

PT 05-7

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

IN RE: 2002 PROPERTY TAX EXEMPTION
BELIEVERS BROADCASTING COMPANY
Applicant

A.H. Docket # 03-PT-0031
P. I. #s 23-2-0003-000-00
23-1-0432-000-00
19-0-0316-002-00

Application #s 02-1-57
02-1-58

Barbara S. Rowe
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Honorable Barney S. Bier, Adams County State's Attorney for Adams County and petitioners; Robert T. Lawley¹, Hinshaw and Culbertson for Believers Broadcasting Company; Kent R. Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held to determine whether Adams County Parcel Index Nos. 23-2-0003-000-00, 23-1-0432-000-00 and 19-0-0316-002-00 qualified for exemption during the 2002 assessment year.

Mr. Carl Geisendorfer, President of Believers Broadcasting, (hereinafter referred to as "Believers" or the "Applicant"); Mr. Ken Geisendorfer, Vice President of Believers and Pastor of the Open Arms Ministry Church at the Shepherd's Inn Life Center (hereinafter referred to as "Shepherd's Inn"); and Mr. Michael Wortman, Treasurer of Believers, Manager of WTJR-TV,

¹ Mr. Lawley was not Believers' original attorney and did not file the protest in this matter.

and Associate Pastor at the Open Arms Ministry at the Shepherd's Inn were present and testified on behalf of Believers. Mr. Michael Goodapple, Manager of the Shepherds Inn until September 2003; Ms. Georgene Zimmerman, Supervisor of Assessments of Adams County and Clerk of the Board of Review of Adams County; Ms. Holly Cain, Director of Tourism for the Quincy Area Convention and Visitors Bureau; Ms. Debra Carstens, General Manager of the Quincy Fairfield Inn; and Ms. Michelle Wiemelt, former employee of the Supervisor of Assessments office of Adams County were present and testified on behalf of Adams County.

Parcel Index No. 19-0-0316-002-00 contains a television receiving and transmitting facility, trailers, and storage areas. Parcel Index Nos. 23-2-0003-000-00 and 23-1-0432-000-00 contain the Shepherd's Inn. The issues in this matter include, first, whether Believers used Parcel Index No. 19-0-0316-002-00 for exempt purposes during 2002. The second issue is whether Believers used Parcel Index Nos. 23-2-0003-000-00 and 23-1-0432-000-00 for exempt purposes in 2002. After a thorough review of the facts and law presented, it is my recommendation that Parcel Index No. 19-0-0316-002-00 does not qualify for exemption for the 2002 assessment year. It is recommended that Parcel Index Nos. 23-2-0003-000-00 and 23-1-0432-000-00 also do not qualify for exemption for the 2002 assessment year. In support thereof, I make the following findings of fact and conclusions of law in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. Believers "is organized exclusively for charitable, religious, and educational purposes, including the construction and operation of television stations, radio stations, churches, ministries, buildings for housing and out-reaches, inns for ministering the Gospel to body, soul,

and Spirit, clinics, and all others that encompass the realm of Christian ministry worldwide, and the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law)².” (Dept. Ex. No. 2 p. 10)

2. The amendment to Believers’ By-Laws, adopted August 9, 2001, states that there are three directors who are permanently installed and shall not be voted upon. The three directors hold the offices of President, Vice President, and Secretary/Treasurer and are Irving C. Geisendorfer, Kenneth M. Geisendorfer and Martin R. Metzger³. The directors embrace the Statement of Fundamental truths that “teach that homosexuality, abortion, fornication, adultery, and idolatry, just to name a few” in named Scripture passages, “are contrary to the moral law of God and all employees, directors, volunteers, supporters and guests of Believers Broadcasting Corp. will be held to the highest standards of that law and will be dismissed, fired, rejected and asked to leave at once if any of the immortal [sic] gestures would be in the lives of said persons.” No member of Believers has voting rights other than the three directors. (Dept. Ex. No. 2 pp. 12-13)

Tower Property

3. The jurisdiction and position of the Department that Adams County Parcel Index No. 19-0-0316-002-00 did not qualify for a property tax exemption for the 2002 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 9)

4. The Department received the application for exemption of the parcel from the Adams County Board of Review. The Board recommended granting the exemption. The

² Verbatim recitation from Believers Articles of Incorporation.

³ It is unclear when Mr. Michael Wortman became Treasurer of Believers. He has been affiliated with Believers since November 2001. (Tr. p. 172)

Department denied the requested exemption finding that the property was not in exempt use. Believers timely protested the denial and requested a hearing. (Dept. Ex. No. 1)

5. The Applicant acquired the subject parcel by a warranty deed dated September 29, 2000. (Dept. Ex. No. 1)

6. “The parcel of real estate identified with Parcel Index Number 19-0-0316-002-00 is a tract of 3.77 acres, more or less, and is improved with one television transmitting tower which measures 1,080 feet in height and one concrete block building.” (Dept. Ex. No. 3-Joint Stip. No. 1)

7. “The portion of the real estate upon which the tower is located, an area 100 feet on each side, 10,000 square feet or .23 acres, more or less, has been leased to the American Tower Corporation by the Applicant in a long-term lease with an option to purchase.” (Dept. Ex. No. 3-Joint Stip. No. 2)

