



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES

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Contact Person:

Identification Number:

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Legend:

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We have considered your ruling request dated June 16, 2005, in which a ruling was requested regarding the proposed changes to your Articles of Incorporation

FACTS:

A is a B not-for-profit corporation recognized as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code (the "Code") and is classified as other than a private foundation under section 509(a)(2) of the Code. As more fully set forth below, A was originally formed to conduct scientific research for the understanding, measurement and prevention of problems caused by inadequate indoor environments.

A's board of directors is comprised of prominent members from the local business, industry and academic community. More than 50 C companies, as well as numerous academic, medical and research institutions are involved with A.

Poor Indoor Environmental Quality ("IEQ") has been identified as having a dramatic, negative impact on human health. The compounds causing the indoor pollution include

volatile organic chemicals ("VOCs") which are seeping out of building materials, furniture, office equipment, carpet, paint and pesticides. In addition, many buildings do not draw fresh air from outside but rather re-circulate stale air, or draw air through intake ducts located near parking lots or loading docks thereby circulating carbon monoxide and other contaminants throughout the buildings. According to the D Research Institute, the negative impact on human health has been exacerbated by the following:

- 1) people spend as much as 90% of their time indoors;
- 2) during the past 20 years, energy efficient building designs, use of synthetic building materials and chemically formulated personal products have produced poor indoor environmental quality in office buildings, schools and homes;
- 3) 58% of U.S. schools have IEQ problems;
- 4) 41% of U.S. households need IEQ improvement; and
- 5) 33% of U.S. commercial buildings are "sick".

The World Health Organization estimates that one out of every three workers may be working in buildings that are damaging their health. Currently, over 17 million people in the United States have asthma including over 5 million children. The prevalence of pediatric asthma has increased 160% from 1982 to 1995. Research has indicated that this increase may be due in part to IEQ problems.

Poor IEQ is attributed to poorly constructed buildings. Research has been conducted to develop IEQ systems to both correct "sick buildings" and to build new buildings which avoid or eliminate IEQ problems. IEQ systems include technologies for "smart buildings" which enhance the health and productivity of occupants through systems that monitor and control:

- 1) temperature, humidity and energy;
- 2) air pollution by VOCs and particulates;
- 3) noise and lightings;
- 4) drinking water; and
- 5) services for basic needs of the occupants.

A was initially formed to conduct research to both identify the effect of poor IEQ on human health and develop new technologies to correct or mitigate the sources of poor IEQ. The focus of the research has included, the following:

- 1) Identify and study IEQ - related health problems to increase public awareness about the hazards of poor IEQ and increase awareness of new products/services that remedy, control and prevent the problems;
- 2) Develop and transfer technologies for commercialization into new products that assess, control, correct and prevent poor IEQ;
- 3) Identify new IEQ applications for current products and services;

- 4) Develop new designs, construction methods, and building operation specifications to optimize IEQ and improve worker health and productivity; and
- 5) Integrate all facets of design, engineering and construction when assessing and remediating environmental quality in existing buildings to reduce energy consumption and capital expenditures.

A has and will continue to make the results of the research (including sponsored research) available to the public on a nondiscriminatory basis by publishing research results in:

- 1) scientific journals;
- 2) journals which are reviewed by research peers;
- 3) website of the granting agency (e.g. the U.S. Environmental Protection Agency) and
- 4) The website for A which is accessible to the general public.

In December E, A amended its Certificate of Incorporation to expand its purposes. Specifically, it added as one of its stated purposes to use its research and the results thereof

[T]o, inter alia, transform C into an acknowledged leader in the areas of research and applications of new research developments to improve the quality of both indoor and outdoor environments; facilitate public and private business collaborations in such areas, increasing the viability of such ventures; and encourage industry, public and private institutions to locate new facilities or expand existing facilities in C in order to increase the employment opportunities of residents within areas of underemployment, offering solutions to the loss of industry and related jobs.

The purpose of the expanded purpose clauses is to allow A to become a vehicle to attract companies, generate new investments and bring high-paying jobs to the C region by transforming the area into an innovative leader in the field of environmental research. It is anticipated that the C region will become a magnet for industries interested in indoor environmental air quality because the area will have the research, expertise and scientists that are vital to this type of environmental work. A will not provide private industry any monetary incentive to locate in the region. Rather, A plans to collaborate with numerous B educational, medical and research institutions, along with private industry, to establish a nationally known indoor environmental research center which will spur economic development and create jobs in the C area in the field of urban and built environments.

A believes that its research will serve as a catalyst for the facilitation of relationships between industry and academic institutions which will advance high tech environmental research projects which promote the development of the indoor environmental air quality industry. It is anticipated that this collaborative effort between industry and academia will result in new designs, construction methods, products and building specifications that will improve indoor air quality. A believes that the natural result of this collaborative

effort will be the influx of new opportunities in the C area as new and existing companies take steps to exploit the research in this new emerging field of scientific study.

Although A will continue with the research initiative described above, it will also pay closer attention to economics and market results of this research. This involves a change in the emphasis of the mission of A rather than a change in structure of the organization. Specifically, A will make a greater effort to ensure that the results of the research it undertakes or sponsors will develop and encourage industry in C with the goal of transforming C into the acknowledged leader in the field of indoor air quality.

A's research is primarily funded through federal, state and local funding. A pursues publicly funded contracts and grants and gifts that support and further scientific research. Federal agencies provide monies which are selectively distributed to various institutions to fund research projects concerning indoor environmental quality and its effects on human health and welfare.

In line with its expanded purposes, A will seek to ensure that these research funds are strategically placed in industries and projects that will serve as a catalyst for the development of the indoor air quality sector in the C area. A will continue to create requests for proposals pertaining to the improvement of indoor air quality from research institutions. The proposals will be required to emphasize the marketability of the project and the benefit to the region. Grants will be awarded to various institutions based on technical quality and the likelihood the proposals will have an impact on encouraging industry to choose to locate in the area. Additionally, A will encourage local academic programs to focus their research agendas on areas of environmental research which will produce products that are marketable because of their usefulness in business and industry.

A is also involved in a larger statewide initiative to attract developing industry to B. In 2001, Governor F formed the "G's" initiative with the goal of bringing well-paying, high-tech jobs to B by enhancing the State's leadership role in the critical fields of high technology and biotechnology. H has been designated as the G in Environmental and Energy Systems. In addition to its independent activities, A is also a member of the H G federation; its role is to catalyze collaborative efforts between research institutions and industry to attract environmental air quality businesses and create high-tech jobs in Central B.

RULING REQUESTED:

1. A's expansion of its purposes as set forth in the amendments of its articles of incorporation will not adversely affect its tax exempt status under section 501(c)(3).

LAW:

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for scientific purposes.

Section 1.501(c)(3)-1(b)(1)(iii) of the Income Tax Regulations states that an organization is not organized exclusively for one or more exempt purposes if its articles expressly

empower it to carry on, otherwise than as an insubstantial part of its activities, activities that are not in furtherance of one or more exempt purposes.

Sections 1.501(c)(3)-1(d)(5)(i) and (ii) of the regulations state as follow:

(5) Scientific defined. (i) Since an organization may meet the requirements of section 501(c)(3) only if it serves a public rather than private interest, a "scientific" organization must be organized and operated in the public interest. Therefore, the term scientific, as used in section 501(c)(3), includes the carrying on of scientific research in the public interest. Research when taken alone is a word with various meanings; it is not synonymous with "scientific"; and the nature of particular research depends upon the purpose which it serves. For research to be "scientific" within the meaning of section 501(c)(3), it must be carried on in furtherance of a scientific purpose. The determination as to whether research is "scientific" does not depend on whether such research is classified as "fundamental" or "basic" as contrasted with "applied" or "practical."

(ii) Scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc.

Section 1.501(c)(3)-1(d)(5)(iii)(a)-(c) of the regulations provides that scientific research will be regarded as carried on in the public interest under the following circumstances:

- a. If the results of such research (including any patents, copyrights, processes, or formulae resulting from such research) are made available to the public on a nondiscriminatory basis;
- b. If such research is performed for the United States, or any of its agencies or instrumentalities, or for a State or political subdivision thereof; or
- c. If such research is directed toward benefiting the public. The following are examples of scientific research which will be considered as directed towards benefiting the public, and therefore will be regarded as carried on in the public interest. (1) aiding in the scientific education of college or university students; (2) obtaining scientific information which is published in a treatise, thesis, trade publication, or in any other form that is available to the interested public; (3) discovering a cure for a disease; (4) aiding a community or geographic area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area. Scientific research described in this subdivision (c) will be regarded as carried on in the public interest even though such research is performed pursuant to a contract or agreement under which the sponsor or sponsors of the research have the right to obtain ownership or control of any patents, copyrights, processes, or formulae resulting from such research.

Revenue Ruling 76-296, 1976-2 C.B. 142, states that commercially sponsored research otherwise qualifying as scientific research under section 501(c)(3), the results of which, including all relevant information, are timely published in such form as to be available to the interested public, constitutes scientific research carried on in the public interest.

Research, the publication of which is withheld or delayed significantly beyond the time reasonably necessary to establish ownership rights, however, is not in the public interest and constitutes the conduct of unrelated trade or business within the meaning of section 513.

ANALYSIS:

The amendment of A's articles of incorporation to allow it to engage in scientific research into indoor environmental quality in order to attract industry or encourage industrial and economic development in C will not affect the tax-exempt status of A under Section 501(c)(3) of the Code. Substantially all research conducted by C is "scientific" research "carried on in the public interest" for a number of reasons. The research (i) is performed for a government instrumentality, (ii) is published in a treatise, thesis, trade publication, or other form available to the interested public, or (iii) aids C and the surrounding states by attracting industry or by encouraging industrial and economic development. The "scientific" character of A's research is not changed by the fact that A's amended articles allow it to focus its research efforts toward aiding a geographic area, by attracting new industry to the area or by encouraging the development of an industry in the area. See Section 1.501(c)(3)-1(d)(5)(iii)(c)(4) of the regulations.

HOLDING:

Based on all of the facts submitted by A, we rule that the amendments to A's Articles of Incorporation will not adversely affect its exempt status under Section 501(c)(3).

This ruling only applies to the facts and Code sections cited herein. This ruling does not determine whether any activity gives rise to unrelated business income.

This ruling is based on the understanding there will be no material changes in the facts upon which it is based. Any changes that may have a bearing on your tax status should be reported to the Service.

Please keep a copy of this ruling in your organization's permanent records.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, Notice of Intention to Disclose. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

A copy of this ruling is being sent to your legal representative under the provisions of a Power of Attorney, Authorization and Declaration, or other proper authorization currently on file with the Internal Revenue Service.

Sincerely,

Debra J. Kawecki
Manager, Exempt Organizations
Technical Group 2

Enclosure: Notice 437