



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

Date:
07/07/2025
Employer ID number:

Form you must file:

Tax years:

Person to contact:

Release Number: 202540024
Release Date: 10/3/2025
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.

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

Redacted Letter 4038

cc:



**Department of the Treasury
Internal Revenue Service**

Date:
05/02/2025
Employer ID number:

Person to contact:
Name:
ID number:
Telephone:
Fax:

Legend:

C = State
D = Date
E = School
x percent= Percent
y Dollars=Amount
z percent=Percent

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 are a nonprofit organization incorporated in C on D. You will support the educational mission of E by assisting with student recruiting, promotion of the college's educational opportunities and resources, and improving E's outreach. You will accomplish this by funding name, image, and likeness ('NIL') sponsorship deals with select athletes of E.

Your specific activity is to secure and manage the use of the name, image, and likeness of collegiate athletes and fund sponsorship deals for the athletes to promote the university and other related charitable organizations. You will specifically focus on athletes on the basketball teams (men's and women's) of E. The deals will include the use of the athlete's social media presence, in-person appearances and developing/promoting programming for E.

You stated you have not set any limits for compensation an athlete may earn but expect the amount to not exceed y dollars per year. The compensation is based on whether the athletes align with your mission and values and the athlete's media reach. The compensation amount is fixed and not tied to the number of activities

performed by the athlete. More activities or fewer activities do not affect the compensation received by the athlete.

Your financials indicate that you receive, or plan to receive, around x percent from gifts, grants, and contributions, and the rest of your support comes from gross investment income. Your expenses are comprised primarily of NIL sponsorship deals. Your remaining expenses consist of fundraising costs and professional fees.

Law

IRC Section 501(c)(3) provides for exemption from federal income tax of organizations organized and operated exclusively for charitable, educational, scientific, and other purposes, provided that no part of the net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides that, 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 IRC Section 501(c)(3). If an organization fails to meet either the organizational or operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in 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) states that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to 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.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) provides that the term "charitable" is used in IRC Section 501(c)(3) in its generally accepted legal sense and includes, among other things, lessening the burdens of government, relief of the poor and distressed or of the underprivileged, advancement of education or science, erection or maintenance of public buildings, monuments, or works, and promotion of social welfare by organizations designed to accomplish any of the above purposes, or in part to defend human and civil rights secured by law.

Revenue Ruling 61-170, 1961-2 C.B. 112 (1961), 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. 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 (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 (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.

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 in your application and supporting documentation you fail the operational test.

Since providing funds for NIL opportunities are more than an insubstantial part of your activities, which is not in furtherance of an exempt purpose, you are not operated exclusively for exempt purposes according to Treas. Reg. Section 1.501(c)(3)-1(c)(1).

You appear to substantially operate for the private interest of college students using their NIL. This activity is similarly described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii), which states that an organization is not

organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. Based on the facts presented in your application you serve a private rather than a public interest because you confer benefits primarily on student athletes of a particular university's sports teams for the use of their NIL. You have not demonstrated that these student athletes belong to a charitable class. This is contrary to Treas. Reg. Section 1.501(c)(3)-1(d)(2).

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 the student athletes of one particular university. 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. The organization's activities clearly benefited the public at large, but they also provided some benefit to private individuals owning lakefront property. The benefit to private interests was qualitatively incidental. The benefit to private interests 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. The benefit to private interests was indirect and clearly incidental to the organization's overriding purpose of preserving the lake. In contrast, your activities result in a direct monetary benefit to E 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.

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 your primary expense is spending to acquire NIL rights of student athletes, compensating student athletes for their NIL rights 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.

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. Therefore, since a substantial part of your activities is not furthering IRC Section 501(c)(3) purposes you are similar to Better Business Bureau of Washington, D.C., Inc. v. United States.

As noted in American Campaign Academy v. Commissioner, 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 college. 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 in Est of Hawaii v. Commissioner of Internal Revenue, 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 it is your purpose to develop NIL opportunities for members of the college's sports teams. 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 assert your activities further the charitable and educational purposes of E and the success of their athletic programs. You claim the competitive success and continued existence requires financial support for student athletes from the institution themselves or from collective organization such as yourselves.

You cite Rev. Rul. 67-291, 1967-2 C.B. 184, which subsidized a training table for student athletes and Rev. Rul. 60-143, 1960-1 C.B. 192, an alumni association exclusively furthering the educational and charitable purposes of a university. You indicate your activities similarly further the purposes of your college by providing financial support to your select athletes to expand the college's athletic offerings and their competitiveness. You claim a 501(c)(3) school's athletic programs will require significant financial support to student athletes. You are formed to alleviate that burden. You claim that any benefits to the student athletes are both qualitatively and quantitatively incidental. Having a robust NIL program is critical to recruit retain and educate the student athletes. Quantitatively, you compare the current annual payments you make to your student athletes to the revenue received by the athletic department of E.

Our response to your position

You have not demonstrated you exclusively further the charitable or educational purposes of a 501(c)(3) educational institution. Rather, you more than insubstantially benefit the private interests of individual college athletes. Unlike the organization cited in Rev. Rul. 67-291, your activities do not exclusively further the health, development, and well being of all student athletes in the college's athletic programs. Rather, you selectively compensate individual athletes of certain programs. Similarly, you are unlike the alumni organization in Rev. Rul. 60-143 in that you have a more than insubstantial non-exempt activity. The private benefit you confer upon the student athletes for use of their NIL is not incidental nor insubstantial to your other activities.

You further stated you are formed to alleviate the burden of the college to pay its players for the college to be athletically competitive. However, you have not demonstrated that is a recognized burden of the college. You then claim that in comparison to E's athletic program budget the benefits to the student athletes would be incidental. However, your primary activity is to pay the athletes for their NIL licensing. If this activity is only incidental to the colleges exempt athletic program then you would similarly only be furthering the college's exempt athletic program incidentally. Lastly, claiming the private benefit to student athletes you provide is quantitatively incidental when compared to the athletic budget of E is irrelevant. Your application is based on its own merits and not compared to another organization. Approximately z percent of your expenses are used to fund NIL deals.

Conclusion

Based on the above facts and analysis, you do not qualify for exemption under IRC Section 501(c)(3) because you are operated for substantial non-exempt purposes and fail the operational test. Specifically, you are

operated for the private benefit of student athletes attending E. Accordingly, 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.

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