



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

Date:
10/03/2024
Employer ID number:

Form you must file:

Tax years:

Person to contact:

Release Number: 202452017
Release Date: 12/27/24
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

Redacted Letter 4038



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

Date: 07/24/2024

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend

B = Date

C = City, State

D = University

E = Partners

w percent = Percent

x = Number of Hours

y dollars = Rate

z = Minimum Participants

zz = Maximum Participants

UIL

501.03-00

501.03-30

501.33-00

Dear :

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

Issues

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

Facts

You were formed on B, in C, as a not-for-profit corporation.

You contract with college student athletes at D to use the athletes' name, image, and likeness (NIL) for work with local nonprofit organizations. You said the partner charities benefit from the athlete's personal platforms. Many of these student athletes have huge following on social media and massive fan bases.

You project that more than w percent of all funding will go directly towards the student-athletes who participate at events of the 501(c)(3) organizations you partner with.

You work exclusively with other tax-exempt organizations to further their missions while teaching student athletes to put their time and efforts toward improving the lives of others. You distribute philanthropic proceeds to student athletes to further not-for-profit companies in community.

Each athlete signs an agreement contract outlining the rules of participation with a monthly addendum outlining compensation for a given set of activities. In your agreement, you state, that you intend the fees paid to student athletes to be commensurate in value to the services provided, and to be reasonable and tied directly to the value of the services actually performed by the athletes. You intend the fees are reflective of the fair market value of the services provided and performed. You agree to re-negotiate the fees at any time if the fees are not commensurate with the then-current value of the services by using good faith efforts.

Your goal is to have student-athletes provide x hours of work for a given rate of payment on a month-to-month basis. You are not limited to a specific sport at D.

The student athletes at D receive flat-fee compensation for completed events once they provide proof of completion to you. The student-athletes are independent contractors. You report these payments as payroll expenses on your financial statements. You will provide IRS Form 1099 with their total yearly compensation at year end.

Your directors have sole power in making the decision of how much a student athlete is compensated. An athlete who attracts more participants, more volunteers, more donors, and more excitement has greater relative value than a student athlete that has less success in marketable disciplines.

To date, z out of zz number of student athletes on campus have participated in several sports or local events which you sponsored and partnered with non-for-profit organizations, named on list E. The student athletes received payments range from between y dollars of compensation.

You provided correspondence from multiple non-profit partners of list E touting your program and the need for the programs going forward.

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 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. 129, 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 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 (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, you serve a private, rather than a public interest, because you confer benefits primarily on student athletes of D for the use of their NIL. You have not demonstrated that these student athletes belong to a charitable class. To qualify for exemption under IRC 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 w 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 primary activity is to increase the number of paid NIL opportunities for D's student athletes. 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, 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 D's student athletes. In addition, you have not established how exclusively benefiting the student athletes of one school is a necessary concomitant of providing promotional/marketing services to local charities. 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, your activities result in a direct benefit to a limited group of individuals; 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, the 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 up to w 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 who participate in your activities. This direct monetary benefit to student athletes is substantial and cannot be considered merely incidental. See Rev. Rul. 76-152, 1976-1 C.B. 151 (1976) "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 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 increase the number of paid NIL opportunities for the student athletes. 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 sports clinics targeted to community youth and other charitable and educational initiatives, 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 (paying student 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 D's 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 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 an 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 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 benefited substantially from the organization's operations. You have stated that your purpose is to develop financial opportunities for members of D's sports teams, and that you intend to distribute at least w 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.

Your position

You held that by leveraging the student athletes' popularity allows your partner charities to recruit more donors, volunteers and stimulate more awareness of their mission. You help other tax-exempt organizations to further their individual missions while teaching student athletes to put their time and efforts toward improving the lives of others.

Our response to your position

Based on the facts presented, you serve a private, rather than a public interest, because you confer benefits primarily on student athletes of D's men's basketball and football teams for the use of their NIL.

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 and resemble those of a trade or business. 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.

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 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