



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

Date:  
10/31/2024  
Employer ID number:

Form you must file:  
1120  
Tax years:  
All  
Person to contact:

Release Number: 202504020  
Release Date: 1/24/2025  
UIL Code: 501.03-30, 501.32-01, 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](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.

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:  
Letter 437  
Redacted Letter 4034

cc:



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

**Date:** 9/09/2024

**Employer ID number:**

**Person to contact:**

**Name:**

**ID number:**

**Telephone:**

**Fax:**

**Legend:**

B = Name

C = State

D = Date

f percent = Number

**UIL:**

501.03-30

501.32-01

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 incorporated in C on D as a nonprofit corporation for charitable, educational, and scientific purposes within the meaning of IRC Section 501(c)(3). You accomplish your purposes by entering into written community service agreements with college student athletes from B to use their name, image, and likeness (NIL) in order to provide charitable services to local community service organizations. In these agreements, student athletes commit to perform the services over a defined period of time in which they are paid. The sample agreements in part state:

- Each charitable event is less than two hours in duration unless otherwise negotiated;
- The student athlete is required to publish online promotional content and/or social media posts at least one time per event. Each publication and/or post is to advertise in a positive light the student athlete's performance of the charitable services.

Furthermore, the agreements typically have terms by which if the student athlete fails to perform the charitable services, the student athlete's right to a commensurate portion of payment is forfeited and if the student athlete never performs the agreed to services, you have the right to pursue them and recover all monies that might previously have been paid.

Examples of services that B student athletes agree to provide to community service organizations include after school programming, leadership development and mentoring, staffing public service announcements, providing resources to underserved communities, making personal appearances, participating in certain promotional activities, and otherwise performing the charitable services as directed by the personnel at the event. The beneficiaries of these services are the participants and/or beneficiaries to whom those community service organizations target their programming and among these participants and beneficiaries are school-aged children. Further, you have already established a relationship with multiple community service organizations.

You explained that you have discovered that by using student athletes to deliver charitable services is a unique, powerful tool for positively and significantly impacting the community service organizations with whom you partner. You also explained that these student athletes:

- Raise awareness of the charitable services provided by those community service organizations;
- Cultivate positive community “chatter” regarding the causes supported by those community service organizations; and
- Enhance and amplify the likelihood that donors will act on their charitable impulses to donate to such worthy causes.

In addition, it is your view that within the metropolitan area around B, these student athletes are the individuals who have the greatest likelihood of accomplishing all these positive outcomes in the least amount of time. You explained that you have found that these student athletes are able to make a profound impact which is your goal. You believe that the extent of such impact over the applicable period of time cannot be matched by anyone else reasonably available to you and that your operations model appears to be contributing to the evolution of a charitable mindset.

We provided you copies of your webpages. Per the website, your mission and core function is to:

- Provide NIL opportunities exclusively in exchange for student athlete participation in charitable and educational activities;
- To secure charitable contributions and offer meaningful name, image, and likeness partnerships to student athletes for their participation in community service initiatives in the local community and beyond.

One of the web pages also indicates you are facilitating partnerships between student athletes and fans, alumni, businesses, non-profits, and other community organizations to create meaningful NIL opportunities. The page further states that “In addition to providing robust financial support to student athletes, these opportunities infuse professional and entrepreneurial lessons that will set them up for sustained, elite-level success, on and off the field of play”. Additionally, the website encourages individuals and businesses to become members by creating an account and to set up periodic contributions to you. You also offer different membership levels with associated perks both for individuals and businesses depending on the amount they annually contribute. One such membership provides the donor with exclusive game day experiences and tickets to select games. Most of the individual memberships provide exclusive behind the scenes access to coaches and student athletes.

Additionally, the website encourages business members to invest in student athletes, coaches, and teams, to ensure they have the resources to attract and retain the highest-level talent, positioning them to compete for championships for years to come.

The website provides that at least f percent of all online contributions will be paid to student athletes. The remaining funds are to help cover operational expenses.

You are supported by gifts, grants, and contributions. Expenses are for salaries, and for amounts paid to student athletes as well as for other administrative expenses.

#### **Law**

IRC Section 501(c)(3) provides exemption under Section 501(a) for organizations organized and operated exclusively for one or more of the exempt purposes set forth in Section 501(c)(3).

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 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 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.

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. 70-186, 1970-1 C.B. 128, held that an organization formed to preserve a lake as a public recreational facility qualified for exemption under IRC Section 501(c)(3), even though the organization's activities also benefited lakefront property owners. The Service determined that the benefits of the organization's activities flowed principally to the general public and that it would have been impossible for the organization to accomplish its exempt purposes without providing some benefit to the lakefront property owners.

Rev. Rul. 75-286, 1975-2 C.B. 210, held that an organization formed by the residents of a city block to beautify and preserve that block did not qualify for exemption under IRC Section 501(c)(3). The restricted nature of the organization's membership and the limited area in which its improvements were made indicated that the organization was organized and operated to serve private interests by enhancing the value of its members' property rights.

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.

Rev. Rul. 76-206, 1976-1 C.B. 154, held that an organization formed to generate community interest in the retention of classical music programs by a local for-profit radio station did not qualify for exemption under IRC Section 501(c)(3). The organization's activities enabled the radio station to increase its total revenue and, by increasing its listening audience, would enhance the value and salability of the station's airtime. The organization's activities benefited the station in a more than incidental way and served a private rather than a public interest.

Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, 283 (1945), held that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption regardless of the number or importance of truly exempt purposes.

B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), held that the purpose towards which an organization's activities are directed, and not the nature of the activities themselves, is ultimately dispositive of the organization's right to be classified as a IRC Section 501(c)(3) organization.

Christian Manner International, Inc. v. Commissioner, 71 T.C. 661 (1979), held that an organization whose primary activity was the publication and sale of religious books written by its founder did not qualify for exemption under IRC Section 501(c)(3). The Tax Court noted in this case that when an activity furthers both an exempt and nonexempt purpose, qualification for exemption depends on whether the nonexempt purpose is so incidental to the exempt purpose as not to disqualify the organization for exemption.

Est of Hawaii v. Commissioner, 71 T.C. 1067 (1979), held that an organization created to disseminate educational programs, the rights to which were owned by for-profit corporations, furthered the commercial, private purposes of the for-profit entities, and did not qualify for exemption under IRC Section 501(c)(3). The Tax Court noted that the critical inquiry was not whether the payments to the for-profit corporations were reasonable, but whether the for-profit entities benefited substantially from the organization's operations.

American Campaign Academy v. Commissioner, 92 T.C. 1053, 1076-78 (1989), held that a school that trained individuals for careers as political campaign professionals was not described in IRC Section 501(c)(3) because its operations benefited the private interests of entities and candidates associated with a single political party. The Tax Court observed that an organization's conferral of benefits on disinterested persons may cause the organization to serve private rather than public interests.

In City of Galveston, Texas v. United States, 33 Fed. Cl. 685, 707-08 (1995), the court indicated that "[a] taxpayer cannot premise its right to an exemption by showing that others have been treated more generously, leniently or even erroneously by the IRS."

### **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 provided in your application and supporting documentation, we conclude that you fail the operational test.

Qualification for exemption under IRC Section 501(c)(3) requires that an organization operate exclusively for exempt purposes. 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. See Treas. Reg. Section 1.501(c)(3)-1(c)(1).

Based on the facts presented, you serve a private rather than a public interest, since you confer benefits primarily on B student athletes for the use of their name, image, and likeness in performing services to community service organizations. You have not demonstrated that these student athletes belong to a charitable or protected class. To qualify for exemption under IRC Section 501(c)(3), an organization must serve a public interest, rather than a private interest, as described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

Similar to the situation described in Rev. Rul. 61-170, in which an organization operated to increase the employment opportunities available to its members, your primary activity is to increase the number of paid name, image and likeness opportunities for B student athletes. You focus your efforts on arranging name, image, and likeness deals between community service organizations and student athletes to further the nonexempt purpose of providing compensation to these student athletes. As such, a substantial and non-incidental part of your activities furthers a private interest.

You are unlike the organization in Rev. Rul. 70-186, which was formed to preserve a lake as a public recreational facility, which benefited the public at large. Such actions simultaneously provided some benefit to private individuals owning lakefront property. However, the benefit to private interests was qualitatively incidental. The benefit to private interests was a necessary component of the exempt activity since it would have been impossible to accomplish the exempt purpose without also benefiting the lakefront property owners. The benefit to private interests was indirect and clearly incidental to the organization's overriding purpose of preserving the lake. Conversely, your activities result in a direct monetary benefit to the selected student athletes. Here, in contrast, your activities result in a direct monetary benefit to the B student athletes, and this private benefit from your activities is not qualitatively incidental to an exempt purpose. Furthermore, unlike the situation in Rev. Rul. 70-186, you have not demonstrated that it would be impossible to accomplish your exempt purposes without providing benefits to B student athletes.

As in Rev. Rul. 75-286, your activities result in a direct benefit to a limited group of individuals; therefore, the private benefit from your activities is not qualitatively incidental to the exempt purposes.

Just like the artists in Rev. Rul. 76-152, who directly benefited by the exhibition and sale of their works, student athletes who are engaged in your activities are directly benefited by the compensation they receive for use of their NIL. Given that you plan on spending at least f percent of online donations to pay student athletes for the use of their NIL, compensating B student athletes for the use of their NIL is one of your substantial activities and is serving the private interests of those student athletes who participate. This direct monetary benefit to student athletes is substantial and cannot be considered merely incidental. See Rev. Rul. 76-152. ("The artists in subject case are being directly benefited by the exhibition and sale of their works, with the result that a major activity of the organization is serving private interests of those artists whose works are displayed for sale. Since

90 percent of all sale proceeds are turned over to individual artists, such direct benefits are substantial by any measure and the organization's provision of them cannot be dismissed as being merely incidental to its other purposes and activities.""). Similarly, you provide a direct monetary benefit to student athletes that is substantial and cannot be considered merely incidental.

