

PT 04-1
Tax Type: Property Tax
Issue: Religious Ownership/Use

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

A.H. Docket # **01-PT-0027**
P. I. # **174-116-11**
Docket # **00-28-01**
Docket # **01-28-07**

Barbara S. Rowe
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Kent R. Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue; Mr. Nicholas P. Miller, Sidley, Austin, Brown, Wood, L.L.C., Mr. Lee Boothby, Boothby and Yingst, and Mr. D. Michael Riva for 3 Angels Broadcasting Network; Ms. Merry Rhodes and Ms. Joanne H. Petty, Robbins, Schwartz, Nicholas, Lifton and Taylor, Ltd. for Thompsonville Community High School District 112.

Synopsis:

The hearing in this matter was held to determine whether Franklin County Parcel Index No. 174-116-11 qualified for exemption during the 2000 and/or 2001 assessment years.

Danny Shelton, president of Three Angels Broadcasting, (hereinafter referred to as the "Applicant" or "3ABN"); Larry Ewing, director of finance in 2002 of applicant; Alan Lovejoy, CPA and accountant; Walter Thompson, chairman of the board in 2002 of applicant; Bill Bishop, minister in the Seventh-day Adventist Church and member of the pastoral staff of applicant; Kenneth Denslow, president of the Illinois Conference of the Seventh-day Adventist Church; Mollie Steenson, department coordinator of applicant; and Linda Shelton, vice president of

applicant, were present and testified on behalf of applicant. Cynthia Humm, Supervisor of Assessments of Franklin County was present and testified on behalf of Thompsonville Community High School District No. 112 (hereinafter referred to as the “Intervenor.”)

The issues in this matter are: first, whether applicant was the owner of Parcel Index No. 174-116-11 during the 2000 and/or 2001 assessment years; secondly, whether applicant is a religious or charitable organization; and lastly, whether the parcel was used by applicant for religious or charitable purposes during the 2000 and/or 2001 assessment years. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be denied for the 2000 and 2001 assessment years, except for the two pastoral offices each measuring 14 feet by 18 feet on the second floor of the administrative production center building, and a corresponding amount of land. In support thereof, I make the following findings and conclusions in accordance with the requirements of §100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Franklin County Parcel Index No. 174-116-11 did not qualify for a property tax exemption for the 2000 and 2001 assessment years were established by the admission into evidence of Dept. Ex. Nos. 1 and 2. (Tr. p. 27)

2. The Department received the requests for exemption of Franklin County Parcel Index No. 174-116-11 for the 2000 and 2001 assessment years. In 2000, the assessed value of the property was \$505,500; in 2001, \$556,050. The Board of Review of Franklin County recommended denying the requests. For the 2000 assessment year, the Cave Township Supervisor and Cave Township Board objected to the exemption. In a letter attached to the 2000 year application, the Village of Thompsonville adamantly (emphasis in the original attachment)

opposed the requested exemption. The Department denied the requested exemptions finding that the property was not in exempt ownership and use. Applicant timely protested the denials and a hearing was held pursuant to those protests. (Dept. Ex. Nos. 1 and 2)

3. Applicant acquired the subject parcel by a warranty deed dated October 17, 1991. The 5 acre parcel at issue contains three buildings, the ownership and uses of which are at issue. The first building is a three-story administration production center building that contains approximately 30,000 square feet. The 10,800 square foot BOS Auditorium¹ is part of the administration building. The second building is applicant's carpenter shop, a one story building that contains 2,400 square feet. The third building is the "call center", which is about 7,000 square feet and is where applicant stores, ships, and receives its merchandise. As the name suggests, it is also where applicant receives calls from viewers around the world interested in applicant's programs and products. (Applicant's Ex. No. 1; Tr. pp. 81-91, 119-122, 233, 280-292)

4. Applicant's administrative production center contains the two studios where applicant creates its programs. A production area is between the two studios. In the center are applicant's administrative areas where financing, engineering, and pastoral care offices are located. A kitchen is available for workers' use. Offices for applicant's president and vice president are also in the center. The center contains the areas where graphics, maintenance, and computers are located. The two pastoral offices are on the second floor and measure 14 feet x 18 feet each. (Tr. pp. 81-84, 89, 235-246, 276-280, 284)

¹ Applicant's exemption applications list three buildings and dimensions at issue: 1) an administration building which is two stories and contains 15,680 square feet; 2) the BOS Auditorium which is also two stories and contains 10,800 square feet; and 3) a carpenter shop which is one story and contains 2400 square feet. (Dept. Ex. Nos. 1, 2) According to the testimony of applicant's president, the BOS Auditorium is part of the administration building, the carpenter shop is a separate building, and the third building at issue is the "call center". The exact dimensions of the interior and exterior of each building are unclear. (Applicant's Ex. Nos. 12, 13; Tr. pp. 81-84, 121-126, 617)

5. The “call center” is next to applicant’s main facility. Here, applicant’s employees and volunteers take and process orders for applicant’s products. Applicant gives away free material on a variety of topics from health to religion. (Applicant’s Ex. Nos. 18-21; Tr. pp. 171-186, 288-290)

6. The carpenter shop is where applicant builds sets for its programs. (Tr. p. 117)

Corporate Structure

7. Applicant was incorporated under the General Not for Profit Corporation Act of the State of Illinois on March 1, 1985, for the following:

The purposes for which the corporation is organized are exclusively religious, charitable or educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, and, in furtherance of these purposes, the corporation may:

- (a) 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.
- (b) to [sic] 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.
- (c) to [sic] develop, plan, promote, produce, direct and distribute recorded music and video recorded programs to further the purposes of the corporation.
- (d) own or operate facilities or own other assets for the public’s welfare.
- (e) solicit support for the corporation’s activities from the public generally and through a board of directors.
- (f) 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.

- (g) own, lease or otherwise deal with all property, real and personal, to be used in furtherance of these purposes.
- (h) contract with other organizations, for-profit and not-for-profit, with individuals, and with governmental agencies in furtherance of these purposes.
- (i) otherwise operate exclusively for religious, charitable or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, in the course of which operation:
 - (i) No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its members, trustees, directors, officers, or other persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein.
 - (ii) No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office except as authorized under the Internal Revenue Code.
 - (iii) Notwithstanding any other provisions of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal Income Tax under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States

Internal Revenue Law) or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law). (Applicant's Ex. No. 2)

8. The four directors of the corporation listed in the articles are Danny L. Shelton, Kenneth Joel Shelton, Linda Shelton, and Emma Lou Shelton². (Applicant's Ex. No. 2)

9. The officers of the applicant are a chairman and chairman-elect of the board; a president, elected by the board; one or more vice presidents; a secretary; and treasurer. The board chairman is the chief policy officer of the corporation. The president is the chief executive officer of the corporation and the direct executive representative of the board in the management of applicant. (Applicant's Ex. No. 3)

10. The president's duties include carrying out all policies established by the board and advising on the formation of those policies; developing a plan for the conduct of activities of the corporation and recommending changes when necessary; preparing, reviewing, and evaluating written plans for specific objectives of applicant; preparing the annual budget; selecting, employing, supervising, and discharging personnel; maintaining physical properties; supervising the financial affairs of applicant; attending meetings and presenting periodic reports of the applicant; attending meetings of the board and serving as an *ex officio* member of committees; being a member of the executive committee; and acting as a liaison for the corporation. He is also the designee: "To affix the signature of the Corporation to all papers and instruments,

² No information was offered as to who Emma Lou and Kenneth Joel Shelton are. The oral testimony was that in 2000 and 2001, applicant's eleven to twelve member board was made up of Seventh-day Adventists laymen, business people, church employees, and former church employees. Some of applicant's board members are and were Seventh-day Adventists' pastors. The board meets 3-5 times a year. (Tr. pp. 92-95, Danny Shelton; Tr. pp. 499-501, Walter Thompson). The names of the board members, other than Mr. Thompson, in 2000 and 2001 were not in evidence and, in fact, applicant only submitted the names of Danny Shelton, Linda Shelton, Kenneth Joel Shelton, and Emma Lou Shelton as the four directors of 3 ABN.

including promissory notes of the Corporation in writing that may require the same.”
(Applicant’s Ex. No. 3; Tr. pp. 95-96)

11. The president designates the duties of the vice president. The secretary performs duties customarily performed by or required of corporate secretaries. (Applicant’s Ex. No. 3)

12. Danny Shelton is the president of applicant. Linda Shelton is the vice president. Neither Linda nor Danny is an ordained minister. (Applicant’s Ex. No. 12; Tr. pp. 36, 39, 590-591)

13. Applicant’s corporate by-laws³ adopted by the board on September 14, 1997, state that as of January 1, 1987⁴, the board of directors consists of seven to fifteen persons. Not more than one-third of the board is composed of employees of the Seventh-day Adventist Church. (Applicant’s Ex. No. 3)

14. Board members do not receive reimbursement for travel expenses. Board members receive no compensation for being on the board. (Tr. pp. 499-501)

15. Applicant employs approximately 140 people in its locations in Southern Illinois, Russia, and the Philippines. Applicant does not own properties in Russia and the Philippines because of legal reasons. However, Danny Shelton is the director and president of the entities that do own properties there. Applicant funds those facilities. (Tr. pp. 188, 349-355)

General Information about Applicant

16. Danny Shelton founded applicant in 1984. Prior to working for applicant, Danny Shelton was a carpenter and managed a lumberyard. He has a high school education. (Tr. pp. 49-52, 170)

³ Pages 8-10 of this exhibit are missing. The missing pages contain the sections between 1.2 and section 3.2 of the by-laws. Therefore, the corporate purpose section of the by-laws is incomplete. In addition, qualifications of certain members of the board are on the missing pages in section 2.3.

⁴ The difference in the date of the adoption of the corporate by-laws and this date was not explained.

17. Linda Shelton attended one year of college after high school graduation. Prior to working for applicant she worked as a receptionist in a law office and held other odd jobs such as a secretary at City Hall. (Tr. pp. 590-592)

18. Linda Shelton is responsible for the content in the magazines, sales catalogs, and newsletters applicant distributes. Publication of the items does do not take place on the subject property. The periodicals are distributed to between 100,000 and 150,000 people. People get on applicant's mailing list by sending in a donation or by request. (Intervenor's Ex. Nos. 5-9; Tr. pp. 342, 592-594, 605-607)

19. Linda Shelton is in charge of applicant's production, programming, and scheduling. (Tr. p. 592)

20. Linda Shelton writes the contents of the newsletters and promotional magazines applicant produces. They are distributed free of charge. She has recorded four CDs that applicant produced and sells. (Applicant's Ex. No. 24; Tr. pp. 592-595)

21. Linda Shelton receives royalty payments for the CDs she produces. Broadcast Music Incorporated, a private company unaffiliated with applicant, licenses her songs. The songs on the CD, "I Think About Grace" belong to Linda, and were copyrighted by her in 2001. Applicant's (800) area code telephone number is listed on the inside label of "I Think About Grace" for ordering additional CDs. The outside label of the CD has the (618) area code telephone number listed with the address of applicant. Applicant's Fall/Winter 2001-2002 newsletter has an advertisement for the CD. The advertisement has the (800) toll free telephone number listed for orders. (Intervenor's Ex. No. 8; Applicant's Ex. No. 24; Tr. pp. 617-623, 644-645)

22. As president of applicant, Danny Shelton carries forth the policies that the board sets and oversees the operations of the broadcasting department, the programming department,

the financial department, and the physical building and maintenance. Danny Shelton also represents applicant in raising funds, does the hiring and firing, and oversees the general operations of applicant. On weekends, he and Linda Shelton travel extensively on applicant's airplane doing commercial and public relations work for applicant. (Tr. p. 37)

23. In 2000 the Sheltons traveled approximately 20 weekends for engagements in numerous cities. The engagements generated large donations to applicant. Danny Shelton correlates his speaking with the amounts of donations. (Tr. pp. 406-408)

24. Danny and Linda Shelton travel extensively to New Guinea, the Philippines and applicant's affiliated Russia center. Applicant's board sets the salaries for the Sheltons. The Shelton's benefits include medical and dental insurance and the use of a company vehicle. (Tr. pp. 131-136, 141-146)

Applicant's Productions and Programming

25. Applicant's airtime is made up of applicant's programs and other programs. Approximately 75-80% of the airtime is made up of applicant's programs. The other 20-25% of airtime is rented, sold, or used for programs applicant determines are worthwhile. Not all people on applicant's programs are Seventh-day Adventists. (Tr. pp. 146-160, 410)

26. Danny and Linda Shelton host a daily program in studio "A" on the lower level of the administrative production center. The area is set up like a house with a living room area that contains a couch and chairs. The Sheltons interview guests in that area. A small front porch area is used for the introduction for the program. The program contains Bible scripture, health information, music, and a cooking section. Vegetarian meals are prepared during the cooking section. No records were produced depicting the time allocated for each of the separate types of programs. Some of applicant's programs are transmitted live and some pre-recorded. (Tr. pp. 85-86, 247-273)

27. In studio “B”, also on the first level, applicant has a remote truck that it uses for the production of children’s and exercise programs. One set at that location looks like the front of a church where pastors can preach. Applicant also produces an exercise program at the studio itself. The studio is not complete. (Tr. pp. 86, 273-274)

28. Another segment of the first floor contains the new master control where all of applicant’s satellite tapes are edited for applicant’s 24-hour-a-day programming. Bathrooms are also located on that floor. (Tr. pp. 86-88)

29. The second floor of the administrative production center contains applicant’s maintenance department. A small room contains the computer that does graphics. More graphics are done in the publishing department that is also on the second floor, where applicant’s calendars are created and design functions are located. The second floor also has two offices, each 14’ x 18’ where pastors pray with people and take telephone calls. (Tr. pp. 89-90)

30. The third floor of the administrative production center contains the air conditioning and storage areas. (Tr. pp. 90-91)

31. Applicant maintains a local telephone area code (618) and a toll free (800) telephone number for prayer requests and for orders of satellite dish systems, videos, musical cassettes, and CDs. Calls come into the reception area in the administration building where they are diverted to the proper area. (Applicant’s Ex. No. 8; Intervenor’s Ex. Nos. 5-9; Tr. pp. 235-236)

32. Applicant’s (800) telephone number is continually rolling across the television screen during applicant’s programs and is printed on the bottom of every page of applicant’s 2001 order forms and catalogs. The (618) area code telephone number is printed on the outside of applicant’s catalogs. (Intervenor’s Ex. Nos. 6-9; Tr. pp. 612-613)

33. Danny and Linda Shelton have total decision-making authority for airtime contracts. (Intervenor's Ex. No. 8; Tr. pp. 610-611)

34. Applicant's board does not review the airtime contracts. (Tr. p. 611)

35. Members of applicant's board appear in videos or on applicant's programs. Board members have made donations to applicant. (Tr. pp. 499, 516-518, 524)

36. Applicant's programming is not available on regular or cable television channels. It has to be downlinked. There are 88 cities across America that have unmanned downlink stations for applicant's programs. (Applicant's Ex. No. 8; Intervenor's Ex. Nos. 6, 8; Tr. pp. 72-80, 162-164, 608)

37. The BOS Auditorium located in applicant's administrative production center building was used for recording in 2000 and 2001. Net 2000 is a program where an evangelist comes for approximately 30 consecutive nights, the public is invited, and the program is sent by satellite to applicant's viewers. Net 2000 was produced in the BOS auditorium. (Tr. pp. 88, 105-106)

38. For the Net programs for the year 2000, applicant brought about 12 translators to the station to translate the message of the evangelist to other languages including *inter alia* German, Russian, Yugoslavian, and Portuguese. (Tr. p. 102)

39. In 2000, applicant sent its trucks to the General Conference Session of the Seventh-day Adventists in Toronto, Canada to record and transmit the conference. The session is a meeting of church officials and leaders from the world church where decisions affecting all Seventh-day Adventist Churches are made. The session occurs once every five years. (Tr. pp. 107-108)

40. Applicant also produced about 20-30 programs per year for the global missions department of the Seventh-day Adventist Church in 2000 and 2001. The programs identify areas

where new churches are needed and help raise funds for orphanages, churches, and schools. (Tr. pp. 108-113)

41. Applicant's programming is carried 24-hours-a-day, seven-days-a-week. Applicant's station carries health, gardening, cooking, and music programs in addition to religious and family entertainment. (Intervenor's Ex. No. 8; Tr. pp. 70-72)

Applicant's Satellite Systems

42. Applicant has its own 3ABN digital dish system designated as "PAN" that brings the receiver 3ABN television and 3ABN radio 24-hours-a-day. The complete system includes a 36-inch satellite dish, digital receiver and cable. Applicant's signal is transmitted from the subject property to "GE-4" a high-powered digital satellite. The signal can be received in most homes in the United States. The signal can also be received in Hawaii, the Caribbean, and Central America. The digital signal includes applicant's television programming in English and occasional additional channels in Spanish, Portuguese and Romanian. The cost for applicant's system in 2000 and 2001 was \$350 in the United States and \$500 in Canada. The cost in Canada usually includes professional installation. (Intervenor's Exhibit Nos. 6, 8; Tr. pp. 72-80)

43. Applicant's "PAN" dish system was made specifically to accommodate applicant's needs. The company that makes applicant's "PAN" system made a distinctive receiver and a dish system that would work with applicant's satellite. (Intervenor's Ex. Nos. 1-4; Tr. pp. 163-164, 294, 307-310)

44. Applicant also offers a high-quality 18-inch digital dish system from DISH network starting at \$164. Subscriptions may be obtained from Dominion Sky Angel's programming and start at \$9 per month, \$99 per year, and \$225 for a 3-year subscription. (Intervenor's Ex. Nos. 6, 8; Applicant's Ex. No. 8; Tr. pp. 72-80)

45. A third option for viewing applicant's programming is to purchase the complete Sky Angel 18" digital system for \$479, which includes the receiver and a lifetime subscription with the DISH Network. (Applicant's Ex. No. 8; Intervenor's Ex. Nos. 6, 8; Tr. pp. 72-80, 162-164, 608)

46. Sky Angel is located in Florida. It carries 33 channels of religious and family programs. Applicant's programs are on one of the channels. (Tr. pp. 164-165, 313-326)

47. Applicant's order forms use "PAN" to identify applicant's satellite system. Those order forms are different from those used for ordering a 3ABN Digital Satellite, the Sky Angel Order form, and the credit card order form for videos and related items. Applicant accepts Visa credit card, Master credit card, and Discover credit card. (Intervenor's Ex. Nos. 1-4; Tr. pp. 163-164, 294, 307-310)

48. Another satellite dish beams applicant's signal to a high-powered satellite launched by PanAm Sat called "PAS-9". In 2000 and 2001 applicant replaced its former satellite system with the high power version to gain greater coverage and more accessibility to customers. Applicant improved and expanded its system so that it could reach its customers in all of North, Central, and South America, as well as a portion of Europe. 90-centimeter dishes in homes can receive the satellite signal. The wider coverage enables applicant to have multiple language broadcasts and reach a broader group of customers. (Intervenor's ex. No. 8 pp. 400036-7; Tr. pp. 72-80)

Applicant's Sales

49. Beside the sales of the satellite systems and related items, applicant also sells videos; both its own and those produced by other entities. Applicant maintains a web site at www.3abn.org where catalogues and other information are available. (Intervenor's Ex. Nos. 5-9; Tr. pp. 336-342)

50. Applicant's programming and videos contain information related to health and life style topics. Applicant's videos are not copyrighted. (Tr. pp. 515-516, 574, 613)

51. The magazines/catalogs and newsletters contain order forms for the various items that applicant sells. The videos range in price from \$14 for a single video to \$572 for a video series – 26 programs. The videos cover such diverse topics as The 3ABN Miracle Story, 3ABN Flagship Programs,⁵ Bible and Prophecy Topics,⁶ Worship Services,⁷ Family Topics,⁸ Health and Lifestyle Topics,⁹ Help for Addictions,¹⁰ Spanish Programming,¹¹ Musical Specials,¹² and Variety Programs.¹³ (Intervenor's Ex. Nos. 5-9; Tr. pp. 167-170)

52. Applicant's board is not involved in setting prices for the videos or other items sold by applicant. Applicant's board does not determine the prices applicant charges. Danny Shelton determines the prices for the videos and other items without the board's final determination or approval. (Tr. pp. 526-528, 617)

53. Applicant has what it calls the "video special of the month" where Danny Shelton and Linda Shelton chose one program that they especially like. They record that and advertise it in the newsletters and on the air so that people can purchase it. (Tr. pp. 168-170)

⁵ Examples of the Flagship Programs include 3ABN Camp meetings, Making Marriage Work, a variety of cooking programs, Managing Stress, and various programs entitled "Behind the scenes at ABN."

⁶ The Bible & Prophecy topics include such things as a Genesis to Revelation Seminar, videos about how to get a job, Omnipresence, Second Coming, ear piercing, forgiveness, and homosexuals.

⁷ Worship Service videos are for the Fort Worth SDA, the Pioneer Memorial Church at Andrews University in Berrien Springs, Michigan, the Sacramento Central Sabbath School, and the Tabernacle Hour at the Battle Creek SDA Church.

⁸ Family Topics includes *inter alia*: Adventures in Peace and Happiness; Family Matters; HomeGrown Kids (about home schooling); Its All About Love; Issues and Answers with various guest speakers; Janice's Attic (which includes lessons for children); Kids Time; Teen Pathways; Thinking About Home; and World Prophecy News.

⁹ The subsections of Health and Lifestyle videos include: Abundant Living (which covers nutrition, herbs, diabetes and other diseases, stress management, PMS, soy products, vitamins, and various ethnic cooking shows); Body and Spirit which offers videos on exercise; Dick Nunez Work Out Special; Cooking By The Book (featuring vegetarian cooking); Food for Thought (specializing in thoughtful food preparation); Health for a Lifetime (containing information on how to obtain and maintain good health, with discussions about various diseases and lifestyle changes); Help Yourself to Health (includes many natural remedies for common ailments); Home School of Health ; Miracle Garden (organic gardening); Westbrook Hospital; and Wonderfully Made (discusses health issues).

¹⁰ Help for Addictions addresses drug alternative programs and smoking.

¹¹ Applicant carries a variety of videos in Spanish.

¹² Done by a variety of artists performing songs featured on applicant's television programs.

Financial Information

54. Applicant's basic rate charge for airtime is \$1,200 per hour. (Tr. p. 160)

55. Various organizations purchased airtime from the applicant to televise their own programs in 2000. Those organizations include the Quite Hour of Redlands, CA which purchased 31.25 hours of airtime for a total amount paid of \$32,700; Voice of Prophecy of Newbury Park, CA that purchased 26.5 hours at a cost of \$35,600; United Prison Ministries of Verbena, AL that purchased 25.5 hours for a cost of \$14,500; Amazing Facts of Roseville, CA which used 105 hours for a cost of \$87,050; Light Bearers Ministry of Malo, WA for 29.5 hours at a cost of \$57,298; LMN Publishing, Intl. of St. Maries, ID for 25.5 hours for \$31,390; Transada Advertising of Simi Valley, CA for 200 hours at a cost of \$167,271; Global Missions of Silver Springs, MD for 26 hours for \$33,291; Carter Report of Thousand Oaks, CA for 156 hours at a cost of \$151,500; Adventist SE Asia Project of Berrien Springs, MI for 6 hours at a cost of \$5,450; Gospel Outreach of College Place, WA for 26 hours for \$33,557; Adventist Frontier Mission of Berrien Springs, MI for 25.5 hours at a cost of \$14,100; and ADRA of Silver Springs, MD for 26.5 hours for a purchase amount of \$27,850. In the 2000 calendar year, applicant sold 709.25 hours of airtime for \$691,557. (Applicant's Ex. No. 16)

56. In 2000, applicant also earned income from leases of properties not at issue to various individuals and businesses including *inter alia* a barber, Subway, and Tae Kwon Do shop. The total yearly from those leases is \$50,889. It is unclear where this amount appears on the financial statement. (Intervenor's Ex. No. 13; Tr. pp. 674-678)

57. For 2001, the following entities purchased airtime from applicant: Pacific Press Publishing of Nampa, ID - 8.75 hours for \$1,546; Message for Today of Carmel, IN - 26 hours at a cost of \$3,900; The Quiet Hour of Redlands, CA - 39.75 hours for \$27,800; Voice of Prophecy

¹³ The variety videos contain camp meetings, concerts, and applicant's programs.

of Newbury Park, CA - 26 hours for an amount paid of \$28,300; United Prison Ministries of Verbena, AL - 26 hours, paid \$19,200; Outpost Center, Inc. of Apison, TN for 21 hours - \$23,400; Amazing Facts of Roseville, CA-127 hours for \$145,500; Living Faith of Albuquerque, NM, 6.5 hours at a cost of \$2,400; Light Bearers Ministry of Malo, WA - 28 hours at a cost of \$34,550; LMN Publishing Int'l of St. Maries, ID, 26.5 hours at a cost of \$28,000; Transada Advertising of Simi Valley, CA - 195.50 hours for \$220,400; Global Missions of Silver Springs, MD - 25.5 hours for payment of \$40,920; Carter Report of Thousand Oaks, CA - 154 hours with a payment of \$138,000; Adventist SE Asia Project of Berrien Springs, MI - 5.5 hours and a payment of \$7,000; Gospel Outreach of College Place, WA - 25.5 hours for \$23,000; Adventist Frontier Mission of Berrien Springs, MI - 6 hours and a payment of \$6,700; ADRA of Silver Springs, MD - 26 hours for \$30,950; Florida Conference of Winter Park, FL - 4 hours and a payment of \$6,000; Ruben Arn of Glendale, CA - 5 hours and an amount of \$3,000; General Conference of SDA of Silver Springs, MD - 6.5 hours, unknown amount of payment; Texas Media Center of Fort Worth - 2 hours for an undisclosed amount of payment; for a total of 791 hours in 2001 and a total payment amount of \$790,566. (Applicant's Ex. No. 17; Tr. pp. 151-155; 369-370)

58. The purchase of the airplane in 2001 for \$1.3 million enabled applicant's employees to travel more efficiently and reach a larger audience of customers. Applicant also supplies the Sheltons with a 2000 Ford Econoline van. (Tr. pp. 384-386,405-409)

59. According to applicant's audited financial statement, applicant had total revenues and other support in 2000 of \$14,452,519.91. Total expenses were \$13,239,904.62 for a net profit of \$1,212,615.29. Under the sub-category entitled "Schedule of Supporting Service Expenses," the amount of \$4,098,620.61 is listed; of that amount \$1,802,307.48 is shown as wages. (Applicant's Ex. No. 14)

60. For 2001, applicant's total revenue and other support were \$13,935,318.64. Applicant's total expenses were \$11,940,167.11 for a net profit of \$1,995,151.53. Under the sub-category entitled "Schedule of Supporting Service Expenses," \$4,026,680.45 is listed; of that amount, \$1,219,639.23 is shown as wages. (Applicant's Ex. No. 15)

61. The Independent Auditor's Reports for 2000 and 2001 state:

Dowlink equipment acquired by gift is not recorded in the financial statements. In our opinion, generally accepted accounting principles require that such donated property be recorded at its fair value at the date of receipt. It was not practicable to determine the effects of the unrecorded equipment on the financial statements.

In connection with the recording of real estate revocable trusts, the fair values of the trusts were based on internal estimates performed by the organization. We were unable to obtain sufficient evidential matter in connection with the estimates of fair value.¹⁴ (Applicant's Ex. Nos. 14, 15)¹⁵

62. Applicant's donations are broken into restricted and unrestricted funds.¹⁶ Restricted funds are for a particular product or project. Applicant had restricted net assets of \$757,891.39 in the year ending December 31, 2000, and \$1,454,857.61 in the year ending December 31, 2001. (Intervenor's Ex. No. 10; Tr. pp. 343-350)

Religious Considerations

63. Applicant is exempt from the payment of Illinois Retailers' Occupation Tax and related taxes pursuant to a finding by the Department of Revenue that applicant is a religious organization under those tax laws. (Applicant's Ex. Nos. 6, 7)

¹⁴ The financial report for 2000 contains additional concerns found by the independent auditors.

¹⁵ Applicant's financial reports raise additional questions and concerns. For example, the unrecorded contribution revenue related to charitable gift annuity agreements were not recorded in conformance with generally accepted accounting principles. The "related party transactions" were acknowledged without identifying the parties. The notes refer to "split interest agreements," where applicant received the assets funding the trusts and applicant is to pay certain amounts for specified periods of time to the donors. There is nothing in the record to identify the donors or the assets. None of the trust agreements were supplied. (Applicant's Ex. Nos. 14, 15)

64. On November 4, 1997, applicant executed a Joint Declaration of Commitment (hereinafter referred to as the “Declaration”) with the General Conference of Seventh-day Adventists. The declaration details commitments of the two entities and issues resolution. The declaration states that the common vision:

Includes strategic planning sessions, counseling on matters of common interest, praying, dreaming and planning together. We welcome the opportunity to join together in coordinating and executing the global mission of reaching every nation, kindred, tongue and people with the message of the saving grace of Christ and His soon coming in the context of the Great Controversy and the Three Angels’ Messages of Revelation 14. (Applicant’s Ex. No. 9; Tr. pp. 96-100)

65. The declaration states that:

The General Conference of Seventh-day Adventists and Three Angels Broadcasting Network are committed to faithfulness to God’s Word and loyalty to Bible truth as formulated in the 27 Fundamental Beliefs of the Seventh-day Adventist Church. We believe that our shared commitment to world evangelism through media compels us to seek ways to cooperate in the task of reaching the world for Christ. We believe that much more can be accomplished to hasten the Lords return through cooperation in an atmosphere of mutual trust and confidence. (Applicant’s Ex. No. 9)

66. According to the declaration, applicant agrees that:

As leaders of Three Angels Broadcasting Network (3ABN), we commit ourselves to:

A. Offer our resources in accordance with 3ABN’s operational policies to support the mission of, and work in cooperation with, the Seventh-day Adventist Church in the proclamation of the everlasting gospel to the entire world.

B. Proclaim the gospel in its purity and simplicity while being sensitive to the unique cultures of people in countries around the world.

¹⁶ Applicant’s president testified “Unrestricted funds are donations that come into Three Angels Broadcasting Network that people don’t specify what they want it used for.” (Tr. p. 343)

C. Reiterate our endorsement of the concept of the Seventh-day Adventist Church organization as set forth in the book *Seventh-day Adventists Believe*, Chapters 11-13, and in the writings of Ellen G. White.

D. Recognize the local and regional constituent responsibility and leadership in administering activities and operations of the Church and their territory.

E. Restate our support for integrating new members into the body of Christ and, more specifically, encouraging membership in the Seventh-day Adventist Church around the world. (Applicant's Ex. No. 9)

67. According to the declaration, the administrators of the General Conference of Seventh-day Adventists commit themselves to:

A. Reaffirm the profound spiritual truth that God calls and empowers both individuals and supporting ministries who are committed to the mission of the Seventh-day Adventist Church, to join with the Church, its institutions and organizations in the proclamation of the gospel.

B. Establish such official communication and planning forums, including supporting ministries such as 3ABN, with world and division leaders as may be appropriate.

C. Encourage General Conference departments, world divisions, and Church institutions to utilize the services of 3ABN for production and distribution of programming as may be appropriate, with the understanding that the agreements between the applicable Seventh-day Adventist organizations and 3ABN, include-at a minimum-that the financial arrangements and copyright ownership be documented in writing.

D. Encourage Seventh-day Adventist Church organizations to submit programming for distribution on 3ABN with the recognition and understanding that 3ABN will review all programming.

E. Encourage the fostering of a spirit of unity and cooperation between all organizations of the Seventh-day Adventist Church and 3ABN. (Applicant's Ex. No. 9)

68. The declaration also contains a three-step process for resolution of problems.
(Applicant's Ex. No. 9)

69. The General Conference of the Seventh-day Adventist Church purchased airtime from applicant during the 2000 and 2001 calendar years. (Tr. pp. 368-369)

70. Applicant is not part of the Seventh-day Adventist Church. (Tr. p. 368)

71. Applicant is not a Seventh-day Adventist institution. (Tr. p. 97)

72. Applicant was established, organized and is operated by lay people. (Intervenor's Ex. No. 8 p. 400033)

73. Applicant is not owned by or controlled by the Seventh-day Adventist Church. (Tr. p. 99)

74. Applicant's staff includes four Seventh-day Adventist ministers that answer telephones and pray with people in the two 14' x 18' offices. The pastors lead daily worship services and view the videotapes for content that is consistent with applicant's purposes.¹⁷ Sabbath services, foot washings, marriages, and baptisms are not held on the property in question. (Tr. pp. 531-541)

Charitable Considerations

75. Applicant is not required to pay federal income tax pursuant to a finding by the Internal Revenue Service that applicant is an exempt organization under Section 501(c)(3) of the Internal Revenue Code. (Applicant's Ex. Nos. 4, 5)

76. Applicant's board has no written policy to give away or donate its satellite systems. If an individual were unable to pay the cost of the system, applicant's secretary would contact Danny Shelton who would determine, with the board's guidance, whether the product should be given away. "Applicant has no policy that says give away." (Tr. pp. 295-303)

77. Applicant has no records of materials given away in 2000 or 2001. Applicant has no specific written policy that outlines what factors are used or what direction is given by

¹⁷ See Finding of Fact No. 7.

applicant's board that allows applicant to distribute items at a reduced rate or free of charge. (Tr. pp. 586-589, 614-616)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois 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.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992).

Pursuant to the authority granted by the Constitution, the legislature has enacted exemptions from property tax. Applicant asserts that it is entitled to a property tax exemption under either the religious or charitable exemptions found in the Illinois Property Tax Code.

The religious exemption is found at 35 ILCS 200/15-40. In 2000, a portion of the statute stated:

§ 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, . . .¹⁸

¹⁸ Amended by P.A. 92-333, §5, eff. Aug. 10, 2001, the statute was changed to state:

§ 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.

In People ex rel. McCullough v. Deutsche Gemeinde, 249 Ill. 132 (1911), the Court stated: “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.” *Id.* at 136

Also at issue is the provision found at 35 ILCS 200/15-65, which exempts certain property from taxation as follows:

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. . . .

Illinois courts have recognized that religious organizations may use properties for charitable purposes, thereby fulfilling their charitable missions and ministries. First Presbyterian Church of Dixon v. Zehnder, 306 Ill.App.3d 1114 (2nd Dist. 1999). In that case the court found that the applicant is a religious organization using the subject property for religious purposes through the distribution of food, clothing, furniture, and Christmas gifts to those in need.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the 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). Further, 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); Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill.App.3d 678 (4th Dist. 1994).

Applicant, in the very first paragraph of its post-trial brief, states that both the federal government and the State of Illinois have already recognized it to be organized and operated for

tax exempt purposes. However, applicant fails to recognize that neither the federal government's exemption from income tax nor the granting of an Illinois sales tax exemption is based on the Illinois Constitution and statutory provisions for property tax exemptions. Illinois case law has numerous references to the fact that exemptions from other taxes is not determinative of whether the property at issue is entitled to a property tax exemption. Decatur Sports Foundation v. Department of Revenue, 177 Ill.App.3d 696 (4th Dist. 1988); People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970); Clark v. Marian Park, Inc., 80 Ill.App.3d 1010 (2nd Dist. 1980).

Religious Tax Exemption Standards and 3ABN's Claim for Religious Exemption

As a preliminary matter, applicant is not organized and operated as a religious corporation under the Illinois Religious Corporation Act, found at 805 ILCS 110/0.01 *et seq.* Rather, applicant is incorporated under the General Not for Profit Corporation Act. 805 ILCS 105/101.01 *et seq.* The Illinois General Assembly has recognized organizational and operational differences between the two types of organizations and has established different and separate statutory schemes to govern those differences. Implicit in such legislative action is the recognition that religious corporations and general not for profit corporations are separate, distinct, and different legal entities. Therefore, as a matter of law, applicant is not a religious corporation.

35 ILCS 200/15-40 establishes the standard for obtaining an exemption from property tax as a religious organization. First, the property must be used exclusively for religious purposes and second, it must not be used with a view to profit. This standard is satisfied if it is shown that the property is primarily used for religious purposes, even though it may also be used for a secondary or incidental purpose. McKenzie v. Johnson, 98 Ill.2d 87 (1983).

In the seminal case defining religious purpose, the Illinois Supreme Court in People ex rel. McCullough v. Deutsche Gemeinde, *supra* stated:

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 existence of superior beings capable of exercising power over the human race, yet in the common understanding and in 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 public worship, Sunday schools and religious instruction. *Id.* at 136-137

With respect to its alleged entitlement to a religious exemption, applicant contends that it “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 p. 2) Furthermore, applicant claims that its “ministry spreads its 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.” *Id.* (citing testimony of Danny Shelton at Tr. pp. 70-76). In conclusion, applicant argues that “[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 p. 7).

Assuming *arguendo*, that applicant is, in fact, properly characterized as the “archetypal religious media ministry,” any such entity seeking a religious property tax exemption in the State of Illinois must still satisfy the existing statutory and judicial standards relating to granting the requested exemption. Regardless of how applicant asserts it is operated, and even if applicant is

the first of its “religious media ministry” kind, the threshold question is: Is the property being used primarily for a religious purpose as contemplated by 35 ILCS 200/15-40? Under recent case law, the dissemination and distribution of religious materials may be either (1) primarily religious with incidental commercial aspects, and thus within section 15-40 of the Code or (2) primarily commercial with religious overtones, and thus outside section 15-40.

The subject property is used to produce and broadcast applicant’s television and radio programs. Operating such an enterprise is not “religious” in the conventional sense because it lacks the requisite association with places traditionally used for public worship, Sunday School or other devotional instruction. It does raise a more contemporary question as to whether property used for exclusively religious broadcasting purposes could, in fact, qualify for a property tax exemption in Illinois. Illinois courts have yet to address the issue. The Alaskan Supreme Court has held that a radio station operated by the Catholic Bishop qualified for a property tax exemption as it was used solely for a combination of “public worship,” “religious education,” and “charitable purposes.”¹⁹ City of Nome v. Catholic Bishop of Northern Alaska, 707 P.2d 870, 890 (1985).

That case is distinguishable from this instant matter in that the Seventh-day Adventist Church, a religious organization, is not the applicant in this case. Applicant herein is specifically not part of the Seventh-day Adventist Church (Finding of Fact No. 70); is not a Seventh-day Adventist institution (Finding of Fact No. 71); is not owned or controlled by the Seventh-day Adventist Church (Finding of Fact No. 73); and, was established, organized, and is operated by lay people (Finding of Fact No. 72). Also, Alaskan court decisions are not binding in Illinois and, at best, might provide guidance in making a legal determination in Illinois. I therefore find that reliance on City of Nome is inappropriate in this matter.

¹⁹ In Alaska, the statute allows that the “exempt use” requirement permits a combination of exempt uses.

Historical case law compels a holding that applicant's property was not used exclusively, i.e., primarily for a religious purpose. The earliest pertinent opinion appears to be Congregational Sunday School & Publishing Society v. Board of Review, 290 Ill. 108 (1919) wherein the society operated a missionary department that organized Sunday schools and maintained missionaries to assist those schools, published and circulated religious periodicals, books, and educational materials that it sold specifically to Sunday schools. Although the society's store sold religious books and supplies, it did not make a profit and the society relied on donations for its funds. Any profits made were devoted to maintaining the missionary department. Congregational Sunday School, 290 Ill. at 111-12. The society requested the property tax exemption for the store on both religious and charitable grounds. The supreme court considered the two grounds together because they were so closely associated under the facts of the case. *Id.* at 112. In granting the exemption the court found that the society's dominant purpose was to spread the gospel by distributing religious books and Sunday school supplies. The court noted as well that the society's work was to send its workers and missionaries into those parts of our country where religious teaching has been neglected and take the young people in those areas into Sunday schools for moral and religious instruction and provide them with wholesome literature. Congregational Sunday School, 290 Ill. at 117.

In Scripture Press Foundation v. Annunzio, 414 Ill. 339 (1953), the supreme court limited its holding in Congregational Sunday School by ruling that the mere publication and distribution of religious literature is not a religious purpose. A nonprofit corporation that published and distributed Christian literature requested an exemption from unemployment compensation contributions on the ground that it was organized and operated exclusively for religious purposes. Scripture Press Foundation, 414 Ill. at 341-42. Relying on the corresponding property tax exemption, the supreme court held that the organization was not exempt. The court found

pertinent the facts that the foundation was incorporated and organized by Christian persons with a long record of religious service, but they were neither ordained ministers, pastors, nor representatives of any ecclesiastical or church organization. No church or ecclesiastical organization was an incorporator or member of the corporation. The court stated:

A study of the 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 in turn use, them in conducting their religious activity. We are of the opinion 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 any other item necessary to its ordinary and customary functioning.” (emphasis added.) Scripture Press Foundation at 355-56.

The court observed that there was no evidence that the foundation itself engaged directly in religious activities such as maintaining missionaries in the field, nor did it conduct Bible or Sunday Schools. It was “pertinent” that the profits of the foundation were reinvested on production and sales at a profit and that, upon a dissolution, the assets of the foundation could go to secular organizations or private individuals, including its officers. The court distinguished Congressional Sunday School on the ground that the earlier opinion interpreted only a statutory tax exemption for “charitable and beneficent organization” and not based on “religious purposes”. Scripture Press Foundation at 343, 357-360

Cases following Scripture Press Foundation have adhered to its distinction between nonprofit organizations that engage directly in religious activities, such as worship, missionary work, and religious education, and secular organizations that merely supply religious entities with materials to conduct such activities.

In Inter-Varsity Christian Fellowship v. Hoffman, 62 Ill.App.3d 798 (2nd Dist. 1978) the Illinois appellate court addressed whether property of an evangelical organization used to prepare and distribute Christian literature could qualify for exemption under the religious property tax exemption. Although the court held that the applicant fellowship did qualify for the exemption, the facts presented in Inter-Varsity are readily distinguishable from those before me.

First, the record in Inter-Varsity shows that the fellowship based the price of each publication that it sold strictly on its cost to the fellowship. *Id.* at 800, 803. The record contains absolutely no evidence proving how 3ABN determines the prices of the satellite dishes, videos, airtime, CD's and other items that it sells other than Danny Shelton's testimony that the pricing guide applicant uses for sales of its videos, CD's etc. is "that they are affordable." (Tr. pp. 168-170). Absent this evidence, I must resolve all failures of proof against the applicant and in favor of taxation. People ex rel. Norland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill.App.3d 430 (1st Dist. 1987). Therefore, I conclude that applicant employs a non-exempt commercial or retail pricing system unlike the Inter-Varsity Fellowship pricing method.

Second, the Inter-Varsity record specifically disclosed that the fellowship provided "a substantial amount of materials free or below cost to groups that are targeted for its message." Inter-Varsity, *supra*, at 803. Specifically, the fellowship gave away no less than 10% of its total publications free of charge and sold an unspecified amount of its literature "at half price to individuals with the idea that they would give the books away." *Id.* at 800.

Such is not the case here. Applicant did not establish that they gave anything away free except for the catalogues that list the merchandise that is for sale. In addition, absent evidence to the contrary, I conclude that at least one private individual, Linda Shelton, profits from the sale of items listed in the catalogue. Applicant's board has no written policy to give away or donate

its satellite systems, nor was a clear policy even articulated through oral testimony. Rather, if an individual were unable to pay the cost of the system, applicant's secretary would contact Danny Shelton who would determine, with the board's guidance, whether the product should be given away. "Applicant has no policy that says give away." (Tr. pp. 295-303).

In fact, applicant has no records of materials given away in 2000 or 2001. Applicant has no specific written policy that outlines what factors are used or what direction is given by applicant's board or president that allows applicant to distribute items at a reduced rate or free of charge. (Tr. pp. 586-589, 614-616). Applicant has, therefore, failed to establish that the facts relied upon by the Inter-Varsity court to grant the exemption therein are present in this case.

Finally, in Evangelical Teacher Training Ass'n v. Novak, 118 Ill. App.3d 21 (1983) a nonprofit association of religious educational institutions promoted Christian education by sending its officers to lecture at religious colleges, advising religious educators on training seminary students, preparing materials for Bible courses that were written by faculty at member schools, and distributing its publications, often free, to libraries and schools. In affirming the entitlement to a property tax exemption, the appellate court distinguished Scripture Press Foundation in several respects. First the training association constituents were religious organizations and its officers were ministers. Second, upon dissolution, the training association's assets would go to a charitable purpose. Third, the training association did far more than distribute religious materials to others; its officers were deeply involved in religious teaching, which served "to directly accomplish its corporate purpose, the promotion of Christian education, in a manner which could not be achieved through the mere sale or distribution of its books and religious materials." Evangelical Teacher Training 118 Ill. App. 3d at 26. Similar to the circumstances in Scripture Press Foundation and its distinction expressed in Evangelical Teacher Training, 3ABN's officers are not ministers and its constituents are not religious

organizations. Upon dissolution, there is no language in the 3ABN by-laws and articles of incorporation regarding the distribution of assets. 3ABN has not established that it has officers deeply involved in religious teaching that serve to accomplish the promotion of Christian education.

Although the foregoing opinions do not lay down a completely clear or rigid formula for deciding whether property is being used exclusively for religious purpose, the facts in this case compel me to find that applicant's property was not so used in 2000 and 2001. There is no evidence in that time period that applicant's officers were members of the clergy or that it was directly affiliated with a religious organization. More importantly, the evidence overwhelmingly shows that 3ABN directly engaged in little or no specifically religious activity and used the property in question for no such purpose. Instead, as was the case in Scripture Press Foundation, but unlike those in Inter-Varsity and Evangelical Teacher Training Ass'n, 3ABN achieves its corporate purpose of disseminating information by selling airtime, satellite dishes, and videos. The clear import from Scripture Press Foundation is that, when a secular nonprofit organization does not directly engage in religious activities but merely supplies materials to assist others in doing so, the organization is not using its real property "exclusively for religious purposes" as mandated by the statutes.

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, the question of whether applicant uses the property for religious purposes must be answered in the negative. Applicant unequivocally fails to satisfy this statutory mandate.

Applicant is not a religious society or body of persons. Instead, applicant admits it is an organization of lay persons that is not part of the Seventh-day Adventist Church. The majority

of the property in question is not a stated place for worship, Sunday School, and religious instruction as mandated by Deutsche Gemeinde. Not only are Sabbath Services not held on the majority of the property, but according to the testimony of Pastor Bishop, the public is unaware of any mini worship services that are held there. (Tr. pp. 539-541). Deutsche Gemeinde requires that such facts must be stated. *Id.* at 136.

As a lay institution, applicant entered into a formal contract with the Seventh-day Adventist Church that acknowledges the church's support of applicant's efforts. However, the property isn't used solely for applicant's programming. Other entities purchase time for programming that is non-religious. There is no indication in the record that what applicant charges for the sale of its airtime is not competitive. Furthermore, it is very evident that applicant is marketing its own products and goods for purchase. Applicant is advocating a way of life but it is a lifestyle that applicant favors, not a religion. Leasing or otherwise using property to promote a lifestyle and to market merchandise does not qualify as a use of property for primarily religious purposes.

Illinois case law recognizes that certain entities qualify for exemption if their operations are directed and controlled by another exempt entity. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944), Southern Illinois University Foundation v. Booker, 98 Ill.App.3d 1062 (5th Dist. 1981). In these cases the two exempt public universities were subject to statutory debt limitations that made it legally impossible for them to obtain the financing for the purchase of the properties at issue. The university foundations purchased the properties for their respective university. The legal limitations did not apply to the respective foundations that purchased and held legal title to the properties at issue. The organizational documents of each of the foundations stated that the foundation entities were strictly for the benefit of the respective university. Based upon those provisions, the courts concluded that the universities exercised

sufficient direction and control over the foundation to place equitable ownership of the properties in the university.

Applicant's contract with the Seventh-day Adventists does not state that applicant's use of the property is contingent upon any control what so ever of the Seventh-day Adventist Church. The document merely states that the entities support the efforts of each other. Nothing in the record establishes the Seventh-day Adventist's authority to operate the subject property under its own jurisdiction, and, in fact, the testimony of Danny Shelton was that applicant is not owned by or controlled by the Seventh-day Adventist Church. Although Danny Shelton testified that he has written three books about the teachings and principles of the Seventh-day Adventist Church, (Tr. pp. 155-157) those books were not admitted into evidence, nor were the circumstances regarding the religious nature or financial information about the books admitted into evidence. Certainly nothing connects the writing, publication, or distribution of that material to the property at issue.

In addition, there is discrepancy in the testimony of Linda Shelton. She stated she did not receive royalty payments for the CDs (Tr. pp. 595, 617) and later admitted that she did (Tr. p. 619). The CD admitted into evidence, entitled "I think About Grace", has a copyright mark on it. (Applicant's Ex. No. 24). Broadcast Music Incorporated, a private company unaffiliated with applicant, licenses her songs. (Tr. pp. 617-620). The songs on the CD belong to Linda, and were copyrighted by her in 2001. (Tr. pp. 620-623). Linda insisted that the (800) area code, toll free telephone number is strictly for prayer requests (Tr. p. 608, 612); however, it is the number listed on the inside label of her CD that was admitted into evidence. The (800) telephone number is listed for ordering additional CDs. The outside label had the (618) area code telephone number listed with the address of applicant. Applicant's Fall/Winter 2001-2002 newsletter has an advertisement for Linda Shelton's new CD, "I Think About Grace." The advertisement has the

toll free number listed for orders. (Intervenor's Ex. No. 8; Applicant's Ex. No. 24; Tr. pp. 644-645).

Based upon the record, I conclude that applicant, a non-religious entity and commercial enterprise, maintains control over the operations conducted on the property at issue.

Where property is used for two purposes, one of which is exempt from taxation and the other of which is not, tax should be imposed against the part of the property that does not qualify for exemption, and not imposed against the portion that qualifies. Fairview Haven v. Department of Revenue, 153 Ill.App.3d 763 (4th Dist. 1987). In the second floor of the administrative production center, applicant has two offices, each 14' x 18'. Applicant's staff includes four Seventh-day Adventist ministers that answer telephones in those offices and pray with people. The pastors lead daily worship services in these rooms. The use of the two offices for prayer is consistent with the religious activities required under Deutsche Gemeinde, *supra*.

Leased or Otherwise Used With a View to Profit

The religious property tax exemption also mandates that the property not be "leased or otherwise used with a view to profit." 35 ILCS 200/15-40²⁰ Applicant's property is most definitely used with a view to profit. Both applicant's own corporate growth and the profit inuring to individuals result from applicant's use of the subject property. According to applicant's 2001 financial statement, applicant's assets have accumulated to over forty-two million dollars (\$42,000,000), approximately three times the total revenue for 2001 of slightly under fourteen million dollars (\$14,000,000). The income raised and accumulated by applicant has allowed it to purchase an airplane, a state-of-the art recording studio, and other audio/video production facilities and tools. The airplane is a business airplane that is used to promote the Shelton's commercial enterprises and expand the target audience areas where 3ABN does its

²⁰ See Footnote No. 20 for the 2001 amendment to the statute.

business. Danny Shelton uses the airplane to allow him to speak to groups around the world and to advertise that 3ABN is available. Unspecified donations for his speaking come as an added bonus. Applicant provided no information in its financials as to where the amounts listed as contributions come from and/or who contributes. Nor is there any indication in the record that Danny Shelton is traveling to advocate the Seventh-day Adventist doctrine or faith.

Danny Shelton testified that he earned an annual salary of approximately \$50,000 and Linda Shelton earned a similar salary. He also stated that the Sheltons have asked not to receive retirement benefits and have requested to keep their compensations around those amounts. The Sheltons also get medical insurance and dental insurance. (Tr. pp. 140-141). The financial statements of the applicant for 2000, in its schedule of supporting service expenses, management and general expenses, list wages of \$1,802,307.48. Applicant did not provide a break down of those wages. For 2001, applicant's financial statement lists wages of \$1,219,639.23 in its schedule of supporting service expenses, management and general expenses, and wages in the schedule of program service expenses, television and radio broadcasting expenses category of \$825,160.07. Applicant did not explain those amounts and to whom the wages were given. Applicant did not verify or establish the assertions of Danny Shelton regarding the retirement benefits and wage amounts with copies of the Shelton's W-2's or any other evidence. No evidence was given to establish how the wage amounts in the financial statements should be broken down, or even for how many employees these wages apply. The estimated liability for future group medical insurance claims in 2000 was \$37,399.30 and in 2001, \$24,482.41. Those amounts were also not explained. I take administrative notice of the fact that applicant did not supply a federal form 990, "Return of Organization Exempt From Income Tax" that must be filed with the Internal Revenue Service to support Shelton's assertions about wages, lack of compensation for directors, pension plan contributions, or other financial considerations.

According to the incorporation documents submitted, the four directors of the company are Danny L. Shelton, Linda Shelton, Kenneth Joel Shelton, and Emma Lou Shelton. Applicant failed to produce any evidence that this is not a closely held business with profits inuring to the family. Applicant failed to establish what the relationship is between Kenneth Joel Shelton, Emma Lou Shelton, Danny Shelton and Linda Shelton or that the relationship of Kenneth Joel Shelton and Emma Lou Shelton with Linda and Danny Shelton is not one of direct family. This is of import because these are the only names of the directors of the applicant, and two of them are controlling corporate officers. Applicant has produced no evidence to negate the supposition that Danny and Linda Shelton maintain control of this organization. Although the by-laws state that the number of directors of the corporation is seven (7) to fifteen (15), applicant failed to explain the discrepancy between these numbers and the four Shelton directors shown on the articles of incorporation.

Decisions concerning terms and conditions of employment are normally left to the business judgment of an applicant's governing board and courts generally presume that a governing board will act in good faith and in furtherance of a company's best interest when making such decisions. Spillyards, et al. v. Abboud, et al. 278 Ill.App.3d 663, 681 (4th Dist. 1996). As such, courts usually will not interfere with governing board's business judgment absent a showing that the governing board acted in bad faith, abused its discretion, or committed gross negligence. *Id.*

This protective presumption does not attach where the directors have an improper interest in the subject matter. *Id.* 3ABN's corporate documents create such an improper interest by providing that all four directors share the last name of Shelton and have Rural Route #2, West Frankfort, Illinois 62896 as their mailing address. As presumed family members, the corporate control rights normally exercised by the board become personal and one can fully expect the

board's authority to be exercised in a manner that provides them with the greatest financial return. I must conclude from the evidence of record, that applicant is controlled by Danny and Linda Shelton, and all final decisions are made by them and not by a disinterested impartial board of directors.

Linda Shelton is certainly operating a commercial enterprise with the production of her CDs. The programming done on the property generates large sums of money. Applicant has failed to establish that it is not charging everyone that purchases or uses its products, facilities, and programs at prices above the cost of operation. On the contrary, these appear to be arms-length transactions producing fees no different than a non-exempt business enterprise would generate. Programming and broadcasting are done for profit on this property, as clearly shown by applicant's financial statements.

Section 15-40 expressly forbids this type of management by barring exemption where the property is "used with a view to a profit." 35 ILCS 200/15-40. Although most of the case law concerning uses for profit has developed in the context of leased property, Illinois courts have uniformly denied exemption to properties primarily used for purposes of providing their owners with some form of return on their investment. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 140-141 (1934); People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1924); People ex rel. County Collector v. Hopedale Medical Foundation, 451 Ill.2d 450 (1970); Victory Christian Church v. Department of Revenue, 264 Ill.App.3d 919, 923-924 (1st Dist. 1988); Wheaton College v. Department of Revenue, 155 Ill.App.3d 945 (2nd Dist. 1987); American National Bank and Trust Company v. Department of Revenue, 242 Ill.App.3d 716 (2nd Dist. 1993); Immanuel Evangelical Lutheran Church of Springfield v. Illinois Department of Revenue, 267 Ill.App.3d 678 (1994).

The operation of 3ABN on the property in question generates a significant profit for applicant. Applicant broadcasts its programs to a customer base comprised of persons that purchase applicant's dish systems. The nature of applicant's programming and CDs is the encouragement of a healthy lifestyle, for a price. Although there may be religious overtones in applicant's use of the property, that is not sufficient to qualify for a religious property tax exemption. Were I to recommend a grant of tax exemption for the majority of the property at issue, which is clearly a commercial enterprise, it would give applicant an unfair commercial advantage over other commercially owned and operated radio and television stations.

Although applicant executed the declaration with the General Conference of Seventh-day Adventists, the declaration simply expresses the support of each entity for the endeavors of the other. The declaration confirms that the Seventh-day Adventist church supports the principles of the applicant but establishes no formal interaction between the two entities. There is no obligation on the part of the applicant to use the property for Seventh-day Adventist activities, doctrines or programming, and in fact applicant charged the Seventh-day Adventist Church for its programs, just like it charged all its other customers.

Applicant's activities have brought it to a position where it can consider the spin-off of for-profit corporations dedicated to activities that cannot be done by a not-for-profit entity. (Tr. pp. 376-385). Additionally, accumulated capital equipment and resources obtained and maintained by applicant (for example, the 800 toll free telephone number) are used in conjunction with ordering applicant's equipment and products. Applicant has accumulated sufficient wealth that it is currently in the process of setting up its own music label and has purchased additional properties for various uses not contemplated under the not-for-profit statutes. (Tr. pp. 371-372, 376-385). At least one person, Linda Shelton, will benefit from that.

(Tr. pp. 617-623, 643-645). Applicant has, therefore, not established that it does not profit from the enterprise conducted on the subject property, a fatal flaw to its exemption claim.

The audited financial statements prove that applicant netted a profit during the years at issue. Applicant has total revenues and other support in 2000 of \$14,452,519.91 and expenses of \$13,239,904.62 for a net profit of \$1,212,615.29. For 2001, total revenues and other support were \$13,935,318.64 and expenses were \$11,940,167.11 for a net profit of \$1,995,151.53. It is difficult to totally understand applicant's financial position based solely on the financial statements submitted. The mere fact that applicant's financial records show a surplus may not be sufficient, in and of itself, to prevent 3ABN from obtaining exempt status. *See, Children's Development Center v. Olson, 52 Ill.2d 332 (1972)*. Nevertheless, the fact that applicant maintained such a sizeable surplus *at the same time as* it was able to comfortably cover its operating expenses through its cash resources negates a finding that applicant does not use the property with a view to profit. Applicant has not established that it conducts charitable activities when it clearly has the resources to extend the use of the property and equipment on the property to charitable and/or religious entities at no cost. The record does not indicate that it did so.

Charitable Tax Exemption Standards and Applicant's Claim for Charitable Exemption

Section 15-65 of the Property Tax Code authorizes an exemption for property actually and exclusively used for charitable purposes and not leased or used with a view to profit. In Crerar v. Williams, 145 Ill. 625 (1893), the Illinois Supreme Court defined charity as follows:

A charity, in a legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public government. *Id.* at 643

When determining whether an organization is charitable for purposes of tax exemptions, courts first look at an applicant's organizational documents. Morton Temple Association v. Department of Revenue, 158 Ill.App.3d 794 (3rd Dist. 1987). Applicant's by-laws fail to specify the nature of any charity that is to be dispensed and have no mention of charity as contemplated by Illinois statutes and case law. Illinois courts have long held that the lack of such wording in the organizational document can be used as a basis for determining that an applicant is not a charitable organization as contemplated by the statute. People ex rel. Nordland v. Association of Winnebago Home for the Aged, 40 Ill.2d 91 (1968). In fact, even if such language appeared in these documents, the court in Albion Ruritan Club v. Department of Revenue, 209 Ill.App.3d 914 (5th Dist. 1991) said that the statements of the agents of an institution and the wording of its governing legal documents evidencing an intention to use its property exclusively for charitable purposes do not relieve such institution of the burden of proving that its property is actually and factually so used. *Id.* at 918.

Applicant's by-laws allow it, *inter alia*, (1) to develop religious programming for electronic transmission, (2) to buy and sell television and radio apparatus, (3) to develop, promote and produce recorded music and video programs, (4) to own or operate facilities for the public's welfare, (5) solicit support for its activities from the public, (6) promote interests of other affiliated organizations (7) own and lease property, (8) contract with other organizations in furtherance of applicant's purposes, and (9) operate within the meaning of section 501(c)(3) of the Internal Revenue Code. Although these by-laws express, generically, that the corporate purposes are exclusively religious, charitable, scientific or educational, the enumerated provisions illustrate that the organizational documents fail to satisfy the threshold tests set forth in Crerar v. Williams, *supra*.

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court articulated six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines are as follows:

- (1) The benefits derived are for an indefinite number of persons;
- (2) The organization has no capital, capital stock or shareholders, and does not profit from the enterprise;
- (3) Funds are derived mainly from private and public charity, and are held in trust for the objectives and purposes expressed in its 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 property is for charitable purposes.

Therefore, the focus of a charitable exemption is whether the applicant serves public interest and lessens the government's burden. Dupage County Board of Review v. Joint Commission on Accreditation of Health Care Organizations, 274 Ill.App.3d 461 at 466 (2nd Dist. 1995).

The purposes set forth in applicant's by-laws are that the applicant, in conjunction with various religious organizations, will develop and produce electronic transmission for television and radio broadcasting throughout the world. These purposes in and of themselves have no relationship to the guidelines listed in Methodist Old People's Home, *supra*. Further, the by-laws submitted by applicant are not complete, did not contain the entire corporate purpose section, and express, generically that the corporate purposes are religious, charitable, scientific or educational within the meaning of Section 501(c)(3) of the Internal Revenue Code. There is no language or prevailing authority that requires charity at all in the governing mandate for applicant and the by-laws state nothing about charity under the Illinois Constitution as it pertains to the grant of property tax exemptions.

Also contrary to the guidelines enumerated in Methodist Old People's Home, is the fact that applicant's property is used with a view to accumulating profits. According to applicant's 2001 financial statement, applicant's assets have accumulated to over forty two million dollars (\$42,000,000), approximately three times the total revenue for 2001 of slightly under fourteen million dollars (\$14,000,000). Although applicant does not issue capital stock nor has shareholders, the income raised and accumulated by applicant has allowed it to purchase an airplane, a state-of-the art recording studio, and other audio/video production facilities and tools. Such an accumulation of income occurred during a time when there is no evidence that applicant dispensed or allowed its programs, goods, or property to be used by those not able to pay the costs applicant required. Clearly, this is in violation of a Methodist Old Peoples Home guideline.

The two leading cases on "profit or gain," are People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970) and Lutheran General Health Care System v. Department of Revenue, 231 Ill.App.3d 652 (1st Dist. 1992). In Hopedale it was held that the type of "profit or gain" prohibited under Methodist Old People's Home is that which inures to the benefit of one or more private individuals engaged in managing the applicant's enterprise. Hopedale, supra, at 454.

The compensation at issue in Hopedale consisted of Hopedale's medical director and chief administrator, Dr. Rossi, exercising virtual control over the foundation's operations, maintaining continuing security-related claims against the foundation's assets, and receiving a salary of \$75,000 which the court found to be "substantial" even though it was paid in increments over five years. Rossi also purchased groceries for his family's personal use using the non-profit foundation's sales tax exemption on occasions when the foundation did not have sufficient funds to pay his salary. *Id.* at 450, 456-458, 463-464.

The compensation at issue in Lutheran General, *supra*, consisted solely of \$20 shares of stock that physicians, employed by the non-profit medical foundation, could purchase. *Id.* at 655, 662. If the physician's employment ended, the foundation would re-purchase the doctor's share of stock for \$20. The physicians had the right to vote on administrative matters while they owned the stock. *Id.* at 662. In comparing Lutheran General, where the court held that the compensation at issue did not constitute the type of pecuniary profit prohibited under Methodist Old People's Home, with Hopedale, where the compensation at issue *did* violate that prohibition, it is clear that the substance rather than the form of the compensation is decisive. Lutheran General, *supra*, at 662.

Applicant's remuneration to the Sheltons in the form of a van, an airplane at their disposal on weekends, the wages listed on the financial statements, and the total control over the operation by Danny Shelton, are similar to the circumstances listed by the court in Hopedale, that were found to violate the type of pecuniary profit prohibited under Methodist Old Peoples Home. The substance of applicant's activities on the subject property also shows that the applicant is profiting from the enterprise.

With respect to guidelines cited above as (1), (4) and (5) of Methodist Old Peoples Home, *supra*, applicant's by-laws are totally devoid of any references to a gift to be given to an indefinite number of persons, or a reduction of a governmental burden. Applicant was unable to establish that any satellite materials or dishes were given away or that there is a set policy that if one is in need of charity, they can obtain it.

Applicant receives donations, both restricted and unrestricted, from the public and generates additional revenue from the sale of airtime and products. The revenue generated from these ventures is approximately fourteen million dollars (\$14,000,000) a year. Applicant serves as a pass-through of dedicated funds donated by individuals, yet how the remaining unrestricted

funds are used is unknown. The transmission of applicant's programming is effectuated through applicant's satellite systems and transmissions,²¹ thereby establishing that viewers need to purchase those systems through either applicant or other entities.²² Costs to viewers for such purchases are considerable and constitute a significant obstacle to those unable to afford the equipment. This obstacle prohibits disbursal to all who need and apply for it. Call center workers are trained only to accommodate payment requests for applicant's products. As stated previously, applicant has not established that it provides a waiver of fees for those individuals that cannot afford its products, a most compelling factor according to Small v. Pangle, 60 Ill. 2d 510 (1975).

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 fourteen million dollars (\$14,000,000) a year and have led to the accumulation of over forty two million dollars (\$42,000,000) of net corporate assets. Even assuming, as applicant asserts, that satellites and/or programming systems are sold to purchasers at or slightly below cost, no documentary evidence was offered on this issue and I cannot reasonably conclude this as a fact based solely upon the oral testimony provided. Therefore, such an activity cannot be considered to be a "benefit to an indefinite number of persons." What is definitely established is that the activity is a benefit to the applicant as it expands its audience of potential donors and customers by providing them with the delivery system to ensure they will continue to observe applicant's programs, that, in turn, advertise a catalogue of merchandise sold by applicant at commercial rates.

²¹ Additional radio, television, and cable transmissions may be available to recipients; however, the primary focus of applicant's operations is based on a sophisticated satellite system designed to receive applicant's programming.

²² It is unclear exactly what the relationship is between applicant and Sky Angel and/or the financial arrangements between the two.

Applicant asserts that it maintains an (800) area code telephone number strictly for prayer requests. However, none of applicant's order forms/catalogues state that pastors are available for prayer requests. Rather, the order forms are for the satellite dishes, videos, cassettes and other tangible personal property applicant sells to its viewers and subscribers. Both the (800) and the (618) area code telephone numbers are on those documents.

This case is not about applicant's beliefs, contrary to what was asserted consistently at the hearing. It is about whether the use of the subject property during 2000 and 2001 legally qualifies for a religious or charitable property tax exemption for those years. In Fairview Haven v. Department of Revenue, *supra*, the court granted a property tax exemption for the intermediate care facility owned by a religious organization and denied the requested exemption for the independent-living units. As part of its analysis, the court discusses the fact that:

governmental entities may not inhibit the free exercise of religion or act in such a way as to foster any particular belief. Therefore, governmental bodies are precluded from resolving disputes on the basis of religious doctrine (Grace Evangelical Lutheran Church v. Lutheran Church-Missouri Synod (1983), 118 Ill.App.3d 151, 73 Ill.Dec. 789, 454 N.E.2d 1038) and must respect the internal autonomy of religious organizations. (Lowe v. First Presbyterian Church (1974), 56 Ill.2d 404, 308 N.E.2d 801). 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. Holy Spirit Association for the Unification of World Christianity v. Tax Commission, (1982), 55 N.Y.2d 512, 518, 450 N.Y.S.2d 292, 293, 435 N.E.2d 662, 663. Fairview Haven at 772-773.

In its analysis of the use of the subject properties, the court found that the applicant was a religious organization; however, the court went on to state that the second prong of the test for a property tax exemption is whether the use of the property complied with the necessary section of the statutes. This does not violate an individual's or organization's rights to practice religion 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. *Id.* at 772-774.

Similarly, in this case, an analysis of applicant's use of the property is necessary. The case is also not about whether or not what the applicant is doing is good for people. No one disputes that family oriented programming is positive and that applicant's programming is family oriented and includes programming intended to further physically healthy lifestyles. However, contrary to applicant's assertions, these types of programming conducted on a property do not, *ipso facto*, result in a tax exemption for that property.

Danny and Linda Shelton have control of applicant. They regulate the amount they are paid. They have control of programming. They regulate all contracts. Applicant uses this property to produce television programs, to sell equipment, radio and television time, and to sell merchandise, and, absent evidence to the contrary, sales are made at commercially competitive prices.

While a significant portion of the materials may incidentally relate to religious topics, applicant is a radio and television/satellite broadcasting, sales, and publishing corporation that sells, markets and/or otherwise distributes its products to outside entities or individuals. Outside entities are attracted to the content of applicant's programs that are consistent with the 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, a religious institution using the subject property in furtherance of religious or charitable activities.

Applicant filed a "Motion For Leave To File Instanter" requesting that I consider two Department of Revenue administrative decisions, 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. The motion was granted by the order dated July 28, 2003. In Basilean Films, a religious and charitable organization owned a house and used a portion of it for writing, producing, and editing

religious video tapes, audio tapes, and books for Christian organizations world-wide. Those sections of the house qualified for a property tax exemption. The areas of the house used primarily for residential purposes did not qualify for exemption.

In Muhammad's Holy Temple of Islam, an Islamic organization owned a three-story building that was used for training in the Islamic religion. At hearing, Muhammad's Holy Temple established that it was, in fact, a religious Islamic organization and that the training was an essential part of its religious purposes.

The Department, as shown by these cases, grants exemptions for religious organizations that use property for exempt religious purposes and not with a view to profit. As discussed above, applicant is not only not a religious organization, but, more importantly, does not primarily use the property for religious purposes without a view to profit.

For the aforementioned reasons it is recommended that Franklin County Parcel Index No. 174-116-11 remain on the tax rolls for the 2000 and 2001 assessment years and be assessed to the applicant, the owner thereof, except for the two pastor's offices, each measuring 14 feet by 18 feet, on the second floor of the administrative production center building, and a corresponding amount of land. That area, I recommend, be granted a property tax exemption as used for religious purposes without a view to profit.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
January 28, 2004