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

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

ORDER PURSUANT TO APPLICANT'S PETITION FOR REHEARING

This cause comes on to be heard on "Applicant's Petition for Rehearing," filed by applicant following an issuance of decision by the Department of Revenue. The Department, as respondent, and the intervenor filed the "Respondent's and Intervenors' Joint Response to Applicant's Petition for Rehearing." Following a complete review of these filings, as well as of the record in this cause, applicant's petition is denied for the following reasons:

A request for rehearing must comply with 86 Admin. Code Section 200.175, which states in pertinent part at (b):

> To be considered for initial review or rehearing, a taxpayer must submit a written application therefor to the Chief Administrative Law Judge, offering specific and detailed rationale for each basis used to support the request. Where a rehearing is sought following issuance of a final Departmental decision, all errors of fact or law viewed as affecting the validity of that decision must be set forth. If new evidence, not previously available and which the taxpayer was not required to maintain or keep as part of its own records is sought to be admitted, explanation of the nature of that evidence and how it affects the decision shall also be included. . . . In determining whether to permit an initial review or rehearing, the Department shall consider such factors as: the offer of proof with respect to matters in controversy; new evidence and the nature and complexity of legal issues raised; the

> diligence of the person seeking the rehearing; the passage of tine between the finalization of the assessment and the request for review. No second or subsequent application for review or rehearing relating to the same operative set of facts shall be considered by the Department

Applicant first requests that it be permitted to add three additional pages to its trial Exhibit 3, thereby providing the record with a complete copy of its bylaws. It contends that its failure to provide a complete copy of its bylaws at hearing was unintended. 86 Admin. Code 200.155 addresses the evidence and conduct of hearings at the Illinois Department of Revenue and at part (f) states:

> With the exception of Section 200.135(f) of this Part[1], all evidence in support of any issue, whether in the nature of testimony, documents, or other physical matter, shall be taken in the course of and on the date(s) set for hearing. An Administrative Law Judge shall not accept or consider evidence of any form or nature which is received or submitted outside of or subsequent to the hearing itself, nor permit same under any circumstances, without the express written and recorded agreement of the parties.

It certainly is a party's burden to make sure that each of its evidentiary exhibits is complete when submitted into the record. It is also clear that applicable Illinois regulations prohibit the acceptance of evidence after the hearing is completed, as in this case. However, there is no reason for me to believe that applicant intended to enter into the record anything less than a complete copy of its bylaws. Nor have the intervenors and respondent suggested that they were not provided a complete copy of these bylaws. I conclude that applicant's failure to include three pages of its bylaws as part of the record was inadvertent, and, therefore, a complete copy of applicant's bylaws shall be designated for purposes of this record as Applicant's Exhibit 3.

[1] Dealing with evidence obtained in informal review.

The addition of these pages of applicant's bylaws affects only a small segment of the determination denying tax exemption. By no means does a change in the legal analysis on this one point, found at pages 29 and 30 in the Recommendation, warrant a different legal conclusion as to whether the property at issue is exempt from real estate taxes for the pertinent years.

Applicant has failed to provide any other basis for further reconsideration. Applicant's assertion that it should be allowed to augment the record post-hearing with its IRS forms 990 (Return of Organization Exempt From Tax for years 2000 and 2001) is of serious concern. Applicant cites to Muller v. Zollar, 267 Ill. App.3d 339 (3rd Dist. 1994) and Country Companies v. Universal Underwriters Insurance Company, (343 Ill.App.3d 224 (3rd Dist. 2003) for the proposition that "judicial notice of a public record is proper and may be taken despite the fact the public document was not offered at the administrative hearing."[2]

First, while reviewing courts have permitted public documents to be added to the court record post-hearing, no court has announced that this permission must be extended to every public document. Rather, the practice of permitting the admission into the record of public documents post-hearing is extended to those documents containing facts based upon "'easily accessible sources of indisputable accuracy.'" People v. Davis, 65 Ill.2d 157, 161 (1976) citing McCormick on Evidence section 330 at 763(2d ed. 1972)

What is of serious concern in this matter is the assertion by the respondent and intervenors in their "Joint Response to Applicant's Petition for Rehearing" that intervenors requested the 990s in discovery requests and in a Supreme Court Rule 237 request and the applicant refused to produce them.[3] As stated in the response: "It is not

[2] Applicant's Petition for Rehearing p. 4.
[3] Joint Response to Applicant's Petition for Rehearing pp. 3-4.

only unfair, but patently improper to now offer them as proof of a contrary conclusion on the basis that the administrative agency can take administrative notice of these records. It is presumptuous to now seek to admit them on the basis that these federal returns are a matter of public record, since it is not so clear that they are part of the public record."[4]

Thus, there is raised herein a concern, at the very least, regarding the "indisputable accuracy" of the facts found on the 990s which the applicant, at this late date, requests that I consider as supporting its oral evidence. Further, it is of considerable importance that these returns were produced by the applicant and were in the applicant's possession and control before and during the entire administrative hearings process. Applicant, therefore, made a deliberate decision to use only oral testimony to advance the facts it now wants these documents to bolster. I must agree with the respondent and intervenors that to allow the inclusion into the record of these documents at this time will seriously prejudice them by compromising the integrity of the trial proceeding whereby full disclosure is required when sought and the right to fully examine evidence is essential.

As a result of the serious concern raised by the inclusion of these returns at this date, they will not only not be considered, but are stricken from "Applicant's Petition For Rehearing."

The majority of the errors averred by the applicant in its request constitute arguments that the evidence and testimony submitted at hearing should have been interpreted differently. For example, applicant cites to Applicant's Exhibits 18-21 for the proposition that applicant gives away a number of materials for free. These exhibits are lists of items applicant, through the testimony of Mr. Shelton, asserted were available for

[4] Joint Response to Applicant's Petition for Rehearing p. 4.

free. These lists were prepared in anticipation of litigation (Tr. pp. 173-177) and were offered into evidence without substantive support. Therefore, there is no basis provided by the applicant for re-evaluation of the consideration given to these documents, and applicant presents no basis for concluding that my facts or legal conclusions are in error.

On the other arguments, after a careful review of the entire record including an assessment of the credibility of the witnesses, I stand by the facts and conclusions of law drawn from the record. Thus, a rehearing or any further reconsideration is not warranted.

Therefore, on the point that applicant intended to have a complete set of bylaws as part of the record, and inadvertently left out sections, I agree. The complete bylaws are entered into evidence in this matter. On all other points, Applicant's Petition for Rehearing is denied and all mention of the forms 990 are hereby stricken.

Date: April 6, 2004

Barbara S. Rowe
Administrative Law Judge