Similar to the organization described in Rev. Rul. 76-206, whose activities were intentionally designed to benefit the for-profit radio station so that it could continue broadcasting classical music, your activities are designed to provide paid NIL opportunities for B student athletes. The intentional private benefit from your activities cannot be considered qualitatively incidental to the accomplishment of an exempt purpose.

Under Better Business Bureau, even if these activities further an exempt purpose, the presence of a single non-exempt purpose (paying B student athletes), if substantial in nature, destroys the exemption regardless of the number or importance of truly exempt purposes. Here, you provide a direct monetary benefit to B student athletes that is substantial and cannot be considered merely incidental.

As noted in American Campaign Academy, when an organization operates for the benefit of private interests, the organization, by definition, does not operate exclusively for exempt purposes. In American Campaign Academy, the organization operated a program to educate and/or train people to work for political campaigns. However, the court decided that the organization was not exempt as a public charity furthering educational purposes because the organization's program was a feeder program for one specific political party, and thus, the primary activity of the organization substantially furthered private interests. Like American Campaign Academy, your activities are aimed at benefiting a designated group, namely B student athletes.

As described above, your activities are directed at benefiting student athletes. As described in B.S.W. Group, the purpose towards which an organization's activities are directed, and not the nature of the activities themselves, is ultimately dispositive of the organization's right to be classified as an IRC Section 501(c)(3) organization.

As in Christian Manner International, Inc., you further a non-exempt purpose that is not incidental to an exempt purpose. Your payments to student athletes in exchange for their name, image and likeness rights does not further an exempt purpose.

As in Est of Hawaii, the critical inquiry is not whether the payments to student athletes are reasonable, but whether student athletes benefited substantially from the organization's operations. Your entire enterprise, therefore, is carried on in such a manner that B student athletes benefit substantially from your operations. This indicates that your activities impermissibly serve private rather than public interests, and that you are not operated exclusively for exempt purposes.

### **Your position**

You explained that B student athletes have completed more than a few hundred hours of charitable service work per week for various community service organizations. These include but are not limited to student athletes:

- Working at the local food bank to sort, stock, pack and solicit donations of food items;
- Working at a local charity whose focuses on preventing child abuse and child neglect by collecting book donations and packing them for families, providing in person mentoring, and encouraging interactions to children and adults served by the charity;



- Working at a local charity whose focus is on achieving mental health for males ages 3-24 years old by participating in their mentoring program and delivering in person presentations to boys and young men about the importance of focus, determination and perseverance in pursuing goals as well as conducting interactive athletic demonstrations regarding how speed and agility can improve physical fitness and overall health.

You further explained that you may contract with individuals other than B student athletes where engaging with the individuals is likely to generate a short- or long-term charitable impact.

You provided the names of numerous organizations you referred to as “peer institutions” that hold federal tax-exempt status under IRC Section 501(c)(3) whose activities you believe are like yours. As a result, you believe like these organizations, you should be granted exemption under Section 501(c)(3).

### **Our response to your position**

You have not provided any information proving that you meet the requirements of IRC Section 501(c)(3).

You have not demonstrated that these student athletes or any individuals you may contract with belong to a charitable class. You have not indicated that you will offer paid opportunities to individuals based on a demonstrated need; rather, you plan on compensating them regardless of their financial need. Although you conduct some activities that may further charitable purposes, you are operating for substantial nonexempt purposes. You serve a private, rather than a public interest, because you confer benefits primarily on student athletes from B sports teams for the use of their NIL as explained above.

Concerning organizations that you claim are similar to you, the facts and issues concerning the alleged tax-exempt status of those organizations are not relevant to our determination here. Disparate treatment claims are not supported by the law. In City of Galveston, Texas v. United States, the court stated the mere fact that one taxpayer has been treated differently from another taxpayer does not establish the other’s entitlement. The fact that all taxpayers or all areas of the tax law cannot be dealt with by the Service with equal vigor and that there thus may be some taxpayers who avoid paying the tax cannot serve to release all other taxpayers from the obligation. As such, a taxpayer cannot premise its right to an exemption by showing that others have been treated more generously, leniently, or even erroneously by the IRS.

### **Conclusion**

Based on the facts presented, you do not qualify for exemption from federal income tax as an organization described in IRC Section 501(c)(3). You have failed to meet the operational test because you operate for substantial non-exempt purposes, specifically for the private interests of B student athletes. 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](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.

We sent a copy of this letter to your representative as indicated on your Form 2848, Power of Attorney and Declaration of Representative.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements