



Department of the Treasury  
Internal Revenue Service  
Tax Exempt and Government Entities

Date:  
09/25/2024  
Employer ID number:

Person to contact:

Release Number: 202451019  
Release Date: 12/20/2024  
UJL Code: 501.03-30,  
501.32-01, 501.33-00,  
501.35-00, 503.00-00

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](http://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.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosures:  
Letter 437  
Redacted Letter 4034  
Letter 4038



Department of the Treasury  
Internal Revenue Service

Date: 08/01/2024

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

**Legend:**

C = Date

D = State

F = School

G = Organization

h = number

j dollars = amount

k dollars = amount

**UIL:**

501.03-30

501.32-01

501.33-00

501.35-00

503.00-00

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 C in the state of D. You attest that you have the necessary organizing document, that your organizing document limits your purposes to one or more exempt purposes within the meaning of the IRC Section 501(c)(3), that your 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 your 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 that your mission is to support F's student athletes with Name, Image and Likeness (NIL) compliance requirements.

Detailed information was subsequently requested.

Your mission is to provide F's student athletes the opportunity to enhance their college experience through volunteering in community services and non-profit organizations, using their NIL. The activities are conducted at selected agencies approved by your board of directors. To be eligible to participate in your program, student athletes must be full-time students in good standing at F, and members of its athlete program. Student athletes receive compensation for volunteering for such events. You ensure that all events meet the compliance requirements set forth by G. You have a selection committee who chooses worthy participants.

Your contract indicates that you will use F's student athletes NIL to help them make a difference in the community in the light of G's NIL policy, approved in . The participating athletes are required to complete h hours of service for compensation of j dollars. A coach is always present at the events and keeps record of the hours volunteered. If an athlete fails to complete the hourly requirement, you can withhold all or a portion of the compensation. Any participating athlete is limited to compensation of up to k dollars per year.

You publicize your program by contacting individuals and corporations in person. You do not use advertising or promotional materials. Your income is from donations. All your revenue is for the payment of the student athletes, and all outside expenses are paid by your board members, who are not reimbursed.

#### **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, or educational purposes, 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) provides that, 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 or 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 exempt purposes unless it serves a public rather than a private interest. To meet this requirement, an organization must establish that it is not organized or operated 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.

Revenue Ruling 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.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279 (1945), the court held an organization qualifying for exemption under IRC Section 501(c)(3) must be exclusively devoted to furthering Section 501(c)(3) purposes and the presence of a single substantial non-exempt purpose will prohibit exemption qualification regardless of the presence of any exempt purposes. Noting an activity can have more than one purpose, the court also held that once a substantial non-exempt purpose is established, it is unnecessary to determine whether there are exempt purposes because exemption is unavailable.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), an organization that provided managerial and consulting services on a regular basis for a fee is a trade or business carried on for profit. The fact that services in this case are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of IRC Section 501(c)(3). The court stated that when applying the operational test, under Treas. Reg. Section 1.501(c)(3)-1(c), as "operated exclusively" looks at the purpose towards which an organization's activities are directed, and not the nature of the activities themselves. The purpose is ultimately dispositive of the organization's right to be classified under Section 501(c)(3).

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 noted that if the primary purpose of the scholarships is compensatory, then petitioner does not qualify for exempt status under Section 501(c)(3).

### Application of law

IRC Section 501(c)(3) sets forth two main tests for qualification for exempt status. As stated in Treas. Reg. Section 1.501(c)(3)-1(a)(1), an organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). Based on the information submitted, we conclude you fail the operational test.

An organization is required to operate exclusively for exempt purposes to qualify for exemption under IRC Section 501(c)(3). Exclusivity with respect to Section 501(c)(3) does not mean “solely” or “without exception” but rather contemplates that any non-exempt activities be only incidental and less than substantial, according to Treas. Reg. Section 1.501(c)(3)-1(c)(1). Your mission to enhance student athletes’ college experience through opportunities to participate in community and non-profit organizations events using their NIL, does not further an exempt purpose.

Based on the facts presented, your primary purpose is to provide student athletes opportunities to be compensated for the use of their NIL. Thus, you serve the private interests of your contracted student athletes rather than a public interest. To qualify for exemption under IRC Section 501(c)(3), you must serve a public, rather than a private interest, as described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii). Because you spend all your resources on the payment of your student athletes, you operate for their private interests.

Like the organization denied exemption in Rev. Rul. 61-170, you are operated to provide employment opportunities for the private benefit of your contracted student athletes. Your main activity is to coordinate community service events for student athletes to use their NIL, in exchange for compensation. Therefore, a substantial part of your activities furthers private interests.

Like the organization denied exemption in Rev. Rul. 76-152, who directly benefitted by the exhibition and sale of their works, the student athletes involved in your activities directly benefit from the compensation received for the use of their NIL. Based on the fact that this is your main activity, and you will spend all your revenues on the payment of these student athletes, this cannot be dismissed as being merely incidental, and therefore you are not operated exclusively for exempt purposes.

In B.S.W. Group, Inc., the court found that the purpose towards which an organization's activities are directed, and not the nature of the activities themselves, are ultimately dispositive of the organization's right to be classified under IRC Section 501(c)(3). Your purpose is to create opportunities for student athletes to use their NIL to enhance their recognition for doing volunteer work that is being compensated. Enhancing the recognition of student athletes, who are being compensated for their community service, does not further an exempt purpose.

In Miss Georgia Scholarship Fund, Inc., the court found that awarding scholarships to contestants in a beauty pageant in consideration of contractual obligations negated the right to be recognized under IRC Section 501(c)(3). Similarly, the primary purpose of your volunteer opportunities is compensatory in nature and meant to enhance the recognition of F’s student athletes under contract, and does not serve an exempt purpose.

You might be helping charitable and non-profit causes, but the primary purpose of your operations is to enrich the image of F’s student athletes and provide them with more opportunities for monetary compensation. As noted in Better Business Bureau of Washington, D.C., the presence of a single non-exempt purpose, if substantial in nature, will destroy exemption regardless of the number or importance of truly exempt purposes.

**Conclusion**

Based on the facts and analysis above, you do not qualify for exemption under IRC Section 501(c)(3) because you are operated for the substantial non-exempt purpose of creating opportunities for your contracted student athletes to use their NIL in exchange for monetary compensation. You are operated for the private interests of your contracted student athletes. Thus, you fail the operational test and are not qualified 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](http://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](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements