



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

Date:
01/21/2025
Employer ID number:

Person to contact:

Release Number: 202516008
Release Date: 4/18/2025
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.

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
PO Box 2508
Cincinnati, OH 45201

Date: 10-31-2024

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

B = Date

C = State

D = School

p percent = percentage

q percent = percentage

w dollars = dollar amount

UIL: 501.03-30

501.32-01

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 were formed on B, in C, as a not-for-profit corporation to strengthen, promote, and support nonprofit organizations through grants and in-kind contributions that include promotional/marketing services and educational activities performed by student-athletes at D with whom you contract to use their name, image, and likeness (NIL) in partnership with local and regional nonprofits.

These partnerships are designed to compensate high-caliber student-athletes at D for the use of their NIL by your nonprofit partners who, in turn, receive a high level of publicity that allows them to attract more donors and volunteers, thus increasing their visibility and impact within the community. You state this arrangement is necessary because student-athletes must be compensated for the use of their NIL by law; therefore, you secure the required compensation through fundraising and donations, allowing both parties to benefit from the publicity generated by the community service of high-caliber student-athletes.

Each student-athlete signs a NIL Use Agreement contract outlining the rules of participation and compensation. Participants must complete activities called NIL Deliverables, which may include (but are not limited to) the use of student-athletes' signatures, pictures, memorabilia, and individualized messages; participation in various events, promotional videos, and Zoom call with charitable partners or fans; NIL education and trainings you provide to student-athletes; or other assigned activities included in your contract.

Your officers have the ultimate power and reserve the right under contract to choose the deliverables. In addition, you choose which student-athletes are eligible to participate based on the following criteria:

- student-athlete reputation within the community, team, online (e.g., social media);
- perceived enhancement to the brands of nonprofit partners;
- positive reflection upon you, your operations, and your supporters; and
- available funds to compensate student-athletes for NIL deliverables.

Your participants must, by virtue of their athletic ability and experience, possess a high caliber of public recognition and value that can support fundraising and generate publicity for your nonprofit partners. You place no further criteria on participation, such as financial need. As a result, your NIL opportunities are not open to all student-athletes on all athletic teams at D. You anticipate expanding your opportunities in the future, pending available funds and the status of your federal tax exemption.

For compensation purposes, student-athletes are treated as independent contractors and issued a Form 1099-MISC for payments in proportion to the completion of their assigned deliverables. For example, those who complete all deliverables may receive full compensation of w dollars on the last date of each month; however, you determine the actual amount student-athletes are paid during each contract cycle (e.g., semester). There is no set scale for payments; your pay structure is based on your available funds as donated by your supporters.

You estimate between p percent of your funds will be used to compensate student-athletes at D, and, in total, more than q percent of your expenses will include these payments, along with advertising expenses and fundraising activities. A small portion of your funds will cover 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.

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 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 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 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 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 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.

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 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.

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 Section 501(c)(3). The Tax Court noted 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 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.

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 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, as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1).

Based on the facts presented, you serve a private rather than a public interest, because you confer benefits primarily on student-athletes at D for the use of their NIL, and you have not demonstrated that these student-athletes belong to a charitable class. To qualify for exemption under Section 501(c)(3), you must serve a public rather than private interest, as described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii). You plan to spend roughly p percent of your funds to acquire the NIL rights of student-athletes; thus, you operate substantially for a private interest, rather than a public interest.

Similar to Rev. Rul. 61-170, in which an organization operated to increase the employment opportunities available to its members, your activities increase the number of paid NIL opportunities for student-athletes at D. You focus your efforts on arranging NIL deals between local charities and student-athletes to further the nonexempt purpose of providing student-athletes with compensation. Thus, a substantial and non-incidental part of your activities furthers private interests.

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; however, the benefit to private interests was qualitatively incidental as it would have been impossible to accomplish the exempt purpose without benefiting the lakefront property owners. Therefore, the benefit to private interests was a necessary concomitant of the exempt activity and clearly incidental to the organization's overriding purpose of preserving the lake.

In contrast to this ruling, your activities result in a direct monetary benefit to student-athletes at D, and you have not established how exclusively benefiting the student-athletes of one school is a necessary concomitant of providing promotional/marketing services and educational activities to local charities. You assert payment is necessary because student-athletes must be compensated for the use of their NIL under law; however, student-athletes control their NIL and, thus, *may* receive compensation for its use as amateur athletes, not *must*, i.e., student-athletes may donate the use of their NIL. Accordingly, none of the deliverables you require student-athletes to complete to receive compensation would require compensation to complete. For instance, autographs, memorabilia, etc., may be donated, as well as the time required to participate in events. Indeed, there are alternative means by which you could promote local charities without conferring a substantial private benefit on these student-athletes, such as by encouraging volunteerism. Therefore, the private benefit from your activities is not qualitatively incidental to exempt purposes.

As in Rev. Rul. 75-286, where the activities of beautifying and preserving a city block conferred direct benefits upon its residents, your activities also result in a direct benefit to a limited group of individuals. The restricted membership of the city block is not unlike the restricted membership of your participants, i.e., high-caliber student-athletes at D. While participation may eventually open to all student-athletes, you currently restrict it to those with high levels of public recognition that can enhance the brand of your nonprofit partners, which confers a private benefit upon certain student-athletes that is not qualitatively incidental to exempt purposes.

Just like the artists in Rev. Rul. 76-152, who were directly benefited by the exhibition and sale of their works, the student-athletes at D are directly benefited by the compensation they receive for use of their NIL. Given that you plan on spending between p percent of your gross receipts to acquire NIL rights of student-athletes, compensating student-athletes for their NIL rights is a major activity of your organization and is serving the private interests of those student-athletes selected to participate in your activities.

In addition, this direct monetary benefit to student-athletes is substantial and cannot be considered merely incidental, especially given the non-fixed nature of the payments. As stated in Rev. Rul. 76-152, “The artists...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.”

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 increase the number of paid NIL opportunities for student-athletes at D. Thus, the intentional private benefit from your activities cannot be considered qualitatively incidental to the accomplishment of an exempt purpose.

While you noted the student-athletes' participation in charitable and educational events, under Better Business Bureau of Washington, D.C., Inc., even if these activities further an exempt purpose, the presence of a single non-exempt purpose (e.g., paying student athletes), if substantial in nature, destroys the exemption regardless of the number or importance of truly exempt purposes. Accordingly, you provide a direct monetary benefit to D’s student-athletes that is substantial and cannot be considered merely incidental, both qualitatively and quantitatively, in relation to your operations and finances.

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 an organization that furthers 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 in American Campaign Academy, your activities are aimed at benefiting a designated group, namely student-athletes of one university. Similarly, one of your substantial activities, providing promotional, marketing, and publicity services to charities, does not make you exempt as charitable because this activity provides substantial private benefit to the student-athletes.

As described above, your activities are directed at benefiting D's student-athletes. As described in B.S.W. Group Inc., 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.

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

As in Est of Hawaii, the critical inquiry is not whether the payments to the student-athletes are reasonable, but whether the student-athletes benefit substantially from the organization's operations. Your purpose is to develop financial opportunities for student-athletes at D, and you intend to distribute at least p percent of your gross receipts to these student-athletes. Your entire enterprise, therefore, is carried on in such a manner that the 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.

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). By providing compensation to student athletes for the use of their NIL, you confer an impermissible amount of private benefit to the student-athletes; therefore, you are operating for a substantial non-exempt purpose. Your operations are not exclusively charitable. We conclude that you do not 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