



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

Date:
11/27/2024
Employer ID number:

Form you must file:
1120

Tax years:
All

Person to contact:

Release Number: 202508005
Release Date: 2/21/25
UIL Code: 501.03-00, 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.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:
Letter 437
Redacted Letter 4034

Letter 4038 (Rev. 11-2021)
Catalog Number 47632S



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

Date: 9/19/2024

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

W = State

X = Date

Y = Name

UIL:

501.03-00

501.03-30

501.33-00

Dear Applicant:

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 W on X. Your Articles of Incorporation state your specific purposes are to conduct charitable activities, make charitable distributions to IRC Section 501(c)(3) organizations, and conduct any activities consistent with such purposes. Upon dissolution, your assets shall be distributed for one or more Section 501(c)(3) exempt purposes, or to such organization or organizations that qualify for exemption as Section 501(c)(3) organizations.

Your Bylaws indicate that you are formed to help strengthen, promote, and otherwise support W tax-exempt charitable organizations and the communities and individuals they serve. You accomplish your purposes by primarily coordinating the use of the names, images, and likenesses (NIL) of Y intercollegiate (IC) athletes with whom you contract. Specifically, you secure and manage the use of the NIL of these athletes which you provide as in-kind contributions to W charitable organizations. Your goal is for the partner organizations not to have any costs for the license for the right to use the IC athlete's NIL and that any costs for such license are paid by you. The athletes you seek for the use of their NIL depends primarily on the need of your partner charities, and what sport, gender, and athlete may be the best fit to accomplish and fulfill the charitable partner's need(s) and services.

You also explained that:

- You do not develop NIL opportunities rather you investigate the needs of the charitable organizations, and then

contact the IC athletes that may fit a charity's need and discuss the charity, event, and the NIL services needed for that charity or charity's event, and if the athlete is willing to provide the desired NIL services. you will enter into a NIL services agreement with that IC athlete.

- Your service agreements for the use of the NIL's are such that the IC athlete grants/provides a non-exclusive license to you and the partner charity for the use of their NIL.
- Pursuant to the services agreements for the NIL's, the IC athletes retain the ownership of the rights to their NIL.
- After the NIL services agreement is entered into between you and the athlete, you assist in coordinating and making sure that the services were provided, confirm the services were satisfactorily provided, and pay the athlete for services rendered.

You explained that your activities increase the charitable organizations' visibility and reach in W and their local communities, provide unique athletic and physical education to beneficiaries served by the charitable organizations, raise awareness of the need of beneficiaries served by charitable organizations, attract donors and volunteers to the charitable organizations and enhance the charitable organizations' relationships among served populations. Examples of your services to charitable organizations using the NIL's of IC athletes and the IC athletes themselves include, but are not limited to, holding athletic skill camps and physical education events, conducting charitable activities and events within the lines of service offered by charitable organizations, and providing the services of the IC athletes as organizational spokespersons, motivational speakers, group speakers and advisors on relationships with and needs of served populations. You further stated that the specific services you provide to partner charities depend in large part on the particular needs of your partner charities and the specific events and activities that those charities are engaged in and the individuals/populations that those particular charities serve.

Currently volunteers organize and manage your operations as well as secure and manage the use of the NIL of IC athletes with whom you contract. In the future, you may hire either on a part-time or full-time basis for positions for administrative and day-to-day functions at locally competitive wages or salaries.

You are funded through fundraising activities and contributions from both individuals and entities. Your primary expense is for the use of the NIL of IC athletes from Y with whom you contract.

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) provides 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 and 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. 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.

Ginsberg v. Commissioner, 46 T.C. 47 (1966), held that an organization formed to dredge certain waterways was organized and operated primarily for the benefit of persons owning property adjacent to the waterways rather than for public charitable purposes.

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.