8. “The Office of County Assessor of Adams County has separated out the .23 acre plot of real estate leased by the Applicant and issues a leasehold assessment to the Lessee, American Tower Corporation.” (Dept. Ex. No. 3-Joint Stip No. 3)

9. “The .23 acre leasehold is, therefore, not in contention in this matter.” (Dept. Ex. No. 3-Joint Stip. No. 4)

10. In connection with Believers’ corporate activities, it maintains WTJR-TV, located at another site. At that location, Believers does live broadcasting and tape recording. Believers has regular broadcasting on both television and radio. WTJR is the acronym for the television station-Working Until Jesus Returns. (Tr. pp. 14-16)

11. Believers has operated the radio and television broadcasting stations since 1985. The broadcast area includes listeners as far away as 75 miles from the tower site. KJIR 91.7 FM are the call letters for the radio station. (Believers' Ex. No. 7; Tr. pp. 14-18)

12. National programs give Believers a portion of their contributions to transmit their programming over Believers' television station. Believers asks for a "donation" and sets that amount. Believers has its own programming where it asks for general contributions for the support of its channel. (Tr. pp. 39, 41)

13. Employees of Believers are the ones who do the programming. Local pastors and others do talk shows on testimonies of how God changed their lives. Local charity ministers use Believers' programming to obtain contributions for their efforts. (Tr. p. 40)

14. Aside from the .23 acre area leasehold that is not at issue in this exemption application, on the remainder of Parcel Index No. 19-0-0316-002-00 in 2002 were the concrete block transmitter building, trailers full of parts necessary to run the transmission, additional equipment in a hedge row used for parts, a well, two uplink buildings and two satellite dishes. One of the satellite dishes belongs to 3 Angles Broadcasting Network, which operates a broadcasting facility unrelated to this application. Trailers on the property are used for storage of backup parts. Everything that Believers does from its broadcasting station goes through the concrete transmitter building. The building is approximately 30' x 30'. (Dept. Ex. No. 1 pp. 11-21; Tr. pp. 18-24, 28-30)

Shepherd's Inn

15. The jurisdiction and position of the Department that Adams County Parcel Index Nos. 23-2-0003-000-00 and 23-1-0432-000-00 qualified for a property tax exemption for the

2002 assessment year were established by the admission into evidence of Dept. Ex. No. 2. (Tr. p. 11)

16. The Department received the application for exemption of the parcel from the Adams County Board of Review. The Board recommended denying the exemption. The Department granted the requested exemption finding that the property was in exempt ownership and use in 2002. (Dept. Ex. No. 2)

17. Believers' application listed the use of the property as: 1. Church; 2. Temporary housing, food, clothing for homeless; 3. Eyeglass clinic; and 4. Pastoral school. (Dept. Ex. No. 2)

18. The Adams County State's Attorney timely protested the granted exemption and requested a hearing. The basis of the protest is that Adams County believes that at least a portion of the subject property is income producing and therefore should not be tax exempt in 2002. (Dept. Ex. No. 2)

19. Believers acquired the subject parcel by a warranty deed dated September 29, 2000. (Dept. Ex. No. 2)

20. Located on the subject parcel is the Shepherd's Inn, a three-story 31,620 square foot structure that was previously operated as a Ramada Inn. (Dept. Ex. No. 1)

21. Shepherd's Inn was dilapidated when Believers purchased it at auction, with severe water damage to many of the rooms. Believers' employees worked to fix up the facility. (Tr. p. 50)

22. Each floor of the inn has 43 rooms with beds in them; 26 on the north side and 17 on the south side. The first floor also has a lobby that is 70' x 35'; two restrooms that measure 10' x 11'; a swimming pool in a room that is 55' x 35'; an exercise area that is 55' x 18'; the

“sanctuary” that is 54’ x 51’; a 21’ x 8’ pastor’s office; a “Jesus and Eyecare” room that is 21’ x 18’; the break room that is 26’ x 21’; the 39’ x 20’ laundry; and a 8’ x 6’ elevator. (Dept. Ex. No. 2)

23. Also located in the Shepherd’s Inn in 2002 were the Crowning Glory Hair Salon⁴ and the Well Spring Ministry⁵. (Believers’ Ex. No. 7; Tr. pp. 117-118)

24. The second floor has only the 43 rooms that contain beds. The third floor has the 43 rooms for overnight lodging as well as a 52’ x 28’ banquet/meeting room; a 36’ x 48’ banquet/meeting room used as a youth center; a 55’ x 51’ restaurant; the 51’ x 54’ kitchen; and three restrooms: 1) a handicap accessible one that measures 17’ x 10’; 2) a women’s bathroom that is 20’ x 12’; and 3) a men’s bathroom that is 9’ x 12’. (Dept. Ex. No. 2)

25. In the taxable year at issue, 74 rooms with beds had been restored. Approximately 50 rooms were available to the public. The rooms in the 1st floor-North and 2nd floor-North areas were all closed. The kitchen was also not in use in 2002. (Dept. Ex. No. 2; Tr. p. 52)

26. For a standard room, containing either two double or one king size bed, Believers asks for a “donation” of \$50 per night for the use of the room. (Dept. Ex. No. 2; Tr. pp. 65-66)

27. For the suites, a “donation” of \$80 is asked of guests for each night’s stay. (Tr. p. 66)

28. Believers had one Jacuzzi room available in 2002. A “donation” of \$125 per night was asked of a guest staying in that room. (Tr. p. 66)

⁴ It was not disclosed where the Crowing Glory Hair Salon was located.

⁵ The Well Spring Ministry dealt with health foods and vitamins. They gave a donation to Believers for the use of two rooms. The location of the two rooms was not disclosed.

29. Believers does not charge tax on the “donations” it receives for the use of the rooms and advises its patrons that the “donation” is a write off on their tax returns. (Petitioner’s Ex. No. 8; Tr. pp. 243-244)

30. Each room comes equipped with coffee, coffee pot, microwave with popcorn, and a small refrigerator with soda at no extra cost. For the charge for the use of the Jacuzzi room, a guest also receives two continental breakfasts. (Dept. Ex. No. 2; Tr. p. 242)

31. To rent the banquet/meeting room that seats 80-100 people, the requested “donation” is \$400. For the banquet/meeting room that seats 150 people, Believers requests a \$750 “donation.” When renting a banquet room, if someone in the party stays at the Shepherd’s Inn, a \$25.00 reduction in the cost of the banquet room is made for each person that stays at the Inn. (Dept. Ex. No. 2; Petitioner’s Ex. No. 8; Tr. p. 242)

32. Four programs were offered in the Shepherd’s Inn in 2002: The “Open Arms Ministries” a non-denominational Christian ministry which includes a “Helps ministry in which donated items are dispensed to those in need”; the “Jesus and Eyecare” eyeglass clinic, designed to provide eyeglasses to the public for money; Addicts Victorious, a program that is not operated by Believers but was on the property in 2002 and is a “Christ-centered substance abuse ministry devoted to deliverance from addictions”; and, finally, The School of Christ, a program designed for training pastors to bring revival to the hearts of all that attend. It is a worldwide ministry based in Beaumont, Texas and had weeklong training sessions in February 2002 and November 2002. (Dept. Ex. No. 2; Believers’ Ex. No. 10)

33. The Shepherd’s Inn houses a low cost, high quality optical office, which operates on a “donation” basis. Todd Bridgeman of Main Street Eye Clinic⁶ heads the eye care program.

⁶ There is nothing in the record to represent that Main Street Eye Clinic is not a for-profit commercial entity.

Jesus and Eyecare is open by appointment only. Appointments are made at the front desk of the Inn for a Monday or Wednesday evening from 6 to 8 p.m. (Believers' Ex. Nos. 11, 13)

34. Addicts Victorious had approximately 7,000 people go through the program in 2002. Addicts Victorious gave Believers \$300 per month to use the restaurant, ballroom⁷ and two other rooms to do their counseling. Addicts Victorious used the property several times a week. (Tr. pp. 60-61)

35. Believers' and the Shepherds Inn are not affiliated with any particular sect or denomination. According to its President, "It's interdenominational." (Tr. p. 61)

36. Believers has a contract with Trailways Bus Line for \$200.00 per month. The contract allows a bus to park in the Shepherd's Inn parking lot. (Tr. p. 73)

37. In 2002, Believers purchased advertisements for the Shepherd's Inn rooms in the local yellow pages of the phone books under the hotels and motels sections. (Petitioner's Ex. Nos. 1-3; Tr. pp. 74-77)

38. The Shepherd's Inn also advertised with billboards along the highway in 2002, as well as on the radio, television and over the Internet. (Tr. pp. 77-79, 157)

39. In 2002, Believers participated in the Quincy Hoteliers program operated by the Quincy Convention and Visitor's Bureau. The room rates to stay at the Shepherd's Inn for performers of the Youth Performing Arts Conference, held August 13-16, 2002, quoted to the Visitor's Bureau by Believers' manager were: 1-20 rooms for \$45.00 per night; 21-49 rooms for \$40.00 per night; and for 50+ rooms the nightly rate was \$35.00. Additional bids were solicited from Believers by the Convention and Visitors Bureau for the Mormon Temple open house from May 18-June 22, the Missouri State Harley Rally in Hannibal, Missouri on September 7th, the Great River Golden Games from August 23 through August 25, 2002, the Annual Spring

Traditional Bluegrass, Country & Gospel Music Festival from June 26-29th, the Youth Bowling Tournament⁸, and Village Tours, held on June 5, 2002. (Petitioner's Ex. Nos. 4, 5, 7; Tr. pp. 78, 149-155)

40. Shepherd's Inn is a non-smoking, alcohol free establishment. Parties, drinking, smoking, unmarried couples sharing a room, same sex couples sharing a room, and pornography are all conditions that will not be tolerated at the Inn. There is no condition that a guest must be a Christian. (Petitioner's Ex. No. 4; Tr. pp. 91-92, 161-162)

41. Once a person makes an offering or donation to Believers' ministry, that person becomes a member in good standing. A benefit of being a member is receiving the monthly newsletter listing the broadcasting of WTJR-TV on local channel 16 and information about Shepherd's Inn. (Believers' Ex. Nos. 7, 11)

42. Believers submitted audited financial statements for the period ending December 31, 2002. The Notes to the financial statements states in Note 1:

The significant policies are as follows:

Method of accounting and financial statement presentation;

The books and records of Believers Broadcasting Corporation are maintained on a cash basis recognizing neither the effects of accounts receivable nor accounts payable and accrued expenses. This method is not in accordance with generally accepted accounting principles and the financial statements are not presented in accordance with generally accepted accounting principles. (Believers' Ex. No. 22)

43. The financial statement combined the assets and liabilities of all of Believers' activities⁹. (Believers' Ex. No. 22; Tr. pp. 174-175)

⁷ It is unclear where the ballroom is located.

⁸ The date of this event was not disclosed.

44. Believers does not pay hotel/motel tax. (Believers' Ex. No. 22)

45. The President of Believers does not minister to a congregation at the Shepherd's Inn. He lives at the Inn, is the night watchman and answers the telephone at night. He closes the Inn every night and opens every morning. He is an ordained minister with Global Ministries. (Tr. pp. 72, 86-88)

46. The Pastor of the Open Arms Ministry Church is also the overseer of the Shepherd's Inn. (Tr. p. 96)

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. At issue is the religious exemption found at 35 ILCS 200/15-40.

In 2002, a portion of the statutory exemption stated:

- (a) Property used exclusively for:
 - (1) religious purposes, or
 - (2) school and religious purposes, or

⁹ For example, under the category of "ASSETS" are: cash in bank on hand-\$4,210; Cash-Good Samaritan Fund-\$1,062; Cash-Shepherd's Inn-\$3,959; Cash-Kingdom of God-\$39; Inventory-\$5,495; Fixed assets [less accumulated depreciation of \$1,077,419] \$2,660,634 for total assets of \$2,675,399. The amount of the total liabilities and net assets equaled the amount of assets listed on the document. There was a separate breakdown of Shepherd's Inn expenses [\$298,300] versus broadcast expenses [\$549,565]; however, the cash flows from operating activities, general and administrative expenses were not segregated by the management of Believers, the entity responsible for the financial statement. (Believers' Ex. No. 22)

(3) orphanages
qualifies for exemption as long as it is not used with a view to profit.

- (b) Property that is owned by
 - (1) Churches or
 - (2) Religious institutions or
 - (3) religious denominations

and that is used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations including the convents and monasteries where persons engaged in religious activities reside also qualifies for exemption.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

Therefore, in order to qualify for a property tax exemption under the religious exemption, the property must be used for religious purposes and not used with a view to profit.

Tower Property

Parcel Index Number 19-0-0316-002-00 is used in conjunction with Believers' television broadcasting station. The television programs are done at another site and sent by microwave to the concrete transmitter building on the subject parcel. Everything that Believers does from its broadcasting station for television goes through the concrete block transmitter building and then is sent to the television-transmitting tower. The television-transmitting tower on .23 acres of Parcel Index Number 19-0-0316-002-00 is leased to American Tower Corporation by Believers and is not at issue. The remainder of the property, including the concrete block transmitter

building, satellite dishes, trailers full of parts necessary to run the transmission, a well, additional equipment in a hedge row used for parts, and two uplink buildings are at issue in this matter.

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).

The only indication of the content of Believers' television programs established in this matter is in the newsletters Believers sends out on a monthly basis and the testimony of Carl Geisendorfer. He testified that the television station is used as an opportunity to obtain contributions for the efforts of the local charities and ministries that perform on the station. (Tr. p. 40) Believers sets the amounts of the "donations" that it asks for the local and national programming it airs. The "donation" amount is determined by how often the program is on. (Tr. p. 46) Believers airs its own programs as well, wherein Believers asks for general "contributions and donations" for the support of the channel. (Tr. p. 40-41)

Believers "donations" label has no legal consequence whatsoever. Believers is operating its television station no differently than a commercial enterprise that asks for money for its services. There is no indication in the record, other than the testimony of Carl Geisendorfer, (Tr. p. 39) that any requests for donations are waived if programs done by entities other than Believers cannot pay the requested amount. There is certainly nothing in the Articles of Incorporation or By-Laws that suggest that fees are waived. Thus, the primary purpose of the property is to transmit and receive broadcasting in which pleas for contributions are made by Believers and others, who in turn, give a portion of the contributions to Believers. Believers is

transmitting programming for a fee and the primary purpose of the use of the property is to make money.

Believers is a closely held not-for-profit organization¹⁰ run basically by three men. In fact, as an example of the complete control held by the directors, Carl Geisendorfer did not agree with the message from Trinity Broadcasting Network (TBN) in its April 2002 telethon concerning the “Prosperity Gospel.” Carl Geisendorfer removed the telethon from the scheduled programming on WTJR. The reason for the removal was “because the message being preached was absolutely wrong . . . ” (Believer’s Ex. No. 7, May 2002 Newsletter.) Geisendorfer also testified that the donation from TBN varied from year to year. It had been \$10,000 in January 2001 and in April, 2002 TBN was reducing it from \$8,000 to \$7,000. (Tr. p. 45)

Regarding the content of Believers’ programming, although some of the programs listed in the newsletters may have religious themes, it is impossible to conclude that Believers conducts religious programming based upon the newsletters listings of its programs. Programs entitled “Lift Jesus Higher” or “Victory in Jesus” would probably have religious overtones, but the listings also include programs such as “Golden Nuggets,” “Pet Playhouse,” “Musical Memories,” “The Woman’s Walk,” “Wassup” and “Dino” to name just a few. I cannot conclude that, by the names, the programs are religious in nature. I also cannot assume that just because Carl Geisendorfer testified that the local and national programming had “educational, charitable and religious purposes” (Tr. p. 14), that conclusionary statement is valid.

In the seminal case defining religious purpose, the Illinois Supreme Court in People ex rel. McCullough v. Deutsche Gemeinde, 249 Ill. 132 (1911) 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.

Any entity seeking a religious property tax exemption in the State of Illinois must satisfy the existing statutory and judicial standards relating to the grant of the requested exemption. Regardless of how applicant asserts it is operated, 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.

American Tower Management Inc. leases .23 acres of the subdivided land containing the transmitting tower; Believers leases tower space back from American Tower for its own transmitting antenna. Believers retained 3.54 acres, which it uses for its television transmitting facility. The subject property is used in conjunction with Believers television operation. 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

¹⁰ Although Believers’ attorney and the State’s Attorney for Adams County stipulated that Applicant is a religious organization, there is no indication in the record that the Special Assistant Attorney General for the Department

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.”¹¹ 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 Believers has not established that it is a religious organization. Believers is not owned or controlled by any church and in fact, according to its Articles of Incorporation, it is solely in the control of Carl Geisendorfer, Ken Geisendorfer and Martin Metzger, the only members of the corporation that have voting rights and are the three directors that are permanently installed and “shall not be voted on.” (Dept. Ex. No. 2) 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.

Historical case law compels a holding that applicant’s property was not used 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

joined the stipulation. (Tr. p. 58)

¹¹ In Alaska, the statute allows that the “exempt use” requirement permits a combination of exempt uses.

Sunday School & Publishing Society, *Id.* 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 and Publishing Society, *Id.* at 117.

In Scripture Press Foundation v. Annunzio, 414 Ill. 339 (1953), the supreme court limited its holding in Congregational Sunday School and Publishing Society 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, *supra*, 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) *Id.* 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 and Publishing Society 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, *supra*, 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 Christian Fellowship are readily distinguishable from those herein.

First, the record in Inter-Varsity Christian Fellowship shows that the fellowship based the price of each publication that it sold strictly on its cost to the fellowship. *Id.* at 800, 803. Second, the Inter-Varsity Christian Fellowship record specifically discloses that the fellowship provided “a substantial amount of materials free or below cost to groups that are targeted for its message.” *Id.* 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. In this matter, Believers has failed to establish that the facts relied upon by the Inter-Varsity Christian Fellowship court to grant the exemption therein are present.

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 Ass’n, *supra* at 26.

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 (1941). 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)

Similar to the circumstances in Scripture Press Foundation and the distinction expressed in Evangelical Teacher Training Ass'n, Believers has established no religious activity on the tower property and has not shown that it used the property in question for such a purpose. Instead, as was the case in Scripture Press Foundation, but unlike those in Inter-Varsity Christian Fellowship and Evangelical Teacher Training Ass'n, Believers accomplishes its stated corporate purposes by requesting specific amounts of money for its activities.

Believers has supplied no reliable financial data to establish what exactly takes place where. By intermingling its operations on the financial sheets submitted, it is impossible to discern which entity is responsible for what funding. As the note in the financial statement expressed, the cash basis accounting method used by Believers, recognizing neither the effects of accounts receivable nor accounts payable with accrued expenses, is not in accordance with generally acceptable accounting principles. As the financial information is not reliable, it is impossible to ascertain if the subject property is used with a view to profit. As the burden is on an applicant to prove that it fits within the requirements of a statutory exemption, Believers has not met that burden with regards to the requirement of not operating with a view to profit.

Because People ex rel. McCullough v. 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 also be answered in the negative. There is nothing in the record to show that the use of the subject property is contingent upon any control whatsoever of any church or that it is used for worship. The property is plainly and simply used for television transmission, at a cost to all users. As such, the use of the property unequivocally fails to satisfy this statutory mandate.

Although Believers asserts it has no commercial advertising on its radio and television station, (Tr. pp. 14-16) that fact alone would not make the property qualify for a property tax exemption. The total dearth of evidence showing that the property is used for religious purposes mandates that the property not be granted a tax exemption for the 2002 assessment year.

A portion of the subject property was used for storage of items that Believers used in conjunction with its televising function. The appellate court of Illinois has determined that property owned by a church and used for storage of church records and furniture qualified for a property tax exemption in Our Savior Lutheran Church v. Department of Revenue, 204 Ill. App. 3d 1055 (5th Dist. 1990). However, as Believers has not established that it uses its property for religious purposes, the areas used for storage of related items also cannot qualify for exemption.

Shepherd's Inn

Property owned by a church and used as a parsonage or monastery was taxable prior to 1957. See People ex rel. Carson v. Muldoon, 306 Ill. 234 (1922), People ex rel. Pearsall v. Methodist Episcopal Church, 315 Ill. 233 (1925)

The Illinois Supreme Court in McKenzie v. Johnson, 98 Ill.2d 87 (1983) held that the provision granting an exemption for a parsonage used primarily for religious purposes was constitutional. The court also required that the parsonage must reasonably and substantially facilitate the aims of religious worship because the pastor's religious duties required that he live in close proximity to the church or because the parsonage had unique facilities for religious worship and instruction or was primarily used for such purposes. However, parsonages are the only residential type of housing that qualifies for a tax exemption under the religious section of the statutes in question. At issue herein is a former Ramada Inn that Believers is asserting is used for religious purposes.

Believers submitted numerous documents that appear to have been created solely for submission to the county, Department, or for the hearing, and were not affidavits. (Believers Ex. Nos. 8-10; 13, 21, 23-27, 29) Exhibit 8 is entitled WELCOME and lists the Daughters of Rachel, Jesus to the Streets, Philemon, and Acts 29 Ministry. The document states that the participants are to do the housecleaning involved with the room. Room checks are done twice weekly. Religious services are listed. There is a ZERO tolerance for smoking, drug use, or drinking. It is unclear who wrote the document. Exhibit 9 is entitled "The Shepherd's Inn Mission Statement" and explains what the aims are of the Open Arms Ministries, Jesus and Eyecare, Addicts Victorious, The School of Christ, and The Shepherd's Inn. It is unclear who wrote the document. Exhibit 10 begins with "The Shepherd's Inn Life Center is a Church and operates in the same." It is unclear who wrote the document¹². Exhibit 13 is entitled "A listing of all

¹² The testimony from Ken Geisendorfer was "Yeah. I believe this is also something that we typed up for the Department of Revenue, and this might have come [sic] off the Internet at one time." (Tr. p. 103)

charitable or religious activities, events, functions that have been held at the facility of The Shepherd's Inn Life Center.”¹³

Exhibit 21 is a letter to Michael Wortman of Believers, dated October 7, 2003, from John P. Wardwell, CPA in which is stated that “Pursuant to our telephone conversations and, based on the data¹⁴ you provided I have attempted to develop a reasonable basis for determining the daily cost of providing a room for overnight lodging.” The daily average cost for a room according to the letter is \$7.28¹⁵. John P. Wardwell was not present at the hearing to testify.

Exhibit 23 is entitled “THE SHEPHERD’S INN LIFE CENTER DONATIONS FOR YEAR 2002 BY CATEGORY” shows total donations of \$158,451.21.¹⁶ Exhibit 24 is entitled “COST FOR OPERATING THE SHEPHERD’S INN LIFE CENTER IN 2002 AFTER SUBTRACTING ROOM OPERATING COST” and relies on the accountant’s figure shown in exhibit 21.¹⁷ The first line of exhibit 25 starts with “Room nights used in 2002 . . .” was prepared by Michael Wortman.¹⁸ Exhibit 26 begins “In 2002 there were 74 rooms available for occupancy.” The document was also prepared by Michael Wortman¹⁹. (Tr. p. 182-184)

Exhibit 27 entitled “Rooms Available At The Shepherd’s Inn Life Center In The Year 2002” was prepared by Michael Wortman. The document asserts that the total rooms available

¹³ The exhibit was done by Ken Geisendorfer and prepared for submission to the county or the Department somewhat explaining the programs. (Tr. p. 118) No other foundation or testimony was offered and it was admitted into evidence without objection. (Tr. p. 137)

¹⁴ The data provided to John P. Wardwell, CPA is not in evidence.

¹⁵ The testimony of Michael Wortman was that the exhibit “represents the daily operating cost for a room at Shepherd’s Inn.” (Tr. p. 173) The document was admitted into evidence without objection. (Tr. p. 137)

¹⁶ The exhibit was again prepared by Michael Wortman. (Tr. pp. 177-179) No basis, other than his testimony, was given for the figures and they do not correspond with any amounts on Ex. No. 22, the audited financial statement. The document was admitted into evidence without objection. (Tr. p. 137)

¹⁷ The document was admitted into evidence without objection. (Tr. p. 137)

¹⁸ Wortman testified that this document was prepared from books and records kept in the ordinary course of the ministry business. (Tr. p. 180) What constitutes the ministry business was not explained, nor what Wortman relied upon to prepare the document. The document was admitted into evidence without objection. (Tr. p. 137) The document found that 45.45% of daily room usage is attributable to ministry and 54.55% is attributable to the general public.

in 2002 were 74,²⁰ and the total rooms in the Inn were 129. Finally, Believers' Exhibit 29 is entitled "Source of Revenue Explained by Category The Shepherd's Inn Life Center 2002." It was prepared by Michael Wortman. (Tr. p. 184) Again the source of the figures used in the exhibit was not in evidence.

Applicant's only witnesses were Mr. Irvin Carl Geisendorfer, President of Believers Broadcasting, Mr. Ken Geisendorfer, his son, Vice President of Believers and Pastor of the Open Arms Ministry Church at Shepherd's Inn and Michael Wortman, Treasurer of Believers, Manager of WTJR-TV and Associate Pastor at the Open Arms Ministries at the Shepherd's Inn. If, in fact, Believers has a relationship with public and private agencies regarding its rehabilitation program as asserted, (Tr. p. 133) why were representatives of those agencies not present to verify the assertions? If Believers helped 83 people with its programs in 2002, as asserted by Believers, (Tr. p. 194) why were those people not present to testify? If The Open Arms Ministry Church had regular church services with up to 300 people in the sanctuary, (Tr. p. 97) why were none of the attendees at the hearing to verify that assertion? Why were there no church bulletins, pictures or other tangible evidence to support the assertions of the only witnesses that were present to testify in behalf of Believers and had a vested interest in acquiring the property tax exemption?

Believers asserts that its donations for the Shepherd's Inn Life Center for the year 2002, as shown in a document entitled "The Shepherd's Inn Life Center Donations for Year 2002 By Category" were:

\$107,904.08 (68.1%) from the general public

¹⁹ According to Wortman, its purpose was to establish that "Clearly this shows that we [Believers] are not in the business of selling rooms for occupancy" as stated in the document.

²⁰ As the Applicant has established, through documentary evidence, that many of the rooms in Shepherds Inn were damaged when the inn was purchased and were in the process of being remodeled in 2002, I found as a fact that only 74 rooms were available in 2002. (See Finding of Fact No. 26) However, Believers' Ex. No. 27 was not the basis of this finding.

\$26,882.90 (16.97%) from hardship/program people
\$13,236.00 (8.35%) from ministry to ministry
\$4,650.00 (2.93%) from Addicts Victorious
\$3,230.98 (2.04%) from vending machines
\$1,483.25 (0.94%) from coffee/cappuccino
\$1,064.00 (0.67%) from outright donations

\$158,451.21(100%) total donations (Believers' Ex. No. 23)

The Profit and Loss Statement for Shepherd's Inn for the period of January 1, through August 1, 2002 in the category of Ordinary Income/expense shows: Contributions Income of \$.18; Crowing Glory income of \$5,050.63; Donations - \$4,437.15; Hotel income - \$3,628.66; Jesus & Eyecare - \$12,141.00; Loans S/Inn - \$3,109.00; Mexico Missions - \$45.00; Miscellaneous Income - \$463.42; Reimbursed Expenses - \$127.17; Shepherds Inn Banquet Room - \$726.00, Shepherds Inn Other - \$76,821.74 for total Shepherd's Inn income on the statement of \$77,547.74 and total income of \$106,295.43. Expenses as shown on the document included cost of goods sold for J&I, plus supplies and wages of \$7,779.35. The document shows net income for that period in the amount of \$ -147,745.01 (Dept. Ex. No. 2). The Department relied upon this document and others in the exhibit to grant the requested exemption for property used as "a church, temporary housing, food, clothing for homeless, eyeglass clinic and pastoral school."

However, in fact, as established at the hearing, Believers advertised its Inn in the yellow pages, on billboards and the Internet, and through radio and television advertisements as a Christian environment where a person can spend the night for a payment. Believers participates in the Quincy Hoteliers program operated by the Quincy Convention and Visitor's Bureau to increase the number of guests staying in the Inn. Although Believers insists that it is just taking

“donations” and that the guests can write off the “donations” on their taxes²¹, those guests are in fact paying a consideration to obtain living quarters, sleeping and housekeeping accommodations. The Inn is run similarly to a commercial enterprise; there are set fees for specific rooms, *to wit* \$50 for a standard room; \$80 for a suite; and \$125 for the Jacuzzi. Believers’ conduct in setting requested fees for a stay at the Inn along with its participation in advertising establishes that it is run in the same manner as other commercial hotels and motels. All advertise; all offer services for a fee; and all participate in commercial arenas such as taking part in the tourism bureau outreach programs. Just because Believers has restrictions on the caliber of the guests staying in its hotel does not negate the fact that it is running a commercial enterprise.

Believers neglected to submit evidence regarding the way the Jesus and Eyecare program is conducted. The program is run by Todd Bridgeman of Main Street Eye Clinic. It is unclear from the record as to what the relationship is between these two entities. Bridgeman was not present to testify. Again, “donations” are asked of those receiving services. Also, again, there is no document or evidence of a waiver of an individual’s “donation” if that person could not pay for the services or glasses. It is unclear what the process would be if someone were unable to afford to pay or who would be able to authorize a waiver those fees if such request were made. Based on the lack of evidence in the record, it is reasonable to conclude that Jesus and Eyecare is a for profit commercial enterprise and the people running the business are being paid for their services. There are no exhibits or credible evidence in the record to suggest otherwise.

Believers submitted a document entitled “Guest History Statistics” that showed \$00 as the revenue received for nights stayed. Although not reflected on the document, Believers

²¹ It is not unreasonable to conclude that advisement to Believers regarding the word “donations” was legally incorrect and that to advise guests that they could write off the “donations” on their tax returns was also legally

operated with a “cash folio” system wherein if a payment for a room is done by a third party, the amount would not be recorded in the Guest History Statistics but would rather be reflected in the cash folio. The cash folio document was not in evidence. (Believers Ex. No. 28; Petitioner’s Ex. No. 6; Tr. pp. 257-269, 284-285) According to the testimony of Michael Goodapple, former Manager of the Shepherd’s Inn, an example of a cash folio was a night that was spent at Shepherd’s Inn by two bikers traveling across country. A director or priest of a local church paid for the stay. Believers noted it as a ministry-to-ministry arrangement on the “Guest History Statistics” document. The amount of revenue, according to the document, was \$00. (Believers Ex. No. 28; Tr. pp. 257-58)

Believers highlighted its “Hardship/Program People” on the “Guest History Statistics” document. The hardship people were not allowed to stay in the Jacuzzi suite or the suites. (Believers Ex. No. 28; Tr. pp. 271-274) None of the hardship/program people attended the hearing and testified in behalf of Believers. The criteria used to identify hardship/program people was not explained. A blank “Information Sheet” (Believers’ Ex. No. 12) was submitted with spaces for a guest to put the “date, name, age, others needing lodging, telephone, reason for hardship, when lodging needed, and attempts/successes with other social agencies including Salvation Army, Two Rivers, United Way, Home Church, Ladies of Charity, Quanaada (if Ind), General Assistance, and place of employ if any.” The testimony by Ken Geisendorfer about the document was that it was a program sheet used to help him pastor and find out what social services the person had already explored.

There is evidence that the Shepherd’s Inn Life Center is established as a Christian, Pentecostal, interdenominational, not-for-profit ministry. Sub-ministries offered within the Open Arms Ministry outreach center include the Daughters of Rachel, a group for single mothers who

incorrect.

are ministered to by ladies of the church; Jesus to the Streets that allows anyone to come off the streets and stay for one to three nights; the Philemon Program directed toward persons who have been recently released from prison or jail; and the Acts 29 Ministry. Ken Geisendorfer calls the people who participate in these programs “program people”. When given Exhibit 8 and asked if he “reclected how many program people” he had, he testified “ No. Mike Wortman can answer that. He’s got all the statistics on that.” (Tr. p. 102) Mr. Wortman never testified about Exhibit 8.

The Open Arms Ministries, led by Ken Geisendorfer, offer teaching, preaching, prayer, counseling and Bible study. Church services are on Sunday morning at 10:00 a.m. On Tuesday night “New Believer’s Bible Study” is at 6:00 p.m. and at 7:00 p.m., a prayer service is held. On Thursday night at 7:00 p.m. is a Church Service and Monday through Friday the School of Christ Session (held in November and February) is from 8:30 to 10:00 a.m. However, while Ken Geisendorfer may have offered these programs, there is no indication, other than his testimony, that anyone attended them. There is also nothing in the record to establish that Ken Geisendorfer or Michael Wortman are licensed or ordained ministers.

In order to preserve the constitutional and statutory limitations that protect the property tax base, statutes conferring property tax exemptions are to be strictly construed with all doubts and evidentiary deficiencies resolved in favor of taxation. The applicant bears the burden of proving all elements of its exemption claim by a standard of clear and convincing evidence. Winona School of Professional Photography v. Department of Revenue, 211 Ill. App.3d 565, 569 (1st Dist. 1991); Evangelical Hospitals Corporation v. Department of Revenue et al, 223 Ill.App.3d 225, 231 (2nd Dist. 1992). “Clear and convincing evidence is defined as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the

proposition in question.” In re Israel, 278 Ill. App.3d 24, 35 (2nd Dist. 1996); In re Weaver’s Estate, 75 Ill. App.2d 227, 229 (4th Dist. 1966); Matter of Jones, 285 Ill. App.3d 8, 13 (3rd Dist. 1996). As it has not been established that either Ken Geisendorfer or Michael Wortman are licensed or ordained ministers and that the programs conducted on the subject property were attended by any persons, it cannot be said that Believers has established by clear and convincing evidence that the Shepherd’s Inn is used exclusively for religious purposes.

The word “exclusively” when used in the property tax exemption context means “the primary purpose for which the property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). The evidence presented in this matter establishes that the primary use of the Shepherd’s Inn in 2002 is as a hotel, motel or inn where guests, for a consideration, could obtain living quarters, sleeping and housekeeping accommodations. There is no exemption in the property tax statutes for commercial for-profit hotels, motels or inns.

Believers has failed its burden to establish that the primary use of any of the subject properties is religious. For the foregoing reasons, it is recommended that Adams County Parcel Index Nos. 23-2-0003-000-00, 23-1-0432-000-00 and 19-0-0316-002-00 remain on the tax rolls for the 2002 assessment year and be assessed to Believers, the owner thereof.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
Date: February 18, 2005