureau annually, on the calendar year basis, lists, in triplicate, showing only the names, numbers and addresses of any subordinate lodges chartered by you during the year, and the names, numbers and addresses of any lodges which for any reason have ceased to exist. Such annual lists should be accompanied by a statement sworn to by one of your principal officers as to whether the information heretofore submitted by you and on which this ruling is based, is applicable in all respects to the new subordinate lodges appearing on the lists and should be forwarded so as to reach this office not later than February 15 of the following year."

This decision was reaffirmed in each of the years from 1952 through August 26, 1969. (Under the Internal Revenue Code of 1954, the code section was changed to 501(c)(8). With the advent of the Tax Reform Act of 1969, the headquarters of the Benevolent and Protective Order of Elks in Chicago has continued to update the group exemption roster.

A letter dated October 12, 1971, from the Chief, Ruling Section, Exempt Organizations Branch, Washington, stated, in part:

"We rule that the new subordinates you recently submitted for addition to your group exemption roster are exempt from Federal income tax under Section 501(c)(8) of the Internal Revenue Code. This ruling supplements your original group exemption letter."

This letter further stated that each subordinate is required to file Form 990 if its annual gross receipts are more than \$5,000. Also an option was given to file a group return including all of the subordinates.

The national office of the Benevolent and Protective Order of Elks has continued to supplement the original group ruling of new subordinates with additions or deletions each year. The latest communication, dated June 5, 1980, was sent to the Internal Revenue Service Center, Philadelphia, PA, EOR Branch.

The question has been raised recently by some agents as to why the Benevolent and Protective Order of Elks should not be exempt under Section 501(c)(10) of the Internal Revenue Code, which provides that:

"Domestic fraternal societies, orders or associations, operating under the lodge system --

- (A) the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational and fraternal purposes, and

- (B) which do not provide for the payment of life, sick, accident or other benefits."

Historically, since the early exemptions in 1939, which continue to date, the Elks have been exempt under Section 501(c)(8) of the Code and similar prior sections, as a fraternal beneficial society providing \*\*\*\* benefits to its members. The question as to what benefits are provided to the members of the Elks has been raised several times. There are several benefits, other than insurance which accrue to the members, namely:

1. Emergency higher education grants available for children of disabled Elks and deceased Elks.
2. Section 54a of the Statutes of the Benevolent and Protective Order of Elks provides for the financial assistance to worthy and needy members of the Order who are suffering from a disease of an incurable character or from total disability and who are without funds or property or relatives able or willing to care for them.
3. Each Exalted Ruler of a lodge is provided with accident and death benefits while on Grand Lodge business.
4. The Elks National Home is available to qualified Elks.
5. Each Elk is entitled to the club and lodge privileges of his own lodge and is welcomed as a guest, participating in many activities and club privileges of the 2263 lodges throughout our Order.
6. The wives of Elks are given identification cards which entitles them to the privileges of the Elks' facilities.
7. Where applicable, the children of Elks are entitled to the privileges of the club operations such as swimming pools, tennis courts and other athletic endeavors.
8. Disabled veterans, which includes many Elks in Veterans Hospitals, are given therapeutic and social activities and various forms of entertainment.
9. One of the greatest benefits is the fellowship and the association with individuals in all walks of life which enures to a member.

10. An Elk away from his home lodge often encounters travel or financial difficulty. The local Elks lodge, with proper identification, cashes checks for the visiting brother and assists him in such problems as he may have. Quite often an Elk who has financial need is given bus fare back to his home.

There are other benefits accruing to members of the Order.

On February 5, 1970, with the enactment of the Tax Reform Act of 1969, the writer met with the representatives of the Exempt Organizations Branch in Washington. A conference was held with John Barber, Robert Maginnis, Ed Coleman and the Head, Mr. Dunn. A general review of the exemption of the Grand Lodge of the Benevolent and Protective Order of Elks and its subordinates was held. It was the consensus of those attending this conference that the Elks should continue to be exempt under Section 501(c)(8) rather than change to Section 501(c)(10).

Recently several agents have asked our lodges to apply for individual exemptions under Section 501(c)(10). If the Internal Revenue Service mandates this requirement then there would be 2263 individual applications for exemption filed on Form 1024.

It is inconceivable to the writer that for over 30 years Internal Revenue has recognized that there are substantial benefits available to members of the Order and that Internal Revenue has agreed that Section 501(c)(8) was the proper section under which exemption would be granted and now some Exempt Organization Groups take the position that our lodges should be exempt under Section 501(c)(10).

Consideration should be given by the Internal Revenue Service to the additional cost both to the Service and to the Order in connection with the filing of individual applications.

It is the position of the writer, who is a tax attorney and a former Internal Revenue employee for 35 years, that the Order should continue to be exempt under Section 501(c)(8) of the Internal Revenue Code.

Edward W. McCabe  
Attorney for Taxes  
Benevolent and Protective  
Order of Elks

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*Handwritten signature and initials*

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F

INTERNAL REVENUE SERVICE  
District Director

DEPARTMENT OF THE TREASURER

Mr. Stanley F. Kocur  
Grand Lodge of the Benevolent and  
Protective Order of Elks of the  
United States of America  
2750 North Lakeview Avenue  
Chicago, Illinois 60614

Person to Contact: William G. Daluga  
Telephone Number RRB-4721  
Refer Reply to: EP/EO:201:WGC  
Date: June 17, 1981

Dear Mr. Kocur:

We have received the position paper submitted with your recent letter concerning the exempt status of the Grand Lodge and its subordinate lodges under Section 501(c)(8) of the Internal Revenue Code.

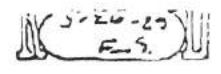
We contacted our National Office and apprised them of the findings of the recent examination of your individual lodges as mentioned in your letter.

Internal Revenue Code section 501(c)(8) exempts from tax fraternal beneficiary societies, orders of associations

- (A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and
- (B) providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents.

Our National Office has advised us that since the benefits provided by the Grand Lodge are available to the members of the individual lodges, these benefits are considered other benefits to the members under I.R.C. 501(c)(8)(B).

The Grand Lodge and its subordinate lodges will continue to be recognized under section 501(c)(8) of the Internal Revenue Code if they meet the requirements of (A) and (B) as mentioned above.



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Mr. Stanley F. Kocur  
Grand Lodge of the Benevolent and  
Protective Order of Elks of the  
United States of America

If you have any questions, please contact the person whose name and  
telephone number are shown above.

Sincerely yours,

*Donald E. Bergherm*

Donald E. Bergherm  
District Director

**Benefits to Members of Grand Lodge and Subordinate Lodges of Benevolent and Protective Order of Elks of the United States of America**

Benevolent and Protective Order of Elks of the United States of America, Inc. ("BPOE") is a fraternal order operating under the lodge system, consisting of a central organization (Grand Lodge) and more than 2,000 subordinate lodges chartered by the Grand Lodge. BPOE has been in existence since June 1885. BPOE holds tax exemption under Section 501(c)(8) of Internal Revenue Code, and subordinate lodges are included in a group exemption.

The following are some Section 501(c)(8) qualifying benefits provided to members and dependents by BPOE and subordinate lodges:

1. BPOE provides general liability insurance for all subordinate Lodges and their officers, members, representatives, agents, and employees. [BPOE Statutes Sec. 4.231]. The insurance includes provision of costs and expenses of defending against an action within the policy coverage.

2. BPOE provides comprehensive all-risk insurance coverage for the properties of all subordinate Lodges. [BPOE Statutes Sec. 4.232].

3. BPOE provides up to \$10,000 annually for the assistance of worthy and needy Members of the Order who are suffering from diseases of an incurable character or from total disability, and who are without funds or property or relatives able or willing to care for them. Any member may apply for such assistance. [BPOE Statutes Sec. 5.070].

4. Elks National Foundation, Inc. provides one-year college scholarship grants to children of deceased or totally disabled BPOE members who have financial need. Grants are renewable up to three times. For the fiscal year 2009-2010, an amount of \$350,000 was allocated for this program.

5. Elks National Foundation, Inc. annually provides 250 four-year college scholarships for the children and grandchildren of members who have been in good standing for at least two years. The scholarships are awarded based primarily on merit. For the fiscal year 2009-2010, an amount of \$1,000,000 was allocated for this program.

The foregoing benefits for members and dependents are sufficient to qualify as benefits under Section 501(c)(8) of Internal Revenue Code.