



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
Box 2508
Cincinnati, OH 45201

Date:
01/24/2024
Employer ID number:

Form you must file:
1120

Tax years:
All

Person to contact:

Release Number: 202416015
Release Date: 4/19/2024
UIL Code: 501.00-00,
501.03-30, 501.33-00

Dear :

This letter is our final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(3). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under IRC Section 501(c)(3), donors generally can't deduct contributions to you under IRC Section 170.

We may notify the appropriate state officials of our determination, as required by IRC Section 6104(c), by sending them a copy of this final letter along with the proposed determination letter.

You must file the federal income tax forms for the tax years shown above within **30 days** from the date of this letter unless you request an extension of time to file. For further instructions, forms, and information, visit www.irs.gov.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. Read the enclosed Letter 437, Notice of Intention to Disclose - Rulings, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Letter 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

If you have questions about this letter, you can call the contact person shown above. If you have questions about your federal income tax status and responsibilities, call our customer service number at 800-829-1040 (TTY 800-829-4933 for deaf or hard of hearing) or customer service for businesses at 800-829-4933.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

cc:



Department of the Treasury
Internal Revenue Service
PO Box 2508
Cincinnati, OH 45201

Date: 11/13/2023

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

B = Date

C = State

E = Name

G = City

UIL:

501.03-00

501.03-30

501.33-00

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(3). This letter explains the reasons for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under IRC Section 501(c)(3)? No, for the reasons stated below.

Facts

You submitted Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

You attest that you were incorporated on B, in the state of C. You attest that you have the necessary organizing document, that the organizing document limits the purposes to one or more exempt purposes within the meaning of the IRC Section 501(c)(3), that the organizing document does not expressly empower you to engage in activities, other than an insubstantial part, that are not in furtherance of one or more exempt purposes, and that the organizing document contains the dissolution provision required under Section 501(c)(3).

You attest that you are organized and operated exclusively to further charitable purposes. You attest that you have not conducted and will not conduct prohibited activities under IRC Section 501(c)(3). Specifically, you attest you will:

- Refrain from supporting or opposing candidates in political campaigns in any way
- Ensure that your net earnings do not inure in whole or in part to the benefit of private shareholders or individuals

- Not further non-exempt purposes (such as purposes that benefit private interests) more than insubstantially
- Not be organized or operated for the primary purpose of conducting a trade or business that is not related to your exempt purpose(s)
- Not devote more than an insubstantial part of your activities attempting to influence legislation or, if you made a Section 501(h) election, not normally make expenditures in excess of expenditure limitations outlined in Section 501(h)
- Not provide commercial-type insurance as a substantial part of your activities

You indicated in the mission statement on the Form 1023 EZ that you will provide athletes an opportunity to earn NIL (name, image, and likeness) revenue while contributing to the greater good of the community by partnering with local charities in the G community.

During review of your Form 1023-EZ, detailed information was requested supplemental to your attestations. Your responses included a copy of your filed Articles of Incorporation, Bylaws, and representative copies of contracts, policies, and written agreements.

You explained that you are a non-profit entity that collects money from donors for the name, image, and likeness (NIL) of E University student athletes. Rather than donors giving money to a specific athlete, they will donate to you. You will manage the money, but it will be the student athletes who give their time for community service hours with local non-profit organizations.

Once donations are made, your Board of Directors will review written requests for funding from the student-athletes and approve those written requests that agree to your mission.

Your President will manage donations made to you. Donations are deposited into your bank account, and you will work with local charities to establish projects that partner with the student athlete(s). The student-athletes partner with local charities to support charitable endeavors such as camps, sporting activities, youth programs, food banks, and other charities that help your local community. In the sample NIL agreement, it states, in consideration for the above services, you agree to pay the student-athlete a set amount, payment made upon the completion of the agreement.

Amounts designated for each student-athlete per project will be determined by the Board of Directors and your executive director. Designated amounts are subject to available funds, negotiations with the student-athletes as well as the size of the project and reputation of the athlete. Your goal is to maintain minimal operation expenses and make every effort to allocate substantially all donations to the student-athletes.

Your President and Board of Directors will review applications and determine which applicant will be selected to support established projects. You initially plan to work with student-athletes from the E University wrestling team and expand your program to other E University student-athletes who can apply for NIL contract agreements with you. The NIL agreements will be finalized and signed by both your President and the student-athlete. Payments will be made directly to the student-athlete, who will manage their own funds. Donors make donations to you and will not have decision making responsibilities in transactions with student-athletes.

Within each NIL Agreement (contractual agreement), the student-athlete will use their name, image, and likeness to make a difference for community charities and organizations. In the agreement it states the student-athlete agrees to provide a number of hours to provide community service to non-profits. Also, the student-athlete agrees to share the event on social media by tweet tagging, retweet or quote any Twitter posts about the event, make an Instagram post tagging the non-profit and share any posts/reels to project coordinator(s) Instagram Story and/or Facebook page. Additionally, the student-athlete will share any Facebook posts about the event from their Facebook page. Furthermore, the student-athlete agrees that you and/or non-profit may share or publish any photographs from the event.

Law

IRC Section 501(c)(3) provides, in part, for the exemption from federal income tax to organizations organized and operated exclusively for charitable, religious, educational purposes, or other enumerated purposes as specified in the statute where no part of the net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that, in order to be exempt as an organization described in IRC Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in IRC Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. An activity that primarily serves private interests may jeopardize exempt status if it is carried on to a degree that is more than an insubstantial part of the organization's activities.

Rev. Rul. 61-170, 1961-2 C.B. 112, held that an association of professional nurses that operated a nurses' registry to provide greater employment opportunities to its members and to organize an adequate and available nursing placement service for the community did not qualify for exemption under IRC Section 501(c)(3). By operating an employment service principally for the benefit of its members, the organization served private interests more than insubstantially and consequently was not organized and operated exclusively for charitable or other exempt purposes.

Rev. Rul. 76-152, 1976-1 C.B. 151, held that an organization formed by art patrons to promote community understanding of modern art trends did not qualify for exemption under IRC Section 501(c)(3). The organization exhibited and sold the artwork of local artists, who received 90 percent of sales proceeds. This provision of direct benefits served the private interests of the artists and could not be dismissed as being merely incidental to its other purposes and activities, and therefore the organization was not operated exclusively for educational purposes.

Under Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

In Miss Georgia Scholarship Fund, Inc. v. Commissioner, 72 T.C. 267 (1979), the court held that an organization whose activity was awarding scholarships to contestants in a beauty pageant did not qualify under IRC Section 501(c)(3) because the scholarships were awarded in consideration of contractual obligations. The court further notes “However, if the primary purpose of the scholarships is compensatory as we have so found, then petitioner does not qualify for exempt status under IRC 501(c)(3). Petitioner is affiliated with and is operated for the purpose of providing compensatory payments on behalf of Georgia Pageant so as to attract a high quality of contestants to enter the Miss Georgia Pageant. Therefore, petitioner is not operated exclusively for any of the permissible purposes enumerated in IRC 501(c)(3) and should not be classified as an exempt organization.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the Tax Court observed that an organization’s conferral of benefits on disinterested persons (i.e., unrelated third parties) causes the organization in the ruling to serve private rather than public interests.

Application of law

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). Based on the information you provided in your application and supporting documentation, we conclude that you fail the operational test.

You are not operating exclusively for exempt purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1). A substantial purpose of your organization is to serve the private interests of student athletes. This is in contravention to Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

You are similar to the organizations in Rev. Rul. 76-152 and Rev. Rul. 61-170, because you are providing a direct economic benefit to the student-athletes through compensation for the use of their NIL. The benefit to other charities is incidental to you managing compensation for the use of a specific athlete’s NIL.

You are similar to Miss Georgia Scholarship Fund, Inc. v. Commissioner since there is a contractual relationship between you and the student-athletes for the student-athletes’ compensation. You receive what are called “donations” from donors in exchange for the use of the NIL of an athlete in their advertising. The athlete must agree to participate in the charitable activities of other unrelated tax-exempt organizations in exchange for compensation in the amount of the “donation.” In your sample agreement, you illustrate this where the student-athlete is required to perform specified services in return for a set amount of compensation.

As noted in American Campaign Academy v. Commissioner, “When an organization operates for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests, the organization by definition does not operate exclusively for exempt purposes.”

You are similar to Better Business Bureau of Washington, D.C., Inc. v. United States since a substantial part of your activities is not furthering IRC Section 501(c)(3) purposes.

Conclusion

You have not shown that you meet the requirements for recognition of tax exemption under IRC Section 501(c)(3). You are operating for substantial nonexempt purposes. You are also serving the private interests of the student athletes. Compensation to the student-athletes are serving private rather than public interests. Therefore, you fail to qualify for exemption under Section 501(c)(3).

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

If you don't agree

You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

For an officer, director, trustee, or other official who is authorized to sign for the organization:
Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, Power of Attorney and Declaration of Representative, with us if they haven't already done so. You can find more information about representation in Publication 947, Practice Before the IRS and Power of Attorney.

We'll review your protest statement and decide if you gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information in Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).

Where to send your protest

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
PO Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that they received it.

You can get the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

Contacting the Taxpayer Advocate Service

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or if you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

cc: