

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
FRANKLIN COUNTY, ILLINOIS**

THREE ANGELS BROADCASTING NETWORK,

Plaintiff

v.

**ILLINOIS DEPARTMENT OF REVENUE,
Defendant, and THOMPSONVILLE COMMUNITY
HIGH SCHOOL DIST. NO. 112, and
THOMPSONVILLE SCHOOL DIST. NO. 62,
Intervenors**

Defendants

No. 04 MR 15

Barbara S. Rowe
Administrative Law Judge

VOLUME FOUR OF FIVE

**ANSWER AND ADMINISTRATIVE RECORD
OF THE ILLINOIS DEPARTMENT OF REVENUE**



LISA MADIGAN
Attorney General of Illinois
Revenue Litigation Bureau
500 S. Second Street
First Floor
Springfield, Illinois 62706
(217) 782-9022

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
FRANKLIN COUNTY, ILLINOIS**

**THREE ANGELS BROADCASTING
NETWORK,**

Plaintiff

v.

**ILLINOIS DEPARTMENT OF REVENUE,
Defendant, and THOMPSONVILLE COMM.
HIGH SCHOOL DIST. NO. 112, and
THOMPSONVILLE SCHOOL DIST. NO. 62,
Intervenors**

Defendants

No. 04 MR 15

**ANSWER AND ADMINISTRATIVE RECORD
OF THE ILLINOIS DEPARTMENT OF REVENUE**

Now Comes the Illinois Department of Revenue and Brian Hamer, Director, through their attorney, LISA MADIGAN, Attorney General, and respectfully submits as its Answer to the Complaint For Administrative Review filed in this cause, the following record of administrative proceedings taken before the Illinois Department of Revenue, together with the exhibits submitted thereto, pursuant to 735 ILCS 5/3-101, et seq.

Respectfully submitted,

Brian Hamer, Director
Illinois Department of Revenue

By: LISA MADIGAN
Attorney General of Illinois
Revenue Litigation Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9022

THREE ANGELS BROADCASTING NETWORK,

V.

**ILLINOIS DEPARTMENT OF REVENUE, and
THOMPSONVILLE COMMUNITY HIGH SCHOOL DISTRICT NO. 112, and
THOMPSONVILLE SCHOOL DISTRICT NO. 62**

04 MR 15

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Illinois Department of Revenue
 OFFICE OF ADMINISTRATIVE HEARINGS
 Willard Ice Building
 101 West Jefferson Street - Level 5SW
 Springfield, Illinois 62702
 (217) 782-6995

OFFICE OF THE
 ADMINISTRATIVE CLERK
 FILED

APR 16 2001

IDOR
 ADMINISTRATIVE HEARINGS
 SPRINGFIELD, ILLINOIS

3 ANGELS BROADCASTING NETWORK)		
	)	Docket #	00-28-01
v.	)	A.H. Docket #	01-pt-0027
	)	P. I. #	174-166-11
)		
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

NOTICE OF AUTOMATIC STATUS CONFERENCE

TO: Please see attachment.

YOU ARE HEREBY NOTIFIED pursuant to the request for a hearing on the protest filed in the above-entitled matter, that an automatic status conference has been set for June 5, 2001, at 1:00 p.m. to be held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois. If you wish this matter to be held as a telephone conference, please call (217) 785-6528 prior to the scheduled event

The purpose of this conference is to ascertain the litigation posture of the respective parties, to set a tentative discovery cut-off, and to determine the estimated time frame for resolution of the controvers(ies) at issue.

YOU ARE FURTHER NOTIFIED that any and all persons who purport to represent the protesting party are required to have a Power of Attorney on file with this division on or before the above date in order to participate in the proceeding or receive any further notices.

Continuances of the above-set date will NOT be entertained with the exception of emergencies. If you cannot have someone present on the date indicated, you should make arrangements with the Department's representative to have the status earlier than set by this notice.

PLEASE BE AWARE THAT FAILURE TO ATTEND THIS PROCEEDING WILL SUBJECT THE PROTESTING PARTY TO A DEFAULT AND FINALIZATION OF THE MATTERS AT ISSUE.

Date of Mailing: April 16, 2001

Barbara S. Rowe
 Barbara S. Rowe
 Administrative Law Judge

001088



OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

OFFICE OF ADMINISTRATIVE HEARINGS JUN 05 2001

Illinois Department Of Revenue
101 W. Jefferson Street - Level 5SW
Springfield, Illinois 62702
(217) 782-6995

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

3 ANGELS BROADCASTING NETWORK)		
	)	Docket #	00-28-01
v.	)	A.H. Docket #	01- 01 -0027
	)	P. I. #	174-166-11
)		
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

NOTICE OF PRE-TRIAL CONFERENCE

To: Please see attachment.

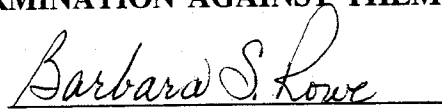
YOU ARE HEREBY NOTIFIED that on September 5, 2001, at 1:00 p.m., at the Willard Ice Building, 101 W. Jefferson, Springfield, Illinois, before the Department of Revenue, pursuant to your request and the authority generally granted the Department of Revenue by 35 ILCS 200/8-35, and all rules promulgated thereunder, a pre-trial conference will be held as to the Department's decision denying the exemption of the above-captioned parcel for the 2000-assessment year. If you wish the matter to be held as a teleconference, please call (217) 785-6528 prior to the scheduled event.

The purpose of the pre-trial conference is to clarify, isolate and dispose of problems concerning testimony and evidence to be presented at the hearing itself. At the conference, counsel familiar with the case and authorized to act shall appear to consider matters including, but not limited to:

- 1.) Simplification of the issues and organizing the hearing;
- 2.) the possibility of obtaining stipulations, admissions of fact and documents which will avoid unnecessary proof;
- 3.) ascertaining and/or limiting the number of witnesses;
- 4.) any other matters which may aid in the disposition and/or facilitation of the case; and
- 5.) set a hearing date.

FAILURE OF THE APPLICANT TO PARTICIPATE PURSUANT TO THIS NOTICE WILL RESULT IN AN IMMEDIATE FINAL DETERMINATION AGAINST THEM IN THIS CASE.

Date: June 5, 2001



 Barbara S. Rowe
 Administrative Law Judge

PLEASE NOTE: ALL COUNSEL MUST FILE A POWER OF ATTORNEY FORM PRIOR TO THE HEARING.

001089

2. A copy of an executed Power of Attorney (IDOR Form IL-2848AH) authorizing Petitioner to represent the Taxpayer with respect to the matters before the IDOR is attached hereto.

3. My practice for the past 30 years has been primarily involved with church-state litigation, religious organizations, and religious discrimination law throughout the United States.

_____, (short history of representation or practice). Petitioner is the counsel most knowledgeable about the Illinois tax liabilities of the Taxpayer during this period, as to religious and charitable organization exemptions from taxation.

4. Lee Boothby is a member in good standing of the bar of the ~~State of~~ District of Columbia.

5. A certificate attesting to Petitioner's good standing in the District of Columbia bar is attached hereto.

6. IDOR regulations state that a Taxpayer "may be represented at the hearing by any person who is admitted to practice as an attorney at law by the Supreme Court of Illinois, or who is permitted to practice law in Illinois by rules of comity." 86 Ill. Adm. Code Sec. 200.110(a).

7. Illinois Supreme Court Rule 707 states:

Anything in these rules to the contrary notwithstanding, an attorney and counselor-at-law from any other jurisdiction in the United States, or foreign country, may in the discretion of any court of this State be permitted to participate before the court in the trial or argument of any particular cause in which, for the time being, he or she is employed.

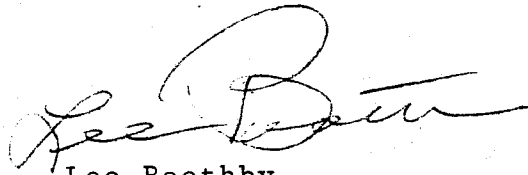
001091

8. The petitioner has discussed the foregoing Motion with Administrative Law Judge Barbara Rowe and Special Assistant Attorney General Kent Steinkamp and the have indicated to the Petitioner that they do not oppose the motion.

Wherefore, Petitioner respectfully requests that his motion to appear as counsel *pro hac vice* on behalf of the Taxpayer before the Illinois Department of Revenue be granted.

Respectfully submitted,

7/25/01
date

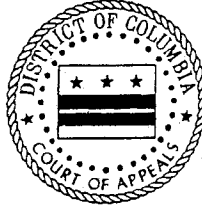


Lee Boothby

(name of petitioner)

~~XXXXXXXXXXXX~~

Address



District of Columbia Court of Appeals
Committee on Admissions
500 Indiana Avenue, N.W. — Room 4200
Washington, D. C. 20001
202/879-2710

I, GARLAND PINKSTON, JR., Clerk of the District of Columbia Court of Appeals, do hereby certify that

Orva Lee Boothby

was on the 5th day of July, 1991,
duly qualified and admitted as an attorney and counselor and
entitled to practice before this Court and is, on the date
indicated below, an active member in good standing of this Bar.

In Testimony Whereof, I have
hereunto subscribed my name and
affixed the seal of this Court
at the City of Washington, D.C.
this 24th day of
July, 2001.

GARLAND PINKSTON, JR., CLERK

By: _____

Orva Lee Boothby
Deputy Clerk

001093

3 ANGELS BROADCASTING NETWORK)

v.)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)

) Docket # 00-28-01
) A.H. Docket # 01-pt-0027
) P.I.# 174-166-11
)
)

MOTION FOR CONTINUANCE

NOW COMES 3 ANGELS BROADCASTING NETWORK, by its attorneys, LEE BOOTHBY and D. MICHAEL RIVA, and request this Court to continue the pre-trial conference scheduled for September 5, 2001, at 1:00 p.m., and in support thereof state as follows:

- 1. LEE BOOTHBY is presently out of the country speaking at an international religious liberty conference and does not believe he will be able to be back in America in time to attend the pre-trial conference.
- 2. This motion is not made for purpose of delay and movant desires a rescheduled date at the court's convenience, except for the following dates: September 6, 7, 12, 17, 22 through 29 and October 17 through 20.
- 3. Movant would like this Motion to be heard via teleconference on Friday, August 31, 2001, at 10:00 a.m.

WHEREFORE, movant prays that this scheduled pre-trial conference be continued and that this motion be heard by teleconference on August 31, 2001 at 10:00 a.m.

3 ANGELS BROADCASTING NETWORK, INC.
By its attorney

By: *D. Michael Riva*
D. MICHAEL RIVA



Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS
 Willard Ice Building
 101 West Jefferson Street - Level 5SW
 Springfield, Illinois 62702
 (217) 782-6995

OFFICE OF THE
 ADMINISTRATIVE CLERK
ENTERED

AUG 31 2001

IDOR
 ADMINISTRATIVE HEARINGS
 SPRINGFIELD, ILLINOIS

3 ANGELS BROADCASTING NETWORK)		
	)	Docket #	00-28-01
v.	)	A.H. Docket #	01-pt-0027
	)	P. I. #	174-166-11
)		
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

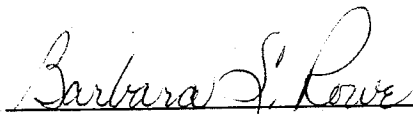
ORDER OF CONTINUANCE

TO: Please see attachment.

This cause coming on to be heard on the motion of 3 Angels Broadcasting Network, taxpayer, by and through its attorney to continue the pre-trial conference herein set for September 5, 2001, due notice having been given, all arguments having been properly been considered, no objection having been raised and it being the finding of the administrative law judge that just cause has been shown in order to justify delay of the proceeding scheduled:

IT IS THEREFORE ORDERED that the taxpayer's motion is granted and the pre-trial conference previously set in this cause is continued and set over to October 3, 2001, at 1:30 p.m. without further notice.

Date: August 31, 2001



 Barbara S. Rowe
 Administrative Law Judge

FAILURE OF THE APPLICANT TO APPEAR PURSUANT TO THIS NOTICE WILL RESULT IN AN IMMEDIATE FINAL DETERMINATION AGAINST YOU IN THIS CASE.



Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS
 Willard Ice Building
 101 West Jefferson Street - Level 5SW
 Springfield, Illinois 62702
 (217) 782-6995

OFFICE OF THE
 ADMINISTRATIVE CLERK
ENTERED
 OCT 04 2001
IDOR
 ADMINISTRATIVE HEARINGS
 SPRINGFIELD, ILLINOIS

3 ANGELS BROADCASTING NETWORK)		
	)	Docket #	00-28-01
v.	)	A.H. Docket #	01-pt-0027
	)	P. I. #	174-166-11
)		
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

ORDER AND NOTICE OF HEARING

TO: Please see attachment.

This cause coming on to be heard pursuant to notice with all parties represented by counsel, the Department of Revenue having jurisdiction of the parties and subject matter herein, and the administrative law judge being fully advised in the premises,

IT IS HEREBY ORDERED:

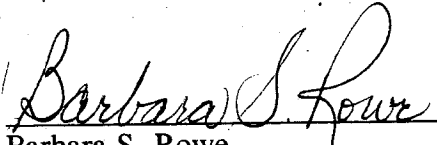
- The issues in this matter include whether Three Angels Broadcasting Network, (hereinafter referred to as the "Applicant") owned the parcel herein issue during the 2000-assessment year; whether the applicant is a religious organization; and whether the applicant was in the process of adapting this parcel for exempt use or did in fact use this parcel for exempt purposes during the 2000-assessment year.
- YOU ARE HEREBY NOTIFIED** that on March 20, 2002 through March 22, 2002, at 10:00 a.m. on the 20th and 9:00 a.m. every morning thereafter, at the Willard Ice Building, 101 West Jefferson, Springfield, Illinois before the Department of Revenue, pursuant to your request and the authority generally granted the Department of Revenue by 35 *ILCS* 200/8-35, and all rules promulgated thereunder, a hearing will be held as to the Department's decision denying the exemption of the above-captioned parcel for the 2000 assessment year.

3. The witnesses that the applicant intends to call are:
- a) Danny Shelton, President of the applicant;
 - b) The Chairman of the Board of the applicant;
 - c) The President of the Conference of Seventh Day Adventists;
 - d) A representative of the General Conference of the Seventh Day Adventists;
 - e) The accountant/financial officer of the applicant;
 - f) The pastor who lives on the subject parcel;
 - g) Three persons who deal with the programs carried on the applicants network including, Harold Lance, Doug Bachelor, and a representative of the Voice of Prophecy;
 - h) A representative expert of religious broadcasters/telecasters.
4. The applicant reserves the right to supplement or augment the witness list.

YOU ARE FURTHER NOTIFIED to produce at such hearing all books, records, documents and other pertinent evidence relating to the subject matter of this hearing. Please appear promptly.

FAILURE OF THE APPLICANT TO APPEAR PURSUANT TO THIS NOTICE WILL RESULT IN AN IMMEDIATE FINAL DETERMINATION AGAINST YOU IN THIS CASE.

Date: October 4, 2001


Barbara S. Rowe
Administrative Law Judge

PLEASE NOTE: ALL COUNSEL MUST FILE A POWER OF ATTORNEY FORM PRIOR TO THE HEARING.

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING)
NETWORK, INC.,)
)
Applicant,)
)
and)
)
THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)
)
Respondent.)

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

DEC 14 2001

Docket Number: 00-28-1004
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS
Case Number: 00-PT-0027

PETITION TO INTERVENE

NOW COME, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, by and through their attorneys, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd. and hereby Petition that they be granted intervenor status in the above-docketed administrative hearing. In support of the Petition to Intervene, the Petitioners state as follows:

1. Thompsonville Community High School District No. 112, is a quasi-municipal corporation organized and existing pursuant to the laws of the State of Illinois. As such quasi-municipal corporation, it has the authority to levy property taxes against the territory comprising Thompsonville Community High School District No. 112.

2. Thompsonville School District No. 62, is a quasi-municipal corporation organized and existing pursuant to the laws of the State of Illinois. As such quasi-municipal corporation, it has the authority to levy property taxes against the territory comprising Thompsonville School District No. 62.

3. Permanent Parcel Identification Numbers 174-116-11 is located within the territory comprising Thompsonville Community High School District No. 112 and Thompsonville School District No. 62.

4. Three Angels Broadcasting Network, Inc. has applied for exemption from property taxation, the property identified as Permanent Parcel Identification Number 174-116-11.

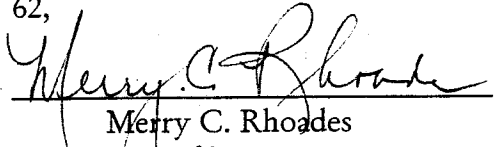
5. Both Thompsonville Community High School District No. 112 and Thompsonville School District No. 62 have a financial interest in the tax exempt status of the property involved.

WHEREFORE, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62 petition the administrative office to intervene in this action.

Respectfully submitted,

Thompsonville Community High
School District No. 112 and
Thompsonville School District No.
62,

By:


Merry C. Rhoades
One of its attorneys

Merry C. Rhoades
ROBBINS, SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.
230 Regency Centre
Collinsville, Illinois 62234
Telephone: 618.343.3540
FAX: 618.343.3546

001100

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING)
NETWORK, INC.,)

Applicant,)

and)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)

Respondent.)

and)

THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT No. 112,)
and THOMPSONVILLE SCHOOL)
DISTRICT No. 62,)

Interveners.)

Docket Number: 01-28-1

Case Number: 01-PT-0027

NOTICE OF HEARING (RESCHEDULED)

TO:

Barbara Rowe
Administrative Law Judge
Office of Administrative Hearings
Illinois Department of Revenue
101 West Jefferson
Springfield, IL 62794
Fax: 217.524.0527

D. Michael Riva
Attorney at Law
226 East Main Street
West Frankfort, IL 62896
Fax: 618.937.2405

Kent Steinkamp
Special Assistant to the Attorney General
101 West Jefferson
Springfield, IL 62794
Fax: 217.524-0527

Cynthia Humm
Supervisor of Assessments
202 W. Main
Benton, IL 62812
Fax: 618.439.3029

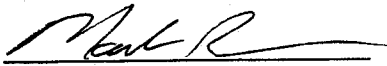
NOTICE is hereby given that a hearing on Intervener Thompsonville Community High School District No. 112 and Thompsonville School District No. 62's Motion for Continuance filed on December 21, 2001 is scheduled for hearing on January 11, 2002, at 10:00 before Administrative Law Judge Barbara

001102

Rowe. Said hearing to be conducted before Judge Rowe via telephone conference call set up by Intervener.
The previously scheduled hearing (January 10, 2002 at 10:30) is cancelled.

Dated this 3rd day of January, 2002.

ROBBINS, SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.

By: 
Mark J. Dean,
One of Intervener attorneys

Mark J. Dean
ROBBINS, SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.
230 Regency Centre
Collinsville, Illinois 62234

001103



Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS

Willard Ice Building
101 West Jefferson Street - Level 5SW
Springfield, Illinois 62702
(217) 782-6995

OFFICE OF THE CLERK
ADMINISTRATIVE HEARINGS
ENTERED

DEC 18 2001

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

3 ANGELS BROADCASTING NETWORK)

v.)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS and)
THOMPSONVILLE COMMUNITY HIGH)
SCHOOL DISTRICT NO. 112 and)
THOMPSONVILLE SCHOOL DISTRICT)
NO. 62)

Docket # 00-28-01
A.H. Docket # 01-pt-0027
P. I. # 174-166-11

ORDER ALLOWING INTERVENTION

TO: Please see attachment.

This cause coming on to be heard on the petition of Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, by and through its attorney to intervene in this matter, due notice having been given, all arguments having been properly been considered, with an objection having been raised by the applicant and the Department voicing its position that it does not welcome the intervention due to the lateness of the filing in the course of the proceedings, and it being the finding of the administrative law judge that just cause has been shown in order to justify the intervention:

IT IS THEREFORE ORDERED that the intervenor's petition is granted and the Intervenor's become named parties in this matter without further notice.

Date: December 18, 2001

Barbara S. Rowe
Barbara S. Rowe
Administrative Law Judge

ILLINOIS DEPARTMENT OF REVENUE
 BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

OFFICE OF THE
 ADMINISTRATIVE CLERK
FILED

THREE ANGELS BROADCASTING)
 NETWORK, INC.,)
)
 Applicant,)
)
 and)
)
 THE DEPARTMENT OF REVENUE)
 OF THE STATE OF ILLINOIS,)
)
 Respondent.)
)
 and)
)
 THOMPSONVILLE COMMUNITY)
 HIGH SCHOOL DISTRICT No. 112,)
 and THOMPSONVILLE SCHOOL)
 DISTRICT No. 62,)
)
 Intervenor.)

DEC 21 2001
 IDOR
 ADMINISTRATIVE HEARINGS
 SPRINGFIELD, ILLINOIS

Docket Number: 01-28-1
 Case Number: 01-PT-0027

MOTION FOR CONTINUANCE

NOW COME, the Intervenor, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, by and through their attorneys, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., and move to continue the hearing in the above-entitled cause, and in support, state as follow:

1. That the hearing in the above-entitled cause is scheduled for March 20-22, 2002 and that Respondent currently has a motion pending to continue the hearing to March 27-29, 2002.
2. That Intervenor were allowed to intervene on or about December 18, 2001 after first becoming aware of these proceedings in November 2001.

3. That Intervenor's attorneys would like the opportunity to conduct discovery, including propounding interrogatories, requests to produce, and depositions.

4. Intervenor further state that to date they have not had an opportunity to review any and all documents submitted in this matter to the Department of Revenue. Such information is needed to adequately represent the interests of the Intervenor.

5. That the March 20-22, 2002 hearing date will not afford Intervenor adequate time to complete said discovery. That Respondent's proposed continuance to March 27-29, 2002 will not afford Intervenor adequate time to complete said discovery. Intervenor further request that a status conference be held for the purposes of establishing a discovery schedule and hearing dates.

6. That this is Intervenor's first request for continuance in this matter.

7. That Intervenor's request for continuance is not for the purposes of delay.

8. That Intervenor have contacted Kent Steinkamp, the Special Assistant Attorney General representing the Department of Revenue and he has no objection to a continuance in this matter.

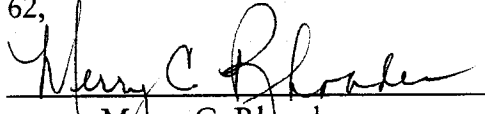
9. That Intervenor have contacted Mike Riva, the attorney for the Applicant. Mr. Riva stated that he needed to confer with lead counsel for Applicant before discussing continuance.

WHEREFORE, Intervenor, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, respectfully requests the hearing in this matter be continued until such time as determined by mutual consent of the parties. Intervenor further request that a status conference be convened for the purpose of establishing a discovery schedule between the parties.

Respectfully submitted,

Thompsonville Community High
School District No. 112 and
Thompsonville School District No.
62,

By:


Merry C. Rhoades
One of its attorneys

Merry C. Rhoades
Mark J. Dean
ROBBINS, SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.
230 Regency Centre
Collinsville, Illinois 62234
Telephone: 618.343.3540
FAX: 618.343.3546

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING)
NETWORK, INC.,)

Applicant,)

and)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)

Respondent.)

and)

THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT No. 112,)
and THOMPSONVILLE SCHOOL)
DISTRICT No. 62,)

Intervenors.)

Docket Number: 01-28-1

Case Number: 01-PT-0027

ORDER

This cause coming to be heard on Intervenor's Motion to Continue Hearing and the Chief Administrative Law Judge or the Designated Supervisory Administrative Law Judges being fully advised in the premises,

IT IS HEREBY ORDERED that the hearing scheduled for March 20-22, 2002 is hereby cancelled. A status conference is scheduled for _____, 2002 at _____ for the purposes of establishing a discovery schedule and hearing dates.

ENTERED this ____ day of _____, 20__.

Barbara Rowe, Administrative Law Judge

001103



OFFICE OF THE
ADMINISTRATIVE CLERK
ENTERED

JAN 11 2002

**Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS**

ROOM
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

Willard Ice Building
101 West Jefferson Street - Level 5SW
Springfield, Illinois 62702
(217) 782-6995

3 ANGELS BROADCASTING NETWORK)

v.)

Docket # 00-28-01
A.H. Docket # 01-pt-0027
P. I. # 174-166-11

**THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS and)
THOMPSONVILLE COMMUNITY HIGH)
SCHOOL DISTRICT NO. 112 and)
THOMPSONVILLE SCHOOL DISTRICT)
NO. 62)**

ORDER OF CONTINUANCE

TO: Please see attachment.

This cause coming on to be heard on the motion of Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, intervenor, by and through its attorney to continue the hearing herein set March 20th through 22nd, 2002, due notice having been given, all arguments having been properly been considered, no objection having been raised and it being the finding of the administrative law judge that just cause has been shown in order to justify delay of the proceeding scheduled:

IT IS THEREFORE ORDERED that the intervenor's motion is granted and the hearing previously set in this cause is continued and set over to May 22nd through May 24th 2002, to commence at 10:00 a.m. on the 22nd and 9:00 a.m. on the 23rd and 24th without further notice. By agreement of the parties, the intervenor shall serve its interrogatories and other discovery on the applicant on or before February 1, 2002, and all depositions shall be completed by May 1, 2002.

Date: January 11, 2002

Barbara S. Rowe
Administrative Law Judge

**FAILURE OF THE APPLICANT TO APPEAR PURSUANT TO THIS NOTICE WILL
RESULT IN AN IMMEDIATE FINAL DETERMINATION AGAINST YOU IN THIS
CASE.**

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Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS
 Willard Ice Building
 101 West Jefferson Street - Level 5SW
 Springfield, Illinois 62702
 (217) 782-6995

OFFICE OF THE
 ADMINISTRATIVE CLERK
FILED

MAR 15 2002

IDOR
 ADMINISTRATIVE HEARINGS
 SPRINGFIELD, ILLINOIS

**THREE ANGELS BROADCASTING
 NETWORK**

Applicant
 v.

**THE DEPARTMENT OF REVENUE
 OF THE STATE OF ILLINOIS**

Docket # 02-PT-0007
PIN 174-116-11
Tax Year 2001

NOTICE OF INITIAL STATUS CONFERENCE

TO: Mr. D. Michael Riva
 Attorney at Law
 226 E. Main Street
 West Frankfort, IL 62896

Mr. William K. Richardson
 State's Atty.
 Franklin Cty. Courthouse
 P. O. Box 607
 Benton, IL 62812

Mr. Kent Steinkamp
 Asst. Atty. General
 Deptmt. of Revenue
 101 W. Jefferson St.
 Springfield, IL 62702

YOU ARE HEREBY NOTIFIED, pursuant to 86 Ill. Admin. Code, Ch. I, Section 200.140, that a **MANDATORY** status conference in regard to the protest you have filed in the above entitled matter will be held on **Friday, May 10, 2002 at 9:30 a.m.** at the offices of the Illinois Department of Revenue, Willard Ice Building, 101 W. Jefferson Street, Springfield, Illinois. **All parties are required to be present or to otherwise participate by telephone** to ascertain the status of this case and determine the course of action, if any, to be taken to expedite resolution. **Legal representatives (other than State's Attorneys) are required to file a Power of Attorney (IDR Form 2848-AH) before they may participate in these proceedings or acquire the right to obtain information in regard to the above named applicant.** Should you have any questions or concerns with respect to this Notice, please call the number listed above and ask to speak with the Department's representative as designated on the bottom left side of this notice.

PLEASE TAKE NOTE THAT YOUR FAILURE TO APPEAR OR PARTICIPATE PURSUANT TO THIS NOTICE WILL RESULT IN AN IMMEDIATE TERMINATION OF THE PROCEEDINGS AND A FINALIZATION OF THE LIABILITIES AND/OR CLAIMS AT ISSUE.

Date: March 15, 2002
 Kent Steinkamp, Litigator

Issued by the Administrative Clerk
 Office of Administrative Hearings

001110

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING)
NETWORK, INC.,)

Applicant,)

and)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)

Respondent.)

and)

THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT No. 112,)
and THOMPSONVILLE SCHOOL)
DISTRICT No. 62,)

Intervenors.)

Docket Number: 01-28-1

Case Number: 01-PT-0027

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

MAR 15 2002

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

MOTION FOR CONTINUANCE

NOW COME, the Intervenors, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, by and through their attorneys, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., and move to continue the hearing in the above-entitled cause, and in support, state as follow:

1. That the hearing in the above-entitled cause is scheduled for May 22-24, 2002.
2. In the Order of Continuance, dated January 11, 2002, setting the hearing date for May 22-24, 2002, the Administrative Law Judge granted the Intervenors until February 1, 2002 to serve interrogatories and other discovery.
3. Intervenors submitted a Request to Produce and Interrogatories to Applicant on February 1, 2002.

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4. In a letter dated February 19, 2002, counsel for Applicant objected the Interrogatories as being beyond the limit of 40 as set forth in 86 Ill. Admin. Code Section 200.125(e).

5. On February 27, 2002, Intervenors responded by re-submitting Interrogatories that did not exceed 40.

6. On March 1, 2002, Applicant filed an Objection to Interrogatories, citing the Interrogatories submitted on February 1, 2002. In a telephone conference on February 8, 2002, counsel for Applicant indicated that he was also objecting to the revised interrogatories (submitted on February 27, 2002) and the parties could not agree as to terms for compliance. To date, Intervenors have received no objection to such February 27, 2002 Interrogatories. The Intervenors are concurrently filing a Motion to Compel. The revised Interrogatories are attached as an exhibit to the Motion to Compel.

7. On March 1, 2002, the Applicant also filed a Motion for Extension of Time to answer the Request to Produce. This was the first notice that Intervenors received regarding any delay by Applicant in responding to the Request to Produce. In a telephone conference on February 8, 2002, counsel for Applicant and counsel for Intervenors agreed that Applicant would be allowed until February 15, 2002 to deliver the request to produce documents to Intervenors attorneys.

8. Intervenors are unable to determine further discovery and depositions that are needed until they have in their possession the answers to Interrogatories and the answers to the Request to Produce. Such information is needed to adequately represent the interests of the Intervenors.

9. The May 1, 2002 deadline for completing depositions and the hearing dates of May 22-24, 2002 set by the Administrative Law Judge in her Order of Continuance, dated January 11, 2002, will not afford Intervenor adequate time to complete said discovery solely due to Applicant's delay in responding to the outstanding discovery requests. Intervenors further request that a status conference be held for the purposes of establishing a discovery schedule and hearing dates.

10. That this request for continuance is made in good faith and is not for the purpose of delay. The request is made solely due to the discovery delay and disputes pending.

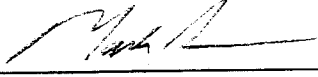
11. That Intervenors have contacted Mike Riva, the attorney for Applicant, and that he does not object to a continuance in this matter for the purpose of resolving the discovery dispute and allowing Intervenors appropriate time to conduct depositions following receipt of discovery from Three Angels.

12. That Intervenors have contacted Kent Steinkamp, Special Assistant Attorney General for the Department of Revenue, and that he does not object to a continuance in this matter for the purpose of resolving the discovery dispute and allowing

WHEREFORE, Intervenors, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, respectfully requests the hearing in this matter be continued until such time as determined by mutual consent of the parties. Intervenors further request that a status conference be convened for the purpose of establishing a new deadline for depositions.

Respectfully submitted,

Thompsonville Community High School
District No. 112 and Thompsonville
School District No. 62,

By: 

Mark J. Dean
One of its Attorneys

Merry C. Rhoades
Mark J. Dean
ROBBINS, SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.

230 Regency Centre
Collinsville, Illinois 62234
Telephone: 618.343.3540
Fax: 618.343.3546

001114

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING)
NETWORK, INC.,)

Applicant,)

and)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)

Respondent.)

and)

THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT No. 112,)
and THOMPSONVILLE SCHOOL)
DISTRICT No. 62,)

Intervenors.)

Docket Number: 01-28-1

Case Number: 01-PT-0027

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

MAR 15 2002

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

MOTION TO COMPEL

NOW COME, the Intervenors, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, by and through their attorneys, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., and pursuant to 86 Ill. Admin. Code Section 200.130(a) move to compel answers by Applicant to Interrogatories propounded by Intervenors on February 1, 2002, and in support, state as follow:

1. In the Order, dated January 11, 2002, setting the hearing date, the Administrative Law Judge granted the Intervenors until February 1, 2002 to serve interrogatories and other discovery.

2. On February 1, 2002, Intervenors submitted Interrogatories to Applicant, providing that Applicant answer within 28 days of service.

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3. In a letter dated February 19, 2002, counsel for Applicant objected to the Interrogatories as being beyond the limit of 40 as set forth in 86 Ill. Admin. Code Section 200.125(e).

4. Intervenors responded by re-submitting Interrogatories that did not exceed 40, on February 27, 2002. The revised Interrogatories are attached hereto as Exhibit A.

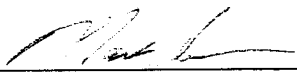
5. On March 1, 2002, Three Angels filed an Objection to Interrogatories, citing the Interrogatories submitted on February 1, 2002. In a telephone conference on February 8, 2002, counsel for Applicant indicated that he was also objecting to the revised interrogatories (submitted on February 27, 2002) and the parties could not agree as to terms for compliance. To date, Intervenors have received no objection to such February 27, 2002 Interrogatories. The Intervenors are concurrently filing a Motion for Continuance as the delay in resolving this discovery dispute inhibits Intervenors ability to gather information necessary to prepare for the hearing, currently set for May 22-24, 2002.

6. That this motion to compel is made in good faith and is not for the purpose of delay. This motion is made solely as a result of Applicants refusal to answer Interrogatories.

WHEREFORE, Intervenors, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, respectfully requests an Order be entered ordering Applicant to answer all interrogatories as submitted on February 27, 2002 and attached hereto as Exhibit A.

Respectfully submitted,

Thompsonville Community High
School District No. 112 and
Thompsonville School District No. 62,

By: 
Mark J. Dean
One of its Attorneys

Merry C. Rhoades
Mark J. Dean
ROBBINS, SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.
230 Regency Centre
Collinsville, Illinois 62234
Telephone: 618.343.3540
FAX: 618.343.3546

001117

ROBBINS, SCHWARTZ, NICHOLAS, LIFTON & TAYLOR, LTD.

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MARK J. DEAN / mdean@apci.net
Collinsville Office

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FAX 815.726.2605

205 SOUTH RANDOLPH STREET
MACOMB, ILLINOIS 61455
309.837.5055
FAX 309.833.5575

February 27, 2002

D. Michael Riva
Attorney at Law
226 East Main Street
West Frankfort, Illinois 62896

Re: Three Angels Broadcasting Network, Inc., The Department of Revenue of the State of Illinois and Thompsonville Community High School District No. 112 and Thompsonville School District No. 62
Case No.: 01-PT-0027

Dear Mike:

We are in receipt of your letter dated February 19, 2002 indicating that you believe our Interrogatories served on February 1, 2002 exceeded the limit of 40. You have asked me to advise you which interrogatories to answer. Enclosed please find a revised set of interrogatories.

If you have any questions, please give me a call. Thank you.

Very truly yours,

ROBBINS, SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.

By:

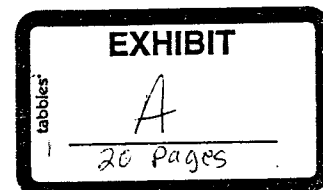


Mark J. Dean

MJD:gbc

Enclosures

cc: Kent Steinkamp (without enclosures)
Barbara Rowe (without enclosures)
Steve Webb, Superintendent (with enclosures)
Merry C. Rhoades (with enclosures)



001113

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING)
NETWORK, INC.,)

Applicant,)

and)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)

Respondent.)

and)

THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT No. 112,)
and THOMPSONVILLE SCHOOL)
DISTRICT No. 62,)

Intervenors.)

Docket Number: 01-28-1

Case Number: 01-PT-0027

INTERVENORS FIRST SET OF INTERROGATORIES TO APPLICANT, THREE ANGELS BROADCASTING NETWORK, INC.

NOW COMES the Intervenors, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, by and through its attorneys, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., pursuant to Illinois Supreme Court Rule 213 and 86 Ill. Admin. Code Section 200.125(e) and propounds the following Interrogatories to be answered by Applicant, Three Angels Broadcasting Network, Inc., its agents and attorneys within thirty (28) days of service hereof, which interrogatories shall be deemed continuing so as to require prompt supplemental answers if Three Angels Broadcasting Network, Inc., its agents and/or attorneys obtains or recalls further information relative thereto between the time the answers are submitted to Intervenors and the time of hearing.

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DEFINITIONS

1. Document shall mean any writing or recording and includes, but is not limited to, the original and any copy of books, records, reports, tape recordings, transcripts of tape recordings, data cards, memorandum or notes of conversations and meetings, notes, letters, telegrams, cables, telexes, diaries, logs, graphs, charts, contracts, releases, studies, drawings, canceled checks, summaries, booklets, circular bulletins, instructions, minutes, bills, questionnaires, invoices, disks, correspondence, financial statements, and drafts of any of the foregoing, as well as any other tangible thing on which information is recorded in writing, sound, or through any other means.

2. Person or persons shall mean each and every individual, corporation, partnership, joint venture, social or political organization, or any other entity whether real or judicial, incorporated or unincorporated, encompassed within the usual and customary meaning of "person" or "persons" or otherwise encompassed within this definition.

3. "Photographs" shall mean any photographs, slides, motion pictures, videotapes, or other means of photographic reproduction.

4. "Identify" or "identification" shall mean:

a.) As to an individuals, stating his or her:

1.) full name customarily used at the present time, and any other full names customarily used during the time in question;

2.) present or last known home addresses and home telephone numbers;

3.) name and address of current employer, if known, nature of employer's business, and job title, status or classification with current employer, and business telephone number;

4.) name and address of employer, nature of employer's business, and job title,

status, or classification with such employer during the relevant time or times in question.

b.) As to any person other than the individual stating:

- 1.) Its legal name and any other names used by it;
- 2.) The form or manner of its organization (i.e. partnership, corporation, sole proprietorship, etc.);
- 3.) The address of its principal place of business, and the state of its incorporation, if it is incorporated;
- 4.) Its type of business.

c.) As to any event, transaction, or occurrence, stating:

- 1.) Its date;
- 2.) Where it took place and the manner of this occurrence (i.e. face-to-face meeting of participants, telephone calls, etc.
- 3.) The identification of all its participants and eye witnesses to this occurrence;
- 4.) Its purpose and subject matter;
- 5.) A concise description of what transpired.

d.) As to a document, or other written matter, state:

- 1.) The date which appeared on it or, if no date appears on the document, the date on which it was prepared;
- 2.) The person(s) who prepared it;
- 3.) The identification of all person(s) having an original or copy of the document;
- 4.) A concise description of its contents.

INSTRUCTIONS

1. The singular shall include the plural and the plural shall include the singular.
2. Masculine, feminine or neuter pronouns shall not exclude the other genders.
3. All objects or answers to Interrogatories which fail or refuse fully to respond to any

Interrogatory on the grounds of any claim of privilege of any kind whatever shall:

- a.) State the nature of the claim of privilege;
- b.) State all facts relied upon in support of the claim of privilege thereto;
- c.) Identify all documents related to the claim of privilege;
- d.) Identify all persons having knowledge of any facts related to the claim of privilege;
- e.) Identify all events, transactions, or occurrences as related to the claim of privilege.

INTERROGATORIES

1. Identify the name(s), current address(es), and telephone number(s) of the individual(s) answering these Interrogatories. If more than one person is answering, identify the specific answers given by each person.

ANSWER:

2. Identify the name(s), current address(es), telephone number(s) and subject matter(s) and the expected testimony of any and all individuals Three Angels Broadcasting Network may call as witness(es) at hearing.

ANSWER:

3. Identify all individuals Three Angels Broadcasting Network intends to call as an expert witness at hearing, the subject matter to which the individual will testify and the opinions on which the individual will be requested to testify, the content of the expected testimony at hearing, and the education, training or experience by which the individual possesses knowledge of a specialized nature beyond that of the average person on the factual matter for the expert will be testifying.

ANSWER:

4. Identify the name(s), current address(es), telephone number(s) of any individual(s)

that have knowledge with respect to the allegation(s) and subject matter(s) of this proceeding. With respect to each individual identified, state the subject matter of the individual(s) knowledge.

ANSWER:

5. Identify any and all accounts of Three Angels Broadcasting Network for which any and all contributions, gifts or other money is contributed is deposited in. For calendar years 1999, 2000, and 2001 to which such contributions are deposited, identify the amounts of such deposits in each identified account.

ANSWER:

6. Identify any and all individuals, his/her employer, the specific tasks performed by each individual, the date such services were performed who have responsibility for collection, deposit, accounting, or bookkeeping or other record keeping for Three Angels Broadcasting Network for calendar years 1999, 2000, and 2001.

ANSWER:

7. For calendar years 1999, 2000, and 2001, identify and fully describe any and all activities considered as religious services by Three Angels Broadcasting Network, including the dates for which services are/were provided, and the individuals employed by Three Angels Broadcasting Network providing such services.

ANSWER:

8. Identify all individual(s) designated as a "pastor" or other leader of religious services (as defined in the answer to Interrogatory No. 7, above) for the subject property in the pending dispute, identifying the religious services performed by the individual on the subject property, the education, certification, licensures or other qualifications of the individual, and the dates, times, and places of any religious service that occurred on the subject property performed by the individual in 1999, 2000, and 2001.

ANSWER:

9. Identify the religious services, other than via telecast, which take place in any area of the subject property. For each service identified provide a detailed description of the services, times, and places of the services that took place in 1999, 2000, and 2001.

ANSWER:

10. Detail all activities of the Voice of Prophecy.

ANSWER:

11. Identify all officers and directors of Three Angels Broadcasting Network for the calendar years 1999, 2000, and 2001, the identified individual's educational background (including licensures, certifications, and religious affiliations), and whether the individual is an ordained minister, pastor, or representative of any ecclesiastical or church organization.

ANSWER:

12. Identify any and all church, religious, or ecclesiastical organizations that are affiliated with Three Angels Broadcasting Network. For each entity identify:
- a. Dates of affiliation with Three Angels Broadcasting Network.
 - b. Whether there is an Affiliation Agreement between Three Angels Broadcasting Network and the identified organization.
 - c. Dates of any and all Affiliation Agreements.
 - d. The contact person(s) at any affiliated organization.

ANSWER:

13. Specify for calendar years 1999, 2000, and 2001 all contributions, gifts, or other monetary amounts provided to any religious society, church, religiously affiliated, charitable, or not-for-profit organization by Three Angels Broadcasting Network.

For each contribution, identify:

- a. The religious society, church, religiously affiliated, charitable, or not-for-profit organization such contributions, gifts or other monetary amounts were provided to.
- b. The dates such contributions, gifts or other monetary amounts were provided to the identified religious society, church, religiously affiliated, charitable, or not-for-profit organization.
- c. The account from which such contributions, gifts or other monetary amounts were provided to the identified religious society, church, religiously affiliated, charitable, or not-for-profit organization.

ANSWER:

14. State with specificity the modes of communication (i.e. satellite, cable, radio frequency) that individuals can receive Three Angels Broadcasting Network programming?

ANSWER:

15. For calendar years 1999, 2000, and 2001, identify any individual or entity who received for free, or at a reduced cost, any items typically available for purchase from Three Angels Broadcasting Network, including the date of purchase or receipt, the item purchased or received, and the amount, if any, of each purchase.

ANSWER:

16. Identify each asset, including all real and personal property, leased by Three Angels Broadcasting Network, to any individual or entity in 1999, 2000, and 2001. For each asset stated, identify:
- a. Detailed description of the property being leased;
 - b. Dates of leasing of such property;
 - c. The individual or entity having custody of such lease agreement.
 - d. Amount and term of such lease.

ANSWER:

17. Identify the location and use of each parcel of real property owned by Three Angels Broadcasting Network for calendar years 1999, 2000, and 2001. For each parcel, identify:
- a. Dates of ownership of Three Angels Broadcasting ownership of such property; the property owned, the cat owned, the dog owned, the sister owned, the dad owned, the mommy owned, the respirator owned,
 - b. Any and all mortgages or other evidence of indebtedness on each stated property;
 - c. Use of such property by Three Angels Broadcasting Network for calendar years 1999, 2000, and 2001.

ANSWER:

18. For calendar years 1999, 2000, and 2001, identify any and all employees, sub-contractors or other individuals that have received any benefits, either through compensation, perks, benefits, real or personal property from Three Angels Broadcasting Network. For each individual identified, state:
- a. The compensation, perk, benefit, real or personal property received by the identified individuals;
 - b. Dates such compensation, perk, benefit, real or personal property was received by the identified individuals;
 - c. Value of such compensation, perk, benefit, real or personal property received by the identified individuals;

ANSWER:

19. Provide a listing of organizations which purchased air time during 1999, 2000, and 2001 from Three Angels Broadcasting Network. This listing should include the legal name of the organization, the federal tax identification number, number of hours of prime time and non-prime time purchased, and the total amount paid during 1999, 2000, and 2001.

ANSWER:

20. Provide a listing of all songbooks, video's, CD's, and satellite systems available for sale during 1999, 2000, and 2001 with a corresponding list of sale price.

ANSWER:

21. Provide any and all documentation of time studies and cost allocation plans used to allocate costs to video production, CD production, songbook production, cassette production, satellite system production, and other items for sale by Three Angels Broadcasting Network during 1999, 2000, and 2001.

ANSWER:

Respectfully submitted,

Thompsonville Community High School
District No. 112 and Thompsonville School
District No. 62,

By: ROBBINS, SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.

By: _____
One of Its Attorneys

Merry C. Rhoades
Mark J. Dean
ROBBINS, SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.

Regency Centre
Collinsville, Illinois 62234
Telephone: 618.343.3540
FAX: 618.343.3546

I, _____, being duly sworn on oath state the answers herein to the
aforementioned Interrogatories are true and correct to the best of my knowledge and belief.

SUBSCRIBED AND SWORN TO
BEFORE ME THIS ___ DAY OF
_____, 2002.

NOTARY PUBLIC

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING)
NETWORK, INC.,)

Applicant,)

and)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)

Respondent.)

and)

THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT NO. 112,)
And THOMPSONVILLE SCHOOL)
DISTRICT NO. 62,)

Intervenors.)

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

MAR 20 2002

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

Docket Number: 01-28-1

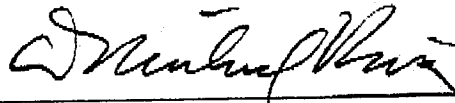
Case Number: 01-PT-0007

MOTION FOR EXTENSION OF TIME

NOW COMES THREE ANGELS BROADCASTING NETWORK, INC., the applicant, by D. MICHAEL RIVA, one of it's attorneys, and requests this Court to grant an extension of time to comply with the Intervenors Request to Produce Documents submitted to applicant on February 4, 2002. Due to the sheer number of items requested, applicant will require an additional 28 days to respond to said requests to produce.

This motion is not filed or purpose of delay but to obtain sufficient time to respond to said requests.

WHEREFORE, THREE ANGELS BROADCASTING NETWORK, INC., the applicant, prays that an order for an extension of 28 days be granted for response to said request for production.



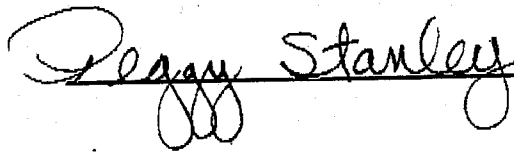
D. MICHAEL RIVA, Attorney for Three
Angels Broadcasting Network, Inc.,
Applicant

PROOF OF SERVICE

The undersigned does hereby certify that a copy of the foregoing Motion for Extension of time was mailed on 3-1, 2002, by depositing said copy in a pre-addressed, postage prepaid envelope in the United States Mail at West Frankfort, Illinois addressed to the following named individuals at the following addresses:

Mark J. Dean
Attorney at Law
230 Regency Centre
Collinsville IL 62234

Kent Steinkamp
Special Asst. to the Attorney General
101 West Jefferson
Springfield IL 62794



D. MICHAEL RIVA, LTD.
D. MICHAEL RIVA
ATTORNEY FOR APPLICANT
226 EAST MAIN STREET
WEST FRANKFORT IL 62896
(618) 937-2404

wpl3abn\morext

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING)
NETWORK, INC.,)

Applicant,)

and)

THE DEPARTMENT OF REVENUE)
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THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT NO. 112,)
And THOMPSONVILLE SCHOOL)
DISTRICT NO. 62,)

Intervenors.)

Docket Number: 01-28-1

Case Number: 01-PT-0027

NOTICE OF HEARING

To: Barbara Rowe
Administrative Law Judge
IL Dept of Revenue
101 West Jefferson
Springfield IL 62794
Fax #217 524-5341

Kent Steinkamp
Special Asst. to Att. General
101 West Jefferson
Springfield IL 62794
Fax #(217) 524-0527

Mark J. Dean
Attorney for Intervenor
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Collinsville IL 62234
Fax #(618) 343-3546

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED


MAR 20 2002

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

001140

NOTICE is hereby given that a hearing on the Motion for Extension of Time filed March 1, 2002 is scheduled for hearing on March 21, 2002, at 10:00 A.M. before Administrative Law Judge Barbara Rowe. Said hearing to be conducted before Judge Rowe via telephone conference call set up by Intervener.

Dated: March 20, 2002.



D. MICHAEL RIVA,
Attorney for Three Angels Broadcasting
Network, Inc.

D. MICHAEL RIVA, LTD.
D. MICHAEL RIVA
ATTORNEY FOR APPLICANT
226 EAST MAIN STREET
WEST FRANKFORT IL 62896
(618) 937-2404

001141

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

MAR 21 2002

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THREE ANGELS BROADCASTING)
NETWORK, INC.,)

Applicant,)

and)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)

Respondent.)

and)

THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT No. 112,)
and THOMPSONVILLE SCHOOL)
DISTRICT No. 62,)

Interveners.)

Docket Number: 01-28-1

Case Number: 01-PT-0027

NOTICE OF HEARING

TO:

Barbara Rowe
Administrative Law Judge
Office of Administrative Hearings
Illinois Department of Revenue
101 West Jefferson
Springfield, IL 62794
Fax: 217.524.0527

D. Michael Riva
Attorney at Law
226 East Main Street
West Frankfort, IL 62896
Fax: 618.937.2405

Kent Steinkamp
Special Assistant to the Attorney General
101 West Jefferson
Springfield, IL 62794
Fax: 217.524-0527

Cynthia Humm
Supervisor of Assessments
202 W. Main
Benton, IL 62812
Fax: 618.439.3029

NOTICE is hereby given that a hearing on Intervenor Thompsonville Community High School District No. 112 and Thompsonville School District No. 62's Motion to Compel and Motion for Continuance filed on March 15, 2002 is scheduled for hearing on March 21, 2002, at 10:00 before

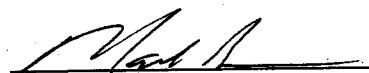
001142

Administrative Law Judge Barbara Rowe. Said hearing to be conducted before Judge Rowe via telephone conference call set up by Intervenor.

Dated this 18th day of March, 2002.

ROBBINS, SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.

By:



Mark J. Dean,
One of Intervener attorneys

Mark J. Dean
Merry C. Rhoades
ROBBINS; SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.
230 Regency Centre
Collinsville, Illinois 62234

001143



Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS

Willard Ice Building
101 West Jefferson Street - Level 5SW
Springfield, Illinois 62702
(217) 782-6995

OFFICE OF THE
ADMINISTRATIVE CLERK
ENTERED

MAR 21 2002

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

3 ANGELS BROADCASTING NETWORK	)	Docket #	00-28-01
	)	A.H. Docket #	01-pt-0027
v.	)	P. I. #	174-166-11
)		
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS and)		
THOMPSONVILLE COMMUNITY HIGH)		
SCHOOL DISTRICT NO. 112 and)		
THOMPSONVILLE SCHOOL DISTRICT)		
NO. 62)		

ORDER OF CONTINUANCE

TO: Please see attachment.

This cause coming on to be heard on the motion of Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, intervenor, by and through its attorney to continue the hearing herein set for May 22, 2002 through May 24, 2002, due notice having been given, all arguments having been properly been considered, no objection having been raised and it being the finding of the administrative law judge that just cause has been shown in order to justify delay of the proceeding scheduled:

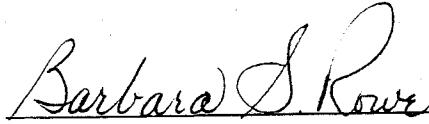
IT IS THEREFORE ORDERED that the intervenor's motion is granted and the hearing previously set in this cause is continued and set over to September 24th through 26, 2002, to commence at 10:00 a.m. on the 24th and 9:00 a.m. on the 25th and 26th without further notice. By agreement of the parties, this will be the last continuance granted in this matter.

The Intervenor in this matter also filed a motion to compel answers by the applicant to interrogatories propounded by the intervenors on February 27, 2002. The applicant filed an objection to the interrogatories and a motion for extension of time to respond to discovery.


The motion for extension of time to respond to discovery is granted. The time is extended to April 2, 2002, thereby making it unnecessary to rule on the motion to compel and the objection to the interrogatories.

Status conferences in this matter are set for April 8, 2002, May 1, 2002, June 3, 2002, July 1, 2002, August 1, 2002 and September 3, 2002, at 10:00 a.m. The status conferences may be conducted by telephone.

Date: March 21, 2002


Barbara S. Rowe
Administrative Law Judge

FAILURE OF THE APPLICANT TO APPEAR PURSUANT TO THIS NOTICE WILL RESULT IN AN IMMEDIATE FINAL DETERMINATION AGAINST YOU IN THIS CASE.

OK.


ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING)
NETWORK, INC.,)

Applicant,)

and)

Docket Number: 01-28-1

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)

Case Number: 01-PT-0027

Respondent.)

and)

THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT NO. 112,)
And THOMPSONVILLE SCHOOL)
DISTRICT NO. 62,)

Intervenors.)

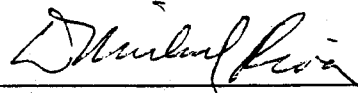
MOTION FOR EXTENSION OF TIME

NOW COMES THREE ANGELS BROADCASTING NETWORK, INC., the applicant, by D. MICHAEL RIVA, one of it's attorneys, and requests this Court to grant an extension of time to file any objections to the Intervenors Request to Produce Documents submitted to applicant on February 4, 2002, and the Intervenors First Set of Interrogatories submitted to applicant on March 1, 2002.

This motion is not filed for purpose of delay but to obtain sufficient time to respond to said requests.

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WHEREFORE, THREE ANGELS BROADCASTING NETWORK, INC., the applicant, prays that an order for an extension to April 2, 2002 be granted for filing of any objection to said production and interrogatories.



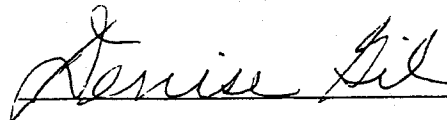
D. MICHAEL RIVA, Attorney for Three
Angels Broadcasting Network, Inc.,
Applicant

PROOF OF SERVICE

The undersigned does hereby certify that a copy of the foregoing Motion for Extension of time was mailed on March 22, 2002, by depositing said copy in a pre-addressed, postage prepaid envelope in the United States Mail at West Frankfort, Illinois addressed to the following named individuals at the following addresses:

Mark J. Dean
Attorney at Law
230 Regency Centre
Collinsville, IL 62234

Kent Steinkamp
Special Asst. to the Attorney General
101 West Jefferson
Springfield, IL 62794



**D. MICHAEL RIVA, LTD.
D. MICHAEL RIVA
ATTORNEY FOR APPLICANT
226 EAST MAIN STREET
WEST FRANKFORT IL 62896
618/937-2404**

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

THREE ANGELS BROADCASTING)
NETWORK, INC.,)

MAR 27 2002

Applicant,)

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

and)

Docket Number: 01-28-7

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)

Case Number: 02-PT-0007

Respondent.)

PETITION TO INTERVENE

NOW COME, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, by and through their attorneys, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd. and hereby Petition that they be granted intervenor status in the above-docketed administrative hearing. In support of the Petition to Intervene, the Petitioners state as follows:

1. Thompsonville Community High School District No. 112, is a quasi-municipal corporation organized and existing pursuant to the laws of the State of Illinois. As such quasi-municipal corporation, it has the authority to levy property taxes against the territory comprising Thompsonville Community High School District No. 112.

2. Thompsonville School District No. 62, is a quasi-municipal corporation organized and existing pursuant to the laws of the State of Illinois. As such quasi-municipal corporation, it has the authority to levy property taxes against the territory comprising Thompsonville School District No. 62.

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3. Permanent Parcel Identification Numbers 174-116-11 is located within the territory comprising Thompsonville Community High School District No. 112 and Thompsonville School District No. 62.

4. Three Angels Broadcasting Network, Inc. has applied for exemption from property taxation, the property identified as Permanent Parcel Identification Number 174-116-11.

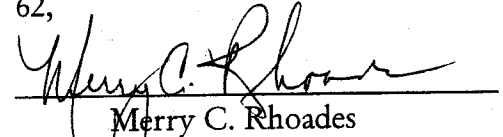
5. Both Thompsonville Community High School District No. 112 and Thompsonville School District No. 62 have a financial interest in the tax exempt status of the property involved.

WHEREFORE, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62 petition the administrative office to intervene in this action.

Respectfully submitted,

Thompsonville Community High School District No. 112 and Thompsonville School District No. 62,

By:


Merry C. Rhoades
One of its attorneys

Merry C. Rhoades
Mark J. Dean
ROBBINS, SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.
230 Regency Centre
Collinsville, Illinois 62234
Telephone: 618.343.3540
FAX: 618.343.3546

001149

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING)
NETWORK, INC.,)

Applicant,)

and)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)

Respondent.)

and)

THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT No. 112,)
and THOMPSONVILLE SCHOOL)
DISTRICT No. 62,)

Intervenors.)

Docket Number: 01-28-1

Case Number: 01-PT-0027

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

APR 05 2002

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

MOTION TO COMPEL AND RESPONSE TO APPLICANT'S OBJECTION TO
AND ANSWERS TO INTERVENOR'S FIRST SET OF INTERROGATORIES

NOW COME, the Intervenors, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, by and through their attorneys, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., and pursuant to 86 Ill. Admin. Code Section 200.130(a) move to compel answers to interrogatories not provided by Applicant to Intervenors' First Set of Interrogatories, and in support, state as follow:

RESPONSE TO APPLICANTS' RESPONSES TO INTERROGATORIES

Intervenors initially note that its Interrogatories were initially submitted on February 1, 2002, providing that Applicant answer within 30 days of service. Prior to Applicant's objections filed on April 2, 2002, it sought no clarification as to any definitions or interrogatories. Applicant only filed

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an objection, on or about March 1, 2002 concerning the number of interrogatories submitted. Therefore, the current objections are untimely.

Following are Intervenor's responses to Applicant's objections to Intervenor's Interrogatories, organized by the number of the original request.

5. Applicant objects on relevancy grounds. Intervenor's submit that the information is relevant, or will lead to discoverable evidence, because the requested information may help to determine whether the Applicant is using the subject property with a view to a profit. Specifically, in Applicant's request for hearing, it states that "funds are derived from charity and held in trust for purposes expressed in the organization's corporate charter." Applicant's Letter Requesting Hearing, dated April 5, 2001. Exhibit A.

6. Applicant objects that the interrogatory is overbroad. The request is sufficiently categorical and specific. Intervenor's submit that the information is relevant, or will lead to discoverable evidence, because the requested information may help to determine whether the Applicant is using the subject property with a view to a profit. In Applicant's request for hearing, it states that "funds are derived from charity and held in trust for purposes expressed in the organization's corporate charter." Applicant's Letter Requesting Hearing, dated April 5, 2001. Exhibit A.

7. Applicant objects that the interrogatory is overbroad, vague, and unduly burdensome. Applicant is seeking an exemption to taxation based on its alleged use a religious property. Therefore, the interrogatory is proper and should be answered in full. The request is sufficiently categorical and specific.

8. Applicant objects that the interrogatory is overbroad, vague, and unduly burdensome. Applicant is seeking an exemption to taxation based on its alleged use a religious property. Therefore, the interrogatory is proper and should be answered in full. The request is sufficiently categorical and specific. Moreover, in Applicant's request for hearing, it states that "it maintains a pastoral staff which is currently composed of four full-time pastors." Applicant's Letter Requesting Hearing, dated April 5, 2001. Exhibit A. Additionally, the Order of Notice of Hearing dated October 4, 2001 states that Applicant intends to call "[t]he pastor who lives on the subject property."

9. Applicant objects that the interrogatory is overbroad, vague, and unduly burdensome. Applicant is seeking an exemption to taxation based on its alleged use a religious property. Therefore, the interrogatory is proper and should be answered in full. The request is sufficiently categorical and specific. Moreover, in Applicant's request for hearing, it states that "it maintains a pastoral staff which is currently composed of four full-time pastor." Applicant's Letter Requesting Hearing, dated April 5, 2001. Exhibit A.

13. Applicant objects that the interrogatory is overbroad, vague, and not relevant. The request is sufficiently categorical and specific. Intervenors submit that the information is relevant, or will lead to discoverable evidence, because the requested information may help to determine whether the Applicant is using the subject property with a view to a profit. In Applicant's request for hearing, it states that "funds are derived from charity and held in trust for purposes expressed in the organization's corporate charter." Applicant's Letter Requesting Hearing, dated April 5, 2001. Exhibit A.

15. Applicant objects on the basis that the request is unduly burdensome. Such an objection is not proper. The request is sufficiently categorical and specific.

Intervenors submit that the information is relevant, or will lead to discoverable evidence, because the requested information may help to determine whether the Applicant is using the subject property with a view to a profit.

The cases cited by Applicant are inopposite. Neither *Inter-Varsity Christian Fellowship v. Hoffman*, 62 Ill. App. 3d 798 (2d Dist. 1978) or *Congregational Sunday School and Publishing Society v. Board of Review*, 290 Ill. 108 (1919) had anything to do with whether information was discoverable or not. In any event, the Court in *Congregational Sunday School* based its decision in part on the fact that “the receipts of the money from sales is incidental and secondary.” 290 Ill. at 123. In *Scripture Press Foundation v. Annunzio*, 414 Ill.339 (1953), the Illinois Supreme Court stated that if “sales are consistently made at stated list prices which yield an overall substantial profit ... [s]uch [a] practice would indicate a secular rather than exclusively religious operation.” 414 Ill. at 357. The *Inter-Varsity* court noted the applicable rule that “each individual case of claimed tax exemption must be determined upon the facts presented.” 62 Ill. App. 3d at 816.

16. Applicant objects that the interrogatory is overbroad, vague, and not relevant. The request is sufficiently categorical and specific. Intervenors submit that the information is relevant, or will lead to discoverable evidence, because the requested information may help to determine whether the Applicant is using the subject property with a view to a profit. In Applicant’s request for hearing, it states that “funds are derived from charity and held in trust for purposes

expressed in the organization's corporate charter." Applicant's Letter Requesting Hearing, dated April 5, 2001. Exhibit A.

The cases cited by Applicant are inopposite. Neither *Inter-Varsity Christian Fellowship v. Hoffman*, 62 Ill. App. 3d 798 (2d Dist. 1978) or *Congregational Sunday School and Publishing Society v. Board of Review*, 290 Ill. 108 (1919) had anything to do with whether information was discoverable or not. In any event, the Court in *Congregational Sunday School* based its decision in part on the fact that "the receipts of the money from sales is incidental and secondary." 290 Ill. at 123. In *Scripture Press Foundation v. Annunzio*, 414 Ill.339 (1953), the Illinois Supreme Court stated that if "sales are consistently made at stated list prices which yield an overall substantial profit ... [s]uch [a] practice would indicate a secular rather than exclusively religious operation." 414 Ill. at 357. The *Inter-Varsity* court noted the applicable rule that "each individual case of claimed tax exemption must be determined upon the facts presented." 62 Ill. App. 3d at 816.

17. Applicant objects that the interrogatory is not relevant. Intervenors submit that the information is relevant, or will lead to discoverable evidence, because the requested information may help to determine whether the Applicant is using the subject property with a view to a profit. In Applicant's request for hearing, it states that "funds are derived from charity and held in trust for purposes expressed in the organization's corporate charter." Applicant's Letter Requesting Hearing, dated April 5, 2001. Exhibit A.

18. Applicant objects that the interrogatory is not relevant. Intervenors submit that the information is relevant, or will lead to discoverable evidence, because the requested information may help to determine whether the Applicant is using the subject property with a view to a

profit. In Applicant's request for hearing, it states that "funds are derived from charity and held in trust for purposes expressed in the organization's corporate charter." Applicant's Letter Requesting Hearing, dated April 5, 2001. Exhibit A.

19. Applicant objects that the interrogatory is not relevant. Applicant is seeking an exemption to taxation based on its alleged use a religious property. Therefore, the interrogatory is proper and should be answered in full.

20. Applicant objects that the interrogatory is overbroad, vague, and not relevant. The request is sufficiently categorical and specific. Intervenors submit that the information is relevant, or will lead to discoverable evidence, because the requested information may help to determine whether the Applicant is using the subject property with a view to a profit. In Applicant's request for hearing, it states that "funds are derived from charity and held in trust for purposes expressed in the organization's corporate charter." Applicant's Letter Requesting Hearing, dated April 5, 2001. Exhibit A.

Applicant also objects to the production on relevancy grounds. Intervenors submit that the information is relevant, or will lead to discoverable evidence, because the requested information may help to determine whether the Applicant is using the subject property with a view to a profit.

The cases cited by Applicant are inopposite. Neither *Inter-Varsity Christian Fellowship v. Hoffman*, 62 Ill. App. 3d 798 (2d Dist. 1978) or *Congregational Sunday School and Publishing Society v. Board of Review*, 290 Ill. 108 (1919) had anything to do with whether information was discoverable or not. In any event, the Court in *Congregational Sunday School* based its decision in part on the fact that "the receipts of the money from sales is incidental and secondary." 290

Ill. at 123. In *Scripture Press Foundation v. Annunzio*, 414 Ill.339 (1953), the Illinois Supreme Court stated that if "sales are consistently made at stated list prices which yield an overall substantial profit ... [s]uch [a] practice would indicate a secular rather than exclusively religious operation." 414 Ill. at 357. The *Inter-Varsity* court noted the applicable rule that "each individual case of claimed tax exemption must be determined upon the facts presented." 62 Ill. App. 3d at 816.

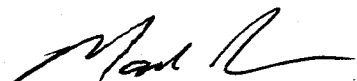
Applicant states that it has provided Attachment 5, "the two most recent catalogues listing such items for sale." No Attachment 5 was provided to Intervenors.

WHEREFORE, Intervenors, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, respectfully requests an Order be entered ordering Applicant to answer all interrogatories propounded in full.

Respectfully submitted,

Thompsonville Community High
School District No. 112 and
Thompsonville School District No.
62,

By:



Mark J. Dean
One of its Attorneys

Merry C. Rhoades
Mark J. Dean
ROBBINS, SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.
230 Regency Centre
Collinsville, Illinois 62234
Telephone: 618.343.3540
FAX: 618.343.3546

D. MICHAEL RIVA
ATTORNEY AT LAW
226 E. Main Street
WEST FRANKFORT, ILLINOIS 62896
(618) 937-2404 • FAX: (618) 937-2405

April 5, 2001

Glen L. Bower, Director
Illinois Department of Revenue
Office of Legal Government Services, 3-520
101 West Jefferson Street
Springfield, IL 62702

RECEIVED
DEPT. OF REVENUE

Re: IL Dept of Revenue Docket No. 01-28-1
Three Angels Broadcasting Network
Property Tax Number 174-116-11

EXEMPTION SECTION

Dear Mr. Bower:

Please be advised that I represent Three Angels Broadcasting Network and am writing this letter to say that my client does not agree with the decision dated March 22, 2001, which denied the application for property tax exemption. This letter is an amendment to my earlier request for formal hearing dated April 2, 2001. Attached is a copy of the Department of Revenue's March 22, 2001, Denial.

Please consider this to be a written request for a formal hearing.

The determination is erroneous both in its holding that the property is not in exempt ownership and that the property is not in exempt use. The decision was mistaken in that the property is owned and used by a corporation organized for religious and/or charitable purposes and operated exclusively for religious purposes pursuant to 35 ILCS 200/15-40 for the spreading of the Gospel and/or owned and used for a charitable purpose under the provisions of 35 ILCS 200/15-65 for the same objective. The decision by the Illinois Department of Revenue failed to apply the decisions of *Inter-Varsity Christian Fellowship of the United States v. Hoffman*, 62 Ill.App.3d 798, 290 Ill. 108, 379 N.E.2d 815 (1978), and *Congregational Sunday Sch. & Publishing Soc'y v. Bd. of Review*, 125 N.E. 7 (1919). Therefore, the decision is in error and should be reversed.

EXHIBIT

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Glen L. Bower
April 5, 2001
Page Two

Three Angels Broadcasting Network will present additional evidence that it was organized to develop, plan, promote, produce, and direct, in cooperation with various religious organizations, all types of religious programming for electronic transmission for television and radio broadcasting throughout the world. We will submit evidence that: (1) the corporation is a 501(c)(3) nonprofit corporation that has continually since its founding operated consistent with the above purpose and has been exclusively engaged in the spreading of the Gospel of Jesus Christ through its electronic evangelistic ministry; (2) it also maintains a pastoral staff which is currently composed of four full-time pastors; (3) it supports Seventh-day Adventist evangelistic ministries throughout the world; (4) on its properties, it houses a local Seventh-day Adventist Church; and (5) its religious ministry is committed to the proclamation of the teachings of Bible truth as formulated in the 27 Fundamental Beliefs of the Seventh-day Adventist Church with which it maintains a formal agreement to provide its resources to support the mission of and work in cooperation with the Seventh-day Adventist Church.

We will also show that: (1) benefits derived are all provided for an indefinite number of persons for their general spiritual welfare; (2) the corporation has issued no capital stock nor has shareholders; (3) funds are derived from charity and held in trust for purposes expressed in the organization's corporate charter; (4) charity is disbursed for such purpose; (5) no obstacles are placed in the way of those seeking spiritual benefits provided by the organization; (6) the primary use of the property is for religious and/or charitable purposes; and (7) there is no personal enurement.

The decision of the Illinois Department of Revenue is contrary to the Religion Clauses of the First Amendment to the United States Constitution in that other similar organizations, including television ministries almost identical to 3 ABN's Christian ministry, receive tax exemption in Illinois. Thus, denial of tax exemption to the Three Angels Broadcasting Network would violate the neutrality requirements of the Religion Clauses of the First Amendment contrary to the teachings of the Supreme Court in *Walz v. Tax Comm'n of New York City*, 397 U.S. 664, 696 (1970), wherein the Court stated that neutrality in the application of the Establishment Clause "requires an equal protection mode of analysis." Also, in *Church of Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520, 534 (1993), citing *Gillette v. United States*, 401 U.S. 437, 452 (1971), the Court stated that "the Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination. The Clause 'forbids subtle departures from neutrality.'" Three Angels Broadcasting Network will submit evidence of the unequal application of the religious and charitable use exemptions within the State of Illinois.

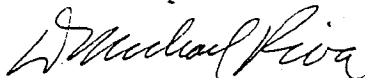
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Glen L. Bower
April 5, 2001
Page Three

The decision also violates Art. 1, sec. 3, of the Illinois Constitution of 1970 which requires "[t]he free exercise and enjoyment of religious profession and worship, without discrimination" and proscribes "any preference be[ing] given by law to any religious denomination or mode of worship."

Finally, the decision violates that part of 775 ILCS 35/15 which provides that government may not substantially burden the free exercise of religion unless it demonstrates the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. The government failed to so demonstrate, and we will show that the decision would substantially burden the free exercise of religion.

Sincerely,



D. Michael Riva

Attachment

100067
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ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING)
NETWORK, INC.,)

Applicant,)

and)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)

Respondent.)

and)

THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT No. 112,)
and THOMPSONVILLE SCHOOL)
DISTRICT No. 62,)

Intervenors.)

Docket Number: 01-28-1

Case Number: 01-PT-0027

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

APR 05 2002

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

MOTION TO COMPEL AND RESPONSE TO APPLICANT'S OBJECTION TO
INTERVENORS REQUEST TO PRODUCE DOCUMENTS

NOW COME, the Intervenors, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, by and through their attorneys, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., and pursuant to 86 Ill. Admin. Code Section 200.130(a) move to compel production not provided by Applicant to Intervenors' Request to Produce on February 1, 2002, and in support, state as follow:

RESPONSE TO APPLICANTS' GENERAL OBJECTIONS

1. Applicant states that Intervenors have failed to comply with Illinois Supreme Court Rule 214 by not specifying a time, date, and place for production. Intervenors Request to Produce specifically asked the documents to be provided by Applicant within thirty days (30) of

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service. Intervenors request that all documents requested be photocopied by Applicant and sent to Intervenor via regular mail. This arrangement seems to be understood by Applicant as its next section heading specifically references "Intervenors Request for Production and Copying of Documents." Applicant's Objection, p. 3.

RESPONSE TO APPLICANTS' RESPONSE TO INTERVENORS' REQUEST FOR PRODUCTION AND COPYING OF DOCUMENTS

Following are Intervenors responses to Applicant's objections to requests Intervenors seek documents, organized by the number of the original request. Intervenors Request to Produce is attached hereto as Exhibit A.

6. Intervenors seek "a copy of any all lease agreements for properties owned by Three Angels Broadcasting Network and rented to others." Applicant objects on relevancy grounds. Intervenors submit that the information is relevant, or will lead to discoverable evidence, because the requested information may help to determine whether the Applicant is using the subject property with a view to a profit.

7. Intervenors seek "a copy of the sales contract, invoice, or receipt for the satellite systems sold during calendar years 1999, 2000, and 2001." Applicant objects on the basis that the request is unduly burdensome because it is a "voluminous" request. Such an objection is not proper. The request is sufficiently categorical and specific. Moreover, the requested documents are not voluminous.

Applicant also objects to the production on relevancy grounds. Intervenors submit that the information is relevant, or will lead to discoverable evidence, because the requested

information may help to determine whether the Applicant is using the subject property with a view to a profit.

The cases cited by Applicant are inopposite. Neither *Inter-Varsity Christian Fellowship v. Hoffman*, 62 Ill. App. 3d 798 (2d Dist. 1978) or *Congregational Sunday School and Publishing Society v. Board of Review*, 290 Ill. 108 (1919) had anything to do with whether documents were discoverable or not. In any event, the Court in *Congregational Sunday School* based its decision in part on the fact that “the receipts of the money from sales is incidental and secondary.” 290 Ill. at 123. In *Scripture Press Foundation v. Annunzio*, 414 Ill.339 (1953), the Illinois Supreme Court stated that if “sales are consistently made at stated list prices which yield an overall substantial profit ... [s]uch [a] practice would indicate a secular rather than exclusively religious operation.” 414 Ill. at 357. The *Inter-Varsity* court noted the applicable rule that “each individual case of claimed tax exemption must be determined upon the facts presented.” 62 Ill. App. 3d at 816.

Applicant objects on the basis that the information sought contains confidential information. Applicant provides no legitimate reason why the information is confidential and cites no recognizable privilege. In the event any names and addresses are deemed confidential, Interveners would agree to a protective order.

8. Interveners seek “a copy of any and all invoices or receipts for satellite systems purchased by Three Angels Broadcasting Network in calendar years 1999, 2000, and 2001.” Applicant objects on the basis that the request is unduly burdensome because it is a “voluminous” request. Such an objection is not proper. The request is sufficiently categorical and specific. Moreover, the requested documents are not voluminous.

Applicant also objects to the production on relevancy grounds. Intervenors submit that the information is relevant, or will lead to discoverable evidence, because the requested information may help to determine whether the Applicant is using the subject property with a view to a profit.

The cases cited by Applicant are inopposite. Neither *Inter-Varsity Christian Fellowship v. Hoffman*, 62 Ill. App. 3d 798 (2d Dist. 1978) or *Congregational Sunday School and Publishing Society v. Board of Review*, 290 Ill. 108 (1919) had anything to do with whether documents were discoverable or not. In any event, the Court in *Congregational Sunday School* based its decision in part on the fact that “the receipts of the money from sales is incidental and secondary.” 290 Ill. at 123. In *Scripture Press Foundation v. Annunzio*, 414 Ill.339 (1953), the Illinois Supreme Court stated that if “sales are consistently made at stated list prices which yield an overall substantial profit ... [s]uch [a] practice would indicate a secular rather than exclusively religious operation.” 414 Ill. at 357. The *Inter-Varsity* court noted the applicable rule that “each individual case of claimed tax exemption must be determined upon the facts presented.” 62 Ill. App. 3d at 816.

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9. Intervenors seek “a copy of the sales contract, invoice, or receipt for the video tapes sold by Three Angels Broadcasting Network during calendar years 1999, 2000, and 2001.” Applicant objects on the basis that the request is unduly burdensome because it is a “voluminous”

request. Such an objection is not proper. The request is sufficiently categorical and specific. Moreover, the requested documents are not voluminous.

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Applicant objects on the basis that the information sought contains confidential information. Applicant provides no legitimate reason why the information is confidential and

cites no recognizable privilege. In the event any names and addresses are deemed confidential, Intervenor would agree to a protective order.

11. Intervenor seeks "a copy of the sales contract, invoice, or receipt for the songbooks sold by Three Angels Broadcasting Network during calendar years 1999, 2000, and 2001." Applicant objects on the basis that the request is unduly burdensome because it is a "voluminous" request. Such an objection is not proper. The request is sufficiently categorical and specific. Moreover, the requested documents are not voluminous.

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Applicant objects on the basis that the information sought contains confidential information. Applicant provides no legitimate reason why the information is confidential and cites no recognizable privilege. In the event any names and addresses are deemed confidential, Intervenors would agree to a protective order.

12. Intervenor seeks “a copy of any and all invoices or receipts for songbooks purchased by Three Angels Broadcasting Network in calendar years 1999, 2000, and 2001.” Applicant objects on the basis that the request is unduly burdensome because it is a “voluminous” request. Such an objection is not proper. The request is sufficiently categorical and specific. Moreover, the requested documents are not voluminous.

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case of claimed tax exemption must be determined upon the facts presented.” 62 Ill. App. 3d at 816.

Applicant objects on the basis that the information sought contains confidential information. Applicant provides no legitimate reason why the information is confidential and cites no recognizable privilege. In the event any names and addresses are deemed confidential, Intervenor would agree to a protective order.

14. Intervenor seeks “a copy of all invoices and receipts for all video, CD, satellite, and songbook sales for 1999, 2000, and 2001.” Applicant objects on the basis that the request is unduly burdensome because it is a “voluminous” request. The request is sufficiently categorical and specific. Moreover, the requested documents are not voluminous.

Applicant also objects to the production on relevancy grounds. Intervenor submit that the information is relevant, or will lead to discoverable evidence, because the requested information may help to determine whether the Applicant is using the subject property with a view to a profit.

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Applicant objects on the basis that the information sought contains confidential information. Applicant provides no legitimate reason why the information is confidential and cites no recognizable privilege. In the event any names and addresses are deemed confidential, Intervenor would agree to a protective order.

17. Intervenor seeks “any and all documents evidencing the sales price of all songbooks, CD’s, video tapes, and satellite systems for calendar years 1999, 2000, and 2001.” Applicant objects on the basis that the request is unduly burdensome because it is a “voluminous” request. Such an objection is not proper. The request is sufficiently categorical and specific. Moreover, the requested documents are not voluminous.

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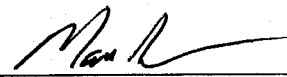
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Applicant objects on the basis that the information sought contains confidential information. Applicant provides no legitimate reason why the information is confidential and cites no recognizable privilege. In the event any names and addresses are deemed confidential, Intervenor would agree to a protective order.

WHEREFORE, Intervenor, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, respectfully requests an Order be entered ordering Applicant to produce all documents requested via regular mail to the undersigned.

Respectfully submitted,

Thompsonville Community High
School District No. 112 and
Thompsonville School District No.
62,

By: 
Mark J. Dean
One of its Attorneys

Merry C. Rhoades
Mark J. Dean
ROBBINS, SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.
230 Regency Centre
Collinsville, Illinois 62234
Telephone: 618.343.3540
FAX: 618.343.3546

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING)
NETWORK, INC.,)

Applicant,)

and)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)

Respondent.)

and)

THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT No. 112,)
and THOMPSONVILLE SCHOOL)
DISTRICT No. 62,)

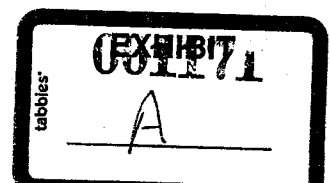
Intervenors.)

Docket Number: 01-28-1

Case Number: 01-PT-0027

INTERVENORS REQUEST TO PRODUCE DOCUMENTS TO APPLICANT, THREE ANGELS BROADCASTING NETWORK, INC.

NOW COMES the Intervenors, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, by and through its attorneys, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., pursuant to Illinois Supreme Court Rule 214 and 86 Ill. Admin. Code Section 200.125(c) and propounds the following Request to Produce Documents to be answered and provided by Applicant, Three Angels Broadcasting Network, Inc., its agents and attorneys within thirty (28) days of service hereof, which request to produce documents shall be deemed continuing so as to require prompt supplemental answers and documents if Three Angels



Broadcasting Network, Inc., its agents and/or attorneys obtains or recalls further information and/or documents relative thereto between the time the answers and documents are submitted to Intervenor and the time of hearing.

DEFINITIONS

The following words and terms, as used in this Request for Production, have the meanings set forth below and also require that in your response to the requests in which they are used, you set forth the information and provide the documents which each requires.

1. "You" means the Plaintiff to whom this Request for Production is addressed and includes any agent or person acting on their behalf including, but not limited to, their attorney.
2. "Document" shall mean any writing or recording and includes, but is not limited to, the original and any copy of books, records, reports, tape recordings, transcripts of tape recordings, data cards, memorandum or notes of conversations and meetings, notes, letters, telegrams, cables, telexes, diaries, logs, graphs, charts, contracts, releases, studies, drawings, canceled checks, summaries, booklets, circular bulletins, instructions, minutes, bills, questionnaires, invoices, disks, correspondence, financial statements, and drafts of any of the foregoing, as well as any other tangible thing on which information is recorded in writing, sound, or through any other means.
3. "Person" or "persons" shall mean each and every individual, corporation, partnership, joint venture, social or political organization, or any other entity whether real or judicial, incorporated or unincorporated, encompassed within the usual and customary meaning of "person" or "persons" or otherwise encompassed within this definition.
4. "Photographs" shall mean any photographs, slides, motion pictures, videotapes, or

PREFACE AND INSTRUCTIONS

1. If a document requested herein existed at one time but has either been destroyed or cannot be located, please:

- A.) Describe said document (its general nature, date, author, etc.);
- B.) Identify the date of destruction;
- C.) Identify (name, address, employer) the person(s) with knowledge of its destruction;
- D.) Identify (name, address, employer) the person(s) charged with the responsibility of keeping such documents; and
- E.) Identify the person who had copies of such documents.

2. If a document required herein is withheld on the basis that such document is exempt from production on any grounds, please:

- A.) Describe said document (its general nature, date, author and addressee[s] of same);
- B.) State the basis for the claim of exemption; and
- C.) State the name, job title and employer of each person who has possession of said document.

DOCUMENTS REQUESTED

1. Provide a copy of the audited financial statements for 1999, 2000, and 2001.
2. Provide a copy of IRS form 990 (Return of Organization Exempt From Income Tax) for 1999, 2000, and 2001.
3. Provide a copy of IRS form 990-T (Exempt Organization Business Income Tax

Return) for 1999, 2000, and 2001.

4. Provide a copy of Illinois form AG990-IL (Illinois Charitable Organization Business Income Tax Return) for 1999, 2000, and 2001.
5. Provide a copy of Illinois form IL-990-T (Illinois Exempt Organization Income and Replacement Tax Return) for 1999, 2000, and 2001.
6. Provide a copy of any and all lease agreements for properties owned by Three Angels Broadcasting Network and rented to others.
7. Provide a copy of the sales contract, invoice, or receipt for the satellite systems sold during calendar years 1999, 2000, and 2001.
8. Provide a copy of any and all invoices or receipts for satellite systems purchased by Three Angels Broadcasting Network in calendar years 1999, 2000, and 2001.
9. Provide a copy of the sales contract, invoice, or receipt for the video tapes sold by Three Angels Broadcasting Network during calendar years 1999, 2000, and 2001.
10. Provide a copy of any and all invoices or receipts for video tapes purchased by Three Angels Broadcasting Network in calendar years 1999, 2000, and 2001.
11. Provide a copy of the sales contract, invoice, or receipt for the songbooks sold by Three Angels Broadcasting Network during calendar years 1999, 2000, and 2001.
12. Provide a copy of any and all invoices or receipts for songbooks purchased by Three Angels Broadcasting Network in calendar years 1999, 2000, and 2001.
13. Provide a copy of all loan agreements for which there was any activity including advancements, repayments or outstanding balances during 1999, 2000, and 2001.
14. Provide a copy of all invoices and receipts for all video, CD, satellite, and songbook

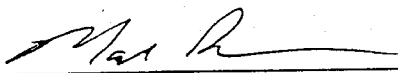
sales for 1999, 2000, and 2001.

15. Provide copies of all newsletters distributed by Three Angels Network in 1999, 2000, and 2001.
16. Provide any and all documentation of time studies and cost allocation plans used to allocate costs to video production, CD production, songbook production, cassette production, satellite system production, and other items for sale by Three Angels Broadcasting Network.
17. Provide any and all documents evidencing the sales price of all songbooks, CD's, video tapes, and satellite systems for calendar years 1999, 2000, and 2001.
18. Provide any and all Affiliation Agreements between Three Angels Broadcasting Network and any church, religious, or ecclesiastical organization.

Respectfully submitted,

Thompsonville Community High School
District No. 112 and Thompsonville School
District No. 62,

By: ROBBINS, SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.

By: 
One of Its Attorneys

Merry C. Rhoades
Mark J. Dean
ROBBINS, SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.
Regency Centre
Collinsville, Illinois 62234
Telephone: 618.343.3540
FAX: 618.343.3546

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING)
NETWORK, INC.,)

Applicant,)

and)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)

Respondent.)

and)

THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT No. 112,)
and THOMPSONVILLE SCHOOL)
DISTRICT No. 62,)

Interveners.)

Docket Number: 01-28-1

Case Number: 01-PT-0027

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

APR 05 2002

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

NOTICE OF HEARING

TO:

Barbara Rowe
Administrative Law Judge
Office of Administrative Hearings
Illinois Department of Revenue
101 West Jefferson
Springfield, IL 62794
Fax: 217.524.0527

Kent Steinkamp
Special Assistant to the Attorney General
101 West Jefferson
Springfield, IL 62794
Fax: 217.524.0527

D. Michael Riva
Attorney at Law
226 East Main Street
West Frankfort, IL 62896
Fax: 618.937.2405

Cynthia Humm
Supervisor of Assessments
202 W. Main
Benton, IL 62812
Fax: 618.439.3029

NOTICE is hereby given that a hearing on Intervenor Thompsonville Community High School District No. 112 and Thompsonville School District No. 62's Motion to Compel and Response to Applicant's Objection to and Answers to Intervenor's First Set of Interrogatories and Motion to Compel and Response to Applicant's Objection to Intervenor's Request to Produce Documents filed on April 4,

001176

2002 is scheduled for hearing on April 8, 2002, at 10:00 before Administrative Law Judge Barbara Rowe.
Said hearing to be conducted in conjunction with the status conference via telephone conference call.

Dated this 4th day of April, 2002.

ROBBINS, SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.

By:



Mark J. Dean,
One of Intervenors attorneys

Mark J. Dean
Merry C. Rhoades
ROBBINS, SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.
230 Regency Centre
Collinsville, Illinois 62234

001177



OFFICE OF THE
ADMINISTRATIVE CLERK
ENTERED

APR 08 2002

Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS
Willard Ice Building
101 West Jefferson Street - Level 5SW
Springfield, Illinois 62702
(217) 782-6995

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

3 ANGELS BROADCASTING NETWORK)		
	)	Docket #	00-28-01
v.	)	A.H. Docket #	01-PT-0027
	)	P. I. #	174-166-11
)		
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS and)		
THOMPSONVILLE COMMUNITY HIGH)		
SCHOOL DISTRICT NO. 112 and)		
THOMPSONVILLE SCHOOL DISTRICT)		
NO. 62)		

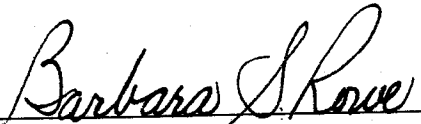
ORDER SETTING HEARING ON MOTIONS

This cause coming on to be heard on the motions of Intervenors Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, by and through its attorney of record to "compel and respond to applicant's objection to and answers to intervenor's first set of interrogatories" and "compel and respond to applicant's objection to intervenor's request to produce documents." The motions were faxed to the parties on Thursday April 4, 2001, at 7:35 p.m. At the status conference scheduled for April 8, 2002, the applicant's representatives requested a week in which to respond to the motions. While the motions were discussed at the previous status conference, particulars were not offered.

IT IS HEREBY ORDERED:

The motion to "compel and respond to applicant's objection to and answers to intervenor's first set of interrogatories" and the motion "to compel and respond to applicant's objection to intervenor's request to produce documents" are hereby set for hearing on Monday, April 15, 2002, at 10:00 without further notice.

Date: April 8, 2002


Barbara S. Rowe
Administrative Law Judge

061173



Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS
 Willard Ice Building
 101 West Jefferson Street - Level 5SW
 Springfield, Illinois 62702
 (217) 782-6995

OFFICE OF THE
 ADMINISTRATIVE CLERK
 ENTERED

APR 15 2002

IDOR
 ADMINISTRATIVE HEARINGS
 SPRINGFIELD, ILLINOIS

3 ANGELS BROADCASTING NETWORK)

v.)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS and)
THOMPSONVILLE COMMUNITY HIGH)
SCHOOL DISTRICT NO. 112 and)
THOMPSONVILLE SCHOOL DISTRICT)
NO. 62)

Docket # 00-28-01
A.H. Docket # 01-PT-0027
P. I. # 174-166-11

ORDER

This cause coming on to be heard on the motions of Intervenors Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, by and through its attorney of record to “compel and respond to applicant’s objection to and answers to intervenor’s first set of interrogatories” and “compel and respond to applicant’s objection to intervenor’s request to produce documents” due notice having been given, all arguments having been properly been considered, with objections having been raised by the applicant and it being the finding of the administrative law judge that just cause has been shown in order to compel certain responses,

IT IS HEREBY ORDERED:

Regarding the Intervenors motion to “compel and respond to applicant’s objection to intervenor’s request to produce documents”:

6. Applicant is to provide any and all lease agreements for its properties rented to others for the 2000-assessment year.
7. Applicant is to provide the financial information and samples of sales contracts for the satellite systems sold by the applicant during the 2000 calendar year.

8. Applicant is to provide the financial information, sample sales contracts, and names of the sellers of the satellite systems purchased by applicant in the 2000 calendar year;
9. Applicant is to provide samples of sales contracts and financial information for the video tapes sold by the applicant in the 2000-assessment year.
10. The applicant is to provide samples of the sales contracts, financial information, and names of sellers of the video tapes purchased by the applicant in the 2000-assessment year.
11. Applicant is to provide samples of sales contracts and financial information for the songbooks sold by the applicant in the year 2000.
12. The applicant is to provide names of sellers, samples of sales contracts, and financial information regarding the songbooks purchased by the applicant in the 2000-assessment year.
14. Duplicates previously requested documents and is therefore denied.
17. The applicant has agreed to produce "any and all documents evidencing the sales price of all songbooks, CD's video tapes, and satellite systems for the calendar years 1999, 2000, and 2001." The year at issue is the 2000-assessment year.

Regarding the Intervenor's motion to "compel and respond to applicant's objection to and answers to intervenor's first set of interrogatories":

5. Applicant is to identify any and all accounts of the applicant for which any and all contributions, gifts or other contributed money is deposited for the 2000-assessment year.
6. The applicant has complied with this interrogatory.
7. The applicant has given available information regarding this interrogatory and will review its records to ensure completeness for the 2000-assessment year. The applicant will stipulate to the completeness of its answers to interrogatories 7 through 9 on or before June 3, 2002.
8. The applicant has given available information regarding this interrogatory and will review its records to ensure completeness for the 2000-assessment year. The applicant will stipulate to the completeness of its answers to interrogatories 7 through 9 on or before June 3, 2002.
9. The applicant has given available information regarding this interrogatory and will review its records to ensure completeness for the 2000-assessment year. The applicant will stipulate to the completeness of its answers to interrogatories 7 through 9 on or before June 3, 2002.
13. Interrogatory 13 has been answered.
15. The applicant will provide financial information regarding items received by other entities for free or at reduced cost that are typically available for purchase from the applicant.
16. Interrogatory 16 was ruled upon in number 6 of the request to produce documents.
17. The applicant will provide a complete description of the usage of all properties

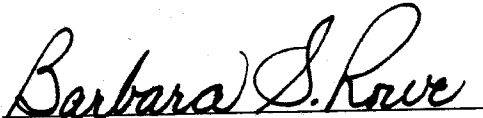
- owned by the applicant during the 2000-assessment year.
18. Applicant will provide the intervenor any additional information available regarding benefits, either through compensation, perks, benefits, real or personal property, received by employees, subcontractors or other individuals from the applicant.
 19. The applicant will provide a specific list of organizations, which purchased air time during 2000.
 20. The applicant will provide a listing of all songbooks, videos, CDs, and satellite systems available for sale during 2000 with a corresponding list of sales prices.

THE HEARING IN THIS MATTER PREVIOUSLY SCHEDULED FOR SEPTEMBER 24, 2002 THROUGH SEPTEMBER 26, 2002 IS, BY AGREEMENT OF ALL PARTIES, CHANGED TO SEPTEMBER 23, 2002 THROUGH SEPTEMBER 25, 2002.

THE INITIAL WITNESS LISTS FOR THE APPLICANT AND INTERVENORS SHALL BE MADE AVAILABLE TO ALL PARTIES ON OR BEFORE MAY 31, 2002. THE FINAL WITNESS LIST SHALL BE SUBMITTED TO ALL PARTIES ON OR BEFORE JUNE 28, 2002.

ALL DEPOSITIONS SHALL BE COMPLETED BY JULY 26, 2002.

Date: April 15, 2002


Barbara S. Rowe
Administrative Law Judge

001181

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, SPRINGFIELD

THREE ANGELS BROADCASTING)
NETWORK, INC.,)
)
Applicant,)
)
and)
)
THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)
)
Respondent.)
)
and)
)
THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT NO. 112,)
And THOMPSONVILLE SCHOOL)
DISTRICT NO. 62,)
)
Intervenors.)

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

APR 26 2002

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

No. 2002-MR-


MOTION FOR ADMISSION OF COUNSEL
PRO HAC VICE

NOW COMES D. MICHAEL RIVA, an attorney licensed to practice in the State of Illinois, and moves the court for an Order of Admission *Pro Hac Vice* of LEE BOOTHBY and NICHOLAS MILLER, who are licensed attorneys in the District of Columbia, to serve as counsel for THREE ANGELS BROADCASTING NETWORK, INC., a party to these causes before the Illinois Department of Revenue Office of Administrative Hearings, Docket Number 00-28-1, Case Number 01-PT-0027, and Docket Number 01-28-7, Case Number 02-PT-0007, in causes known as Three Angels Broadcasting Network, Inc., Applicant, and The Department of Revenue of the State of Illinois, Respondent, and Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, Intervenors. Affidavits of LEE BOOTHBY and NICHOLAS MILLER are attached to this Motion and are incorporated by reference.

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The undersigned attorney, D. MICHAEL RIVA, states that this motion is for the purpose of these cases only and that LEE BOOTHBY and NICHOLAS MILLER are familiar with the law, facts and procedures relating to the subject matter of these cases.

WHEREFORE, movant respectfully requests permission for LEE BOOTHBY and NICHOLAS MILLER to appear of record and to participate *pro hac vice* in these cases.



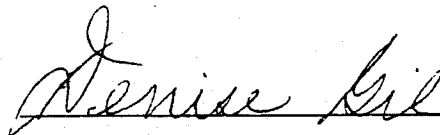
D. MICHAEL RIVA, Attorney for Three
Angels Broadcasting Network, Inc.,

PROOF OF SERVICE

The undersigned does hereby certify that a copy of the foregoing Motion for Admission of Counsel *Pro Hac Vice* was mailed on April 26, 2002, by depositing said copy in a pre-addressed, postage prepaid envelope in the United States Mail at West Frankfort, Illinois addressed to the following named individuals at the following addresses:

Kent Steinkamp
Special Asst. to the Attorney General
101 West Jefferson
Springfield, IL 62704

Barbara Rowe
Administrative Law Judge
Illinois Department of Revenue
101 W. Jefferson – Level 5SW
Springfield, IL 62704



D. MICHAEL RIVA, LTD.
D. MICHAEL RIVA
ATTORNEY FOR APPLICANT
226 EAST MAIN STREET
WEST FRANKFORT IL 62896
618/937-2404

**AFFIDAVIT OF LEE BOOTHBY IN SUPPORT OF MOTION
FOR ADMISSION *PRO HAC VICE***

City of Washington)
) SS
District of Columbia)

Lee Boothby, being first duly sworn, upon oath, states as follows:

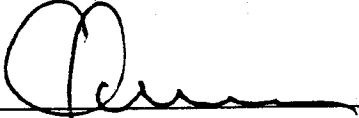
1. I am a duly licensed attorney and counselor at law admitted to practice, and currently in good standing, in the States of Michigan, Maryland, and the District of Columbia.
2. I have appeared as counsel, associate counsel or in some other capacity as an attorney at law in one case in the courts of the State of Illinois prior to seeking admission in this case.
3. I am familiar with the provisions of the Illinois Code of Civil Procedure and the Illinois Supreme Court Rules, and I understand and agree that I will be bound by them in all proceedings before this court in this cause.
4. In particular, I am familiar with section 2-611 of the Illinois Code of Civil Procedure, Illinois Revised Statutes chapter 110, section 2-611, relating to the signing of pleadings, motions and other papers and the duties imposed upon litigants and counsel, and I understand and agree that I will follow and be bound by the provisions of said section 2-611, and hereby submit myself to the jurisdiction of the court for any and all proceedings thereunder.

Dated: April 24, 2002



LEE BOOTHBY

Subscribed and sworn to before
me this 24th day of April, 2002



NOTARY PUBLIC

My commission expires: _____

**QUINN O'CONNELL JR.
NOTARY PUBLIC, DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES JULY 14, 2003**

AFFIDAVIT IN SUPPORT OF MOTION FOR ADMISSION *PRO HAC VICE*

DISTRICT OF COLUMBIA) SS

Nicholas P. Miller, being first duly sworn, upon oath, states as follows:

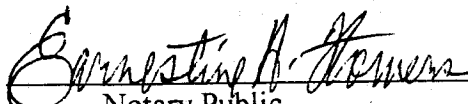
1. I am a duly licensed attorney and counselor at law admitted to practice, and currently in good standing, in the District of Columbia.
2. I have appeared as counsel, associate counsel or in some other capacity as an attorney at law in zero cases in the courts of the State of Illinois prior to seeking admission in this case.
3. I am familiar with the provisions of the Illinois Code of Civil Procedure and the Illinois Supreme Court Rules, and I understand and agree that I will be bound by them in all proceedings before this court in this cause.
4. In particular, I am familiar with Section 2-611 of the Illinois Code of Civil Procedure, Illinois Revised Statutes Chapter 110, Section 2-611, relating to the signing of pleadings, motions and other papers and the duties imposed upon litigants and counsel, and I understand and agree that I will follow and be bound by the provisions of said Section 2-611, and hereby submit myself to the jurisdiction of the court for any and all proceedings thereunder.



(NAME)

Subscribed and sworn to before me this 4th day of April, 2002.

(SEAL)



Notary Public

Ernestine A. Flowers
Notary Public, District of Columbia
My Commission Expires Jan. 31, 2003

001186

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, SPRINGFIELD

THREE ANGELS BROADCASTING)
NETWORK, INC.,)

Applicant,)

and)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)

Respondent.)

and)

THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT NO. 112,)
And THOMPSONVILLE SCHOOL)
DISTRICT NO. 62,)

Intervenors.)

2002MR 00234

No. 2002-MR-

FILED

MAY 06 2002 FAM-7

of the
Circuit Court

ORDER

Cause comes on for hearing on Motion for Admission of Counsel *Pro Hac Vice* and the court being fully advised finds that the motion should be granted.

IT IS THEREFORE ORDERED that attorney LEE BOOTHBY and attorney NICHOLAS MILLER are allowed to appear of record for Three Angels Broadcasting Network, Inc. and to participate *pro hac vice* in the causes before the Illinois Department of Revenue Office of Administrative Hearings, Docket Number 00-28-1, Case Number 01-PT-0027, and Docket Number 01-28-7, Case Number 02-PT-0007, known as Three

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Angels Broadcasting Network, Inc., Applicant, and The Department of Revenue of the State of Illinois, Respondent, and Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, Intervenors.

Dated: 5/6/02

ENTER:



JUDGE

D. MICHAEL RIVA, LTD.
D. MICHAEL RIVA
ATTORNEY FOR APPLICANT
226 EAST MAIN STREET
WEST FRANKFORT IL 62896
618/937-2404

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

MAY 07 2002

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THREE ANGELS BROADCASTING NETWORK, INC.,)	
)	
Applicant,)	
)	
and	)	Docket Number: 01-28-1
)	
THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS,	)	Case Number: 01-PT-0027
)	
Respondent.)	
	)	Docket Number: 01-28-7
and)	
	)	Case Number: 02-PT-0007
THOMPSONVILLE COMMUNITY HIGH SCHOOL DISTRICT NO. 112, And THOMPSONVILLE SCHOOL DISTRICT NO. 62,)	
)	
Intervenors.)	

NOTICE OF HEARING

To: Barbara Rowe
Administrative Law Judge
IL Dept of Revenue
101 West Jefferson
Springfield, IL 62702
Fax #217 524-5341

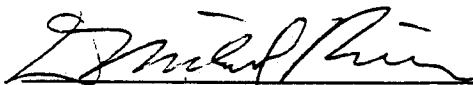
Kent Steinkamp
Special Asst. to Att. General
101 West Jefferson
Springfield, IL 62702
Fax #(217) 524-0527

Mark J. Dean
Attorney for Intervenor
230 Regency Centre
Collinsville, IL 62234
Fax #(618) 343-3546

Linda Olivero
Administrative Law Judge
101 West Jefferson
Springfield, IL 62702

NOTICE is hereby given that a hearing on the Motion for Consolidation filed May 7, 2002 is scheduled for hearing on May 10, 2002, at 930 a.m. before Administrative Law Judge Linda Olivero. Said hearing to be conducted before Judge Olivero via telephone conference call set up by Applicant.

Dated: May 7, 2002.



D. MICHAEL RIVA,
Attorney for Three Angels Broadcasting
Network, Inc.

D. MICHAEL RIVA, LTD.
D. MICHAEL RIVA
ATTORNEY FOR APPLICANT
226 EAST MAIN STREET
WEST FRANKFORT IL 62896
(618) 937-2404

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

THREE ANGELS BROADCASTING)
NETWORK, INC.,)

Applicant,)

and)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)

Respondent.)

and)

THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT NO. 112,)
And THOMPSONVILLE SCHOOL)
DISTRICT NO. 62,)

Intervenors.)

MAY 07 2002

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

Docket Number: 01-28-1

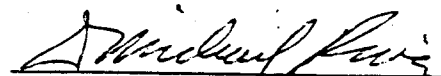
Case Number: 01-PT-0027

Docket Number: 01-28-7

Case Number: 02-PT-0007

MOTION FOR CONSOLIDATION

Applicant, **THREE ANGELS BROADCASTING NETWORK, INC.**, by D. MICHAEL RIVA, one of its attorneys, moves the Court to consolidate into one action for purposes of trial these two causes, in each of which the parties are the same. The applicant seeks to try both cases together, but with separate docket entries, verdicts and judgments, the consolidation being limited to a joint trial. In support of this motion, applicant submits the attached affidavit.



D. MICHAEL RIVA, Attorney for Three
Angels Broadcasting Network, Inc.,
Applicant

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ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING)
NETWORK, INC.,)

Applicant,)

and)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)

Respondent.)

and)

THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT NO. 112,)
And THOMPSONVILLE SCHOOL)
DISTRICT NO. 62,)

Intervenors.)

Docket Number: 01-28-1

Case Number: 01-PT-0027

Docket Number: 01-28-7

Case Number: 02-PT-0007

AFFIDAVIT

STATE OF ILLINOIS)
) SS.
COUNTY OF FRANKLIN)

D. MICHAEL RIVA, duly sworn and on oath, states as follows:

1. He is one of the attorneys for the applicant in each of these actions.
2. In both of these actions, while the year of exemption sought is different in each case, there are many similar, indeed identical, issues regarding the organization and operations of the applicant.

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3. Each of the above actions is now pending in this court and has not yet been reached for trial.

4. The issues in both actions arise out of and are based on the same or very similar facts.

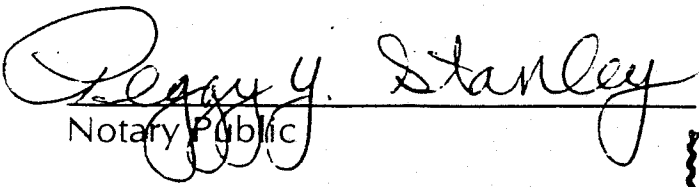
5. Considerable time and expense will be saved by the consolidation of these actions, so the court can rule on the two tax years in one proceeding.

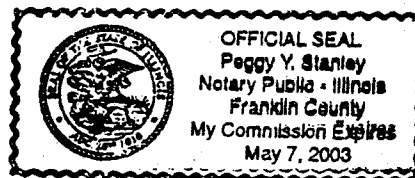
6. The consolidation of these actions will not be prejudicial to any substantial right of the parties. No party has objection to this request for consolidation.

Dated: May 7, 2002


D. MICHAEL RIVA

SUBSCRIBED and SWORN to
before me this 7th day of
May, 2002.


Notary Public



wp\3ABN\affidmr

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

OFFICE OF THE
ADMINISTRATIVE CLERK
ENTERED

MAY 10 2002

ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

3 ANGELS BROADCASTING NETWORK)	Docket #	00-28-01
)	A.H. Docket #	01-PT-0027
v.)	P. I. #	174-116-11
)		
THE DEPARTMENT OF REVENUE)	Docket #	01-28-07
OF THE STATE OF ILLINOIS and)	A.H. Docket #	02-PT-0007
THOMPSONVILLE COMMUNITY HIGH)	P.I. #	174-116-11
SCHOOL DISTRICT NO. 112 and)		
THOMPSONVILLE SCHOOL DISTRICT)		
NO. 62)		

ORDER

TO: Please see attachment.

This cause coming on to be heard as a set matter for automatic status, all parties represented by counsel, the Department of Revenue having jurisdiction of the parties and subject matter herein, and the administrative law judges being fully advised in the premises:

The Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, by and through its attorney, filed a petition to intervene in this matter, due notice having been given, all arguments having been properly been considered, with an objection having been raised by the applicant, it being the finding of the administrative law judge that just cause has been shown in order to justify the intervention:

IT IS THEREFORE ORDERED:

The petition to intervene is granted.

In addition, applicant filed a motion to consolidate Docket No. 01-28-01; Case No. 01-PT-0027 with Docket No. 01-28-7; Case No. 02-PT-0007 for the limited purpose of a joint trial with separate docket entries, verdicts and judgments to be kept. There was no opposition to the motion. Applicant stipulates it will produce documents for the 2001 assessment year pursuant to discovery requests for the 2000 assessment year. By agreement of all parties, those documents will be produced on or before June 7, 2002. Also by agreement of all parties, there will be no

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continuance of the hearing scheduled for September 23, 2002 through September 25, 2002.

IT IS THEREFORE ORDERED:


The applicant's motion is granted and Docket No. 01-28-01; Case No. 01-PT-0027 and Docket No. 01-28-7; Case No. 02-PT-0007 are hereby consolidated for the limited purpose of a joint trial.

A subsequent status conference in both matters is set for June 3, 2002, at 10:00 a.m. The matter will be held as a telephone conference.

Date: May 10, 2002



Linda Olivero
Administrative Law Judge



Barbara Rowe
Administrative Law Judge

**FAILURE OF THE APPLICANT TO APPEAR PURSUANT TO THIS NOTICE WILL
RESULT IN AN IMMEDIATE FINAL DETERMINATION AGAINST YOU IN THIS
CASE.**

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

3 ANGELS BROADCASTING NETWORK)

v.)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)

Docket #

A.H. Docket #

P. I. #

00-28-01

01-PT-0027

174-116-11

ORDER

TO: Mr. Kent Steinkamp
Special Assistant Attorney General
Illinois Department of Revenue
101 West Jefferson
Springfield, Illinois 62702

Lee Boothby
Boothby & Yingst
4545 42nd Street, N.W., Suite 201
Washington, D.C. 20016

Merry Rhodes
Mark J. Dean
Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd.
230 Regency Centre
Collinsville, Illinois 62234

D. Michael Riva
Attorney at Law
226 East Main
West Frankfort, Illinois
62896

Nicholas P. Miller
Sidley, Austin, Brown, Wood, LLC
1501 K. Street, N.W.
Washington, D.C. 20006

William K. Richardson
State's Attorney
Franklin County Courthouse
Post Office Box 607
Benton, Illinois 62812

This cause coming on to be heard pursuant to notice with all parties represented by counsel, the Department of Revenue having jurisdiction of the parties and subject matter herein, and the administrative law judge being fully advised in the premises;

The applicant has stated it will submit Motions in Limine regarding the applicability of equal protection and the Religious Freedom Restoration Act to this matter.

IT IS HEREBY ORDERED:

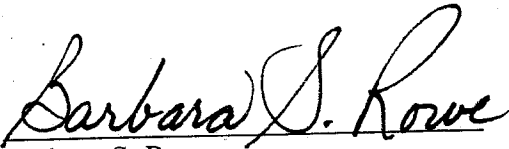
Such motions are to be filed on or before August 1, 2002.

Date: July 1, 2002

OFFICE OF THE
ADMINISTRATIVE CLERK
ENTERED

JUL 01 2002

IDOR
ADMINISTRATIVE HEARINGS


Barbara S. Rowe
Administrative Law Judge

001197

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING
NETWORK, INC.,

Applicant

and

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,

Respondent

and

THOMPSONVILLE COMMUNITY
HIGH SCHOOL DISTRICT
NO. 112, and
THOMPSONVILLE SCHOOL
DISTRICT NO. 62,

Intervenors

Docket No.: 01-28-1

Case No.: 01-PT-0027

APPLICANT'S MOTION IN LIMINE

Applicant Three Angels Broadcasting Network Incorporated ("Three Angels") respectfully requests that the Administrative Law Judge enter a protective order ruling that the following matters of evidence are inadmissible against it in this case:

- I. Evidence regarding expenses or income resulting from sales made by applicant of videos, CDs, books, and TV satellite equipment must be excluded.**

Three Angels contends that evidence may not be presented nor inquiry made as to the expenses or income resulting from sales of videos, CDs, books, cassettes, and TV satellite equipment as well as airtime. Instead, the state and intervenors should be restricted to presenting only evidence as to whether the income from such sales furthers the religious purpose to which Three Angels primarily devotes the land. The relevant inquiry in these

proceedings is whether the use of the subject property directly accomplishes the applicant's declared religious purpose.

The Illinois statute providing tax exemption for organizations with religious purposes, that being 35 ILCS 200-15-40, provides that property used exclusively for religious purposes are qualified for an exemption as long as they are not used with a view to a "profit." Illinois courts have interpreted this prohibition of a "profit" to mean that no private individual or group of persons should receive a personal inurement or benefit from the excess funds of the organization. The courts have explicitly rejected the notion that a prohibited profit is where an organization receives a revenue stream greater than its expenses. The Illinois "sup reme court has noted that the *determining feature* of a 'profit' with respect to a charitable institution is whether there is *inurement of benefit* to a private individual." *Du Page County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations*, 274 Ill.App.3d 461, 470, 210 Ill.Dec. 941, 947 (App. Ill. 2nd Dist. 1995) (emphasis added), *citing*, *People ex rel. County Collector v. Hopedale Medical Foundation*, 46 Ill.2d 450, 452-53, 264 N.E.2d 4 (1970).

The *Du Page County* court noted that the state erroneously believed that if not-for-profit organizations accumulate funds beyond their obligations, that "a fund balance ceases to be a fund balance and becomes a 'profit.'" *Id.* at 470, 948. The court pointed out the foolishness of insisting that "not-for-profit" organizations must literally be "non-profit," having minimal or non-existent fund balances. "Conditioning tax exemptions on high-risk money management," the court asserted, fails to serve the interests of charitable organizations and their beneficiaries." *Id.* at 470-471, 948.

Illinois courts have applied these principles in allowing religious entities to sell items related to their religious objectives at or above cost, or at a "profit." In *Inter-Varsity Christian Fellowship of the United States v. Hoffman*, 62 Ill. App. 3d 798, 379 N.E. 2d 813, the court dealt with the state's contention that "inasmuch as profits are made from the sale of the literature, this is a non-exempt operation of a charitable or religious organization." 379

N.E. 2d at 816. But citing *Congregational Sunday School and Publishing Soc'y v. Board of Review*, 290 Ill. 108, 125 N.E. 7 (1919), the court stated "it was not the use to be made of the profits, but the nature of the business done that should be considered in deciding questions of liability of a charitable institution's property to taxation." *Inter-Varsity*, 379 N.E. 2d at 816.

In *Congregation Sunday School & Publishing Soc'y v. Board of Review*, 290 Ill. 108, 125 N.E.7 (1919), the court determined that an organization's branch office or store selling Sunday school materials was exempt where the purpose was to establish and aid Sunday schools, supply Sunday school libraries, and otherwise promote Sunday school education.

Here the nature of the applicant's activities are religious. The court noted that "[t]he purposes of the appellant [Sunday School publishing house] are directly carried out by the distribution of its books and supplies, and the receipt of the money from sales is incidental and secondary." *Id.* The court then announced that:

It is not the profits from the sale of the books that accomplish the purposes of appellant, but it is the distribution of the books, periodicals and lesson helps -- and therefore the use of the property sought to be taxed -- that directly accomplishes appellant's religious, charitable, and beneficial purposes.

Id.

In *Congregational Sunday School*, 135 N.E. at 13, the court quoted with approval from an earlier Illinois tax case, *Grand Lodge v. Board of Review*, 281 Ill. 480, 117 N.E. 1016 (1917), in which the court held that a large farm owned by a Masonic Home to raise produce for the care and support of dependent Masons, their widows and orphans, was exempt from taxation when the profits from the farm were used as a part of the charity fund to maintain the Masonic home. The court in *Congregational Sunday School* quoting from *Grand Lodge* stated:

The primary use to which the property is put is to be considered in determining whether it falls within the terms of the exemption. . . . The primary purpose and use of the lands in question being the maintenance of the house and the whole net income being devoted to that use, they come within the statutory definition of lands actually and exclusively used for charitable or beneficent purposes and not leased or otherwise used with a view to profit.

Any other interpretation of Illinois ad valorem property tax law would run afoul of the Religion Clauses of the First Amendment to the United States Constitution. The state and intervenors' position is similar to that of the government in *Murdock v. Pennsylvania*, 319 U.S. 105 (1943), dealing with a solicitation law providing for a licensing tax. The law had been applied to itinerant religious booksellers. The Court in *Murdock* flatly declared:

But the mere fact that the religious literature is "sold" by itinerant preachers rather than "donated" does not transform evangelism into a commercial enterprise.

Id. at 11.

In *Murdock* the Supreme Court rejected the idea, similar to that advanced by the state and intervenors here, that First Amendment protection of religious activities include only church services, religious services and prayers. The Court concluded that the spreading of religious beliefs was equally protected, stating:

The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protection afforded commercial handbills. It should be remembered that the pamphlets of Thomas Paine were not distributed free of charge. It is plain that a religious organization needs funds to remain a going concern. But an itinerant evangelist however misguided or intolerant he may be, does not become a mere book agent by selling the Bible or religious tracts to help defray his expenses or to sustain him. Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way.

Id. at 111.

In *Murdock* the Court specifically addressed proselytization through the sale of religious literature, observing:

This form of evangelism is utilized today on a large scale by various religious sects whose colporteurs carry the Gospel to thousands upon thousands of homes and seek through personal visitations to win adherents to their faith; it is more than preaching; it is more than distribution of religious literature. It is a

combination of both. Its purpose is as evangelical as the revival meeting. *This form of religious activity occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits.* It has the same claim to protection as the more orthodox and conventional exercises of religion. It also has the same claim as the others to the guarantees of freedom of speech and freedom of the press.

Id. at 108-09 (emphasis supplied).

Applicant's production and distribution of programming with the aim of carrying out its television ministry is the twenty-first Century's variant of evangelism which was the subject of *Murdock*. Likewise, Three Angels, when selling and distributing satellite dishes (which only pick-up Sky Angel broadcasts) to the public to view its religious programs and providing religious videos, gospel CDs and devotional books, does not forfeit its free exercise right to conduct its ministries. It would violate Religion Clause principles to hold that religious organizations which require funds to carry on and expand their ministries lose the tax exemption otherwise provided to other religious ministries not needing or seeking funds. Such an interpretation would violate neutrality principles, discussed more fully below.

II. Evidence should be excluded which seeks to draw distinctions between "sacred" and "secular" components of Three Angel's programming and operations, as the state's inquiry should be limited to testing whether the applicant's asserted religious beliefs and activities are sincere and genuine.

Three Angels believes and claims that its television programming relating to vegetarian cooking classes, healthful diets, smoking cessation and Christian stewardship are an integral part of its religious mission. As a supporter and promoter of the teachings of the Seventh-day Adventist church, Three Angels views the Biblical gospel message as including the teachings that the body is the temple of the Holy Spirit and Christians have a holy obligation as stewards to treat this temple with care. Further, all employees at Three Angel's, whether they work in the mail room, TV production center, or accounting office, are viewed as an integral part of the religious purposes and mission of the organization.

But apparently the state and the intervenors believe that they may challenge the validity of these assertions and may parse what is and what is not a religious belief or activity. The state appears to hold that health, fitness and financial stewardship programming is not "religious" in content. The intervenors, in particular, have sought to divide times of "worship" activity conducted on the subject property from other activities related to the running of applicant's broadcast and media activities—even going so far as to inquire into the square-footage divisions among the various departments of Three Angels.

These attempts to divide Three Angels' ministries into separate religious and non-religious categories flies in the face of state and federal civil liberties principles, as well as general legal principles related to tax-exempt organizations.

A. State and federal constitutional provisions require neutrality towards religious beliefs that precludes inquiry into the "religiosity" of a claimed religious programming, but limits state inquiries to the sincerity of asserted religious beliefs.

While civil courts and state agencies can assess the sincerity of claimed religious beliefs, they lack the constitutional competence to assess whether a claimed religious belief is truly religious. The First Amendment to the federal constitution, as made applicable to state governments by the Fourteenth Amendment, commands that state officials "shall make no law respecting the establishment of religion or prohibiting the free exercise thereof." Similarly, although with more precision and broader protection, the Illinois constitution says, in Article I, section 3:

The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed, and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship against

his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

Further, Illinois has adopted a statutory provision that gives religion a higher level of protection than that provided by the federal constitution. 775 ILCS 35/15 establishes the strict scrutiny test, as outlined in *Sherbert v. Verner*, 374 U.S. 398 (1963), for all free exercise of religion cases in Illinois. This statute provides that government may not substantially burden the free exercise of religion unless it demonstrates the existence of a compelling state interest and the burden imposed is the least restrictive means available to accomplish that purpose.

The above principles were concisely expressed in a case very similar to the present one by the highest court of New York, which ruled that the involvement of the Holy Spirit Association, a California non-for-profit religious organization, in political and economic activities did not deprive the movement of its religious exemption from real property because these political and economic activities were "... integral aspects of its religious program and program." *Holy Spirit Ass'n for Unification of World Christianity v. Tax Comm'n of New York*, 55 N.Y. 2d 512, 450 N.Y.S.2d 292, 435 N.E.2d 662 (1982); See *Holy Spirit Ass'n for Unification of World Christianity v. Tax Comm'n of New York*, 81 A.D.2d 64, 92-94, 438 N.Y.S. 521 (S.C. 1st Dept. 1981).

Not only did the *Holy Spirit Ass'n* court find that the integration of economic, social and religious beliefs "are of the essence of (petitioner's) religious doctrine and program," it made it clear how limited the state's inquiry into these matters could be. The court stated that:

When, as here, particular purposes and activities of a religious organization are claimed to be other than religious, the civil authorities may engage in but two inquiries: *Does the religious organization assert that the challenged purposes and activities are religious, and is that assertion bona fide?* Neither the courts nor the administrative agencies of the State or its

subdivisions may go behind the declared content of religious beliefs any more than they may examine their validity.

55 N.Y.2d at 521.

From its decision, it is apparent that the court viewed the phrase "bona fides" as referring to the sincerity of the beliefs rather than the accuracy or religiosity of the beliefs. "No serious question can be raised on the record before us that the Church has demonstrated the sincerity and the bona fides of its assertions that [the churches political beliefs and activities] are at the core of its religious beliefs." The court also noted that this principle was firmly established by the Supreme Court in *Watson v. Jones*, 13 Wall 679, 782, 20 L.Ed. 666, where it ruled that "the law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."

The Supreme Court in *Texas Monthly* agreed with *Holy Spirit*, observing that:

[There exists an] overriding interest in keeping the government -- whether it be the legislature or the courts -- out of the business of evaluating the relative merits of differing religious claims. The risk that governmental approval of some and disapproval of others will be perceived as favoring one religion over another is an important risk the Establishment Clause was designed to preclude.

109 S. Ct. at 902. See also *id.* at 906 (Blackmun, J., concurring).

Attempts to divide Three Angel's programming into "religious" and "secular" categories will inevitably result in a definition of religion oriented towards what the majority views as "religious." The Supreme Court recognized the pitfalls of this in *Walz v. Tax Commission*, 397 U.S. 664 (1970), where, in upholding the constitutionality of tax exemptions for religious organizations, it noted that the government should not be partial to any one religious group and that the Court would "survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders." *Id.* at 696.

If, on a case-by-case basis, a claim to tax exemption because of a religious purpose and religious activity may be picked apart by those challenging the exemption while popular religious groups obtain tax exemption for their selected activities, the danger to religious neutrality becomes obvious. Exemptions for churches guard against the dangers inherent in the

reality that "[g]overnments have not always been tolerant of religious activity, and hostility toward religion has taken many shapes and forms -- economic, political, and sometimes harshly oppressive." *Id.* at 673. Government "oppression [of religion] has taken many forms, one of which has been taxation of religion." *Committee for Public Education and Religious Liberty v. Nyquist*, 413 U.S. 756, 793 (1973).

The state and intervenors seek to introduce evidence which would result in the type of religious gerrymandering that violates the Establishment Clause of the First Amendment. Because other, perhaps dominant, religious denominations do not view health and fitness, or financial stewardship as relating to *their* doctrine, the suggestion by the state is, that this court should not accept the claim by Three Angels that these matters do relate to *its* doctrine. This would have the affect of enshrining the majority's view of what "religious" doctrine consists of at the expense of the views of the minority.

Such an approach would violate the neutrality towards religion that the government is meant to maintain under the teachings of *Walz* and *Texas Monthly*. As the *Holy Spirit Ass'n* court put it:

The error of the majority of the Tax Commission, of the Special Referee and the majority at the Appellate Division is that each asserted the right of civil authorities to examine the creed and theology of the Church and to factor out what in its or his considered judgment are the peripheral political and economic aspects, in contradistinction to what was acknowledged to be the essentially religious component.

55.N.Y. 2d at 527

For the state to inquire into what activities are religious contrary to the assertion of the religious organization is fraught with constitutional dangers of governmental entanglement with religion. Justice Harlan's concurrence in *Walz*, 397 U.S. at 698-99, noted that "the more discriminating and complicated the basis of classification for an exemption -- even a neutral one -- the greater the potential for state involvement in evaluating the character of the organizations." This Court, in the present case, should avoid this error of sitting in judgment

on what constitutes "secular" and "religious" programming, and limit the state and the intervenors to presenting evidence that relates to the sincerity of Three Angels' asserted religious beliefs as portrayed in its media programming.

B. Evidence should be excluded that attempts to divide Three Angel's operations into "religious" and "secular" components, as all activities at the disputed property are in furtherance of the religious mission of the organization.

Three Angel's asserts that all its activities on the property at issue relate directly to the religious purposes and activities of the organization. The intervenors appear to challenge this assertion, and have undertaken significant discovery on issues like the number of employees at Three Angel's that are "ministers" or that are employed in directly "spiritual" tasks, such as praying, preaching or baptizing. The intervenors have also made searching inquiries into the square footage of the buildings that are used for preaching or pastoral purposes as compared to the square footage that relates to administration, accounting, mailing and printing services, engineering, computer graphics and media services.

They seem to argue that directly "worship activities" are the only truly religious activities taking place and because this activity is only a part of what occurs on the subject property, the tax exemption must be denied. But such a narrow view would place Illinois tax exemption for churches and religious organizations in constitutional jeopardy and cannot be sustained. This is because churches themselves contain facilities and carry out operations which can be labeled as secular. Many churches have, depending on their sizes, some combination of janitor offices, gardener sheds, media booths, treasurer offices, plant maintenance rooms and the like. Just because cleaning, gardening, running sound systems, auditing books, and painting are "secular" endeavors, does not mean that these activities contribute to the religious purpose of the organization any less than the prayer, praise and worship that takes place on the weekends.

As Justice Brennan observed in *Walz*, "[a]ppellant assumes, apparently, that church-owned property is used for exclusively religious purposes if it does not house a hospital, orphanage, weekday school or the like." 379 U.S. at 692 (Brennan, J. concurring). He could just as correctly added, "or conduct vegetarian cooking and stop smoking programs" or "sell videos and satellite dishes to view religious programming." Justice Brennan then perceptively stated:

Any assumption that a church building itself is used for exclusively religious activities, however, rests on a simplistic view of ordinary church operations. . . . Even during formal worship services, churches frequently collect the funds used to finance their secular operations and make decisions regarding their nature.

Id. at 688-89.

But the carrying out of these "secular operations" does not jeopardize the tax-exempt nature of the organization, as they are done in furtherance of the religious purpose. Similarly, the "secular" components of Three Angel's operations at the subject property should not call into question its property tax exemption. If this were to occur, all religious schools in Illinois would have no basis for a property tax exemption, as much of their curriculum is not directly "religio us," as in Bible or doctrinal classes, but includes topics such as math, science, spelling and physical education.

But as the highest court in New York noted:

The fact that part of the curriculum includes secular subjects does not mean that the [school] facilities are being partly devoted to non-religious purposes. . . . Here the teaching of secular subjects by a religious school is an integral part of the church's belief that knowledge of the world should be conveyed and considered in a religious context.

Rochester Christian Church, Inc. v. State of New York Public Service Comm'n, 55 N.Y.2d 196, 203, 448 N.Y.S.2d 149, 152, 433 N.E.2d 132 (1982). In *Rochester Christian* the court focused on the fact that there "the teaching of religious beliefs is the paramount objective and that it pervades all subjects whether secular or religious." *Id.*

Likewise, that Three Angel's employees persons to take phone call orders, maintain television equipment, repair buildings and vehicles, track finances and create web-sites does not detract from the fact that the organizations paramount objective is to promote the religious teachings and beliefs of the Seventh-day Adventist church. Intervenors should be prevented from introducing evidence to slice and dice Three Angel's property and programs into "secular" and "religious" categories.

While Three Angel's property does need to be operated for "exclusively religious" purposes, that does not mean that every activity in furtherance of that purpose will be, when viewed in isolation, a so-called "religious" act. As one court has noted:

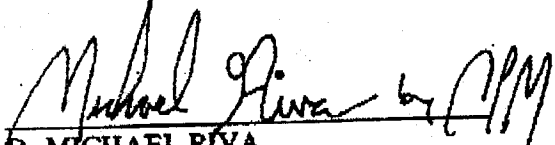
Religious services are, of course, "exclusively religious," but the term embraces more than that. Religious activities are not confined to a church or house of worship. Traditionally churches and religious organizations engage in a wide variety of activities which may be seen to be "exclusively religious" when they are reasonably incidental to the religious goal . . . [citations omitted]. Thus a farm operated by a religious organization to feed its members has been held to be exempt from taxes although farming is not necessarily a religious activity . . . [citations omitted].

Rochester Christian Church, Inc. v. State of New York Public Service Comm'n, 55 N.Y.2d at 202-03, 448 N.Y.S.2d at 151-52.

Thus, all operations supportive of Three Angels' broadcast, media and print ministries are "religious" activities under the meaning of the exemption statute. Any evidence attempting to isolate these activities as secular should be excluded.

WHEREFORE, applicant Three Angels Broadcasting Network, Inc. respectfully requests that a protective order be entered excluding from evidence and prohibiting inquiry into those matters set forth above.

Dated: August 1, 2002


D. MICHAEL RIVA
226 E. Main Street
West Frankfort, IL 62896
(618) 937-2404

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING)
NETWORK, INC.,)
)
Applicant,)
)
and)
)
THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)
)
Respondent.)
)
and)
)
THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT NO. 112,)
And THOMPSONVILLE SCHOOL)
DISTRICT NO. 62,)
)
Intervenors.)

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

AUG 02 2002

Docket Number: 00-28-1
IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS
Case Number: 01-PT-0027

Docket Number: 01-28-7

Case Number: 02-PT-0007

NOTICE OF HEARING

To: Barbara Rowe
Administrative Law Judge
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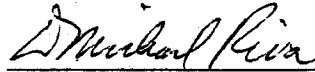
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Fax #(618) 534-2349

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001210

NOTICE is hereby given that a hearing on the Applicant's Motion in Limine filed August 1, 2002 is scheduled for hearing on August 7, 2002, at 3:00 p.m. before Administrative Law Judge Barbara Rowe. Said hearing to be conducted before Judge Rowe via telephone conference call set up by Applicant.

Dated: August 2, 2002.



D. MICHAEL RIVA,
One of the Attorneys for Three Angels
Broadcasting Network, Inc.

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001211

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

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ENTERED

AUG 07 2002

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ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

3 ANGELS BROADCASTING NETWORK)
)
v.)
)
)
)
THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)

Docket # 00-28-01
A.H. Docket # 01-PT-0027
P. I. # 174-116-11

ORDER

TO: Mr. Kent Steinkamp
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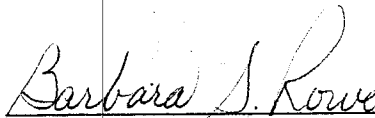
This cause coming on to be heard pursuant to notice with all parties represented by counsel, the Department of Revenue having jurisdiction of the parties and subject matter herein, and the administrative law judge being fully advised in the premises;

The applicant has submitted a Motion in Limine. The Intervenors and Department wish to respond.

IT IS HEREBY ORDERED:

Such response is to be filed on or before August 23, 2002. If oral arguments are necessary, the hearing officer is to be notified by August 28, 2002. All documents are to be faxed to the parties. Service on Mr. Boothby is sufficient for Mr. Miller.

Date: August 7, 2002


Barbara S. Rowe
Administrative Law Judge

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**Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS**

Willard Ice Building
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Springfield, Illinois 62702
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AUG 23 2002

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THREE ANGELS BROADCASTING
NETWORK, INC.,

Applicant

v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

and

THOMPSONVILLE COMMUNITY
HIGH SCHOOL DISTRICT NO. 112, and
THOMPSONVILLE SCHOOL
DISTRICT NO. 62,

Intervenors.

Docket # 01-PT-0027

**JOINT DEPARTMENT AND INTERVENOR
RESPONSE TO APPLICANT'S MOTION
IN LIMINE**

The Department of Revenue ("Department") and the Intervenors hereby submit their joint response to the Applicant, Three Angels Broadcasting Network, Inc.'s ("3ABN") Motion in Limine. Respondents assert that 3ABN's motions in limine should be denied in that they seek to prevent this tribunal from making a necessary inquiry into the criteria set out by statute for determining whether an application for a property tax exemption should be granted. Applicant argues in its motion to limit the scope of

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evidence, because a detailed examination of its activities is a threat to its rights under the free exercise of religion clause of the First Amendment to the United States Constitution. Respondents assert that no such threat exists.

The exemption for property tax for religious organizations is not a constitutional right but a privilege granted by statute. The Illinois Constitution contains a provision that allows the legislature to fashion the dimensions of property tax exemptions, including exemptions for religious purposes. The Illinois legislature has created a system whereby real estate may be exempt from taxation if it is both owned by a religious organization and is used "exclusively for religious purposes" (35 ILCS 200/15-40). In order to obtain the exemption, the religious organization must submit to an application process. An entity that believes it may qualify for the statutory exemption is required to file an application with county officials, who send a recommendation to the Department of Revenue, which makes the ultimate decision on the application (35 ILCS 200/16-70). The Department must determine whether the applicant conforms to the requirements of the statute. (*Application of County Collector of Du Page County*, 157 Ill. App. 3d 355 (2nd Dist. 1987)).

It is well established that the statute exempting property from taxation must be strictly construed in favor of taxation. (*Harrisburg-Raleigh Airport Authority v. Department of Revenue*, 126 Ill. 2d 326, 331 (1989)). Moreover, in determining whether property is included within the scope of a tax exemption, all facts are to be construed and all debatable questions resolved in favor of taxation. (*City of Chicago v. Department of Revenue*, 147 Ill. 2d 484, 491 (1992)). In addition, the taxpayer seeking the exemption

bears the burden of proving by clear and convincing evidence that the exemption applies. (*Evangelical Hospitals Corp. v. Department of Revenue*, 223 Ill. App. 3d 225, 231 (2nd Dist. 1991)).

Given this structure, applicant's attempt to exclude certain facts relative to its operation and to the activities conducted upon its property is misguided. Such an inquiry is not an infringement of its free exercise of religion, but an examination of the facts the applicant has put into question by filing an application for tax exemption. The inquiry merely seeks to determine whether the privilege of tax exemption should be granted. If an applicant is unable or unwilling to provide support for its position, including a detailed examination of the activity it claims to be religious, then its burden of proof cannot be met. The applicant has asked that this tribunal restrict itself to an examination of the "sincerity" of the organization and of the stated purpose of the activities it carries out on the property, rather than an examination of "actual facts" (*See Du Page County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations*, 274 Ill. App. 3d 461 (2nd Dist. 1995)). However, in the leading Illinois case regarding publishing of religious materials, for example, the court delved into every detail of the religious organization's history, revenue sources, product lines, costs and ultimate expenditures of certain operational profits. (*Inter-Varsity Christian Fellowship v. Hoffman*, 62 Ill. App. 3d 798 (2nd Dist. 1978)). It is axiomatic that tax law decisions are made on the basis of all the facts and circumstances surrounding the issue. "Whether an institution has been organized and is operating exclusively for a purpose exempt from real estate tax is to be

determined from its charter and bylaws and the actual facts relating to its method of operation.” (*Du Page County Board of Review*, 274 Ill. App. 3d at 466).

**1. EXPENSES AND INCOME FROM
PRODUCT SALES**

Applicant's first motion seeks to bar evidence or inquiry into "expenses or income resulting from sales made by applicant of videos, compact disks, books and TV satellite equipment," as well as airtime. This motion is aimed at excluding from this tribunal's purview any fact finding with regard to the profitability of 3ABN products, services, and sales activities. 3ABN argues that the Administrative Law Judge might engage in the "foolishness" of concluding that a not-for-profit corporation that has positive fund balances is making a profit. (Applicant's Motion in Limine, 2). It cites as authority *Du Page County Board of Review v. Joint Commission*, supra., and *Inter-Varsity Christian Fellowship*, supra. While both of these cases support the proposition that revenue is not necessarily profit, even if revenue results in a positive fund balance, neither supports the applicant's proposition that the administrative fact-finder must shield its glance from the profitability of particular parts of the operation. *Inter-Varsity* dealt with a publisher of religious books and pamphlets. Inquiry into the sales of its publications revealed an interesting finding:

No net profit, per se, is realized on the sale of the publications. Indeed, the cost of the literature appears to consistently exceed the revenue from its sale. Donations to the literature division account for whatever apparent 'profit' is generated by that division. In this regard, we note that donations constitute a considerable portion of the annual budget of Inter-Varsity. (*Inter-Varsity*, 62 Ill. App. at 800).

It is not illogical to assume that the only way for the court to have known this information was by having it in evidence. It also shows the misdirection of the applicant's argument. The *Inter-Varsity* court's discussion of the "profits" from the publishing operation focused on those revenues from sales plus donations *to that particular portion of the organization's operation*. It was the revenue from that total that was then used in missionary work overseas. There were no profits from the actual sales of books and pamphlets. Only by combining revenues from sales with outside donations did the division generate a profit.

At the core of its decision, the *Inter-Varsity* court enumerated the relevant factors that supported its conclusion favoring the exemption. Points First and Second recited the standard organizational requirements for a charity:

Third, Inter-Varsity supports over 100 Missionaries within the United States and serves the needs of a growing evangelical movement. Fourth, Inter-Varsity's publications are sold at cost or less, and any revenue in excess of expenditures is the sole result of donations. Fifth, Inter-Varsity provides a substantial amount of materials free or below cost to groups which are targeted for its message. (*Ibid.* at 803).

It is clear from this that *Inter-Varsity* does not support the idea that any level of profits can be made from commercial-type sales if they are devoted to a larger exempt purpose. The principle is much narrower. It seems to be that in a unified package of religious activities (where revenues from sales of publications, augmented by donations, is diverted to religious missionary work) sales of a commercial nature are transformed into religious activities. The *Inter-Varsity* court was not shy about examining this interplay of religious and commercial activities, and characterizing them as such.

Du Page County Board of Review v. Joint Commission, cited by 3ABN, also does not support its argument. First, this case did not deal with a religious organization.

Second, its revenues were not primarily from commercial-like sales activities. Indeed, “[t]he primary source of funds for the Joint Commission is from fees received for surveys, publications, and educational programs.” (*Du Page*, 274 Ill. App.3d at 471).

3ABN is correct that the Du Page County case holds that a positive fund balance does not necessarily transform a charitable organization into one that engages in activities “with a view to a profit.” However, it stands for nothing more than that. It does not stand for the proposition that there should be no inquiry into the profitability of certain activities that are seemingly of a commercial nature.

Applicant also cites *Congregation Sunday School & Publishing Society v. Board of Review*, 290 Ill. 108 (1919), for the proposition that if distribution of religious materials is the purpose of a religious entity and “the receipt of the money from sales is incidental and secondary” (*Ibid.*), then such sales further the organization’s exempt purpose. Again, like in *Inter-varsity*, the court was able to make these findings because it was able to examine the details of the organization’s sales activities. One of the reasons for examining the financial details of 3ABN sales is to determine whether revenue is incidental to such sales or whether it is a central purpose of the organization.

Applicant makes far-reaching constitutional claims in attempting to restrict the tribunal's inquiry into relevant evidence in this matter. It declares that any interpretation of the Illinois property tax law other than its own “would run afoul of the Religion Clauses of the First Amendment to the United States Constitution.” (Applicant Motion, 4). It alleges that the Department’s and Intervenors’ position is like the government’s position in *Murdock v. Pennsylvania*, 319 U.S. 105 (1943). We agree that *Murdock* holds that a license tax that pointedly interferes with a particular religious practice (the practice

of itinerant preaching and dissemination of literature), and where distribution of the religious literature was in the form of sales, the tax is a statute that interferes with the free exercise of religion. Unfortunately, *Murdock* is inapplicable to this case because that case dealt only with the very narrowly aimed tax (not just any tax) that amounted to an interference with the particular activity that the taxation targeted.

In fact, Justice Douglas' opinion in *Murdock* drew a clear distinction between the tax it found objectionable (which imposed a burden on the distribution of religious literature which hampered the free exercise of religious), and property taxes:

We have here something quite different, for example, from a tax on the income of one who engages in religious activities or *a tax on property used or employed in connection with those activities*. It is one thing to impose a tax on the income or property of a preacher. It is quite another thing to exact a tax from him for the privilege of delivering a sermon. The tax imposed by the City of Jeannette is a flat license tax, the payment of which is a condition of the exercise of these constitutional privileges. The power to tax the exercise of a privilege is the power to control or suppress its enjoyment. (Citation). Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance. Those who can tax the privilege of engaging in this form of missionary evangelism can close its doors to all those who do not have a full purse. Spreading religious beliefs in this ancient and honorable manner would thus be denied the needy. Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the Reformation. (*Murdock*, 319 U.S. at 112) (emphasis added)).

Applicant's constitutional warning is without merit. *Murdock* explicitly contradicts applicant's misplaced reliance upon it to carve out a constitutional issue that is nonexistent in the matter before this administrative tribunal. The only way *Murdock* could apply to the current case is if it were reviewing a tax on television transmissions rather than a tax upon the property owned and used by the applicant.

An examination of the applicant's sales is necessary to decide whether the real estate is used for an exempt religious purposes or for non-exempt commercial purposes. This inquiry raises no constitutional issue with respect to the free exercise of religion. Failure to make this inquiry would effectively create a carte blanche religious exemption for unbridled commercial enterprises, subject only to the test of whether they were carried out in support of the religious organization's sincerely declared purposes. Such a result was clearly not intended by the legislature.

2. EXCLUSION OF EVIDENCE
AIMED AT DISTINGUISHING
BETWEEN RELIGIOUS AND SECULAR
PROGRAMMING

3ABN has moved to exclude any inquiry into its programming and operations and seeks to limit the Department's inquiry to testing whether the asserted religious beliefs are sincere and genuine. It declares that programs dealing with certain health and stewardship subjects are part of its mission and that examining the content of the programming is an attempt by this tribunal to "challenge the validity of these assertions." (Applicant Motion, 6)

Respondents agree with the applicant's argument that the State should not and cannot judge the "validity" of any of its assertions of mission. Given the dual requirements of ownership and use of the statutory exemption for property tax, however, this tribunal must allow submission of evidence of subject matter and content to determine whether the primary use of the property is religious.

Sincerity cannot be the only measure of religious use, as the applicant seems to assert. *Murdock v. Pennsylvania* makes this clear:

The integrity of this conduct or behavior as a religious practice has not been challenged. Nor do we have presented any question as to the sincerity of petitioners in their religious beliefs and practices, however misguided they may be thought to be. Moreover, we do not intimate or suggest in respecting their sincerity that *any conduct can be made a religious rite and by the zeal of the practitioners swept into the First Amendment.*" (Murdock, 319 U.S. at 109) (emphasis added)).

Nor can any programming be made a religious rite and be swept by the zeal of its producers into the religious use criteria of the property tax exemption provisions.

Illinois has not yet determined whether a modern, state of the art, television network facility used for the production and transmission of specialty programming constitutes a religious use for property tax exemption purposes. Applicant claims that the property's use is religious. However, this case raises a question that can only be answered by allowing a fair inquiry into the behavior and activity that it considers to be religious. Such an inquiry does not challenge the validity of 3ABN's sincerely held religious beliefs, but is simply an effort to assure that the primary use of the real estate is, in fact, an exercise of religion.

The applicant has relied heavily on the New York property tax exemption decision, *Holy Spirit Association for Unification of World Christianity v. Tax Commission of New York*, 55 N.Y. 2d 512 (1982), for support of its motion. Ignoring the fact that a New York decision is not authoritative in the State of Illinois, it must be pointed out that the New York Court of Appeals in that case was not analyzing whether the use of the property was religious. The opening statement clearly identifies the issue as an examination of whether the organization was a religious organization:

In determining whether a particular ecclesiastical body *has been organized and is conducted exclusively for religious purposes*, the courts may not inquire into or classify the content of the doctrine, dogmas, and teachings held by that body to be integral to its religion but must accept that body's

characterization of its own beliefs and activities and those of its adherents, so long as that characterization is made in good faith and is not sham. (*Holy Spirit*, 55 N.Y.2d at 518) (emphasis added)).

The respondents herein have not sought to question the religious nature of the Seventh Day Adventist Church. We concede that it is a religious organization, so principles taken from that case are not relevant to this proceeding. The question is whether a corporation, formed for the exclusive purpose of owning and operating a facility that creates and transmits television programming twenty-four hours a day, seven days a week, 52 weeks a year should receive a property tax exemption.

3ABN would have this tribunal hold that there cannot be any inquiry into, or investigation of, an organization's activities if it is stated with sincerity that it is a religious organization and that its activities are religious. The Second Circuit has recently refuted this proposition with eloquence and tact:

This argument overstates the scope of the protections afforded by the Religion Clauses. The term "religion" was defined by the Supreme Court nearly 100 years ago in *Davis v. Beason*, 133 U.S. 333, 342, (1890) as having reference to a person's views of his relations to his Creator. This definition seems unduly narrow today. . . . To foreclose a court from analyzing a church's activities as needed to determine whether those activities violated a statute, on the ground that the First Amendment forbids such inquiry, would mean that there are no restraints or limitations on church activities. See *Christian Echoes National Ministry, Inc. v. United States*, 470 F.2d 849, 856 (10th Cir.), cert. denied, 414 U.S. 864, 94 S.Ct. 41, 38 L.Ed.2d 84 (1973). The "free exercise" of religion is not so unfettered. The First Amendment does not insulate a church or its members from judicial inquiry when a charge is made that their activities violate a penal statute. Consequently, in this criminal proceeding the jury was not bound to accept the Unification Church's definition of what constitutes a religious use or purpose. (*U.S. v. Sun Myung Moon*, 718 F.2d 1210 (2nd Cir. 1983)).

The same argument (that there are no limitations upon the First Amendment rights of a religious organization with regard to tax exemption) was also refuted in the context

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of a religious organization's political activities which violated a statutory provision barring such activity by an organization exempt from Federal Income Tax:

Such conclusion is tantamount to the proposition that the First Amendment right of free exercise of religion, *ipso facto*, assures no restraints, no limitations and, in effect, protects those exercising the right to do so unfettered. We hold that the limitations imposed by Congress in Section 501(c)(3) are constitutionally valid. The free exercise clause of the First Amendment is restrained only to the extent of denying tax exempt status and then only in keeping with an overwhelming and compelling Governmental interest: That of guarantying that the wall separating church and state remain high and firm. (*Christian Echoes Nat. Ministry, Inc. v. U. S.*, 470 F.2d 849, 857 (10th Cir. 1972)).

The applicant also cites *Walz v. Tax Commissioner*. That decision also recognized the dual examination if any application for property tax exemption as an examination of ownership, and use or activity:

The legislative purpose of a property tax exemption is neither the advancement nor the inhibition of religion; it is neither sponsorship nor hostility. . . . Qualification for tax exemption is not perpetual or immutable; some tax-exempt groups lose that status *when their activities take them outside the classification* and new entities can come into being and qualify for exemption. (*Walz v. Tax Commission*, 397 U.S. 664, 672-673, 90 S. Ct. 1409, 25 L.Ed.2d 697 (1970) (emphasis added)).

Again, neither the Illinois statute nor any principle of First Amendment jurisprudence supports the applicant's contention that this administrative tribunal cannot inquire into the substance of the activity that is carried out on the parcel of real estate for which an exemption has been applied. If a question as to the validity or invalidity of any of the teachings of the Seventh Day Adventist Church are ever, openly, by inference or by implication, brought into question in the presentation of the evidence or the characterization of that evidence, the Administrative Law Judge may and is urged to halt such a line of argumentation at its inception. However, the tribunal must be allowed to hear evidence as to the subject matter of the programming to be able to determine

whether the allegedly religious activities bears out its stated purpose as a religious organization.

3. EXCLUSION OF EVIDENCE OF NON-RELIGIOUS OR SECULAR ACTIVITIES

The applicant asserts that its secular activities may not be examined or presented into evidence to show that such activities are not religious. It is true that all property, even those with an exemption from taxation must, at one time or another, carry out certain activities that are non-religious. When those activities are incidental to the primary religious use of the property, they do not transform an otherwise exempt property into a nonexempt property. However, unless such activities are analyzed and examined, neither the fact-finder at the administrative level nor a reviewing court on appeal would be able to determine whether the applicant's secular activities are primary or incidental uses to which the real estate is devoted.

4. CONCLUSION

The respondents oppose the motion in its entirety and in every particular and move this tribunal to deny it in full.

Respectfully submitted,

**ILLINOIS DEPARTMENT OF
REVENUE**

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ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

AUG 29 2002

THREE ANGELS BROADCASTING
NETWORK, INC.,

Applicant,

and

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,

Respondent.

and

THOMPSONVILLE COMMUNITY
HIGH SCHOOL DISTRICT
NO. 112, and
THOMPSONVILLE SCHOOL
DISTRICT NO. 62,

Intervenors.

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

A.H. Docket No.: 01-PT-0027

APPLICANT'S REQUEST FOR ORAL ARGUMENT

On August 7, 2002, the Honorable Barbara S. Rowe, Administrative Law Judge, entered an Order in the above-captioned case concerning Applicant's (pending) Motion in Limine requiring the intervenors and Department to file any response to the Motion in Limine on or before August 23, 2002. A Joint Response was filed.

The Order further provided that if oral argument were necessary, the hearing officer was to be notified by August 28, 2002. In accordance with that Order, applicant does hereby give notice that oral argument is deemed necessary, and therefore applicant requests that oral argument be scheduled.

Further, a Motion is being simultaneously lodged with the Office of the Administrative Clerk of the State of Illinois Department of Revenue, Office of Administrative Hearings requesting leave be granted permitting a Reply to be filed instanter to Department's and Intervenors' Joint Response to Applicant's Motion in Limine. A copy of the Reply accompanies the Motion.

Dated: August 28, 2002

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Applicant's Request for Oral Argument was served this date by facsimile upon:

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING
NETWORK, INC.,

Applicant,

and

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,

Respondent.

and

THOMPSONVILLE COMMUNITY
HIGH SCHOOL DISTRICT
NO. 112, and
THOMPSONVILLE SCHOOL
DISTRICT NO. 62,

Intervenors.

A.H. Docket No.: 01-PT-0027

**APPLICANT'S MOTION FOR LEAVE TO FILE APPLICANT'S
REPLY TO DEPARTMENT'S AND INTERVENORS'
JOINT RESPONSE TO APPLICANT'S MOTION
IN LIMINE**

COMES NOW applicant 3 Angels Broadcasting Network requesting that leave be granted instanter permitting the filing of the accompanying Applicant's Reply to Department's and Intervenors' Joint Response to Applicant's Motion in Limine and in support thereof states:

1. On August 7, 2002, the Administrative Law Judge entered an Order concerning the applicant's pending Motion in Limine providing that the intervenors and


Department file any response to said Motion on or before August 23, 2002. A Joint Response was filed by the intervenors and the Department taking issue with the legal arguments made by applicant in support of its Motion and citing numerous federal and state court decisions. Counsel for applicant believe that in order for there to be a meaningful oral argument, the only practical way of informing the Administrative Law Judge, as well as counsel for the Department and intervenors, is through a prior written response. Because applicant takes issue with most of the legal assertions made in the Joint Response, applicant feels a written reply is particularly germane.

2. Applicant believes the issues raised in the Motion in Limine, which present in part important constitutional concerns, can only be appropriately determined with all counsel being fully apprised of applicant's position prior to oral argument. For that reason, accompanying this Motion is the written Reply of applicant which should make more meaningful the oral presentation of all parties.

WHEREFORE, applicant respectfully requests that the accompanying Reply be filed immediately and considered prior to the oral argument on applicant's Motion in Limine.

Respectfully submitted,

Dated: August 28, 2002


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226 E. Main Street
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NICHOLAS P. MILLER

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

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A.H. Docket No.: 01-PT-0027

**APPLICANT'S REPLY TO DEPARTMENT'S AND
INTERVENORS' JOINT RESPONSE TO
APPLICANT'S MOTION IN LIMINE**

Applicant agrees with respondents that property tax exemption for religious organizations is not a constitutional right. But that is not to say once tax exemptions are provided for religious organizations, there are no constitutional limitations regarding the manner in which they are provided. For example, since "[e]very tax exemption constitutes a subsidy," *Texas Monthly, Inc. v. Bullock*, 489 U.S. 14 (1989), the exemption must not result in "religious gerrymanders." *Id.* at 17. The process of providing the exemption must prevent the courts and administrative agencies from

"evaluating the relative merits of differing religious claims." *Id.* at 20. A procedure or process of determining whether a tax exemption should be allowed cannot, under the Religion Clauses of the First Amendment, permit "inconsistent treatment and government embroilment in controversies over religious doctrine." *Id.*

The Department and intervenors correctly argue at page 2 of their Joint Response¹ that Illinois case law holds that the statute exempting property from taxation must be strictly construed in favor of taxation. But they fail to note that in Illinois case law a margin of appreciation is also given to charitable organizations.

As early as 1919 the Illinois Supreme Court in *Congregational Sunday School and Publishing Soc'y v. Board of Review*, 290 Ill. 108, 125 N.E. 7, 13 (1919), stated:

We recognize the rule adopted by this court that statutes for the exemption of property from taxation are to be strictly construed against the exemption and in favor of the state and taxation. . . . On the other hand, charities have always been favored in the law because they relieve the burdens of government, and if appellant fairly comes within the terms of the exemption clause of our Revenue Act we feel inclined to grant the exemption.

I. THE DEPARTMENT AND INTERVENORS HAVE FAILED TO SHOW THAT ILLINOIS CASE LAW MAKES RELEVANT THE AMOUNT OF ANY REVENUE FROM SALES IN DETERMINING TAX EXEMPTION.

Applicant cited *DuPage County Bd. of Review v. Joint Comm'n on Accreditation of Health Care Org.*, 274 Ill. App. 3d 461, 470, 210 Ill. Dec. 941, 947 (App. Ill. 2d Dist. 1995), for the proposition that Illinois courts have interpreted the legislative proviso contained in 35 ILCS 200-15-40 (which provides that property used exclusively for

¹The Joint Response is not paginated, but the pages cited here are to the actual pages of the Joint Response.

religious purposes is qualified for an exemption as long as it is not used with a "view to a profit") to mean that no private individual or group of persons should receive a personal inurement or benefit from the excess funds of the organization.

The Joint Response at 4 admits that *DuPage County* case, as well as *Inter-Varsity*, "support[s] the proposition that revenue is not necessarily profit, even if revenue results in a positive fund balance." Respondents, however, contend that neither case "supports the applicant's proposition that the administrative fact-finder must shield its glance from profitability of particular parts of the operation." But the Joint Response fails to respond to the point made by applicant that the "view to a profit" language in the statute, as interpreted by *DuPage County*, is *only* concerned with private inurement. If the "determining feature" of a "profit" for a "charitable organization is whether there is inurement of benefit to a private individual, the expenses or income resulting from the sales made by applicant of videos, CDs, books, and TV satellite equipment are totally irrelevant to the issues to be decided at this hearing.

The Department argues that in *Inter-Varsity* the court found there was no net profit realized from the sale of the publications and therefore opined that "[i]t is not illogical to assume that the only way for the court to have known this information was by having it in evidence." But there are at least two problems with this response to the holding in the *DuPage County* case. First, the latter case was decided in 1995 and *Inter-Varsity* in 1978. The second is that *Inter-Varsity* never discussed whether the net profit issue was of decisive importance to the court. It may simply be that the property owner in *Inter-Varsity* used this as part of its factual presentation in support of tax exemption. In deciding that case, the court distinguished the facts in *Inter-Varsity* from those in

Scripture Press Found. v. Annunzio, 414 Ill. 339, 352, 111 N.E. 2d at 562. The court specifically noted that in *Scripture Press* the controlling question was "whether the foundation was organized and operated exclusively for religious purposes or whether part of its net earnings would inure to the pecuniary benefit of an individual or shareholder." *Inter-Varsity*, 379 N.E. 2d at 816 (emphasis supplied).

Subsequent to *Inter-Varsity*, the *DuPage* case clearly held that the only relevance of profit, for tax exemption purposes in Illinois, is when the profit results in personal inurement.

The Joint Response argues that *DuPage* did not deal with a religious organization *per se*. This is true. But it would be surprising to find that that case only applies to a non-religious "charitable" organization. Indeed, such an application would create equal protection problems of its own as well as violating the Establishment Clause.

The Joint Response seeks to taint the argument by suggesting that *DuPage* was "not primarily from commercial-like sales activities." Instead, the Joint Response argues that "the primary source of funds for the Joint Commission is from fees received from surveys, publications, and educational programs." But what makes one any more of a "commercial-like activity" than the other?

In fact, the court in *DuPage* found that "fees are charged for each service supplied, and the record contains no evidence that provisions are ever made for waiver or reduction of the fees for any recipient under any circumstance." *Id.* at 247. It is clear under *DuPage* that even though the Joint Commission's surplus of income of \$203,075 in 1988, together with its accumulated surplus over the years in the fund balance did not, according to the court, result in a "profit" as it relates to a not-for-profit

corporation under Illinois Supreme Court case law. *Id.* at 246.

In *Lutheran Gen. Health Care Sys. v. Department of Revenue*, 172 Ill. Dec. 544, 231 Ill. App. 3d 652, 595 N.E.2d 1214, *appeal denied*, 176 Ill. Dec. 802, 146 Ill. 2d 631, 602 N.E. 2d 456, the meaning of the term "profit" in Illinois property tax exemption law becomes clear. It refers to "profit taking" by individuals for their financial benefit as distinguished from reasonable compensation payments to employees for services rendered. 495 N.E. 2d at 1222.

In distinguishing an earlier case, *People ex rel. County Collector v. Hopedale Medical Found.*, 46 Ill. 2d 450, 264 N.E. 2d 4 (1970), the court stated that in that case "[i]n denying a charitable exemption, the supreme court held that the foundation was operated for the professional and financial benefit of the director and his associates. *Id.* at 1222.

The Joint Response at page 6 asserts that "[o]ne of the reasons for examining the final details of 3 ABN sales is to determine whether revenue is incidental to such sales or whether it is a central purpose of the organization." But this inquiry is also not relevant because whether or not the "revenue is incidental" is not the issue. The relevant question is whether a non-exempt use is incidental to the exempt purpose. As the court stated in *People ex rel. Baldwin v. Jessamine Withers Home*, 312 Ill. 136, 143 N.E. 414, 415 (1924):

It is the primary use to which the property is put which determines the question whether it is exempt from taxation. If it is devoted primarily to the religious or charitable purposes which are exempt from taxation, an

incidental use for another purpose will not destroy the exemption. . . .²

Any "profit" realized in this case is not relevant here if the income is used in furtherance of the exempt purpose. In *People v. University of Illinois Foundation*, 388 Ill. 363, 371, 58 N.E. 2d 33, 39 (1944), the Illinois Supreme Court declared with regard to the "view to profit" language that:

Application of these tests to the case at bar discloses that the present use of the four properties, is for at least one exempt purpose, namely, public education. The mere fact that a part of the enterprise yields an income -- incidental profit -- is but of little importance where, as here, the gross income and the entire property are used directly and exclusively for public educational purposes.

The *University of Illinois* decision was cited in *Village of Oak Park v. Rosewell*, 115 Ill. App. 3d 497, 450 N.E. 2d 981, 983 (Ill. App. 1 Dist. 1983).

Recent Illinois decisions have not adopted the "commercial-like" analysis employed in the Joint Response. In *First Presbyterian Church of Dixon v. Zehnder*, 715 N.E. 2d 1209 (Ill. App. 2 Dist. 1999), that the property was used "three days a week to sell clothing or furniture to raise funds" seemed not to cause the court concern.

The Joint Response at page 7 suggests that the principles set forth in *Murdock v. Pennsylvania*, 319 U.S. 105 (1943), are not applicable to property taxes. Such a view was rejected by Justice Scalia and joined by the Chief Justice and Justice Kennedy when

²Illinois has further relaxed the primary use requirement in *MacMurray College v. Wright*, 38 Ill. 2d 272, 230 N.E. 2d 846 (1967), by explaining that an "[e]xemption will be sustained if it is established that the property is primarily used for purposes which are *reasonable necessary* for the accomplishment and fulfillment of the educational objectives, or efficient administration, of the particular institution." The *MacMurray* standard was subsequently applied to a claim to a religious use exemption in *Mount Calvary Baptist Church, Inc. v. Zehnder*, 706 N.E.2d 1008, 1016 (Ill. App. 1 Dist. 1998).

in their dissent they argued that the *Texas Monthly* decision (based largely on *Murdock*) was also applicable to property tax exemptions. *Texas Monthly* 489 U.S. at 31.

In attacking applicant's reference to *Murdock*, the Department and intervenors claim that 3 ABN's selling and distribution of satellite dishes so that homes may receive its religious programming and the sale of religious videos, gospel CDs, and devotional books is not reasonably necessary in the furtherance of its religious mission. But the court in *Congregational Sunday School and Publishing Soc'y v. Board of Review*, 125 N.E. 7, 11 (1919), early on established that the sale and distribution of literature, even at a profit, does not render a religious organization taxable. In that case the court recognized, as in *Murdock*, that a religious mission of "spreading the gospel" may be accomplished by both the "spoken and written word," and therefore the Congregation Sunday School and Publishing Society's religious mission was "directly promoted by the distribution of its religious and moral books and Sunday school supplies." *Id.* Thus, "[t]he purpose of the society is accomplished by the effect on the minds and lives of the children and adults who read and study its books and periodicals." *Id.*

That court underscored its position by concluding:

The purposes of appellant are directly carried out by the distribution of its books and supplies, and the receipt of the money from sales is incidental and secondary. It is not the profits from the sale of the books that accomplish the purposes of appellant, but it is the distribution of the books, periodicals, and lesson helps -- and therefore the use of the property sought to be taxed -- that directly accomplishes appellant's religious, charitable, and beneficent purposes.

Id. at 13. Thus, as the court stated, "[s]ales of publications made by this society, whether at a profit, at actual cost, or half cost" were not relevant. The sales there, as here, are not incidental to a non-exempt purpose but, rather, are incidental to the exempt

religious purpose.

For the above reasons, neither gain to the organization from sales made by 3 ABN or the amount of the gain under Illinois law is relevant, and no evidence should be received with regard to the amount of revenue from such sales.

II. THE JOINT RESPONSE MISCHARACTERIZES APPLICANT'S MOTION WHICH SEEKS TO EXCLUDE EVIDENCE WHICH ATTEMPTS TO DRAW DISTINCTIONS BETWEEN "SACRED" AND "SECULAR" COMPONENTS OF 3 ABN'S PROGRAMMING AND OPERATIONS.

The Joint Response misstates applicant's motion by stating at page 8 that "3 ABN has moved to exclude any inquiry into its programming and operations." This is not correct. What 3 ABN does ask is that evidence be excluded that seeks to draw distinctions between "sacred" and "secular" components of 3 ABN's programming and operations because the state's inquiry should be limited in that regard to testing whether the applicant's asserted religious beliefs and activities are sincere and genuine.

Respondents at page 9 of their Joint Response acknowledge "that the State should not and cannot judge the 'validity' of any of . . . [3 ABN's] assertion of mission." Apparently, however, the state and intervenors claim that the Department now and the courts later may judge whether applicant's programming with regard to vegetarian cooking, healthful diets, smoking cessation, and Christian stewardship falls within the state's view of the "religious" even though they concede that the state is prohibited from judging the "validity" of any of 3 ABN's assertions of its mission. But more accurately, the state, including its "[c]ourts should not undertake to dissect religious beliefs." *Thomas v. Review Bd.*, 450 U.S. 707, 715 (1981). The *Thomas* Court, with abundant clarity regarding a court's right to dissect claims that a matter is religiously significant,

declared:

Interfaith differences of that kind are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences in relation to the Religion Clauses. One can, of course, imagine an asserted claim so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause; but that is not the case here, and the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect. Particularly in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceive the commands of their common faith. Courts are not arbiters of scriptural interpretation.

Id. at 715-16. Likewise, there is no suggestion that the claims of 3 ABN are so bizarre as to be clearly non-religious in motivation.

Further, *Thomas* went an additional step beyond saying that courts are not arbiters of scriptural interpretation. The *Thomas* Court further declared that "[t]he determination of what is 'religious' belief or practice is more often than not a delicate task [T]he resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question." *Id.* at 714.

Holy Spirit Ass'n for Unification of World Christianity v. Tax Comm'n of New York, 55 N.Y. 2d 515, 450 N.Y.S. 2d 292, 435 N.E. 2d 662 (1982), is not just New York case law but is reflective federal constitutional law which Illinois courts are similarly bound by. Precisely because civil courts are not competent to decide what is a religion, particularly when asserted by a religious organization, the task as stated by *Holy Spirit Ass'n* is left with two pertinent inquiries: (1) Does the religious organization assert that the challenged purposes and activities are religious; and (2) Is that assertion bona fide or, in other words, sincere?

United States Supreme Court decisions subsequent to *Holy Spirit Ass'n* make clear

that its holding is exactly what the Religion Clauses demand. We have already noted that *Texas Monthly* agreed with the principles established in *Holy Spirit Ass'n*.

It is curious that respondents, in attempting to respond to *Holy Spirit*, only refer to a snippet contained in the 1943 *Murdock* decision and never even mention *Texas Monthly*. That decision quite clearly affirms that courts should stay out of the business of evaluating the relative merits of differing religious claims. But more recent Supreme Court decisions even more clearly explain why this is so.

The constitutional concern the Department should consider and the courts must respect is whether inquiry by the court constitutes excessive entanglement with a religious organization in violation of the Establishment Clause of the First Amendment. As the Court stated in *New York v. Cathedral Academy*, 434 U.S. 125, 133 (1977):

The prospect of church and state litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment, and it cannot be dismissed by saying it will happen only once.

Respondents argue at page 11 that no "principle of First Amendment jurisprudence supports the applicant's contention that this administrative tribunal cannot inquire into the substance of the activity that is carried out on the parcel of real estate for which an exemption has been applied." But what respondents want to do is parse the programming into what they, not the organization, have predetermined to be "secular" and "religious."

In *Corporation of Presiding Bishop v. Amos*, 483 U.S. 327, 336 (1987), the United States Supreme Court stated that "it is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities

a secular court will consider religious."

According to respondents at pages 11-12, "the tribunal must be allowed to hear evidence as to the subject matter of the programming to be able to determine whether the allegedly religious activities bears out its stated purpose as a religious organization. This is precisely what the Religion Clauses proscribe. It is particularly troublesome from a constitutional standpoint that there is no standard to be applied; rather the state seeks to accomplish this task by trolling through the 24-hour religious programming and earmarking what it deems to be "religious" and what it deems to be "secular." Such expeditions on a case-by-case basis was a concern of the *Amos* Court. As Justice Brennan noted in his concurring opinion, "what makes the application of a religious-secular distinction difficult is that the character of an activity is not self-evident. 483 U.S. at 343. He stated that "[a] case-by-case analysis for all activities . . . would both produce excessive government entanglement with religion and create the danger of chilling religious activity." *Id.* at 344.

Justice Brennan further observed that "[t]his substantial potential for chilling religious activity makes inappropriate a case-by-case determination of the character of a nonprofit organization. . . ."

Both Justices Brennan and O'Connor in separate concurring opinions noted that "[t]he fact that an operation is not organized as a profit-making commercial enterprise makes colorable a claim that it is not purely secular in orientation." *Id.* at 344 and 348.

As Justice Brennan noted:

In contrast to a for-profit corporation, a non-profit organization must utilize its earnings to finance the continued provision of goods or services it furnishes, and may not distribute any surplus to the owners. *See*

generally Hansmann, *The Role of Nonprofit Enterprise*, 89 Yale L. J. 835 (1980). This makes plausible a church's contention that an entity is not operated simply in order to generate revenue for the church, but that its activities themselves are infused with religious purpose. Furthermore, unlike for-profit corporations, nonprofits historically have been organized to provide certain community services, not simply to engage in commerce. Churches often regard the provision of such services as a means of fulfilling a religious duty and of providing an example of the way of life a church seeks to foster.

Id. at 344.

The District of Columbia Circuit Court of Appeals has found the Court's concern in *Amos* with regard to "intrusive inquiries" into religious beliefs to be compelling and has adopted a test to be applied with regard to NLRB jurisdiction over religious schools. This is to avoid a case-by-case "trolling through the beliefs" of an educational institution. *University of Great Falls v. NLRB*, 278 F.3d 1335, 1342 (D.C. Cir. 2002). Under the test, similar to *Holy Spirit* in its approach, the court found that in determining its jurisdiction over such institutions the NLRB may simply inquire as to whether the institution (a) holds itself out to the public as a religious institution; (b) is nonprofit; and (c) is religiously affiliated. At the hearing applicant will show it clearly meets this test, negating the need for the court to go trolling through applicant's religious beliefs and practices.

In spite of the constitutional reasons for prohibiting the introduction of evidence by respondents in this case seeking to draw a distinction between "sacred" and "secular" components of 3 ABN's programming and operations, the respondents use a curious argument. At page 9 of their response, they state:

Illinois has not yet determined whether a modern, state of the art, television network facility used for the production and transmission of specialty programming constitutes a religious use for property tax

purposes.

But this claim is not accurate, and it is beside the point in any event. The fact is that:

1. Illinois has already granted tax exemption to such a facility in an adjacent county -- Tri-State Christian TV -- and any attempt to treat 3 ABN differently now would clearly violate Religion Clauses neutrality principles; and

2. Illinois' trolling through 3 ABN's religious programming is not necessary to determine whether the carrying out of a religious mission through today's technology is equivalent to the distribution of published religious material which was the focus in 1919 of *Congregational Sunday School*. An answer to the question does not require intrusive inquiry and judicial judgment-making as to what portion, if any, of 3 ABN's programming is not religious.

Respondents attempt to avoid the line of cases prohibiting the state from deciding what is and what is not religious by citing *United States v. Sun Myung Moon*, 718 F.2d 1210 (2d Cir. 1983). But that case is not on point in any way. Of course, religious claims do not insulate a church or its leaders from the state "analyzing a church's activities . . . to determine whether those activities violate a [criminal] statute." But, in doing so, the court is not concerned with whether or not the activity is claimed to be religious. Rather, the inquiry is only whether the activity violated the law.


Applicant agrees that the free exercise of religion does not, *ipso facto*, assure that there will be no limitation or restraint as to what a religious organization may do. But that is clearly much different from saying that the IRS (here the Illinois Department of Revenue) can conclude that the content of a program run by a religious institution and asserting to be religious is not religious.

In *Hernandez v. C.I.R.*, 490 U.S. 680, 694 (1989), the issue there related to donations made to the Church of Scientology. The Court expressed concern about any process that would require the IRS and reviewing courts to differentiate 'religious' benefits from 'secular' ones. Justice O'Connor in her dissent in *Hernandez* cited *United States v. Alleghery County*, 322 U.S. 174, 176 (1944), underscoring this concern and warning against drawing a line between "taxable and immune" when "drawn by an unsteady hand." 490 U.S. at 711-12. This, she concluded, would occur when there is "the differential application of a standard based on constitutionally impermissible differences drawn by the Government among religions."

If 3 ABN is denied tax exemption because the Department sifted through 3 ABN's programming without any fixed standard of distinguishing sacred from secular, while Tri-State Christian TV in Williamson County enjoys the tax exemption blessing of the Department, the line between the exempt and taxable clearly would have been inartfully and unconstitutionally drawn by the unsteady hand of the Department of Revenue.

WHEREFORE, applicant Three Angels Broadcasting Network, Inc. respectfully requests that a protective order be entered excluding from evidence and prohibiting inquiry into those matters set forth in applicant's Motion in Limine.

Dated: August 28, 2002


D. MICHAEL RIVA
226 E. Main Street
West Frankfort, IL 62896
(618) 937-2404

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING
NETWORK, INC.,

Applicant,

and

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,

Respondent.

and

THOMPSONVILLE COMMUNITY
HIGH SCHOOL DISTRICT
NO. 112, and
THOMPSONVILLE SCHOOL
DISTRICT NO. 62,

Intervenors.

A.H. Docket No.: 01-PT-0027

APPLICANT'S NOTICE OF FILING

TO: See attached service list.

PLEASE TAKE NOTICE that on August 28, 2002, by facsimile at (217) 524-5341 I filed with the Office of the Administrative Clerk of the State of Illinois Department of Revenue, Office of Administrative Hearings the attached Applicant's Motion for Leave to File Applicant's Reply to Department's and Intervenors' Joint Response to Applicant's Motion in Limine (along with accompanying Reply).

Dated: August 28, 2002



LEE BOOTHBY
4545 42nd St., NW, Suite 201
Washington, DC 20016
(202) 363-1773

Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Filing of Applicant's Motion for Leave to File Applicant's Reply to Department's and Intervenors' Joint Response to Applicant's Motion in Limine was served this date by facsimile upon:

Merry C. Rhoades.
230 Regency Centre
Collinsville, IL 62234
Fax: 618 343 3546

Barbara Rowe
Administrative Law Judge
Illinois Dept. of Revenue
101 W. Jefferson, Level 5SW
Springfield, IL 62702
Fax: 217 524 5341

Kent Steinkamp
Special Assistant to the
Attorney General
101 W. Jefferson
Springfield, IL 62702
Fax: 217 524 0527

William K. Richardson
Franklin County State's Attorney
202 W. Main Street
Benton, IL 62812
Fax: 618 435 2349

Dated: August 28, 2002



LEE BOOTHBY

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

OFFICE OF THE
ADMINISTRATIVE CLERK
ENTERED

AUG 29 2002

IDCR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

3 ANGELS BROADCASTING NETWORK)	Docket #	00-28-01
v.)	A.H. Docket #	01-PT-0027
)	P. I. #	174-116-11
)		
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

ORDER

TO: Mr. Kent Steinkamp
Special Assistant Attorney General
Illinois Department of Revenue
101 West Jefferson
Springfield, Illinois 62702

D. Michael Riva
Attorney at Law
226 East Main
West Frankfort, Illinois
62896

Lee Boothby
Boothby & Yingst
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Nicholas P. Miller
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Merry Rhodes
Mark J. Dean
Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd.
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William K. Richardson
State's Attorney
Franklin County Courthouse
Post Office Box 607
Benton, Illinois 62812

Joanne H. Petty
Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd.
20 North Clark, Suite 900
Chicago, Illinois 60602

This cause coming on to be heard pursuant to notice with all parties represented by counsel, the Department of Revenue having jurisdiction of the parties and subject matter herein, and the administrative law judge being fully advised in the premises;

IT IS HEREBY FOUND:

1. On August 2, 2002, applicant filed its Motion in Limine with all parties in this matter.

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2. A telephone conference hearing was conducted on August 7, 2002, in which the Intervenor and Department expressed a desire to brief the Motion in Limine.
3. An Order was issued on August 7, 2002, setting a briefing schedule and stating that if oral arguments are necessary the hearing officer is to be notified by August 28, 2002.
4. In its motion applicant requests a protective order ruling that the following matters of evidence are inadmissible against it in this case:
 - (a) Evidence regarding expenses or income resulting from sales made by applicant of videos, CDs, books, and TV satellite equipment must be excluded.
 - (b) Evidence should be excluded which seeks to draw distinctions between "sacred" and "secular" components of Three Angels programming and operations, as the state's inquiry should be limited to testing whether the applicant's asserted religious beliefs and activities are sincere and genuine.
5. In support of §§(b) applicant asserts:
 - (i) State and federal constitutional provisions require neutrality towards religious beliefs that precludes inquiry into the "religiosity" of a claimed religious programming, but limits state inquires to the sincerity of asserted religious beliefs.
 - (ii) Evidence should be excluded that attempts to divide Three Angel's operations into "religious" and "secular" components, as all activities at the disputed property are in furtherance of the religious mission of the organization.
6. In well-written motions/briefs the parties outline and argue why the motion should or should not be granted.
7. Applicant has requested a property tax exemption for Franklin County Parcel Index No. 174-116-11.
8. In its protest, applicant asserts that the property is owned and used by a corporation organized for religious and/or charitable purposes and operated exclusively for religious purposes pursuant to 35 ILCS 200/15-40 for the spreading of the Gospel and/or owned and used for a charitable purpose under the provisions of 35 ILCS 200/15-65 for the same objective. (Applicant's protest p. 1)
9. First Presbyterian Church of Dixon v. Zehnder, 306 Ill.App.3d (2nd Dist. 1999) discusses the interplay between a religious organization and its charitable missions.
10. Applicant acknowledges in its protest that there are guidelines in Illinois that are used to

help identify what is a charitable organization. (Applicant's protest p. 2)

11. In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines are as follows:
 - (a) The benefits derived are for an indefinite number of persons;
 - (b) The organization has no capital, capital stock or shareholders, and does not profit from the enterprise;
 - (c) Funds are derived mainly from private and public charity, and are held in trust for the objectives and purposes expressed in its charter;
 - (d) Charity is dispensed to all who need and apply for it;
 - (e) No obstacles are placed in the way of those seeking the benefits; and
 - (f) The primary use of the property is for charitable purposes.
12. In order to ascertain if applicant is a charitable organization and conforms to the guidelines, an analysis of applicant's finances is necessary. In order to do that analysis, evidence regarding expenses or income resulting from sales made by applicant of videos, CDs, books, and TV satellite equipment must be included.
13. In order to qualify for a property tax exemption under the religious exemption, property must be used exclusively for religious purposes. 35 ILCS 200/15-40. The term "a religious purpose" as used in the constitution exempting from taxation property used for religious purposes, means use of property by religious society or body or persons as a place for public worship. People v. Deutsche Gemeinde, 249 Ill. 132 (1911)
14. If applicant is to qualify as a religious organization using the property for religious purposes, an analysis of the usage of the property must be done. Evidence should not be excluded which seeks to draw distinctions between "sacred" and "secular" components of Three Angels programming and operations.
15. There is no question that applicant's asserted religious beliefs and activities are sincere and genuine. However, that is not the standard to qualify for a property tax exemption.
16. After close of business hours on August 28, 2002, applicant faxed A Request for Oral Argument and Motion for Leave to File Applicant's Reply to Department's and Intervenor's Joint Response to Applicant's Motion in Limine.


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IT IS THEREFORE ORDERED:

Applicant's Motion in Limine to exclude evidence of its expenses or income from sales of videos, CDs, books, and TV satellite equipment as well as evidence drawing distinctions between "sacred" and "secular" components of Three Angels programming and operations is hereby denied.

As Applicant's Request for Oral Argument and Motion for Leave to File Applicant's Reply to Department's and Intervenor's Joint Response to Applicant's Motion in Limine was not timely filed, the filing of such Motion is hereby denied.

Enter: August 29, 2002


Barbara S. Rowe
Administrative Law Judge

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING
NETWORK, INC.,

Applicant,

and

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,

Respondent.

and

THOMPSONVILLE COMMUNITY
HIGH SCHOOL DISTRICT
NO. 112, and
THOMPSONVILLE SCHOOL
DISTRICT NO. 62,

Intervenors.

A.H. Docket No.: 01-PT-0027

**APPLICANT'S MOTION FOR ISSUANCE OF
A SUBPOENA DUCES TECUM**

NOW COMES Three Angels Broadcasting Network, Inc., and pursuant to Section 200.145 of the Rules of Practice and Procedure and Hearings Before the Illinois Department of Revenue, requests the issuance of a subpoena duces tecum directed to Garth W. Coonce, President, Tri-State Christian TV which is located in County of Williamson, City of Marion, State of Illinois, the address of which is Route 37 North, P.O. Box 1010, Marion, IL 62959, requiring him to appear at the scheduled hearing in this case and to bring with him the documents set forth in Attachment A hereto, and in support of this request states as follows:

1. Tri-State Christian TV, Inc. conducts a religious television operation which, on information and belief, is essentially the same in its operation and activities as that of applicant. On November 8, 1996, it filed a religious application for property tax exemption, a copy of which is attached as Exhibit 1. On January 30, 1997, the Board of Review considered the application and made no recommendation to the Illinois Department of Revenue but in an accompanying letter to the Illinois Department of Revenue dated February 5, 1996 (a copy of which is attached as Exhibit 2), advised the Department "it became apparent to the members of the Board of Review that this matter was too complex to easily categorize, and that it did not have the expert resources at hand to make a recommendation." After seeking the advice of the Williamson County State Attorney, the Board of Review requested that the Illinois Department of Revenue provide its expertise in resolving the matter as to Tri-State Christian TV.

2. On May 22, 1997, the Illinois Department of Revenue issued a memorandum regarding Tri-State Christian TV, Inc., a copy of which is attached as Exhibit 3, requesting that it provide to the Department 5 items so as to provide additional information to determine tax exemption eligibility. These items were: (a) an affidavit describing in detail the exact uses of the property, the frequency of those uses, the portions of the property put to those uses, and the date the uses commenced; (b) a plot plan or drawing showing boundaries of parcels, showing each building's location and showing the use of all areas of land; (c) a floor plan or drawing labeled as to actual use of all areas of the buildings; (d) a copy of the Real Estate Certificate of Exemption issued by the Department of proof of eligibility for exemption of the facility served by this ancillary property; and (e) information as to the use of the property from 11/4/96 to

12/1/96 and whether renovations had been started in 1996; and, if so, to provide a detailed list of things done in 1996. In response, Tri-State Christian TV provided certain documents, including its affidavit of use which simply stated:

This property is used as corporate offices and day to day operations of Tri-State Christian TV, Inc.. It will handle all corporate personnel and the operations of all stations in the tri-state network.

A copy of this document is attached as Exhibit 4. Further, a copy of the requested Real Estate Exemption Certificate is attached as Exhibit 5.

3. On July 3, 1997, the Illinois Department of Revenue issued a Real Estate Exemption Certificate to Tri-State Christian TV (WTCT TV 27) based upon the statement of facts and supporting documents submitted. A copy of this exemption certificate is attached as Exhibit 6.

4. The Department of Revenue and the intervenors in the instant case submitted a Joint Department and Intervenor response to applicant's motion in limine on August 23, 2002. On unnumbered page 9 of its Joint Response, the following appears:

Illinois has not yet determined whether a modern, state of the art, television network facility used for the production and transmission of specialty programming constitutes a religious use for property tax exemption purposes. Applicant claims that the property's use is religious. However, this case raises a question that only can be answered by allowing a fair inquiry into the behavior and activity that it considers to be religious.

5. On information and belief, the real estate upon which Tri-State Christian TV conducts its activities is tax exempt pursuant to a determination made by the Illinois Department of Revenue. Applicant contends it has the right to demonstrate that the Department has already made a determination that the activities similar to that of applicant in the instant case has already been determined by the Department of Revenue

to be a religious use contrary to the assertion of the Department and the intervenors.

6. On August 29, 2002, the Administrative Law Judge here issued an Order in response to applicant's Motion in Limine and in paragraph 14 of that Order stated:

If applicant is to qualify as a religious organization using the property for religious purposes, an analysis of the usage of the property must be done. Evidence should not be excluded which seeks to draw a distinction between "sacred" and "secular" components of Three Angels programming and operations.

Applicant contends that under the Religion Clauses of the First Amendment to the United States Constitution, as well as Article 1, section 3, of the Illinois Constitution, the Department may not discriminate between religious organizations in the granting of tax exemptions. The Department has indicated that it challenges certain aspects of applicant's programming being religious in character, and, more particularly, claims as secular such programming relating to vegetarian cooking, healthful diet, smoking cessation, and Christian stewardship. Applicant asserts that Tri-State Christian TV (WTCT TV 27) has similar programming to that of applicant. Attached Exhibit 7, for example, shows that on Saturday of each week in April of 2002 it aired a one-hour segment entitled "Health and Nutrition Seminar" between 12 p.m. and 1 p.m. On Mondays, Tuesdays, Wednesdays, Thursdays, and Fridays of that same month Tri-State Christian TV aired a 30-minute program entitled "Marriage & Family Today with Jimmy Evans" from 5:30 a.m. to 6:00 a.m. On Mondays and Wednesdays of each week it aired the program "Marriage & Family Today" from 6:00 p.m. to 6:30 p.m. On Saturdays from 5:30 a.m. to 6:00 a.m., it aired a program called "Vita Life." Within its programming there were periods of time devoted to music, including "Gospel Country," "Masters Music," "Pat Boone," "The Joy of Music/Bish." Further, on Wednesday there

was a program entitled "Art Linkletter," and on the same day a program entitled "Carol Lawrence." Other programming included "Christian World News," "Public Report." Other programming contained titles which make it difficult to identify the content of the programming.

7. Applicant contends that the Department under both Article I, section 3, of the Illinois Constitution and the First Amendment to the United States Constitution must observe strict neutrality in granting tax exemption for religious purposes to religious organizations. In *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 14 (1989), the Court held that "[e]very tax exemption constitutes a subsidy. . . ." The Court concluded in that case that in granting tax exemption a "Court must survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders." In other words, the tax exemption granting authority must observe religious neutrality.

8. The First Amendment requires neutrality in the granting or denying of tax exemption to churches. As the Court stated:

Justice Harlan indicated in his concurring opinion in *Walz v. Tax Commission*, 397 U.S. 664, 696 (1970) (Harlan, J., concurring), that while a government may be neutral,

neutrality in its application requires an equal protection mode of analysis. The Court must survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders.

The requirement of religious neutrality by courts and governmental agencies is a consistent Religion Clauses principle which cannot be ignored. In *Gillette v. United States*, 401 U.S. 437, 449-450 (1971), the Court stated:

An attack founded on disparate treatment of "religious" claims invokes what is perhaps the central purpose of the Establishment Clause -- the

purpose of ensuring governmental neutrality in matters of religion.

In *Larson v. Valente*, 456 U.S. 228, 244 (1982), the Court stated:

The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.

The Court further declared, *id.* at 245, with regard to the principle of religious neutrality that:

This constitutional prohibition of denominational preferences is inextricably connected with the continuing vitality of the Free Exercise Clause. . . . Madison's vision -- freedom for all religion being guaranteed by free competition between religions -- naturally assumed that every denomination would be equally at liberty to exercise and propagate its beliefs. But such equality would be impossible in an atmosphere of official denominational preference. Free exercise thus can only be guaranteed when legislators -- and voters -- [and the Internal Revenue Service] are required to accord to their own religions the very same treatment given to small, new, or unpopular denominations.

9. Justice Rehnquist, dissenting in *Wallace v. Jaffree*, 472 U.S. 38, 113 (1985), said:

The Framers intended the Establishment Clause to prohibit the designation of any church as a "national" one. The Clause was also designed to stop the Federal Government from asserting a preference for one religious denomination or sect over others.

10. This concept that the Establishment Clause requires neutrality between denominations has been frequently stated by the Court. *See also Roemer v. Maryland Public Works Board*, 426 U.S. 736, 745-46 (1976) ("the Court has enforced a scrupulous neutrality by the State, as among religions . . ."); *Everson v. Board of Educ.*, 330 U.S. 1, 18 (1947) (Government must "be neutral in its relations" with religions.); *Zorach v. Clauson*, 343 U.S. 306, 314 (1952) ("the government must be neutral when it comes to competition between sects . . ."); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) ("the

First Amendment mandates governmental neutrality between religion and religion.").

11. Obviously this obligation of neutrality under the First Amendment extends to tax exemption, even if it is regarded as a benefit or privilege. *United States v. Holmes*, 614 F.2d 985, 990 n.8 (5th Cir. 1980).

12. Discrimination in the extension of benefits on the basis of religious faith also violates "[t]he right of equal protection of the laws," e.g., *Wienotko v. Maryland*, 340 U.S. 268, 272 (1951) (discriminatory denial of permit to use park for religious group. "Though the law itself be fair on its face and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and unequal hand, so as practically to make unjust an illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.") e.g. *United States v. Caruthers*, 456 F.2d 1074, 1080 (4th Cir. 1972) (religious discrimination in extension of benefit of use of public buildings' concourse for services held to violate the equal protection component of Due Process Clause.)

13. By reason of the neutrality requirements of the Religion Clauses of the First Amendment to the United States Constitution, applicant has the right to present testimony as to other radio and television facilities located on property that has been granted tax exempt status and the opportunity to demonstrate that a denial of tax exemption to the applicant would deprive applicant of the same rights and privileges granted to other activities of the same character.

14. Applicant should also have the right to demonstrate that in granting tax exemption to Tri-State Christian TV, the Department did not subject that organization

to the same degree of inquiry as it is now subjecting applicant to. Applicant intends to demonstrate at the hearing in this matter that Tri-State Christian TV was not subjected to a review of its financial records nor a review of its programming, and to do so in this case, while not doing so in that case, further violates the neutrality principles of the First Amendment. As previously noted, the granting of a tax exemption to Tri-State Christian TV has provided that organization with a financial benefit by the state in its use of the airwaves as a public forum. The state must be absolutely neutral in ruling concerning the tax exemption application. Applicant believes there to be virtually little different in the programming between itself and Tri-State Christian TV. But, even if a distinction in the content of the programming were to be found, the state may not make content-based distinctions as to what one religious group may use or what message may be conveyed. *Widmar v. Vincent*, 454 U.S. 263, 269-70 (1981); *see also* 454 U.S. at 286-87 (White, J., dissenting).

15. In *Hernandez v. C.I.R.*, 490 U.S. 680, 694 (1989), the issue there related to donations made to the Church of Scientology. The Court expressed concern about any process that would require the IRS and reviewing courts to differentiate 'religious' benefits from 'secular' ones. Justice O'Connor in her dissent in *Hernandez* cited *United States v. Allegheny County*, 322 U.S. 174, 176 (1944), underscoring this concern and warning against drawing a line between "taxable and immune" when "drawn by an unsteady hand." 490 U.S. at 711-12. This, she concluded, would occur when there is "the differential application of a standard based on constitutionally impermissible differences drawn by the Government among religions." Applicant has the right to demonstrate that there is no fixed standard.

16. If 3 ABN is denied tax exemption because the Department sifted through 3 ABN's programming without any fixed standard of distinguishing sacred from secular, while Tri-State Christian TV in Williamson County enjoys the tax exemption blessing of the Department, the line between the exempt and taxable clearly would have been unartfully and unconstitutionally drawn by the unsteady hand of the Department of Revenue.

17. Article I, section 3, of Illinois Constitution provides:

The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed, and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

18. Religious worship in Illinois, however, has been broadly construed to include every variety of religious faith or philosophy of life or death. *In re Walker*, 200 Ill. 566, 66 N.E. 144 (1903). Further, Illinois has adopted a statutory provision that gives religion a higher level of protection than that granted by the federal Constitution. 775 ILCS 35/15 establishes the strict scrutiny test, as outlined in *Sherbert v. Verner*, 374 U.S. 398 (1963), for all free exercise of religion cases in Illinois. This statute provides that government may not substantially burden the free exercise of religion unless it demonstrates the existence of a compelling state interest and the burden imposed is the least restrictive means available to accomplish that purpose.

19. The name of Shane Chaney or another current officer of Tri-State

Christian TV was listed as number 18 in applicant's list of prospective witnesses previously filed in this matter. The stated subject matter of the testimony was:

This witness may be questioned about the programming and other activities of Tri-State Christian TV, whether its real property is tax exempt, documents and testimony provided before the Illinois Department of Revenue concerning its activities and the basis for its request for tax exemption and any determination as to its tax exempt status.

WHEREFORE, because the testimony of this witness is relevant and necessary to applicant's claim to tax exemption, applicant requests that a subpoena duces tecum be issued to Garth W. Counce, President, Tri-State Christian TV, Inc., directing him to appear at the hearing in this case and that the subpoena request that those documents be provided as set forth in Attachment A to this Motion.

Respectfully submitted,

Dated: August 30, 2002

D. Michael Riva by A.C.
D. MICHAEL RIVA
226 E. Main Street
West Frankfort, IL 62896
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Nicholas P. Miller by A.C.
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Washington, DC 20016
(202) 363-1773

Attorneys for Applicant

ATTACHMENT A

The witness shall produce any and all of the following documents with regard to Tri-State Christian TV, Inc.:

1. All applications for property tax exemption filed with the Illinois Department of Revenue for property it owns in the State of Illinois.
2. All documents including records, reports, tape-recordings, transcript of tape recordings, memoranda or notes of conversations and meetings, notes, diaries, photographs, drawings, questions, correspondence, computer print-outs, and any other tangible item on which information is recorded in writing, sound or through any other means relating to either information requested by the Illinois Department of Revenue as to property tax exemption regarding Tri-State Christian TV, Inc., or information provided by Tri-State Christian TV, Inc., to the Illinois Department of Revenue.
3. Copies of all news letters distributed to the public by Tri-State Christian TV, Inc., during the years 1999, 2000, and 2001.
4. Copies of Illinois form AG 990-IL (Illinois Charitable Organization Business Income Tax Return) for the years 1999, 2000, and 2001.
5. Copies of Illinois form IL-990-T (Illinois Exempt Organization Income and Replacement Tax Return) for 1999, 2000, and 2001.
6. Copies of all program guides or any other document (as the term "document" is defined in paragraph 2 above) showing the daily programming for the years 1999, 2000, and 2001.
7. Copies of all documents (as the term "document" is defined in paragraph

2 above) circulated to the public describing the programming content aired on its television network for the years 1999, 2000, and 2001.

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING
NETWORK, INC.,

Applicant,

and

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,

Respondent.

and

THOMPSONVILLE COMMUNITY
HIGH SCHOOL DISTRICT
NO. 112, and
THOMPSONVILLE SCHOOL
DISTRICT NO. 62,

Intervenors.


A.H. Docket No.: 01-PT-0027

APPLICANT'S NOTICE OF FILING

TO: See attached service list.

PLEASE TAKE NOTICE that on August 30, 2002, by facsimile at (217) 524-5341 I transmitted to the Office of the Administrative Clerk of the State of Illinois Department of Revenue, Office of Administrative Hearings the attached Applicant's Motion for Issuance of a Subpoena Duces Tecum.

Dated: August 30, 2002


LEE BOOTHBY
4545 42nd St., NW, Suite 201
Washington, DC 20016
(202) 363-1773

Attorney for Applicant

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

OFFICE OF THE
ADMINISTRATIVE CLERK
ENTERED

SEP 03 2002

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

3 ANGELS BROADCASTING NETWORK)

v.)

**THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)**

Docket #

00-28-01

A.H. Docket #

01-PT-0027

P. I. #

174-116-11

ORDER

TO: Mr. Kent Steinkamp
Special Assistant Attorney General
Illinois Department of Revenue
101 West Jefferson
Springfield, Illinois 62702

D. Michael Riva
Attorney at Law
226 East Main
West Frankfort, Illinois
62896

Lee Boothby
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State's Attorney
Franklin County Courthouse
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Joanne H. Petty
Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd.
20 North Clark, Suite 900
Chicago, Illinois 60602

This cause coming on to be heard pursuant to notice with all parties represented by counsel, the Department of Revenue having jurisdiction of the parties and subject matter herein, and the administrative law judge being fully advised in the premises;

IT IS HEREBY FOUND:

1. On September 3, 2002, applicant filed a Motion for Issuance of Subpoena Duces Tecum

001263

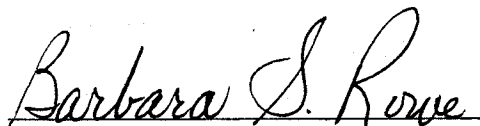
(hereinafter the "Motion") for the appearance of Garth W. Coonce, President, Tri-State Christian TV and all relevant document in his possession as listed on applicant's "Exhibit A" attached to the motion. The Department and intervenor do not object to the issuance of the subpoena; however, the parties do object to the assertions contained on the motion and reserve all rights regarding the motion. The Department and intervenor wish to file responses to the motion and a motion in limine regarding the assertions in applicant's motion.

2. The parties have agreed to revise the witness lists to avoid duplication of testimony.

IT IS THEREFORE ORDERED:

1. A Subpoena At Testificandum and Subpoena Duces Tecum is attached to this order for the appearance of Garth W. Coonce, President, Tri-State Christian TV, and any and all documents with regard to Tri-State Christian TV, Inc. included in applicant's "Attachment A" which is included and incorporated herein. Service of the subpoena is the responsibility of applicant.
2. By agreement of the parties, the intervenor and Department will file their response, and any additional documents, regarding applicant's motion on or before September 9, 2002. Applicant's response is due on or before September 16, 2002.

Enter: September 3, 2002


Barbara S. Rowe
Administrative Law Judge



OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

SEP 09 2002

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

**Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS**

Willard Ice Building
101 West Jefferson Street - Level 5SW
Springfield, Illinois 62702
(217) 782-6995

THREE ANGELS BROADCASTING
NETWORK, INC.
Applicant

V.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS
Respondent

and

THOMPSONVILLE COMMUNITY HIGH
SCHOOL DISTRICT No. 112, and
THOMPSONVILLE SCHOOL DISTRICT
No. 62,

Intervenors.

A.H. Docket # 01-PT-0027

NOTICE OF FILING

TO: See attached service list.

PLEASE TAKE NOTICE that on September 9, 2002, I personally filed with the Office of the Administrative Clerk of the State of Illinois Department of Revenue, Office of Administrative Hearings, at 100 West Randolph Street, Level 7-900, Chicago, IL 60601, the attached **Joint Department and Intervenor Motion in Limine, Motion to Quash and Memorandum of Law In Support.**

Kent R. Steinkamp, Department Litigator



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SEP 09 2002

Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS
Willard Ice Building
101 West Jefferson Street - Level 5SW
Springfield, Illinois 62702
(217) 782-6995

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

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HIGH SCHOOL DISTRICT NO. 112, and
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DISTRICT NO. 62,

Intervenors.

Docket # 01-PT-0027

**JOINT DEPARTMENT AND INTERVENOR
MOTIONS IN LIMINE**

Intervenors, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62 ("Intervenors"), by and through their attorneys, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., and the Illinois Department of Revenue ("Department"), hereby move to bar evidence of the following matters at the hearing in this matter. In support of its Motion in Limine, states as follows:

1. Any and all evidence, argument, inference or insinuation of other decisions of the Department, other than court opinions, dealing with other applicants for tax exemption, including the testimony of Garth Coonce, or any other employee of Tri-State Christian TV ("Tri-State"). (See Brief in Support of Joint Motion in Limine and Motion to Quash ("Joint Brief")).
2. Any argument that the State of Illinois via the Department has violated any rights of the applicant under the equal protection clause. (See Joint Brief).
3. Any argument that the applicant is being denied any rights under the First Amendment. (See Joint Brief).
4. Testimony of Ted Wilson and Dennis Fortin. Wilson's and Fortin's testimonies are irrelevant in that they seek to introduce evidence of the basis of the Seventh-Day Adventist Church, its fundamental beliefs and practices. The witness disclosures indicate that they are being asked to testify only that Three Angels Broadcasting Network's ("3ABN") programming is consistent with the teachings of the Seventh Day Adventist Church. First, the fundamental beliefs of the Seventh-Day Adventist Church are not an issue in this proceeding. Second, this evidence is irrelevant to whether 3ABN's property is being used for exclusively for religious purposes without a view to profit. Neither witnesses have any evidence of the use of the property, nor are they expected to offer any testimony regarding 3ABN's use of the property.

Moreover, the supplemental disclosure of Fortin's opinions made twenty days prior to the hearing is untimely, and highly prejudicial to the Department and Intervenors. The Intervenors decided not to depose Dr. Fortin on the basis his proposed testimony was to

be substantially the same or similar to Ted Wilson. After Wilson's deposition was taken, it was clear that neither witnesses had any relevant information regarding 3ABN's use of the property. Although Dr. Fortin's supplemental disclosure still does not disclose any relevant evidence to be offered, it is nevertheless prejudicial to the litigants to allow him to provide testimony based on this late disclosure.

5. Any and evidence, argument, inference or insinuation regarding the Intervenors' motives for challenging 3ABN's tax exemption application. The Intervenors' motives are wholly irrelevant to 3ABN's burden of proof.
6. An order excluding non-party witnesses from the hearing room during the pendency of the hearing.

WHEREFORE, the Department of Revenue and Intervenors respectfully request the administrative law judge grant these Motions in Limine and exclude the evidence as requested.

Dated: September 9, 2002.

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Intervenors.

Docket # 01-PT-0027

**JOINT DEPARTMENT AND INTERVENOR
MOTION TO QUASH SUBPOENA**

Intervenors, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62 ("Intervenors"), by and through their attorneys, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., and the Illinois Department of Revenue

("Department"), hereby move to quash the subpoena issued to Garth W. Coonce of Tri-State Christian TV ("Tri-State") on September 3, 2002. In support thereof, states as follows:

Introduction

On September 3, 2002, Applicant, Three Angels Broadcasting Network ("3ABN") moved the Department for the issuance of a subpoena duces tecum to issue to Garth W. Coonce, President of Tri-State. The basis of Applicant's motion for the subpoena ("Motion for Subpoena") is Applicant's assertion that it requires Mr. Coonce's testimony and documents of Tri-State to establish that the Department seeks to discriminate against 3ABN in violation of the First Amendment of the United States Constitution, as well as Article 1, section 3 of the Illinois Constitution, and to deny it equal protection under the law.

In its motion, 3ABN proposes to prove that Tri-State has similar programming to that of applicant, and that its mode of operation is similar, and that "Tri-State was not subjected to a review of its financial records nor a review of its programming, and so to do so in this case, while not doing so in that case, further violates the neutrality principles of the First Amendment." (Applicant Motion, 8). The Intervenors and the Department move this tribunal to quash the subpoena issued to Mr. Coonce for the following reasons:

1. The proposed testimony of Mr. Coonce is irrelevant to the inquiry of whether 3ABN's use of the property qualifies it for the exemption under 35 ILCS 200/15-40.
 2. The Applicant's Motion for Subpoena and its proposed testimony amounts to an untimely supplemental disclosure.
1. Mr. Coonce's testimony is irrelevant to the only issue in this case: whether 3ABN use of the property qualifies it for the property tax exemption provided by 35 ILCS 200/15-40.

One of 3ABN's proffered reason for introducing Mr. Coonce's testimony and documents of Tri-State is to prove that a statement found in the Department and Intervenor's Joint Response to Applicant's Motion in Limine is untrue. Specifically, 3ABN proposes to demonstrate that the "Department has already made a determination that the activities to that of the applicant in the instant case has already been determined by the Department to be a religious use contrary to the assertion of the Department and the Intervenor." (Motion for Subpoena, para. 5).

3ABN proposes to show that Tri-State's operation and programming are substantially similar to 3ABN's and therefore, since Tri-State has an exemption, the Department has already considered television studios to be a religious use. The Department's determination with regard to other taxpayers is irrelevant. *See TTX Company v. Whitley*, 692 N.E.2d 790, 229 Ill. Dec. 801 (1st Dist. 1998). In this case, the only relevant inquiry is what the primary use of the property is and whether it is being used with a view to profit? The primary use to which the property is devoted, and not its secondary or incidental use, is controlling. *People ex rel. Pearsall v. Catholic Bishop of Chicago*, 311 Ill. 11, 142 N.E. 520 (1924). To accept 3ABN's interpretation of this proffered evidence would essentially allow an applicant to sidestep one of the core elements of its burden of proof. In effect, 3ABN is seeking an order that would effectively exempt it from meeting this essential element of its claim for tax exemption. It would be a different situation had 3ABN offered a case citation with a similar factual scenario to support its assertion that the Department had determined that 3ABN's use of the property is a "religious use" within the meaning of the statute, but it did not, and to date, there are no cases that have held that a state of the art television production studio and media distribution center is property being used exclusively for "religious purposes."

Furthermore, the Department should not be bound to *carte blanche* grant 3ABN's application without subjecting it to its burden of proof simply because Tri-State was granted a tax exemption on its property. The determination of whether a designated parcel of property is exempt from taxation requires a consideration of the *particular factual situation* presented. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363, 370, 58 N.E.2d 33, 37 (1944).

3ABN argues that a grant of a property tax exemption under one situation negates the need for all similar organizations to establish they are using their property in accordance with the statute. Under this scenario, an applicant need only show they are similar to an exempt organization in order to be granted the exemption. This is not the interpretation intended by the legislature, or the courts, and would effectively foreclose all possible intervenors to challenge the application. The Department and the State are not bound by their prior decisions with regard to other applicants such that they are foreclosed from requiring each applicant to show that they are entitled to the exemption. *See TTX*, 295 Ill. App. 3d 548.

Thus, in attempting to analogize its position with Tri-State, 3ABN is attempting to demonstrate that they are similarly situated to assert some *quasi*-equal protection argument. Notwithstanding the fact that there is no evidence as to the circumstances under which Tri-State obtained its tax exemption, what Tri-State's programming was at the time their exemption was granted, or whether Tri-State sold any merchandise such as satellites, videos, songbooks, CD's, etc., an equal protection argument is simply not present under the facts presented. For all we know, Tri-State obtained its tax exemption without objection from any intervening taxing bodies, nor is there any evidence of other factors the Department used in making its

determination (for example, we do not know what investigation the Department conducted on its own). To assert that the Department must now grant 3ABN's application similarly to Tri-State's application would essentially foreclose the Intervenor's rights to litigate this matter and protect its tax base and would tie the hands of the Department in making its determination based on the particular factual situation presented.

In effect, 3ABN is attempting to divert this tribunal's inquiry from the relevant issues in this case and attempting to shift the burden to the Department to show why Tri-State's exemption was granted and why 3ABN's should not be granted. This is not relevant, judicially uneconomical, and 3ABN's Motion for Subpoena should be denied.

2. The Applicant's Motion for the subpoena and its proposed testimony amounts to an untimely supplemental disclosure.

The Applicant's Motion for Subpoena asserts that Mr. Coonce will offer testimony regarding the operations of Tri-State and that his testimony and the documents will prove that 3ABN is similarly situated to Tri-State. Applicant's witness list only names Shane Chaney as a potential witness to testify as to the programming and activities of Tri-State. This Motion for Subpoena amounts to an untimely supplemental disclosure and should be denied.

The name Garth Coonce was first brought to the Department and Intervenor's attention when the Motion for Subpoena was faxed on August 30, 2002. For many of the attorneys, the first time they had an opportunity to review 3ABN's Motion for Subpoena was September 3, 2002. It is undisputed that the hearing in this matter will begin September 23, 2002 ("by agreement, without any further continuances," ALJ Order dated March 21, 2002). Thus, this disclosure was essentially made twenty days before the hearing.

The Department regulations provide that discovery rules shall follow the rules of the Illinois Supreme Court. *See* 86 Ill. Adm. Code § 200.125. With regard to the disclosure of witnesses, Supreme Court Rule 213 requires parties to fully disclose the identity and testimony of witnesses. Moreover, litigants and their attorneys are required to update that information. *American Service Insurance Company v. Leslaw Olszewski*, 324 Ill. App. 3d 743, 747, 756 N.E. 2d 250, 258 Ill. Dec. 268 (1st Dist. 2001). Supreme Court Rule 213 (i) also requires the parties to supplement their disclosures. A party should be allowed to rely on an opposing party's answer to Rule 213 (f) and expect that only those witnesses disclosed will in fact be called to testify at trial regarding the subject disclosed. *Id.* The purpose of this rule is intended to provide litigants with a degree of certainty and predictability in the trial process and prevent trial by "ambush."
Id.

Discovery was cut off on April 2, 2002 (ALJ Order dated March 21, 2002), with final witness lists to be submitted by June 28, 2002 and all depositions were to be completed by July 26, 2002. (ALJ Order dated April 15, 2002). Clearly, Mr. Coonce was not disclosed before June 28, 2002.

To allow Mr. Coonce to testify would amount to a trial by ambush and is highly prejudicial. The Department and Intervenors had no prior knowledge of this witnesses existence. Nor do the litigants have any knowledge regarding the scope of Mr. Coonce's knowledge regarding Tri-State's exemption, whether he had any role in the application process, or what activities Tri-State was engaging in at the time the exemption was granted. Since the disclosure is twenty days before the start of the hearing, it also does not allow any time for the Department or the Intervenors' to depose Mr. Coonce (notwithstanding the fact that discovery has been cut-

off). Without an opportunity to depose Mr. Coonce, the Department and Intervenors are therefore foreclosed from presenting appropriate motions in limine to either exclude or limit any of Mr. Coonce's testimony.

WHEREFORE, the Department of Revenue and Intervenors respectfully request the administrative law judge deny Applicant's Motion for the Issuance of a Subpoena Duces Tecum and at Testificandum, and to quash the Subpoena issued to Garth W. Coonce of Tri-State Christian TV on September 3, 2002.

Dated: September 9, 2002.



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Intervenors.

Docket # 01-PT-0027

MEMORANDUM OF LAW AND BRIEF IN SUPPORT
OF JOINT MOTION IN LIMINE &
MOTION TO QUASH

Intervenors, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62 ("Intervenors"), by and through their attorneys, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., and the Illinois Department of Revenue ("Department"), hereby submit this brief as their memorandum of law and brief in support of their Motions in Limine and Motion to Quash Subpoena served on Garth W.

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Coonce. In support thereof, states as follows:

On September 3, 2002, Applicant, Three Angels Broadcasting Network ("3ABN") moved the Department for the issuance of a subpoena duces tecum to issue to Garth W. Coonce, President of Tri-State Christian TV ("Tri-State"). The basis of Applicant's motion for the subpoena ("Motion for Subpoena") is Applicant's assertion that it requires Mr. Coonce's testimony and documents of Tri-State to establish that 3ABN is not being afforded equal protection under the law and that the Department is discriminating against 3ABN in violation of the First Amendment of the United States Constitution, as well as Article 1, section 3 of the Illinois Constitution. The Department and Intervenors have, together with this Brief, filed a Motion to Quash the Subpoena issued to Mr. Coonce.

The Department and Intervenors have also submitted their Joint Motions in Limine and submit this brief as its Memorandum of Law in support of the Motions in Limine. The Applicant raises several issues in its Motion for Subpoena that, for the sake of economy, the Department and Intervenors have decided to address in one brief.

INTRODUCTION

By seeking a subpoena for Garth Coonce of Tri-State, the Applicant has fashioned an argument for the production and admission of certain types of comparison evidence that is substantially in the form of a claim of violation of the equal protection clauses of the United States and Illinois Constitutions. The Department and Intervenors believe that Applicant's arguments are unsupported in law. Bereft of a valid claim, the Applicant should not be permitted to introduce evidence that is factually irrelevant to its application for property tax exemption.

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At the onset, the Department and Intervenors note that we have been perplexed by 3ABN's Motion for Subpoena, and its prior Motion in Limine which raised constitutional arguments. First, such a challenge is inappropriate in this forum. Second, there are certain procedural requirements that 3ABN has not met. By raising constitutional arguments that hint at an unequal application of the tax exemption statute and that the statute fails for lack of neutrality, the Applicant is clearly raising a constitutional challenge to the Illinois Property Tax Code statute granting property tax exemptions to religious organizations, 35 ILCS 200/15-40. In order to properly raise an equal protection challenge, the challenged action must be based on a classification scheme that seeks to discriminate based on membership in a suspect class, and in order to raise a First Amendment challenge, the applicant must show that the statute is invalid because it burdens the free exercise of religion, or is not neutrally applied. In either case, the challenge is to the constitutionality of the subject statute, as written or as applied.

However, the Applicant has not met the procedural requirements for challenging the statute on constitutional grounds. Supreme Court Rule 19 requires notice to be served to the Attorney General, State's Attorney, municipal counsel or agency attorney that a party is raising a constitutional challenge to a statute, ordinance or administrative regulation affecting the public interest. S. Ct. Rule 19 (2002). The rule further requires that the "notice shall identify the particular statute, ordinance or regulation, and shall briefly describe the nature of the constitutional challenge. The notice shall be served at the time of suit, answer or counterclaim, if constitutionality is raised at that level or promptly after the constitutional question arises as a result of a circuit or reviewing court ruling or judgment." *Id.* at (b). The "purpose of such notice shall be to afford the State . .

. the opportunity, but not the obligation, to intervene . . . for purposes of defending the constitutionality of the law. . . .” *Id.* at (c). Clearly, Applicant has not served the requisite notice on the Attorney General that it seeks to invalidate 35 ILCS 200/15-40 on constitutional grounds, or that it is being applied in a discriminatory manner by the State. On this basis alone, all constitutional arguments raised by 3ABN should be excluded from the hearing to the extent that the constitutionality of the Illinois Property Tax Code is under attack.

EQUAL PROTECTION

Some of the legal analysis in this section responds to certain legal claims made in Applicant’s Motion for Subpoena, because that motion makes an argument that attempts to set up an Equal Protection claim in support of the evidence it hopes to introduce in connection with its application for a property tax exemption.

The Applicant has initiated its arguments by repeating portions of certain statements made in the Joint Response to Applicant’s Motion in Limine by the Department and Intervenors and the Order entered by the Administrative Law Judge. Specifically, 3ABN proposes to refute an argument in the Department and Intervenors Response to its Motion in Limine that “Illinois has not yet determined whether a modern, state of the art, television network facility used for the production and transmission of specialty programming constitutes a religious use for property tax exemption purposes.” (Motion for Subpoena, para. 4) It intends to “demonstrate that the Department has already made a determination that the activities to that of the applicant in the instant case has already been determined by the Department of Revenue to be a religious use contrary to the assertion of the Department and the intervenors.” (Motion for Subpoena, para. 5).

As we establish in the Motion to Quash, evidence regarding Tri-State is irrelevant to this inquiry. The Department's determination regarding Tri-State is not contained in a published court opinion, and there has been no discovery regarding its application process (aside from obtaining the actual application submitted by Tri-State). 3ABN has not conducted any deposition of any Department representative responsible for making the determination as to Tri-State, nor has 3ABN disclosed any such representative. Mr. Coonce's proposed testimony would thus do little to refute this one argument in the Department and Intervenors' Response.

Moreover, evidence as to Tri-State as an organization does little to help 3ABN's case. In order to assert some constitutional right, the only relevant inquiry would be whether the Department somehow applied the exemption statute in a discriminatory manner. It is irrelevant that Tri-State is a similar organization to 3ABN since the Department is only to look at the particular facts presented in the application, and the use of the property. 3ABN's argument is illogical since it would require an examination of each organization *vis a vis* another applicant organization to grant property tax exemptions to ensure "neutrality" between organizations.

Furthermore, the Applicant's Motion in Limine has already been denied. It would certainly not be relevant to the matter under protest to allow the admission of evidence designed to enhance its arguments in support of a defeated motion.

A closer examination of the Motion for Subpoena reveals that Mr. Coonce's testimony is being proffered not to establish that the Department has already made a determination that the activities similar to that of Applicant has been determined to be a religious use (which it has not), but to reassert arguments denied in its Motion in Limine.

That is, that an inquiry into components of 3ABN's programming and operations which seeks to draw a distinction between "sacred" and "secular" should be excluded.

3ABN's Motion for Subpoena is simply part II of its denied Motion in Limine and it continues to make the same First Amendment arguments of dubious authority and distorted application that were not persuasive with respect to its previous Motion and their placement in this context is baffling at best. (Motion for Subpoena, paras. 7, 8, 9, 10, 11, 14 and 15).

Moreover, evidence from the prior decision, even when it shows that another unrelated taxpayer successfully applied for a property tax exemption, is not factually relevant to this taxpayer's application process. *TTX Company v. Douglas L. Whitley*, 295 Ill.App.3d 498, 557 (1998). Such information would only be relevant to other claims, such as a claim that the Department has been inconsistent in its application of the law or that the procedure followed was a violation of equal protection principles. Since a finding of inconsistency of result is not helpful to this particular application, the only possible reason for permitting evidence of a prior exemption decision is to establish some sort of an equal protection claim. Applicant's Motion has certainly danced to that tune, but no valid Fourteenth Amendment claim has been made or could be made under these circumstances by this Applicant.

Therefore, this tribunal should disregard all discussion tending to extend the debate on the denial of its prior Motion in Limine, including any constitutional argument regarding equal protection, and exclude Mr. Coonce's testimony and any evidence regarding Tri-State.

NEUTRALITY

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3ABN argues in its Motion for Subpoena that the Department may not discriminate between religious organizations in the granting of tax exemptions. (Motion for Subpoena, para. 7, 8, 10, 11, 12, 13). This is 3ABN's most confusing argument in that it has essentially combined constitutional jurisprudence regarding equal protection and First Amendment neutrality principles.

With regard to its First Amendment arguments, the Applicant is at its most accomplished in exploiting its understandable fluency in the vernacular of religion jurisprudence to concoct a *quasi*- Equal Protection argument out of the cases that discuss the need for governments to remain neutral with respect to religion.

The cases cited by 3ABN in support of its position deal with denominational preferences exercised by a state and with statutes regarding religion on their face. They are factually inapplicable. For example, *Larson v. Valente* cited by 3ABN dealt with Minnesota's charitable contributions statute that sought to exempt from the statute's registration and reporting requirements only those religious organizations that receive more than fifty percent of their total contributions from members or affiliated organizations. *Larson*, 456 U.S. 228 (1982). The statute was held unconstitutional because the statute clearly granted denominational preferences. *Id.* *Wallace v. Jaffree* concerned a state statute authorizing a moment of silence in public schools for "meditation and voluntary prayer," for the sole express purpose of returning prayer to schools. *Wallace*, 472 U.S. 38, 113 (1985). Justice Rehnquist's dissenting opinion, cited by 3ABN, speaks to his concern over the designation of any church as a "national" one. (Motion for Subpoena, para. 9). *Zorach v. Clauson* dealt with a statute permitting students to attend religious courses during the day operated outside the school building.

Zorach, 343 U.S. 306 (1952). This statute was upheld because it neither prohibited the free exercise of religion nor displayed any preference for one denomination. *Id*

3ABN argues that this obligation of neutrality extends to tax exemption. (Motion for Subpoena, para. 11). 3ABN seeks to introduce information regarding Tri-State to demonstrate that a denial of tax exemption would deprive 3ABN of the "same rights and privileges granted to other activities of the same character." (Motion for Subpoena, para. 13). 3ABN's true motive for this Motion is revealed in paragraph 14 where it contends that the Department cannot subject 3ABN to a review of its financial records or programming without violating neutrality principles. (Motion for Subpoena, para. 14). However, as discussed above, this evidence would do little to further any argument regarding neutrality. Without stating so, this neutrality argument is essentially an argument that to grant Tri-State's exemption, without granting 3ABN's exemption application would amount exhibiting a denomination preference for Tri-State. In essence, to differentiate Tri-State and 3ABN based on the content of the programming is a violation of their rights. However, this argument entirely misses the point. The only relevant inquiry is 3ABN's use of the property. If Tri-State were to present evidence, the only relevant evidence from Tri-State would be its use of its property. Unfortunately, 3ABN has not disclosed any information indicating that it intends to proffer evidence regarding Tri-State's use of the property.

Factually, 3ABN has not attempted to analogize its position with any of the cases it cited in its motion. It simply states that the First Amendment neutrality principles give it the right to present evidence as to other tax exempt organizations. (Motion for Subpoena, para. 13). By presenting disjointed citations and quotations of various

Supreme Court opinions, without making any effort to apply those opinions to the facts here, 3ABN's arguments are unpersuasive, at best and turns neutrality principles on its head. Instead of analyzing whether the statute is neutrally applied, 3ABN seeks to show that to deny its exemption based on an examination into its organization's financial documents, and programming would cause a non-neutral results. It asserts that to remain neutral, the Department must subject 3ABN to the same inquiry it subjected Tri-State. This is not supported by the case law

Furthermore, other than the cryptic indication in Harlan's concurring opinion in *Walz v. Tax Commission*, 397 U.S. 664 (1970), there is little indication that the courts have meant to declare that government neutrality means equality of treatment. In fact, the court in *Walz*, in dealing with a New York's property tax exemption statute, stated that the "legislative purpose of the property tax exemption is neither the advancement nor the inhibition of religion." *Walz*, 397 U.S. 664, 672 (1970). And that "there is no genuine nexus between tax exemption and establishment of religion." *Id* at 676. Generally, the courts have usually discussed neutrality as the government's behavior *vis a vis* religion rather than government treatment of one religious entity *vis a vis* another.

In *Zelman v. Simmons-Harris*, No. 001751 (June 27, 2002), the United States Supreme Court in its recent school voucher decision described neutrality concisely:

The Establishment Clause of the First Amendment, applied to the States through the Fourteenth Amendment, prevents a State from enacting laws that have the purpose or effect of advancing or inhibiting religion. *Zelman v. Simmons-Harris*, No. 001751 (June 27, 2002).

Given this test, the Supreme Court had earlier indicated what it considered acceptably neutral with regard to inquiries into tax exemptions for religious publishers in *Texas Monthly, Inc. v. Bullock*, 489 U. S. 1 (1989):

While Texas is correct in pointing out that compliance with government regulations by religious organizations and the monitoring of their compliance by government agencies would itself enmesh the operations of church and state to some degree, we have found that such compliance would generally not impede the evangelical activities of religious groups and that the "routine and factual inquiries" commonly associated with the enforcement of tax laws "bear no resemblance to the kind of government surveillance the Court has previously held to pose an intolerable risk of government entanglement with religion." *Id.* at 21 (citations omitted).

It is interesting to note that the *Texas Monthly* decision struck down a state exemption from sales tax fashioned exclusively for religious content publishers because such an exemption violated the Establishment Clause of the First Amendment. Its neutrality language with regard to the Free Exercise Clause, just quoted, was a response to Texas' claim that the exemption was *required* by the First Amendment.

As this brief discussion should illustrate a proper constitutional challenge would require an examination of the statute. The most important issue to be decided in analyzing a potential Equal Protection claim is the level of scrutiny that this tribunal must follow in its examination of the relevance of the evidence to be admitted.

The usual standard of review for a statute or regulation challenged on equal protection grounds is the rational basis test. Under this test, legislation is presumed to be valid, and will be sustained as long as the classification drawn by the statute is rationally related to a legitimate state interest. *Griffin High School v. IHSA*, 822 F.2d 671, 674 (7th Cir. 1987).

Under the "rational basis" standard, the Applicant herein has not made a claim that would rise to the level of a constitutional violation. A court will not overturn state action under the rational basis test unless "the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational." (*Griffin, Id.*, 675, quoting *Vance v. Bradley*, 440 U.S. 93 (1979)).

Since little more than unexplained disparate treatment between two religious applicants for a property tax exemption has been inferred, not the “irrational” action of the State, an Equal Protection analysis is not appropriate in this context. An equal protection analysis would require that the Applicant fall within some “suspect class” so that a heightened level of inquiry of all facts would be necessary. This has not been established. To cut this inquiry mercifully short, the Seventh Circuit Court of Appeals has determined that religious entities like Three Angels Broadcasting Network do not qualify as members of such a class. It is well-established that “[c]orporations do not have fundamental rights; they do not have liberty interests, period.” *Mid-American Waste Sys., Inc. v. City of Gary, Ind.*, 49 F.3d 286, 291 (7th Cir. 1995). This applies even when the corporations are churches. *See C.L.U.B. v. City of Chicago*, 2001 U.S. Dist. LEXIS, 17213, *23, n5 (N.D. Ill. 2001). In *C.L.U.B. v. City of Chicago*, the court stated:

While individuals of a particular religious faith may constitute a suspect class requiring heightened scrutiny, there is no proof churches as an entity qualify as a suspect class here. In the context of the Zoning Ordinance, owners of “churches” are operators of the physical structure in which people gather to celebrate and are not a suspect class. . . . While this conclusion is a narrow distinction, it is an important distinction, because a classification based upon the religious preferences of an individual may trigger heightened scrutiny but a classification that merely touches upon religion in general is subject to the standard rational basis equal protection review. *Id.* at *22.

However, ever resourceful, the Applicant infers in paragraph 18 of its Motion that its Equal Protection claim under the Illinois Constitution is afforded stricter scrutiny than it is under the United States Constitution. This is not true. The Illinois Supreme Court has declared, “(i)n resolving challenges brought under that provision of the Illinois Constitution, we apply the same standards that govern equal protection claims made under the Federal Constitution.” *Nevitt v. Langfelder*, 157 Ill. 2d 116 (1993).

Applicant further cites for its authority the Religious Freedom Restoration Act, Section 35/15 which requires any burden on the *free exercise of religion* 1) to be in furtherance of a compelling governmental interest and 2) to be the least restrictive means of furthering the compelling interest. This is an enhanced test for measuring a person's First Amendment *Free Exercise* protections and is no authority for a Fourteenth Amendment *Equal Protection* analysis. Illinois does not require a different level of scrutiny for equal protection claims.

The free exercise clause prohibits local governments from making discretionary (i.e. not neutral, not generally applicable) decisions that burden the free exercise of religion, absent some compelling governmental interest. *C.L.U.B.*, 2001 U.S. Dist. LEXIS at *31 (citations omitted). Modern free exercise claims are controlled by the seminal cases *Employment Div., Dept. of Human Resources of Oregon v. Smith* and *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*. *Id.* Under *Smith*, a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice. *Id.* Under *City of Hialeah*, a law is not "neutral" if the *object* of the law is to infringe upon or restrict practice *because* of their religious motivation. *Id.* (emphasis in original).

In this case, the Illinois statute granting property tax exemption is a neutral, generally applicable law. It is neutral because the object is to grant tax exemptions for qualified entities, not to suppress the exercise of religion. Moreover, the statute imposes no burdens on the use of the property for religious purposes or celebration. The application process similarly requires all applicants to sustain its burden of proof and is

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equally is imposed on all qualified entities, regardless of the character of the organization, or its particular religious beliefs. 3ABN seems to suggest that since it is a religious organization, the state cannot inquire into its use of the property or require it to meet its burden, because to do so would require 3ABN to divulge information about its operations to the State, thereby causing an excessive entanglement. This illogical argument has no support.

Assuming 3ABN can raise these constitutional challenges despite its noncompliance with Supreme Court Rule 19, the Applicant has not made and cannot make a valid claim of an equal protection violation or First Amendment challenge in this protest. Therefore, there is no relevance to the evidence it seeks to obtain and introduce in its Motion for Subpoena and the Department and Intervenors should be granted their Motion in Limine to exclude all evidence, argument, insinuation or implication of these constitutional arguments.

Dated: September 9, 2002.

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Respectfully submitted,

**ILLINOIS DEPARTMENT OF
REVENUE**

By:



KENT R. STEINKAMP

Special Assistant to the Attorney General

101 W. Jefferson Street

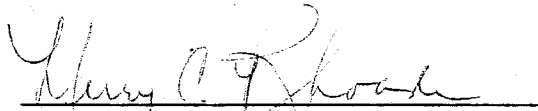
Springfield, Illinois 62794

Telephone: 217/557.4395

Facsimile: 217/524.0527

**ROBBINS, SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.**

By:



MERRY C. RHOADES

JOANNE H. PETTY

Attorneys for Intervenors

230 Regency Centre

Collinsville, Illinois 62234

Telephone: 618/343.3540

Facsimile: 618/343.3546

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ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING
NETWORK, INC.,

Applicant,

and

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,

Respondent.

and

THOMPSONVILLE COMMUNITY
HIGH SCHOOL DISTRICT
NO. 112, and
THOMPSONVILLE SCHOOL
DISTRICT NO. 62,

Intervenors.

A.H. Docket No.: 01-PT-0027

OFFICE OF THE
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SEP 13 2002

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

**NOTICE TO APPEAR AND PRODUCE AT
THE ADMINISTRATIVE HEARING**

TO: Loren Stoffe
Illinois Department of Revenue
101 West Jefferson Avenue
Springfield, IL 62702
and Kent Steinkamp, attorney for Department of Revenue

YOU ARE HEREBY NOTIFIED that the attendance of Loren Stoffe is required at the hearing in the above-entitled matter as a necessary witness and who is a Department employee pursuant to Section 200.145(c) of the Rules of Practice and Procedure for Hearings Before the Illinois Department of Revenue at 10:00 a.m.

September 24, 2002, at the designated hearing room at 101 West Jefferson Avenue, Springfield, Illinois. The witness is further directed to produce at such hearing the documents contained in the attached list.

Dated: September 13, 2002

D. Michael Riva by Lee Boothby

D. MICHAEL RIVA
226 E. Main Street
West Frankfort, IL 62896
(618) 937-2404

Nicholas P. Miller, by Lee Boothby

NICHOLAS P. MILLER
Sidley, Austin, Brown, Wood
1501 K St., NW
Washington, DC 20006
(202) 736-8544

Lee Boothby

LEE BOOTHBY
4545 42nd St., NW, Suite 201
Washington, DC 20016
(202) 363-1773

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice to Appear and Produce at the Administrative Hearing was served this date by facsimile upon:

Merry C. Rhoades
230 Regency Centre
Collinsville, IL 62234
Fax: 618 343 3546

Barbara Rowe

Kent Steinkamp
Special Assistant to the
Attorney General
101 W. Jefferson
Springfield, IL 62702
Fax: 217 524 0527

ATTACHMENT

(As to the Notice to Appear Issued to Loren Stoffe)

The witness shall produce all of the following documents in the possession of the Illinois Department of Revenue: all files and their contents relating to property tax exemptions approved or denied by the Department including, but not limited to, applications for property tax exemption, records, reports, tape-recordings, transcripts of tape-recordings, hearing transcripts, memoranda or notes of conversations and meetings, notes, diaries, photographs, drawings, questions, correspondence, computer print-outs, docket sheets as to filings, and any other items relating to either information requested or otherwise received by the Illinois Department of Revenue or transmitted by the Illinois Department of Revenue regarding the following entities, for all property located in the County where the following organizations or entities are located regardless of the specific address of the listed organization or entity:

- A. Tri-State Christian TV
Route 37 North
P.O. Box 1010
Williamson County
Marion, IL 62959

- B. Catholic Views Broadcasting, Inc.
TV Channel 54
19418 9th Ave.
Will County
Mokena, IL 60448

- C. America Family Radio
WAXR 88.1 FM
3316 23d Ave.
Rock Island County
Moline, IL 61265

- D. Believers Voice Network, Inc.
WBVN Radio

Williamson County
Marion, IL 62959

- E. Illinois Bible Institute
WBFL-FM
Champaign County
Champaign, IL 61820
- F. Illinois Bible Institute
WCFL Radio
Grundy County
Morris, IL 60450
- G. Illinois Bible Institute
WSC Radio
Sangamon County
Springfield, IL 62708
- H. Illinois Bible Institute
WCIC Radio
Tazewell County
Pekin, IL 61554
- I. Illinois Bible Institute
WNLD Radio
Macon County
Decatur, IL 62525
- J. Illinois Bible Institute
WIBI
Macoupin County
Carlinville, IL 62626
- K. Christian Communication of Chicagoland
WCFC-CA
Television Channel 54
6110 Broadcast Parkway
Winnebago County
Rockford, IL 60611
- L. Family Values Organization, Inc.
WQFL-CA
P.O. Box 2730
Winnebago County
Loves Park, IL 61132

- M. Family Stations, Inc.
Radio Station WJCH
Will County
Joliet, IL 60434
- N. Infinity Broadcasting Corporation of Illinois
Radio Station WYLL
DuPage County
Des Plaines, IL 60017
- O. The Faith Educational Network
Radio Station WFEN
4701 South Main St.
Winnebago County
Rockford, IL 61102
- P. Trinity Broadcasting Network
Radio Station WTJR
220 N. 6th St.
Adams County
Quincy, IL 62301
- Q. Moody Bible Institute
Radio Station WMBI
820 N. LaSalle Blvd.
Cook County
Chicago, IL 60610

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS**

**THREE ANGELS BROADCASTING NETWORK,
Applicant,**

and

**THE DEPARTMENT OF REVENUE
STATE OF ILLINOIS,
Respondent,**

Docket No. 00-28-1

Case No. 01-PT-0027

and

**THOMPSONVILLE COMMUNITY HIGH
SCHOOL DISTRICT No. 112, and THOMPSONVILLE
SCHOOL DISTRICT No. 62,
Intervenors.**

**JOINT DEPARTMENT AND INTERVENOR
OBJECTIONS TO ISSUANCE OF SUBPOENAS AND
MOTION TO STRIKE NOTICE TO APPEAR AND PRODUCE AT THE
ADMINISTRATIVE HEARING**

Intervenors, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62 ("Intervenors"), by and through their attorneys, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., and the Illinois Department of Revenue ("Department"), hereby object to the issuance of a subpoena to Shane Chaney of Tri-State Christian TV ("Tri-State") and Loren Stoffe, of the Department of Revenue, and move to strike the Notice to Appear and Produce at the Administrative Hearing issued to Loren Stoffe on September 13, 2002. In support thereof, states as follows:

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SPRINGFIELD, ILLINOIS**

On September 13, 2002, Applicant, Three Angels Broadcasting Network ("3ABN") requested the Department of Revenue to issue subpoena *duces tecum ad testificandum* to Shane Chaney of Tri-State and Loren Stoffe of the Department of Revenue. Applicant seeks certain documents and Mr. Chaney's and Ms. Stoffe's appearance at the hearing, and asserts that both Mr. Chaney and Ms. Stoffe's testimony have been sufficiently disclosed.

The Department should not issue the requested subpoenas because Mr. Chaney (whose testimony is to mirror Mr. Coonce's proposed testimony) and Ms. Stoffe (to testify regarding other tax exempt organizations) because their testimony is irrelevant, unreliable, and untimely disclosed. First, Ms. Stoffe was never disclosed as a witness. The Intervenors and the Department object to these subpoenas for the same reasons set forth in their Motion to Quash the subpoena issued to Garth Coonce, and their Memorandum of Law and Brief in Support of Joint Motion in Limine and Motion to Quash ("Joint Brief") previously filed on September 9, 2002 and hereby incorporate those arguments in this objection.

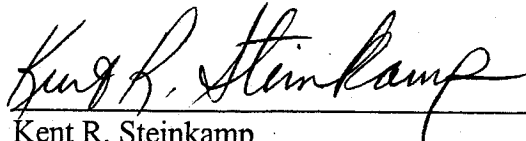
Applicant has had sufficient time while discovery remained open to discover Ms. Stoffe's identity and issue a supplemental disclosure. If Applicant had done that, the parties would have had an opportunity to depose Ms. Stoffe. Rather, Applicant seeks to have Ms. Stoffe testify regarding the tax exempt status of other similar organizations without first disclosing her identity, the documents she is to rely upon and without updating their witness list. The Department and Intervenors have already argued the irrelevance and inappropriateness of this evidence in their Joint Brief and adopt incorporate those arguments. For those same reasons, not only should a subpoena to Ms. Stoffe not be issued, the Applicant's Notice to Appear and Produce at the Administrative Hearing issued September 13, 2002 should be stricken.

Even if the Department were to consider the disclosures made by Applicant to be sufficient, the proposed witnesses and their testimony are not relevant, and an unwarranted attempt to litigate constitutional issues before this tribunal. The only testimony that both Mr. Chaney and Ms. Stoffe can offer is evidence regarding organizations other than 3ABN. These issues have already been extensively briefed in the Department and Intervenors Joint Brief, and we incorporate those arguments as support for this objection to the issuance of the subpoenas *duces tecum ad testificandum* and motion to strike the Notice to Appear and Produce at the Administrative Hearing issued to Loren Stoffe.

Dated: September 13, 2002

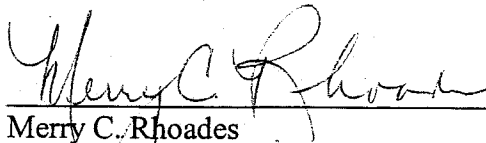
Respectfully submitted,

ILLINOIS DEPARTMENT OF REVENUE,



Kent R. Steinkamp
Special Assistant Attorney General
Illinois Department of Revenue

THOMPSONVILLE COMMUNITY HIGH
SCHOOL DISTRICT No. 112, and
THOMPSONVILLE SCHOOL DISTRICT No. 62,



Merry C. Rhoades

Merry C. Rhoades
ROBBINS, SCHWARTZ, NICHOLAS, LIFTON & TAYLOR, LTD.
230 Regency Centre
Collinsville, IL 62234-4635
618-343-3540

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

SEP 16 2002

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

3 ANGELS BROADCASTING NETWORK,)
Applicant)
)
)
v)
)
)
THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)

Docket # 00-28-01
A.H. Docket # 01-PT-0027
P.I. # 174-116-11

MOTION TO QUASH SUBPOENA

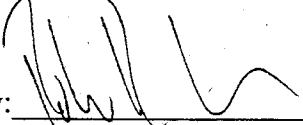
Now Comes GARTH W. COONCE, President of TRI-STATE CHRISTIAN T.V., by and through his attorneys, Brown, Hay & Stephens, and for his Motion to Quash the Subpoena Ad Testificandum and Duces Tecum states as follows:

1. Movant is not a party to the instant action and seeks no relief herein.
2. Any information which is sought to be produced by the Subpoena is irrelevant to the current action.
3. TRI-STATE CHRISTIAN T.V.'s property, application, and tax returns are unique to it, as are Three Angels Broadcasting Network's application for whatever relief it seeks. The relevant question is not whether Three Angels Broadcasting was treated differently, but whether its application meets the criteria for exemption. See *TTX Co. v Whitley*, 295 Ill. App. 3d 548 (5th Dist. 1998).
4. The Subpoena, in addition to being irrelevant, places an undue burden on Movant to gather data in an extraordinarily short time for a purpose which is not known to Movant.
5. Finally, some of the material requested is requested by a business rival to Movant and would not be so otherwise available to it and is not reasonably calculated to lead to the discovery of admissible evidence.

For the foregoing reasons, Movant prays the Subpoena issued herein and directed to GARTH W. COONCE be quashed and held for naught.

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GARTH W. COONCE, President
TRI-STATE CHRISTIAN T.V.

By: 
One of his attorneys

Dwight H. O'Keefe, III
Registration No. 2096943
Roland R. Cross, III
Registration No. 6274757
Brown, Hay & Stephens
205 S. 5th Street
Springfield, Illinois 62701
Telephone: (217) 544-8491

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STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

OFFICE OF THE
ADMINISTRATIVE CLERK
ENTERED

SEP 17 2002

3 ANGELS BROADCASTING NETWORK)

v.)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)

Docket #

A.H. Docket #

P. I. #

~~IDOR~~
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS
00-28-01

01-PT-0027

174-116-11

ORDER

This cause coming on to be heard pursuant to notice with all parties represented by counsel, the Department of Revenue having jurisdiction of the parties and subject matter herein, and the administrative law judge being fully advised in the premises;

IT IS HEREBY FOUND:

1. On August 30, 2002, applicant filed a "Motion for Issuance of Subpoena Duces Tecum" for the appearance of Garth W. Coonce, President, Tri-State Christian TV and all relevant documents in his possession as listed on applicant's "Exhibit A" attached to the motion.
2. In September 3, 2002, an order was entered issuing a Subpoena At Testificandum and Subpoena Duces Tecum to Garth W. Coonce. Intervenor and Department were given leave to file their responses to applicant's motion and additional documents on or before September 9, 2002. Applicant's response was due on or before September 16, 2002.
3. On September 9, 2002, the "Joint Department and Intervenor Motions in Limine"; "Joint Department and Intervenor Motion to Quash Subpoena" issued to Garth W. Coonce; and "Memorandum of Law and Brief in Support of Joint Motion in Limine & Motion to Quash" were filed with the administrative clerk of the administrative hearings division.

The Motions in Limine move to bar:

- a) Any and all evidence, argument, inference or insinuation of other decisions of the Department, other than court opinions, dealing with other applicants for tax exemption, including the testimony of Garth Coonce or any other employee of Tri-State Christian TV.
- b) Any argument that the State of Illinois via the Department has violated any

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rights of the applicant under the equal protection clause.

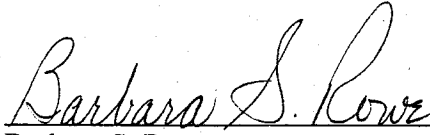
- c) Any argument that the applicant is being denied any rights under the First Amendment.
 - d) Testimony of Ted Wilson and Dennis Fortin as irrelevant because the witnesses have no knowledge of the use of the subject property.
 - e) Any evidence, argument, inference or insinuation regarding Intervenor's motives for challenging applicant's tax exemption application.
 - f) An order excluding non-party witnesses from the hearing room during the pendency of the hearing.
4. On September 13, 2002, applicant filed its "Applicant's Request for Subpoena Ad Testificandum and Duces Tecum" asking that a subpoena be issued for Loren Stoffe of the Illinois Department of Revenue and Shane Chaney of Tri-State Christian TV to appear at the hearing scheduled in this matter for September 23, 2002 through September 25, 2002. The witnesses' presence and documents were requested for September 24, 2002, at 10:00 a.m. The documents requested were listed on the attachments for the respective proposed witness.
 5. On September 13, 2002, applicant also filed a "Notice to Appear and Produce at the Administrative Hearing" for Loren Stoffe of the Illinois Department of Revenue.
 6. On September 16, 2002, Department and Intervenor filed a "Joint Department and Intervenor Objections to Issuance of Subpoenas and Motion to Strike Notice to Appear and Produce at the Administrative Hearing" objecting to the issuance of the subpoenas to Shane Chaney and Loren Stoffe.
 7. On September 16, 2002, Garth W. Coonce filed his "Motion to Quash Subpoena" with the administrative clerk of the hearings department of the Illinois Department of Revenue.
 8. On September 16, 2002, applicant filed "Applicant's Memorandum of Law and Brief in Opposition to Department's and Intervenor's Joint Motion in Limine and Motion to Quash" with the administrative clerk of the hearings department of the Illinois Department of Revenue.
 9. All parties eloquently argued their respective positions (please see documents).

IT IS HEREBY ORDERED:

1. The Subpoena At Testificandum and Subpoena Duces Tecum issued on September 3, 2002, to Garth W. Coonce is hereby quashed.

2. Any and all evidence, argument, inference or insinuation of other decisions of the Department, other than court opinions, dealing with other applicants for tax exemption, including the testimony of Garth Coonce or any other employee of Tri-State Christian TV is hereby barred *inter alia* as irrelevant.
3. Any argument that the State of Illinois via the Department has violated any rights of the applicant under the equal protection clause is hereby barred *inter alia* because this is not the proper forum to address a constitutional challenge. Texaco-Cities Service Pipeline Co. v. McGaw, 182 Ill.2d 262 (1998), Cook County Bd. of Review v. Property Tax Appeal Bd., 2002 WL 1931994 (Ill.App. 1st Dist.)
4. Any argument that the applicant is being denied any rights under the first amendment is hereby barred *inter alia* because this is not the proper forum to address a constitutional challenge. Texaco-Cities Service Pipeline Co. v. McGaw, 182 Ill.2d 262 (1998), Cook County Bd. of Review v. Property Tax Appeal Bd., 2002 WL 1931994 (Ill.App. 1st Dist.)
5. The testimony of Ted Wilson and Dennis Fortin is barred as irrelevant because the witnesses have no knowledge of the use of the subject property. The authenticity of the Seventh-day Adventist theological teaching and religious activities is not at issue.
6. Any evidence, argument, inference or insinuation regarding Intervenor's motives for challenging applicant's tax exemption application are hereby barred. The burden is on the applicant to establish that the use of the property in question qualifies for exemption under the Illinois statutes.
7. The Notice to Appear and Produce issued to Loren Stoffe on September 13, 2002 is hereby stricken. The request for the issuance of a subpoena for Loren Stoffe is hereby denied.
8. The request for the issuance of a subpoena for Shane Chaney is hereby denied.
9. Non-party witnesses are excluded from the hearing room during the pendency of the hearing.
10. All documents submitted into evidence must be 8½" X 11". Any videos admitted must have 5 copies for the record.

Enter: September 17, 2002


Barbara S. Rowe
Administrative Law Judge

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS**

**THREE ANGELS BROADCASTING NETWORK
Applicant,**

and

**THE DEPARTMENT OF REVENUE
STATE OF ILLINOIS,
Respondent.**

Docket No. 00-28-1

Case No. 01-PT-0027

and

**THOMPSONVILLE COMMUNITY HIGH
SCHOOL DISTRICT No. 112, and THOMPSONVILLE
SCHOOL DISTRICT No. 62
Intervenors.**

NOTICE TO PRODUCE AT TRIAL

Intervenors, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, requests Applicant, Three Angels Broadcasting, to produce the following at the commencement of trial, pursuant to Supreme Court Rule 237 and the Code of Civil Procedure of Illinois:

1. All witness statements in your possession.
2. All diagrams, photographs, videotapes, motion pictures, slides, graphs, charts, drawings and exhibits you intend to introduce at trial.
3. All financial statements, whether audited or unaudited, for 1999, 2000 and 2001.
4. All reports, notes, memoranda, exhibits, diagrams, plats, photographs, slides, videotapes, articles, publications and books which may be used by you or your expert witness(es) in rendering an opinion regarding this matter.
5. All rules, regulations, by-laws and other documents of any association, licensing authority, accrediting authority, or other private body which may be used in your case.

6. All articles, papers, treatises, tests, textbooks, journals, or literature which may be used by you or your witnesses in this cause.
7. Produce the following witnesses at hearing for purpose of adverse examination: Linda Shelton, Danny Shelton, Larry Ewing, Robert Russell and Mollie Steenson.
8. Every income tax return filed by Danny Shelton for 2000 and 2001.
9. Every income tax return filed by Linda Shelton for 2000 and 2001.
10. All contracts, licenses, invoices, receipts and any documents regarding Three Angels Broadcasting Network's relationship with Dish network
11. W-2 forms for all Board members of Three Angels Broadcasting Network as of 2000 and 2001.
12. Copies of all subpoenas issued in the above captioned cause. This request continues throughout the trial of said cause.
13. Provide a copy of IRS form 990 (Return of Organization Exempt From Income Tax) for 1999, 2000, and 2001.
14. Provide a copy of IRS form 990-T (Exempt Organization Business Income Tax Return) for 1999, 2000, and 2001.
15. Provide a copy of Illinois form AG990-IL (Illinois Charitable Organization Business Income Tax Return) for 1999, 2000, and 2001.
16. Provide a copy of Illinois form IL-990-T (Illinois Exempt Organization Income and Replacement Tax Return) for 1999, 2000, and 2001.
17. Provide a copy of any and all lease agreements for properties owned by Three Angels Broadcasting Network and rented to others.
18. Provide a copy of the sales contract, invoice, or receipt for the satellite systems sold during calendar years 1999, 2000, and 2001.
19. Provide a copy of any and all invoices or receipts for satellite systems purchased by Three Angels Broadcasting Network in calendar years 1999, 2000, and 2001.
20. Provide a copy of the sales contract, invoice, or receipt for the video tapes sold by Three Angels Broadcasting Network during calendar years 1999, 2000, and 2001.
21. Provide a copy of any and all invoices or receipts for video tapes purchased by Three Angels Broadcasting Network in calendar years 1999, 2000, and 2001.
22. Provide a copy of the sales contract, invoice, or receipt for the songbooks sold by Three Angels Broadcasting Network during calendar years 1999, 2000, and 2001.

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- 23. Provide a copy of any and all invoices or receipts for songbooks purchased by Three Angels Broadcasting Network in calendar years 1999, 2000, and 2001.
- 24. Provide a copy of all loan agreements for which there was any activity including advancements, repayments or outstanding balances during 1999, 2000, and 2001.
- 25. Provide a copy of all invoices and receipts for all video, CD, satellite, and songbook sales for 1999, 2000, and 2001.
- 26. Provide copies of all newsletters distributed by Three Angels Network in 1999, 2000, and 2001.
- 27. Provide any and all documentation of time studies and cost allocation plans used to allocate costs to video production, CD production, songbook production, cassette production, satellite system production, and other items for sale by Three Angels Broadcasting Network.
- 28. Provide any and all documents evidencing the sales price of all songbooks, CD's, video tapes, and satellite systems for calendar years 1999, 2000, and 2001.
- 29. Provide any and all Affiliation Agreements between Three Angels Broadcasting Network and any church, religious, or ecclesiastical organization.

Respectfully submitted,

THOMPSONVILLE COMMUNITY HIGH SCHOOL DISTRICT NO. 112 and THOMPSONVILLE SCHOOL DISTRICT NO. 62

By:

Joanne Petty

One of Its Attorneys

Merry C. Rhoades
Joanne H. Petty
ROBBINS, SCHWARTZ, NICHOLAS,
LIFTON & TAYLOR, LTD.
20 North Clark Street, Suite 900
Chicago, IL 60602
(312) 332-7760
(312) 332-7768 facsimile
Attorney No. 91219

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING
NETWORK, INC.,

Applicant,

and

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,

Respondent.

and

THOMPSONVILLE COMMUNITY
HIGH SCHOOL DISTRICT
NO. 112, and
THOMPSONVILLE SCHOOL
DISTRICT NO. 62,

Intervenors.

A.H. Docket No.: 01-PT-0027

**APPLICANT'S NOTICE CONCERNING PROSPECTIVE
WITNESSES**

At the last status conference held on September 3, 2002, intervenors requested that applicant notify intervenors of witnesses whom they may present at the hearing in this matter. Applicant may call as witnesses as part of their case in chief the following:

1. Danny Shelton
2. Ken Denslow
3. Dr. Walter Thompson
4. Pastor Bill Bishop in the place of Pastor Samuel Thomas who relocated to Huntsville, Alabama, the end of July, 2002.

5. Douglas Batchelor
6. Alan Lovejoy
7. Larry Ewing
8. Linda Shelton
9. Robert Russell
10. Molly Steenson

Applicant will make offers of proof as to the video deposition of Ted Wilson. Applicant will also make an offer of proof concerning testimony that applicant's expert, Dr. J. H. Denis Fortin, would provide.

Any of the other witnesses previously listed on applicant's list of prospective witnesses may be called as rebuttal witnesses.

The subject matter of the testimony of the aforesaid witnesses has been previously set forth in applicant's list of prospective witnesses which was provided on or about May 30, 2002.

Dated: September 20, 2002

D. Michael Riva
D. MICHAEL RIVA
226 E. Main Street
West Frankfort, IL 62896
(618) 937-2404

Nicholas P. Miller
NICHOLAS P. MILLER
Sidley, Austin, Brown, Wood
1501 K St., NW
Washington, DC 20006
(202) 736-8544

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING
NETWORK, INC.,

Applicant,

and

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,

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and

THOMPSONVILLE COMMUNITY
HIGH SCHOOL DISTRICT
NO. 112, and
THOMPSONVILLE SCHOOL
DISTRICT NO. 62,

Intervenors.

A.H. Docket No.: 01-PT-0027

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ADMINISTRATIVE CLERK
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APPLICANT'S MOTION TO QUASH

Applicant, Three Angels Broadcasting Network, Inc., moves to quash the Notice to Produce at Trial served by intervenors, a copy of which is attached, for the reasons hereafter set forth:

1. The Notice to Produce at Trial attempts to require production of a long list of documents and other items which clearly are sought for discovery purposes on the eve of trial. Many of the items were originally sought in requests for documents to which objections were made by applicant and resolved after a motion was filed by intervenors. However, many of the items sought were not even a part of intervenors' prior request for production.

2. The Notice to Produce is based on Supreme Court Rule 237 and the Code of Civil Procedure of Illinois. Under Rule 237(b), "[t]he notice also may require the production at the trial of the originals of those documents or tangible things previously produced during discovery." Supreme Court Rule 237 does not provide or permit further discovery or permit the use of the notice to produce at trial as a substitute for discovery.

The Committee Comments for Rule 237 state as follows:

Paragraph (b) has been revised to clarify the fact that Rule 237(b) is not a discovery option to be used on the eve of trial in lieu of a timely request for the production of documents, objects and tangible things pursuant to Rule 214. Discovery of relevant documents, objects and tangible things should be diligently pursued before trial pursuant to Rule 214. Under the new paragraph, a Rule 237(b) request to produce at trial will be expressly limited to those documents, objects, and tangible things produced during discovery. This revision will effect a change in current practice, under which a Rule 237(b) request to produce at trial is often used as a major discovery tool by nondiligent litigants, a practice that often causes trial delay. It is the intent of this revision to establish that the due diligence for the purposes of a motion to delay the trial cannot be shown by a party who first attempts to discovery documents, objects or tangible things by serving a request under Rule 237(b). *See Campen v. Executive House Hotel, Inc.*, 105 Ill. App. 3d 576, 434 N.E. 2d 511 (1st Dist. 1982).

3. Further, the Notice to Produce is unduly burdensome, particularly on the eve of trial, and most of the documents sought are irrelevant.

4. Paragraph 7 of the Notice to Produce at Trial endeavors to require applicant to produce the following individuals as witnesses at the hearing for the purpose of adverse examination: Linda Shelton, Danny Shelton, Larry Ewing, Robert Russell, and Molly Steenson. However, none of these individuals was listed on intervenors list of prospective witnesses.

WHEREFORE, applicant respectfully requests that the Notice to Produce referred to above be quashed.

Dated: September 20, 2002

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D. MICHAEL RIVA
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Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Applicant's Motion to Quash was served this date by facsimile upon:

Merry C. Rhoades
230 Regency Centre
Collinsville, IL 62234
Fax: 618 343 3546

Barbara Rowe
Administrative Law Judge
Illinois Dept. of Revenue
101 W. Jefferson, Level 5SW
Springfield, IL 62702
Fax: 217 524 5341

Kent Steinkamp
Special Assistant to the
Attorney General
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Fax: 618 435 2349

Dated: September 20, 2002

Lee Boothby
LEE BOOTHBY

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

3 ANGELS BROADCASTING NETWORK)		
)		
v.	)	A.H. Docket #	01-PT-0027
	)	P. I. #	174-116-11
	)	Docket #	00-28-01
THE DEPARTMENT OF REVENUE	)	Docket #	01-28-07
OF THE STATE OF ILLINOIS)		

BRIEFING ORDER

This cause coming on to be heard pursuant to notice with all parties represented by counsel, the Department of Revenue having jurisdiction of the parties and subject matter herein, and the administrative law judge being fully advised in the premises;

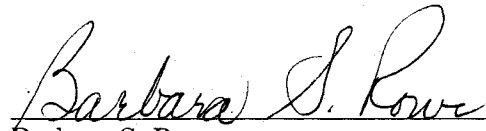
IT IS HEREBY FOUND:

Counsel for applicant, intervenor, and Department have requested leave to file post-hearing briefs in this matter.

IT IS HEREBY ORDERED:

Such leave is granted. The brief of applicant is due on or before 5:30 p.m. on the 25th of November 2002. The briefs of intervenor and the Department are due on or before 5:30 p.m. on the 30th of December 2002.

Enter: September 25, 2002


Barbara S. Rowe
Administrative Law Judge

OFFICE OF THE
ADMINISTRATIVE CLERK
ENTERED

SEP 26 2002
001311

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING)
NETWORK, INC.,)

Applicant,)

and)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)

Respondent,)

THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT)
NO. 112, AND)
THOMPSONVILLE SCHOOL)
DISTRICT NO. 62,)

Intervenors.)

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

JUL 18 2003

Docket No.: 00-28-01

01-28-07

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

A.H. Docket # 01-PT-0027

MOTION FOR LEAVE TO FILE INSTANTER

NOW COMES Applicant, Three Angels Broadcasting Network, Inc. by its attorneys, and requests this Court to allow the filing of two previous administrative law judge decisions for the sole reason that the Court would be able to consider them in making its decision in the case at hand; (*Basilean Films Foundation, Inc. v. The Department of Revenue of The State of Illinois*, Docket No. 93-22-344 and *Muhammad's Holy Temple of Islam v. The Department of Revenue of The State of Illinois*, Docket No. 01-PT-0061; attached hereto as Exhibit 1 and Exhibit 2).

In support of this request, the applicant states as follows:

Early in this litigation, Applicant Three Angels Broadcasting Network, Inc., requested that the Department of Revenue provide it with "any document, list, or record which states whether or not the not-for-profit religious corporations transacting business of any kind or nature

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in the state of Illinois receive an exemption from property taxes for the years 1996, 1997, 1998, 1999, 2000 and 2001.” The Department responded that it did “not possess nor produce any document, list or records such as that described, nor any document, list or record which *in any form contains the information requested.*” (emphasis added) (See Reply to Request for Production ¶ 7, attached hereto as Exhibit 3.)

The Applicant had requested similar information in other document requests, including “any decision of the Illinois Department of Revenue granting or denying any application for exemption from property taxes for the years” 1996 through 2001. The Department once again indicated that it had “no document, list or record with the specific requested information.” (*Id.* at ¶ 4).

It was thus with great surprise that counsel for Applicant came across a Department webpage this week entitled “Administrative Hearings - Religious Ownership/Use.” The page consisted of a list of apparently all the Department’s hearing decisions regarding requests for property-tax exemption on the basis of religious use. The list allowed one to access the decisions themselves, and covered the years 1995 to 2003, almost precisely the time period requested by Applicants.

A review of the page revealed about 200 decisions dealing directly with the issue of property-tax exemptions based on religious use. Many of these decisions would have been very helpful to Applicants case and would have been used in Applicant’s briefing had it known of them. As this Court has not yet released its opinion in this matter, Applicant desired to bring to the Court’s attention two particular decisions that bear most directly, in relation to the present case, on the question of how “religious use” has been defined by the Department.

The briefing schedule is long over, and Applicant will not comment on these decisions, but allow them to speak for themselves. It believes, however, that given the Department's incomplete and misleading discovery responses regarding the availability of these decisions, that it would only be fair for the Court to consider these cases in ruling on the present case.


Dated: July 17, 2003



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ATTORNEYS FOR APPLICANT

PT 95-6
Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
SPRINGFIELD, ILLINOIS

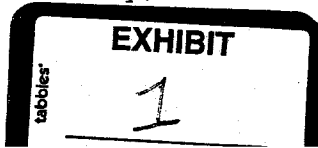
BASILEAN FILMS FOUNDATION, INC.) Docket No(s) 93-22-344
) PI No(s) 09-01-204-005
) DuPage County)
)
Applicant)
)
v.)
)
)
)
THE DEPARTMENT OF REVENUE) George H. Nafziger
OF THE STATE OF ILLINOIS) Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES Attorney Dan Walker, Jr., appeared on behalf of Applicant. Mr. Robert G. Rybica, assistant state's attorney of DuPage County, appeared on behalf of the DuPage County Board of Review.

SYNOPSIS The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on December 14, 1994, to determine whether or not DuPage County parcel No. 09-01-204-005 and the buildings thereon, should be exempt from real estate tax for the 1993 assessment year.

Is Applicant a religious, and/or a charitable organization? Did Applicant own the parcel here in issue during all, or part of the 1993 assessment year? Did Applicant use all, or part of the parcel here in issue and the buildings thereon, for primarily religious, and or/charitable purposes during the 1993 assessment year? Following the submission of all the evidence and a review of the record, it is determined that Applicant is a religious and charitable organization. It is further determined that Applicant owned the parcel here in issue during the period May 10, 1993, through December 31, 1993. Finally, it is determined that since no evidence



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was offered, either that Dr. Hamilton was required to live in this house because of his exempt duties for Applicant, or that he performed any of his exempt duties in the residential portion of this house, that said residential portion of the house did not qualify for exemption during the period May 10, 1993, through December 31, 1993.

FINDINGS OF FACT The Department's position in this matter, namely that the parcel here in issue and the buildings thereon, did not qualify for exemption during 1993, was established by the admission in evidence of Department's Exhibits 1 through 6B.

On November 30, 1993, the DuPage County Board of Review forwarded an Application for Property Tax Exemption To Board of Review, concerning the parcel here in issue for the 1993 assessment year to the Illinois Department of Revenue (Department's Exhibit 2). On August 4, 1994, the Department of Revenue notified Applicant that it was denying the exemption of the parcel here in issue for the 1993 assessment year (Department's Exhibit 3). By a letter dated August 18, 1994, Applicant's Executive Director, Dr. Hamilton, requested a formal hearing in this matter (Department's Exhibit 4). The hearing held on December 14, 1994, was held pursuant to that request.

Applicant was incorporated in the State of Delaware on November 13, 1974, for purposes which included the following:

"To be an operating foundation for the production and distribution of educational, cultural, and religious films, radio and television programs, printed publications, and other media communication."

Dr. Hamilton holds a Ph.D in Communications from the University of Southern California, and is the executive director and the only full-time employee of Applicant. Applicant writes, produces, and edits religious video tapes, audio tapes, and books for Christian churches and church-related organizations located throughout the United States, Canada, and the rest of

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the world.

Applicant acquired the parcel here in issue and the building thereon, by a quitclaim deed, dated May 10, 1993, from Dr. Hamilton and his wife. Dr. and Mrs. Hamilton had lived in the house on this parcel before they conveyed it to Applicant, and have continued to occupy a portion of it as their residence since that conveyance.

The parcel here in issue is improved with a two-story house with a basement, and a frame garage. The basement of the house, during 1993, contained a sound studio, a film editing room, and a film vault. The first floor of the house, during 1993, contained a reception area, program services office, a media library, a dining/conference room, and a kitchen. The second floor of the house contained three bedrooms, two baths, a utility room, and the executive director's office. All of the basement and the first floor, except for the dining/conference room, and the kitchen, as well as the executive director's office, and one bathroom on the second floor, were primarily used for Applicant's corporate purposes of writing, producing, and editing video tapes, audio tapes, and books during the period May 10, 1993, through December 31, 1993. The dining/conference room and the kitchen on the first floor, as well as the bedrooms, one bath, and the utility room on the second floor, were primarily used by Dr. Hamilton and his family as their residence during the period May 10, 1993, through December 31, 1993. During the period May 10, 1993, through December 31, 1993, the garage was used for the storage of one ministry vehicle and one personal vehicle belonging to Dr. and Mrs. Hamilton.

During the period May 10, 1993, through December 31, 1993, Dr. Hamilton testified that he and his family occupied the residential portion of the house on the parcel here in issue as the caretakers of Applicant's property. He further testified that the caretaker's duties performed by his family included maintaining and cleaning the building and grounds.

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During the period May 10, 1993, through December 31, 1993, Applicant's primary activities included the writing, production, and editing of religious video tapes, audio tapes, and books, for Christian organizations world-wide. Applicant's sources of income during that period included fees for services, and also contributions. During that period, Applicant waived or reduced its fees for services and prices for products, based on the customers' ability to pay. During the period here in issue Applicant had no capital, capital stock, or shareholders, and no one profited from the enterprise. Applicant used the portion of the building which it occupied during the period May 10, 1993, through December 31, 1993, for primarily charitable and religious purposes. The areas occupied by Dr. Hamilton and his family, during the period May 10, 1993, through December 31, 1993, were used primarily for residential purposes.

1. Based on the foregoing, I find that Applicant is a religious and charitable organization.

2. I further find that Applicant owned the parcel here in issue and the house and garage located thereon, during the period May 10, 1993, through December 31, 1993.

3. The areas of the house, including all of the basement, the first floor, except for the dining/conference room and the kitchen, and the executive director's office and one bathroom on the second floor and one half of the garage, I find during the period May 10, 1993, through December 31, 1993, were used primarily for religious and charitable purposes.

4. The dining/conference room and the kitchen on the first floor of the house, as well as the bedrooms, one bath, and the utility room on the second floor of the house, and one-half the garage, I find, were used primarily for residential purposes during the period May 10, 1993, through December 31, 1993.

CONCLUSIONS OF LAW Article IX, Section 6, of the Illinois

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Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

35 ILCS 205/19.2 (1992 State Bar Edition), (1991 Illinois Revised Statutes, Chapter 120, Paragraph 500.2), exempts certain property from taxation in part as follows:

"All property used exclusively for religious purposes, or used exclusively for school and religious purposes,...."

35 ILCS 205/19.7 (1992 State Bar Edition), (1991 Illinois Revised Statutes, Chapter 120, Paragraph 500.7), exempts certain property from taxation in part as follows:

"All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;...."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967).

Illinois Courts have previously held that real estate owned by religious and charitable organizations which publish and sell religious books and tracts and which give away said items in cases of need, qualify for exemption. See, *The Congregational Sunday School and Publishing*

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Society v. Board of Review 290 Ill. 108 (1919), and also see Inter-Varsity Christian Fellowship v. Hoffman, 62 Ill.App.3d 798 (1978). Based on the foregoing, I conclude that the parcel here in issue, the area of the house and garage used by Applicant in its activities of writing, producing, and editing Christian videos, audio tapes, and books, and providing said items at reduced prices, or free, in cases of need, qualified for exemption during the period May 10, 1993, through December 31, 1993.

The Supreme Court in MacMurray College v. Wright, 38 Ill.2d 272 (1967), in considering whether or not faculty housing at a college qualified for exemption, applied a two-part test. First, were the residents of the houses required to live in the residences because of their exempt duties for the organization, or were they required to, or did they perform any of their exempt duties there? The Appellate Court has more recently applied the MacMurray tests to caretakers' residences in Benedictine Sisters of the Sacred Heart v. Department of Revenue, 115 Ill.App.3d 325 (1987), which involved three caretakers housed on the property of a convent, Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill.App.3d 420 (1987), and Cantigny Trust v. Department of Revenue, 171 Ill.App.3d 1082 (1988). See also Girl Scouts of DuPage County Council, Inc. v. The Department of Revenue, 189 Ill.App.3d 858 (1989), and also The People v. Avery Coonley School, 12 Ill.2d 113 (1957). The caretaker's duties testified to by Dr. Hamilton, namely maintaining and cleaning the house on the parcel here in issue, were clearly not exempt duties. In addition, no evidence was offered either that Dr. Hamilton was required to live in the house because of his exempt duties for Applicant, or that he performed any of his exempt duties for Applicant in the residential portion of said house.

I therefore conclude that Applicant is a religious and charitable organization, which owned the parcel here in issue during the period May

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10, 1993, through December 31, 1993. I also conclude that Applicant used the basement, the first floor, except the dining/conference room and the kitchen, as well as the executive director's office, and one bathroom on the second floor, and one-half of the garage and the land on which the garage is located, for religious and charitable purposes during the period May 10, 1993, through December 31, 1993.

I therefore recommend that DuPage County parcel No. 09-01-204-005 be exempt from real estate tax for 65% of the 1993 assessment year, except for the house and the land on which it stands, and the garage and the land on which it stands. Concerning the house, I recommend that the percentage of the square footage of the house contained in the basement, the first floor, except for the dining/conference room, and the kitchen plus the executive director's office, and one bathroom on the second floor, be exempt from real estate tax for 65% of the 1993 assessment year. That same percentage of the land on which the house stands should also be exempt for 65% of 1993. Concerning the garage, I recommend that one-half of the garage and one-half of the land on which it stands, be exempt for 65% of the 1993 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge

February , 1995

001321

PT 02-17
Tax Type: Property Tax
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

MUHAMMAD'S HOLY TEMPLE
OF ISLAM,
APPLICANT

01-PT-0061

Real Estate Tax Exemption

For 1999 Tax Year
P.I.N. 20-33-100-001-0000

v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

Kenneth J. Galvin
Administrative Law Judge

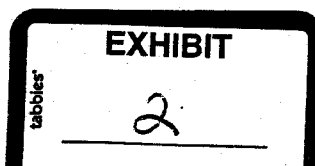
RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Richard D. Worsek, on behalf of the applicant; Mr. Shepard Smith, on behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether the subject property, identified by Cook County Parcel Index Number 20-33-100-001-0000 (hereinafter the "subject property") qualifies for exemption from 1999 real estate taxes under 35 ILCS 200/15-40, which exempts, "[a]ll property used exclusively for religious purposes."

The controversy arises as follows: On May 11, 2000, Muhammad's Holy Temple of Islam (hereinafter the "applicant") filed a Real Estate Exemption Complaint for the subject property with the Board of Appeals/Board of Review of Cook County



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(hereinafter the "Board"). Dept. Ex. No. 3. The Board reviewed the applicant's complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that an exemption for the property be denied. Dept. Ex. No. 2.

On May 17, 2001, the Department accepted the Board's recommendation finding that the subject property was not in exempt ownership or use during 1999. Dept. Ex. No.

1. On May 25, 2001, the applicant filed a timely request for a hearing as to the denial and presented evidence at a formal hearing on March 7, 2002, with Kamal Mohammad, National Secretary of the Nation of Islam, providing oral testimony. Following submission of all evidence and a careful review of the record, it is recommended that the subject property be granted an exemption for the 1999 tax year.

FINDINGS OF FACT:

1. Dept. Ex. Nos. 1, 2 and 3 establish the Department's jurisdiction over this matter and its position that the subject property was not in exempt ownership or use in 1999.
2. On October 30, 1985 the applicant acquired the subject property, located at 7901 South Halsted Street, and owned it continuously through October 27, 2000, when the applicant sold the property to the City of Chicago. Tr. pp. 16-20; App. Ex. Nos. 1, 2 and 3.
3. The subject property consists of a building with three equal levels. During 1999, no part of the building was leased and no rent was generated. There were no commercial uses of the building. The building was entirely used by Muhammad's Holy Temple of Islam. Tr. pp. 46-49.

4. Muhammad's Holy Temple of Islam was founded in 1930 in the United States as part of the religion of Islam. Muslims believe in God who is called "Allah" and also in the prophets including Moses, Abraham, Jesus and Mohammad, the latest prophet. Muslims attempt to make a pilgrimage, called "Hajj," to Mecca in Saudi Arabia once in their lifetime. Tr. pp. 21-23.
5. Muhammad's Holy Temple of Islam is headquartered in Chicago and was incorporated in Illinois on February 4, 1985, under the "Not For Profit Corporation Act." The Articles of Incorporation state, *inter alia*, that the purposes of the corporation are "[T]he indoctrination in the religious principles of Islam on the leading of an Islamic life as taught and exemplified by the Honorable Elijah Muhammad, Messenger of Allah," and that "[T]he real and personal property of this corporation is irrevocably dedicated to religious and charitable purposes." Tr. pp. 24-25; App. Ex. Nos. 4 and 5.
6. Muhammad's Holy Temple of Islam is exempt from Retailers' Occupation Tax in Illinois and is tax exempt under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 27-28; App. Ex. No. 6.
7. The Nation of Islam has approximately 150 mosques around the world, in almost every major city in the United States. There are approximately 20,000 registered believers or clergy, and approximately 200,000 members attend the services. Registered believers indoctrinate people in the teaching of Islam, conduct mosque meetings and help bring in the congregation and make the members comfortable in the meetings. Tr. pp. 28-30, 88, 119.

8. The Nation of Islam communicates with its members in different ways: meetings and services in the mosques; through an official newspaper known as "Final Call," considered a religious text; and through books and tapes and various radio shows across the country. Tr. pp. 30-33.
9. Training for registered believers is provided five days per week. Women's training is separate from men's training. Sunday is the general mosque meeting for men and women. Monday is intense training for men. Wednesday is a continuation of the general mosque meeting. Friday is religious study group. Saturday is meeting and training for women. This schedule has been followed since 1930. Tr. pp. 35-36.
10. Female members, while in the mosque, must wear a loose fitting garment which covers their legs and their hair must be covered. These garments are not commercially available. Tr. pp. 31-34.
11. Women's training is known as "Muslims Girls Training" or "MGT." It includes sewing classes and instruction on how to care for one's children and raise a family under God's law. Classes are taught by registered believers trained in home economics, sewing and cooking. MGT starts as soon as a child enters Islam and women attend classes throughout their lifetimes. Tr. pp. 37-38.
12. One room of the ground level of the subject property was devoted to MGT. In this room, women were trained in cooking, caring for a family, garment production and training on the tenets and doctrines of Islam. Garments produced included Muslim garments, headpieces, uniforms for school students and practical clothing that meets the standards of Islam. MGT classes are for registered believers or those in training to become registered believers. Attendees do not pay for the classes but are expected

to donate to Islam to cover a small amount paid to the instructor or for supplies. Tr. pp. 50-55, 101, 117; Joint Ex. No. 3.

13. Islam requires males to be able to defend themselves in accordance with the belief that knowledge of defense lessens the need to engage in violence. Muslims are not allowed to carry weapons except in certain situations, and they consider the use of force to be an extreme response. Muslims believe that physical training creates self-confidence, discipline and internal peace and that violence arises from fear. Tr. pp. 38-42.

14. This knowledge of defense and sense of self-confidence is utilized in urban areas and in the Nation of Islam's prison ministries. The Nation of Islam goes into disenfranchised urban areas and tries to change the lives of the residents. Their training allows them to enter these areas without resorting to violence, as they are taught to show confidence without being aggressive and to be able to calm any situation that develops. More extensive religious and physical training is required for registered believers in the prison ministry. These members must have a higher level of confidence and peacefulness in order to instruct prisoners who may be living in a hopeless environment. Tr. pp. 38-39; 57-58, 61.

15. Physical training for males includes martial arts training. Some of the martial arts instructors have proficiency belts. Students may be able to attain a proficiency belt through the training. Tr. pp. 92-94, 96.

16. One room of the ground level of the subject property was devoted to Fruit of Islam classes ("FOI") training for men. FOI includes instruction in the principles of Islam, instruction on how to properly care for the human body through special dietary laws

and physical training, martial arts training, and an understanding of the discipline and confidence that is developed from martial arts. FOI training is mandatory for registered believers and those in training to be registered believers. This training may be utilized by registered believers in conducting meetings in the mosque, properly securing mosque meetings, quieting disturbances, and doing outreach in neighborhoods considered dangerous. Tr. pp. 55-59, 67, 119; App. Ex. No. 7; Joint Ex. No. 3.

17. Different levels of FOI training take place on different nights of the week. Monday night classes are larger and geared toward new converts. There is no charge for FOI training. Males begin training at age four or five and continue through their entire lives. Tr. pp. 60-62, 67, 103.

18. The ground and second floors of the subject property contain rooms for storage of audio and video tapes and equipment for duplication and editing. Four people worked in this area. The audio and video tapes stored here include tapes by Hon. Elijah Mohammad, the former leader of Islam, Hon. Minister Louis Farrakhan, the current leader, and associated Nation of Islam ministers.¹ Tr. pp. 21, 68-73, 106, 116; App. Ex. No. 7; Joint Ex. No. 3.

19. Muhammad's Holy Temple, in Chicago, is the central point of distribution to all mosques of Islam, and study groups in the United States and missions in the Caribbean, West Africa, London and Canada. Audio and video tapes are duplicated

¹ At hearing, administrative notice was taken of the following audio and video tapes, which are representative of tapes stored in this area: "The Severe Trial of the Nation of Islam" dated December 12, 1999; "Press Conference of the World Tour III," dated February 20, 1998; "This Day I Have Perfected For You Your Religion;" and "The Current Health Status of the Minister Farrakhan Press Conference at the Fabulous Salaam Restaurant," March 19, 1999. Tr. pp. 71-72.

upon request and sent to mosques and study groups around the world. Large duplications are done at another location. Tr. pp. 69-70; App. Ex. No. 7.

20. The ground and second floors of the subject property contain rooms for storage of religious publications and texts. Included in this room are Korans in English, French and Spanish and companion documents to the Koran, including "Message to the Blackman," "How to Eat to Live," and "Our Savior Has Arrived." Some of these books were written by Elijah Mohammad and are considered core spiritual texts which are used daily. Some books are given away; other books are given for a donation. Tr. pp. 74-76, 110; App. Ex. No. 7; Joint Ex. No. 3.
21. The ground and first floors of the subject property contain rooms for storage of religious literature and periodicals. Included in these rooms are "Final Call" Newspapers from 1979 to 2001. The newspapers are considered religious documents because there are articles by Hon. Minister Louis Farrakhan in each issue. These papers are never thrown away and they are considered timely documents regardless of the date.² Also archived in these rooms is the newspaper, "Mohammad Speaks," which is the original newspaper from the 1960's. The room also contains texts such as "Meaning of F.O.I.," "Training Manual for the F.O.I.," and "Official Guide to the Ministry." Tr. pp. 76-78; App. Ex. No. 7; Joint Ex. No. 3.
22. The first floor of the subject property contains a room for storage of religious material related to Islam. This material includes the Nation of Islam flag, photos and posters of Hon. Elijah Mohammad and Hon. Minister Louis Farrakhan, prayer rugs, Million

² At hearing, administrative notice was taken of five "Final Call" newspapers which are representative of newspapers stored in this area. These papers contained the following lead articles: "An Interview With Minister Louis Farrakhan;" "To Serve, Protect and Suppress;" "U.S. Lies, U.N. Spies;" "Urban Arms Dealers Under Fire;" and "The Healing of the Deadly Wound of the Nation." Tr. pp. 77-78.

Man March flags, bumper stickers and posters saying "Allah is God," and Savior's Day pens. Prayer rugs are used daily for praying. Other material stored here would be used for fundraisers and shipped to mosques and study groups. Tr. pp. 80-84; App. Ex. No. 7; Joint Ex. No. 3.

23. Included on the first floor is a room with desks and 8 to 10 telephones. These telephones were used to invite people to the mosque or to notify people that Minister Farrakhan was going to speak on a particular night. The phone calls were made by registered believers who were volunteering their services. The telephones would also be used for fundraising. Tr. pp. 84-85, 91-92, 116; Joint Ex. No. 3.

CONCLUSIONS OF LAW:

An examination of the record establishes that the applicant has demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the subject property from real estate taxes for the 1999 tax year. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article

IX, Section 6 does not in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-3 *et seq.* The relevant provisions of that statute which govern the disposition of the instant proceeding are found in Section 200/15-40, which states as follows:

All property used exclusively for religious purposes, or used exclusively for schools and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt ...
35 ILCS 200/15-40.

Prior to 1909, the law required that religious property exemptions would be granted only if the party using the property for religious purposes also owned the property. People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922). However, this is no longer the case because statutory changes have eliminated the ownership requirement. *Id.* Evidence was presented at the evidentiary hearing showing that the applicant acquired the subject property by quitclaim deed on October 30, 1985, and owned it continuously through October 27, 2000. App. Ex. Nos. 1, 2 and 3. The only issue to be decided is whether the subject property was actually and exclusively used for religious purposes in 1999.

Property satisfies the exclusive-use requirement of the tax exemption statutes if it is primarily used for the exempted purpose, even though it may also be used for a secular

or incidental purpose. McKenzie v. Johnson, 98 Ill. 2d 87, 98 (1983). In People ex rel. McCullough v. Deutsche Gemeinde, 249 Ill. 132, 136-137 (1911), the court noted that, as applied to the use of property, “a religious purpose means a use of such property by a religious society or body of persons as a stated place for public worship, Sunday schools, and religious instruction.”

Based on the evidence and testimony presented in this case, I have concluded that Muslim Girls Training (“MGT”) and Fruit of Islam Training (“FOI”) are “religious instruction” as contemplated by the court in McCullough. The training for men in FOI and women in MGT is offered to registered believers or those in training to be registered believers. Registered believers are considered clergy. Tr. p. 29. In this respect, the training is comparable to that given to Catholic seminarians. In People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924), the court determined that a seminary preparing young men for the priesthood was exempt from taxation as property used exclusively for “religious purposes.”

The Department argued in closing that training in martial arts for men and sewing for women were “vocational activities,” and not entitled to exemption. Tr. pp. 123-124. Whereas, the training certainly does involve some vocational aspects, the testimony of Kamal Mohammad, which I find credible, clearly showed the relationship of the training to the Islamic religion. The witness testified that family life is very important in Islam and, as far as MGT is concerned, part of the training “is how to raise a family under God’s law.” Tr. pp. 37-38. The necessity of the men’s training in FOI for ministering to disenfranchised areas and prisons was clearly demonstrated by the witness: “[W]e have a philosophy that having a knowledge of defense [lessens] that need to engage in violence.

So it's a mental strategy that we use and it works very well from the meetings that we have had in the urban areas to the meetings that we have in prisons." Tr. p. 39. Mr. Mohammad added that there is always a "spiritual component" to the training which is "related to God's instructions in that area..." Tr. p. 39. Based on the above considerations, I have concluded that MGT and FOI training is primarily for religious purposes and the areas in the subject property used for this training should be exempt from property taxes.

The question of whether the storage areas on the subject property are exempt must be based on the standard set forth in MacMurray College v. Wright, 38 Ill. 2d 272, 278 (1967), where the court stated that "exemptions will be sustained if it is established that the property is primarily used for purposes which are reasonably necessary for the accomplishment and fulfillment of the [religious] objectives, or efficient administration of the particular institution." The objective of Muhammad's Holy Temple of Islam, as stated in their Articles of Incorporation, is "[T]he indoctrination in the religious principles of Islam on the leading of an Islamic life ..." App. Ex. No 4.

Muhammad's Holy Temple, in Chicago, is the central point of distribution to all mosques of Islam and study groups in the United States and missions in the Caribbean, West Africa, London and Canada. Tr. pp. 69-70. Because of this fact, I must conclude that storage on the subject property is "reasonably necessary" for the accomplishment of the applicant's objectives. The audio and video tapes stored on the subject property were sent to mosques or study groups around the world. Tr. p. 69. The religious books stored are considered core spiritual texts, including Korans in different languages and books written by Elijah Mohammad on how to lead an Islamic life. Tr. pp. 74-75. The texts and

video tapes are necessary for the fulfillment of the applicant's objective of religious indoctrination.

The "Final Call" newspapers stored on the subject property are never thrown away and are considered religious documents because they contain articles by the Hon. Minister Louis Farrakhan. The original newspaper, "Mohammad Speaks," is archived in the storage area. Tr. pp. 76-77. Other storage on the subject property included the Nation of Islam flag and prayer rugs used daily for praying. It is noted that there is precedent for the exemption of storage areas. See *i.e.* Our Savior Lutheran Church v. Dep't. of Revenue, 204 Ill. App. 3d 1055 (5th Dist. 1990) (exemption granted for storage of church property including Church records, pews, hymnals, an altar and a cross). Based on the testimony and evidence in the instant case, I have concluded that the storage of the materials on the subject property serves to directly accomplish the applicant's stated purpose and provides for the efficient administration of Muhammad's Holy Temple.

WHEREFORE, for the reasons stated above, it is recommended that the subject property, identified by Cook County Parcel Index. No. 20-33-100-001-0000, be granted an exemption from property tax for the 1999 tax year.

ENTER:

Kenneth J. Galvin
Administrative Law Judge

April 18, 2002



Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS

Willard Ice Building
101 West Jefferson Street - Level 5SW
Springfield, Illinois 62702
(217) 782-6995

THREE ANGELS BROADCASTING
NETWORK, INC., Applicant

v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

Docket # 01-PT-0027

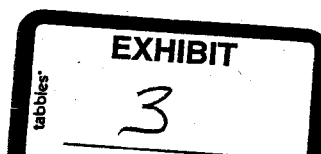
REPLY TO REQUEST FOR PRODUCTION

The following are replies by paragraph to Applicant's Request, dated August 27, 2001, with enclosures of those documents produced. Applicant's text by paragraph precedes each response:

1. Any document, list, or record which states the names and addresses, if available, of all not-for-profit corporations transacting business of any kind or nature in the State of Illinois for the years 1996, 1997, 1998, 1999, 2000 and 2001.

DEPARTMENT'S RESPONSE:

The Department of Revenue does not possess nor produce any document, list or record such as that described, nor any document, list or record which contains in any form the



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information requested. The Secretary of State of Illinois administers the registration functions for corporations of all types in this State, but this response should not necessarily indicate that the Secretary of State does possess the documents sought.

2. Any document, list, or record which states whether or not the not-for-profit corporations transacting business of any kind or nature in the State of Illinois receive an exemption from property taxes for the years 1996, 1997, 1998, 1999, 2000 and 2001.

DEPARTMENT'S RESPONSE:

The Department of Revenue does not possess nor produce any document, list or record such as that described, nor any document, list or record which in any form contains the information requested.

3. Any document, list, or record which states the names and addresses, if available, of parties, corporations, partnerships, or any other entities which have received an exemption from property taxes for the years 1996, 1997, 1998, 1999, 2000 and 2001.

DEPARTMENT'S RESPONSE:

The Department of Revenue maintains a computer database of all of its decisions on property tax exemption applications. The total of such decisions for the year 2000 was 6,631. This number has remained somewhat constant during the years in question at near 7,000 per year. For the years requested, then, the potential total of property tax exemption decisions is approximately 40,000. Although the database contains the requested information, no document, list or record with the specific requested information has ever been created or possessed by the Department of Revenue.

The Department of Revenue, therefore, declines to comply with this request because: 1. The Department possesses no list, document or record which contains the specifically requested

information; 2. For reasons of security and confidentiality of taxpayer information, the Department cannot make the database available to any outside searchers or compilers; 3. It would be excessively burdensome for the Department itself to create a search program that would locate and retrieve the information requested and transform it into a list or document from its property tax exemption database; and 4. The request does not seek information reasonably calculated to lead to the discovery of relevant or admissible evidence (See *TTX v. Whitley*, 295 Ill. App. 3d 548 (1998)).

4. Any document, list, or record which contains any decision of the Illinois Department of Revenue granting or denying any application for exemption from property taxes for the years 1996, 1997, 1998, 1999, 2000 and 2001.

DEPARTMENT'S RESPONSE:

The Department of Revenue maintains a computer database of all of its decisions on property tax exemption applications. The total of such decisions for the year 2000 was 6,631. This number has remained somewhat constant during the years in this request at near 7,000 per year. For the years requested, then, the potential total of property tax exemption decisions is approximately 40,000. Although the database contains the requested information, no document, list or record with the specific requested information has ever been created by the Department of Revenue.

The Department of Revenue, therefore, declines to comply with this request because: 1. The Department possesses no list, document or record which contains the specifically requested information; 2. For reasons of security and confidentiality of taxpayer information, the Department cannot make the database available to any outside searchers or compilers; 3. It would be excessively burdensome for the Department itself to create a search program that

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would locate and retrieve the information requested and transform it into a list or document from its property tax exemption database; and 4. The request does not seek information reasonably calculated to lead to the discovery of relevant or admissible evidence (See *TTX v. Whitley*, 295 Ill. App. 3d 548 (1998)). (Same answer as the answer to paragraph 3.)

5. Any document, list, or record which contains any decision of the Illinois Department of Revenue granting an exemption from property taxes and the application for such exemption for the following:

WTCT-TV (Tri-State Christian Television)
11717 Route 37
Marion, IL 62959

Channel 38
Chicago, Illinois

DEPARTMENT'S RESPONSE:

The documents requested for WTCT-TV are enclosed. No application or decision could be located for Channel 38. It is likely that any application would have been made in the corporate or business name of the entity. The Department will provide the requested documents if the name under which the application was made is provided.

It is the Department's position, however, that these documents are neither admissible nor relevant in the hearing on the Applicant's application for property tax exemption (*TTX v. Whitley*, 295 Ill. App. 3d 548 (1998)), but provides them because the burden is minimal and no confidentiality issues are raised by their production.

6. Any document, list, or record which states the names and addresses, if available, of all not-for-profit religious corporations transacting business of any kind or nature in the State of Illinois for the years 1996, 1997, 1998, 1999, 2000 and 2001.

DEPARTMENT'S RESPONSE:

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The Department of Revenue does not possess nor produce any document, list or record such as that described, nor any document, list or record which in any form contains the information requested.

7. Any document, list, or record which states whether or not the not-for-profit religious corporations transacting business of any kind or nature in the State of Illinois receive an exemption from property taxes for the years 1996, 1997, 1998, 1999, 2000 and 2001.

DEPARTMENT'S RESPONSE:

The Department of Revenue does not possess nor produce any document, list or record such as that described, nor any document, list or record which in any form contains the information requested.

Department of Revenue of the State of Illinois

By:



Kent R. Steinkamp
Special Assistant Attorney General

Enclosure

001333

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING)
NETWORK, INC.,)

Applicant,)

and)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)

Respondent.)

and)

THOMPSONVILLE COMMUNITY)
HIGH SCHOOL DISTRICT NO. 112,)
And THOMPSONVILLE SCHOOL)
DISTRICT NO. 62,)

Intervenors.)

Docket Number: 00-28-1

Case Number: 01-PT-0027

**OFFICE OF THE
ADMINISTRATIVE CLERK
FILED**

JUL 21 2003

**IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

NOTICE OF HEARING

To: Barbara Rowe
Administrative Law Judge
IL Dept of Revenue
101 West Jefferson
Springfield, IL 62702
Fax #(217) 524-5341

Kent Steinkamp
Special Asst. to Att. General
101 West Jefferson
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Fax #(217) 524-0527

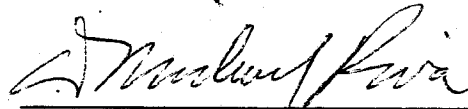
Merry C. Rhoades
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230 Regency Centre
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William K. Richardson
Franklin County State's Atty.
202 West Main Street
Benton, IL 62812
Fax #(618) 435-2349

NOTICE is hereby given that a hearing on the Applicant's Motion for Leave to File Instanter filed July 17, 2003, is scheduled for hearing on July 24, 2003, at 1:30 p.m. before Administrative Law Judge Barbara Rowe. Said hearing to be conducted before Judge Rowe via telephone conference call set up by Applicant.

To access this conference please call 1-888-483-9931 with a passcode of 7582#.

Dated: July 21, 2003.



D. MICHAEL RIVA,
One of the Attorneys for Three Angels
Broadcasting Network, Inc.

D. MICHAEL RIVA, LTD.
D. MICHAEL RIVA
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Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS
 Willard Ice Building
 101 West Jefferson Street - Level 5SW
 Springfield, Illinois 62702
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OFFICE OF THE
 ADMINISTRATIVE CLERK
 ENTERED

JUL 28 2003

IDOR
 ADMINISTRATIVE HEARINGS
 SPRINGFIELD, ILLINOIS

3 ANGELS BROADCASTING NETWORK)		
	)	Docket #	00-28-01
v.	)	A.H. Docket #	01-PT-0027
	)	P. I. #	174-116-11
)		
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

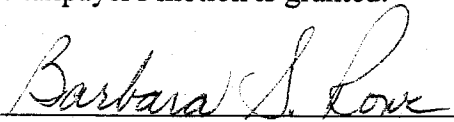
ORDER

TO: Please see attachment.

This cause coming on to be heard on the "Motion for Leave to File Instanter" of 3 Angels Broadcasting Network, taxpayer, by and through its attorneys, due notice having been given, all arguments having been properly considered, no objection having been raised and it being the finding of the administrative law judge that just cause has been shown in order to justify the motion:

IT IS THEREFORE ORDERED that the taxpayer's motion is granted.

Date: July 28, 2003


 Barbara S. Rowe
 Administrative Law Judge

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OFFICE OF THE
ADMINISTRATIVE CLERK
JAN 28 2004

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING
NETWORK, INC.

Applicant,

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,

Respondent,

and

THOMPSONVILLE COMMUNITY
HIGH SCHOOL DISTRICT NO. 112, and
THOMPSONVILLE SCHOOL
DISTRICT NO. 62,

Intervenors.

Docket No.: 00-28-01
and

Docket No.: 01-28-07

Case No. 01-PT-0027
P.I. # 174-116-11

ADMINISTRATIVE HEARINGS
STATE OF ILLINOIS

APPLICANT'S PETITION FOR REHEARING

Applicant, Three Angels Broadcasting Network, Inc., ("Three Angels"), respectfully petitions, pursuant to Section 8-35 of the Illinois Property Tax Code (35 ILCS 200/8-35), for a rehearing of the January 28, 2004 decision in this case in order to correct erroneous or incomplete findings and conclusions contained therein. In support of its petition, Three Angels states as follows:

1. At trial, counsel for Three Angels offered into evidence what appeared to be a complete set of Three Angels' corporate by-laws. The by-laws were admitted into evidence without objection. (Tr. 60; Applicant's Exhibit 3). In footnote 3 at page 8 of her opinion, however, the Administrative Law Judge notes that three pages of the exhibit were missing from her copy. Since the admission of the by-laws was not objected to, and a complete copy was intended to be admitted, Applicant requests that a complete copy of the corporate by-

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laws be substituted for the incomplete exhibit. The complete copy (marked as Applicant's Exhibit 3A), is attached hereto as Exhibit A.

2. Due to the missing pages in the Three Angels' by-laws exhibit reviewed by the Administrative Law Judge (Applicant's Ex. 3), the Administrative Law Judge was unable to review Section 1.4 which provides that in the event Three Angels is dissolved, all remaining assets are to be distributed to organizations operated exclusively for charitable, religious, educational or scientific purposes for the benefit the inhabitants of Illinois, provided such organizations qualify at the time as exempt organizations under Section 501(3)(c) of the Internal Revenue Code. *See* Exhibit A, Section 1.4.

This is consistent with Mr. Shelton's testimony at trial that the by-laws provide that in the event of a corporate dissolution, Three Angels assets are to be distributed among other not-for-profit organizations. (Tr. 60). The Administrative Law Judge's opinion at page 30 is thus factually incorrect when it concludes that Three Angels' by-laws do not provide for a dissolution of assets, and the opinion should be corrected in accordance with the trial testimony and the complete copy of the by-laws.

3. At pages 35-36 of her opinion, the Administrative Law Judge erroneously concludes that Three Angels is tantamount to a closely held business with profits inuring to Danny and Linda Shelton. The Administrative Law Judge reaches this erroneous conclusion based on an incorrect factual finding that during 2000 and 2001, the Three Angels' board of directors consisted of the four individuals listed on the Three Angels' 1985 Articles of Incorporation, all of which had the last name Shelton and listed the same address.¹ The evidence, however, is to the contrary.

¹ The Administrative Law Judge made this finding despite having acknowledged that Dr.

At trial, there was no testimonial or documentary evidence that Kenneth Shelton and Emma Lou Shelton were members of the board of directors in 2000 or 2001. They were only identified as directors in the 1985 Articles of Incorporation.

Danny Shelton testified that during 2000 and 2001, there were twelve directors on the Board. (Tr. 92). Of the twelve, nine directors were identified at trial. In addition to Danny and Linda Shelton, Dr. Walter Thompson, a doctor living in Burr Ridge, Illinois, testified that he had been a member of the board since approximately 1986 or 1987, and had held the position of Chairman of the Board from approximately 1994 to the present. (Tr. 494, 497-499). Dr. Thompson confirmed for counsel for Intervenors that May Chung was also a member of the board. (Tr. 527).

Danny Shelton testified as to the identity of five additional board members. He testified that the Illinois Conference President of the Seventh-day Adventist Church has a standing position on Three Angels' board of directors, and during 2000 and 2001, that position was filled by Wayne Coulter, who was also an ordained minister. (Tr. 92-93). Mr. Shelton further testified that the Under Secretary of the General Conference of the World Church of the Seventh-day Adventist sat on the board and was an ordained minister, although this individual was not disclosed by name. *Id.* In addition, Mr. Shelton testified that: Owen Troy, an ordained minister and the Communication Director for the North American Division of Seventh-day Adventist; Larry Welch, an ordained minister; and, Ellsworth McKee, also sat on the board during 2000 and 2001.

The Administrative Law Judge, moreover, may take administrative notice of Three Angels' federal form 990, which lists the directors and their compensation, because the forms

Thompson was a board member during 2000 – 2001. (Op. at 7, fn. 2).

are a matter of public record pursuant to §6104(b) of the Internal Revenue Code. In *Muller v. Zollar*, 267 Ill. App. 3d 339,341, 642 N.E.2d 860, 862 (1994), the Illinois Appellate Court held that judicial notice of a public record is proper and may be taken despite the fact the public document was not offered at the administrative hearing:

Notwithstanding the limitations of section 3-110 [of the Administrative Review Act], Illinois courts recognize that documents containing readily verifiable facts capable of instant and unquestionable demonstration may be judicially noticed. [citation omitted] Judicial notice is proper where the document in question is part of the public record [citation omitted] and where such notice will aid in the efficient disposition of a case. [citation omitted] Moreover, this court may take judicial notice regardless of whether such notice was sought at the trial court level.

See also Country Cos. v. Universal Underwriters Ins. Co., 343 Ill. App. 3d 224, 229; 796 N.E.2d 639, 643 (2003).

In light of the testimonial evidence alone (or in conjunction with Three Angels' federal form 990), it was erroneous for the Administrative Law Judge to find as a factual matter that Three Angels had "only submitted the names of Danny Shelton, Linda Shelton, Kenneth Joel Shelton, and Emma Lou Shelton as the four directors of 3 ABN" for 2000 and 2001. (Op. at 7, n.2). The erroneous conclusion that the board of directors was biased and partial (because it allegedly consisted exclusively of four family members) led the Administrative Law Judge to commit further error by concluding that Three Angels was a "closely held business with profits inuring to the [Shelton] family." (Op. 35-36).

Applicant therefore requests that administrative notice be taken of Three Angels' federal form 990 for the years 2000 and 2001. Copies of the federal forms 990 are marked as Applicant's Exhibit 25 and attached as Exhibit B.

Applicant further requests that the portion of the Administrative Law Judge's opinion, beginning with the last full paragraph on page 35 up to, but not including, the last full

paragraph on page 36 be stricken, and the Administrative Law Judge's factual findings with respect to the board of directors on page 7 be corrected to conform to the evidence. In the alternative, applicant requests that it be permitted to introduce additional evidence on this point.

4. With respect to the wages earned by the Sheltons, Danny Shelton testified that they each earned about \$50,000 a year, their salaries were set by the board of directors, they received medical and dental benefits, but they did not receive retirement benefits. (Tr. 141-145). Dr. Thompson testified that board members do not receive any compensation for their services as directors and are not reimbursed for travel expenses. (Tr. 500-501). Mr. Shelton further testified that Three Angels employed approximately 144 employees worldwide. (Tr. 188-189).

Although Mr. Shelton's testimony was unimpeached, the Administrative Law Judge at pages 34 through 35, *sua sponte*, questioned the veracity of the testimony because no documentary evidence was introduced to substantiate the testimony. As noted above, however, the Administrative Law Judge may take administrative notice of Three Angels' federal forms 990 which substantiate the testimony of the Sheltons as to their compensation.² Accordingly, Applicant requests that administrative notice be taken of Three Angels' federal form 990 for the years 2000 and 2001, and that the opinion of the Administrative Law Judge be modified in accordance with the unimpeached testimony as substantiated by the federal forms. In the alternative, applicant requests that it be permitted to introduce additional evidence on the point.

² The 990 forms confirm that Danny Shelton made \$53,365 and \$55,504 during 2000 and 2001 respectively, and Linda Shelton made \$47,453 and \$49,354.

5. With respect to the sale of Three Angels' CDs on which Linda Shelton sings, the Administrative Law Judge found at page 36 that Linda Shelton was operating a "commercial enterprise." The opinion appears to be based on the erroneous factual conclusion that Ms. Shelton obtained royalties from the sales of the CDs. (Op. at 29, 33). The evidence, however, does not substantiate such a finding.

At trial, Ms. Shelton testified that she does not receive royalties from the sale of the CDs on which she sings. (Tr. 641). Mr. Shelton confirmed the same. (Tr. 142). Linda explained that although she owns the copyright to the individual songs, the "project belongs to Three ABN," *i.e.*, Three Angels owns and sells the CDs. (Tr. 620). The CDs are offered for sale in Three Angels' catalogs and Three Angels receives the sales revenue. Three Angels does not pay Ms. Shelton a royalty on the sales. Ms. Shelton testified that she makes the CDs for Three Angels as a gift to help Three Angels spread the gospel. (Tr. 595).

When Ms. Shelton was initially asked about whether she received royalties from the CDs, the question was asked in the sales context. Ms. Shelton had just explained that Three Angels sells the CDs. (Tr. 595). When then asked by way of follow up whether she received any royalties, she assumed the question to be asking whether Three Angels paid her any royalties on the sales of the CDs. She explained her confusion on redirect. (Tr. 619).

Her testimony on cross examination was consistent therewith. Ms. Shelton was initially asked only whether she had received any royalties with respect to the most recent CD on which she sings, marked as Applicant's Exhibit 24. She indicated she had not. (Tr. 617, 642-643). When asked collectively about the CDs on which she sings, she explained although she does not receive any royalties for the sales of the CDs, she nevertheless owns the copyright to the songs which she licenses to Broadcast Music Inc. ("BMI"). (Tr. 618-

619; Applicant Ex. 3). BMI collects license fees from music users, e.g., radio stations, and in turn pays Ms. Shelton a royalty if her songs receive "massive airplay." (Tr. 619).

This arrangement is common in the music industry. Organizations like BMI monitor television and radio stations to determine whether any of the songs to which they hold a license are played by the station. Depending on the amount of airplay a song receives, the station is required to pay BMI a license fee. BMI in turn pays a royalty check to the musician that has licensed his or her music to BMI. Ms. Shelton testified that she does not receive royalties for any airplay by Three Angels' broadcast networks. (Tr. 641-642). She stated that the largest royalty check she ever received from BMI was approximately \$20. (Tr. 619).

In light of the fact that Ms Shelton receives no royalties on the sale of the CDs or for any airplay on Three Angels' networks, it can hardly be said that Ms. Shelton is operating a "commercial enterprise for the production of her CDs." The Administrative Law Judge's finding at page 36 should accordingly be stricken as well as the first sentence of the first full paragraph on page 33, and the third sentence in the second full paragraph on page 29. In the alternative, applicant requests that it be permitted to introduce additional evidence on this point.

6. The Administrative Law Judge further erred when she found that Three Angels "did not establish that they gave anything away free except for the catalogues that list the merchandise that is for sale." (Op. at 29). Both the documentary and testimonial evidence belie the judge's finding. Mr. Shelton testified that every day Three Angels gives away religious materials on topics from the gospel to health, all of which are part of the fundamental tenants of the Seventh-day Adventist religion. (Tr. 171-172; 181-182).

Applicant's exhibits 18 through 21 were admitted into evidence and identify the items given away to promote spiritual growth during the years 2000 and 2001. (Tr. 652; Applicant Exs. 18-21). They reveal that in 2000, well over 14,000 items were given away, the majority of which were books and magazine pamphlets, and in 2001 nearly 18,000 were given away. In addition, on Thursday nights other spiritual books and magazines were also given away. Over one hundred items were offered on Thursday nights over the two years.

Linda Shelton testified that Three Angels sends out a newsletter 9 to 10 times a year and a magazine twice a year to between 100,000 and 150,000 people. These publications are free and contain miracle stories, testimonials, information on Three Angels' initiatives and articles on devotional thought.

With respect to satellite dishes, Mr. Shelton testified that he instructed his engineering team to sell the Three Angels' satellite systems at cost, *i.e.*, \$350. (Tr. 167). Subsequently the price was reduced by \$50 so the satellite systems were sold below Three Angels' cost in order to keep them affordable to the public. (Tr. 325). Mr. Shelton stated that although there is not a written policy to give satellite systems away, there is an operational policy for distribution of satellite system equipment to those with financial hardship. He testified that when someone requests a system for free, Three Angels checks with a pastor from the individual's church to verify that there is a financial need. If the pastor confirms there is a hardship situation, Three Angels will attempt to split the cost of the satellite system with the parishioner's church. If the church is unwilling to absorb part of the cost, the system is given away. (Tr. 296-297). Mr. Shelton testified that approximately 5 or 6 satellite systems were given away in each of the years in question due to financial hardship of the recipient. (Tr. 300, 331).

Several witnesses testified that Three Angels also gives away significant amounts programming airtime. Three Angels charged \$600 per half hour of airtime, but programs were generally aired an additional two times at no charge. (Tr. 146, 370). Mr. Shelton testified that as a matter of course, if a church or lay ministry could not afford to pay the airtime charges, Three Angels would reduce its charges, or in some instances would give the airtime away for free. (Tr. 146-147). By way of example Mr. Shelton testified that in 2000, Three Angels broadcast the meeting of the General Conference of the Seventh-day Adventist Headquarter Session which took place over a ten-day period in Toronto, Canada. Because of the location, Three Angels had to send out a remote crew and trucks to broadcast the session. Although the cost to Three Angels was approximately \$200,000, no fee was charged for the broadcast. (Tr. 105-108). During the year 2000, Three Angels also broadcast a separate five week evangelist preaching and worship series at no charge featuring Samuel Thomas in Ohio. (Tr. 105-106). The same year Three Angels also broadcast at no charge an evangelist preaching series known as Pentecost 2000. The series featured pastor Steven Lewis and took place at, and was broadcast from, Three Angels' property. The program series ran for approximately a month. *Id.*

Danny Shelton's testimony was corroborated by an independent witness, Kenneth Denslow, the President of the Illinois Conference of the Seventh Day Adventist. Mr. Denslow testified that during 2000 through 2001, Three Angels televised the Conference's church organizational meetings, known as town hall meetings, for Adventist churches throughout the state. The Conference was only charged for Three Angels' third party costs. No charge was made for Three Angels' services. (Tr. 551-556, 563). Three Angels also televised the Net 2000 Series at no charge. Net 2000 was a series of biblical preaching

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services resulting from a cooperative effort between the Illinois Conference and the North American Division of Seventh-day Adventist. The series lasted almost five weeks with broadcasts airing almost every night of the week. (Tr. 556-557). Three Angels also hosted and televised the Illinois Conference's camp meeting at no charge, which involved religious meetings and worship services. (Tr. 557-558).

In short, there was significant evidence that Three Angels gave away substantial amounts of religious materials and programming airtime, as well as a small amount of satellite systems. Although no giveaway policy was reduced to writing, an operational policy was clearly in effect and utilized. To the extent the Administrative Law Judge's opinion at pages 21, 29 and 38 are inconsistent with the evidence, Applicant requests that those portions of the opinion be stricken and the opinion be modified to reflect that Three Angels gave away or reduced the charges for numerous items as reflected in the testimony and documents. In the alternative, applicant requests that it be permitted to introduce additional evidence on this point.

7. At page 30, the Administrative Law Judge concluded that "3ABN has not established that it has officers deeply involved in religious teaching that serve to accomplish the promotion of Christian education." Relatedly, she concluded at page 34 that "[n]or is there any indication in the record that Danny Shelton is traveling to advocate the Seventh-day Adventist doctrine or faith." Such conclusions are squarely contradicted by the evidence.

Danny Shelton is a director and the president of Three Angels. He is an ordained elder in the Seventh-day Adventist Church. As such, he participates in the distribution of the elements, baptisms and foot washings and represents the church on prayer missions. (Tr. 38). He is a lay minister of the gospel. *Id.* Mr. Shelton has taught bible studies and lessons on the

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doctrines and teachings of the Seventh-day Adventist beliefs, and has written three books on the subject. (Tr. 155-158).

At the property in question, Mr. Shelton hosts a daily program entitled "Three ABN Presents" that is aired on Three Angels' networks. (Tr. 73). The program is devoted to religious instruction and missionary work. Mr. Shelton co-hosts the program with his wife, Linda Shelton, who is also a director and vice president. They host the show to spread the gospel and involve the viewers in the missionary work of the Seventh-day Adventist Church.

They begin the program by reading bible scripture and praying. Gospel music is then played. Thereafter they interview people on church-related topics. They interview people from other ministries as well as officials and missionaries of the Seventh Day Adventist church regarding the global missions of the church, such as the building of orphanages, schools and churches in places like Bangladesh. (Tr. 85, 130-131, 247)

Mr. and Mrs. Shelton also travel extensively on the weekends to promote the Christian teachings of the Seventh-day Adventist directly and to educate people about Three Angels' religious programming which offers instruction and education on Seventh-day Adventist beliefs. Typically they travel to a Seventh-day Adventist church in the United States. Seventh-day Adventists observe the Sabbath from sundown Friday evening to sundown Saturday evening. (Tr. 258). The Sheltons begin their Sabbath services on Friday night with gospel music. Mr. Shelton then preaches. Saturday morning they teach "Sabbath School" which is akin to Christian Sunday School. Formal church services are held around 11 a.m. and Mr. Shelton usually preaches the sermon. Saturday afternoon they usually participate in a religious revival where gospel music is played and testimonials are shared. (Tr. 130-31).

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Danny and Linda's involvement in religious instruction and education is not limited to their weekend travels. Both Sheltons are intimately involved in spreading the gospel through Three Angels' broadcasts. To this end, Linda testified that Three Angles' Board of Directors voted to limit Three Angels programming to shows and music that reflect and promote the 27 fundamental beliefs of the Seventh-day Adventist Church, and that promote the Christian gospel around the world to the extent it is consistent with Seventh-day Adventist beliefs. (Tr. 598). Danny and Linda are charged with carrying out this responsibility. The Sheltons, together with Mollie Steenson, the Department Coordinator and an ordained minister, plus the four pastors on staff at Three Angels, review all programming to assure that it is doctrinally consistent with Seventh-day Adventist views. (Tr. 332, 532-533, 598-599). The pastors are also charged with engaging in worldwide prayer with Three Angels' viewers. They take daily prayer requests from 8 a.m. until midnight from viewers that call in on an 800 telephone number. (Tr. 81, 531-532).

Linda Shelton is also actively involved in spreading the gospel through the monthly newsletter/magazines that Three Angels sends for free to its viewers. As noted previously, the newsletter contains devotional thought and stories and is written primarily by Ms. Shelton.

Doctor Walter Thompson is the Chairman of the Board of Directors for Three Angels and is an officer pursuant to Section 5.1 of the by-laws. Dr. Thompson has been a member of the Seventh-day Adventist Church since childhood and testified that as an adult he has been involved in projects for the church for many years. (Tr. 498). He volunteers several days a month at the free medical clinic operated by Three Angels, performing medical services. (Tr. 193). He is actively involved in reviewing Three Angels programming to

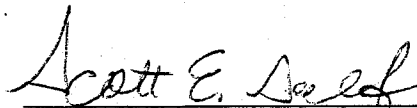
make sure it is consistent with the fundamental tenants of the Seventh-day Adventist beliefs. (Tr. 513-514). In addition, he has appeared as a host and as a guest on various programs and videos shown by Three Angels in order to instruct people as to the health-related beliefs adopted by the Seventh-day Adventist faith. (Tr. 516).

In short, the evidence established that Dr. Thompson and Danny and Linda Shelton lead lives of service and devotion to the teachings of the Seventh-day Adventist faith, promoting the instruction and education of such beliefs. The Administrative Law Judge's conclusions at pages 30 and 34 that "3ABN has not established that it has officers deeply involved in religious teaching" and that there is no indication in the record that Danny Shelton travels to advocate the Seventh-day Adventist doctrine or faith is thus contrary to the evidence and should be stricken. In the alternative, applicant requests that it be permitted to introduce additional evidence on this point.

WHEREFORE, applicant, Three Angels Broadcasting Network, Inc., prays that its petition for rehearing be granted and the January 28, 2004 decision of the Director be modified as set forth above and judgement be entered in its favor, or in the alternative, that the Administrative Law Judge permit additional evidence to be taken on the points outlined herein and judgement be entered in favor of applicant.

Respectfully submitted,

By:



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Form 990

Return of Organization Exempt From Income Tax

Under section 501(c) of the Internal Revenue Code (except black lung benefit trust or private foundation), section 527 or section 4947(a)(1) nonexempt charitable trust

OMB No. 1545-0047

2000

Department of the Treasury Internal Revenue Service

The organization may have to use a copy of this return to satisfy state reporting requirements.

Open to Public Inspection

Header section containing organization name (THREE ANGELS BROADCASTING NETWORK INC), address (WEST FRANKFORT, IL 62896), and identification numbers (Employer ID: 37-1179056, Telephone: 618-627-4651).

Part I: Revenue, Expenses, and Changes in Net Assets or Fund Balances (See Specific Instructions on page 18.)

Main table with 21 rows detailing revenue (Total: 11,399,767) and expenses (Total: 10,231,520), resulting in a net asset change of 1,168,247.

SCANNED DEC 07 01

EXHIBIT Applicant's #25

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Part II Statement of Functional Expenses All organizations must complete column (A). Columns (B), (C), and (D) are required for section 501(c)(3) and (4) organizations and section 4947(a)(1) nonexempt charitable trusts but optional for others. (See Specific Instructions on page 20.)

Do not include amounts reported on line 6b, 8b, 9b, 10b, or 16 of Part I.	(A) Total	(B) Program services	(C) Management and general	(D) Fundraising
22 Grants and allocations (att. sch.) cash \$ _____ non-cash \$ _____	22			
23 Specific assistance to individuals (att. sch.)	23			
24 Benefits paid to or for members (att. sch.)	24			
25 Compensation of officers, directors, etc.	25	137,294	137,294	
26 Other salaries and wages	26	1,665,013	1,665,013	
27 Pension plan contributions	27			
28 Other employee benefits	28			
29 Payroll taxes	29	132,045	132,045	
30 Professional fundraising fees	30			
31 Accounting fees	31	100,287	100,287	
32 Legal fees	32	86,063	86,063	
33 Supplies	33	529,697	398,276	131,421
34 Telephone	34	191,380	191,380	
35 Postage and shipping	35	496,003	496,003	
36 Occupancy	36	143,517	83,988	59,529
37 Equipment rental and maintenance	37	1,953,377	1,851,468	101,909
38 Printing and publications	38	390,889	144,879	246,010
39 Travel	39	282,402		282,402
40 Conferences, conventions, and meetings	40			
41 Interest	41	19,823		19,823
42 Depreciation, depletion, etc. (attach schedule)	42	1,482,976	1,482,976	
43 Other expenses (itemize): a STATEMENT 3	43a	2,620,754	1,988,877	631,877
b	43b			
c	43c			
d	43d			
e	43e			
44 Total functional expenses (add lines 22 thru 43) <small>Organizations completing columns (B)-(D), carry these totals to lines 13-15.</small>	44	10,231,520	6,141,844	4,089,676

Reporting of Joint Costs. Did you report in column (B) (Program services) any joint costs from a combined educational campaign and fundraising solicitation? Yes No
 If "Yes," enter (i) the aggregate amount of these joint costs \$ _____; (ii) the amount allocated to Program services \$ _____; (iii) the amount allocated to Management and general \$ _____; and (iv) the amount allocated to Fundraising \$ _____.

Part III Statement of Program Service Accomplishments (See Specific Instructions on page 23.)

What is the organization's primary exempt purpose? **SATELLITE TELEVISION MINISTRY**

All organizations must describe their exempt purpose achievements in a clear and concise manner. State the number of clients served, publications issued, etc. Discuss achievements that are not measurable. (Section 501(c)(3) and (4) organizations and 4947(a)(1) nonexempt charitable trusts must also enter the amount of grants and allocations to others.)

Program Service Expenses (Required for 501(c)(3) and (4) orgs. and 4947(a)(1) trusts; but optional for others.)	
a PRODUCTION AND DISTRIBUTION OF 24 HOUR PER DAY RELIGIOUS PROGRAMMING FOR ELECTRONIC TRANSMISSION THROUGHOUT THE WORLD. (Grants and allocations \$ 0)	6,141,844
b	
c	
d	
e Other program services (attach schedule)	
f Total of Program Service Expenses (should equal line 44, column (B), Program services)	6,141,844

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Part IV Balance Sheets (See Specific instructions on page 23.)

Note: Where required, attached schedules and amounts within the description column should be for end-of-year amounts only.		(A) Beginning of year		(B) End of year
ASSETS	45 Cash - non-interest-bearing	177,465	45	304,365
	46 Savings and temporary cash investments	4,376,937	46	4,109,652
	47 a Accounts receivable	193,624		
	b Less: allowance for doubtful accounts		47c	193,624
	48 a Pledges receivable			
	b Less: allowance for doubtful accounts		48c	
	49 Grants receivable		49	
	50 Receivables from officers, directors, trustees, and key employees (attach sch)		50	
	51 a Other notes and loans receivable (attach schedule)			
	b Less: allowance for doubtful accounts		51c	
	52 Inventories for sale or use	53,907	52	88,160
	53 Prepaid expenses and deferred charges	191,966	53	307,364
	54 Investments - securities (attach schedule) <input type="checkbox"/> Cost <input type="checkbox"/> FMV		54	
	55 a Investments - land, buildings, and equipment: basis			
	b Less: accumulated depreciation (attach schedule)		55c	
56 Investments - other (attach schedule)		56		
57 a Land, buildings, and equipment: basis	16,664,527			
b Less: accumulated depreciation (attach schedule) ..STMT. 4.	6,819,385	57c	9,845,142	
58 Other assets (describe <input type="checkbox"/> SEE STATEMENT 5)	9,622,093	58	18,605,582	
59 Total assets (add lines 45 through 58) (must equal line 74)	31,397,776	59	33,453,889	
LIABILITIES	60 Accounts payable and accrued expenses	944,988	60	454,336
	61 Grants payable		61	
	62 Deferred revenue		62	
	63 Loans from officers, directors, trustees, and key employees (attach schedule)		63	
	64 a Tax-exempt bond liabilities (attach schedule)		64a	
	b Mortgages and other notes payable (attach schedule)	159,993	64b	120,100
	65 Other liabilities (describe <input type="checkbox"/> SEE STATEMENT 6)	17,779,782	65	19,153,827
66 Total liabilities (add lines 60 through 65)	18,884,763	66	19,728,263	
NET ASSETS OR FUND BALANCES	Organizations that follow SFAS 117, check here <input checked="" type="checkbox"/> and complete lines 67 through 69 and lines 73 and 74.			
	67 Unrestricted	10,114,168	67	11,976,736
	68 Temporarily restricted	2,398,845	68	1,748,890
	69 Permanently restricted		69	
	Organizations that do not follow SFAS 117, check here <input type="checkbox"/> and complete lines 70 through 74.			
	70 Capital stock, trust principal, or current funds		70	
	71 Paid-in or capital surplus, or land, building, and equipment fund		71	
	72 Retained earnings, endowment, accumulated income, or other funds		72	
73 Total net assets or fund balances (add lines 67 through 69 OR lines 70 through 72; column (A) must equal line 19 and column (B) must equal line 21)	12,513,013	73	13,725,626	
74 TOTAL liabilities and net assets/fund balances (add lines 66 and 73)	31,397,776	74	33,453,889	

Form 990 is available for public inspection and, for some people, serves as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and fully describes, in Part III, the organization's programs and accomplishments.

Part IV-A Reconciliation of Revenue per Audited Financial Statements with Revenue per Return (See Specific Instructions, page 25.)

Table with 2 columns: Description and Amount. Rows include Total revenue, gains, and other support per audited financial statements (14,452,520), Adjustments (Net unrealized gains, Donated services, Recoveries of prior year grants, Other), and Total revenue per line 12, Form 990 (11,399,767).

Part IV-B Reconciliation of Expenses per Audited Financial Statements with Expenses per Return

Table with 2 columns: Description and Amount. Rows include Total expenses and losses per audited financial statements (13,239,905), Adjustments (Donated services, Prior year adjustments, Losses reported on line 20, Other), and Total expenses per line 17, Form 990 (10,231,520).

Part V List of Officers, Directors, Trustees, and Key Employees (List each one even if not compensated; see Specific Instructions on page 25.)

Table with 5 columns: (A) Name and address, (B) Title and average hours per week devoted to position, (C) Compensation, (D) Contributions to employee benefit plans & deferred compensation, (E) Expense account and other allowances. Row 1: SEE STATEMENT 9, Compensation: 137,294, Contributions: 0, Expenses: 0.

75 Did any officer, director, trustee, or key employee receive aggregate compensation of more than \$100,000 from your organization and all related organizations, of which more than \$10,000 was provided by the related organizations? [] Yes [X] No

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Part VI Other Information (See Specific Instructions on page 28.)		N/A	Yes	No
76	Did the organization engage in any activity not previously reported to the IRS? If "Yes," attach a detailed description of each activity			X
77	Were any changes made in the organizing or governing documents but not reported to the IRS? If "Yes," attach a conformed copy of the changes.			X
78 a	Did the organization have unrelated business gross income of \$1,000 or more during the year covered by this return?			X
b	If "Yes," has it filed a tax return on Form 990-T for this year?		N/A	
79	Was there a liquidation, dissolution, termination, or substantial contraction during the year? If "Yes," attach a statement			X
80 a	Is the organization related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc., to any other exempt or nonexempt organization?			X
b	If "Yes," enter the name of the organization	N/A		
and check whether it is <input type="checkbox"/> exempt OR <input type="checkbox"/> nonexempt.				
81 a	Enter the amount of political expenditures, direct or indirect, as described in the instructions for line 81	81a	0	
b	Did the organization file Form 1120-POL for this year?	81b		X
82 a	Did the organization receive donated services or the use of materials, equipment, or facilities at no charge or at substantially less than fair rental value?	82a		X
b	If "Yes," you may indicate the value of these items here: Do not include this amount as revenue in Part I or as an expense in Part II (See instructions for reporting in Part III.)	82b	N/A	
83 a	Did the organization comply with the public inspection requirements for returns and exemption applications?	83a	X	
b	Did the organization comply with the disclosure requirements relating to quid pro quo contributions?	83b	X	
84 a	Did the organization solicit any contributions or gifts that were not tax deductible?	84a		X
b	If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?	84b	N/A	
85	501(c)(4), (5), or (6) organizations. a Were substantially all dues nondeductible by members?	85a	N/A	
b	Did the organization make only in-house lobbying expenditures of \$2,000 or less? If "Yes" was answered to either 85a or 85b, do not complete 85c through 85h below unless the organization received a waiver for proxy tax owed for the prior year.	85b	N/A	
c	Dues, assessments, and similar amounts from members	85c	N/A	
d	Section 162(e) lobbying and political expenditures	85d	N/A	
e	Aggregate nondeductible amount of section 6033(e)(1)(A) dues notices	85e	N/A	
f	Taxable amount of lobbying and political expenditures (line 85d less 85e)	85f	N/A	
g	Does the organization elect to pay the section 6033(a) tax on the amount in 85f?	85g	N/A	
h	If section 6033(e)(1)(A) dues notices were sent, does the organization agree to add the amount in 85f to its reasonable estimate of dues allocable to nondeductible lobbying and political expenditures for the following tax year?	85h	N/A	
86	501(c)(7) organizations. Enter:			
a	Initiation fees and capital contributions included on line 12	86a	N/A	
b	Gross receipts, included on line 12, for public use of club facilities	86b	N/A	
87	501(c)(12) organizations. Enter:			
a	Gross income from members or shareholders	87a	N/A	
b	Gross income from other sources. (Do not net amounts due or paid to other sources against amounts due or received from them.)	87b	N/A	
88	At any time during the year, did the organization own a 50% or greater interest in a taxable corporation or partnership, or an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 30.7701-3? If "Yes," complete Part IX	88		X
89 a	501(c)(3) organizations. Enter: Amount of tax imposed on the organization during the year under: section 4911 ▶ 0 ; section 4912 ▶ 0 ; section 4955 ▶ 0			
b	501(c)(3) and 501(c)(4) organizations. Did the organization engage in any section 4958 excess benefit transaction during the year or did it become aware of an excess benefit transaction from a prior year? If "Yes," attach a statement explaining each transaction	89b		X
c	Enter: Amount of tax imposed on the organization managers or disqualified persons during the year under sections 4912, 4955, and 4958. ▶ 0			
d	Enter: Amount of tax in 89c, above, reimbursed by the organization ▶ 0			
90 a	List the states with which a copy of this return is filed ▶ SEE STATEMENT 10			
b	Number of employees employed in the pay period that includes March 12, 2000 (See instructions.)	90b	77	
91	The books are in care of ▶ DAVID E CARSON Telephone no. ▶ 618-627-4651 Located at ▶ 3391 CHARLEY GOOD RD, WEST FRANKFORT, IL ZIP code ▶ 62896-0220			
92	Section 4947(a)(1) nonexempt charitable trusts filing Form 990 in lieu of Form 1041 - Check here and enter the amount of tax-exempt interest received or accrued during the tax year ▶ 92		N/A	

Part VII Analysis of Income-Producing Activities (See Specific Instructions on page 30.)

Enter gross amounts unless otherwise indicated.

Table with 5 main columns: (A) Business code, (B) Amount, (C) Exclusion code, (D) Amount, (E) Related or exempt function income. Rows include 93 Program service revenue, 94 Membership dues, 95 Interest on savings, 96 Dividends, 97 Net rental income, 98 Net rental income from personal property, 99 Other investment income, 100 Gain/loss from sales, 101 Net income from special events, 102 Gross profit from sales, 103 Other revenue (VIDEO SALES, OTHER MISC, CHANGE IN VALUE UNITRUSTS), 104 Subtotal, 105 Total.

Note: Line 105 plus line 1d, Part I, should equal the amount on line 12, Part I.

Part VIII Relationship of Activities to the Accomplishment of Exempt Purposes (See Specific Instructions on page 31.)

Table with 2 columns: Line No., Explain how each activity for which income is reported in column (E) of Part VII contributed importantly to the accomplishment of the organization's exempt purposes. Row 1: SEE STATEMENT 11.

Part IX Information Regarding Taxable Subsidiaries and Disregarded Entities (See Specific Instructions on page 31.)

Table with 5 columns: (A) Name, address, and EIN of corporation, partnership, or disregarded entity; (B) Percentage of ownership interest; (C) Nature of activities; (D) Total income; (E) End-of-year assets. Row 1: N/A.

Part X Information Regarding Transfers Associated with Personal Benefit Contracts (See Specific Instructions on page 31.)

- (a) Did the organization, during the year, receive any funds, directly or indirectly, to pay premiums on a personal benefit contract? [] Yes [X] No
(b) Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract? [] Yes [X] No

Note: If "Yes" to (b), file Form 8870 and Form 4720 (see instructions).

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has knowledge.

November 14, 2001 Danny Shelton, President

Date Type or print name and title

Preparer's SSN or PTIN

SCHEDULE A
(Form 990 or 990-EZ)

Organization Exempt Under Section 501(c)(3)
(Except Private Foundation) and Section 501(a), 501(f), 501(k),
501(n), or Section 4947(a)(1) Nonexempt Charitable Trust

OMB No 1545-0047

2000

Department of the Treasury
Internal Revenue Service

Supplementary Information - (See separate instructions.)

▶ Must be completed by the above organizations and attached to their Form 990 or 990-EZ.

Name of the organization

Employer identification number

THREE ANGELS BROADCASTING NETWORK INC

37-1179056

Part I Compensation of the Five Highest Paid Employees Other Than Officers, Directors, and Trustees
(See page 1 of the instructions. List each one. If there are none, enter "None.")

(a) Name and address of each employee paid more than \$50,000	(b) Title and average hours per week devoted to position	(c) Compensation	(d) Contributions to employee benefit plans & deferred compensation	(e) Expense account and other allowances
NONE				
Total number of other employees paid over \$50,000 ▶		0		

Part II Compensation of the Five Highest Paid Independent Contractors for Professional Services
(See page 1 of the instructions. List each one (whether individuals or firms.) If there are none, enter "None.")

(a) Name and address of each independent contractor paid more than \$50,000	(b) Type of service	(c) Compensation
P & I BUILDERS		
PO BOX 1193 MARION IL 62959	BUILDING CONTRACTOR	393,590
PAUL MILLER CONSTRUCTION		
6709 MACE RD, THOMPSONVILLE, IL 62890	BUILDING CONTRACTOR	217,930
GRAY HUNTER STENN LLP		
PO BOX 1728, MARION, IL 62959	AUDIT & COMPUTER CON	69,245
TOM L DENNIS PE		
PO BOX 206, VILLAGE MILLS, TX 77663	ENGINEERING SERVICES	62,746
Total number of others receiving over \$50,000 for professional services ▶		0

Part III Statements About Activities

	Yes	No
1 During the year, has the organization attempted to influence national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum? If "Yes," enter the total expenses paid or incurred in connection with the lobbying activities. ▶ \$ <u>N/A</u> Organizations that made an election under section 501(h) by filing Form 5768 must complete Part VI-A. Other organizations checking "Yes," must complete Part VI-B AND attach a statement giving a detailed description of the lobbying activities.		X
2 During the year, has the organization, either directly or indirectly, engaged in any of the following acts with any of its trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary:		
a Sale, exchange, or leasing of property?		X
b Lending of money or other extension of credit?		X
c Furnishing of goods, services, or facilities?		X
d Payment of compensation (or payment or reimbursement of expenses if more than \$1,000)? SEE FORM 990, PART V	X	
e Transfer of any part of its income or assets? If the answer to any question is "Yes," attach a detailed statement explaining the transactions.		X
3 Does the organization make grants for scholarships, fellowships, student loans, etc.?		X
4a Do you have a section 403(b) annuity plan for your employees?		X
b Attach a statement to explain how the organization determines that individuals or organizations receiving grants or loans from it in furtherance of its charitable programs qualify to receive payments. (See page 2 of the instructions.)		

Part IV Reason for Non-Private Foundation Status (See pages 2 through 5 of the instructions.)

The organization is not a private foundation because it is: (Please check only ONE applicable box.)

- 5 A church, convention of churches, or association of churches. Section 170(b)(1)(A)(i).
- 6 A school. Section 170(b)(1)(A)(ii). (Also complete Part V, page 5.)
- 7 A hospital or a cooperative hospital service organization. Section 170(b)(1)(A)(iii).
- 8 A Federal, state, or local government or governmental unit. Section 170(b)(1)(A)(v).
- 9 A medical research organization operated in conjunction with a hospital. Section 170(b)(1)(A)(iii). Enter the hospital's name, city, and state ▶
- 10 An organization operated for the benefit of a college or university owned or operated by a governmental unit. Section 170(b)(1)(A)(iv). (Also complete the Support Schedule in Part IV-A.)
- 11a An organization that normally receives a substantial part of its support from a governmental unit or from the general public. Section 170(b)(1)(A)(vi). (Also complete the Support Schedule in Part IV-A.)
- 11b A community trust. Section 170(b)(1)(A)(vi). (Also complete the Support Schedule in Part IV-A.)
- 12 An organization that normally receives: (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its charitable, etc., functions—subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See section 509(a)(2). (Also complete the Support Schedule in Part IV-A.)
- 13 An organization that is not controlled by any disqualified persons (other than foundation managers) and supports organizations described in: (1) lines 5 through 12 above; or (2) section 501(c)(4), (5), or (6), if they meet the test of section 509(a)(2). (See section 509(a)(3).)

Provide the following information about the supported organizations. (See page 5 of the instructions.)

(a) Name(s) of supported organization(s)	(b) Line number from above

- 14 An organization organized and operated to test for public safety. Section 509(a)(4). (See page 5 of the instructions.)

Part IV-A Support Schedule (Complete only if you checked a box on line 10, 11, or 12.) Use cash method of accounting.
 Note: You may use the worksheet in the instructions for converting from the accrual to the cash method of accounting.

Calendar year (or fiscal year beginning in) ▶	(a) 1999	(b) 1998	(c) 1997	(d) 1996	(e) Total
15 Gifts, grants, and contributions received. (Do not include unusual grants. See line 28.)	9,999,808	7,557,624	6,834,614	5,701,976	30,094,022
16 Membership fees received					
17 Gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is not a business unrelated to the organization's charitable, etc., purpose	4,523,968	1,488,651	134,290	153,230	6,300,139
18 Gross income from interest, dividends, amounts received from payments on securities (section 512(b)(15)), rents, royalties, and unrelated business taxable income (less section 511 taxes) from businesses acquired by the organization after June 30, 1975	31,583	65,770	13,920	18,164	129,437
19 Net income from unrelated business activities not included in line 18					
20 Tax revenues levied for the organization's benefit and either paid to it or expended on its behalf					
21 The value of services or facilities furnished to the organization by a governmental unit without charge. Do not include the value of services or facilities generally furnished to the public without charge					
22 Other income. Attach a sch. Do not include gain or (loss) from sale of capital assets					
23 Total of lines 15 through 22	14,555,359	9,112,045	6,982,824	5,873,370	36,523,598
24 Line 23 minus line 17	10,031,391	7,623,394	6,848,534	5,720,140	30,223,459
25 Enter 1% of line 23	145,554	91,120	69,828	58,734	

26 Organizations described on lines 10 or 11: a Enter 2% of amount in column (e), line 24 N/A ▶ 26a

b Attach a list (which is not open to public inspection) showing the name of and amount contributed by each person (other than a government unit or publicly supported organization) whose total gifts for 1996 through 1999 exceeded the amount shown in line 26a. Enter the sum of all these excess amounts ▶ 26b

c Total support for section 509(a)(1) test: Enter line 24, column (e) ▶ 26c

d Add: Amounts from column (e) for lines: 18 _____ 19 _____
 22 _____ 26b _____ ▶ 26d

e Public support (line 26c minus line 26d total) ▶ 26e

f Public support percentage (line 26e (numerator) divided by line 26c (denominator)) ▶ 26f %

27 Organizations described on line 12: a For amounts included in lines 15, 16, and 17 that were received from a "disqualified person," attach a list (which is not open to public inspection) to show the name of, and total amounts received in each year from, each "disqualified person." Enter the sum of such amounts for each year: SEE STATEMENT 12
 (1999) 1,444,658 (1998) 534,598 (1997) 0 (1996) 0

b For any amount included in line 17 that was received from a nondisqualified person, attach a list to show the name of, and amount received for each year, that was more than the larger of (1) the amount on line 25 for the year or (2) \$5,000. (Include in the list organizations described in lines 5 through 11, as well as individuals.) After computing the difference between the amount received and the larger amount described in (1) or (2), enter the sum of all these differences (the excess amounts) for each year: SEE STATEMENT 13
 (1999) 0 (1998) 43,279 (1997) 112,400 (1996) 96,000

c Add: Amounts from column (e) for lines: 15 30,094,022 16 _____
 17 6,300,139 20 _____ 21 _____ ▶ 27c 36,394,161

d Add: Line 27a total 1,979,256 and line 27b total _____ ▶ 27d 2,230,935

e Public support (line 27c total minus line 27d total) ▶ 27e 34,163,226

f Total support for section 509(a)(2) test: Enter amount on line 23, column (e) ▶ 27f 36,523,598

g Public support percentage (line 27e (numerator) divided by line 27f (denominator)) ▶ 27g 93.54%

h Investment income percentage (line 18, column (e) (numerator) divided by line 27f (denominator)). ▶ 27h 0.35%

28 Unusual Grants: For an organization described in line 10, 11, or 12 that received any unusual grants during 1996 through 1999, attach a list (which is not open to public inspection) for each year showing the name of the contributor, the date and amount of the grant, and a brief description of the nature of the grant. Do not include these grants in line 15. (See page 5 of the instructions.)

Part V

Private School Questionnaire (See page 5 of the instructions.)

(To be completed ONLY by schools that checked the box on line 6 in Part IV)

N/A

29 Does the organization have a racially nondiscriminatory policy toward students by statement in its charter, bylaws, other governing instrument, or in a resolution of its governing body?

Table with 2 columns: Yes, No. Row 29: Yes, No.

30 Does the organization include a statement of its racially nondiscriminatory policy toward students in all its brochures, catalogues, and other written communications with the public dealing with student admissions, programs, and scholarships?

Table with 2 columns: Yes, No. Row 30: Yes, No.

31 Has the organization publicized its racially nondiscriminatory policy through newspaper or broadcast media during the period of solicitation for students, or during the registration period if it has no solicitation program, in a way that makes the policy known to all parts of the general community it serves?

Table with 2 columns: Yes, No. Row 31: Yes, No.

If "Yes," please describe; if "No," please explain. (If you need more space, attach a separate statement.)

32 Does the organization maintain the following:

- a Records indicating the racial composition of the student body, faculty, and administrative staff?
b Records documenting that scholarships and other financial assistance are awarded on a racially nondiscriminatory basis?
c Copies of all catalogues, brochures, announcements, and other written communications to the public dealing with student admissions, programs, and scholarships?
d Copies of all material used by the organization or on its behalf to solicit contributions?

Table with 2 columns: Yes, No. Rows 32a, 32b, 32c, 32d.

If you answered "No" to any of the above, please explain. (If you need more space, attach a separate statement.)

33 Does the organization discriminate by race in any way with respect to:

- a Students' rights or privileges?
b Admissions policies?
c Employment of faculty or administrative staff?
d Scholarships or other financial assistance?
e Educational policies?
f Use of facilities?
g Athletic programs?
h Other extracurricular activities?

Table with 2 columns: Yes, No. Rows 33a through 33h.

If you answered "Yes" to any of the above, please explain. (If you need more space, attach a separate statement.)

34 a Does the organization receive any financial aid or assistance from a governmental agency?

Table with 2 columns: Yes, No. Row 34a.

b Has the organization's right to such aid ever been revoked or suspended?

Table with 2 columns: Yes, No. Row 34b.

If you answered "Yes" to either 34a or b, please explain using an attached statement.

35 Does the organization certify that it has complied with the applicable requirements of sections 4.01 through 4.05 of Rev. Proc. 75-50, 1975-2 C.B. 587, covering racial nondiscrimination? If "No," attach an explanation.

Table with 2 columns: Yes, No. Row 35.

001305

Part VII Information Regarding Transfers To and Transactions and Relationships With Noncharitable Exempt Organizations (See page 9 of the instructions.)

51 Did the reporting organization directly or indirectly engage in any of the following with any other organization described in section 501(c) of the Code (other than section 501(c)(3) organizations) or in section 527, relating to political organizations?

a Transfers from the reporting organization to a noncharitable exempt organization of:

- (i) Cash
(ii) Other assets

b Other transactions:

- (i) Sales or exchanges of assets with a noncharitable exempt organization
(ii) Purchases of assets from a noncharitable exempt organization
(iii) Rental of facilities, equipment, or other assets
(iv) Reimbursement arrangements
(v) Loans or loan guarantees
(vi) Performance of services or membership or fundraising solicitations

c Sharing of facilities, equipment, mailing lists, other assets, or paid employees

d If the answer to any of the above is "Yes," complete the following schedule. Column (b) should always show the fair market value of the goods, other assets, or services given by the reporting organization. If the organization received less than fair market value in any transaction or sharing arrangement, show in column (d) the value of the goods, other assets, or services received.

Table with 3 columns: Question, Yes, No. Rows include 51a(i), a(ii), b(i), b(ii), b(iii), b(iv), b(v), b(vi), and c.

Table with 4 columns: (a) Line no., (b) Amount involved, (c) Name of noncharitable exempt organization, (d) Description of transfers, transactions, and sharing arrangements. First row contains N/A.

52a Is the organization directly or indirectly affiliated with, or related to, one or more tax-exempt organizations described in section 501(c) of the Code (other than section 501(c)(3)) or in section 527?

Yes No (with checked box)

b. If "Yes," complete the following schedule.

Table with 3 columns: (a) Name of organization, (b) Type of organization, (c) Description of relationship. First row contains N/A.

001366

Schedule B
(Form 990 or 990-EZ)

Schedule of Contributors

OMB No 1545-0047

2000

Department of the Treasury
Internal Revenue Service

Supplementary information for line 1d of Form 990 or
line 1 of Form 990-EZ (see instructions)

Name of organization

THREE ANGELS BROADCASTING NETWORK INC

Employer identification number

37-1179056

Organization type (check one) - Section:

- 501(c)(3) (enter number); 527 or
 4947(a)(1) nonexempt charitable trust

A Section 501(c)(7), (8), or (10) organizations - Check this box if the organization had no charitable contributors who contributed more than \$1,000 during the year. (But see General rule below.)

Enter here the total gifts received during the year for a religious, charitable, etc., purpose. ▶ \$

Note: This form is generally not open to public inspection except for section 527 organizations.

KFA For Paperwork Reduction Act Notice, see page 1 of the Instructions for Form 990 and Form 990-EZ. Schedule B (Form 990 or 990-EZ) (2000)

Name of organization

THREE ANGELS BROADCASTING NETWORK INC

Employer identification number

37-1179056

Part I Contributors

(a) No.	(b) Name, address and zip code	(c) Aggregate contributions	(d) Type of contribution
<u>1</u>		\$ <u>775,000</u>	Individual <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> <small>(Complete Part II if a noncash contribution.)</small>
<u>2</u>		\$ <u>430,670</u>	Individual <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> <small>(Complete Part II if a noncash contribution.)</small>
<u>3</u>		\$ <u>877,742</u>	Individual <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> <small>(Complete Part II if a noncash contribution.)</small>
<u>4</u>		\$ <u>352,000</u>	Individual <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> <small>(Complete Part II if a noncash contribution.)</small>
		\$ _____	Individual <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> <small>(Complete Part II if a noncash contribution.)</small>
		\$ _____	Individual <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> <small>(Complete Part II if a noncash contribution.)</small>

KFA

001368

Name of organization

Employer identification number

THREE ANGELS BROADCASTING NETWORK INC

37-1179056

Part II Noncash Property

(a) No. from Part I	(b) Description of noncash property given	(c) FMV (or estimate) (see instructions)	(d) Date received
—	_____ _____ _____	\$ _____	_____
—	_____ _____ _____	\$ _____	_____
—	_____ _____ _____	\$ _____	_____
—	_____ _____ _____	\$ _____	_____
—	_____ _____ _____	\$ _____	_____
—	_____ _____ _____	\$ _____	_____
—	_____ _____ _____	\$ _____	_____

KFA

Name of organization

Employer identification number

THREE ANGELS BROADCASTING NETWORK INC

37-1179056

Part III Section 501(c)(7), (8), or (10) organizations that received more than \$1,000 in charitable gifts during the year-

Enter the total gifts that were from contributors who gave \$1,000 or less during the year for a religious, charitable, etc., purpose (see instructions)

\$

(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held
(e) Transfer of gift		Relationship of transferor to transferee	
Transferee's name, address, and zip code			
(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held
(e) Transfer of gift		Relationship of transferor to transferee	
Transferee's name, address, and zip code			
(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held
(e) Transfer of gift		Relationship of transferor to transferee	
Transferee's name, address, and zip code			
(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held
(e) Transfer of gift		Relationship of transferor to transferee	
Transferee's name, address, and zip code			

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FEDERAL STATEMENTS

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CLIENT 68287

THREE ANGELS BROADCASTING NETWORK INC

37-1179056

11/07/01

03/28/01

STATEMENT 10
FORM 990, PART VI, LINE 90A
LIST OF STATES WHICH THIS RETURN IS FILED

ILLINOIS,

OREGON

STATEMENT 11
FORM 990, PART VIII
RELATIONSHIP OF ACTIVITIES TO THE ACCOMPLISHMENT OF EXEMPT PURPOSES

LINE #	EXPLANATION OF ACTIVITIES
103	SALE OF RELIGIOUS PROGRAMMING.
93	PAYMENT FOR AIRTIME & PRODUCTION OF CERTAIN RELIGIOUS PROGRAMMING.
95	INTEREST INCOME IS USED TO HELP OFFSET GENERAL OPERATING EXPENSE.
102	SALE OF SATELLITE DISHES TO ENABLE VIEWERS TO RECEIVE PROGRAMMING.

STATEMENT 12
SCHEDULE A, PART IV-A, LINE 27A
PAYMENTS FROM DISQUALIFIED PERSONS

DISQUALIFIED PERSON	1999	1998	1997	1996
	\$ 220,000	\$ 65,000	\$ 0	\$ 0
	986,658	49,598	0	0
	238,000	420,000	0	0
TOTAL	\$1,444,658	\$ 534,598	\$ 0	\$ 0

STATEMENT 13
SCHEDULE A, PART IV-A, LINE 27B
EXCESS PAYMENTS FROM NONDISQUALIFIED PERSONS

NONDISQUALIFIED PERSON	1999	1998	1997	1996
	\$ 0	\$ 0	\$ 0	\$ 154,734
	0	0	182,228	0
	0	134,399	0	0
TOTAL	\$ 0	\$ 134,399	\$ 182,228	\$ 154,734
LESS: 145,554 X	0			
91,120 X 1		91,120		
69,828 X 1			69,828	
58,734 X 1				58,734
EXCESS AMOUNTS	\$ 0	\$ 43,279	\$ 112,400	\$ 96,000

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THREE ANGELS BROADCASTING NETWORK INC

37-1179056

11/07/01

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STATEMENT 1
FORM 990, PART I, LINE 8
NET GAIN (LOSS) FROM NONINVENTORY SALES

NONPUBLICLY TRADED SECURITIES:

DESCRIPTION:	SECURITIES	
DATE ACQUIRED:	VARIOUS	
HOW ACQUIRED:	PURCHASED	
DATE SOLD:	VARIOUS	
TO WHOM SOLD:		
GROSS SALES PRICE:	542,828	
COST OR OTHER BASIS:	605,104	
EXPENSES OF SALE:	0	
	<hr/>	
GAIN (LOSS)		\$ -62,276
		<hr/>
GAIN (LOSS) FROM SECURITIES		-62,276

OTHER ASSETS:

DESCRIPTION:	DOWNLINK EQUIPMENT	
DATE ACQUIRED:	VARIOUS	
HOW ACQUIRED:	PURCHASED	
DATE SOLD:	VARIOUS	
TO WHOM SOLD:		
GROSS SALES PRICE:	12,000	
COST OR OTHER BASIS:	11,038	
EXPENSES OF SALE:	0	
DEPRECIATION:	0	
	<hr/>	
GAIN (LOSS)		\$ 962
		<hr/>
GAIN (LOSS) FROM OTHER ASSETS		962
		<hr/>
TOTAL GAIN (LOSS)		\$ -61,314

STATEMENT 2
FORM 990, PART I, LINE 20
OTHER CHANGES IN NET ASSETS OR FUND BALANCES

Net Unrealized Security Gains.....	\$ 44,366
TOTAL	\$ 44,366

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THREE ANGELS BROADCASTING NETWORK INC

37-1179056

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STATEMENT 3
FORM 990, PART II, LINE 43
OTHER EXPENSES

OTHER EXPENSES	(A) TOTAL	(B) PROGRAM SERVICES	(C) MANAGEMENT & GENERAL	(D) FUNDRAISING
ADVERTISING	\$ 60,195	60,195		
BAD DEBT EXPENSE	4,352		4,352	
BROADCASTING	71,751	71,751		
CAMP MEETING	22,883		22,883	
CONTRACT LABOR	32,103		32,103	
CREDIT CARD FEES	66,743		66,743	
DOWNLINK	878,101	878,101		
DUES & REGISTRATION	30,154	30,154		
INSURANCE	388,089		388,089	
MISCELLANEOUS	57,896	24,284	33,612	
REPAIR & MAINT - BUILDING	35,282		35,282	
SMALL TOOLS & EQUIPMENT	48,813		48,813	
SPECIAL PROJECTS	924,392	924,392		
TOTAL	\$2,620,754	1,988,877	631,877	0

STATEMENT 4
FORM 990, PART IV, LINE 57
LAND, BUILDINGS, AND EQUIPMENT

ASSET	BASIS	ACCUM. DEPREC.	BOOK VALUE
AUTOMOBILES / TRANSPORTATION EQUIP.	\$ 1,482,719	549,762	932,957
MACHINERY AND EQUIPMENT	11,345,804	5,919,181	5,426,623
BUILDINGS	3,003,073	340,339	2,662,734
IMPROVEMENTS	170,909	10,103	160,806
LAND	568,565		568,565
MISCELLANEOUS	93,457	0	93,457
TOTAL	\$16,664,527	6,819,385	9,845,142

STATEMENT 5
FORM 990, PART IV, LINE 58
OTHER ASSETS

	ENDING
ANNUITIES	\$ 5,543,104
CONSTRUCTION IN PROGRESS	549,014
DUE FROM TRUST ACCOUNTS	24,000
EMPLOYEE ADVANCES	980
TRUSTS	12,488,484
TOTAL	\$ 18,605,582

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THREE ANGELS BROADCASTING NETWORK INC

37-1179056

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STATEMENT 6
FORM 990, PART IV, LINE 65
OTHER LIABILITIES

	<u>ENDING</u>
ANNUITIES	\$ 5,543,104
DUE TO TRUST ACCOUNTS	81,126
FUTURE GROUP MEDICAL INS CLAIMS	37,399
LIABILITY UNDER UNITRUST AGREEMENTS	1,003,711
ROUNDING	3
TRUSTS	12,488,484
TOTAL	<u>\$ 19,153,827</u>

STATEMENT 7
FORM 990, PART IV-A, LINE B(4)
OTHER AMOUNTS

COGS	\$ 2,995,088
RENTAL	13,295
ROUNDING	4
TOTAL	<u>\$ 3,008,387</u>

STATEMENT 8
FORM 990, PART IV-B, LINE B(4)
OTHER AMOUNTS

COGS	\$ 2,995,088
RENTAL	13,295
ROUNDING	2
TOTAL	<u>\$ 3,008,385</u>

STATEMENT 9
FORM 990, PART V
LIST OF OFFICERS, DIRECTORS, TRUSTEES, AND KEY EMPLOYEES

<u>NAME AND ADDRESS</u>	<u>TITLE & AVG. HRS/WK DEVOTED</u>	<u>COMP.</u>	<u>EMPLOYEE BEN. CONTRIB.</u>	<u>EXPENSE PLN ACCOUNT/ OTHER</u>
DR WALTER THOMPSON 174 FOX BOROUGH BURR RIDGE, IL 60521	CHAIRMAN NONE	\$ 0	0	0
J WAYNE COULTER 619 PLAINFIELD RD, 3RD FLOOR WILLOWBROOK, IL 60521-5381	DIRECTOR NONE	0	0	0

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FEDERAL STATEMENTS

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CLIENT 69287

THREE ANGELS BROADCASTING NETWORK INC

37-1179056

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STATEMENT 9 (CONTINUED)
FORM 990, PART V
LIST OF OFFICERS, DIRECTORS, TRUSTEES, AND KEY EMPLOYEES

NAME AND ADDRESS	TITLE & AVG. HRS/WK DEVOTED	COMP.	EMPLOYEE BEN. PLAN CONTRIB.	EXPENSE ACCOUNT/ OTHER
MAY E CHUNG 155 MANCHESTER LANE SAN BERNARDINO, CA 92408	DIRECTOR NONE	\$ 0	0	0
DR ROBERT FORD 2517 N E KRESKY CHEHALIS, WA 98532-2409	DIRECTOR NONE	0	0	0
BILL HULSEY BOX 596 COLLEGEDALE, TN 37315	DIRECTOR NONE	0	0	0
ELLSWORTH MCKEE P O BOX 750 COLLEGEDALE, TN 37315	DIRECTOR NONE	0	0	0
DANNY SHELTON P O BOX 220 WEST FRANKFORT, IL 62896	PRES 40HRS/WK	53,365	0	0
LINDA SHELTON P O BOX 220 WEST FRANKFORT, IL 62896	VP 40HRS/WK	47,453	0	0
STAN SMITH OJ JACOBSON FOUNDATION BOX 100 LILLOOET, BC VOK 1V0, CANADA	DIRECTOR NONE	0	0	0
G RALPH THOMPSON 12501 OLD COLUMBIA PIKE SILVER SPRING, MD 20904-6600	DIRECTOR NONE	0	0	0
OWEN TROY 1906 DANA DRIVE ADELPHI, MD 20783-2119	DIRECTOR NONE	0	0	0
LARRY WELCH 715 S MULKEY CHRISTOPHER, IL 62822	DIR. 40HRS/WK	36,476	0	0
	TOTAL	\$ 137,294	0	0

001375

Application for Extension of Time To File an Exempt Organization Return

OMB No. 1545-1709

▶ File a separate application for each return.

- If you are filing for an Automatic 3-Month Extension, complete only Part I and check this box
 - If you are filing for an Additional (not automatic) 3-Month Extension, complete only Part II (on page 2 of this form).
- Note: Do not complete Part II unless you have already been granted an automatic 3-month extension on a previously filed Form 8868.**

Part I Automatic 3-Month Extension of Time—Only submit original (no copies needed)

Note: Form 990-T corporations requesting an automatic 6-month extension—check this box and complete Part I only

All other corporations (including Form 990-C filers) must use Form 7004 to request an extension of time to file income tax returns. Partnerships, REMICs and trusts must use Form 8736 to request an extension of time to file Form 1065, 1066, or 1041.

Type or print File by the due date for filing your return. See instructions.	Name of Exempt Organization <u>Three Angels Broadcasting Network</u>	Employer identification number <u>37 117 9056</u>
	Number, street, and room or suite no., if a P.O. box, see instructions. <u>PO Box 220</u>	
	City, town or post office, state, and ZIP code. For a foreign address, see instructions. <u>West Frankfort IL 62896</u>	

- Check type of return to be filed (file a separate application for each return):**
- | | | |
|--|--|------------------------------------|
| <input checked="" type="checkbox"/> Form 990 | <input type="checkbox"/> Form 990-T (corporation) | <input type="checkbox"/> Form 1720 |
| <input type="checkbox"/> Form 990-BL | <input type="checkbox"/> Form 990-T (sec 1011(a) or 1081(a) trust) | <input type="checkbox"/> Form 5227 |
| <input type="checkbox"/> Form 990-EZ | <input type="checkbox"/> Form 990-T (trust other than above) | <input type="checkbox"/> Form 6069 |
| <input type="checkbox"/> Form 990-PF | <input type="checkbox"/> Form 1041-A | <input type="checkbox"/> Form 3870 |

- If the organization does not have an office or place of business in the United States, check this box
- If this is for a **Group Return**, enter the organization's four digit Group Exemption Number (GEN) _____ if this is for the **whole group**, check this box ; if it is for part of the group, check this box and attach a list with the names and EINs of all members the extension will cover.

1 I request an Automatic 3-month (6-month, for 990-T corporation) extension of time until August 15, 2001 to file the exempt organization return for the organization named above. The extension is for the organization's return for:

▶ calendar year 2000, or

▶ tax year beginning _____ 20 and ending _____ 20

2 If this tax year is for less than 12 months, check reason: Initial return Final return Change in accounting period

3a If this application is for Form 990-BL, 990-PF, 990-T, 1720, or 6069, enter the tentative tax, less any nonrefundable credits. See instructions. \$ _____

b If this application is for Form 990-PF or 990-T, enter any refundable credits and estimated tax payments made. Include any prior year overpayment allowed as a credit. \$ _____

c **Balance Due.** Subtract line 3b from line 3a. Include your payment with this form, or, if required, deposit with FTD coupon or, if required, by using EFTPS (Electronic Federal Tax Payment System). See instructions. \$ _____

Signature and Verification

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete, and that I am authorized to prepare this form.

Signature ▶ David S. Carson Title ▶ Financial Director Date ▶ 5/15/01

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- If you are filing for an Additional (not automatic) 3-Month Extension, complete only Part II and check this box
- Note: Only complete Part II if you have already been granted an automatic 3-month extension on a previously filed Form 8868.
- If you are filing for an Automatic 3-Month Extension, complete only Part I (on page 1).

Part II Additional (not automatic) 3-Month Extension of Time—Must File Original and One Copy.

Type or print File by the extended due date for filing the return. See instructions.	Name of Exempt Organization Three Angels Broadcasting Network, Inc	Employer identification number 37 1179056
	Number, street, and room or suite no. If a P.O. box, see instructions PO Box 220	For IRS use only
	City, town or post office, state, and ZIP code. For a foreign address, see instructions West Frankfort, IL 62896	

Check type of return to be filed (File a separate application for each return):

- Form 990 Form 990-EZ Form 990-T (sec 401(a) or 408(a) trust) Form 1041-A Form 5227 Form 8870
- Form 990-BL Form 990-PF Form 990-T (trust other than above) Form 4720 Form 6069

STOP: Do not complete Part II if you were not already granted an automatic 3-month extension on a previously filed Form 8868.

- If the organization does not have an office or place of business in the United States, check this box
- If this is for a Group Return, enter the organization's four digit Group Exemption Number (GEN) _____ . If this is for the whole group, check this box . If it is for part of the group, check this box and attach a list with the names and EINs of all members the extension is for.

4 I request an additional 3-month extension of time until November 15, 2001

5 For calendar year _____ or other tax year beginning _____, 20____ and ending _____, 20____

6 If this tax year is for less than 12 months, check reason: Initial return Final return Change in accounting period

7 State in detail why you need the extension Accounting Software was changed on July, 2000 and Financial Director was discharged December 8, 2000 and not replaced until December 27, 2000 therefore this caused our audit to be delayed until August 27, 2001.

8a If this application is for Form 990-BL, 990-PF, 990-T, 4720, or 6069, enter the tentative tax, less any nonrefundable credits. See instructions \$ _____

b If this application is for Form 990-PF, 990-T, 4720, or 6069, enter any refundable credits and estimated tax payments made. Include any prior year overpayment allowed as a credit and any amount paid previously with Form 8868 \$ _____

c **Balance Due.** Subtract line 8b from line 8a. Include your payment with this form, or, if required, deposit with FTD coupon or, if required, by using EFTPS (Electronic Federal Tax Payment System). See instructions \$ _____

Signature and Verification

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete, and that I am authorized to prepare this form.

Signature ▶ Darryl Steiner Title ▶ President Date ▶ 8/15/01

Notice to Applicant—To Be Completed by the IRS

- We have approved this application. Please attach this form to the organization's return.
- We have not approved this application. However, we have granted a 10-day grace period from the later of the date shown below or the due date of the organization's return (including any prior extensions). This grace period is considered to be a valid extension of time for elections otherwise required to be made on a timely return. Please attach this form to the organization's return.
- We have not approved this application. After considering the reasons stated in item 7, we cannot grant your request for an extension of time to file. We are not granting a 10-day grace period.
- We cannot consider this application because it was filed after the due date of the return for which an extension was requested.
- Other _____

EXTENSION APPROVED

Director

SEP 19 2001

Alternate Mailing Address — Enter the address if you want the copy of this application for an additional 3-month extension returned to an address different than the one entered above.

Type or print	Name LINDA WEISKOPF, FIELD DIRECTOR, SUBMISSION PROCESSING, OGDEN
	Number and street (include suite, room, or apt. no.) Or a P.O. box number
	City or town, province or state, and country (including postal or ZIP code)

001377

Form **990**

Return of Organization Exempt From Income Tax

OMB No 1545-0047

2001

Open to Public Inspection

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

Department of the Treasury
Internal Revenue Service

The organization may have to use a copy of this return to satisfy state reporting requirements

A For the 2001 calendar year, or tax year beginning 2001, and ending 20

B Check if applicable:
 Address change
 Name change
 Initial return
 Final return
 Amended return
 Application pending

C Section 501(c)(3) organizations and 4947(a)(1) nonexempt charitable trusts must attach a completed Schedule A (Form 990 or 990-EZ)

D Employer identification number: 37,1179056

E Telephone number: (618) 627-4651

F Accounting method: Cash Accrual
 Other (specify):

G Web site: 3abn.org

H and **I** are not applicable to section 527 organizations

H(a) Is this a group return for affiliates? Yes No

H(b) If "Yes" enter number of affiliates:

H(c) Are all affiliates included? Yes No
 If "No" attach a list (See instructions)

H(d) Is this a separate return filed by an organization covered by a group ruling? Yes No

I Enter 4 digit GEN:

J Organization type (check only one): 501(c) () (insert no) 4947(a)(1) or 527

K Check here if the organization's gross receipts are normally not more than \$25,000. The organization need not file a return with the IRS, but if the organization received a Form 990 Package in the mail, it should file a return without financial data. Some states require a complete return.

L Gross receipts. Add lines 6b, 8b, 9b, and 10b to line 12:

M Check if the organization is not required to attach Sch. B (Form 990, 990-EZ, or 990-PF)

Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances (See Specific Instructions on page 16)

1	Contributions, gifts, grants, and similar amounts received	1a	12,323,162	1d	12,323,162
a	Direct public support	1b		2	857,768
b	Indirect public support	1c		3	
c	Government contributions (grants)			4	38,397
d	Total (add lines 1a through 1c) (cash \$ <u>12,221,924</u> noncash \$ <u>101,238</u>)			5	
2	Program service revenue including government fees and contracts (from Part VII, line 93)			6a	35,040
3	Membership dues and assessments			6b	10,576
4	Interest on savings and temporary cash investments			6c	24,464
5	Dividends and interest from securities			7	
6a	Gross rents				
b	Less rental expenses				
c	Net rental income or (loss) (subtract line 6b from line 6a)				
7	Other investment income (describe: <u> </u>)				
8a	Gross amount from sales of assets other than inventory	(A) Securities	74,871	(B) Other	
b	Less cost or other basis and sales expenses		76,106		
c	Gain or (loss) (attach schedule)		-1,235		
d	Net gain or (loss) (combine line 8c, columns (A) and (B))			8d	-1,235
9	Special events and activities (attach schedule)				
a	Gross revenue (not including \$ <u> </u> of contributions reported on line 1a)	9a		9c	
b	Less direct expenses other than fundraising expenses	9b			
c	Net income or (loss) from special events (subtract line 9b from line 9a)				
10a	Gross sales of inventory less returns and allowances	10a	618,832		
b	Less cost of goods sold	10b	460,500	10c	158,332
c	Gross profit or (loss) from sales of inventory (attach schedule) (subtract line 10b from line 10a)			11	49,493
11	Other revenue (from Part VII, line 103)			12	13,450,381
12	Total revenue (add lines 1d, 2, 3, 4, 5, 6c, 7, 8d, 9c, 10c, and 11)			13	7,452,987
13	Program services (from line 44, column (B))			14	4,016,104
14	Management and general (from line 44, column (C))			15	
15	Fundraising (from line 44, column (D))			16	
16	Payments to affiliates (attach schedule)			17	11,469,091
17	Total expenses (add lines 16 and 44, column (A))			18	1,981,290
18	Excess or (deficit) for the year (subtract line 17 from line 12)			19	13,725,626
19	Net assets or fund balances at beginning of year (from line 20 of Form 990, 990-EZ, or 990-PF)			20	2,450,614
20	Other changes in net assets or fund balances (attach explanation)			21	18,157,530
21	Net assets or fund balances at end of year (combine lines 18, 19, and 20)				

SCANNED NOV 06 2002

RECEIVED
OCT 31 2002
OGDEN, UT

For Paperwork Reduction Act Notice, see the separate instructions

CA# No 112827

Form 990 (2001)

061373

Part II Statement of Functional Expenses

All organizations must complete column (A). Columns (B), (C) and (D) are required for section 501(c)(3) and (4) organizations and section 4947(a)(1) nonexempt charitable trusts but optional for others. (See Specific Instructions on page 21.)

Do not include amounts reported on line 6b, 8b, 9b, 10b, or 16 of Part I		(A) Total	(B) Program services	(C) Management and general	(D) Fundraising
22	Grants and allocations (attach schedule) (cash \$ _____ noncash \$ _____)				
23	Specific assistance to individuals (attach schedule)				
24	Benefits paid to or for members (attach schedule)				
25	Compensation of officers, directors, etc.	143,482	52,429	91,053	
26	Other salaries and wages	1,901,317	772,731	1,128,586	
27	Pension plan contributions				
28	Other employee benefits				
29	Payroll taxes	153,483		153,483	
30	Professional fundraising fees				
31	Accounting fees	93,087		93,087	
32	Legal fees	127,577		127,577	
33	Supplies	335,658	209,142	126,516	
34	Telephone	199,463	199,463		
35	Postage and shipping	528,479		528,479	
36	Occupancy	236,394	112,942	123,452	
37	Equipment rental and maintenance	2,227,793	2,139,051	88,742	
38	Printing and publications	337,403	231,624	105,779	
39	Travel	541,785		541,785	
40	Conferences, conventions, and meetings				
41	Interest	23,753		23,753	
42	Depreciation, depletion, etc. (attach schedule)	1,594,088	1,594,088		
43	Other expenses not covered above (itemize) a Stmt 3	3,025,331	2,141,519	883,812	
43b	b				
43c	c				
43d	d				
43e	e				
44	Total functional expenses (add lines 22 through 43). Organizations completing columns (B), (D), carry these totals to lines 13-15	11,469,091	7,452,987	4,016,104	

Joint Costs Check if you are following SOP 98-2
 Are any joint costs from a combined educational campaign and fundraising solicitation reported in (B) Program services? Yes No
 If "Yes," enter (i) the aggregate amount of these joint costs \$ _____ (ii) the amount allocated to Program services \$ _____
 (iii) the amount allocated to Management and general \$ _____ and (iv) the amount allocated to Fundraising \$ _____

Part III Statement of Program Service Accomplishments (See Specific Instructions on page 24)

What is the organization's primary exempt purpose?	Program Service Expenses (Required for 501(c)(3) and (4) orgs. and 4947(a)(1) trusts, but optional for others)
a Production and distribution of 24 hour per day religious programming for electronic transmission throughout the world (Grants and allocations \$ _____)	7,452,987
b _____ (Grants and allocations \$ _____)	
c _____ (Grants and allocations \$ _____)	
d _____ (Grants and allocations \$ _____)	
e Other program services (attach schedule) (Grants and allocations \$ _____)	
f Total of Program Service Expenses (should equal line 44 column (B) Program services)	

001373

Part IV Balance Sheets (See Specific Instructions on page 24)

Note		(A)		(B)	
Where required attached schedules and amounts within the description column should be for end-of-year amounts only		Beginning of year		End of year	
		304,385	45	1,477,406	
45	Cash- non-interest-bearing				
46	Savings and temporary cash investments	4,109,652	46	4,121,578	
47a	Accounts receivable	165,591			
47b	Less allowance for doubtful accounts	32,233	47c	133,358	
48a	Pledges receivable	164,862			
48b	Less allowance for doubtful accounts		48c	164,862	
49	Grants receivable		49		
50	Receivables from officers, directors, trustees, and key employees (attach schedule)		50		
51a	Other notes and loans receivable (attach schedule)		51c		
51b	Less allowance for doubtful accounts				
52	Inventories for sale or use	88,160	52	276,360	
53	Prepaid expenses and deferred charges	307,364	53	441,430	
54	Investments- securities (attach schedule)		54		
	▶ <input type="checkbox"/> Cost <input type="checkbox"/> FMV				
55a	Investments- land, buildings and equipment basis				
55b	Less accumulated depreciation (attach schedule)		55c		
56	Investments- other (attach schedule)		56		
57a	Land, buildings, and equipment basis	20,297,026			
57b	Less accumulated depreciation (attach schedule)	8,413,471	57c	11,883,555	
58	Other assets (describe ▶ Statement 5)	9,845,142	58	23,851,825	
59	Total assets (add lines 45 through 58) (must equal line 74)	18,805,582			
60	Accounts payable and accrued expenses	33,453,889	59	42,350,374	
61	Grants payable	454,336	60	453,657	
62	Deferred revenue		61		
63	Loans from officers, directors, trustees, and key employees (attach schedule)		62	8,571	
64a	Tax-exempt bond liabilities (attach schedule)		63		
64b	Mortgages and other notes payable (attach schedule)	120,100	64a	1,643,428	
65	Other liabilities (describe ▶ Statement 6)	19,153,827	65	22,087,188	
66	Total liabilities (add lines 60 through 65)	19,728,263	66	24,192,844	
Net Assets or Fund Balances					
Organizations that follow SFAS 117, check here ▶ <input type="checkbox"/> and complete lines 67 through 69 and lines 73 and 74					
67	Unrestricted	11,976,736	67	15,364,864	
68	Temporarily restricted	1,748,890	68	2,792,666	
69	Permanently restricted		69		
Organizations that do not follow SFAS 117, check here ▶ <input type="checkbox"/> and complete lines 70 through 74					
70	Capital stock, trust principal, or current funds		70		
71	Paid-in or capital surplus or land, building, and equipment fund		71		
72	Retained earnings, endowment, accumulated income, or other funds		72		
73	Total net assets or fund balances (add lines 67 through 69 OR lines 70 through 72)	13,725,826	73	18,157,530	
74	Total liabilities and net assets / fund balances (add lines 66 and 73)	33,453,889	74	42,350,374	

Form 990 is available for public inspection and, for some people serves as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and fully describes, in Part III, the organization's programs and accomplishments.

061380

Part IV-A Reconciliation of Revenue per Audited Financial Statements with Revenue per Return (See Specific Instructions, page 26)

a	Total revenue, gains and other support per audited financial statements	a	13,935,319
b	Amounts included on line a but not on line 12, Form 990	b	484,938
(1)	Net unrealized gains on investments \$ 13,862		
(2)	Donated services and use of facilities \$		
(3)	Recoveries of prior year grants \$		
(4)	Other (specify)		
Statement 7	\$ 471,076		
	Add amounts on lines (1) through (4)	b	484,938
c	Line a minus line b	c	13,450,381
d	Amounts included on line 12, Form 990 but not on line a	d	
(1)	Investment expenses not included on line 6b, Form 990 \$		
(2)	Other (specify)		
	Add amounts on lines (1) and (2)	d	
e	Total revenue per line 12, Form 990 (line c plus line d)	e	13,450,381

Part IV-B Reconciliation of Expenses per Audited Financial Statements with Expenses per Return

a	Total expenses and losses per audited financial statements	a	11,940,167
b	Amounts included on line a but not on line 17, Form 990	b	471,076
(1)	Donated services and use of facilities \$		
(2)	Prior year adjustments reported on line 20, Form 990 \$		
(3)	Losses reported on line 20, Form 990 \$		
(4)	Other (specify)		
Statement 8	\$ 471,076		
	Add amounts on lines (1) through (4)	b	471,076
c	Line a minus line b	c	11,469,091
d	Amounts included on line 17, Form 990 but not on line a	d	
(1)	Investment expenses not included on line 6b, Form 990 \$		
(2)	Other (specify)		
	Add amounts on lines (1) and (2)	d	
e	Total expenses per line 17 Form 990 (line c plus line d)	e	11,469,091

Part V List of Officers, Directors, Trustees, and Key Employees (List each one even if not compensated see Specific Instructions on page 26)

(A) Name and address	(B) Title and average hours per week devoted to position	(C) Compensation (If not paid, enter -0-)	(D) Contributions to employee benefit plans & deferred compensation	(E) Expense account and other allowances
Statement 9		143,482		

75 Did any officer, director, trustee or key employee receive aggregate compensation of more than \$100,000 from your organization and all related organizations, of which more than \$10,000 was provided by the related organizations? Yes No
If "Yes," attach schedule - see Specific Instructions on page 27

Part VI Other Information (See Specific Instructions on page 27)		Yes	No
76	Did the organization engage in any activity not previously reported to the IRS? If "Yes," attach a detailed description of each activity		✓
77	Were any changes made in the organizing or governing documents but not reported to the IRS? If "Yes," attach a conformed copy of the changes		✓
78a	Did the organization have unrelated business gross income of \$1,000 or more during the year covered by this return?		✓
78b	If "Yes," has it filed a tax return on Form 990-T for this year?		
79	Was there a liquidation, dissolution, termination, or substantial contraction during the year? If "Yes," attach a statement		✓
80a	Is the organization related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc. to any other exempt or nonexempt organization?		✓
81a	b If "Yes," enter the name of the organization _____ and check whether it is <input type="checkbox"/> exempt OR <input type="checkbox"/> nonexempt		
81b	Enter direct or indirect political expenditures. See line 81 instructions		✓
82a	Did the organization file Form 1120-POL for this year?		✓
82b	Did the organization receive donated services or the use of materials, equipment, or facilities at no charge or at substantially less than fair rental value? If "Yes," you may indicate the value of these items here. Do not include this amount as revenue in Part I or as an expense in Part II. (See instructions in Part III)		
83a	Did the organization comply with the public inspection requirements for returns and exemption applications?	✓	
83b	Did the organization comply with the disclosure requirements relating to quid pro quo contributions?	✓	
84a	Did the organization solicit any contributions or gifts that were not tax deductible?		✓
84b	If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?		
85a	501(c)(4), (5), or (6) organizations: Were substantially all dues nondeductible by members?		
85b	Did the organization make only in-house lobbying expenditures of \$2,000 or less? If "Yes" was answered to either 85a or 85b, do not complete 85c through 85h below unless the organization received a waiver for proxy tax owed for the prior year		
85c	Dues, assessments, and similar amounts from members		
85d	Section 162(e) lobbying and political expenditures		
85e	Aggregate nondeductible amount of section 6033(e)(1)(A) dues notices		
85f	Taxable amount of lobbying and political expenditures (line 85d less 85e)		
85g	Does the organization elect to pay the section 6033(e) tax on the amount on line 85f?		
85h	If section 6033(e)(1)(A) dues notices were sent, does the organization agree to add the amount on line 85f to its reasonable estimate of dues allocable to nondeductible lobbying and political expenditures for the following tax year?		
86a	501(c)(7) orgs: Enter a. Initiation fees and capital contributions included on line 12		
86b	Gross receipts, included on line 12, for public use of club facilities		
87a	501(c)(12) orgs: Enter a. Gross income from members or shareholders		
87b	Gross income from other sources (Do not net amounts due or paid to other sources against amounts due or received from them)		
88	At any time during the year did the organization own a 50% or greater interest in a taxable corporation or partnership, or an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? If "Yes," complete Part IX		✓
89a	501(c)(3) organizations: Enter Amount of tax imposed on the organization during the year under section 4911 _____, section 4912 _____, section 4955 _____		
89b	501(c)(3) and 501(c)(4) orgs: Did the organization engage in any section 4958 excess benefit transaction during the year or did it become aware of an excess benefit transaction from a prior year? If "Yes," attach a statement explaining each transaction		✓
	c. Enter Amount of tax imposed on the organization managers or disqualified persons during the year under sections 4912, 4955, and 4958		0
	d. Enter Amount of tax on line 89c, above, reimbursed by the organization		0
90a	List the states with which a copy of this return is filed		95
90b	Number of employees employed in the pay period that includes March 12, 2001 (See instructions)		
91	The books are in care of Larry Ewing Telephone no (618) 627-4651 Located at 3391 Charley Good Road, West Frankfort, IL ZIP + 4 62896-0220		
92	Section 4947(a)(1) nonexempt charitable trusts filing Form 990 in lieu of Form 1041- Check here and enter the amount of tax-exempt interest received or accrued during the tax year		

Part VII Analysis of Income-Producing Activities (See Specific Instructions on page 32)

	Unrelated business income		Excluded by section 512, 513 or 514		(E) Related or exempt function income
	(A) Business code	(B) Amount	(C) Exclusion code	(D) Amount	
Note Enter gross amounts unless otherwise indicated					
93 Program service revenue					857,768
a Production and distribution					
b					
c					
d					
e					
f Medicare/Medicaid payments					
g Fees and contracts from government agencies					
94 Membership dues and assessments					38,397
95 Interest on savings and temporary cash investments					
96 Dividends and interest from securities					
97 Net rental income or (loss) from real estate					
a debt-financed property					24,464
b not debt-financed property					
98 Net rental income or (loss) from personal property					
99 Other investment income					-1,235
100 Gain or (loss) from sales of assets other than inventory					
101 Net income or (loss) from special events					158,332
102 Gross profit or (loss) from sales of inventory					251,110
103 Other revenue a Video and Other Sales					-227,430
b Change in value split interest agreements					25,813
c Other					
d					
e					
104 Subtotal (add columns (B), (D), and (E))					1,127,219
105 Total (add line 104, columns (B), (D), and (E))					1,127,219

Note Line 105 plus line 1d, Part I, should equal the amount on line 12, Part I

Part VIII Relationship of Activities to the Accomplishment of Exempt Purposes (See Specific Instructions on page 32)

Line No	Explain how each activity for which income is reported in column (E) of Part VII contributed importantly to the accomplishment of the organization's exempt purposes (other than by providing funds for such purposes)
11	Statement 11

Part IX Information Regarding Taxable Subsidiaries and Disregarded Entities (See Specific Instructions on page 33)

(A) Name, address and EIN of corporation, partnership or disregarded entity	(B) Percentage of ownership interest	(C) Nature of activities	(D) Total income	(E) End-of-year assets
	%			
	%			
	%			
	%			

Part X Information Regarding Transfers Associated with Personal Benefit Contracts (See Specific Instructions on page 33)

(a) Did the organization, during the year, receive any funds, directly or indirectly, to pay premiums on a personal benefit contract? Yes No

(b) Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract? Yes No

Note If "Yes" to (b), file Form 8870 and Form 4720 (see instructions)

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Please [Redacted] Date Oct 28, 2002

Date [Redacted] Check if [Redacted] Preparer's SSN or PTIN (See Gen. Inst. 100)

SCHEDULE A
(Form 990 or 990-EZ)

Organization Exempt Under Section 501(c)(3)

(Except Private Foundation) and Section 501(e), 501(f), 501(k),
501(n), or Section 4947(a)(1) Nonexempt Charitable Trust

Supplementary Information (See separate instructions)

OMB No 1545-0047

2001

Department of the Treasury
Internal Revenue Service

▶ **MUST be completed by the above organizations and attached to their Form 990 or 990-EZ**

Name of the organization

Three Angels Broadcasting Network

Employer identification number

37 1179056

Part I Compensation of the Five Highest Paid Employees Other Than Officers, Directors, and Trustees
(See page 1 of the instructions List each one If there are none, enter "None")

(a) Name and address of each employee paid more than \$50,000	(b) Title and average hours per week devoted to position	(c) Compensation	(d) Contributions to employee benefit plans & deferred compensation	(e) Expense account and other allowances
Moses S Primo PO Box 39, Thompsonville, IL 62890	Director of Engineering	50,359		
Gonzalo Santos 5693 Plaster Grove Rd, Thompsonville IL	Electrician	50,818		
Total number of other employees paid over \$50,000 ▶				

Part II Compensation of the Five Highest Paid Independent Contractors for Professional Services
(See page 2 of the instructions List each one (whether individuals or firms) If there are none, enter "None")

(a) Name and address of each independent contractor paid more than \$50,000	(b) Type of service	(c) Compensation
Printers Inc	Printing services	237,012
Aeroflits Inc	Airplane maintenance and pilot services	215,391
Gray, Hunter Stenn LLP	Accounting and auditing services	125,367
Du Treil, Lundin, & Rackley Inc	Engineering	50,475
Total number of others receiving over \$50,000 for professional services ▶		

For Paperwork Reduction Act Notice, see the Instructions for Form 990 and Form 990-EZ

Cat No 11285F

Schedule A (Form 990 or 990-EZ) 2001

001384

Part III Statements About Activities (See page 2 of the instructions)		Yes	No
1	During the year has the organization attempted to influence national state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum? If "Yes," enter the total expenses paid or incurred in connection with the lobbying activities ▶ \$ _____ (Must equal amounts on line 38, Part VI-A or line 1 of Part VI-B) Organizations that made an election under section 501(h) by filing Form 5768 must complete Part VI-A. Other organizations checking "Yes," must complete Part VI-B AND attach a statement giving a detailed description of the lobbying activities.		✓
2	During the year, has the organization, either directly or indirectly, engaged in any of the following acts with any substantial contributors, trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary? (If the answer to any question is "Yes," attach a detailed statement explaining the transactions.)		
a	Sale, exchange, or leasing of property?		✓
b	Lending of money or other extension of credit?		✓
c	Furnishing of goods, services, or facilities?		✓
d	Payment of compensation (or payment or reimbursement of expenses if more than \$1,000)?	✓	
e	Transfer of any part of its income or assets?		✓
3	Does the organization make grants for scholarships, fellowships, student loans, etc.? (See Note below)		✓
4	Do you have a section 403(b) annuity plan for your employees?		✓

Note: Attach a statement to explain how the organization determines that individuals or organizations receiving grants or loans from it in furtherance of its charitable programs qualify to receive payments.

Part IV Reason for Non-Private Foundation Status (See pages 3 through 6 of the instructions)

The organization is not a private foundation because it is (Please check only ONE applicable box.)

5 A church, convention of churches, or association of churches. Section 170(b)(1)(A)(i)

6 A school. Section 170(b)(1)(A)(ii). (Also complete Part V.)

7 A hospital or a cooperative hospital service organization. Section 170(b)(1)(A)(iii)

8 A Federal, state, or local government or governmental unit. Section 170(b)(1)(A)(v)

9 A medical research organization operated in conjunction with a hospital. Section 170(b)(1)(A)(iii). Enter the hospital's name, city, and state ▶ _____

10 An organization operated for the benefit of a college or university owned or operated by a governmental unit. Section 170(b)(1)(A)(iv). (Also complete the Support Schedule in Part IV-A.)

11a An organization that normally receives a substantial part of its support from a governmental unit or from the general public. Section 170(b)(1)(A)(vi). (Also complete the Support Schedule in Part IV-A.)

11b A community trust. Section 170(b)(1)(A)(vi). (Also complete the Support Schedule in Part IV-A.)

12 An organization that normally receives (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its charitable, etc. functions, subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See section 509(a)(2). (Also complete the Support Schedule in Part IV-A.)

13 An organization that is not controlled by any disqualified persons (other than foundation managers) and supports organizations described in (1) lines 5 through 12 above, or (2) section 501(c)(4), (5), or (6), if they meet the test of section 509(a)(2). (See section 509(a)(3).)

Provide the following information about the supported organizations (See page 5 of the instructions.)

(a) Name(s) of supported organization(s)	(b) Line number from above

14 An organization organized and operated to test for public safety. Section 509(a)(4). (See page 6 of the instructions.)

001385

Schedule A (Form 990 or 990-EZ) 2001

Part IV-A Support Schedule (Complete only if you checked a box on line 10, 11, or 12) *Use cash method of accounting*
 Note You may use the worksheet in the instructions for converting from the accrual to the cash method of accounting

Calendar year (or fiscal year beginning in)	(a) 2000	(b) 1999	(c) 1998	(d) 1997	(e) Total
15 Gifts, grants and contributions received (Do not include unusual grants See line 28)	10,891,966	9,999,808	7,357,624	6,834,614	35,284,012
16 Membership fees received					
17 Gross receipts from admissions, merchandise sold or services performed or furnishing of facilities in any activity that is related to the organization's charitable, etc purpose	3,415,540	4,523,968	1,488,851	134,290	9,562,449
18 Gross income from interest, dividends amounts received from payments on securities loans (section 512(a)(5)) rents, royalties, and unrelated business taxable income (less section 511 taxes) from businesses acquired by the organization after June 30 1975	74,844	31,583	65,770	13,920	186,117
19 Net income from unrelated business activities not included in line 18					
20 Tax revenues levied for the organization's benefit and either paid to it or expended on its behalf					
21 The value of services or facilities furnished to the organization by a governmental unit without charge Do not include the value of services or facilities generally furnished to the public without charge					
22 Other income Attach a schedule Do not include gain or (loss) from sale of capital assets					
23 Total of lines 15 through 22	14,382,350	14,555,359	9,112,045	6,982,824	45,032,578
24 Line 23 minus line 17	10,966,810	10,031,391	7,623,394	6,848,534	35,470,129
25 Enter 1% of line 23	143,823	145,553	91,120	89,828	

26 Organizations described on lines 10 or 11

a Enter 2% of amount in column (e), line 24

b Prepare a list for your records to show the name of and amount contributed by each person (other than a governmental unit or publicly supported organization) whose total gifts for 1997 through 2000 exceeded the amount shown in line 26a Do not file this list with your return Enter the total of all these excess amounts

c Total support for section 509(a)(1) test Enter line 24, column (e)

d Add Amounts from column (e) for lines 18 _____ 19 _____
 22 _____ 26b _____

e Public support (line 26c minus line 26d total)

f Public support percentage (line 26e (numerator) divided by line 26c (denominator))

26a	
26b	
26c	
26d	
26e	
26f	%

27 Organizations described on line 12

a For amounts included in lines 15, 16, and 17 that were received from a "disqualified person," prepare a list for your records to show the name of and total amounts received in each year from, each "disqualified person" Do not file this list with your return Enter the sum of such amounts for each year

(2000)	2,486,056	(1999)	1,444,658	(1998)	534,598	(1997)	0
--------	-----------	--------	-----------	--------	---------	--------	---

b For any amount included in line 17 that was received from each person (other than "disqualified persons") prepare a list for your records to show the name of, and amount received for each year, that was more than the larger of (1) the amount on line 25 for the year or (2) \$5,000 (include in the list organizations described in lines 5 through 11 as well as individuals) Do not file this list with your return After computing the difference between the amount received and the larger amount described in (1) or (2), enter the sum of these differences (the excess amounts) for each year

(2000)	59,426	(1999)	0	(1998)	43,297	(1997)	112,040
--------	--------	--------	---	--------	--------	--------	---------

c Add Amounts from column (e) for lines 15 _____ 16 _____
 17 _____ 20 _____ 21 _____

d Add Line 27a total _____ and line 27b total _____

e Public support (line 27c total minus line 27d total)

f Total support for section 509(a)(2) test Enter amount from line 23 column (e)

g Public support percentage (line 27e (numerator) divided by line 27f (denominator))

h Investment income percentage (line 18, column (e) (numerator) divided by line 27f (denominator))

27c	44,486,461
27d	4,680,075
27e	39,806,386
27f	45,032,578
27g	88.4%
27h	4%

28 Unusual Grants For an organization described in line 10, 11, or 12 that received any unusual grants during 1997 through 2000, prepare a list for your records to show for each year, the name of the contributor the date and amount of the grant and a brief description of the nature of the grant Do not file this list with your return Do not include these grants in line 15

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Part V Private School Questionnaire (See page 7 of the instructions)
(To be completed ONLY by schools that checked the box on line 6 in Part IV)

	Yes	No
29 Does the organization have a racially nondiscriminatory policy toward students by statement in its charter, bylaws, other governing instrument, or in a resolution of its governing body?		
30 Does the organization include a statement of its racially nondiscriminatory policy toward students in all its brochures, catalogues, and other written communications with the public dealing with student admissions, programs, and scholarships?		
31 Has the organization publicized its racially nondiscriminatory policy through newspaper or broadcast media during the period of solicitation for students or during the registration period if it has no solicitation program, in a way that makes the policy known to all parts of the general community it serves? If "Yes," please describe. If "No," please explain. (If you need more space, attach a separate statement.)		
32 Does the organization maintain the following:		
a Records indicating the racial composition of the student body, faculty, and administrative staff?		
b Records documenting that scholarships and other financial assistance are awarded on a racially nondiscriminatory basis?		
c Copies of all catalogues, brochures, announcements and other written communications to the public dealing with student admissions, programs, and scholarships?		
d Copies of all material used by the organization or on its behalf to solicit contributions? If you answered "No" to any of the above, please explain. (If you need more space, attach a separate statement.)		
33 Does the organization discriminate by race in any way with respect to:		
a Students' rights or privileges?		
b Admissions policies?		
c Employment of faculty or administrative staff?		
d Scholarships or other financial assistance?		
e Educational policies?		
f Use of facilities?		
g Athletic programs?		
h Other extracurricular activities? If you answered "Yes" to any of the above, please explain. (If you need more space, attach a separate statement.)		
34a Does the organization receive any financial aid or assistance from a governmental agency?		
b Has the organization's right to such aid ever been revoked or suspended? If you answered "Yes" to either 34a or b, please explain using an attached statement.		
35 Does the organization certify that it has complied with the applicable requirements of sections 4 01 through 4 05 of Rev. Proc. 75-50, 1975-2 C.B. 587, covering racial nondiscrimination? If "No," attach an explanation.		

Part VI-A Lobbying Expenditures by Electing Public Charities (See page 9 of the instructions)
 (To be completed ONLY by an eligible organization that filed Form 5768)

Check a if the organization belongs to an affiliated group Check b if you checked "a" and "limited control" provisions apply

Limits on Lobbying Expenditures		(a) Affiliated group totals	(b) To be completed for ALL electing organizations
(The term "expenditures" means amounts paid or incurred)			
36	Total lobbying expenditures to influence public opinion (grassroots lobbying)		
37	Total lobbying expenditures to influence a legislative body (direct lobbying)		
38	Total lobbying expenditures (add lines 36 and 37)		
39	Other exempt purpose expenditures		
40	Total exempt purpose expenditures (add lines 38 and 39)		
41	Lobbying nontaxable amount. Enter the amount from the following table: If the amount on line 40 is- Not over \$500,000 Over \$500,000 but not over \$1,000,000 Over \$1,000,000 but not over \$1,500,000 Over \$1,500,000 but not over \$17,000,000 Over \$17,000,000	The lobbying nontaxable amount is- 20% of the amount on line 40 \$100,000 plus 15% of the excess over \$500,000 \$175,000 plus 10% of the excess over \$1,000,000 \$225,000 plus 5% of the excess over \$1,500,000 \$1,000,000	
42	Grassroots nontaxable amount (enter 25% of line 41)		
43	Subtract line 42 from line 36. Enter -0- if line 42 is more than line 36		
44	Subtract line 41 from line 38. Enter 0 if line 41 is more than line 38		

Caution: If there is an amount on either line 43 or line 44, you must file Form 4720.

4-Year Averaging Period Under Section 501(h)

(Some organizations that made a section 501(h) election do not have to complete all of the five columns below. See the instructions for lines 45 through 50 on page 11 of the instructions.)

Calendar year (or fiscal year beginning in) ▶	Lobbying Expenditures During 4-Year Averaging Period				
	(a) 2001	(b) 2000	(c) 1999	(d) 1998	(e) Total
45	Lobbying nontaxable amount				
46	Lobbying ceiling amount (150% of line 45(e))				
47	Total lobbying expenditures				
48	Grassroots nontaxable amount				
49	Grassroots ceiling amount (150% of line 48(e))				
50	Grassroots lobbying expenditures				

Part VI-B Lobbying Activity by Nonelecting Public Charities
 (For reporting only by organizations that did not complete Part VI-A) (See page 12 of the instructions)

During the year did the organization attempt to influence national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum through the use of	Yes	No	Amount
a. Volunteers			
b. Paid staff or management (Include compensation in expenses reported on lines c through h)			
c. Media advertisements			
d. Mailings to members, legislators or the public			
e. Publications, or published or broadcast statements			
f. Grants to other organizations for lobbying purposes			
g. Direct contact with legislators, their staffs, government officials or a legislative body			
h. Rallies, demonstrations, seminars, conventions, speeches, lectures or any other means			
i. Total lobbying expenditures (Add lines c through h)			

If "Yes" to any of the above, also attach a statement giving a detailed description of the lobbying activities.

Schedule B
(Form 990, 990-EZ,
or 990-PF)

Department of the Treasury
Internal Revenue Service

Schedule of Contributors

Supplementary information for
line 1 of Form 990, 990-EZ and 990-PF (see instructions)

OMB No 1545-0047

2001

Name of organization

Three Angels Broadcasting Network, Inc

Employer identification number

37-1179056

Organization type (check one)

Filers of

Section

Form 990 or 990-EZ

501(c)(3) (enter number) organization

4947(a)(1) nonexempt charitable trust not treated as a private foundation

527 political organization

Form 990-PF

501(c)(3) exempt private foundation

4947(a)(1) nonexempt charitable trust treated as a private foundation

501(c)(3) taxable private foundation

Check if your organization is covered by the General rule or a Special rule (Note: Only a section 501(c)(7) (B), or (10) organization can check box(es) for both the General rule and a Special rule—see instructions)

General Rule-

- For organizations filing Form 990, 990-EZ, or 990-PF that received during the year \$5,000 or more (in money or property) from any one contributor (Complete Parts I and II)

Special Rules-

- For a section 501(c)(3) organization filing Form 990, or Form 990-EZ that met the 33 1/3% support test of the regulations under sections 509(a)(1)/170(b)(1)(A)(vi) and received from any one contributor during the year, a contribution of the greater of \$5,000 or 2% of the amount on line 1 of these forms (Complete Parts I and II)
- For a section 501(c)(7), (B) or (10) organization filing Form 990, or Form 990-EZ, that received from any one contributor during the year aggregate contributions or bequests of more than \$1,000 for use *exclusively* for religious, charitable, scientific, literary or educational purposes, or the prevention of cruelty to children or animals (Complete Parts I, II, and III)
- For a section 501(c)(7), (B), or (10) organization filing Form 990, or Form 990-EZ, that received from any one contributor during the year, some contributions for use *exclusively* for religious, charitable, etc. purposes, but these contributions did not aggregate to more than \$1,000 (If this box is checked, enter here the total contributions that were received during the year for an *exclusively* religious, charitable, etc. purpose. Do not complete any of the Parts unless the General rule applies to this organization because it received nonexclusively religious, charitable, etc. contributions of \$5,000 or more during the year) ▶ \$ _____

Caution: Organizations that are not covered by the General rule and/or the Special rules do not file Schedule B (Form 990, 990-EZ, or 990-PF), but they must check the box in the heading of their Form 990, Form 990-EZ, or on line 1 of their Form 990-PF, to certify that they do not meet the filing requirements of Schedule B (Form 990, 990-EZ, or 990-PF)

Cat No 30613X

Schedule B (Form 990, 990-EZ or 990-PF) (2001)

061390

Name of organization
Three Angels Broadcasting Network, Inc

Employer identification number
37-1179056

Part I Contributors (See Specific Instructions)

(a) No	(b) Name, address and ZIP + 4	(c) Aggregate contributions	(d) Type of contribution
<u>1</u>		\$ 877,742	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II if there is a noncash contribution)
<u>2</u>		\$ 775,000	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II if there is a noncash contribution)
<u>3</u>		\$ 424,749	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II if there is a noncash contribution)
<u>4</u>		\$ 352,000	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II if there is a noncash contribution)
(a) No	(b) Name, address and ZIP + 4	(c) Aggregate contributions	(d) Type of contribution
.....	.....	\$ .....	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II if there is a noncash contribution)
(a) No	(b) Name, address and ZIP + 4	(c) Aggregate contributions	(d) Type of contribution
.....	.....	\$ .....	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II if there is a noncash contribution)

THREE ANGELS BROADCASTING NETWORK, INC.
990 - SUPPLEMENTAL INFORMATION
YEAR ENDED DECEMBER 31, 2001

#37-1179056

Statement 9
Form 990, Part V
List of Officers, Directors, Trustees, and Key Employees

Name and Address	Title & Avg Hrs/Wk	Comp	Employee Benefits	Expense Account
Dr Walter Thompson 174 Fox Borough Burr Ridge, IL 60521	Chairman None		0	0
J Wayne Coulter 619 Plainfield Rd , 3rd Floor Willowbrook, IL 60521-5381	Director None		0	0
May E Chung 155 Manchester Lane San Bernardino, CA 92408	Director None		0	0
Dr Robert Ford 2517 NE Kresky Chehalis, Wa 98532-2409	Director None		0	0
Bill Hulsey PO Box 596 Collegedale, TN 37315	Director None		0	0
Ellsworth McKee PO Box 750 Collegedale, TN 37315	Director None		0	0
Danny Shelton 2954 New Lake Road West Frankfort, IL 62896	President Director 40 hrs/wk	55,504		
Linda Shelton 2954 New Lake Road West Frankfort, IL 62896	Vice Pres Director 40 hrs/wk	49,354		
Stan Smith Box 100 Lillooet, BC V0K 1V0	Director None		0	0
G Ralph Thompson 12501 Old Columbia Pike Silver Spring, MD 20904-6600	Director None		0	0

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THREE ANGELS BROADCASTING NETWORK, INC.
990 - SUPPLEMENTAL INFORMATION
YEAR ENDED DECEMBER 31, 2001

#37-1179056

Statement 9
Form 990, Part V
List of Officers, Directors, Trustees, and Key Employees (Continued)

Name and Address	Title & Avg Hrs/Wk	Comp	Employee Benefits	Expense Account
Owen Troy 1906 Dana Drive Adelphi, MD 20783-2119	Director None	0	0	0
Larry Welch 715 S Mulkey Christopher, IL 62822	Director 40 hrs/wk	38,624	0	0
		143,482		

Statement 10
Form 990, Part V, Line 90A
List of States Which This Return is Filed
 California
 Illinois
 Oregon

Statement 11
Form 990, Part VII
Relationship of Activities to the Accomplishment of Exempt Purposes
Line # Explanation of Activities

93	Payment for airtime & production of certain religious programming
95	Interest income is used to help offset general operating expenses
97	Rental income is used to help offset general operating expenses
102	Sale of satellite dishes to enable viewers to receive programming
103	Sale of religious programming and religious books

Statement 12
Schedule A, Part IV-A, Line 27A
Payments From Disqualified Persons

Disqualified Person	2000	1999	1998	1997
	55,000	220,000	65,000	
	1,565	986,658	49,598	
	352,000	238,000	420,000	
	775,000			
	424,749			
	877,742			
	2,486,056	1,444,658	534,598	

THREE ANGELS BROADCASTING NETWORK, INC.
990 - SUPPLEMENTAL INFORMATION
YEAR ENDED DECEMBER 31, 2001

#37-1179056

Statement 13
Schedule A, Part IV-A, Line 27B
Payments From Nondisqualified Persons

Nondisqualified Person		2000	1999	1998	1997
					182,228
				134,399	
		189,500			
		157,572			
Subtotal		347,072		134,399	182,228
Less	143,823 X 2	287,646			
	91,120 X 1			91,120	
	69,828 X 1				69,828
Excess		59,426		43,279	112,400

001394

THREE ANGELS BROADCASTING NETWORK, INC.
990 - SUPPLEMENTAL INFORMATION
YEAR ENDED DECEMBER 31, 2001

#37-1179058

Statement 1
Form 990, Part I, Line 8
Net Gain (Loss) form Noninventory Sales

Publicly Traded Securities

Description	Securities
Date Acquired	Various
How Acquired	Purchased or Donated
Date Sold	Various
To Whom Sold	Market Shares - Unknown
Gross Sales Price	74,871
Cost Basis	76,106
Loss on Sale	<u>(1,235)</u>

Statement 2
Form 990, Part I, Line 20
Other Changes in Net Assets or Fund Balances

Record split interest agreements previously unrecorded	2,451,034
Reclassification of amounts due to other ministries previously classified as temporarily restricted	(14,282)
Net unrealized gains on marketable securities	13,862
	<u>2,450,614</u>

Statement 3
Form 990, Part I, Line 43
Other Expenses

Other Expenses	Total	Program Management Services & General	Fundraising
Advertising and promotion	212,798	118,579	94,219
Bad Debts	28,160	28,160	
Broadcasting	131,066	131,066	
Camp Meeting	26,817		26,817
Contract Labor	135,826		135,826
Credit Card Fees	24,966		24,966
Downlink	841,050	841,050	
Dues and Registration	103,842	103,842	
Insurance	441,646		441,646
Miscellaneous	207,002	100,737	106,265
Small Tools & Equipment	75,269	21,196	54,073
Special Projects	796,889	796,889	
	<u>3,025,331</u>	<u>2,141,519</u>	<u>883,812</u>

001395

THREE ANGELS BROADCASTING NETWORK, INC.
990 - SUPPLEMENTAL INFORMATION
YEAR ENDED DECEMBER 31, 2001

#37-1179056

Statement 4
Form 990, Part IV, Line 57
Land, Buildings and Equipment

<u>Asset</u>	<u>Cost</u>	<u>Accum Deprec</u>	<u>Net Book Value</u>
Aircraft	1,346,893	11,224	1,335,669
Buildings	3,517,409	436,666	3,080,743
Land	681,178		681,178
Land Improvements	187,511	22,531	164,980
Machinery & Equipment	12,456,074	7,157,788	5,298,286
Vehicles	1,564,985	785,262	779,723
Construction in Progress	542,976		542,976
	<u>20,297,026</u>	<u>8,413,471</u>	<u>11,883,555</u>

Statement 5
Form 990 Part IV, Line 58
Other Assets

Annuites	7,621,899
Trusts	<u>16,229,926</u>
	<u>23,851,825</u>

Statement 6
Form 990 Part IV, Line 65
Other Liabilities

Annuites	4,405,293
Liabilities under Unitrust Agreements	1,451,969
Revocable Trust Liabilities	<u>16,229,926</u>
	<u>22,087,188</u>

Statement 7
Form 990 Part IV-A, Line B(4)
Other Amounts

Cost of Goods Sold - Satelites	460,500
Rental Expenses	10,576
	<u>471,076</u>

Statement 8
Form 990 Part IV-B, Line B(4)
Other Amounts

Cost of Goods Sold - Satelites	460,500
Rental Expenses	10,576
	<u>471,076</u>

001396

ILLINOIS DEPARTMENT OF REVENUE OFFICE OF THE ADMINISTRATIVE CLERK
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FILED

MAR 08 2004

THREE ANGELS BROADCASTING
NETWORK, INC.,

Applicant,

THE DEPARTMENT OF REVENUE OF THE
STATE OF ILLINOIS

Respondent,

and

THOMPSONVILLE COMMUNITY HIGH SCHOOL
DISTRICT NO. 112, AND THOMPSONVILLE
SCHOOL DISTRICT NO. 62,

Intervenors.

OFFICE OF THE
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

Docket No.: 00-28-01

and

Docket No.: 01-28-07

Case No. 01-PT-0027

P.I.# 174-116-11

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

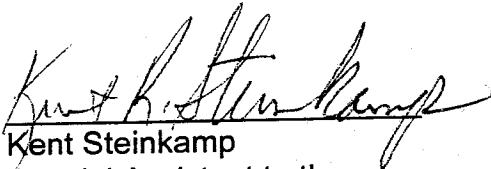
MAR 08 2004


OFFICE OF THE
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

RESPONDENT'S AND INTERVENORS' JOINT NOTICE OF
INTENT TO FILE RESPONSE(S) TO
APPLICANT'S PETITION FOR REHEARING

1. On or about February 27, 2004, Applicant filed its Petition for Rehearing in the captioned matter.
2. Respondent and Intervenors hereby provide notice of their intent to file a written response to the Applicant's Petition for Rehearing.
3. Respondent and Intervenors intend to file such response(s) on or before March 29, 2004, unless instructed to file such response(s) at an earlier time.

Respectfully submitted,


Kent Steinkamp
Special Assistant to the
Attorney General
101 West Jefferson
Springfield, IL 62794
(217) 557-4395
Counsel for Respondent


Joanne H. Petty
Robbins, Schwartz, Nicholas,
Lifton & Taylor, Ltd.
20 North Clark, Suite 900
Chicago, IL 60602
(312) 332-7760
Counsel for Intervenors

051397

of Revenue's January 28, 2004 decision¹ should be stricken to more accurately reflect the record. Applicant further requests that it be permitted to introduce additional evidence on several points.

Applicant's Petition must be denied. The Department of Revenue Regulations permit rehearing and set forth the bases upon which rehearing will be granted in Section 200.175 of Title 86, Part 200. 86 Ill. Admin. Code § 200.175. All errors of fact or law *viewed as affecting the validity of [the Department's] decision* must be set forth. 86 Ill. Admin. Code § 200.175 (b) (emphasis added). The Department shall consider such factors as: the offer of proof with respect to matters in controversy; new evidence and the nature and complexity of legal issues raised; the diligence of the person seeking the rehearing; the passage of time between the finalization of the assessment and the request for review. 86 Ill. Admin. Code § 200.175 (b).

An application for rehearing is essentially a request to reconsider the Department's decision. As the regulations require, a request for rehearing must set forth the errors that affect the validity of the Department's decision. Consequently, only errors that affect the validity of the Department's decision can be the basis upon which a rehearing will be granted.

The "errors" cited by Applicant for the most part constitute arguments that the evidence contained in the voluminous record should have been interpreted differently, or is supported by additional material that was not presented at the hearing. These factual "omissions" from the decision do not affect the validity of the decision as there

¹ Citations to the Department's decision herein shall be identified as "Op."

were several bases upon which the Department's decision was made. Nor do these additional facts compel a contrary result.

Although Intervenor the Department do not believe that a rehash of the evidence is required in this case, some discussion of the Applicant's arguments appears to be warranted. Thus, a brief discussion of Applicant's main factual arguments is presented. The fact that this Response does not individually dispute each of Applicant's arguments should not be interpreted to mean that the Intervenor concedes any of these points.

First, Applicant contends that the Department did not have a complete copy of its corporate by-laws and that the missing pages demonstrate that upon dissolution, the remaining assets are to be distributed to qualified organizations. The omission of these pages do not compel a contrary result since there was testimony during the hearing, as noted in the Petition (p. 2) regarding the distribution of the organizations assets upon dissolution. The evidence was presented and is a part of the record. However, this fact, which, incidentally, was not contested at the hearing, does not establish the other elements which must be proved in order to qualify for tax exemption on the basis of 35 ILCS 200/15-40 or 15-60. Where the assets go upon dissolution does not alone establish that the organization qualifies for tax exemption.

Second, Applicant now requests administrative notice be taken of Applicant's Exhibit 25, federal form 990. The Department specifically noted that Applicant did not submit the form in support of its case. The Intervenor requested these returns in its discovery requests and in a Supreme Court Rule 237 request and the Applicant refused

to produce them. It is not only unfair, but patently improper to now offer them as proof of a contrary conclusion on the basis that the administrative agency can take administrative notice of these records. It is presumptuous to now seek to admit them on the basis that these federal returns are a matter of public record, since it is not so clear that they are part of the public record.

The Department Regulations specifically address the proposal of new evidence. If new evidence, *not previously available and which the taxpayer was not required to maintain or keep as part of its own records* is sought to be admitted, explanation of the nature of that evidence and how it affects the decision shall also be included. See 86 Ill. Admin. Code § 200.175 (b) (emphasis added). The assumption is that the "new evidence" sought to be introduced in a Petition for Rehearing was not previously available to the taxpayer, and it is so significant that it would alter the decision. That is clearly not the case here. These returns were deliberately kept from the Intervenors and the Department when the parties properly requested them in discovery, deliberately kept from the Department during the hearing when they were clearly relevant to the issues and evidence being discussed, and only now, when Applicant is unhappy with the decision and belatedly realizes that one of the bases for the decision was that the Applicant failed to submit this evidence, seeks to admit it. That is, Applicant is only submitting this evidence when it can possibly help its case. Essentially, it is an opportunistic attempt to alter the Department's decision with evidence it obviously had available to it during the hearing and chose not to introduce it at that time. This request should not now be entertained.

Nevertheless, Applicant's Petition on its face demonstrates that the Department had sufficient bases to support its decision. For example, in paragraph 4 of the Petition, even though the Applicant seeks to admit its tax returns to prove the Sheltons' compensation package, the fact is that there was testimony by the principal parties during the hearing regarding the compensation received by the Sheltons. The Department also found, as a matter of fact, that Board members do not receive compensation for being on the Board. (Op., 8, ¶14). The ALJ, as the finder of fact, can also draw conclusions regarding the credibility of the witnesses based on their demeanor and whether there is other evidence in the record that point to a contrary conclusion. Here, the Applicant seeks to bolster testimony which the ALJ questioned by introducing documentary evidence to prove the point. Such a decision should have been made at the hearing - and the documents introduced at that time. A party cannot be permitted to alter its evidentiary submissions to address concerns raised by the finder of fact once the finder of fact makes its determination.

Third, with regard to the testimony of Linda Shelton regarding the sale of her CD's, the record sufficiently supports the Department's determination that this is one aspect of an enterprise designed to turn a profit. The evidence was clear that Ms. Shelton records CD's, the CD's are produced and sold by Applicant and that she receives royalties when her songs are broadcast because of the license she holds with BMI. It matters little to the overall result whether the Department did not specifically distinguish royalties from the sale of CD's to royalties received from the license she

owns.² The fact remains that she receives a benefit that is a personal, rather than an organizational benefit, from the production, marketing, sale and broadcasting of her music through Three Angels Broadcasting. Such is contrary to the Applicant's assertion that it is operating a religious organization without a view to profit.

Fourth, with regard to the issue of give-aways, again the testimony on the record was clear that there are some items given away. However, it was established that the Applicant does not have a fixed policy with regard to give-aways. With regard to satellite systems, the evidence was clear that there was no written policy to give away or donate its satellite systems. (Op., 21, ¶¶ 76-77). Applicant presented only the self-serving and uncorroborated testimony that Applicant has given discounts or given away satellite systems but it was never demonstrated that the Applicant had any kind of policy regarding give-aways. Moreover, Applicant never presented any evidence regarding the materials given away in 2000 or 2001. (Op., 21, ¶ 77). At most, the evidence established that any give-away was determined by Mr. Shelton alone, and in his discretion, and that he is a generous person. Such evidence does not rise to the level of providing benefits to all those who seek it, regardless of the ability to pay as required by *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149 (1968).

Finally, Applicant also devotes 3 pages of its Petition to argue that the principals and directors have deeply held religious beliefs. (See Petition, 10-13, ¶ 7). To devote this amount of time disputing one sentence in the Department's decision is an exercise

²The Department correctly found that "Linda Shelton receives royalty payments for the CD's she produces." (Op., 9, ¶ 21). Whether she receives royalties from the sale, or broadcast is irrelevant. It is a

in futility. Whether the Applicant has demonstrated that it has officers deeply involved in religious teaching does not make this organization into a religious organization. There is still no evidence that the Sheltons or the Applicant's officers were members of the clergy or that it was directly affiliated with a religious organization. (See Op., 30). The evidence is actually to the contrary. The Department correctly concluded from the evidence presented that Applicant, its principals, its directors, and viewers and supporters are not a religious society, organization or body of persons. (Op., 31). The evidence overwhelmingly demonstrated that it is an organization loosely affiliated with the Seventh Day Adventist Church and that it supports the Seventh Day Adventist Church, but it itself is not a religious organization. (Op., 20 - 21, ¶¶ 70-73).

The Department correctly determined that Applicant's use of the property does not rise to the level required to be granted a tax exemption. The record sufficiently details the enterprising nature of the Applicant's activities and that it is an organization operating with a view to profit. None of the arguments presented in Applicant's Petition change the fact that the property is not used exclusively for religious purposes as set forth by the Illinois Supreme Court in *People ex rel. McCullough v. Deutsche Gemeinde*, 249 Ill. 132 (1911) and required by the statute authorizing tax exemption, 35 ILCS 200/15-40. As a preliminary matter, the Department correctly concluded that the use of the subject property "lacks the requisite association with places traditionally used for public worship, Sunday School or other devotional instruction" (Op., 25-26), and none of the facts and arguments presented in the Applicant's Petition compel a contrary result.

matter of personal inurement through the operation of the enterprise on the subject property.

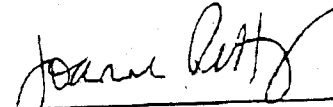
Nor do Applicant's arguments change the fact that Applicant is a commercial enterprise operating with a view to profit. One of the most persuasive pieces of evidence in this regard is that Applicant is engaged in the sale of products from the subject property, the prices for which are established by the Sheltons, without any evidence regarding the cost of such items. There is no evidence in the record proving how Applicant determines the prices of the satellite dishes, videos, airtime, CD's and the other products the Applicant sells. (See Op., 28). There was no evidence presented regarding the cost of producing the videos, books, CD's and other materials that it sells. Without any evidence regarding costs, it cannot be concluded that the prices were determined without a view to turning a profit on the sales of those products. Resolving this failure of proof in favor of taxation, the Department correctly concluded that the "Applicant employs a non-exempt commercial or retail pricing system unlike the Inter-Varsity Fellowship pricing method." (Op., 29). Moreover, the evidence overwhelmingly demonstrates that the operation of the enterprise results in a significant profit for Applicant: (See Op., 38).

The Applicant's Petition for Rehearing does not sufficiently demonstrate that the Department reached the wrong conclusion. The record contains more than adequate support for the Department's findings of fact, and law, and no contrary result is compelled by the Applicant's arguments. The Applicant's request to modify the decision, or permit additional evidence to be taken on the points outlined therein, should be denied. The proposed additional evidence would not change the result as they do not go to the ultimate issues in the case.

Respectfully submitted,



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3 ANGELS BROADCASTING NETWORK

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

Docket # 00-28-01
A.H. Docket # 01-PT-0027
P. I. # 174-116-11

NOTICE OF DECISION

TO: Please see attachment.

YOU ARE HEREBY NOTIFIED that the attached recommended decision of the Administrative Hearings Division of the Illinois Department of Revenue in the above-entitled cause has been accepted by the Director as dispositive of the issues therein. This recommendation is now a final administrative decision and establishes your rights or responsibilities regarding the subject matter of the hearing. Should this decision be adverse to you, you may pursue your rights to administrative review by filing a complaint in the circuit court under the requirements of 735 ILCS 5/3-101 et seq., within 35 days of the date of the mailing of this notice.

4.7.2004
Date of Decision

Brian A. Hamer Dir.
Brian A. Hamer
Director

001407

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
SPRINGFIELD, ILLINOIS**

3 ANGELS BROADCASTING NETWORK

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

Docket #

00-28-01

A.H. Docket #

01-PT-0027

P. I. #

174-116-11

ORDER PURSUANT TO APPLICANT'S PETITION FOR REHEARING

This cause comes on to be heard on "Applicant's Petition for Rehearing," filed by applicant following an issuance of decision by the Department of Revenue. The Department, as respondent, and the intervenor filed the "Respondent's and Intervenors' Joint Response to Applicant's Petition for Rehearing." Following a complete review of these filings, as well as of the record in this cause, applicant's petition is denied for the following reasons:

A request for rehearing must comply with 86 Admin. Code Section 200.175, which states in pertinent part at (b):

To be considered for initial review or rehearing, a taxpayer must submit a written application therefor to the Chief Administrative Law Judge, offering specific and detailed rationale for each basis used to support the request. Where a rehearing is sought following issuance of a final Departmental decision, all errors of fact or law viewed as affecting the validity of that decision must be set forth. If new evidence, not previously available and which the taxpayer was not required to maintain or keep as part of its own records is sought to be admitted, explanation of the nature of that evidence and how it affects the decision shall also be included. . . . In determining whether to permit an initial review or rehearing, the Department shall consider such factors as: the offer of proof with respect to matters in controversy; new

001403

evidence and the nature and complexity of legal issues raised; the diligence of the person seeking the rehearing; the passage of time between the finalization of the assessment and the request for review. No second or subsequent application for review or rehearing relating to the same operative set of facts shall be considered by the Department

Applicant first requests that it be permitted to add three additional pages to its trial Exhibit 3, thereby providing the record with a complete copy of its bylaws. It contends that its failure to provide a complete copy of its bylaws at hearing was unintended. 86 Admin. Code 200.155 addresses the evidence and conduct of hearings at the Illinois Department of Revenue and at part (f) states:

With the exception of Section 200.135(f) of this Part¹, all evidence in support of any issue, whether in the nature of testimony, documents, or other physical matter, shall be taken in the course of and on the date(s) set for hearing. An Administrative Law Judge shall not accept or consider evidence of any form or nature which is received or submitted outside of or subsequent to the hearing itself, nor permit same under any circumstances, without the express written and recorded agreement of the parties.

It certainly is a party's burden to make sure that each of its evidentiary exhibits is complete when submitted into the record. It is also clear that applicable Illinois regulations prohibit the acceptance of evidence after the hearing is completed, as in this case. However, there is no reason for me to believe that applicant intended to enter into the record anything less than a complete copy of its bylaws. Nor have the intervenors and respondent suggested that they were not provided a complete copy of these bylaws. I conclude that applicant's failure to include three pages of its bylaws as part of the record was inadvertent, and, therefore, a complete copy of applicant's bylaws shall be designated for purposes of this record as Applicant's Exhibit 3.

¹ Dealing with evidence obtained in informal review.

The addition of these pages of applicant's bylaws affects only a small segment of the determination denying tax exemption. By no means does a change in the legal analysis on this one point, found at pages 29 and 30 in the Recommendation, warrant a different legal conclusion as to whether the property at issue is exempt from real estate taxes for the pertinent years.

Applicant has failed to provide any other basis for further reconsideration. Applicant's assertion that it should be allowed to augment the record post-hearing with its IRS forms 990 (Return of Organization Exempt From Tax for years 2000 and 2001) is of serious concern. Applicant cites to Muller v. Zollar, 267 Ill. App.3d 339 (3rd Dist. 1994) and Country Companies v. Universal Underwriters Insurance Company, (343 Ill.App.3d 224 (3rd Dist. 2003) for the proposition that "judicial notice of a public record is proper and may be taken despite the fact the public document was not offered at the administrative hearing."²

First, while reviewing courts have permitted public documents to be added to the court record post-hearing, no court has announced that this permission must be extended to every public document. Rather, the practice of permitting the admission into the record of public documents post-hearing is extended to those documents containing facts based upon "easily accessible sources of indisputable accuracy." People v. Davis, 65 Ill.2d 157, 161 (1976) citing McCormick on Evidence section 330 at 763(2d ed. 1972)

What is of serious concern in this matter is the assertion by the respondent and intervenors in their "Joint Response to Applicant's Petition for Rehearing" that intervenors requested the 990s in discovery requests and in a Supreme Court Rule 237

² Applicant's Petition for Rehearing p. 4.

³ Joint Response to Applicant's Petition for Rehearing pp. 3-4.

request and the applicant refused to produce them.³ As stated in the response: "It is not only unfair, but patently improper to now offer them as proof of a contrary conclusion on the basis that the administrative agency can take administrative notice of these records. It is presumptuous to now seek to admit them on the basis that these federal returns are a matter of public record, since it is not so clear that they are part of the public record."⁴

Thus, there is raised herein a concern, at the very least, regarding the "indisputable accuracy" of the facts found on the 990s which the applicant, at this late date, requests that I consider as supporting its oral evidence. Further, it is of considerable importance that these returns were produced by the applicant and were in the applicant's possession and control before and during the entire administrative hearings process. Applicant, therefore, made a deliberate decision to use only oral testimony to advance the facts it now wants these documents to bolster. I must agree with the respondent and intervenors that to allow the inclusion into the record of these documents at this time will seriously prejudice them by compromising the integrity of the trial proceeding whereby full disclosure is required when sought and the right to fully examine evidence is essential.

As a result of the serious concern raised by the inclusion of these returns at this date, they will not only not be considered, but are stricken from "Applicant's Petition For Rehearing."

The majority of the errors averred by the applicant in its request constitute arguments that the evidence and testimony submitted at hearing should have been interpreted differently. For example, applicant cites to Applicant's Exhibits 18-21 for the

³ Joint Response to Applicant's Petition for Rehearing pp. 3-4.

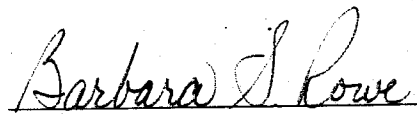
⁴ Joint Response to Applicant's Petition for Rehearing p. 4.

proposition that applicant gives away a number of materials for free. These exhibits are lists of items applicant, through the testimony of Mr. Shelton, asserted were available for free. These lists were prepared in anticipation of litigation (Tr. pp. 173-177) and were offered into evidence without substantive support. Therefore, there is no basis provided by the applicant for re-evaluation of the consideration given to these documents, and applicant presents no basis for concluding that my facts or legal conclusions are in error.

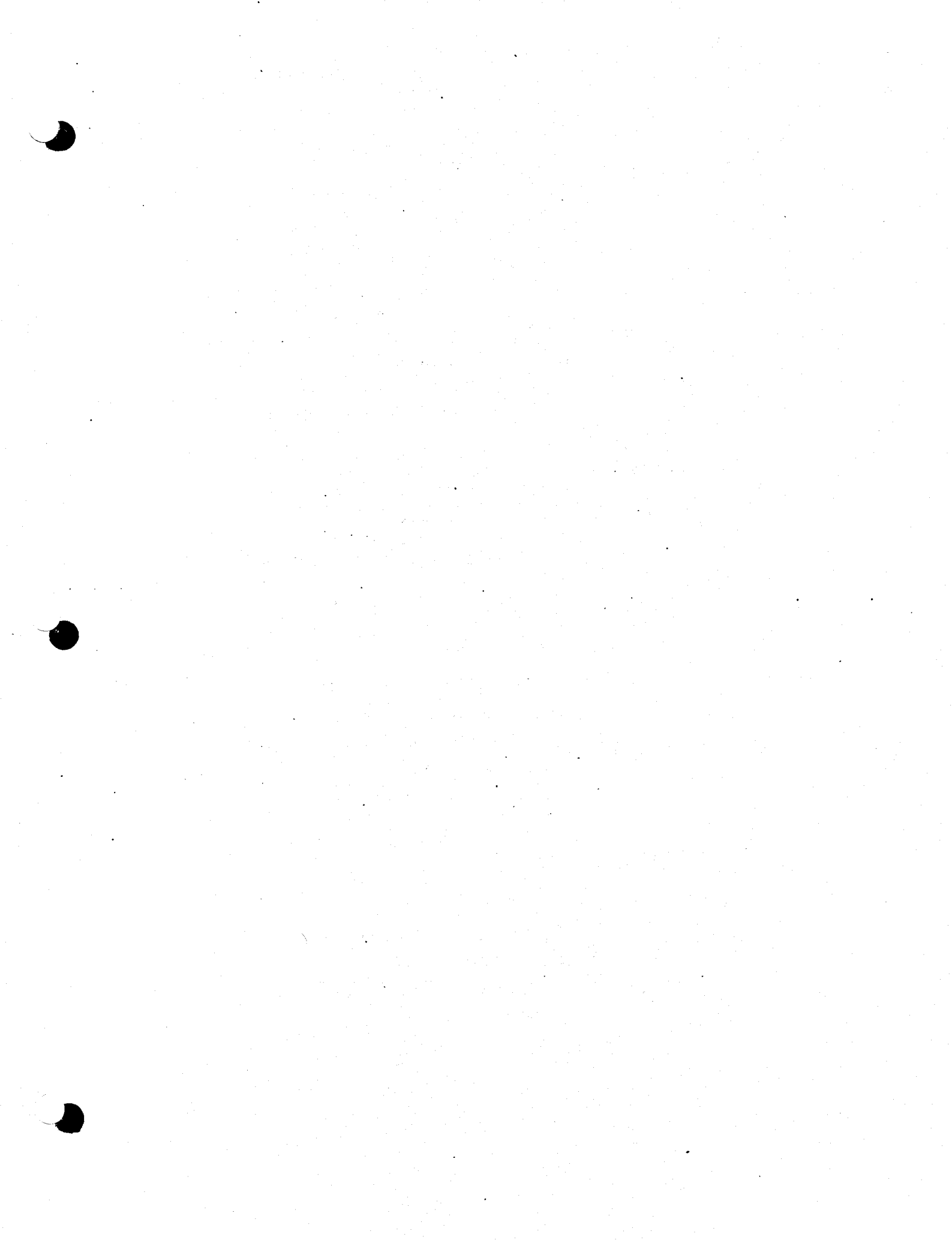
On the other arguments, after a careful review of the entire record including an assessment of the credibility of the witnesses, I stand by the facts and conclusions of law drawn from the record. Thus, a rehearing or any further reconsideration is not warranted.

Therefore, on the point that applicant intended to have a complete set of bylaws as part of the record, and inadvertently left out sections, I agree. The complete bylaws are entered into evidence in this matter. On all other points, Applicant's Petition for Rehearing is denied and all mention of the forms 990 are hereby stricken.

Date: April 6, 2004



Barbara S. Rowe
Administrative Law Judge



ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING
NETWORK, INC.,

Applicant,

and

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,

Respondent.

and

THOMPSONVILLE COMMUNITY
HIGH SCHOOL DISTRICT
NO. 112, and
THOMPSONVILLE SCHOOL
DISTRICT NO. 62,

Intervenors.

A.H. Docket No.: 01-PT-0027

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

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IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

**APPLICANT'S MEMORANDUM OF LAW AND BRIEF
IN OPPOSITION TO DEPARTMENT'S AND
INTERVENORS' JOINT MOTION IN LIMINE
AND MOTION TO QUASH**

INTRODUCTION

The Department of Revenue of the State of Illinois and intervenors (hereafter sometimes "movants") attempt to prevent Three Angels Broadcasting Network, Inc. (hereafter sometimes "applicant" and sometimes "3 ABN") from presenting both facts and arguments to support its constitutional arguments as a part of its case proving its entitlement to tax exemption. Movants seek to cripple applicant's ability to prove their

claim to tax exemption entitlement by two devices (1) a motion to quash a subpoena and (2) a motion in limine. Both devices should be rejected.

Movants do not have standing to move to quash the subpoena directed to a non-party, and, even if they did, they do not have good cause to do so. Likewise, there is no valid basis for granting movants' motion in limine. Clearly, in this non-jury proceeding, movants will experience no prejudice if their motion is denied.

Applicant must be provided the opportunity to present its evidence so as to both demonstrate its entitlement to tax exemption and to establish a reviewable record supporting its constitutional theory. In *Bowen v. Roy*, 476 U.S. 693, 722 n.19 (1986), citing earlier cases, the Supreme Court recognized the importance of the facts and fact-finding in constitutional adjudication. Quoting from *Hammond v. Schappi Bus Line*, 275 U.S. 164, 171-72 (1927), the Court stated "[b]efore any of the questions suggested, which are both novel and of far-reaching importance, are passed upon by the [Supreme] Court, the facts essential to their decision should be definitely found by the lower court on an adequate record." The challenged subpoena and movants' motion in limine aspire to deprive applicant of its due process right to establish a complete record and is not in the interest of judicial economy or of fairness.

ARGUMENT

I. MOVANTS' MOTION TO QUASH MUST BE DENIED.

The Department and intervenors attempt to quash the subpoena issued to Garth W. Coonce of Tri-State Christian TV (hereafter "Tri-State Christian"), but the short answer is they have no standing to do so, and, even if they did, they cannot show any facts demonstrating the unreasonableness and oppressiveness of the subpoena with regard

to movants.

735 ILCS 5/2-1101 provides that a court may quash or modify a subpoena for good cause. As stated in 81 *Am Jur 2d*, Witness § 23, "[a] subpoena duces tecum may only be challenged by the person to whom it is directed or by a person whose property rights or privileges may be violated. A party or the person from whom discovery is sought may move for a protective order or for a motion to quash or modify an unreasonable or oppressive subpoena." Historically, it has been the case that only the served party may object to the subpoena. *Langford v. Chrysler Motors Corp.*, 513 F.2d 1121, 1126 (2d Cir. 1975).

In *United States v. Nachamie*, 91 F.2d 552 (S.D. N.Y. 2000), the court discussed extensively the need for standing to challenge a subpoena issued to a non-party. The *Nachamie* court stated "[a] party generally lacks standing to challenge a subpoena issued to a third party absent a claim of privilege or a proprietary interest in the subpoenaed matter." *Id.* at 558. The New York court *In the Matter of Selesnick*, 115 Misc. 993, 454 N.Y.S. 2d 656, 658 (1982), stated "that a subpoena may only be challenged by the person to whom it is directed or by a person whose property rights or privileges may be violated." The court added that there is no authority to justify petitioner's position that he has a right to challenge the subpoena merely because the material sought might adversely affect him." *Id.*

In seeking to quash the subpoena, movants mischaracterize applicant's reasons for subpoenaing a representative of Tri-State Christian. The reasons applicant requires such an appearance may be generally summed up as follows:

1. Applicant claims that both Art. 1, sec. 3, of the Illinois Constitution and

the First Amendment to the United States Constitution require the state to observe strict neutrality between religions or, in other words, not to be administratively inconsistent as between religious organizations when granting or denying tax exemptions. In this case applicant endeavors to demonstrate that its programming is substantially the same as that of Tri-State Christian (if not even more free from what the Department sees as "secular" or "commercial").

Applicant is prepared to show that Tri-State Christian was granted a tax exemption without any inquiry into its programming. Any attempt on the Department's part to deny 3 ABN an exemption based upon the content of its programming would, therefore, constitute administrative inconsistency and would be a violation of the neutrality mandate of the Religion Clauses of the First Amendment.

2. Applicant seeks also to show that in granting tax exemptions to another religious organization without a uniform standard or process applied by the Department, such state action also would violate the Constitution's command of religious neutrality between religions.

3. The Department has already made a determination that activities (or property use) that is in all constitutionally relevant ways identical to that of applicant is entitled to property tax exemption.

Appellant asserts that the neutrality requirements of the First Amendment are not dependent on proof of intent to discriminate. Applicant does assert that the effect of the Department's action, so far as to 3 ABN in comparison to other television ministries, has been non-neutral and violates the First Amendment.

The movants claim that testimony by a representative of Tri-State Christian is

irrelevant to the only issue raised in the case. They contend the only relevant inquiry is what the primary use of the property is and whether it is being used with a view to a profit. Contrary to the movants' argument, applicant does not intend to sidestep the elements of proof. Applicant believes it will prove the primary use of the property in question is religious and that there has been no view to use the property to profit financially as that phrase has been construed by Illinois courts.

However, the movants have suggested they will inquire about the content of applicant's programming. Thus, the programming of other tax exempt television ministries is constitutionally relevant to applicant's claim with regard to religious use. This is particularly true if the Department and intervenors go trolling through applicant's programming selecting what they believe to be religious and what they believe to be secular.

Movants make a curious argument in suggesting that until there is a court decision holding that Tri-State Christian or some other religious television ministry is tax exempt as a religious use, applicant is foreclosed from establishing a record as to administrative inconsistency in its treatment of religious organizations' claim to tax exemption. Such an argument turns the First Amendment's religious neutrality requirements on its head.

The Department argues it should not be bound to carte blanche grant 3 ABN's application without subjecting it to its burden of proof simply because Tri-State Christian was granted a property tax exemption. But 3 ABN does not make this assertion. It does claim it has a right to introduce testimony and other evidence relevant to the administration of the tax exemption statute and how religious use has been determined. Such evidence is proper when the Department claims to be administering the tax

exemption statute in a neutral manner.

The Department and intervenors argue that applicant's motion for the subpoena and the proposed testimony amounts to an evidentiary supplemental disclosure. But since at least May 30, 2002, movants have known from the applicant's list of proposed witnesses the subject matter of the testimony a current officer of Tri-State Christian was expected to testify about.

As indicated, the prospective list of witnesses did "identify" the proposed witnesses. On or about May 30, 2002, applicant in its List of Prospective Witnesses at numbered paragraphs 16 and 17 stated as witnesses:

16. The individual who has the authority to identify the records of the Department of Revenue concerning the tax exempt status of other similar organizations, including WTCT-TV (Tri-State Christian Television) located in Marion, Illinois, and Channel 38 located in Chicago, Illinois.

Subject matter of testimony: This witness may be asked to testify concerning the tax exempt documents and other matters related to the tax exempt status of other similar organizations.

Also, in paragraph 18 of the List of Prospective Witnesses, 3 ABN listed as a potential witness:

18. Shane Chaney or another current officer of Tri-State Christian TV, P.O. Box 1010, Marion, IL 62959.

Subject matter of testimony: This witness may be questioned about the programming and other activities of Tri-State Christian TV, whether its real property is tax exempt, documents and testimony provided before the Illinois Department of Revenue concerning its activities and the basis for its request for tax exemption and any determination as to its tax exempt status.

Applicant listed as a prospective witness Shane Chaney or another current officer of Tri-State Christian TV. It is difficult to see how it makes any difference which officer

from that organization would be called to testify since neither the Department nor intervenors sought to take the deposition of Chaney. Nowhere do either the state or the intervenors demonstrate how they have been prejudiced by either the selection of Garth Coonce or the filing of the motion for the issuance of a subpoena. Supreme Court Rule 213 only requires the party to "identify" the prospective witness. This was done. How exactly, one may ask are either of the parties "ambushed" by the subpoena -- making the claim that the use of one of the "current officers of Tri-State Christian was "trial by ambush" is difficult to understand particularly when they do not provide one glimpse of how it is prejudicial. If the claim is that the motion for subpoena revealed that applicant may go beyond the scope of the "subject matter of testimony as set forth in applicant's list of proposed witnesses," the proper procedure would be to object at the hearing to the question propounded to the witness rather than prevent the witness from being subpoenaed. This would provide the appropriate protection from any claimed "ambush." Nowhere do the movants explain why they would have deposed Mr. Coonce when they made not effort whatsoever to depose Shane Chaney.

II. MOVANTS' MOTION IN LIMINE MUST BE DENIED.

Movants have filed a far-reaching Motion in Limine. That motion seeks to prevent applicant from presenting and preserving state and federal constitutional challenges to the Department's taxation of applicant's property even though any subsequent review is on the record made before this administrative agency. The motion goes way beyond any legitimate purpose of such a motion. As defined in *Black's Law Dictionary* (abridged, Fifth Ed.), a "motion in limine" is:

A written motion which is usually made before or after the beginning of

a jury trial for a protective order against prejudicial questions and statements. Purpose of such motion is to avoid injection into trial matters which are irrelevant, inadmissible and prejudicial and granting of motion is not a ruling on evidence and, where properly drawn, granting of motion cannot be error.

In *Department of Public Works and Bldgs v. Rohrig*, 45 Ill. App. 3d 189, 3 Ill. Dec. 893, 359 N.E. 2d 752, 759 (1977), the court stated that in ruling on a motion in limine there were two logical steps the court should take. The first is deciding whether "the rules of evidence require exclusions of the subject matter of the motion." Second, "in exercising its discretion, the circuit court should balance the prejudice that might be avoided against the complication or inconvenience that might be caused by granting the motion."

In *Reidelberger v. Highland Body Shop, Inc.*, 83 Ill. 2d 545, 48 Ill. Dec. 237, 416 N.E. 2d 268, 271 (1981), the court warned that "[t]he ability to restrict interrogation makes the *in limine* order a powerful weapon. This power, however, also makes it a potentially dangerous one. Before granting a motion *in limine*, courts must be certain that such action will not unduly restrict the opposing party's presentation of its case." See also *Rush v. Mamdy*, 253 Ill. App. 3d 352, 94 Ill. Dec. 477, 627 N.E. 2d 1119, 1127 (1994), and *Congregation of the Passion v. Toudre Ross*, 224 Ill. App. 3d 559, 166 Ill. Dec. 642, 586 N.E. 2d 600, 613 (1991).

The Department argues that "[f]or all we know, Tri-State obtained its tax exemption without objection from any intervening taxing bodies." But the fact is that the Department has already or could quickly obtain the answer to this question from its own files. But regardless, that should not prevent applicant from presenting evidence at the hearing on this point. Likewise, the Department can present evidence it believes to

discount applicant's theory.

The Department argues that for all we know there may be evidence of other factors the Department used in making its determination. "For example, we do not know what investigation the Department on its own." But the Department either now knows or could easily find out from its own files the answer to this question. This also should not prevent applicant from presenting evidence at the hearing as to that point. Applicant has requested a subpoena of the person in the Department who has control over the information to testify on this point at the hearing.

The Department and intervenors are wrong in contending that the Applicant is attempting to divert this tribunal's inquiry from the relevant issues in this case. But, from the very beginning, applicant has stated that neutrality and equal protection claims were part of its claim to tax exempt entitlement.

The Joint Motion in *Limine* seeks not only a prior ruling on *evidence* before it is proffered but also seeks to foreclose applicant from even making its constitutional argument including legal arguments that "the State of Illinois via the Department has violated any rights of the applicant under the equal protection clause" (Joint Motion at ¶ 2), or "the applicant is being denied any rights under the First Amendment." *Id.* at ¶ 3. It also seeks, in advance of the trial, to prohibit applicant from making any "argument, inference or insinuation regarding the Intervenors' motives for challenging 3 ABN's tax exemption application." *Id.* at 3, ¶ 5.

Paragraph 6 as to exclusion of witnesses is also not the proper subject of a Motion in *Limine*.

Movants cannot be surprised as to the testimony of Ted Wilson or Denis Fortin.

In Applicant's List of Prospective Witnesses, applicant also listed as potential witnesses:

11. Ted Wilson, Vice President of the General Conference of Seventh-day Adventists, 12501 Old Columbia Pike, Silver Spring, MD 20904.

Subject matter of testimony: The role of applicant in the ministry of the Seventh-day Adventist Church. He also may testify as an opinion witness concerning whether all applicant's programming and other activities are religious in the context of the Seventh-day Adventist Church. He will testify that the programming and activities carry out the theology and teachings of the Seventh-day Adventist and are substantially similar to the General Conference of the Seventh-day Adventist Church's related mass communication activities. A copy of his curriculum vitae is attached.

12. Dr. J. H. Denis Fortin, Professor, Seventh-day Adventist Theological Seminary, Andrews University, Berrien Springs, MI 49103, (616) 471-3648.

Subject matter of testimony: He will testify about the doctrinal beliefs and teachings of the Seventh-day Adventist Church including the church's teachings as to health, family life, and stewardship. He may also testify as an opinion witness concerning the programming and other activities of applicant being religious in the context of Seventh-day Adventist theological teachings and religious activities. A copy of his curriculum vitae is attached.

In fact, on July 17, 2002, counsel for intervenors sent a Notice to Appear and Produce for the Purpose of Taking Depositions to Ted Wilson noticing his deposition for July 26, 2002, at 10:00 a.m., together with the following list of documents to be produced:

1. Curriculum Vitae
2. Any and all documents relied upon by the witness in development of his opinion that 3 Angels Broadcasting Network's property and other activities are religious in the context of the Seventh-day Adventist Church.
3. Any and all documents relied upon by the witness that the programming and activities of 3 Angels Broadcasting Network carry out the theology and teachings of the Seventh-day Adventist Church.

4. Any and all documents of the General Conference of Seventh-day Adventists Church regarding mass communication activities of the Seventh-day Adventist Church.

Thereafter, counsel for the intervenors and for the Department stipulated to the taking of the evidence deposition of Ted Wilson and use of videotape which deposition was taken following the discovery deposition of the witness. Up to this time, neither the Department nor intervenors raised any objection or moved to exclude the testimony of Ted Wilson even though the subject matter of his testimony was made known to them as early as May 30, 2002.

III. APPLICANT'S CONSTITUTIONAL CLAIMS MUST ALLOW APPLICANT TO OFFER EVIDENCE IN SUPPORT OF THOSE CLAIMS.

Applicant understands that the Department claims that the applicant was not entitled to property tax exemption because, they claim, that certain portions of the programming aired from the property in question was not religious: for example, programs on vegetarian cooking, healthful diets, smoking cessation, and Christian stewardship which were deemed secular.

The Department's and intervenors' Memorandum of Law and Brief (hereafter "Memo") argues that applicant may not introduce evidence from prior decisions of the Department in this proceeding to support its constitutional claim. Specifically, the Memo at unmarked page 8, states:

However, as discussed above, this evidence [as to Tri-State Christian TV] would do little to further any argument regarding neutrality. Without stating so, this neutrality argument is essentially an argument that to grant Tri-State's exemption without granting 3 ABN's exemption application would amount exhibiting [sic] a denominational preference for Tri-State. In essence, to differentiate Tri-State and 3 ABN *based on the content of their programming* is a violation of their rights. However, this argument misses the point. The only relevant inquiry is 3 ABN's use of

the property. If Tri-State were to present evidence, the only relevant evidence from Tri-State would be the use of the property. Unfortunately 3 ABN has not disclosed any information indicating that it intends to offer evidence regarding Tri-State's use of the property.

This argument is defective for at least four reasons;

1. Applicant in its List of Prospective Witnesses stated that the subject matter of the testimony would include Tri-State Christian's "programming and other activities" as well as "documents and testimony provided before the Illinois Department of Revenue concerning its activities [presumably on the subject of tax exempt property re use] and the basis for its request for tax exemption and any determination as to its tax exempt status. Therefore it is not correct that 3 ABN will not seek to elicit testimony as to the use of the property as disclosed to the Department. In fact, as part of the Applicant's Motion for Issuance of a Subpoena Duces Tecum attached as "Exhibit 4" was a brief 4 line affidavit of the use of the property in response to the Department's May 22, 1997, request for "additional information to determine eligibility attached as "Exhibit 3." The disclosed use was:

This property is used as corporate offices and day to day operations of Tri-State Christian TV, Inc. It will handle all corporate personnel and the operations of all stations in the Tri-State Network.

Applicant will certainly attempt to flesh out further its use.

2. Applicant does not claim that to grant Tri-State's tax exemption application was *ipso facto* entitled applicant to a tax exemption. But applicant is entitled to present evidence with regard to the similarities (or dissimilarities) in the activities taking place on the respective properties.

3. The Department has so far been unwilling to stipulate that the content of

3 ABN's programming and the content of the CD's, videos, and books, which are sold and distributed, is not an issue bearing on the use of the property.

4. The fact that an exemption has been given to another taxpayer is immaterial has been repudiated by the United States Supreme Court in *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221 (1987).

In *Arkansas Writers'* appellant was the publisher of the *Arkansas Times*, a general interest monthly magazine. Following an audit in 1980, the Arkansas Commissioner of Revenue assessed a tax on sales of the *Arkansas Times*. The magazine sought a refund of the sales tax which it had paid asserting "that subjecting *Arkansas Times* to the sales tax, while sales of newspapers and other magazines were exempt, violated the First and Fourteenth Amendments." *Id.* at 225.

Arkansas Writers' exhausted its available administrative remedies and filed a complaint in the State Chancery Court asking for a review of the Commissioner's decision denying the exemption and refund. *Id.* That court held for *Arkansas Writers'* on non-constitutional grounds, but the Arkansas Supreme Court reversed the decision of the Chancery Court and ultimately "rejected appellant's claim of discriminatory treatment, reasoning that exemptions granted to other publications need not be considered because:

[I]t would avail [appellant] nothing if it wins its argument. . . . It is immaterial that an exemption in favor of some other taxpayer may be invalid, as discriminating. If so, it is the exemption that would fall, not the tax against the [*Arkansas*] Times."

Id. at 226.

The case was appealed to the United States Supreme Court which held that the

Arkansas Project had standing and the sales scheme violated First Amendment freedom of press guarantees by taxing general interest magazines but exempting newspapers and religious, professional, trade, and sports journals. The Supreme Court noted that "[w]hile we indicated in *Minneapolis Star* that a genuinely nondiscriminatory tax on the receipts of newspaper would be constitutionally permissible . . . the Arkansas tax cannot be characterized as nondiscriminating, because it is not evenly applied to all magazines." *Id.* at 229.

The Court referred to the case as one of "selective taxation" and stated that "the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Id.* at 229. Quoting *Regan v. Times, Inc.*, 468 U.S. 641, 648-49 (1984), the Court stated:

"Regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment.

Id. at 230. The Court concluded that the exemption was both over-inclusive and under-inclusive. *Id.* at 232. The Court further held "that the State's selective application of its sales tax to magazines is unconstitutional and therefore invalid." *Id.* at 233.

The dissent recognized that in both *Arkansas Project* and *Minneapolis Star & Tribune Co. v. Minnesota Comm'rs of Revenue*, 460 U.S. 575 (1983), the Supreme Court required strict scrutiny as to First Amendment discrimination claims and "that for First Amendment purposes denial of exemptions from taxation is equivalent to regulation." *Id.* at 236 (Scalia, J., dissenting). Thus, denial of exemption to applicant here is the equivalent of the state regulating applicant's religious speech.

The right of the press under the First Amendment to be free from discriminatory

treatment by the state has a corollary for religious organizations under that same section of the Bill of Rights. See *Widmar v. Vincent*, 454 U.S. 263, 270 (1981); *Larson v. Valente*, 456 U.S. 228, 245 (1982). But the movants, by their motion, claim their right to prevent applicant from establishing a record as to such discriminatory conduct. Applicant believes that the evidence will show that Tri-State Christian's programming is for constitutional considerations identical to that of the applicant.

On unnumbered page 8 of the movants' Joint Response to Appellant's Motion in Limine, they stated that "[g]iven the dual requirements of ownership and use of the statutory exemption for property tax, however, this tribunal must allow submission of evidence of subject matter and content to determine whether the primary use of the property is religious."

But they attempt to prevent applicant from showing that another Christian television network with similar programming has been granted tax exemption by the Department. What makes this particularly outrageous, and no doubt why movants want to exclude this evidence, is because, applicant believes, testimony will show that no similar inquiry was made of Tri-State Christian in determining whether it was entitled to tax exemption. Such a position flies in the face of the Supreme Court's holding in *Arkansas Writers* and the principles set forth in *Larson v. Valente*.

Applicant claims that both Article 1, section 3, of the Illinois Constitution and the First Amendment to the United States Constitution require the state to observe strict neutrality among and between religious organizations in granting tax exemptions. Applicant seeks to demonstrate that its programming is substantially similar to that of Tri-State Christian which was granted tax exemption without any inquiry into its

programming and claiming denial of an exemption to applicant based upon the content of its programming would violate constitutionally required religious neutrality. It would deny applicant the same rights and privileges granted to other activities of the same character.

In its letters to the Director of the Illinois Department of Revenue requesting a formal hearing as to both the 2000 and 2001 claim for tax exemption, applicant claimed that "[t]he decision of the Illinois Department of Revenue is contrary to the Religion Clauses of the First Amendment to the United States Constitution in that other similar organizations, including television ministries almost identical to 3 ABN's Christian ministry, receive tax exemption in Illinois."

The letter to the Director thereupon argued:

Thus, denial of tax exemption to the Three Angels Broadcasting Network would violate the neutrality requirements of the Religion Clauses of the First Amendment contrary to the teachings of the Supreme Court in *Walz v. Tax Comm'n of New York City*, 397 U.S. 664, 696 (1970), wherein the Court stated that neutrality in the application of the Establishment Clause "requires an equal protection mode of analysis." Also, in *Church of Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520, 534 (1993), citing *Gillette v. United States*, 401 U.S. 437, 452 (1971), the Court stated that "the Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination. The Clause 'forbids subtle departures from neutrality.'" Three Angels Broadcasting Network will submit evidence of the unequal application of the religious and charitable use exemptions within the State of Illinois.

The Department and intervenors now, for the first time at the eleventh hour, seek an order to not only exclude evidence of unequal application of the religious and charitable use exemptions, but also any argument as to the law concerning the constitutionality of such a violation of the Religion Clauses of the First Amendment.

The Department and intervenors cannot claim that they were led to believe that

this constitutional position of applicant had been abandoned. In fact, applicant served on the Department a Request for Production of documents requesting tax exemption documents as to the WTCT-TV, which documents were produced by the Department's counsel.

The Department and intervenors profess they are perplexed by 3 ABN's Motion for Subpoena and its prior Motion in Limine because they claim that such a challenge is inappropriate in this forum.. They contend that in making its constitutional argument applicant is challenging the Illinois Property Tax Code provision granting property tax exemptions to religious organizations. In response, the record is made in these administrative proceedings which is vital for any constitutional challenge and second applicant at no time has challenged the constitutionality of the statute in these proceedings. It does claim that the neutrality mandate within the Religion Clauses of the First Amendment and state and federal equal protection requirements require the Department of Revenue to administer the statute in a constitutionally permissible manner. Applicant also contends that in interpreting the tax exemption statute it should, if possible, be interpreted in a manner so as to not offend either state or federal constitutional proscriptions and prescriptions.

Because applicant does not challenge the constitutionality the tax exemption statute there is no basis for the movants to complain that applicant has not complied with the notice requirements of Supreme Court Rule 19. Applicant does show, however, that it did raise the First Amendment claim both in its request for a formal hearing claiming that denial of tax exemption status for the years 2000 and 2001 would violate the neutrality requirements of the Religion Clauses of the First Amendment to the United

States Constitution as well as Art. 1, sec. 3, of the Illinois Constitution of 1970 and 775 ILCS 35/15. But since appellant, at least in these proceedings, does not look to invalidate 35 ILCS 200/15-40 on constitutional grounds, Rule 19 is not applicable.

It is difficult to follow the Department's and intervenors' argument as to equal protection and Religion Clause mandated religious neutrality by the state. It appears they make two basic arguments:

1. Because this court has denied applicant's Motion in Limine to exclude certain evidence of movants, the Department and intervenors are *ipso facto* entitled to an order excluding certain testimony that may go to applicant's equal protection and religious neutrality concerns. But a denial of the motion in limine is not dispositive of substantive issues.

2. The Department of Revenue may ignore the neutrality requirements of the Religion Clauses of the First Amendment and the United States Constitution's requirement of non-discrimination in its administration of the tax exemption provision of state law.

The Department and intervenors try to escape from the proscriptions and prescriptions of state and federal constitutional requirements by claiming that *TTX Co. v. Douglas L. Whitley*, 295 Ill. App. 3d 498, 557 (1998), insulates the Department from those constitutional guarantees concluding that the court held that evidence from prior decisions of the agency are not factually relevant. But the court did not so hold. The *TTX* court stated:

In the present case, the information requested in the discovery order is irrelevant to the issue presented. *TTX* alleged in its complaint that it properly applied the single fact of transportation formula, instead

of the three-factor formula, when calculating its state income taxes. The issue before the circuit court was whether TTX qualified as a transportation company under section 304(d). Whether other companies unrelated to TTX *calculated their income tax* as transportation companies, and whether they were audited for doing so, is irrelevant to the issue of whether TTX should be designated a transportation company for income tax purposes.

Id. at 797 (emphasis supplied).

The reason the court found the discovery request irrelevant was as stated by the court:

As the circuit court specifically noted, however, TTX did not allege disparate treatment or violation of its due process or equal protection rights.

Id.

But even if the Illinois Appeals Court said what movants claim the court said that such a holding would be contrary to the decisions of the United States Supreme Court.

Movants apparently contend that the Religion Clauses of the First Amendment do not require strict neutrality by the state in providing benefits or in administering its regulations as between religious organizations. Why requiring the Department to apply the tax exemption statute in a religious neutral manner "turns neutrality principles on its [sic] head" is baffling. Applicant does not claim the statute itself is not religiously neutral. But applicant contends it must be interpreted and applied by the Department in a religiously neutral way.

It is surprising that legal counsel representing governmental agencies -- the Department and school district -- would make the argument that "there is little indication that the courts have meant to declare that governmental neutrality means equal treatment." Mem. at 9. It is also disturbing to learn that counsel for the Department

would subscribe to the notion that "[g]enerally, the courts have usually discussed neutrality as the government's behavior *vis a vis* religion rather than government treatment of one religious entity *vis a vis* another." Such assertions raise critical questions as to the Department's understanding of its constitutional responsibilities which go to the very core of Religion Clauses concerns.

As the Court explained in *Larson v. Valente*, 456 U.S. at 244, "[t]he clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." The *Larson* Court also spoke to Free Exercise Clause concerns stating:

This constitutional prohibition of denominational preferences is inextricably connected with the continuing vitality of the Free Exercise Clause. Madison once noted "Security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests and in the other in the multiplicity of sects." Madison's vision -- freedom of all religions being guaranteed by free competition between religions -- naturally assumed that every denomination would be equally at liberty to exercise and propagate its beliefs. But such equality would be impossible in an atmosphere of official denominational preference.

Id. at 245.

As Justice O'Connor stated in *Kiryas Joel*, 512 U.S. 687, 715, "[t]his emphasis on equal treatment is . . . an eminently sound approach." She quite correctly observed:

In my view, the Religion Clauses -- the Free Exercise Clause, the Establishment Clause, the Religions Test Clause, Art. VI, cl. 3, and the Equal Protection Clause as applied to religion -- all speak with one voice on this point: Absent the most unusual circumstances, one's religion ought not affect one's legal rights or duties or benefits.

It is important to note that at the heart of the problem in *Kiryas Joel* was concern that as to the "exercise of governmental authority in a religiously neutral way," *Kiryas Joel*, 512 U.S. at 703. *Kiryas Joel* state that "the principle is well grounded in our case

law, as we have frequently relied on the availability of any benefit provided religious groups or individuals in turning aside Establishment Clause challenges.

Movants' attempt to use the *Texas Monthly* case to defend their non-neutrality position is indeed vexing. It is true that the Supreme Court held that the Texas statute exempting religious literature from sales tax was found to be unconstitutional precisely because it was not religiously neutral. The Supreme Court stated that "[s]ince *Everson v. Board of Educ.*, 330 U.S. 1 (1947), this Court has adhered to the principle, clearly manifested in the history and logic of the Establishment Clause, that no State can 'pass laws which aid one religion' or that 'prefer one religion over another.' *Id.* at 15." *Larson v. Valente*, 456 U.S. 228, 246 (1982).

Since applicant does not challenge the constitutionality of the tax exemption statute, movants' argument as to the use of the "rational relationship" standard to challenge a statute or regulation on equal protection grounds is irrelevant. But movants are even wrong about the scope of the "rational relationship" standard when fundamental rights, such as rights guaranteed by the First Amendment.

As Justice O'Connor stated in *Board of Educ. of Kiryas Joel v. Grumet*, 512 U.S. 687, 714-15 (1994):

We have time and time again held that the government generally may not treat people differently based upon the God or gods they worship, or do not worship. "The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). "Just as we subject to most exacting scrutiny laws that make classification based on race . . . so too we strictly scrutinize governmental classifications based on religion." *Employment Div., Dep't of Human Resources v. Smith*, 494 U.S. 872, 886 n.3 (1990). "[T]he Establishment Clause prohibits government from

abandoning secular purposes . . . to favor adherents of any sect or religious organization." *Gillette v. United States*, 401 U.S. 437, 450 (1991).

The *Larson* Court, 456 U.S. at 228, "concluded that the *Lemon* test is intended 'to apply to laws affording a uniform benefit to *all* religions' [citation omitted], but that when a law expresses 'a denominational preference, our precedents demand that we treat the law as suspect and that we apply strict scrutiny in adjudging its constitutionality.'" *Grumet v. Board of Educ. of the Kiryas Joel Village School Dist.*, 601 N.Y.S. 2d 61, 71 (Ct. App. 1993).

In commenting upon *Larson*, constitutional scholar Jess H. Choper observed that "the Court admitted in *Larson* that its modern three prong Establishment Clause test was not really fashioned for the problem of discrimination or preference among religions." Choper, *The Free Exercise Clause: A Structured Overview and an Appraisal of Recent Developments*, 27 Wm. & Mary L. Rev. 943, 958 (Special Issue, 1987).

Professor Choper agreed that "[t]he Court [in *Larson*] actually held that discrimination among religions must survive strict scrutiny. . . . Strict scrutiny, however also requires the state have no narrower means available, and the Court felt that the . . . [legislation] was neither necessary nor 'closely fitted' to achieving the state goal. Therefore, the Court held the law invalid." *Id.* at 958, 959.

In *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540 (1993), the Court rejected the facial neutrality argument citing *Gillette v. United States*, 401 U.S. 437 (1971), the Court stated that "[f]acial neutrality is not determinative. The Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination. The Clause 'forbids subtle departures from neutrality.'" The Court,

quoting *Walz v. Tax Comm'n of New York City*, 397 U.S. 664 (1970) (Harlan, J., concurring), stated:

Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirements of facial neutrality. . . . "The Court must survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders."

Id.

In *Corporation of Presiding Bishop v. Amos*, 483 U.S. 327, 339 (1987), the Court flatly stated "*Larson* indicates that laws discriminating *among* religions are subject to strict scrutiny." And the strict scrutiny standard is not just reserved for facial constitutional challenges to statutes. In *Sherbert v. Verner*, 374 U.S. 398 (1963), the Court stated that "Government may neither compel affirmation of a repugnant belief, nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities; nor employ the taxing power to inhibit the dissemination of particular religious views. *Id.* at 402 The Court held that the free exercise mandate was applicable to judicial interpretation of a state law stating:

Nor may the South Carolina court's construction of the statute on the ground that unemployment compensation benefits are not appellant's right but merely a privilege. It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing conditions upon a benefit or privilege. . . .

Id. at 405.

And in language directly refuting movants' "rational relationship" argument, the

Sherbert Court stated:

It is basic that no showing merely of a rational relationship would suffice. In this highly sensitive constitutional area, "[o]nly the gravest abuses, endangering paramount interests give occasion for permissible limitation."

The fact that applicant is a religious organization with declared religious purposes itself places applicant within the protections of the Religion Clauses of the First Amendment, and movants' argument about applicant not being a "suspect class" is far off the mark. Applicant cannot believe that movants would suggest that religious entities do not have standing to litigate claims involving state discrimination between religious entities. Applicant contends a denial of tax exemption to it would result in such unconstitutional treatment.

Movants claim that religious entities may not claim that they have been denied fundamental rights. The Supreme court would surely be surprised to learn that the Mormon Church did not have a fundamental right at stake in *Corporation of Presiding Bishop v. Amos*, 483 U.S. 327 (1987). And it was an Illinois religious entity in *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), which claimed a violation of a fundamental right under the Religion Clauses of the First Amendment. That case involved the church's resistance to a governmental agency's inquiry into its activities. The Court expressed constitutional concern with "the very process of inquiry leading to findings and conclusions." *Id.* at 503. It was this case that caused the Court to declare that the Court should attempt to construe an act in a manner that does not require the Court "to resolve difficult and sensitive questions arising out of the guarantees of the First Amendment Religion Clauses." *Id.* at 307.

Apparently it is movants' claim that it does not matter if an administrative agency administering a statute does so with an unsteady hand and in a discriminatory manner if the law is facially religiously neutral. They summon to their defense in support of this view of the law *Employment Div., Dep't of Human Resources v. Smith*, 494 U.S. 872

(1990), and *Church of the Lukumi Babalu Aye, Inc. v. Hialeah* -- two cases applicant has cited in support of its position. The movants state that under *Smith*, a law that is neutral and of general applicability need not be justified by a compelling governmental interest.

Even if movants' reference to *Smith* were relevant, the Illinois legislature has, for Illinois, nullified *Smith* as to actions committed in Illinois by the state, its agencies, and local governments in 775 ILS 35/15. That law established a strict scrutiny test. But, again, applicant does not here attempt to nullify the statute; it only asks for its constitutional administration.

The *Smith* decision in no way supports movants' arguments for several reasons, not the least of which is that *Smith* does not apply to hybrid claims where a free exercise claim is made "in conjunction with other constitutional protections, such as freedom of speech and of the press." *Id.* at 881. The *Smith* majority cited in support of the hybrid exception *Cantwell v. Connecticut*, 310 U.S. 296, 304-07 (1940), which the Court summarized as a case "invalidating a licensing system for religious and charitable solicitation under which the administrator had discretion to deny a license to any cause deemed non-religious. It also cited *Murdock v. Pennsylvania*, 319 U.S. 105 (1943), which the Court summarized as a case "invalidating a flat tax on solicitation as applied to the dissemination of religious ideas." *Id.*

But even more relevant, *Smith* is not applicable to administrative proceedings where the state has established a system, such as here, of individual exemptions. *Smith*, 494 U.S. at 884.

What applicant suggests is that the law must be administered in a religiously neutral manner and not in a manner that results in discrimination in the granting or denial

of exemptions among religious organizations that use their property in the same way.

Contrary to movants' contention, the administration of the tax exemption statute for religious organizations must be in keeping with state and federal constitutional constraints. And applicant should not be foreclosed or restricted from presenting evidence necessary to support its constitutional argument. In fact, the Supreme Court has said why it is absolutely necessary to permit applicant to present testimony as to Tri-State Christian and other religious television and broadcasting facilities that have been granted tax exempt status by the Department. In *Hernandez v. CIR*, 490 U.s. at 702, the Court, discussing appellant's contention of discriminatory treatment by the IRS, stated:

The development of the present litigation, however, makes it impossible for us to resolve petitioners' claim that they have received unjustifiably harsh treatment compared to adherents of other religions. . . .

Perhaps because the theory of administrative inconsistency emerged only on appeal petitioners did not endeavor from trial to adduce from IRS or other sources, any specific evidence about other religious faiths' transactions. . . . In the absence of such facts, we simply have no way (other than the wholly illegitimate one of relying on our personal experiences and observations) to apprise accurately whether the IRS' revenue rulings have correctly applied a *quid pro quo* analysis with respect to any or all of the religious practices in question.

Applicant must not be prevented from establishing a record which the Supreme Court has indicated is needed in a claim of administrative inconsistency -- here state religious non-neutrality.

CONCLUSION

For the reasons set forth above as to both the movants' motion to quash and in limine, both motions must be denied.

Respectfully submitted,

Dated: September 16, 2002

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Applicant's Memorandum of Law and Brief in Opposition to Department's and Intervenors' Joint Motion in Limine and Motion to Quash was served this date by facsimile upon:

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Dated: September 16, 2002

Lee Boothby
LEE BOOTHBY

ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

THREE ANGELS BROADCASTING
NETWORK, INC.,

Applicant

and

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,

Respondent

and

THOMPSONVILLE COMMUNITY
HIGH SCHOOL DISTRICT
NO. 112, and
THOMPSONVILLE SCHOOL
DISTRICT NO. 62,

Intervenors

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

SEP 20 2002

Docket No.: 01-28-1

Case No.: 01-PT-0027

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

**APPLICANT THREE ANGELS BROADCASTING NETWORK, INC.
TRIAL BRIEF**

Background

In this action, Three Angels Broadcast Network, Inc., seeks exemption for those properties and facilities directly connected with the work of its religious broadcast ministries—its main studio, programming, recording, broadcast, headquarter administrative facilities, and the land on which these buildings are sited—for the years 2000 and 2001. The evidence at trial will show that Three Angels runs a not-for-profit religious media ministry that engages in exclusively religious purposes and that furthers the message and mission of the Seventh-day Adventist church. Led by lay ministers Danny and Linda Shelton, president and vice-president

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respectively, Three Angels seeks to live up to its Biblical namesakes, the three angels of Revelation 14:6-12, by sending the "everlasting gospel" to "every nation, tribe, tongue and people." Three Angels spreads this message through preaching, Biblical teaching, and gospel music and singing that it airs on various satellite, broadcast and cable television stations, as well as satellite radio stations, throughout North America and the world. Danny and Linda, along with a filming and support crew, travel between forty and fifty weekends a year to hold Three Angels' praise, prayer and preaching rallies at churches throughout America and overseas.

Three Angels has a formal agreement with the Seventh-day Adventist church to cooperate with it in furthering its ministry and missionary work. Three Angels works closely with the various ministries of the Seventh-day Adventist church to air programming created by these ministries, and to support and promote missionary projects run by these organizations. Three Angels itself has a number of overseas gospel workers that it directly supports in missionary media work. Further, Three Angels keeps a staff of four pastors at its headquarters to pray and counsel with viewers who call in on the ministry's prayer hotline.

Along with its broadcasts, Three Angels also distributes its message via video and audio tapes, CDs, books and other types of literature. At times these items are given away, at other times a nominal fee is charged to cover the costs of making, promoting, and distributing the items. Three Angels provides satellite receivers at or near its own cost to potential viewers who may not live within a Three Angels broadcast or cable viewing area. These receivers receive only Three Angels' television or radio broadcasts, or similar types of religious and Christian, family oriented, programming. Revenue attributed to sales of books, tapes, videos, CDs or satellite dishes is unlikely, in any given year, to exceed the expenses associated with purchasing, promoting and distributing those items.

The evidence will show, whether a small net revenue or loss is achieved, even the gross amount of revenue associate with these sales is only a few percent of Three Angels total revenue. The vast amount of Three Angels revenue, nearly 95%, comes directly from charitable donations made by its viewers and listeners. The net revenue from sales, if any in a given year, would be some fraction of one percent of overall revenue. In sum, Three Angels is primarily, indeed, overwhelmingly supported by and operated with funds given through charitable donations.

The ministry of Three Angels is overseen by a board of directors made up of members, leaders, and elders of the Seventh-day Adventist church. The board includes current and retired Seventh-day Adventist pastors, including the president of the Illinois conference of Seventh-day Adventists. The Board meets regularly several times a year to oversee and guide the work of Three Angels and to approve its financial arrangements and expenditures. Three Angels' Articles of Incorporation set out the religious objectives and purposes of the ministry, and require that upon dissolution, the assets of the organization must go to a similar not-for-profit organization. The highest salaries received by any worker at Three Angels is about \$50,000, which is the approximate salary of both the president and vice-president. No monies or net revenue from Three Angels go for inurement or benefit of any private person or persons. Rather, all net revenues, if any in a given year, are put back into the religious programming and ministries carried out by Three Angels.

All factors considered, Three Angels is the archetypal religious media ministry run exclusively for religious and charitable purposes. This court should find that it qualifies for Illinois property tax exemption.

I. The property used by Three Angels Broadcasting to carry out and support its religious broadcasting ministry is used for an exclusively religious purpose and is thus exempt from property taxes under 35 ILCS 200/15-40 and 35 ILCS 200/15-65.

In this case, Three Angels seeks no more than is provided for it by the Illinois Constitution and state statutes—a tax exemption for its religious media ministry's lands and buildings. The Illinois Constitution provides that the state assembly may exempt from taxation "property used exclusively for . . . school, religious, cemetery and charitable purposes." Ill. Const. Sec. 6, art. IX. Pursuant to this provision, the Illinois assembly has passed two statutory sections that extend tax exempt status to property used for religious purposes. The first section exempts "property used exclusively for: (1) religious purposes." 35 ILCS 200/15-40 (2001). The second section exempts "all property . . . exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to a profit" which is owned by "institutions of public charity." 35 ILCS 200/15-65 (2001).

In applying these two clauses to religious organizations, Illinois courts have said that the statutory sections "are so closely associated that we will discuss them together."¹ The analysis below will likewise draw on both sections in demonstrating that Three Angels is a not-for-profit, religious and charitable organization that uses the subject properties exclusively for religious purposes.

A. Under Illinois law, a religious purpose extends beyond traditional worship or prayer services, and includes a wide variety of activities that involve transmission of religious teachings and ideas through various media, such as those used by Three Angels.

Three Angels' purposes and activities as a communicator of religious instruction through print, audio, video and broadcast media are the type of activities as those found religious by Illinois courts. An early case, *Deutsche Evangelisch*, referred to "religious purpose" of property

as consisting of "public worship, Sunday schools and religious instruction."² Three Angels activities even fits this somewhat narrow definition of religious purpose, as Three Angel's primary purpose is "religious instruction" through the broadcast of religious programming.

But later cases have clarified that "religious purposes" are broader than those specifically identified in *Deutsche Evangelisch*. The Illinois Supreme Court noted that the definition given in that case as "not stated as inclusive of everything that might in the future be regarded as a use for religious purposes but as *illustrative of the nature of such use*."³ Later, the court noted that "no decision of this court attempting to lay down an all inclusive definition or specification of what constitutes a religious purpose" had been called to its attention, even though it clearly had reviewed the *Deutsche Evangelisch* decision.⁴

Thus, the courts of Illinois have construed religious use of property as being considerably broader than "religious worship" services or Sunday school classes. Groups or properties found to qualify for a property exemption include: supporters of Sunday schools who published and distributed Sunday school supplies, quarterlies and lesson helps, as well as religious and moral books;⁵ Inter-Varsity Christian Fellowship, a group that helped organize Christian student groups at secular colleges and universities, and which published and sold religious literature;⁶ the Evangelical Teacher Training Association, an organization formed by various Christian schools to produce print, audio, visual and other materials to train Christian educators;⁷ A 1.6 acre portion of a tax-exempt religious park, upon which stood a residence for the park care-taker and

¹ *The Congregational Sunday School and Publishing Society v. Board of Review*, 290 Ill. 108, 112, 125 N.E. 7, 9 (1919); See *Inter-Varsity Christian Fellowship of the United States of America v. Hoffman*, 62 Ill. App. 3d 798, 799, 379 N.E.2d 813, 814 (Ill. App. 2d 1978).

² *The People v. Deutsche Evangelisch Luterische Jehovah*, 249 Ill. 132, 136-37, 94 N.E. 162, 164 (1911).

³ *Carson v. Muldoon*, 306 Ill. 234, 238, 137 N.E. 863, 864 (1922) (emphasis added).

⁴ *Scripture Press Foundation v. Annunzio*, 414 Ill. 339, 350-352, 111 N.E.2d 519, 525 (1953).

⁵ *The Congregational Sunday School and Publishing Society v. Board of Review*, 290 Ill. 108, 125 N.E. 7 (1919).

⁶ *Inter-Varsity Christian Fellowship v. Hoffman*, 62 Ill. App. 3d 798, 379 N.E.2d 813 (Ill. App. 2d. 1978).

⁷ *Evangelical Teacher Training Ass'n v. Novak*, 118 Ill. App. 3d 21, 454 N.E.2d 836 (Ill. App. 2d. 1983).

his wife, horses grazed, and upon which religious services were conducted;⁸ a parcel of property owned by a church and leased for \$1 a year to an organization that ran a thrift store that sold items to the needy at a reduced rate and donated the proceeds to charity.⁹

Many of the above uses involve the spread of religious messages through the dissemination and sale, even at a profit, of various media. While the media discussed in these cases is typically print, at least one case, *Evangelical Teacher*, deals with various types of audio and visual media.¹⁰ One would think that the State should look at the content of the media, rather than the form of the media, to determine whether it qualifies as religious. It would seem purely arbitrary to determine that a sermon sold in a book was religious, but the same sermon broadcast and received for free over the airwaves was not.

Indeed, the Illinois Department of Revenue itself appears to recognize that airwaves should be treated similarly as print materials, as evidence will be proffered at trial to show that the Department itself presently treats at least one television ministry as tax exempt. At least two other state courts with statutory property tax-exemption schemes similar to Illinois have found that television ministries qualify as religious or church uses, and ruled that properties associated with the furtherance and support of such ministries are exempt from tax.¹¹

In any event, Illinois courts recognize that they "must accept the entity's characterization of its activities and beliefs as religious as long as the characterization is in good faith."¹² One

⁸ *Ill. Confer. of the United Church of Christ v. Ill. Dept. of Rev.*, 165 Ill. App. 3d 200, 518 N.E.2d 755 (Ill. App. 3d 1988).

⁹ *First Presbyterian Church of Dixon v. Zehnder*, 306 Ill. App. 3d 1114, 715 N.E.2d 1209 (Ill. App. 2d 1999).

¹⁰ *Evangelical Teacher*, 118 Ill. App. 3d at 23, 454 N.E. at 837 (sale items included cassette tapes and overhead projector masters).

¹¹ *Minnesota Christian Broadcasters vs. County of Crow Wing*, 1987 Minn. Tax LEXIS 91 (Minn. Tax Ct. 1987), attached hereto; *Highland Church of Christ v. Powell*, 644 S.W.2d 177 (Texas Ct. App. 11d 1982).

¹² *Fairview Haven v. The Department of Revenue*, 153 Ill. App. 3d 763, 772, 506 N.E.2d 341, 348 (Ill. App. 4d 1987).

such court, quoting from the New York case of *Holy Spirit Association for the Unification of the World v. Tax Com.*,¹³ wrote that:

When, as here, particular purposes and activities of a religious organization are claimed to be other than religious, the civil authorities may engage in but two inquiries: does the religious organization assert that the challenged purposes and activities are religious, and is that assertion bona fide? Neither the courts nor administrative agencies . . . may go behind the declared content of religious beliefs any more than they may examine into their validity.¹⁴

As such, this court should accept at face value Three Angels claims that its programming and activities are religious, and that broadcasting this programming and distributing its materials furthers its religious objectives, unless the state can somehow prove that these claims are being made in bad faith.

B. Three Angel's subject property and facilities should be tax-exempt as they are used exclusively for religious purposes, none of the ministries revenues accrue to the benefit of private persons, it carries out and supports a wide range of missionary activity, and many of its broadcast services and religious materials are provided at or below cost.

Three Angels efforts to communicate the gospel through print, video, audio and broadcast is entirely consistent with the uses given exemptions discussed above. The remaining question is whether Three Angels itself operates as a not-for-profit organization and whether it uses the subject properties "exclusively" for the religious purposes described above. The caselaw makes clear that "exclusively used" means "the primary purpose for which the property is used, not to any secondary or incidental purpose."¹⁵ Thus, an entity whose activities are basically in furtherance of tax exempt purposes will not lose that status if there is some minor, incidental or

¹³ 435 N.E.2d 662, 663.

¹⁴ *Fairview Haven*, 153 Ill. App. 3d at 772, 506 N.E. 2d at 348.

¹⁵ *Methodist Old Peoples Home v. Kortzen*, 39 Ill. 2d 149, 158, 233 N.E.2d 537, 542 (1968); *See McKenzie v. Johnson*, 98 Ill. 2d 87, 98 (1983); *The People v. Muldoon*, 306 Ill. 234, 238, 137 N.E. 863, 864 (1922); *Evangelical Hospital Ass'n v. Novak*, 125 Ill. App. 439, 441, 465 N.E. 2d 986, 988 (Ill. App. 2d 1984).

secondary use of the property for non-exempt purposes.¹⁶ Further, space used for administrative, maintenance, or storage purposes, will be exempt if the storage and administration is integral and necessary to the exempt purposes.¹⁷ Indeed, "Illinois courts have held that property used as hospital administrative and support services, property used as a hospital employee parking lot, surrounding gang-infested property reclaimed by a hospital, and property used as a child-care center serving employees of a tax-charitable hospital all qualify for the property tax exemption."¹⁸

Under Illinois law, one determines if an entity has been exclusively "organized and operated for an exempt purpose" by examining its "charter and bylaws" and the "actual facts relating to its method of operation."¹⁹ In examining religious charities, courts have found a number of different factors to be relevant to the issue of exclusive operation for charitable purposes. In the *Inter-Varsity Christian Fellowship* case, the court noted five "specific and vital" factors relevant to Inter-Varsity's exempt status.²⁰ These included:

- 1) It was organized as a not-for-profit corporation with a charter dedicated exclusively to religious and charitable purposes;
- 2) None of the revenue of the organization inures to the benefit of any private person, and upon dissolution, any capital surplus, if any, must, by operation of the corporate charter, be distributed to another religious and charitable organization;

¹⁶ *Evangelical Hospitals Corp. v. The Dept. of Revenue*, 223 Ill. App. 3d 225, 231, 584 N.E. 2d 1004, 1008 (Ill. App. 2d 1991).

¹⁷ *Evangelical Hosp. Ass'n v. Novak*, 125 Ill. App. 3d 439, 465 N.E. 2d 986 (Ill. App. 2d 1984) (supportive administrative and storage space exempt).

¹⁸ *Mount Calvary Baptist Church v. Zehnder*, 302 Ill. App. 3d 661, 672, 706 N.E.2d 1008, 1016 (Ill. App. 1d 1998).

¹⁹ *Evangelical Teacher*, 118 Ill. App. at 25, 454 N.E. 2d at 838.

²⁰ Other cases purport to set down similar, often overlapping, but somewhat different, sets of criteria for determining a not-for-profit, charitable entity. See., *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149, 233 N.E. 2d 537 (1968); *Evangelical Hosp. Corp. v. Depart. of Revenue*, 223 Ill. App. 3d 225, 584 N.E.2d 1004 (Ill. App. 2d 1991). These cases, however, deal with non-religious charities, and set down some criteria that are not really appropriate for religious entities, e.g., organization "reduces the burdens of government," and "charity is dispensed to all who

- 3) It supported missionaries and served the needs of an evangelical movement;
- 4) It provided a substantial amount of materials free or below cost to groups which were targeted for its message.

The *Inter-Varsity* court also noted that the organization sold its publications at or below cost. While this factor may have aided in the court's analysis, the Illinois Supreme Court has explicitly rejected the notion that possessing a revenue stream from sales that are greater than the associated expenses will disqualify an organization from tax exemption. In *Du Page County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations*, the Court noted that "the determining feature of a 'profit' with respect to a charitable institution is whether there is *inurement of benefit to a private individual*."²¹

The *Du Page County* court noted that the state erroneously believed that if not-for-profit organizations accumulate funds beyond their obligations, that "a fund balance ceases to be a fund balance and becomes a 'profit.'"²² The court pointed out the foolishness of insisting that "not-for-profit" organizations must literally be "non-profit," having minimal or non-existent fund balances. "Conditioning tax exemptions on high-risk money management," the court asserted, fails to serve the interests of charitable organizations and their beneficiaries."²³

Illinois courts have applied these principles in allowing religious entities to sell items related to their religious objectives at or above cost, or at a "profit." In *Inter-Varsity*, the court rejected the state's contention that "inasmuch as profits are made from the sale of the literature, this is a non-exempt operation of a charitable or religious organization,"²⁴ and ruled that "it was

need and apply for it." The factors in *Inter-Varsity*, on the other hand, all directly relate to religious entities, and thus this formulation of the test will be focussed on here.

²¹ *Du Page County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations*, 274 Ill.App.3d 461, 470, 654 N.E.2d 240, 246 (Ill. App. 2d 1995) (emphasis added), citing, *People ex rel. County Collector v. Hopedale Medical Foundation*, 46 Ill.2d 450, 452-53, 264 N.E.2d 4 (1970).

²² *DuPage County*, at 470, 948.

²³ *Id.* at 470-471, 948.

²⁴ 379 N.E. 2d at 816.

not the use to be made of the profits, but the nature of the business done that should be considered in deciding questions of liability of a charitable institution's property to taxation."²⁵

In *Evangelical Teacher*, the court noted that the applicant did not produce materials "to be distributed free of charge." Rather, it at times would donate course and text materials to mission schools, and then offset these losses by "income from 'high volume textbook' sales."²⁶ Clearly, the books sold as part of the "high volume textbook sales" were sold at more than their cost, and generated a positive income stream.

Perhaps the most similar case to the instant one is that discussed in *Congregational Sunday School*. In that case, the applicant sold books at least at a "sufficient charge to cover the expenses of this work."²⁷ There, the court noted that it was difficult or not impossible to determine if a profit was made in any given year. It noted that "some years the business is operated at a profit and some years it is operated at a loss," although it is impossible to tell "what the expenses will be each year."²⁸ But the important point was that "such profits as do come from the business of selling books and periodicals are devoted to the maintenance of the missionary department."²⁹ As the court noted, "[t]he purposes of the appellant [Sunday School publishing house] are directly carried out by the distribution of its books and supplies, and the receipt of the money from sales is incidental and secondary."³⁰ In the end, "whether property is used for profit depends on the intent of the owner in using the property."³¹

Based on the above law, the fifth vital factor of the *Inter-Varsity* test should be modified to read:

5) Any net revenue from sales made by the organization are secondary and incidental to accomplishing the exempt purpose, the sales are of items further the organizations purpose, and the excess revenue is used in the furtherance of the entities charitable purposes.

²⁵ *Inter-Varsity*, 379 N.E. 2d at 816.

²⁶ *Evangelical Teacher*, 118 Ill. App. 3d at 23, 454 N.E. 2d at 838.

²⁷ 290 Ill. at 110-111, 125 N.E. at 9.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363, 371, 58 N.E.2d 33 (1944).

The evidence will show, clearly and convincingly, that Three Angels easily meets the five *Inter-Varsity* factors.

Factor One – Organized and dedicated to not-for-profit, charitable purposes.

First, Three Angels Articles of Corporation state that its purposes will be those of a purely religious or charitable not-for-profit organization within the meaning of Section 501(c)(3) of the Internal Revenue Code. The Articles then state that Three Angels will “develop, plan, promote, produce and direct in cooperation with various religious organizations, *all types of religious programming* for electronic transmission for television and radio broadcasting throughout the world.”³² The Articles then list a series of activities that Three Angels will undertake to further these exempt purposes, including the purchase or sale of television and radio equipment, the production and distribution of music and videos, and to operate facilities for the public welfare.³³

Factor 2 – No Personal Inurement and a Dissolution Clause

Second, the Articles also state that none of the net earnings shall “inure to the benefit of . . . its members, trustees, directors, officers or other persons.”³⁴ Further, the Articles require that upon dissolution of Three Angels, all assets shall be distributed to organizations that are “organized and operated exclusively for charitable, religious, educational or scientific purposes” and qualify as not-for profit entities under Section 501(c)(3).³⁵

This dissolution clause is critical to a not-for-profits existence, as its absence would allow revenues collected by a not-for-profit to be transferred to a private individual once the not-for-profit was dissolved. The absence of such a clause explains, in significant part, the outcome denying exempt status to organizations in *C.O. Baptista Films v. Cummins*³⁶ and *Scripture Press Foundation v. Annunzio*.³⁷

³² Section 1.2 (a) (emphasis added).

³³ *Id.* at 1.2 (b)-(h).

³⁴ *Id.* at 1.2 (I)(I).

³⁵ *Id.* at 1.4.

³⁶ 9 Ill. 2d 259, 263, 137 N.E. 2d 393, 396 (1956).

³⁷ 414 Ill. 339, 357, 111 N.E.2d 519, 528 (1953).

Factor 3 – Missionary Activity and Support of an Evangelical Movement.

Among other crucial factors separating Three Angels from the decision in *Scripture Press* is the close association that Three Angels has with the Adventist church, with Adventist leaders and pastors being on its board, as well as the direct missionary activity carried out by Three Angels, which was absent in *Scripture Press*.³⁸ The evidence will show that not only does Three Angels support both domestic and international missionaries and missionary efforts, but that the enterprise itself is one of missionary activity. Danny and Linda Shelton, the president and vice-president of Three Angels, produce and appear in weekly programs that are a combination of preaching, gospel singing, and spiritual sharing and dialogue. Both Danny and Linda have recorded gospel music CDs that Three Angels frequently gives away to its viewers for free, or sells for a nominal fee. Neither Danny or Linda receive any royalties or compensation from the sale of the CDs, but all revenue goes directly to the work of Three Angels.

Both Danny and Linda travel extensively, between 40 and 50 weekends a year, to hold preaching, praise and prayer rallies at churches around the country and overseas. Three Angels also employs four pastors who counsel and pray with viewers on the telephone. Three Angels also financially supports an overseas operation missionary media ministry operation in Nizny, Russia. There, Three Angels pays about thirty employees who run production and broadcast studios to create and air religious programming in that part of the world.

Apart from its own, direct missionary work, Three Angels also extensively supports other missionary efforts run by the Seventh-day Adventist church, a worldwide, evangelical movement. It has entered into a formal agreement to cooperate with the Seventh-day Adventist church's outreach activities. This "Joint Declaration of Commitment" serves as the basis for an extensive and close cooperation between Three Angels and the Adventist Church. Three Angels works closely with the church's Global Missions department to create and air programs that focus on the church's overseas missionary projects. These programs provide church members

³⁸ 414 Ill. at 355-56, 111 N.E. 2d at 527-28.

with information regarding the church's missionary work overseas, and help these projects raise funds.

Three Angels also works with and airs programming, for basically at or below cost prices, created by a number of the church's media ministries, including *Faith for Today*, *It is Written* and *Amazing Facts*. These programs are traditional evangelistic, preaching style programs, with a host who is an ordained minister and who shares Biblical messages. Part of this Biblical message includes teaching and education about health and lifestyle matters. Testimony proffered at trial will show that the Adventist church has long been involved with medical missionary and health outreach work, believing that healthy living is a part of the Biblical gospel. Three Angels supports this work by creating and airing programs about diet, nutrition and exercise.

Factor 4 – Reduced or No Cost Benefits

Fourth, the evidence will show that Three Angels gives away, at no charge, a significant amount of religious literature, videos, audio tapes and other materials. Even for books and materials that are listed for a sale-price, Three Angels will frequently give away items if callers are unable to afford them. Further, its charges for air-time programming are set to cover costs, not to make a profit, and frequently they are adjusted downward based on a participating ministry's ability to pay. Indeed, some participating groups or ministries are given airtime at no charge.

Factor 5 – Any net revenue is incidental, and used to further, Three Angels religious mission.

Fifth, the evidence will show that net revenue, if any, from sales is an incidental and secondary form of revenue, accounting for something less than 1% of Three Angel's total revenue. In 2000 Three Angel's total revenue was about \$14.5 million and in 2001 about \$14 million. Gross revenue from satellite dish sales were \$2.6 million in 2000, but the cost of satellite dishes to Three Angels in that year were nearly \$3 million. Thus, Three Angels took a

\$400,000 loss that year on satellite sales. In 2001, the situation was slightly reversed, with nearly \$600,000 in dish sales, and about \$400,000 in dish costs. Still, in the two year period Three Angels came out nearly \$200,000 behind on its satellite sales, so this portion of Three Angels sale endeavors can be viewed as positive proof that Three Angels is a not-for-profit entity.

Gross revenue from sales of tapes, videos, CDs, and books was about \$150,000 in 2000 and about \$250,000 in 2001. Testimony at trial will show that the cost of the goods sold were at least as much, factoring in overhead and administrative expenses associated with making, selling and distributing the goods. It is quite unlikely that any net revenue, or actual profit, was received from any goods sold. But even if one assumes there was *no* overhead or cost of goods sold, which obviously wasn't the case, the revenue generated from these sales was at or about 1% of total revenue for both years. This figure is patently "secondary and incidental" to that associated with direct charitable contributions to Three Angels, which makes up about 80% of total revenue.

Likewise, revenue associate with fees from airtime and production fees, about \$600,000 in 2000 and \$850,000 in 2001, represent about 4% and 6% respectively of total revenue. Once again, this is dwarfed by the income generated from directly charitable donations and gifts, which was between \$11 million and \$13 million during those years.

It is evident that the vast number of items sold, including religious books, CDs, videos, and tapes are related to Three Angels religious mission, as they all have a religious content and message. Even the satellite receivers Three Angels sells have a direct religious connection, as the receivers only receive religious broadcasting. Three Angels sells two types of receivers, one that only receives Three Angels broadcasts, and a second that receives Three Angel's programming along with that of a few other religious, family oriented stations.

Once again, the facts show that Three Angels receives no net revenues or profit from its sales. But even if it were to receive some small profit, and even if the Court decided that satellite sales were not a truly religious purpose, the nature of the satellite sale activity is wholly

secondary and incidental to Three Angel's total activities and revenue, and does not detract from the exempt status of the property. "When the property as a whole, or in unidentifiable portions, is used both for an exempt purpose and a nonexempt purpose, the property will be wholly exempt only if the *exempt use is primary and the nonexempt use is incidental.*"³⁹

The same would be true for any income from the farm properties that Three Angels is holding for future development. While taxes are paid on those parcels, and that is not being challenged here, the state may use the rental income to suggest that Three Angels is not an "exclusively charitable" organization. But the evidence will show that the income from rental properties in 2000 was only \$31,000, and in 2001 was a mere \$35,000. These figures represent less than a quarter of a percent of Three Angel's total revenue, and are the very embodiment of incidental and secondary uses envisioned by the caselaw.

The use of revenues from sales, insofar as they exceed the costs of sales, goes only to the further ministry and activities of Three Angels. There is no personal inurement of any profits generated by Three Angels. Rather, employees are compensated with very modest salaries, with the top salaries being about \$50,000.

Conclusion

For the reasons stated above, Three Angels Broadcasting Network, Inc., should be given a tax exemption for the properties at issue in this case for the years 2000 and 2001.

Dated: September 20, 2002

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³⁹ *Evangelical Hospitals Corp. v. The Department of Revenue*, 223 Ill. App. 3d 225, 231, 584 N.E.2d 1004, 1008.

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ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

OFFICE OF THE
ADMINISTRATIVE CLERK
FILED

NOV 25 2002

IDOR
ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THREE ANGELS BROADCASTING
NETWORK, INC.,

Applicant

and

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,

Respondent

and

THOMPSONVILLE COMMUNITY
HIGH SCHOOL DISTRICT
NO. 112, and
THOMPSONVILLE SCHOOL
DISTRICT NO. 62,

Intervenors

Docket No.: 01-28-1

Case No.: 01-PT-0027

**APPLICANT THREE ANGELS BROADCASTING NETWORK, INC.
POST-TRIAL BRIEF**

FACTUAL SUMMARY

Background

In this action, Three Angels Broadcast Network, Inc., seeks exemption for the years 2000 and 2001 relating to those properties and facilities directly connected with the work of its religious broadcast ministries—its main studio, programming, recording, broadcast, call center, headquarter administrative facilities, and the land on which these buildings are sited. (For a full description of this land, see Trial Transcript (hereinafter, "TT") 26-27, Dept. Exh. 1 & 2.) Ironically, both the Federal Government and the State of Illinois has already recognized Three

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Angels to be organized and operated for tax-exempt, charitable purposes for these years—the Federal Government for purposes of giving Three Angels its 501(c)(3) exempt status, and the State of Illinois for sales tax purposes. TT 61-64, Appl. Exh. 4-7. All the evidence at trial was entirely consistent with these earlier rulings regarding Three Angels' charitable, tax-exempt status. Thus, this Court should rule consistently with these previous findings.

Three Angels' Media Ministry

The evidence showed that Three Angels runs a not-for-profit, religious media ministry that engages in exclusively religious purposes that further the message and mission of the Seventh-day Adventist church. Led by lay ministers Danny and Linda Shelton, president and vice-president respectively, Three Angels seeks to live up to its Biblical namesakes, the three angels of Revelation 14:6-12, by sending the "everlasting gospel" to "every nation, tribe, tongue and people." TT 47. The message of the three angels in Revelation 14 has a special meaning to the Seventh-day Adventist church, as it contains references to some of its unique or central doctrines, such as the Sabbath and the second advent of Jesus Christ. TT 48. This message also includes the need to take care of our health and bodies as directed by our Creator; as the body, mind and spirit are closely linked. TT 71-72.

The Three Angels ministry spreads the message of the three angels through preaching, Biblical teaching, and gospel music and singing that it airs on various satellite, broadcast and cable television stations, as well as satellite radio stations, throughout North America and the world. TT 70-76. Mr. and Mrs. Shelton, along with a filming and support crew, traveled between twenty and thirty weekends a year to hold Three Angels' praise, prayer and preaching rallies at Seventh-day Adventist churches throughout America and overseas. TT 131-132. Three Angels also has a number of overseas gospel workers that it directly supports in missionary

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media work, including in broadcast facilities in Russia and the Philippines that Three Angels paid for and continues to support. TT 134-135. The funds used to support this work are requested, generated, and accounted for at the headquarters facility at issue in this case. TT 134.

Three Angels' Work With the Seventh-day Adventist Church

Three Angels has a formal agreement, the Joint Declaration of Commitment, with the Seventh-day Adventist Church to cooperate with the Church in furthering its ministry and missionary work. TT 97. Three Angels works closely with the various ministries of the Seventh-day Adventist church to air programming created by these ministries and to support and promote missionary projects run by these organizations. TT 108-110. These organizations include Global Missions, for which Three Angels produced 20 or 30 programs a year focussing on overseas mission projects, such as building orphanages or schools. TT108-109. Other church-related organizations that Three Angels produces and/or airs programs for are the evangelistic, preaching programs of *It is Written* and *Amazing Facts*. TT 109-110. Indeed, from 70% to 80% of Three Angels' programming is made by or features employees, largely pastors, of the Seventh-day Adventist Church. TT 112.

Three Angels produced and broadcast the General Conference session of Seventh-day Adventists held in Toronto, Canada, in the summer of 2000. TT 105, 107. This was the church's quinquennial business meeting, lasting for two weeks with about 75,000 delegates and observers in attendance. Three Angels provided this coverage at no charge to the church. TT 108. Three Angels has also broadcast a number of worldwide evangelistic meetings for the church, known as "Net Series." TT 101-103, 106. These gospel preaching presentations went for five nights a week for about a month. *Id.* Once again, Three Angels did not charge the church for these Net series, two of which occurred in the year 2000. TT 105-106, 108, 556-557.

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Three Angels has also supported its local church conference, the Illinois Conference of Seventh-day Adventists, by providing down-link services for the church's town-hall meetings at 80 sites throughout the State of Illinois. TT 552-553. Three Angels charged the church only for the cost of some special equipment that Three Angels had to rent to broadcast these meetings. TT 554. Three Angels allowed its headquarters property to be used for no charge by the Illinois Conference as a camp-meeting headquarters, and they also provided, similarly at no charge, property on which the conference runs and operates a church and a school. TT 557-559. Three Angels also financially supports a full-time Seventh-day Adventist evangelist through the Illinois Conference. 560-561.

Three Angels' Administrative and Programming Headquarters

While many of the above-described events and activities involved locations other than Three Angels' headquarters, the planning, organizing, and support of these events *did* take place from these headquarters facilities, directly involving the buildings and property at issue in this dispute. TT 103. This is where Mr. and Mrs. Shelton and their staff planned and worked on the administrative and creative aspects of these programs. TT 83-85. It is where the financial sides of these programs and events were prepared and kept track of. TT 84. At least one of the Net Series, Net 2000 with pastor Steven Lewis, was held live, produced and broadcast at a studio in the headquarters facility. TT 88. All the graphical and technical components of the programs are headquartered at this facility, and the broadcast equipment that goes on the road for off-site broadcasts is based at this headquarters facility. TT 84, 86, 88, 89, 143. Any calls or requests for materials generated by the above described programs come into the call-center, which is also on the headquarters facility property at issue in this case. TT 118.

A significant amount of Three Angels programming actually originates directly from its headquarters facility. It has two main studios where a substantial amount of religious programming is filmed, as well as a master control facility where the programming is edited, produced, and made ready for broadcast. TT 84-87. Mr. and Mrs. Shelton have a daily religious program, called *Three ABN Presents*, which is filmed in the headquarters studio, in which they read scripture, pray, and interview religious leaders and workers from around the world. TT 85-86, 130. Other ministry programs are filmed in these same studios, along with Christian lifestyle programs, including children's Bible programs and vegetarian cooking classes. TT 86. None of the programming Three Angels creates is copyrighted, and viewers are encouraged to copy the programs to share as a witnessing tool with friends. TT 574.

Three Angels' Message and Its Distribution

All the programming created and/or aired over Three Angels is screened so that its content is consistent with and supportive of the 27 fundamental beliefs of the Seventh-day Adventist Church. TT 598. Further, Three Angels keeps a staff of four pastors at its headquarters to carry out this screening of programs, as well as to pray and counsel with viewers who call in on the ministry's prayer hotline. TT 531-533. These pastors also conduct religious services and worships at the headquarters facility, as well as at the local Adventists Church and school. TT 533-34. Daily worship services for each department occur at the headquarters, and once a week there is a group worship for all the employees at the entire facility. TT 534-35, 570.

Along with its broadcasts, Three Angels also distributes its message via video and audio tapes, CDs, books and other types of literature. TT 117-118. At times these items are given away, at other times a nominal fee is charged to cover the costs of making, promoting, and distributing the items. TT 118. The activities of receiving the calls, processing the requests, and

mailing the materials happens at the call center building, which is part of the headquarters facility at issue in this case. TT 118-119.

Three Angels' Finances and Board Operations

Three Angels provides satellite receivers at or below its own cost to potential viewers who may not live within a Three Angels broadcast or cable viewing area. TT 162-163. These receivers receive only Three Angels' television or radio broadcasts, or similar types of religious and Christian, family oriented, programming. TT 164. Revenue attributed to sales of books, tapes, videos, CDs or satellite dishes did not exceed the expenses associated with purchasing, promoting and distributing those items. TT 449-450, 476-477. The sale of airtime covers only a fraction of the expenses associated with the broadcast of that airtime, when equipment costs, satellite fees and other direct overhead are factored in. TT 436, 441-444; Appl. Exh. 14-15.

The testimony and evidence showed even the gross amount of revenue associated with these sales is only a few percent of Three Angels total revenue. TT 433, 435-436. The vast amount of Three Angels revenue, between 75% and 85%, comes directly from charitable donations made by its viewers and listeners. TT 139-140. In sum, Three Angels is primarily, indeed, overwhelmingly, supported by and operated with funds given through charitable donations.

The ministry of Three Angels is overseen by a board of directors made up of members, leaders, and elders of the Seventh-day Adventist Church. TT 92-96. The board includes current and retired Seventh-day Adventist pastors and church leaders, including the President of the Illinois Conference of Seventh-day Adventists. TT 93-94. The Board meets regularly several times a year to oversee and guide the work of Three Angels and to approve its financial arrangements and expenditures. TT 95. Not only do the board members receive no

compensation for their services as board members, they are not reimbursed for their travel expenses to attend board meetings. TT 500-501. Indeed, the chairman of the board testified that he had paid for Three Angels programming and projects out of his own pocket, as well as making regular donations to Three Angels. TT 517-518.

The Board sets the salaries of the President and Vice-President of Three Angels. TT 144-145. The salaries are guided by the equivalent salary, including benefits, of a minister in the Seventh-day Adventist Church. TT 145. President Danny Shelton received about \$50,000 per year in 2000 and 2001, and Vice-President Linda Shelton received about \$45,000 in 2000 and \$47,000 in 2001. TT 141, 144. Apart from health benefits and one-half dental benefits, and the use of a company car each for business purposes, Mr. and Mrs. Shelton derive no further financial benefits from Three Angels. TT 141, 144.

Three Angels' Articles of Incorporation set out the religious objectives and purposes of the ministry, and require that upon dissolution, the assets of the organization must go to a similar not-for-profit, charitable organization. TT 54-60. No monies or net revenue from Three Angels go for inurement or benefit of any private person or persons. TT 55-56. Mr. and Mrs. Shelton's salaries are not based on or adjusted according to the revenue that Three Angels generates. TT 145. Rather, all net revenues, if any, in a given year are put back into the religious programming and ministries carried out by Three Angels.

Conclusion

All factors considered, the evidence showed that Three Angels is the archetypal religious media ministry run exclusively for religious and charitable purposes. What's more, this evidence was entirely un-rebutted, as neither the State nor the intervenors called any witnesses or submitted any evidence regarding the operations, mission, financial matters, personnel matters or

board operations of Three Angels. The intervenors called a single witness who testified to the simple and largely irrelevant claims that prior to the assessment year 2000, the property had been assessed as vacant ground, and that new construction in 1999 had caused it to be re-assessed as taxable. TT 656-658.

Considering that none of the testimony or facts submitted by Three Angels was contradicted by other witnesses or evidence, the Court should accept the representations it fits witnesses as true. Thus, this Court should find that Three Angels and its administrative headquarters and related properties qualifies for tax exemption, as the facts meet the legal standards required for Illinois tax exempt status, as described below.

LEGAL ARGUMENT

I. The property used by Three Angels Broadcasting to carry out and support its religious broadcasting ministry is used for an exclusively religious purpose and is thus exempt from property taxes under 35 ILCS 200/15-40 and 35 ILCS 200/15-65.

In this case, Three Angels seeks no more than is provided for it by the Illinois Constitution and state statutes—a tax exemption for its religious media ministry's lands and buildings. The Illinois Constitution provides that the state assembly may exempt from taxation “property used exclusively for . . . school, religious, cemetery and charitable purposes.” Ill. Const. Sec. 6, art. IX. Pursuant to this provision, the Illinois assembly has passed two statutory sections that extend tax exempt status to property used for religious purposes. The first section exempts “property used exclusively for . . . religious purposes.” 35 ILCS 200/15-40 (2001). The second section exempts “all property . . . exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to a profit” which is owned by “institutions of public charity.” 35 ILCS 200/15-65 (2001).

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In applying these two clauses to religious organizations, Illinois courts have said that the statutory sections “are so closely associated that we will discuss them together.”¹ The analysis below will likewise draw on both sections in demonstrating that Three Angels is a not-for-profit, religious and charitable organization that uses the subject properties exclusively for religious purposes.

A. Under Illinois law, a religious purpose extends beyond traditional worship or prayer services and includes a wide variety of activities that involve transmission of religious teachings and ideas through various media, such as those used by Three Angels.

Three Angels’ purposes and activities as a communicator of religious instruction through print, audio, video and broadcast media are the type of activities as those found religious by Illinois courts. An early case, *Deutsche Evangelisch*, referred to “religious purpose” of property as consisting of “public worship, Sunday schools and religious instruction.”² Three Angels’ activities even fit this somewhat narrow definition of religious purpose, as Three Angels’ primary purpose is “religious instruction” through the broadcast of religious programming.

But later cases have clarified that “religious purposes” are broader than those specifically identified in *Deutsche Evangelisch*. The Illinois Supreme Court noted that the definition given in that case as “not stated as inclusive of everything that might in the future be regarded as a use for religious purposes but as *illustrative of the nature of such use*.”³ Later, the court noted that “no decision of this court attempting to lay down an all inclusive definition or specification of what constitutes a religious purpose” had been called to its attention, even though it clearly had reviewed the *Deutsche Evangelisch* decision.⁴

¹ *The Congregational Sunday School and Publishing Society v. Board of Review*, 290 Ill. 108, 112, 125 N.E. 7, 9 (1919); See *Inter-Varsity Christian Fellowship of the United States of America v. Hoffman*, 62 Ill. App. 3d 798, 799, 379 N.E.2d 813, 814 (Ill. App. 2d 1978).

² *The People v. Deutsche Evangelisch Luterische Jehovah*, 249 Ill. 132, 136-37, 94 N.E. 162, 164 (1911).

³ *Carson v. Muldoon*, 306 Ill. 234, 238, 137 N.E. 863, 864 (1922) (emphasis added).

⁴ *Scripture Press Foundation v. Annunzio*, 414 Ill. 339, 350-352, 111 N.E.2d 519, 525 (1953).

Thus, the courts of Illinois have construed religious use of property as being considerably broader than traditional "religious worship" services or Sunday school classes. Groups or properties found to qualify for a property exemption include: the administrative and office buildings of a group that supports of Sunday schools who published and distributed Sunday school supplies, quarterlies and lesson helps, as well as religious and moral books;⁵ Inter-Varsity Christian Fellowship, a group that helped organize Christian student groups at secular colleges and universities, and which published and sold religious literature;⁶ the Evangelical Teacher Training Association, an organization formed by various Christian schools to produce print, audio, visual and other materials to train Christian educators;⁷ A 1.6 acre portion of a tax-exempt religious park, upon which stood a residence for the park care-taker and his wife, horses grazed, and upon which religious services were conducted;⁸ a parcel of property owned by a church and leased for \$1 a year to an organization that ran a thrift store that sold items to the needy at a reduced rate and donated the proceeds to charity.⁹

Many of the above uses involve the spreading of religious messages through the dissemination and sale, even at a profit, of various media. While the media discussed in these cases is typically print, at least one case, *Evangelical Teacher*, deals with various types of audio and visual media.¹⁰ One would think that the State should look at the content of the media, rather than the form of the media, to determine whether it qualifies as religious. It would seem purely arbitrary to determine that a sermon sold in a book was religious, but the same sermon broadcast and received for free over the airwaves was not.

⁵ *The Congregational Sunday School and Publishing Society v. Board of Review*, 290 Ill. 108, 125 N.E. 7 (1919).

⁶ *Inter-Varsity Christian Fellowship v. Hoffman*, 62 Ill. App. 3d 798, 379 N.E.2d 813 (Ill. App. 2d. 1978).

⁷ *Evangelical Teacher Training Ass'n v. Novak*, 118 Ill. App. 3d 21, 454 N.E.2d 836 (Ill. App. 2d. 1983).

⁸ *Ill. Confer. of the United Church of Christ v. Ill. Dept. of Rev.*, 165 Ill. App. 3d 200, 518 N.E.2d 755 (Ill. App. 3d 1988).

⁹ *First Presbyterian Church of Dixon v. Zehnder*, 306 Ill. App. 3d 1114, 715 N.E.2d 1209 (Ill. App. 2d 1999).

Indeed, the Illinois Department of Revenue itself appears to recognize that airwaves should be treated similarly as print materials, as evidence that was proffered at trial as an offer of proof (discussed more fully at the end of this brief) showed that the Department itself presently treats at least one television ministry as tax exempt. At least two other state courts with statutory property tax-exemption schemes similar to Illinois have found that television ministries qualify as religious or church uses and ruled that properties associated with the furtherance and support of such ministries are exempt from tax.¹¹

Indeed, under Illinois law, one does not start with the State's view of what is religious. Rather, the Court should start with the private entities view of what is religious. The state "must accept the entity's characterization of its activities and beliefs as religious as long as the characterization is in good faith."¹² As one Illinois court put it, quoting the influential decision from New York of *Holy Spirit Ass'n v. Tax Comm'n of New York*¹³:

When, as here, particular purposes and activities of a religious organization are claimed to be other than religious, the civil authorities may engage in but two inquiries: does the religious organization assert that the challenged purposes and activities are religious, and is that assertion bona fide? Neither the courts nor administrative agencies . . . may go behind the declared content of religious beliefs any more than they may examine into their validity.¹⁴

One commentator on Illinois law recently asserted that this case, *Fairview Haven*, "represents the fullest and clearest expression in Illinois of the First Amendment principles

¹⁰ *Evangelical Teacher*, 118 Ill. App. 3d at 23, 454 N.E. at 837 (sale items included cassette tapes and overhead projector masters).

¹¹ *Minnesota Christian Broadcasters vs. County of Crow Wing*, 1987 Minn. Tax LEXIS 91 (Minn. Tax Ct. 1987), attached hereto; *Highland Church of Christ v. Powell*, 644 S.W.2d 177 (Texas Ct. App. 11d 1982).

¹² *Fairview Haven v. The Department of Revenue*, 153 Ill. App. 3d 763, 772, 506 N.E.2d 341, 348 (Ill. App. 4d 1987).

¹³ *Holy Spirit Association for the Unification of the World v. Tax Com*, 435 N.E.2d 662, 663 (N.Y. 1982).

¹⁴ *Fairview Haven*, 153 Ill. App. 3d at 772, 506 N.E. 2d at 348, .

implicitly followed in *Scripture Press* and explicitly recognized in *Holy Spirit*.”¹⁵ It puts the state in the position of not having to “define” religion itself, but merely checking to make sure that the stated religious purpose is not sham, and that the property is “actually and primarily used for the *stated* religious purpose.”¹⁶ There is no place for the state to create its own, separate standards or definition of “religion,” as the state’s attorney would seem to suggest. TT 509-510.

As such, this court should accept at face value Three Angels’ claims that its programming and activities are religious, and that broadcasting this programming and distributing its materials furthers its religious objectives. Neither the state nor the intervenors put on any evidence that even hinted that Three Angels’ claims regarding its religious purposes were made in bad faith. The testimony was unanimous, unequivocal, and undisputed—Three Angels’ programming and other activities are religious in nature generally and support the message and mission of the Seventh-day Adventist Church in particular.

B. Three Angel’s subject property and facilities should be tax-exempt as they are used exclusively for religious purposes, none of the ministries revenues accrue to the benefit of private persons, it carries out and supports a wide range of missionary activity, and many of its broadcast services and religious materials are provided at or below cost.

Three Angels’ efforts to communicate the gospel through print, video, audio and broadcast is entirely consistent with the uses given exemptions discussed above. The remaining question is whether Three Angels itself operates as a not-for-profit organization and whether it uses the subject properties “exclusively” for the religious purposes described above. The caselaw makes clear that “exclusively used” means “the primary purpose for which the property is used, not to any secondary or incidental purpose.”¹⁷ Thus, an entity whose activities are

¹⁵ James W. Hilliard, “The ‘Religious Purposes’ Property Tax Exemption and the First Amendment,” *Illinois Bar Journal*, Vol. 90, p. 549 (Oct. 2002), attached hereto as Exhibit A.

¹⁶ *Id.* at 551. (Emphasis added.)

¹⁷ *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149, 158, 233 N.E.2d 537, 542 (1968); *See McKenzie v. Johnson*, 98 Ill. 2d 87, 98 (1983); *The People v. Muldoon*, 306 Ill. 234, 238, 137 N.E. 863, 864 (1922); *Evangelical Hospital Ass’n v. Novak*, 125 Ill. App. 439, 441, 465 N.E. 2d 986, 988 (Ill. App. 2d 1984).

basically in furtherance of tax exempt purposes will not lose that status if there is some minor, incidental or secondary use of the property for non-exempt purposes.¹⁸

Further, space used for administrative, maintenance, or storage purposes will be exempt if the storage and administration is integral and necessary to the exempt purposes.¹⁹ At the trial, the intervenors attempted to dissect the administrative facility into square-foot blocks broken down by specific purposes, such as administrative use, production studios, advertising, etc. TT 234. But all these uses, administration, advertising, storage, etc., are exempt uses as long as they are in furtherance of the exempt purpose. "Illinois courts have held that property used as hospital administrative and support services, property used as a hospital employee parking lot, surrounding gang-infested property reclaimed by a hospital, and property used as a child-care center serving employees of a tax-charitable hospital all qualify for the property tax exemption."²⁰

Under Illinois law, one determines if an entity has been exclusively "organized and operated for an exempt purpose" by examining its "charter and bylaws" and the "actual facts relating to its method of operation."²¹ In examining religious charities, courts have found a number of different factors to be relevant to the issue of exclusive operation for charitable purposes. In the *Inter-Varsity Christian Fellowship* case, the court noted five "specific and vital" factors relevant to Inter-Varsity's exempt status.²² These included:

¹⁸ *Evangelical Hospitals Corp. v. The Dept. of Revenue*, 223 Ill. App. 3d 225, 231, 584 N.E. 2d 1004, 1008 (Ill. App. 2d 1991).

¹⁹ *Evangelical Hosp. Ass'n v. Novak*, 125 Ill. App. 3d 439, 465 N.E. 2d 986 (Ill. App. 2d 1984) (supportive administrative and storage space exempt).

²⁰ *Mount Calvary Baptist Church v. Zehnder*, 302 Ill. App. 3d 661, 672, 706 N.E.2d 1008, 1016 (Ill. App. 1d 1998).

²¹ *Evangelical Teacher*, 118 Ill. App. at 25, 454 N.E. 2d at 838.

²² Other cases purport to set down similar, often overlapping, but somewhat different, sets of criteria for determining a not-for-profit, charitable entity. See., *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149, 233 N.E. 2d 537 (1968); *Evangelical Hosp. Corp. v. Depart. of Revenue*, 223 Ill. App. 3d 225, 584 N.E.2d 1004 (Ill. App. 2d 1991). These cases, however, deal with non-religious charities, and set down some criteria that are not really appropriate for religious entities, e.g., organization "reduces the burdens of government," and "charity is dispensed to all who

1) It was organized as a not-for-profit corporation with a charter dedicated exclusively to religious and charitable purposes;

2) None of the revenue of the organization inures to the benefit of any private person, and upon dissolution, any capital surplus, if any, must, by operation of the corporate charter, be distributed to another religious and charitable organization;

3) It supported missionaries and served the needs of an evangelical movement;

4) It provided a substantial amount of materials free or below cost to groups which were targeted for its message.

The *Inter-Varsity* court also noted that the organization sold its publications at or below cost. While this factor may have aided in the court's analysis, the Illinois Supreme Court has explicitly rejected the notion that possessing a revenue stream from sales that are greater than the associated expenses will disqualify an organization from tax exemption. In *Du Page County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations*, the court noted that "the *determining feature* of a 'profit' with respect to a charitable institution is whether there is *inurement of benefit to a private individual*."²³

The *Du Page County* court noted that the state erroneously believed that if not-for-profit organizations accumulate funds beyond their obligations, that "a fund balance ceases to be a fund balance and becomes a 'profit.'"²⁴ The court pointed out the foolishness of insisting that "not-for-profit" organizations must literally be "non-profit," having minimal or non-existent fund

need and apply for it." The factors in *Inter-Varsity*, on the other hand, all directly relate to religious entities, and thus this formulation of the test will be focussed on here.

²³ *Du Page County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations*, 274 Ill.App.3d 461, 470, 654 N.E.2d 240, 246 (Ill. App. 2d 1995) (emphasis added), citing, *People ex rel. County Collector v. Hopedale Medical Foundation*, 46 Ill.2d 450, 452-53, 264 N.E.2d 4 (1970).

²⁴ *DuPage County*, at 470, 948.

balances. "Conditioning tax exemptions on high-risk money management," the court asserted, fails to serve the interests of charitable organizations and their beneficiaries."²⁵

Illinois courts have applied these principles in allowing religious entities to sell items related to their religious objectives at or above cost, or at a "profit." In *Inter-Varsity*, the court rejected the state's contention that "inasmuch as profits are made from the sale of the literature, this is a non-exempt operation of a charitable or religious organization."²⁶ It ruled that "it was not the use to be made of the profits, but the nature of the business done that should be considered in deciding questions of liability of a charitable institution's property to taxation."²⁷

In *Evangelical Teacher*, the court noted that the applicant did not produce materials "to be distributed free of charge." Rather, it at times would donate course and text materials to mission schools and then offset these losses by "income from 'high volume textbook' sales."²⁸ Clearly, the books sold as part of the "high volume textbook sales" were sold at more than their cost and generated a positive income stream.

Perhaps the most similar case to the instant one is that discussed in *Congregational Sunday School*. In that case, the applicant sold books at least at a "sufficient charge to cover the expenses of this work."²⁹ There, the court noted that it was difficult, if not impossible, to determine if a profit was made in any given year. It noted that "some years the business is operated at a profit and some years it is operated at a loss," although it is impossible to tell "what the expenses will be each year."³⁰ But the important point was that "such profits as do come from the business of selling books and periodicals are devoted to the maintenance of the missionary department."³¹ As the court noted, "[t]he purposes of the appellant [Sunday School publishing house] are directly carried out by the distribution of its books and supplies, and the

²⁵ *Id.* at 470-471, 948.

²⁶ 379 N.E. 2d at 816.

²⁷ *Inter-Varsity*, 379 N.E. 2d at 816.

²⁸ *Evangelical Teacher*, 118 Ill. App. 3d at 23, 454 N.E. 2d at 838.

²⁹ 290 Ill. at 110-111, 125 N.E. at 9.

³⁰ *Id.*

³¹ *Id.*

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receipt of the money from sales is incidental and secondary."³² In the end, "whether property is used for profit depends on the intent of the owner in using the property."³³

Based on the above law, the fifth vital factor of the *Inter-Varsity* test should be modified to read:

5) Any net revenue from sales made by the organization are secondary and incidental to accomplishing the exempt purpose, the sales are of items further the organizations purpose, and the excess revenue is used in the furtherance of the entities charitable purposes.

The evidence will show, clearly and convincingly, that Three Angels easily meets the five *Inter-Varsity* factors.

Factor One – Organized and dedicated to not-for-profit, charitable purposes.

First, Three Angels' Articles of Incorporation states that its purposes will be those of a purely religious or charitable not-for-profit organization within the meaning of Section 501(c)(3) of the Internal Revenue Code. TT 53-55, Appl. Exh. 2. The Articles then states that Three Angels will "develop, plan, promote, produce and direct in cooperation with various religious organizations, *all types of religious programming* for electronic transmission for television and radio broadcasting throughout the world."³⁴ The Articles then lists a series of activities that Three Angels will undertake to further these exempt purposes, including the purchase or sale of television and radio equipment, the production and distribution of music and videos, and to operate facilities for the public welfare.³⁵

Factor 2 – No Personal Inurement and a Dissolution Clause

Second, the Articles also states that none of the net earnings shall "inure to the benefit of . . . its members, trustees, directors, officers or other persons."³⁶ Further, the Articles and Bylaws require that upon dissolution of Three Angels, all assets shall be distributed to organizations that are "organized and operated exclusively for charitable, religious, educational

³² *Id.*

³³ *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363, 371, 58 N.E.2d 33 (1944).

³⁴ Section 1.2 (a) (emphasis added).

³⁵ *Id.* at 1.2 (b)-(h).

³⁶ *Id.* at 1.2 (I)(I).

or scientific purposes” and qualify as not-for profit entities under Section 501(c)(3).³⁷ TT 60-61, Appl. Exh. 3. No evidence or testimony was introduced that even hinted at any private inurement from the earnings of Three Angels. To the contrary, both the internal director of finance and the external auditor both testified that they had found no evidence of private inurement at Three Angels or any activity inconsistent with a not-for-profit, charitable status. TT 453-454, 486.

This dissolution clause is critical to a not-for-profits existence, as its absence would allow revenues collected by a not-for-profit to be transferred to a private individual once the not-for-profit was dissolved. The absence of such a clause explains, in significant part, the outcome denying exempt status to organizations in *C.O. Baptista Films v. Cummins*³⁸ and *Scripture Press Foundation v. Annunzio*.³⁹ That such a clause *does* exist in the formational documents of Three Angels is also undisputed. TT 60, Appl. Exh. 3.

Factor 3 – Missionary Activity and Support of an Evangelical Movement.

Among other crucial factors separating Three Angels from the decision in *Scripture Press* is the close association that Three Angels has with the Adventist Church, with Adventist leaders and pastors being on its board, as well as the direct missionary activity carried out by Three Angels, which was absent in *Scripture Press*.⁴⁰ On its board is the current president of the Illinois Conference of Seventh-day Adventists, as well as a number of other Adventist pastors and church leaders. TT 93-94. All the board members are active members of the Seventh-day Adventist Church. TT 92. Danny Shelton is an ordained elder of the Adventist Church, and serves as a lay minister of the Church. TT 38

The evidence showed that Three Angels supports both domestic and international missionaries and missionary efforts. It purchased a property and buildings in Russia to serve as a religious broadcast center and church building and offices. TT 133-134. It pays the salaries of

³⁷ *Id.* at 1.4.

³⁸ 9 Ill. 2d 259, 263, 137 N.E. 2d 393, 396 (1956).

³⁹ 414 Ill. 339, 357, 111 N.E.2d 519, 528 (1953).

⁴⁰ 414 Ill. at 355-56, 111 N.E. 2d at 527-28.

the 30 to 40 employees who run the broadcast center in Russia. TT 134, 188. It also owns and operates a broadcast facility in the Philippines based in Manila. This facility employs about ten full-time employees and broadcasts to a potential audience of 20 million people. TT 135.

But not only does Three Angels support missionary activity by others, the enterprise itself is one of missionary activity. Danny and Linda Shelton, the president and vice-president of Three Angels, produce and appear in weekly programs that are a combination of preaching, gospel singing, and spiritual sharing and dialogue. TT 131. These weekend programs, include a number of praise and testimony meetings, as well as a Sabbath morning teaching and preaching worship service. TT 131-132. The Three Angels team is also involved in direct evangelism campaigns resulting in many baptisms, including 15,000 in India and a similar number in Russia in 2000 and 2001. TT 136. As discussed earlier, Three Angels employs a staff of four, full-time pastors who counsel and pray with viewers on the telephone and carry out other religious activities. TT 531-533.

Apart from its own, direct missionary work, Three Angels also extensively supports other missionary efforts run by the Seventh-day Adventist Church, a worldwide, evangelical movement. As discussed above, it has entered into a formal agreement to cooperate with the Seventh-day Adventist Church's outreach activities. This "Joint Declaration of Commitment" serves as the basis for an extensive and close cooperation between Three Angels and the Adventist Church. Three Angels works closely with the church's Global Missions department to create and air programs that focus on the church's overseas missionary projects. These programs provide church members with information regarding the church's missionary work overseas and help these projects raise funds. (See *Supra* p. 3-4).

Three Angels also works with and airs programming, for basically at or below cost prices, created by a number of the church's media ministries, including *Faith for Today*, *It is Written* and *Amazing Facts*. TT 109-110, 146. These programs are traditional evangelistic, preaching style programs, with a host who is an ordained minister and who shares Biblical messages. Part of this Biblical message includes teaching and education about health and

lifestyle matters. Testimony proffered at trial showed that the Adventist Church has long been involved with medical missionary and health outreach work, believing that healthy living is a part of the Biblical gospel. TT 71-72. Three Angels supports this work by creating and airing programs about diet, nutrition and exercise.

As the evidence demonstrated, Three Angels supports a world-wide Evangelical movement, the Seventh-day Adventist Church. It also carries out an active program of missionary activity, both in North America and overseas. It thus meets the third factor of the *Inter-Varsity* test.

Factor 4 – Reduced or No Cost Benefits

Fourth, the evidence will show that Three Angels gives away, at no charge, a significant amount of religious literature, videos, audio tapes and other materials. TT 171, 172, 182, 186; Appl. Exh. 18-21. Everyday, free material is promoted and made available to the public on a variety of spiritual and religious topics, including healthful living and finding spiritual peace. TT 171. Every Thursday, there is a special, two-hour live program, called *3-ABN Presents*, where there is always a free give-away. TT 172. During 2000, Three Angels sold its satellite dishes at cost, which was actually a loss for Three Angels because of overhead and administrative expense associated with the sales. TT 325. During 2001, the dishes were actually sold at \$50 less than their cost to Three Angels. TT 325-326. Indeed, a number of satellite dishes were given away in both 2000 and 2001 to callers who demonstrated significant financial hardship. TT 300.

Even for books and materials that are listed for a modest sale-price, Three Angels will at times further discount the price or give the items away if callers are unable to afford them. TT 169-170. Further, its charges for air-time programming are set to cover costs, not to make a profit, and frequently they are adjusted downward based on a participating ministry's ability to pay. TT 160-162. Indeed, some participating groups or ministries are given airtime at no charge. TT 106-108. (*See supra* p. 3-4).

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Factor 5 – Any net revenue is incidental and used to further Three Angels religious mission.

Fifth, the evidence will show that net revenue, if any, from sales is an incidental and secondary form of revenue, accounting for only a few percent of Three Angel's total revenue. In 2000 Three Angel's total revenue was about \$14.5 million and in 2001 about \$14 million. TT 139; Appl. Exh. 14 & 15. Gross revenue from satellite dish sales was \$2.6 million in 2000, but the cost of satellite dishes to Three Angels in that year was nearly \$3 million. Appl. Exh. 14. Thus, Three Angels took a \$400,000 loss that year on satellite sales. In 2001, the situation was slightly reversed, with nearly \$600,000 in dish sales, and about \$400,000 in dish costs. Appl. Exh. 14. Still, other costs associated with the satellite sales in 2001, including salaries and shipping, meant that there was no net revenue from these sales that year. TT 446-450. Even without factoring in overhead, in the two year period of 2000-2001 Three Angels came out nearly \$200,000 behind on its satellite sales, merely on revenue compared with cost of goods sold.

The situation in regards to sales of tapes, videos, CDs, and books is very similar. Gross revenue from these items was about \$150,000 in 2000 and about \$250,000 in 2001. Appl. Exh. 14-15. Evidence at trial showed that the cost of the goods sold were likely at least as much, factoring in overhead and administrative expenses associated with making, selling and distributing the goods. TT 453, Appl. Exh. 14-15. It is quite unlikely that any net revenue, or actual profit, was received from any goods sold. Certainly this is true in the aggregate. Appl. Exh. 14-15. But even if one assumes there was *no* overhead or cost of goods sold, which obviously was not the case, the revenue generated from these sales was only one to two percent of total revenue for both years. This figure is patently "secondary and incidental" to that associated with direct charitable contributions to Three Angels, which makes up about 80% of total revenue. TT 140, Appl. Exh. 14-15.

Likewise, revenue associated with fees from airtime and production fees, about \$600,000 in 2000 and \$850,000 in 2001, represents about 4% and 6% respectively of total revenue. Appl.

Exh. 14-15. Once again, this is dwarfed by the income generated from directly charitable donations and gifts, which was between \$11 million and \$13 million during those years. *Id.*

It is evident that the vast number of items sold, including religious books, CDs, videos, and tapes are related to Three Angels' religious mission, as they all have a religious content and message. TT 517, 597-599. Even the satellite receivers Three Angels sells have a direct religious connection, as the receivers only receive religious broadcasting. TT 164. Three Angels sells two types of receivers, one that only receives Three Angels' broadcasts, and a second that receives Three Angels' programming along with that of a few other religious, family oriented stations. TT 164-165.

Once again, the facts show that Three Angels receives no net revenues or profit from its sales. But even if it were to receive some small profit, and even if the Court decided that satellite sales were not a truly religious purpose, the nature of the satellite sale activity is wholly secondary and incidental to Three Angels' total activities and revenue and does not detract from the exempt status of the property. "When the property as a whole, or in unidentifiable portions, is used both for an exempt purpose and a nonexempt purpose, the property will be wholly exempt only if the *exempt use is primary and the nonexempt use is incidental.*"⁴¹

The same would be true for any income from the farm properties that Three Angels is holding for future development. Taxes are paid on those parcels, and that tax is not being challenged here. The evidence has shown that the income from rental properties in 2000 was only \$31,000, and in 2001 was a mere \$35,000. Appl. Exh. 14 & 15. These figures represent less than a quarter of one percent of Three Angels' total revenue and are the very embodiment of incidental and secondary uses envisioned by the caselaw.

The use of revenues from sales, insofar as they exceed the costs of sales, goes only to the further ministry and activities of Three Angels.

⁴¹ *Evangelical Hospitals Corp. v. The Department of Revenue*, 223 Ill. App. 3d 225, 231, 584 N.E.2d 1004, 1008.

Conclusion of Argument Regarding Trial Evidence

The evidence is unequivocal and undisputed: Three Angels was organized and is operated for charitable, religious exempt purposes. Its formational documents allow for no personal inurement, and there was no evidence, testimonial or otherwise, of any such inurement. These documents also require that upon dissolution any remaining assets be distributed to similar, not-for-profit organizations. Three Angels is a missionary organization that runs and supports direct missionary efforts, as well as supporting the message and mission of the Seventh-day Adventist church, a worldwide, evangelical movement. Three Angels gives away significant amounts of free materials, including books, CDs and tapes, as well as more substantive items, such as satellite dishes and even broadcast airtime. Net revenue, if any, received by Three Angels is entirely secondary and incidental to the mission of Three Angels in getting its message out.

For these reasons, Three Angels Broadcasting Network, Inc., should be given a tax exemption for the properties at issue in this case for the years 2000 and 2001.

* * * * *

This ends the argument section of the brief based on the testimony and evidence accepted by the Court during the hearing. Below, Applicant renews its request that evidence submitted under offers of proof should be considered by this Court.

OFFERS OF PROOF SECTION

Exclusion of Relevant Evidence

Prior to trial, certain evidence and witnesses of Applicants were excluded by the Court, but which were submitted at the hearing as offers of proof. Applicants' counsel requested that the Court revisit its ruling regarding the admissibility of these materials at the hearing, and does so again now, and asks the court to consider the following arguments and testimony.

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A. Ted Wilson's Deposition Testimony

Applicant Three Angels is entitled to present evidence relevant to its theory of the case. *Dayan v. McDonald's Corp.*, 466 N.E.2d 958, 966 (Ill. App. 1 Dist. 1984). Three Angels' 2001 and 2002 letters requesting formal hearing for the Department's 2001 and 2002 tax exemption denials stated applicant would present evidence that:

(1) the corporation . . . has been exclusively operated in the spreading of the Gospel of Jesus Christ through its electronic evangelistic ministry . . . ; (3) it supports Seventh-day Adventist evangelistic ministries throughout the world; and (5) its religious ministry is committed to the proclamation of the teachings of Bible truth as formulated in the 27 Fundamental Beliefs of the Seventh-day Adventist Church with which it maintains a formal agreement to provide its resources to support the mission of and work in cooperation with the Seventh-day Adventist Church.

Dept. Group 1 and Group 2 Exhibits. Ted Wilson's (Vice President of the General Conference of Seventh-day Adventists) testimony, as tendered in Applicant's Offer of Proof No. 4, goes directly to Three Angels' stated religious activities. Applicant's List of Prospective Witnesses was served and filed on or about May 30, 2002. Ted Wilson was named on that list, and Three Angels described the subject matter of his testimony as follows:

The role of Applicant in the ministry of the Seventh-day Adventist Church. He may also testify as an opinion witness concerning whether all applicant's programming and other activities are religious in the context of the Seventh-day Adventist Church. He will also testify that the programming and activities carry out the theology and teachings of the Seventh-day Adventist Church and are substantially similar to the General Conference of the Seventh-day Adventist Church's related mass communication activities.

On July 25, 2002, Intervenors took the discovery deposition of Ted Wilson. On the same date, following Intervenors' discovery deposition, applicant Three Angels deposed Wilson for testimony to be used at the hearing held by this Court. This deposition was taken with the consent of both the Department and Intervenors, and the purpose of the deposition had been noted well before it was taken. Intervenors' counsel was present, and, while making a very few objections to particular questions near the end of the deposition, made no objection generally to the taking or intended use of the deposition at the hearing.

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Ted Wilson's July 26 testimony was in substantial part based upon his actual, personal knowledge of what Three Angels uses the subject property for because he had visited the property in November of 2000 (Offer of Proof No. 4; Exhibit 25C; Wilson Dep. at 113). He also knew of many of the programs aired by Three Angels since they had been produced by the Adventist Church. *Id.* at 106-07. He testified that Three Angels and the General Conference of Seventh-day Adventists had entered into an agreement and that he was the individual responsible for representing the church in this arrangement. *Id.* at 106, 107, 112-13.

Ted Wilson testified this agreement allowed that the church and its institutions would "utilize the services of Three ABN for production and distribution of programming as may be appropriate." *Id.* at 118. He indicated that in accordance with that understanding, Three Angels regularly aired the church's "Global Mission" program, *id.* at 119, broadcast church activities, and evangelistic programming. *Id.* at 120. He also testified that official church ministries, to wit: "It Is Written," "Breath of Life," and "Voice of Prophecy" have working relationships with Three Angels and "provide programming for it." *Id.*

Wilson attested that he had a copy of Three Angels' video catalog supplements for the years 2000 and 2001, and they included videos using Adventist Church ministers and leaders including Jeff Blanko, a noted Adventist theologian, John Carter, Samuel Thomas, Doug Bachelor, and Ken Cox, Adventist ministers. *Id.* at 143-44. The catalog also included videos from Tim Standish from the Seventh-day Adventist Church's Geo-Science Research Institute, John Baldwin, and Randy Yonker from the church's seminary, and Cliff Goldstein, the editor of the church's Sabbath School Study Guide. *Id.* at 143-44.

Wilson testified about the Seventh-day Adventist Church using programming time on Three Angels. The programs include the church's worship services from Fort Worth, Sacramento, Battle Creek, and Berrien Springs. *Id.* at 147-48. The videos also contain programs for "Amazing Facts," a television and radio ministry of the Adventist Church and Global Missions (a department at the church's headquarters) and Pacific Press (one of the

church's publishing institutions), "It Is Written," (a production of the church), and "Voice of Prophecy," (an Adventist denominational organization). *Id.* at 152-54.

Wilson testified that free offers made to the public by Three Angels included: "These Times," "Vibrant Life," "Health Planner," "Bible Readings for the Home," "The Great Controversy," "Desire of Ages," "Ministry of Healing, Education," all of which are Seventh-day Adventist Church publications. *Id.* at 155-56. The church's general vice president also indicated that in addition to the numerous contacts he has with Three Angels while in his position, he sees their programming from his home. *Id.* at 130. When asked about his knowledge of Three Angels' programming, he testified:

Three Angels ABN covers every aspect of church doctrine and is very much involved in showing all of these aspects.

Id. at 128. Again, with no objections made, the witness testified:

Q. Based upon your experience and knowledge, your review of these documents, your viewing of the television programming as you time permits, based upon your training as a minister of the Seventh Day Adventist Church and your responsibilities as an official of the church, do you have an opinion as to whether the programming and other activities of Three ABN are religious in context in keeping with Adventist theologians?

A. According to my knowledge, they are very consistent with Seventh Day Adventist theology and outreach and, as I mentioned before, their very name, although we keep referring to them as Three ABN, it is Three Angels Broadcasting Network, which refers back to Revelation 14:6-12, which is very much the core of the unique motivation and message that the Seventh Day Adventist Church has.

Q. And have you seen anything at all as you've watched the television programming or as you have looked through not only their monthly programming but the more comprehensive and detailed publications where they offer the videos of various programming that you would understand not to be within the teachings of the Adventist church, exclusively religious?

A. What I have seen is very much in line with what the Seventh Day Adventist Church would believe and seems to be part and parcel of the objectives and goals that the Seventh Day Adventist Church has.

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It was not until more than six weeks (specifically on September 9, 2002) after the Wilson deposition was taken and without prior objection to that deposition, that the Joint Department and Intervenors' Motion in Limine was filed to exclude Ted Wilson's testimony. The Applicant opposed this motion, pointing out that Ted Wilson would testify to the cooperative relationship between Three Angels and the church, as well as to the content of Three Angels programming.

Nevertheless, on September 7 the court ordered that:

5. The testimony of Ted Wilson and Dennis Fortin is [sic] barred as irrelevant because the witnesses have no knowledge of the use of the subject property. The authenticity of the Seventh-day Adventist teaching and religious activities is not at issue.

"A motion in limine . . . is a pretrial motion which seeks an order excluding certain evidence, and references to such evidence, on the ground that its admission would violate some ordinary rule of evidence." *Dept. of Public Works and Bldgs. v. Roehrig*, 359 N.E. 2d 752, 758, 45 Ill. App. 3d 189, 3 Ill. Dec. 893 (Ill. App. 5 Dist. 1977). Its use is primarily to avoid prejudicing a jury. *Id.* at 759. "In exercising its discretion, the . . . court should balance the prejudice that might be avoided against the complication or inconvenience that might be caused by granting the motion." *Id.* Here, neither the Department nor the intervenors have shown prejudice, and they should have been left to objecting to the evidence as it was offered at trial.

A motion in limine "presents in a pretrial setting, an issue of admissibility of evidence that is likely to arise at trial. As such, the order, like any other interlocutory order, remains subject to reconsideration by the court throughout the trial." *Schuler v. Mid. Central Cardiology*, 313 Ill. App. 3d 326, 246 Ill. Dec. 163, 729 N.E. 2d 536, 543 (Ill. App. 4 Dist. 2000).

When Three Angels made its offer of proof regarding Ted Wilson's deposition, counsel for Three Angels stated that Wilson was the church official who represented the church with regard to the agreement between Three Angels and the church (Offer of Proof No. 4 at pp. 19-20). It was noted that Wilson's testimony was based, in part, on having visited the site and having toured the facilities of the subject property. *Id.* at 20. In addition, Wilson has a satellite dish for Three Angels and is familiar with its programming and has continuing contact with

Three Angels about matters which concern the church as it relates to their agreement. *Id.* at 20-21.

As previously indicated, the order on the motion in limine was merely interlocutory. During the offer of proof, the Administrative Law Judge suggested the applicant was "going beyond an offer of proof, as far as stating what Wilson states." The judge concluded an offer of proof was merely to establish why applicant felt it should be admitted into evidence for a reviewing court. *Id.* at 24. In response, Three Angels' counsel urged that another purpose of an offer of proof is to provide the court with the opportunity to revisit the question of whether the motion in limine should in fact be changed, since it was an interlocutory order, and the testimony be entered as evidence. *Id.* at 24-25. In fact, Illinois courts have held that "[a]n offer of proof not only creates a record for review, it also appries the trial judge of specific evidence being offered so that he can make an informal ruling." *Green v. Union Pacific R.R. Co.*, 647 N.E.2d 1092, 1097 (Ill. App. 5 Dist. 1995). The court may then "reevaluate its prior ruling" in light of the offer of proof. *Snelson v. Kamm*, 745 N.E.2d 128, 148 (Ill. App. 4 Dist. 2001); *People v. Land*, 609 N.E.2d 1010, 1024 (Ill. App. 4 Dist. 1993).

Not only should the court take care with regard to its prior ruling on a motion in limine when an offer of proof is made, but an Illinois court has stated:

For future guidance to the trial courts, we would require a ruling on an offer of proof even though a ruling has been made on the same matter via a motion in limine. A motion in limine is a preliminary ruling which the court may change as the evidence in the trial is fully developed. In this case, defendants, in effect, asked for a change in the court's initial ruling through the offer of proof. The court heard the argument, but the record does not indicate an official ruling on defendants' offer.

Ely v. National Super Markets, Inc., 500 N.E.2d 120, 126 (Ill. App. 4 Dist. 1986).

When Three Angels made its offer of proof, it referenced the Illinois Religious Tax Exemption Statute which states that property used exclusively for religious purposes qualifies for exemption so long as it is not used with a view to a profit. *Id.* at 21. Three Angels further noted

that the court in *Evangelical Teacher Training Ass'n v. Novak*, 454 N.E.2d 836 (Ill. App. 2 Dist. 1983), had interpreted the "religious purpose" language to include the production of print, audio, visual and other material to train Christian educators. A television network established to evangelize the world with the Adventist religious teachings would be consistent with the *Evangelical Teacher Training* decision and the literal language of the exemption statute. This is particularly true in light of the holding in *Fairhaven v. Dept. of Revenue*, 153 Ill. App. 3d 763, 772, 506 N.E.2d 341, 348 (Ill. App. 4d 1987); where that court held that Illinois courts recognize that they "must accept the entity's characterization of its activities and beliefs as religious as long as the characterization is in good faith."

Under this standard, it seems that Ted Wilson's testimony concerning the activities of Three Angels and the implementation of its agreement with the Adventist Church should never have been excluded. Counsel for Intervenors stated that the motion in limine was only to exclude testimony that did not relate to "what went on that [subject] property when they [the witness] have never been on the property." TT 364-65. But much of Wilson's testimony *did* relate to what occurred on the subject property, as he had visited it. TT at 364-65. And the Court ruled that testimony about what occurred on the property was relevant. *Id.* at 366. The Court then struck testimony concerning church activities that did not take place on the property. *Id.* at 368. Counsel for the Department stated later on the record that "[w]hat's important is what are the activities [that go on, on the property], and do those activities under the law of the State of Illinois as voiced by the courts and the statutes amount to exempt activities." *Id.* at 503. Wilson specifically explained what activities he knew from personal observation and knowledge went on on the subject property.

When the question of health programming came up during the hearing, counsel for Three Angels asked the court "how the court is viewing the question of health programming and whether we need to demonstrate that it is religious or not." The court replied: "I think you do need to demonstrate that it's religious." *Id.* at 508. Under Three Angels' theory of the case, Three Angels had the right to prove this by both factual evidence and case law. And Wilson's

testimony went directly to this point. In fact, Intervenor's counsel argued that she had a right to adduce testimony from Danny Shelton as to why Three Angels' health programming is religious. *Id.* at 253-54. The court in fact permitted Intervenor's counsel to inquire about various religious activities in Studios A & B, such as "preaching." Intervenor's counsel opened the door (if, indeed, it were ever properly shut) for the type of testimony included in Wilson's deposition by inquiring of Danny Shelton: "When you're using that word, religious programming, can you identify what in your view those religious programs consist of?" *Id.* at 273-74. Mr. Shelton replied it included both preaching and health programming. *Id.* at 274. Counsel also asked about such Adventist religious practices as communion services. *Id.* at 361-62. Intervenor's counsel also inquired of Mr. Shelton if foot washing, marriage ceremonies, or baptisms – all religious rites of the Adventist Church – took place on the subject property. *Id.* at 541.

Because the deposition testimony of Ted Wilson was offered in its entirety and particularly in light of the fact that counsel were present to register objections and to cross-examine, Three Angels respectfully requests that the Administrative Law Judge reconsider its exclusionary order with regard to all of Wilson's testimony and to receive into evidence Ted Wilson's video deposition (Exhibits 25A and 25B) and the transcript (Exhibit 25C).

B. Evidence As To Tri-State Christian TV

The Department's argument that it is undecided whether a religious television station can be a tax-exempt, religious ministry in Illinois would be more convincing had the Department not previously granted an almost identical television network, WTCT-TV, a tax exemption. (Offer of Proof No. 6 pp. 30-37) Offer of Proof No. 6 constituted proof by way of documents furnished to Three Angels by the Department showing that the Department granted tax exemption to Tri-State Christian TV (WTCT-TV). The Department then did not distinguish between religious and secular which it now claims the right to do here. The only document in the Department's files as to Tri-State's activities is an affidavit stating:

This property is used as corporate offices and day to day operations of Tri-State Christian TV, Inc., will handle all corporate personnel and the operations of all stations in the Tri-State Network.

Id. at 33, Exhibit 27.

Exhibit 28 demonstrates the history of Tri-state Christian's tax exemption status from 1987 to the present. Exhibits 29 and 30 similarly show two other Tri-State Christian parcels with their tax exempt status. Exhibit 31 shows Tri-State Christian's program schedule which includes health and nutrition seminars in its programming. Exhibit 32 are videos of its "health" programming, which include blatant infomercials for books and formula supplements to cure cancer and other maladies.

Offer of Proof No. 7 pp. 38-39 is an Affidavit of Danny Shelton stating he has been personally on site at Tri-State Christian TV, and the only distinction between WTCT-TV and Three Angels is that WTCT-TV programming uses infomercial type programs to sell its books, tapes, and health-related formulas.

If Three Angels is denied its tax exemption, "selective taxation" will have occurred, and that is prohibited by the First Amendment to the United States Constitution. *See Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221 (1987). As that case observed, quoting from *Regan v. Times, Inc.*, 468 U.S. 641, 648-49 (1984): "Regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment." *Id.* at 230. The First Amendment requires strict scrutiny when there is a claim of discrimination regarding the content of the message in the denial of tax exemption. *Arkansas Project*, 481 U.S. at 236 (Scalia, J., dissenting). This should be especially true when it is a religious message. What the Department in effect does is to pick and choose *which* religious messages of religious television ministries are entitled to tax exempt status, and which are not.

The Department's counsel stated "[t]he only thing we would contest is whether . . . the actual activities on the property conform to the law of exemption in the State of Illinois." TT 509. Earlier in the Joint Department's and Intervenors' Responses to Applicant's Motion in Limine at 9, the Department and intervenors claimed that the Department may judge whether

applicant's programming with regard to vegetarian cooking, healthful diets, smoking cessation, and Christian stewardship falls within the Department's view of what is "religious."

In *Corporation of Presiding Bishop v. Amos*, 483 U.S. 327, 339 (1987), the Court flatly stated "laws discriminating *among* religions are subject to strict scrutiny." And the strict scrutiny standard is not just reserved for facial constitutional challenges to statutes. In *Sherbert v. Verner*, 374 U.S. 398 (1963), the Court stated that "Government may neither compel affirmation of a repugnant belief, nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities; nor employ the taxing power to inhibit the dissemination of particular religious views." *Id.* at 402

Justice O'Connor in her dissent in *Hernandez* underscored this concern and warned against drawing a line between "taxable and immune" when "drawn by an unsteady hand." 490 U.S. at 711-12. This, she concluded, would occur when there is "the differential application of a standard based on constitutionally impermissible differences drawn by the Government among religions." If Three Angels is denied tax exemption because the Department sifted through Three Angels' programming without any fixed standard of distinguishing sacred from secular, while Tri-State Christian TV in Williamson County enjoys the tax exemption blessing of the Department, the line between exempt and taxable clearly would have been inartfully and unconstitutionally drawn by the unsteady hand of the Department of Revenue. But this Court cannot know whether differing standards were use, if it is not willing to consider the evidence regarding Tri-State.

In *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540 (1993), the Court rejected the facial neutrality argument, stating "[f]acial neutrality is not determinative. The Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination. The Clause `forbids subtle departures from neutrality.'" The Court, quoting *Walz v. Tax Comm'n of New York City*, 397 U.S. 664 (1970) (Harlan, J., concurring), stated:

Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirements of facial neutrality. . . . "The Court must survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders."

Id.

These cases make clear that it is not sufficient that a legal scheme is neutral on its way. Courts must examine how agencies or officials apply that law, to ensure they do so in a religiously neutral manner. Thus, how the Department treats similarly situated religious media ministries *is* of vital relevance in this case. Contrary to the Department's contention, the administration of the tax exemption statute for religious organizations must be in keeping with state and federal constitutional constraints. The applicant should not be foreclosed or restricted at the hearing from presenting evidence necessary to support its constitutional argument.

The U.S. Supreme Court has explained why it is necessary to permit applicants such as Three Angels to present testimony about similarly situated entities in tax exemption disputes. In discussing appellant's contention of discriminatory treatment by the IRS, the Court stated:

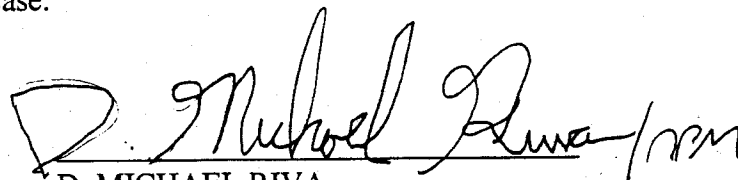
The development of the present litigation, however, makes it impossible for us to resolve petitioners' claim that they have received unjustifiably harsh treatment compared to adherents of other religions. . . . Perhaps because the theory of administrative inconsistency emerged only on appeal petitioners did not endeavor from trial to adduce from IRS or other sources, any specific evidence about other religious faiths' transactions. . . . In the absence of such facts, we simply have no way (other than the wholly illegitimate one of relying on our personal experiences and observations) to apprise accurately whether the IRS' revenue rulings have correctly applied a *quid pro quo* analysis with respect to any or all of the religious practices in question.⁴²

Because there is generally no further factual development allowed on appeal, the initial hearing is the forum for presentation of facts relating to constitutional violations. To hold the contrary view is to claim that the United States Constitution is *not* of ultimate authority in the administrative courts of Illinois. This claim would surely come as a great surprise to the founders and shapers of our Constitution, especially those who framed the Supremacy Clause

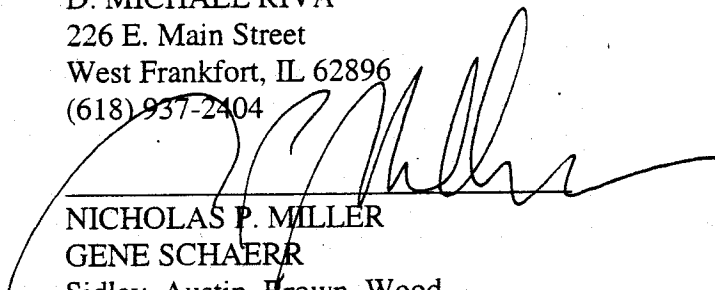
⁴² *Hernandez v. CIR*, 490 U.s. at 702.

and the Fourteenth Amendment. This Court should revisit its order excluding evidence as to Tri-State Christian TV, and should receive the offers of proof regarding that entities tax exemption into evidence in this case.

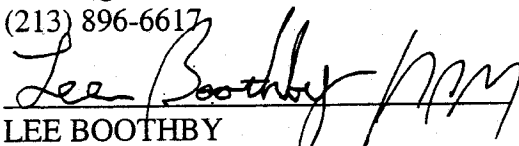
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Exhibit A



How can taxing authorities determine whether property is being used for religious purposes – and is thus eligible for a property tax exemption – without inquiring into religious beliefs in violation of the First Amendment? This article describes the Illinois approach to this challenge.

The “Religious Purposes” Property Tax Exemption and the First Amendment

By James W. Hilliard

Article IX, section 6 of the Illinois Constitution provides that the legislature may exempt from taxation only certain categories of property, one being that used for “religious purposes.” However, the First Amendment to the U.S. Constitution forbids government officials from inquiring into the content of religious beliefs.

Thus, taxing authorities and the

categories of property allowed in the Illinois Constitution. The categories are described in sections 15-35 through 15-180. Section 15-40 states in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers...performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

Like the religious-purposes exemption

statute, other property tax exemption statutes have “exclusive use” requirements. See 35 ILCS 200/15-35 through 15-180. Property satisfies the exclusive use requirement if it is primarily used for an exempted purpose, even if it is also used for a secondary or incidental purpose. Thus, if property is primarily used for a religious purpose, it can be used for secular purposes without destroying the exemption. Conversely, “if the primary use of the property is secular, the fact that a portion of it is incidentally used for a religious purpose

will not make it exempt from taxation.” *First Congregational Church v Bd of Review*, 254 Ill 220, 224, 98 NE 275, 276 (1912).

Thus, the crucial inquiry is whether the property is truly used for religious purposes. Of course, prior to making this determination, a government official must necessarily define the term “religious.” But governmental definition of religion – i.e., the distinguishing of religious from nonreligious purposes – raises several First Amendment concerns.

First Amendment principles and an influential New York case

The religion clauses. The Establishment Clause of the First Amendment prevents government from sponsoring, financially supporting, or being actively involved in religion. Even if a statute meets these tests, it must not produce an excessive entanglement with religion.

However, the Establishment and Free Exercise Clauses do not require a

“In reviewing an application for tax exemption, an official should assume that a good-faith purported purpose is religious, but should also determine whether the property is primarily used for religious purposes.”

courts that review their decisions are faced with the challenge of determining whether property is being used for a religious purpose without inquiring into the content of the property-owners’ beliefs. This article reviews how Illinois courts have struck this balance.

The “religious-purposes” exemption

As authorized by Article IX, section 6 of the Illinois Constitution, the General Assembly enacted section 15-10 of the Property Tax Code (35 ILCS 200/15-10), which establishes exemptions for the

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College of Law. The views expressed herein are solely those of the author.

rigid and total separation of church and state. Indeed, the religion clauses mandate that government accommodate all religions, showing hostility toward none.

In *Walz v Tax Comm'n of New York City*, 397 US 664 (1970), the Court held that New York state's property tax exemption to religious organizations for property used for religious purposes did not violate the Establishment Clause. In fact, the Court believed that taxation of church property would produce excessive entanglement and confrontation between church and state. The exemption minimizes the involvement, reinforces separation, and insulates each institution from the other. (An Establishment Clause challenge would probably lie if the exemption were granted only to religious organizations and not to secular organizations, or only to certain religious organizations and not to others. See *Committee for Public Education v Nyquist*, 413 US 756, 794 (1973)).

For its part, the Free Exercise Clause embraces two concepts - freedom to believe in religion and freedom to act on those beliefs. Although government can regulate religious conduct in extraordinary circumstances for the protection of society, freedom of religious belief is absolute. Therefore, government may not inquire into the truth or falsity of any religion. *United States v Ballard*, 322 US 78, 86-87 (1944).

The Holy Spirit case. In a New York case that has influenced Illinois courts, *Holy Spirit Ass'n for Unification of World Christianity v Tax Comm'n of City of New York*, 435 NE2d 662 (1982), the New York Court of Appeals explained the circumscribing effect of the religion clauses on the decision-making of state officials.

In that case, the Unification Church acquired title to three properties in 1975. The following year, the church applied to the tax authority for a property tax exemption. Following administrative hearings, the tax authority denied the church's application for an exemption, finding that the church was "so threaded with political motives and activities that it requires us to deny the application [because]...the political activity of the applicant is more than an incidental part of their operation." The tax authority did not consider whether the property was actually used for the claimed

religious purposes. *Holy Spirit*, 438 NYS 2d 521, 522 n 1 (NYAD 1981).

On judicial review, a special referee upheld the tax authority's denial, which the appellate division confirmed. The appellate division considered itself "compelled to conduct a broad inquiry into [the church's] doctrine and activities" to determine whether it qualified for the tax exemption. *Id.*, 438 NYS 2d at 526. The court reasoned that politics and economics are traditionally nonreligious fields, and the mere use of religious terminology would not obscure this fact. The court concluded that "political and economic theory is such a substantial part of petitioner's doctrine that it defeats petitioner's claim that its primary purpose is religious." *Id.*, 438 NYS 2d at 525.

The court of appeals, New York's highest court, unanimously reversed. After reviewing the First Amendment principles discussed earlier, the court wrote as follows:

When, as here, particular purposes and activities of a religious organization are claimed to be other than religious, the civil authorities may engage in but two inquiries: Does the religious organization assert that the challenged purposes and activities are religious, and is that assertion bona fide? Neither the courts nor the administrative agencies of the State or its subdivisions may go behind the declared content of religious beliefs any more than they may examine into their validity.

435 NE2d at 665.

The court found that the church's activities were rooted in its religion, and that the church's characterization of those activities was bona fide. The court remanded the cause to the tax authority to determine whether the property was actually used for the claimed religious purposes.

Illinois cases

Early decisions. Despite an early and isolated dictum to the contrary, government officials in Illinois have long recognized the First Amendment proscription explained in *Holy Spirit*. In an early case, *People ex rel McCullough v Deutsche Evangelisch Lutherische Jehovah Gemeinde*, 249 Ill 132, 94 NE 162 (1911), the Illinois Supreme Court, interpreting the religion-purposes property tax exemption in the 1870 Illinois Constitution, stated that "[a]s applied to the uses of property, a religious purpose means a use of such property by a religious society or

body of persons as a stated place for public worship, Sunday schools, and religious instruction." *Id.*, 94 NE at 164.

In a subsequent case, however, the court referred to this language and explained that "[t]his was not stated as inclusive of everything that might in the future be regarded as a use for religious purposes, but as illustrative of the nature of such use." *People ex rel Carson v Muldoon*, 306 Ill 234, 238, 137 NE 863, 864 (1922). The appellate court has held the quoted language in *Deutsche Gemeinde* to be dictum and concluded that the case "cannot be read as containing an authoritative definition of 'religious purposes.'" *Community Renewal Society v Dept of Labor*, 108 Ill App 3d 773, 779, 439 NE2d 975, 978 (1982).

Scripture Press. The Illinois Supreme Court's 1953 decision in *Scripture Press Foundation v Annunzio*, 414 Ill 339, 111 NE2d 519 (1953), represents the implicit recognition of the principles subsequently explained in *Holy Spirit*. The Scripture Press Foundation produced and sold religious literature and merchandise used by churches and Sunday schools and also provided advisory services. The foundation sought a refund of unemployment compensation contributions from the Illinois Department of Labor. The Unemployment Compensation Act provided an exemption for organizations formed and operated exclusively for religious purposes.

The director of labor determined that the foundation was not exempt from making contributions. On administrative review, the trial court reversed the department, finding that the foundation fell within the exemption. On appeal, the supreme court upheld the department, holding that the foundation was not entitled to the exemption. Although the court discussed *Deutsche Gemeinde*, it noted that "[o]ur attention has been called to no decision of this court attempting to lay down an all-inclusive definition or specification of what constitutes a religious purpose...." *Id.*, 111 NE2d at 526.

Reviewing the foundation's articles of incorporation, the supreme court noted the foundation's stated purposes: "The dissemination of the Gospel, the distribution of the Scriptures, of extracts therefrom, of devotional and other literature relating thereto, and of helps and supplies for use in Christian activities." Without discussion, the court assumed

that the foundation's asserted purposes were "religious."

However, the court examined whether the property was actually used for those purported religious purposes, finding that the foundation accomplished its stated purposes by selling literature and supplies to religious organizations, which in turn used them in conducting religious activities. The court concluded that "such activities are secular in nature and not exclusively religious,...the same as any other commercial service organization furnishing to a religious institution necessary services such as fuel, lights, building material," or other necessary items. *Id.*, 111 NE2d at 528.

The supreme court analyzed *Scripture Press* much as the New York high court did *Holy Spirit* a few decades later. *Scripture Press* stands for this rule: "Whether a party has been organized and operated exclusively for an exempt purpose is to be determined from its charter and by-laws and the actual facts relating to its method of operation." *Evangelical Teacher Training Ass'n v Novak*, 118 Ill App 3d 21, 24, 454 NE2d 836, 838 (1983) (citing *Scripture Press*).

Fairview Haven. In *Fairview Haven v Dept of Revenue*, 153 Ill App 3d 763, 506 NE2d 341 (4th D 1987), the Illinois Appellate Court adopted the reasoning of *Holy Spirit*. *Fairview Haven* represents the fullest and clearest expression in Illinois of the First Amendment principles implicitly followed in *Scripture Press* and explicitly recognized in *Holy Spirit*.

Fairview Haven was a senior citizens residence organized and supported by four congregations of a church denomination. The building contained apartments for self-sufficient residents; the remainder of the building was a state-licensed intermediate care facility. Fairview charged its residents different amounts for the various accommodations. However, Fairview accepted needy applicants to its intermediate care facility regardless of their ability to pay.

The church attempted to create av-

enues through which members demonstrated their faith by performing good works. Fairview Haven was one such avenue, providing church members with the opportunity to help the elderly. Fairview's organization and operation were linked to the church.

The Illinois Department of Revenue granted Fairview Haven tax-exempt status from its opening in 1962 until 1982. The department denied Fairview both a religious-purposes and a charitable-purposes tax exemption that year due to changes in Fairview's admission policy. On administrative review, the trial court reversed the department. The court found that the department's charitable-purposes determination was against the manifest weight of the evidence, and that the department's religious-purposes determination violated Fairview Haven's First Amendment rights.

The appellate court reversed that part of the trial court's order involving the religious-purposes tax exemption and upheld the department's denial of the exemption. In its analysis, the appellate court explicitly adopted the First Amendment approach of *Holy Spirit*: "In the tax context, the first amendment requires the court to accept the entity's characterization of its activities and beliefs as religious as long as the characterization is in good faith." *Id.*, 506 NE2d at 348 (citing *Holy Spirit*).

The court then explained that the department obeyed the First Amendment mandate. The department did not reject Fairview Haven's characterization of its purposes as religious. Rather, the department inquired into the primary actual use of the property. The court reasoned that the department's inquiry neither assessed the inherent validity of the church's beliefs nor determined whether the particular conduct conformed to the church's standards or purposes.

The appellate court upheld the department's determination that Fairview Haven's primary actual use was commercial in nature rather than religious.

The court accepted Fairview's stated religious purposes of providing an opportunity for church members to perform good works, care for the elderly, and evangelize. It noted that Fairview was actually used - incidentally - to fulfill these religious purposes. However, the court agreed with the department that Fairview's primary use was as a commercial nursing facility. The court concluded that the operation of this business did not constitute a religious purpose.

Conclusion

The analysis in *Fairview Haven*, explicitly based on First Amendment principles, provides clear guidance to taxing authorities and courts in determining the availability of the religious-purposes property tax exemption. When a government official is presented with an application for the exemption, he or she should assume the purported purpose to be truly "religious" if it is made in good faith. The official should then determine, based on all facts, whether the property in question is actually and primarily used for religious purposes, in addition to considering the other statutory requirements.

This rule makes abuse by applicants for exemption difficult, for at least three reasons. First, the asserted religious purpose must be bona fide. A record could contain sufficient evidence of fraud or sham to justify the decision-maker's disbelief in the applicant's stated religious purpose. Second, the property must actually and primarily be used for the stated religious purpose. Third, the property must not be "leased or otherwise used with a view to profit." 35 ILCS 200/15-40.

Tax authorities and courts in Illinois are forced to do a balancing act in ruling on applications for the religious-purposes property tax exemption. This task has been made easier by decisions such as *Fairview Haven*, which provide explicit guidelines for government officials. ■

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THREE ANGELS BROADCASTING
NETWORK, INC.,
Applicant

V.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

and

THOMPSONVILLE COMMUNITY
HIGH SCHOOL DISTRICT NO. 112, and
THOMPSONVILLE SCHOOL
DISTRICT NO. 62,
Intervenors.

Docket # 01-PT-0027

DEPARTMENT'S BRIEF

In this brief the Department treats certain issues with particular focus. The Intervenors file a separate brief which examines the full range of factual and legal matters in issue. Interests of the Department are in conformity with those of the Intervenors. Separate briefs are not intended and should not be interpreted as indication of disagreement between Department and Intervenors on any subject raised in this hearing, because there are none.

The applicant's arguments tend to center on its own religious *bona fides* and upon the sincerity of its beliefs and purposes. The Applicant seems to insist that sincerity of the purpose of ownership is sufficient to obtain an exemption from the local property tax (Applicant Three Angels Broadcasting Network, Inc. Post Trial Brief (hereafter "App. Brief"), p. 12). Department and Intervenors have consistently asserted that these factors are necessary, *a priori*, in order for a religious exemption to obtain, but that the primary use of the property, in addition to beliefs and purposes, is an essential determination for the fact finder. The applicable section of the Property Tax Code reads as follows:

§ 15-40. Religious purposes, orphanages, or school and religious purposes.
(a) Property used exclusively for:
 (1) religious purposes, or
 (2) school and religious purposes, or
 (3) orphanages
qualifies for exemption as long as it is not used with a view to profit (35 ILCS 200/15-40).

Applicant has applied for an exemption for a tract of real estate it owns. Its property must be "used exclusively" for religious purposes in order to obtain the exemption under the above-cited section *and* it must not be used with a view to a profit (Ibid.). The applicant puts significant reliance on *Fairview Haven v. Department of Revenue*, 153 Ill. App. 3d 763. The Department asserts that *Fairview Haven* unmistakably supports the idea that a religious exemption rests on two pillars, religious ownership and religious use.

As mentioned, Three Angels Broadcasting Network, Inc. has argued at length that it is a religious organization. The Department does not concede that point. It notes, in passing, that the applicant is a separate corporate entity, carrying out policies and beliefs of the Seventh Day Adventist Church pursuant to a contractual agreement. (Transcript, p.

97). The Applicant's status as a religious organization must be analyzed on its own merits. A corporation related by contract to a church should not be given a free ticket on the grounds that the church itself is sincere in its beliefs. Without giving ground on that issue, the Department does devote its arguments herein to the *use* of the real estate.

The court in *Fairview Haven* put this issue in its correct context. It was asked to review the Department of Revenue's denial of an exemption of a residential facility for the aged that had been organized and was operated by the Apostolic Christian Church of America. That applicant argued, as does Three Angels, that the Department's denial of the exemption was a violation of its constitutional right to free exercise of religion. It posited the opinion of the high court of the State of New York in *Holy Spirit Association for the Unification of World Christianity v. Tax Commission*, 55 N.Y. 2d 512 (1982) as determinative of that principle, as does Three Angels in this case.

The Illinois *Fairview Haven* court did exactly what the Department expects the tribunal in this case to do. It accepted the sincerity of the Apostolic Church's beliefs and purposes. *Fairview Haven* granted applicant's argument that it would be a violation of the First Amendment of the United States Constitution to look beyond sincerity to examine its beliefs and doctrines. However, having accepted the Church's beliefs and purposes as sincere, it proceeded to examine the actual use made of the real estate, just as the Illinois statute requires. It said:

No cases in Illinois have directly addressed the issue of the constitutional parameters of the religious-use inquiry in tax matters. However, the format set forth in *Holy Spirit* is persuasive and has been followed. First the Court must accept the organization's characterizations of the purpose of the activities and, second, determine whether the property is in fact exclusively used for the religious purposes. (*Fairview Haven*, *Ibid.*, 773).

This is what this administrative tribunal must do and it is what any court considering this case must do. It cannot exempt real estate that is primarily being used commercially, regardless of the sincerity of belief or purpose of its religious owner. The *Fairview Haven* court explains this principle with clarity:

Inquiry into the primary use to which property is in fact put under the facts presented in this case does not necessarily violate a party's first amendment rights as it neither assesses the inherent validity of the belief structure, nor determines whether the particular conduct conforms to the standards or purposes of a religious group. (Citations). Inquiry into the use to which the property was put is not precluded by constitutional principles. (*Fairview Haven*, Ibid.).

It would be appropriate to note here that the Department and the Intervenors argued the validity of these legal underpinnings in its submittal on procedural matters prior to hearing (Joint Department and Intervenor Response to Applicant's Motion *In Limine*) and again expressed the same principles at the hearing when arguing the relevance of certain testimony (Transcript, p. 511). Applicant's persistence in its claim that the Department has, in some way, intruded on its First Amendment right to free exercise of religion by insisting on the State's prerogative to examine conduct, activity or use at the site of the real estate is contradicted by the clear language of *Fairview Haven*, the case it cites for support of its mistaken assumptions. The following language from that case is impossible to miss:

Here it is not contested that the operation of Fairview provided an opportunity for members of the Apostolic Christian faith to carry out Christian service work, care for the elderly, and engage in evangelization. However, operation of the nursing home was not necessary for these religious purposes, which could also have been accomplished through other means. (Ibid., 774).

* * *

It is not contested that Fairview operated as a not-for-profit business with a contract, requirements for residency, provisions for payment, and provisions for discharge. The corporate purpose included the care and keeping of the elderly.

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Fairview's method of operation was businesslike. The Department's determination *based upon actual method of operation* that Fairview was not exempt for religious purposes was supported by the evidence. (*Fairview Haven*, Ibid., 774) (Emphasis supplied).

The *Fairview Haven* court decided that no part of the facility was exempt on *religious* grounds. This is important. The case Applicant herein relies upon in its arguments as the leading Illinois case on the issue did not grant the corporate applicant a religious exemption. Sincere religious purposes, by themselves, were not sufficient to obtain the exemption.

A closer look at the facts of the case is illustrative. The court found that an intermediate care portion of the facility was exempt for charitable reasons, but that certain independent living units were not. Those units required entrants to pay the full cost of construction up front, through a combination of loan and lease arrangement. The fiscal requirements set by the applicant were "obstacles in the way of charity being dispensed to all." (Ibid., 769). It is interesting to note that founding member churches did assist two applicants to the independent living units, but that this did not confer charitable use upon the corporate applicant. The court stated that, "there is no guarantee that such funding would be available nor does the fact that a separate corporate entity or person may voluntarily help an applicant alleviate the fact that the applicants are expected to have sufficient funds." (Ibid., 772).

The Department analyzes the *Fairview Haven* decision in such detail because the Applicant, in its arguments at hearing (Transcript, p 505-511) and in its brief (App. Brief, p. 12) entirely misrepresents its significance. Applicant mistakenly believes that the case carves out for it a First Amendment right to a property tax exemption if it sincerely believes that it should have one (Ibid.). The Department's analysis has clearly shown that

the *Fairview Haven* court denied its applicant's religious exemption in full, despite the fact that it found the applicant's religious beliefs and the purposes for its real estate ownership to be sincerely religious in nature. Applicant cites with approval one commentator's analysis of *Fairview Haven* (James W. Hilliard, "The Religious Purposes' Property Tax Exemption and the First Amendment," *Illinois Bar Journal*, Vol. 90, p. 549 (Oct. 2002)). It is again interesting to note that Mr. Hilliard supports the Department's oft-stated position and, with regard to the use of the real estate in *Fairview Haven*, reiterates what the Department has already stated herein:

The court accepted Fairview's stated religious purposes of providing an opportunity for church members to perform good works, care for the elderly, and evangelize. It noted that Fairview was actually used – incidentally – to fulfill these religious purposes. However, the court agreed with the department that Fairview's primary use was as a commercial nursing facility. The court concluded that the operation of this business did not constitute a religious purpose. (Ibid., p 551).

It has to be concluded that the Department is able to look at the actual activities, conduct and uses on the real estate parcel for which the exemption is applied and draw dispositive conclusions about whether they are of a religious nature, regardless of the sincerity of the Applicant's beliefs and purposes in undertaking them.

What is the actual use of the real estate for which an exemption has been applied in this matter? The applicant maintains a modern, state-of-the art, broadcasting facility on the site. It has a studio for the production of television programming. It employs highly competent television professionals who earn competitive salaries. (Transcript, pp. 82-84, 189). It owns equipment for recording and rebroadcasting its productions. It has powerful satellite uplink technology. It uses satellite links and transponders to carry the broadcast to nearly any location on the globe. (Transcript, pp. 69-76). Its monthly

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transponder rental cost is over \$200,000. (Transcript, p. 359). It sells satellite reception equipment in order to expand its viewer base. (Transcript, pp. 118-119). It sells publications. (Transcript, p. 118). It sells recordings. (Transcript, p. 360). It owns other production and broadcasting facilities in Russia and the Philippines. (Transcript, pp. 133-134). It owns an executive aircraft that allows the corporate principals to make numerous weekend visits to locations in the United States and across the entire globe where the broadcasts are received, in order to promote its programming and collect money. (Transcript, pp. 407-408).

The factors listed above indicate that the use of the real estate is for television broadcasting. There is no dispute on this point. The Department asserts that a television broadcasting facility is a commercial activity. The Applicant has the burden of proving that its activity is exempt. (*Evangelical Hospitals Corp. v. Department of Revenue*, 223 Ill. App. 3d 225, 231 (2nd Dist. 1991)).

The Applicant has not met its burden of proving how a television broadcasting facility can be exempt. It states that the content of its broadcast message is religious. (App. Brief, p. 18). This is particularly ironic, because, in another context, it insists that content of programming may not be examined. (App. Brief, p. 12). The Department agrees in full that it is prohibited by the First Amendment from analyzing the content of a religious message in making administrative determinations. To allow otherwise would violate the establishment clause of the First Amendment, by preferring religious content over secular content, a result that the United States Supreme Court found objectionable in *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1 (1989).

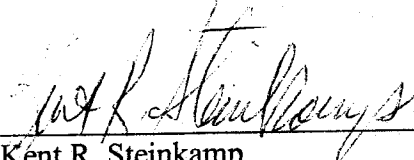
Fairview Haven v. Department of Revenue, supra., is helpful on this matter. It said that operation of a commercial rest home can provide an opportunity for members of a church to carry out some of its teachings. "However, operation of the nursing home was not necessary for these religious purposes, which could also have been accomplished through other means." (Ibid., 774). The same can be said of a television broadcasting facility. There is no doubt that activities carried out by Three Angels on the real estate parcel for which the exemption is applied can be used to greatly enhance any message, even a religious message, but *Fairview Haven* asks whether the religious purpose can "be accomplished by other means." (Ibid.). It did not specify that the other means must be as efficient or as successful. It simply said that commercial means cannot be translated into religious use by mere intentions.

There is a final, significant, reason why this exemption application should not be granted. To allow a television broadcasting facility to obtain a religious exemption would make it impossible for the Department to properly carry out its responsibilities under the property tax code. The free exercise clause of the First Amendment requires that the State remain neutral in its application of law to religious organizations. One way a commercial broadcaster enhances revenue is to place commercial products in programming in exchange for payment from sellers. If a religious organization chose to use this commercial technique to enhance its revenue, the State could discover it most effectively by monitoring programming. Monitoring religious programming for content would clearly violate neutrality principles of the free exercise clause. It would be monitoring only religious programming to see whether some non-religious activity could be detected. This would not be permitted and, therefore, the State would be severely

restricted in its enforcement of the law. Commercial activities, like television broadcasting, cannot be considered exempt uses. To do so would require too great an entanglement of government in religion.

For these reasons and for reasons expressed by Intervenors in their Brief, the Department asks this tribunal to determine that the use of the real estate owned by Three Angels Broadcasting Network, Inc. is neither religious nor charitable and to uphold the denial of exemption for it.

For the Department:



Kent R. Steinkamp
Special Assistant Attorney General

12/30/2002

**ILLINOIS DEPARTMENT OF REVENUE
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**

OFFICE OF THE
ADMINISTRATIVE CLERK
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**THREE ANGELS BROADCASTING
NETWORK, INC.,**

Applicant,

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,**

Respondent,

and

**THOMPSONVILLE COMMUNITY
HIGH SCHOOL DISTRICT NO. 112,
AND THOMPSONVILLE SCHOOL
DISTRICT NO. 62,**

Intervenors.

ADMINISTRATIVE CLERK
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**Docket No. 00-28-01
and
Docket No. 01-28-07**

Case No. 01-PT-0027

**INTERVENORS' MEMORANDUM OF LAW IN SUPPORT OF DETERMINATION
THAT APPLICANT'S REAL PROPERTY IS NOT
EXEMPT FROM PROPERTY TAXATION DURING 2000 AND 2001**

NOW COME Intervenors, Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, by and through their attorneys, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., and for Intervenors' Memorandum of Law in Support of Determination that Applicant's Real Property is Not Exempt from Property Taxation During 2000 and 2001, submit the following.

I. Introduction

Three Angels Broadcasting Network, Inc., Applicant herein, seeks exemption from taxation of properties owned by the corporation and located in Franklin County, Illinois. Two separate tax years, 2000 and 2001, are at issue in this consolidated appeal. These matters came

before the Hon. Barbara S. Rowe, Administrative Law Judge, for hearing on September 23–25, 2002 and arise from the Department of Revenue’s denials of Applicant’s Applications for tax exemption for the two years in question. *See generally* Tr. 26–28 and Respondent’s Exhibits 1 and 2.¹ Thompsonville Community High School District No. 112 and Thompsonville School District No. 62, local taxing entities with a revenue interest in these proceedings, intervened.

II. Factual Summary

Applicant Three Angels Broadcasting Network, Inc. (“3ABN” or “Applicant”) was formed in 1985 under the terms and provisions of the Illinois “General Not For Profit Corporation Act” as “Three Angels Broadcasting, Inc.” Appl. Exh. 2; Tr. 56–59.² According to the Seventh Amended Corporate Bylaws of Three Angels Broadcasting, Inc., the name of the corporation shall be “Three Angels Broadcasting Network, Inc.” Appl. Exh. 3, Tr. 59–60

The property in question is located in Franklin County, Illinois, and is commonly known and numbered as 3390 Charlie Good Road. The following three buildings are located on the subject five-acre parcel of real property:

A. Main Building. Approx. 30,000 sq. ft; Three stories. Serves as the Administrative/Production Building and houses ten (10) departments, to wit:

(1) Administrative Offices: President’s Office (approx. 16x20 ft.), Vice-President’s Office, Office Manager’s Office, Production Coordinator’s Office, Administrative Assistant’s Office (approx. 12x14 ft.), and Receptionist’s Area. (Entry is approx. 24x30 ft.)

(2) Financial Department: Approx. 42x44 ft. Financial Manager’s Office, Accounting Clerk’s work stations, and storage room for confidential materials

(3) Production Department: (Approx. 20x30 ft). Director’s Office, Production Assistant’s work station, Studio A (approx. 60x20 ft.), Studio

¹ Hereinafter, references to the Transcript commemorating the proceedings conducted on September 23 – 25, 2002 shall be designated by the abbreviation “Tr.” followed by the page number(s) in question. All references to the Applicant’s Exhibit will be designated as “Appl. Exh.” and references to Intervenor’s Exhibit will be designated as “Inter. Exh.”

² The Articles submitted into evidence constitute the Articles in effect for 2000 and 2001. Tr. 59.

B (approx. 60x90 ft.; incomplete; remote truck), Control Room, three Edit Bays, Producer's Office, Make-up Room, and Guest Waiting Room

(4) Engineering Department: Engineering Manager's Office, Engineering Administrative Assistant's Office, Engineering work station, Engineering Secretarial Office, and Equipment Room

(5) Housekeeping: Cleaning equipment/supplies room

(6) Bos Auditorium

(7) Marketing Department: Marketing Manager's Office, Assistant Marketing Manager's Office, and Marketing Clerical Office

(8) Pastoral Department: Two Pastoral Offices

(9) Graphics Department: Graphics Office and Special Projects Office

(10) Construction and Maintenance Department: Construction and Maintenance Department Manager Office.

Additionally, a kitchen and restrooms are present.

B. Maintenance and Construction Work Shop. (Separate from Main Building). Used to store Maintenance and Construction equipment, supplies, and to construct sets for Production Studios.

C. 3ABN Call Center. Approx. 7,000 sq.ft. (separate from Main Building) and consists of:

(1) Large work center with operator cubicles for taking phone calls and entering orders into computer

(2) Call Center Manager's Office

(3) Kitchen

(4) Printing Department

(5) Shipping and Receiving

(6) Storage (satellites, etc.), packaging, and operator area

(7) Downloading and technical support.

See generally Applicant's Exhibits 12 and 13, Tr. 122-127, as augmented by Tr. 80-92, Tr. 116-122, and Tr. 232-249. Applicant owns additional real properties not subject to this appeal, comprising, in total, approximately 400 acres. Some of this additional property is in the process of being sold and/or consists of apartments or other properties that generate rental income and/or governmental farm set-aside revenues, and some of said properties may be held by a related and newly-formed for-profit corporation. Tr. 190-196, 376-385; Appl. Exh. 13.

Danny Shelton, Applicant's President and Chief Executive Officer, provided an explanation of the "purposes" reflected in Applicant's Articles of Incorporation. During direct examination, Mr. Shelton characterizes Applicant's corporate "purposes" as follows:

* * * We develop. We plan. We promote. We produce, and direct incorporation with various other religious organizations, all types of religious programming where the electronic transmissions for television and radio broadcasting throughout the world.

We also do a number of other things, that we buy. We sell. We distribute. We produce in association with other, as we said earlier, religious ministries.

Tr. 54.

Although Applicant contends that it is a "religious media ministry," Intervenor respectfully submit that Applicant's primary occupation, and its use of the subject property, is the secular production, transmission, distribution, sale, and marketing of printed materials, reproduced video and audio products, air time, programming, and satellite equipment and/or services. While a significant portion of the materials, products, and services generated may incidentally relate to religious topics, Applicant is, primarily, a radio and television/satellite broadcasting, sales, and publishing corporation that sells, markets, and/or otherwise distributes

its products to outside entities or individuals.³ These outside entities are attracted to content that is consistent with tenets of the Seventh-day Adventist church, yet the existence of this religiously-oriented client base does not impute upon Applicant the characterization that Applicant is, itself, an institution using the subject property in furtherance of religious and/or charitable activities.

Furthermore, the record indicates that Applicant itself is a direct beneficiary of contractual relationships with churches and other religious ministries. For example, and with respect to "Joint Declaration of Commitment" between the General Conference of Seventh-day Adventist and Applicant, Mr. Shelton explained:

The circumstances was [sic], since we're promoting the church and viewed by members as Seventh-day Adventists, though we're not a Seventh-day Adventist institution, the church wanted to make sure that what we are doing and have some formal type of relationship, so that we can work closely together to make sure that we're not working in one direction and they're working in another, but that we could jointly work together, where they possibly could use our tools of communication, our broadcast tools and we could use their membership or their people that they have in different divisions to help promote Three ABN * * *

It actually was a reaffirmation of our, in our very beginning as we, our mission of Three ABN and when we entered into our original Bylaws to work closely with other religious institutions to promote, distribute, produce materials to reach the world, and so what we're reaffirming that we are, Three ABN is committed to helping the Seventh-day Adventist Church through our vehicle of broadcasting, radio, and television to get that message to the world* * *.

The church here is committed to supporting Three ABN, and they're also making a big statement that the Seventh-day Adventist official church believe in lay institutions like Three ABN, and that they have a value and a place within the church, even though we're not owned and controlled by the church and that they, therefore, are going to use their divisions around the world, their church

³ Per Danny Shelton, "Three ABN is a satellite. We work with satellite television and radio. We're networked there from Southern Illinois, that we're actually sending programs that mostly we produce and some that others within the church produce, and we send them to various downlink sites or various homes entirely around planet earth 24 hours a day seven days a week." Tr. 70.

institutions to utilize the production and distribution of Three Angels Broadcasting Network programs around the world.

Tr. 96-99. (Emphasis added). Applicant is a non-denominational corporation separate and distinct from the Seventh-day Adventist Church, and this distinction is advertised accordingly.
Tr. 368.

More specifically with respect to arrangements pertaining to satellite operations, Mr. Shelton explained:

Our church, we work with the church, has now 14,000 downlink sites. Adventist Churches around the world has [sic] thousands each of these big satellite systems. So if the churches want to receive, then they, wherever they are on the earth, also can receive it. It's a joint venture that we have.

Tr. 76. Such a joint venture provides Applicant an audience of "Adventist Churches around the world" to which its tapes, programming, and satellite services can be marketed.

On a day-to-day basis, the subject property is used to "beam both television and radio signal[s]" around the world via satellite, cable, television, and internet systems. Applicant's Exhibit 8. (Admitted for demonstrative purposes, only). "Programming" is either produced at the subject property or aired by 3ABN when an outside entity obtains air time from Applicant.⁴ The General Conference of the Seventh-day Adventist Church was numbered among the independent purchasers of air time from Applicant during 2000 and 2001. Tr. 368-370.

Viewers' purchase inquiries are routed to Applicant's "Call Center." This building serves as the printing, order placement, storage, shipping and distribution hub relating to products available for sale as published in its seasonal catalogs, the Sky Angel satellite system (that

⁴ 20 - 25% of the "airtime" is attributable to programming given or sold by Applicant to independent organizations. Tr. 147 - 148. A total of 791 hours of airtime was purchased, from Applicant, by outside entities in 2001. Tr. 369-370.

includes a satellite dish and sundry peripheral equipment, including the Sky Angel satellite program) or as “giveaways”⁵ (items provided free of charge in conjunction with certain programs).” Tr. 118–119, Tr. 288–289, Tr. 303–304.

3 ABN heavily markets its items for sale, including videocassettes, audio cassettes, CDs, and satellite equipment, through a barrage of publications such as its catalogs and newsletters and on-air advertisement. Inter. Exh. 5 – 9. To receive these items, individuals are referred to the 1-800 number listed as the Call Center. From there, individuals can place their orders by credit card payment (MasterCard, Visa and Discover). Inter. Exh. 4. No set policy is in place with respect to individuals that cannot afford to pay for the marketed items. Additionally, Applicant argues that a caller indicating an inability to pay for items regularly made available for sale may receive a reduced purchase price or fee. See generally Tr. 171–172. A closer inspection of the record shows, however, that any such marketed items are provided to a viewer at a free or reduced cost are, at best, nominal in quantity. Further, Applicant provided no documents to show which marketed items were provided, upon request of a viewer, for free or at a reduced cost. Rather, the calls are forwarded from the “Call Center” to Mollie Steenson, 3ABN’s “Department Coordinator” who weighs the viability and worthiness of the request. If, in her opinion, the request is worthy, it is then forwarded to Mr. Shelton, the self-appointed sole determiner of qualification for reduction or no cost. No policy by the Board of Directors appoints Mr. Shelton to this lauded position nor does 3ABN have a formal policy has been

⁵ Applicant contends that certain materials are coined the term “giveaways” — somehow diminishes the overall use of the property to fall within the scope of “charity”. The record is devoid of any specific testimony or evidence as to where the “giveaway” items are obtained, stored, or, in fact, how it is determined what items will be used as a “giveaway”. Applicant confuses the “giveaways” with those items that are for sale as advertised in its catalog.

adopted by the Board of Directors with respect to terms or conditions to evaluate such requests by Steenson or Mr. Shelton. Tr. 298-300. When questioned under cross-examination, Steenson could not quantify the number of requests forwarded to, and acted upon by Mr. Shelton so the record remains devoid of reliable and credible evidence relating to the scope of Applicant's "reduced pricing" practices. The only testimony elicited regarding cost reduction was Mr. Shelton's own self-serving statement where he states that only approximately 5 or 6 satellite systems have been given away during each of the years in question. No records of such charity were recorded or produced.

Applicant contends that it maintains a "prayer line" on the subject property, and that a dedicated toll-free "800" number is routed through the main reception desk in a manner whereby "we try to keep the 1-800 number specifically for prayer." Tr. 32, 236, 531-532, 607-608. In actual practice, however, it is abundantly clear that the 1-800 number is used for several commercial purposes, to wit: advertised in printed catalogs of items Applicant sells and inclusion on promotional materials including order forms accompanying musical products that generate royalty payments to individuals, Tr. 611, 617-619, 643-645.

It is also imperative to note that no portions of the subject properties are dedicated to traditional worship services open to the public. Applicant attempts to place significance on "religious content" programs and occasional evangelical events produced or held on portions of the property, but the overwhelming weight of the evidence indicates that any worship activities occurring in conjunction with 3ABN's activities are actually conducted off-site at the nearby school and church, (Tr. 533), that 15 minute staff-only (non-public) prayer services are conducted only once or twice weekly on the subject property, (Tr. 537-540), and that Pastor

Bishop is unaware of any sabbath services; baptisms, foot washings, or marriage ceremonies ever held at the main production facility and/or advertised to the general public. (Tr. 539-541). The only pastoral offices located at the main facility consist of two very small offices, located exclusively in the Main Building, of the greater than 37,000 square feet of total improvements comprising the subject property. Tr. 32, 537.

Applicant's assets have accumulated to the sum of approximately 42 Million Dollars, greater than three times Applicant's annual revenues, and currently include the aforementioned real properties and a corporate airplane. Tr. 489, 405. Independent for-profit entities, including a new corporation and an independent record label, appear to be spin-offs of Applicant and maintain intimate ties to Applicant. See generally Tr. 371-372, 376-385, 594-596, 601, 617-623, and 643-644 and the discussion of "Angel Enterprises, L.L.C." at Tr. 377-381.

Additional salient factual considerations will be discussed, with greater specificity, in the following "Argument" section of this Intervenor's Memorandum of Law.

III. Argument

A. Constitutional and Statutory Provisions

The *Illinois Constitution of 1970* establishes narrowly defined and limited categories of properties that may, if the General Assembly by law so determines, be entitled to exemption from taxation.

Article IX, §6 of the *Illinois Constitution of 1970* provides, in part:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing, but, instead, simply authorizes the General Assembly to adopt and enact legislation exempting from taxation property described within the aforementioned constitutional limitations. *City of Chicago v. Illinois Department of Revenue*, 147 Ill.2d 484 (1992). The power of the General Assembly is, accordingly, limited by the Illinois Constitution. Neither the General Assembly nor any court or other entity can broaden or enlarge the tax exemptions authorized by the Illinois Constitution. Similarly, no exemption may be granted unless authorized by the Illinois Constitution. *Board of Certified Safety Professionals, Inc. v. Johnson*, 112 Ill.2d 542 (1986). Further, the General Assembly is not constitutionally required to exempt property from taxation and may place limitations on the granting of such an exemption. *Village of Oak Park v. Rosewell*, 115 Ill.App.3d 497 (1st Dist. 1983). Any statute authorizing exemption from taxation must be strictly construed against the party asserting the claim of exemption. *See generally International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956).

Exercising its authority under the Illinois Constitution of 1970, the General Assembly adopted the following pertinent provisions:

§ 15-40. Religious purposes, orphanages, or school and religious purposes. All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents, and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

35 ILCS 200/15-40. (Emphasis added).

§ 15-65. Charitable purposes. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

(b) beneficent and charitable organizations whose owner, and no other person, uses the property exclusively for the distribution, sale or resale of donated goods and related activities and uses all income from those activities to support the charitable, religious or beneficent activities of the owner, whether or not such activities occur on the property;

(c) old people's homes, facilities for persons with developmental disabilities, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code or its successor and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or (ii) the home or facility is qualified, built and financed under Section 202 of the National Housing Act of 1959 as amended.

35 ILCS 200/15-65. (Emphasis added).⁶

⁶ It is interesting to note that Applicant, in its very first paragraph of its Post-Trial brief, laments that "[i]ronically, both the Federal Government and the State of Illinois has [sic] already recognized Three Angels to be organized and operated for tax-exempt, charitable purposes for these years ... All the evidence at trial was entirely consistent with these earlier rulings regarding Three Angels' charitable, tax-exempt status. Thus, this Court should rule consistently with these previous findings." Appl. Brief, 1 - 2. The true irony to be found in this primary argument from Applicant arises from the fact that Applicant steadfastly refuses to acknowledge that neither the Federal Government, nor the State of Illinois when reviewing sales tax exemptions, are bound to follow the Illinois constitutional and statutory provisions applicable to property tax exemption. Further, Applicant's arguments do not set forth why this administrative agency should depart from well-settled law finding distinct differences in obtaining a sales tax exemption or not-for-profit status from the property tax exemption standard. In an apparent attempt to muddy the waters, (and, perhaps, to garner sympathy), Applicant is comparing apples to oranges. Neither the Federal Government's, nor the state of Illinois' prior determinations arising in different situational contexts, are governed by the provisions of Article IX, §6 of the Illinois Constitution of 1970 and the attendant property tax statutory provisions. Even if we were to assume, *arguendo*, that the bestowal of sales tax exemption and 501(c)(3) standing were appropriately granted, such an assumption would be irrelevant, as a matter of law, to the review at hand.

B. Standards of Construction, Judicial Presumptions, and Burdens of Proof

As previously indicated, any statute authorizing tax exemption must be strictly construed against the party asserting the claim of exemption. See *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Taxation statutes must be strictly construed in favor of taxation. *Board of Certified Professionals v. Johnson*, 112 Ill.2d 542, 494 N.E.2d 485 (1986); *Benedictine Sisters v. Department of Revenue*, 115 Ill.App.3d 325, 508 N.E.2d 470 (2nd Dist. 1987).

Whenever doubt arises, it must be resolved in favor of taxation and against exemption. *People ex. rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1941). There is a presumption against the exemption of property from taxation and any doubt whether an exemption is applicable must be resolved in favor of taxation. *United Air Lines, Inc. v. Johnson*, 84 Ill.2d 446, 419 N.E.2d 899 (1981); *Benedictine Sisters v. Department of Revenue*, 115 Ill.App.3d 325, 508 N.E.2d 470 (2nd Dist. 1987); *Electrical School v. Paschen*, 12 Ill.2d 387, 397, 146 N.E.2d 73, 79 (1957).

Moreover, the burden of establishing an entitlement to tax exemption rests on the party seeking exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967). "The taxing authorities must decide the question from a consideration of the facts stated, and not from the conclusion of any person as to what comes within the scope of" the exempt purpose. *The People v. Deutsche Gemeinde*, 249 Ill. 132, 136, 94 N.E. 162, (1911).

C. "Religious" Tax Exemption Standards and 3ABN's Claim for Religious Exemption

The very manner in which Applicant 3ABN is organized and operated as a corporation renders a review of "religious exemption" standards inapplicable and

irrelevant, as a matter of law, to the factual pattern at hand. Assuming, *arguendo*, that a “religious exemption” analysis could even be reached, Applicant 3ABN’s use of the subject properties fails to comport with prevailing statutory and judicial standards authorizing exemption.

As a preliminary matter, it is imperative to note that Applicant is organized and operated as an Illinois “General Not For Profit Corporation,” (App. Ex. 2, Tr. 56-59), and that Applicant has not availed itself of the provisions of the Illinois Religious Corporations Act, 805 ILCS 110/0.01 – 805 ILCS 110/51.⁷ The Illinois General Assembly has recognized organizational and operational differences between General Not For Profit Corporations and Religious Corporations, has implemented separate statutory schemes to govern these respective differences and operations, and has commemorated the resulting different enabling provisions in separate and distinct Acts. Implicit to such legislative action is the recognition that Religious Corporations and General Not For Profit Corporations are separate, distinct, and different entities. As a matter of law, Applicant has not been organized as, and is not, a Religious Corporation. Consequently, Intervenor submit that Applicant cannot avail itself of benefits (including those relating to potential religious property tax exemption) conferred upon properly organized, recognized, and acting “religious” corporations. Notwithstanding the foregoing, Intervenor submit the following analysis to illustrate that Applicant would not satisfy prevailing

⁷ Contrast General Not For Profit Corporation Act of 1986, 805 ILCS 105/101.01 *et seq.* Applicant relies on *Congregational Sunday School and Publishing Society v. Board of Review*, 290 Ill. 108, 125 N.E. 7 (1919) in support of its claim for exemption. This case is clearly distinguishable as the Court was interpreting a specific statutory provision, to wit: section 46 of the Corporation Act, Hurd’s Stat. 1917, p.707. Said provision is the precursor to 805 ILCS 110/46 of the Illinois Religious Corporations Act, and expressly authorized religious corporations to publish, print, circulate, sell or give away such religious, Sabbath school and missionary tracts, periodicals or books as they may deem necessary to the promotion of religion and morality. *Congregational Sunday School* at 110. The discussion tendered by Applicant with respect to *Congregational Sunday School* is completely misplaced, inapplicable, and irrelevant, as a matter of law, in light of applicant’s underlying corporate characteristics and designation.

“religious” property tax exemption “use” standards even assuming that it were properly organized as a religious corporation.

35 ILCS 200/15-40 establishes the standard for obtaining an exemption from property tax. First the property must be “used exclusively for religious purposes” and second must “not leased or otherwise used with a view to profit...” This standard is satisfied if it is shown that the property is primarily used for a religious purpose, even though it may also be used for a secondary or incidental purpose. *McKenzie v. Johnson*, 98 Ill.2d 87, 456 N.E.2d 73 (1983).

In its seminal case defining religious purpose, the Illinois Supreme Court in *The People v. Deutsche Gemeinde* explained:

Unless facts are stated from which it can be seen that the use is religious or a school use in the sense in which the term is used in the constitution the application should be denied. The words used in the constitution are to be taken in their ordinary acceptation and under the rule of strict construction, which excludes all purposes not within the contemplation of the framers of that instrument. While religion, in its broadest sense, includes all forms and phases of belief in the existence of superior beings capable of exercising power over the human race, yet in the common understanding and its application to the people of this State it means the formal recognition of God as members of societies and associations. As applied to the uses of property, a religious purpose means a use of such property by a **religious society or body of persons as a stated place for worship, Sunday schools and religious instruction.**

Deutsche Gemeinde, 249 Ill. at 136-137. (Emphasis added).

With respect to its alleged entitlement to “religious” exemption, Applicant contends that “Three Angels runs a not-for-profit, religious media ministry that engages in exclusively religious purposes that further the message and mission of the Seventh-day Adventist church.” Applicant’s Post-Trial Brief, 2. Furthermore, Applicant claims that 3ABN’s “ministry spreads the message of the three angels through preaching, Biblical teaching, and gospel music and

singing that it airs on various satellite, broadcast and cable television stations, as well as satellite radio stations, throughout North America and the world.” *Id.*, citing Tr. 70-76. In conclusion, Applicant argues, “[a]ll factors considered, the evidence showed that Three Angels is the archetypal religious media ministry run exclusively for religious and charitable purposes.” *Id.* at 7.

Assuming, *arguendo*, that Applicant is, in fact, properly characterized as the “archetypal religious media ministry,” any such prototypical entity seeking a religious tax exemption in the state of Illinois must still satisfy extant statutory and judicial standards relating to the bestowal of exemption. Regardless of how Applicant contends it is run, and even if Applicant is the first of its “religious media ministry” kind, the threshold question remains: Is use of property by a purportedly religious “media ministry” a “religious purpose” as defined by 35 ILCS 200/15-40?

Because *Deutsche Gemeinde, supra*, explains that a “religious purpose means a use of such property by a religious society or body of persons as a stated place for worship, Sunday schools and religious instruction,” this question must be answered in the negative. Applicant unequivocally fails to satisfy this threshold prerequisite and Applicant cannot be granted a religious tax exemption. Applicant itself is not a “religious society or body of persons” using the property in question as a “stated place for worship, Sunday school and religious instruction.” Applicant admits that none of those activities occur on the property in question.

First and foremost, Applicant is a “lay institution” (Tr. 99) that has entered into a formal joint-venture-type of arrangement with the Seventh-day Adventist Church and/or with “various other religious organizations,” (Tr. 76). In fact, implicit to the Joint Declaration of Commitment is the requirement that the Seventh-day Adventist Church itself, will stand committed to supporting the efforts of Applicant. Tr. 96-99.

The primary uses of the property by Applicant relate to the production, engineering, advertising, distribution, and/or sale of air time, catalogs, videotapes, cds, satellite equipment and/or "programming," and these primary uses are not "religious activities" as defined by *Deutsche Gemeinde, supra*. Applicant's primary use of the property does not even relate to the provision of "a stated place for public worship, Sunday schools and religious instruction," so Applicant's demand for religious exemption must be denied accordingly.⁸

D. "Charitable" Tax Exemption Standards and 3ABN's Claim for Charitable Exemption

Applicant's use of the subject properties fails to comport with prevailing statutory and judicial standards authorizing the bestowal of charitable property tax exemption, and its claim for tax exemption must be denied.

Section 15-65 of the *Revenue Code* authorizes an exemption for property "actually and exclusively used for charitable . . . purposes, and not leased or otherwise used with a view to profit." 35 ILCS 200/15-65. "Charity" has been defined by the Illinois Supreme Court as:

A gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction for their general welfare – or in some way reducing the burdens of government.

Crerar v. Williams, 145 Ill. 625 at 643 (1893).

When determining whether an organization is "charitable" for purposes of consideration of tax exemption, courts first look to organizational documents. *Morton Temple Association v. Department of Revenue*, 158 Ill.App.3d 794, 796 (3rd Dist. 1987).⁹ In the instant situation,

⁸ Additional judicial standards and supplemental specific discussions relating to (1) Applicant's primary and incidental uses of the property in question and (2) "view to a profit" considerations will be discussed, *infra*, in the section of this Memorandum pertaining to Applicant's Arguments. Furthermore, and as indicated by Pastor Bishop, it appears as though the public is not aware, or advised, of prayer-related activities that may occur on the property. Tr. 539-541. Per *Deutsche Gemeinde*, (and contrary to the factual pattern at hand), places entitled to exemption must be "stated."

⁹ Applicant's Bylaws fail to specify even the nature of any alleged charity that is to be dispensed. Illinois courts have long held that the lack of such wording in an organizational document can be used as a basis for determining that the subject property is not a "charitable organization" for which it can be considered for tax exempt purposes. *People ex. rel. Nordlund v. Association of the Winnebago Home for the Aged*, 40 Ill.2d 91 (1968); *Albion Ruritan Club v. Department of Revenue*, 209 Ill.App.3d 914 (5th Dist. 1991). As the Supreme Court admonished in

Applicant's Seventh Amended Bylaws indicate an introductory "purpose" to comport with Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, and delineate nine (9) specifically permitted corporate activities, to wit in summary form:

1. develop, plan, promote, produce and direct in cooperation with various religious organizations, all types of religious programming for electronic transmission for television and radio broadcasting throughout the world.
2. buy, sell, distribute and otherwise acquire or dispose of all kinds of television and radio apparatus properly incidental to or connected with the purpose of this corporation.
3. develop, plan, promote, produce, direct and distribute recorded music and video recorded programs to further the purposes of the corporation.
4. own or operate facilities or own other assets for the public's welfare.
5. solicit support for the corporation's activities from the public generally and through a board of directors.
6. promote, by donation, loan or otherwise, the interests of any not-for-profit and federally tax-exempt organizations which are affiliated with the corporation, the purposes of which are not inconsistent with those of the corporation.
7. own, lease, or otherwise deal with all property, real and personal, to be used in furtherance of these purposes.
8. contract with other organizations, for-profit and not-for-profit, with individuals, and with governmental agencies in furtherance of these purposes.
9. otherwise operate within the meaning of Section 501 ©)(3) of the Internal Revenue Code, with prohibitions against inurement and political, etc., participation.

Although the aforementioned Bylaws express, generically and by way of introduction, that the corporate "purposes" are exclusively religious, charitable, scientific or educational, the

Small v. Pringle, 60 Ill.2d 510 (1975), the most compelling factor is whether an applicant provides a fee waiver for those individuals that cannot afford its fees. In the pending matter, no such provision for a fee waiver has been commemorated in Applicant's corporate documents or even established by action of the Board of Directors. See Tr. 298-300, 587.

subsequently-delineated permissive activities illustrate that Applicant's organizational documents fail to satisfy the threshold tests set forth in *Crerar v. Williams, Methodist Old Peoples Home v. Korzen*, and *DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations*.

The aforementioned nine permitted activities are somewhat redundant and circular in nature. Purpose 1 sets forth the prevailing activity, to "develop, plan, promote, produce and direct in cooperation with various religious organizations, all types of religious programming for electronic transmission for television and radio broadcasting throughout the world." Purposes 2, 3, 6, 7, and 8 recite specific activities that may be undertaken in order to accomplish "the purposes" or "these purposes." Purpose 4 allows for the ownership and operation of facilities and assets, while Purpose 5 enables the corporation to "solicit support for the corporation's activities from the public" (Emphasis added). Finally, Purpose 9 requires compliance with section 501(c)(3) of the Internal Revenue Service code.¹⁰

The Illinois Supreme Court further established the following guidelines to effectuate a review of "charitable" entitlement to tax exemption and requires: (1) the benefits derived are for an indefinite number of persons, persuading them towards an educational or religious conviction; (2) the organization has no capital, capital stock, or shareholders, and does not profit; (3) the funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in the charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the

¹⁰ At this point, it is necessary to reiterate the inapplicability of characterization by the IRS to the determination of whether, under specific Illinois law, an entity is entitled to property tax exemption. Different standards and tests govern the distinct treatments under IRS and Illinois law. Not only are threshold "qualification" requirements and tests different, but operational regulations rules relating to the treatment of donations, (deductions, reported income, etc.), differ under the separate schemes.

property is for charitable purposes. *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149 at 157, 233 N.E.2d 537 at 542 (1968). The focus of such exemption is whether the requesting entity serves the public interest and lessens the State's burden. *DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations*, 274 Ill.App.3d 461 at 466 (2nd Dist. 1995).

With respect to the "capital/profit" prong of *Methodist Old Peoples Home v. Korzen*, Intervenor submit that the property in question is used with a view to the accumulation of profit. Both (1) Applicant's own corporate growth and profit and (2) profit inuring to individuals result from Applicant's use of the property. Per Applicant's 2001 financial statement, Applicant's total assets have accumulated to over 42 Million Dollars, approximately three times Applicant's 2001 total revenue of slightly under 14 Million Dollars. Tr. 489, 433.¹¹ Although Applicant neither issues capital stock nor consists of shareholders, the capital raised and accumulated by Applicant includes real property, an airplane, and state-of-the-art recording studios and other audio/visual production facilities and tools. Furthermore, Applicant's activities to date have brought it to a position whereby it can now consider the spin-off of corporations dedicated to the for-profit transfer of real property (Tr. 376-385). Additionally, accumulated capital equipment and resources obtained and maintained by Applicant (for example, a manned and published/advertised toll-free number for ordering music) appear to be used in conjunction with the establishment of an independent music label and related operations (Tr. 371-372) with at least one individual receiving personal and individual profit. Tr. 617-623, 643-645. In light of the foregoing considerations, Intervenor submit that Applicant fails to comply with both the

¹¹ As indicated previously, Applicant owns additional real property and receives rental/government subsidy revenues. Tr. 190-195, 376-385.

“held in trust” and the “no capital” / “no personal inurement” prongs of *Methodist Old Peoples Home* and, consequently, that Applicant fails to qualify for receipt of a charitable real property tax exemption.

Furthermore, and with respect to the first, forth, and fifth prongs of *Methodist Old Peoples Home*, Applicant’s Bylaws are notably devoid of any reference, whatsoever, either to any sort of “*Crerar Gift*” to be granted to an “indefinite number” of recipients or to a commitment to reduce any type of governmental burden. Applicant receives donations, both dedicated and unrestricted, from the public and generates additional revenue from the sale of air time and products,¹² for a total annual revenue amount of approximately 14 Million Dollars annually. Applicant serves as a pass-through of dedicated funds donated directly by individuals, (Tr. 343-354), yet how the remaining “unrestricted” monies devoted to bestowing any sort of *Crerar-gift* to an indefinite number of persons or to reducing governmental burdens is unknown. The transmission of programming is facilitated through satellite transmission,¹³ thereby establishing the need for potential viewers to purchase (from Applicant or, possibly, independent providers)¹⁴ satellite services and equipment. As previously discussed, costs to viewers associated with such purchases are significant and constitute a prohibited “obstacle” which prohibits the disbursal to all who need and apply for same. Call Center workers will

¹² See generally App. Ex. 10. While Applicant does, in fact, receive funds from charitable donations, Intervenor submit that a significant source of revenue is the direct sale of product and services to individuals and other entities, thereby violating the third *Methodist Old Peoples Home* prong. Furthermore, Applicant has not satisfied its burden to establish that said funds are held in trust for qualifying purposes, (as required by the aforementioned third prong), because of the considerations discussed *supra* with respect to the accumulation/inurement of profit and the formation of related for-profit enterprises.

¹³ Intervenor concede that additional radio, television, and cable transmissions may be available to recipients, yet the primary focus of Applicant’s operation appears to be based upon a sophisticated satellite system.

¹⁴ Tr. 314. Applicant may serve as merely a “pass-through” of payments relating to SkyAngel programming subscriptions, yet the record is not clear with respect to specific payment provisions. Applicant bears a clear and convincing burden of proof to establish that Applicant, itself, provides a charitable gift, and Applicant has not met that burden in the instant situation.

accommodate payment for requested products and services, but they are neither trained nor authorized to reduce prices for non-giveaway items. *See generally* Tr. 586-590.

Applicant contends that pricing of products and services distributed by Applicant is established generally by “affordability.” Tr. 169. Although Applicant contends that items may be sold at a loss, no specific current information appears to have been maintained by Applicant with respect to product costs or corporate cost allocations.¹⁵ Rather Applicant, in a day of trial attempt, tried to introduce a document showing such corporate cost allocations. In this attempt, Applicant makes an admission that “affordability” is not the standard used by Applicant. Further, this last ditch effort shows that the Intervenors’ assertion – that such a cost analysis undertaking is required and has been previously imposed by the Department of Revenue¹⁶ – is a fatal and significant flaw thereby undermining Applicant’s ability to meet the required “clear and convincing” evidence burden of proof standard. (Appl. Offer of Proof 2). This is further acknowledged by 3ABN’s founder and chief executive officer, Danny Shelton, during testimony stated that the focus on pricing items was “to maintain [its] business”. Tr. 360.

The network of programming created by Applicant ensures that an audience is reached from whom donations are received, and said donations, together with revenues received from the sale of products, total approximately 14 Million Dollars a year and have lead to an accumulation of approximately 42 Million Dollars of net corporate assets. Even assuming that satellites and/or programming systems are sold to purchasers at or slightly below cost, can such activity be considered a “benefit to an indefinite number of persons,” or should such activity be considered

¹⁵ *See generally* Tr. 361, 461-462, 488.

¹⁶ *See, All Saints Antiochian Orthodox Church v. Illinois Department of Revenue*, 00-PT-0074 (Illinois Department of Revenue, January 7, 2002, Alan I. Marcus, ALJ), citing *Congregational Sunday School and Publishing Society v. Board of Review*, 290 Ill. 108 (1919).

a benefit to Applicant, itself, as it continues to expand its audience of potential donors by providing them the delivery system necessary to receive the programming in question?

Finally, the sixth prong of *Methodist Old Peoples Home* requires a “primary” use analysis. As discussed in the section of this Brief relating to “religious” exemptions, Intervenor submits that Applicant cannot satisfy this prong of the “charitable” standards.

E. Applicant’s Arguments

Applicant’s argument against property taxation is based upon an admixture of tests (combining both religious and charitable exemption tests) from which Applicant selectively culls components desirable to its goal of achieving tax exemption. The resulting fabricated argument presented by Applicant is significantly more lenient, in its bestowal of tax exemption, than any of the individual underlying tests cited by Applicant. Nevertheless, the facts germane to these appeals would fail to support the granting of exemption even if the relaxed legal tests proffered by Applicant were to be sanctioned. Especially in light of *The People v. Deutsche Gemeinde*’s warning that “taxing authorities must decide the question from a consideration of the facts stated, and not from the conclusion of any person as to what comes within the scope of religious and school purposes,” the facts presented simply do not support the granting of tax exemption in the instant situation. *Deutsche Gemeinde*, 249 Ill. 132 at 136.

Citing *The Congregational Sunday School and Publishing Society v. Board of Review*, 290 Ill. 108, 112, 125 N.E. 7, 9 (1919)¹⁷, and *Inter-Varsity Fellowship of the United States of*

¹⁷ The only other Illinois Supreme Court decision referenced by Applicant in support of this branch of its argument is *The Congregational Sunday School and Publishing Society v. Board of Review*, 290 Ill. 108, 125 N.E. 7 (1919). While *Congregational Sunday School* grants an exemption to an entity sharing some similarities of operation with Applicant, it is necessary to note that *Scripture Press, infra*, specifically reviewed *Congregational Sunday School* and that *Scripture Press* expressly distinguished the findings and rationale of *Congregational Sunday School*, thereby establishing the prevailing standard applicable to a review of religious “exclusivity” tests. Notes *Scripture Press* while discussing *Congregational Sunday School*:

The business of the publishing company was four-fold...In allowing the exemption, the Illinois

America v. Hoffman, 62 Ill. App. 3d 798, 799, 379 N.E.2d 813, 814 (2nd Dist. 1978), Applicant “draws on” both charitable and religious statutory provisions with the hope of demonstrating that “Three Angels is a not-for-profit, religious and charitable organization that uses the subject properties exclusively for religious purposes.” Applicant’s Brief, 9. Applicant presents its contentions under two separate and distinct arguments,¹⁸ yet the factual record adduced during trial clearly indicates that the property in question fails to comport with even Applicant’s own characterization of prevailing judicial standards relating to entitlement to property tax exemption.

court devoted practically its entire opinion as to whether the organization was a “charitable and beneficent” one within the meaning of the tax exemption statute in question. At the start of the opinion this court stated, at page 112, “before proceeding further it is well to determine what is meant by the term “beneficent and charitable organizations.” It thereupon followed such statement with an eleven-page opinion devoted to reaching the conclusion that the publishing company was a charitable and beneficent organization. No place in the opinion is consideration given to whether the property was used exclusively for religious purposes. In no place in the opinion did the court refer to or discuss the case of *People v. Deutsche Gemeinde*, 249 Ill. 132, which appears to be the leading case in Illinois construing the words “religious purposes.” Scripture Press Foundation in the instant case makes no claim for exemption on the ground that it is organized and operated exclusively of “charitable purposes” within the meaning of section 2(f)(6)(G) of the Unemployment Compensation Act, but bases its claim for exemption solely on the fact that it is organized and operated exclusively for “religious purposes.” Under such circumstances the Congregational Sunday School and Publishing Society case cannot be considered as authority for the proposition that the organization there involved was an exclusively religious organization.

Scripture Press, 414 Ill. at 358 – 360. Emphasis added.

Congregational Sunday School has been expressly distinguished by the subsequent decision in *Scripture Press*, and *Scripture Press* remains controlling, as discussed, *supra*, with respect to its analysis of “religious purposes.” Truly, *Congregational Sunday School* is somewhat of an anomaly and does not even warrant or obtain a reference in “The Religious Purposes’ Property Tax Exemption and the First Amendment,” an article cited with favor by Applicant. Even if organizational dissimilarities between Applicant and the taxpayer in *Congregational Sunday School* could be overlooked, *Congregational Sunday School* standards are inapposite due to *Scripture Press*’s subsequent treatment thereof.

¹⁸ Applicant contends: “A. Under Illinois law, a religious purpose extends beyond traditional worship or prayer services and includes a wide variety of activities that involve transmission of religious teachings and ideas through various media, such as those used by Three Angels” and “B. Three Angel’s subject property and facilities should be tax-exempt as they are used exclusively for religious purposes, none of the ministries revenues accrue to the benefit of private persons, it carries out and supports a wide range of missionary activity, and many of its broadcast services and religious materials are provided at or below cost.” Applicant’s Brief, 9 and 12, respectively.

Assuming arguendo, this applies the newly crafted test asserted by Applicant, the only logical conclusion reached from a careful and close examination of each separate and distinct component is that the Applicant cannot meet their own enunciated test.

“Factor One – Organized and dedicated to not-for-profit, charitable purposes”

In discussing Factor One, Applicant rests on its laurels that it is an entity whose purpose is “purely religious or charitable not-for-profit organization within the meaning of Section 501(c)(3) of the Internal Revenue Code.” Applicant provides no legal authority for this assertion. Yet the overwhelming weight of the evidenced adduced at trial shows the actual use of the property by Applicant. The record is, at best, confusing when Applicant discusses its “purely religious and charitable not-for-profit status.” Applicant bears the burden of proof by clear and convincing evidence. *Metropolitan Water Reclamation District of Greater Chicago v. Department of Revenue*, 313 Ill.App.3d 469, 475, 729 N.E.3d 924, 929, 246 Ill.Dec. 273, 278 (1st Dist. 2000). Any doubt must be decided in favor of taxation. Resting on laurels does not meet this required standard. *People ex. rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1941).

Factor 2 – No Personal Inurement and a Dissolution Clause

Both (1) Applicant’s own corporate growth and profit and (2) profit inuring to individuals result from Applicant’s use of the property. Per Applicant’s 2001 financial statement, Applicant’s total assets have accumulated to over 42 Million Dollars, approximately three times Applicant’s 2001 total revenue of slightly under 14 Million Dollars. Tr. 489, 433. Although Applicant neither issues capital stock nor consists of shareholders, the capital raised and accumulated by Applicant includes real property, an airplane, and state-of-the-art recording studios and other audio/visual production facilities and tools. Furthermore, Applicant’s activities

to date have brought it to a position whereby it can now consider the spin-off of corporations dedicated to the for-profit transfer of real property (Tr. 376-385). Additionally, accumulated capital equipment and resources obtained and maintained by Applicant (for example, a manned and published/advertised toll-free number for ordering music) appear to be used in conjunction with the establishment of an independent music label and related operations (Tr. 371-372) with at least one individual receiving personal and individual profit. Tr. 617-623, 643-645. vides no authority and cannot that standards for the proposition Applicant begins its discussion of prevailing “religious” standards by characterizing itself as a “communicator of religious instruction through print, audio, video, and broadcast media.” Applicant’s Brief, 9.

“Factor 3 – Missionary Activity and Support of an Evangelical Movement.”

Applicant contends that its purported “missionary activity” satisfies the next *Scripture Press* prong. A closer inspection of the record indicates, however, that Applicant serves primarily as a conduit for dedicated/restricted contributions received from individual donors, (Tr. 343-346), and/or relies upon missionary “guests” to advance missionary activities. Tr. 130. Although Applicant has assisted with fund raising relating to separate corporate entities in foreign countries, (Tr. 133-134), and has paid salaries relating to foreign operations, (Tr. 190), these scope of these activities must be considered nominal and derivative of the actions of others when viewed in light of the overall activities conducted on the property in question.

In its arguments, Applicant attempts to distinguish *Scripture Press* from the pending proceedings by arguing that the distinction in *Scripture Press* is based solely on the lack of “missionary work”. By reading *Scripture Press*, there are two glaring conclusions made: 1) the facts in *Scripture Press* are strikingly similar to those presented in this proceeding; and 2) the

key determinative factor in *Scripture Press* was not the lack of "missionary work" as Applicant would so lead us to believe.

Similarly, *Scripture Press* indicates that Applicant's demand for tax exemption must be denied. This decision involved the Supreme Court's review of the Unemployment Compensation Act and sets forth a comprehensive discussion of property tax exemption decisions in Illinois and other states. While the decision does grapple (as Applicant indicates) with the absence of an "all inclusive definition or specification of what constitutes a religious purpose," the analysis of *Scripture Press* is more significant in light of its discussion, largely ignored by Applicant, of an operation that bears a striking similarity to Applicant's. The Supreme Court noted:

...Scripture Press Foundation was incorporated and organized by an individual and his wife, who although Christian persons with a long record of religious service, were neither ordained ministers, pastors, nor representatives of any ecclesiastical or church organization. No church or ecclesiastical organization was an incorporator or a member of the corporation. A study of its charter powers in the light of its actual operation indicates that Scripture Press Foundation was organized for the primary purpose of producing, distributing and selling religious literature and supplies to religious organizations. It is true that the language of its charter powers indicates a purpose for "The dissemination of the Gospel, the distribution of the Scriptures, of extracts therefrom, of devotional and other literature relating thereto, and of helps and supplies for use in Christian activities." Such purpose is accomplished only by the distribution and sale of such literature and supplies to religious organizations, which organizations in turn use them in conducting their religious activity. We are of the opinion that under the decisions of the Illinois courts and the language of the Illinois constitution and statute, such activities are secular in nature and not exclusively religious, the same as the maintenance of a parsonage for residential purposes of a pastor or the same as any other commercial service organization furnishing to a religious institution necessary services such as fuel, lights, building material or any other item necessary to its ordinary and customary functioning.

We do not believe that it would be seriously contended that either the real estate or personal property owned and used by Scripture Press Foundation in the conduct of its business would be exempt under Illinois law from property taxes as being used exclusively for religious purposes. The normal rules of logic and

sound reasoning seem to dictate that if the property of an organization essential to its principal operation could not be considered as primarily devoted to an exclusively religious use under the Illinois law, then the primary purpose of such association would not be deemed to be an exclusively religious purpose under Illinois laws.

Scripture Press, 414 Ill. at 355-336. Emphasis added. The factual pattern, organization structure, and property use of the owner in *Scripture Press* are strikingly similar to that of Applicant herein, and the foregoing analysis suggests that Applicant may not be quite as “archetypal”¹⁹ as Applicant contends. Applicant may be using a distribution system and medium somewhat different from that utilized by *Scripture Press* approximately fifty years ago, but the end result is the same: Scripture Press Foundation and 3ABN share common structures, goals and purposes, and they both pursue similar activities. The passage of fifty years and corresponding technological distribution / media changes have not rendered *Scripture Press*’ discussion of secular activities obsolete. Instead, *Scripture Press* remains a controlling standard against which similar operations must be judged. Now, however, it is being “seriously contended” by Applicant, (in spite of *Scripture Press*’ belief that no such contention would be viable), that 3ABN’s operations are something other than secular in nature.

“Factor 4 – Reduced or No Cost Benefits.”

Applicant attempts to meet this prong by merely stating that it “gives away, at no charge, a significant amount of religious literature, videos, audio tapes and other materials.” App. Brief, 19. The record does not, however, support this contention. In *Methodist Old Peoples Home* the threshold inquiry is not as Applicant posits. 39 Ill.2d at 157. Rather the question is whether it makes available all of its services for those who apply and are in need. As previously argued, Applicant maintains no stated policy with respect to priced items that are available to all who

¹⁹ Applicant’s Brief at 7.

requests it. Instead, it uses a haphazard manner – a referral to Steenson who determines whether it is “viable and worthy”. If Steenson, without any guidance or direction from the 3ABN Board determines that it is “viable and worthy,” she then passes it on to Shelton who makes a decision that is unbeknownst to anyone else within the corporate organization or structure.

Factor 5 – Any net revenue is incidental and used to further Three Angels religious mission.”

Applicant next addresses *Inter-Varsity's* fifth factor relating to the generation of revenues. Applicant attempts to formulate an analysis wherein costs and revenues generated from sales-related activities are compared to revenues received from donations and total operating revenues. Nevertheless, up to 25% of Applicant's total revenues, (approximately 14 Million Dollars annually), is derived from activities other than charitable donations, (Tr. 140). Furthermore, the vast majority of the property in question is dedicated almost exclusively to the creation of products made available for sale and/or for the creation and sale of a media system tailored to distribution of such products.

Applicant contends that it operates “to communicate the gospel through print, video, audio and broadcast,” *Id.*, and acknowledges the *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149, 158, 233 N.E.2d 537, 542 (1968), *McKenzie v. Johnson*, 98 Ill. 2d 87, 98 (1983), *The People v. Muldoon*, 306 Ill. 234, 238, 137 N.E. 863, 864 (1922), and *Evangelical Hospital Ass'n v. Novac*, 125 Ill. App. 439, 441, 465 N.E. 2d 986, 988 (Ill. App. 2d 1984) standards pertaining to “exclusive use,” as opposed to secondary or incidental purposes.

Nevertheless, Applicant mistakenly misconstrues the rationale behind Intervenors' analysis of the physical configuration of the property in question and seems to erroneously believe that Intervenors went through such an exercise simply to point out that administrative

areas should be taxable even if the organization in question is otherwise dedicated to the pursuit of religious or charitable purposes. *See generally* Applicants Brief at 13.

Intervenors and Applicant appear to agree with the general concept that an entity whose primary purpose is devoted to religious activity will be awarded a tax exemption for supporting administrative facilities devoted to a primary exempt use. Intervenors' inquiry into the configuration of the property in question, however, relates to a threshold question that Applicant wants to ignore, to wit: What is the primary purpose of a property comprised, primarily, of production facilities, engineering facilities, marketing facilities, graphics facilities, and a telephone "call center" dedicated to receipt of purchase orders and attendant inventory storage, distribution, and shipping operations? Of the over 37,000 square feet of improvements, it appears that only two relatively small "pastoral offices" are located on the premises, and the configuration of the properties relates directly to the requisite and underlying *Deutsche Gemeinde* "religious purpose" analysis. Intervenors submit that the primary purpose of such a facility cannot be deemed to be "exclusively" for religious purposes, and the evidence adduced during trial indicates that the property's overall primary use is commercial and secular in nature. *See generally* Applicant's Exhibits 12 and 13, Tr. 122-127, as augmented by Tr. 80 - 92, Tr. 116 - 122, and Tr. 232 - 249.

IV. Offer of Proof Considerations

In its Post-Trial Brief, Applicant reiterates numerous arguments pertaining to materials and exhibits it tendered, over objection of Intervenors and/or the Department of Revenue, via several offers of proof. In lieu of providing a supplemental specific response to the contentions set forth in Applicant's Brief, Intervenors hereby incorporate by this reference as if set out in full their arguments and objections previously tendered during pre-trial and trial activities.

Specifically, Intervenors hereby incorporate their objections tendered during trial and their pre-trial filings and arguments relating to the omission of the materials and testimony in question.

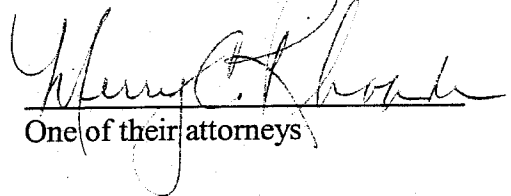
V. Conclusion

Based on the foregoing, the Applicant failed to show by clear and convincing evidence that the subject property was used primarily for religious and/or charitable purposes. Accordingly, Applicant's request for an exemption should be denied and the Department's preliminary holding upheld.

Respectfully submitted,

THOMPSONVILLE COMMUNITY
HIGH SCHOOL DISTRICT
NO. 112 and THOMPSONVILLE
SCHOOL DISTRICT NO. 62,

By:



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