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 (i.e., unrelated third parties) may cause the organization 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 provided, 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 in your application and supporting documentation, the primary beneficiary of your activities will be the Y athletes. Your funds will be used to pay the Y athletes for their NIL and NIL services after the terms of the agreement are met. These athletes are not themselves a recognized charitable class. You would be serving a private rather than a public interest because your benefits and resources would primarily flow to the Y athletes for their NIL and NIL services. Paying for the services is not clearly incidental to the overriding public benefit. To qualify for exemption under Section 501(c)(3), you must serve a public, rather than private interest, as described in Section 1.501(c)(3)-1(d)(1)(ii). Because your primary expense is for the use of the NIL of IC athletes from Y with whom you contract, you operate substantially for a substantial private interest, rather than a public interest.

Just like the artists in Rev. Rul. 76-152, who directly benefited by the exhibition and sale of their works, the Y athletes whom you contract with for their NIL or NIL services, are directly benefited by the compensation they receive for the use of their NIL or for their NIL services. Given that you plan on spending most of your resources for the use of their NIL or for their NIL services, compensating Y athletes is a major activity of yours and is serving the private interests of those Y athletes who participate in your activities. This direct monetary benefit to Y 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 ninety 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 the Y athletes that is substantial and cannot be considered merely incidental.

Like the organization 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 increase the number of paid NIL opportunities for Y athletes. The intentional private benefit from your activities cannot be considered qualitatively incidental to the accomplishment of an exempt purpose.

While you explained that the Y's athlete's participation with various charitable organizations to further their charitable missions as well as involvement with other charitable and educational initiatives, as ruled under Better Business Bureau, even if these activities further an exempt purpose, the presence of a single non-exempt purpose (paying IC athletes), if substantial in nature, destroys the exemption regardless of the number or importance of truly exempt purposes. You provide a direct monetary benefit to Y's athletes that is substantial and cannot be considered merely incidental.

You are similar to the organization in Rev. Rul. 61-170, in that your activities will increase the number of paid NIL opportunities available for the Y athletes. You focus your efforts on arranging NIL deals between local charities and Y athletes to further the nonexempt purpose of providing these athletes with compensation. Thus, a substantial and non-incidental part of your activities furthers private interests.

As explained 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. Like in American Campaign Academy, your activities are aimed at benefiting a designated group which are the IC athletes from Y. Similarly, one of your substantial activities, providing various services to charitable organizations does not make you exempt as charitable because this activity provides substantial private benefit to the IC athletes.

As in Christian Manner International, Inc., you are furthering a non-exempt purpose that is not incidental to an exempt purpose. Your payments to IC athletes in exchange for the use of their NIL does not further an exempt purpose.

Like the organizations in Ginsberg v. Commissioner, and Rev. Rul. 75-286, the direct benefit to IC athletes from Y cannot be dismissed as being merely incidental to the exempt purpose since the NIL arrangements are the primary goal to promote the partner exempt organizations. You are creating NIL agreements with IC athletes of Y in order to provide services for other Section 501(c)(3) organizations in W. Your resources are used to establish and pay the IC athletes and thus will serve the interest of the IC athletes who are a non-charitable class.

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.

You are unlike the organization in Rev. Rul. 70-186, which was formed to preserve a lake as a public recreational facility. While the organization's activities clearly benefited the public at large, they also provided some benefit to private individuals owning lakefront property, but the benefit to private interests was qualitatively incidental. While the organization's activities benefitted the private interests, this was a necessary concomitant of the exempt activity because it would have been impossible to accomplish the exempt purpose without benefiting the lakefront property owners. There, the benefit to private interests was indirect and clearly incidental to the organization's overriding purpose of preserving the lake. Here, in contrast, your activities result in a direct monetary benefit to the Y athletes. In addition, you have not established how exclusively benefiting the IC athletes of Y is a necessary concomitant of providing various services to local charitable organizations.

Therefore, the private interests conferred to IC athletes from your activities is not qualitatively incidental to exempt purposes.

Conclusion

Based on the facts and circumstances presented, you do not qualify for exemption from federal income tax as an organization described in IRC Section 501(c)(3). You are not operated exclusively for exempt purposes as set forth in Section 501(c)(3) because you operate for substantial non-exempt purposes, specifically for the private interests of Y 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 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.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements