

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

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

<p><b>3 ANGELS BROADCASTING NETWORK</b></p> <p style="text-align: center;">v.</p> <p><b>THE DEPARTMENT OF REVENUE              OF THE STATE OF ILLINOIS</b></p>	}	<table style="width: 100%; border: none;"> <tr> <td style="padding: 2px;"><b>A.H. Docket #</b></td> <td style="text-align: right; padding: 2px;"><b>01-PT-0027</b></td> </tr> <tr> <td style="padding: 2px;"><b>P. I. #</b></td> <td style="text-align: right; padding: 2px;"><b>174-116-11</b></td> </tr> <tr> <td style="padding: 2px;"><b>Docket #</b></td> <td style="text-align: right; padding: 2px;"><b>00-28-01</b></td> </tr> <tr> <td style="padding: 2px;"><b>Docket #</b></td> <td style="text-align: right; padding: 2px;"><b>01-28-07</b></td> </tr> </table> <p style="text-align: right; padding: 5px;"><b>Barbara S. Rowe              Administrative Law Judge</b></p>	<b>A.H. Docket #</b>	<b>01-PT-0027</b>	<b>P. I. #</b>	<b>174-116-11</b>	<b>Docket #</b>	<b>00-28-01</b>	<b>Docket #</b>	<b>01-28-07</b>
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**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

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,

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.<sup>17</sup> 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

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<sup>17</sup> 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, . . .<sup>18</sup>

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<sup>18</sup> 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 Inter-Varsity Christian Fellowship v. Hoffman, 62 Ill.App.3d 798 (2<sup>nd</sup> 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 (1<sup>st</sup> 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

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 (4<sup>th</sup> 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 200/15-40<sup>20</sup> 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

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<sup>20</sup> See Footnote No. 20 for the 2001 amendment to the statute.

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 (4<sup>th</sup> 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 (1<sup>st</sup> Dist. 1988); Wheaton College v. Department of Revenue, 155 Ill.App.3d 945 (2<sup>nd</sup> Dist. 1987); American National Bank and Trust Company v. Department of Revenue, 242 Ill.App.3d 716 (2<sup>nd</sup> 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

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