



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

**Date:**  
04/15/2024  
**Employer ID number:**  
  
**Person to contact:**

Release Number: 202428008  
Release Date: 7/12/2024  
UIL Code: 501.03-31,  
501.33-00

Dear \_\_\_\_\_ :

This letter is our final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(3). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under IRC Section 501(c)(3), donors generally can't deduct contributions to you under IRC Section 170.

We may notify the appropriate state officials of our determination, as required by IRC Section 6104(c), by sending them a copy of this final letter along with the proposed determination letter.

You must file the federal income tax forms for the tax years shown above within **30 days** from the date of this letter unless you request an extension of time to file. For further instructions, forms, and information, visit [www.irs.gov](http://www.irs.gov).

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. Read the enclosed Letter 437, Notice of Intention to Disclose - Rulings, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Letter 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

If you have questions about this letter, you can call the contact person shown above. If you have questions about your federal income tax status and responsibilities, call our customer service number at 800-829-1040 (TTY 800-829-4933 for deaf or hard of hearing) or customer service for businesses at 800-829-4933.

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:** 02/05/2024

**Employer ID number:**

**Person to contact:**

Name:

ID number:

Telephone:

Fax:

**Legend:**

B = State

C = Date

D = Name

E = Name

F = Name

x percent = amount

y percent = amount

z percent = amount

**UIL:**

501.03-31

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 incorporated in the state of B on C. Your articles of incorporation indicate that you are organized for exclusively charitable, religious, educational, and scientific purposes under IRC Section 501(c)(3). Your articles of incorporation also provide upon dissolution your assets will be distributed for one or more exempt purposes with the meaning of Section 501(c)(3), or shall be distributed to the federal government, or to a state of local government, for a public purpose.

You state that you are a Type I supporting organization of D. Your bylaws provide your directors and secretary will be appointed by D, directors may be removed by a majority of your board, or by formal action of the board of D. This relationship is further affirmed by two agreements of unanimous written consent of the board of directors between you and D. The agreement between you and D states you were formed as a Type I supporting organization to be operated, supervised, and/or controlled by D, a section 170(b)(1)(A)(vi) public charity, for the purposes expressed in a resolution adopted by the board of D. The agreement between D and you states that



it is in the best interests of D to create a separate facility for accepting and administering charitable contributions intended to leverage the name, image, and likeness (NIL) of high school or college athletes in support of various charitable efforts in a manner that complies with applicable state and federal law and with relevant rules promulgated by the National Collegiate Athletic Association (NCAA), the National Association of Intercollegiate Athletics (NAIA), the National Junior College Athletic Association (NJCAA), their constituent conferences, or similar associations.

Your specific activities and function is to facilitate arrangements in which grantmaking through D to various public charities may involve leveraging the name, image, and likeness (NIL) of high school or college athletes through public appearances, social media, and the like, for which the athletes may be compensated in a manner that complies with applicable state and federal law and with relevant rules promulgated by the NCAA, NAIA, NJCAA, their constituent conferences, or similar associations. You state that compensation to student athletes will be made not directly by you, but by the charities you provide services to.

Your application states you receive and manage contributions intended for the above activities, and assist in coordinating the interactions between student athletes and the public charities their NIL activities are intended to benefit, exercising due diligence to ascertain (a) that any compensation paid to an athlete is commensurate with services actually rendered and not in excess of the value the athlete brings to the arrangement, (b) that the opportunities afforded to an athlete to monetize his or her NIL do not violate state or federal law or association rules, (c) that the organization receiving NIL services and/or grant monies is qualified under section 170(b)(1)(A)(vi) or section 509(a)(2) and serves exempt purposes that are consistent with those of D, including in particular promoting the financial literacy of student athletes.

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 show administrative expenses and payments to student athletes for use of name, image, and likeness in support of selected charities. Your payments to student athletes, or to the benefit of student athletes, amounted to around y percent for each year of financials provided.

You make no direct expenditures for administrative services. You do not have any paid staff and activities are conducted by independent advisors engaged by an entity that provides administrative services to D under existing agreements. You have indicated these administrative services are provided by E. F, who is secretary of both you and D but does not have a vote on either board, holds a controlling interest in E, an LLC.

#### **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.

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.

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 section 501(c)(3) organization.

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.

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.

#### **Application of 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. As stated in Treas. Reg. Section 1.501(c)(3)-1(a)(1), an organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). Also, 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). You do not meet the requirements for exemption under Section 501(c)(3) because you fail the operational test.

You have not demonstrated that you are operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(3). A substantial part of your activities is in furtherance of facilitating arrangements in which grantmaking through D to various public charities may involve leveraging the name, image, and likeness (NIL) of high school or college athletes. Better Business Bureau of Washington, D.C., Inc. v. United States notes that a single non-exempt purpose, if substantial in nature, can preclude exemption. 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).

To meet the operational requirements under IRC Section 501(c)(3) an organization may not conduct its affairs in ways that benefit people outside of the charitable class served by the organizations if those people are served more than an insubstantial amount. Similar to Rev. Rul. 76-206 your activities appear to benefit people outside of a charitable class. The student athletes you serve are not limited to those of a charitable class as they do not fit into the categories contemplated in the regulations such as the poor or underprivileged that is described in Treas. Reg. Section 1.501(c)(3)-1(d)(2). Your activities appear to substantially inure to the private benefit of these student athletes, which is like Rev. Rul. 76-152, in which an organization exhibited and sold the artwork of local artists, who received 90 percent of sales proceeds. According to Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) you bear the burden of proof to show that you are not operated for the benefit of private interests. You have not demonstrated how your activities do not further private interest more than incidentally.

You appear to substantially operate for the private interest of high school or 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. Further, B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), provides whether an organization is operated exclusively for exempt purposes depends on the facts and circumstances, and the purpose towards which an organization's activities are directed, and not the nature of the activities themselves,



is ultimately dispositive of whether an organization is described in IRC Section 501(c)(3). Your activities are substantially directed at providing funding for charities to pay student athletes for use of their NIL.

**The Private Benefit to Students is not Qualitatively nor Quantitatively Incidental**

As noted in American Campaign Academy v. Commissioner, “When an organization operates 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, the organization by definition does not operate exclusively for exempt purposes.” Private benefit is the result of an exempt organization’s activities. It is conferred upon an individual, group of individuals, or a separate entity by receipt of goods, services, income, or assets from the organization’s activities. In other words, if the beneficiaries are specifically identified, as is the case with the student athletes you will serve, private interests are served. American Campaign Academy v. Commissioner further provides that a given activity may both further an exempt purpose and serve private interest. The question is whether your primary purpose benefits the public more than it benefits private individuals. This question is answered if the private benefit is both incidental in the quantitative and qualitative sense.

To be qualitatively incidental, private benefit must be a necessary by-product of the activity that benefits the public at large and accomplishes exempt purposes. This is shown in Rev. Rul. 70-186, where the organization’s preservation of a lake as a public recreational facility was impossible to accomplish without providing benefit to certain private property owners. You fail to establish how making grants to partner charities for payment to student athletes is necessary to provide benefits to the public in general, or how your activities aid D’s exempt activities. You are unlike Rev. Rul. 70-186, because the private benefit (compensation) to the athletes is not a by-product of your activities. Instead, the activities of providing services to other charities is dependent on the participation of the athletes in your program. Since athletes are now allowed profit from their NIL, they can choose to work with for-profit firms that specialize in these activities. A primary difference between you and a for-profit firm is that you solicit donations, so that charities can use the athletes NIL to enable the organization to pay the athletes.

To be quantitatively incidental, private benefit must not be substantial relative to the public benefit. This is a facts and circumstances test that requires public benefit from the organization’s activities must outweigh any individual benefit. For example, in Rev. Rul. 76-152, a group of art patrons formed an organization to promote community understanding of modern art trends. It selected modern art works of local artists for exhibit and possible sale at its gallery, which was open to the public. If an artwork sold, the gallery retained a commission of ten percent and paid the rest to the artist. A direct economic benefit is conferred on the individual artists by the gallery’s sale and rental of their art works. Sale of the work provides an artist with a direct monetary benefit and enhances their artistic career. This private benefit is substantial by any measure and outweighs the public benefit of promoting the arts. You are like Rev. Rul. 76-152, because you are providing a direct benefit to the athletes through compensation for the use of their NIL. The benefit to the other charities appears to be incidental to the compensation you are managing for the use of a specific athlete’s NIL.

You are similar to est of Hawaii v. Commissioner, which 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. Your activities substantially benefit the private interest of student athletes, since the funds you are donating to other charities are earmarked for specific athletes.



### **Your position**

In referencing Internal Revenue Service Office of Chief Counsel AM 2023-004, you have provided you are not an NIL collective as described therein. You state that “some, but not all, of the charities you partner with will likely be NIL “collectives” (in some sense) but in each instance compensating student athletes for their services will be a means to promoting the ends these charities are pursuing, not the end itself.”

You state the estimate of z percent of gross revenue, found on your financial statements, going toward payments to partner charities might change, but did not provide any significant data as to a potential change. You maintain that if you were paying student athletes directly as much as z percent of gross revenue, as provided in your application, this activity would not require an adverse determination of your application. You further go on to say that proceeds might instead be distributed to college athletic departments, in states which those relationships are permitted.

You reiterate that the primary purpose of your activities is to leverage the student athletes’ rights of publicity in service of raising public awareness of and thereby increasing public engagement to what would be “partner” charities. You indicate that these charities are seeking to boost their public profiles, to increase engagement with the local community and expand its pool of prospective volunteers. You relate this activity to a local university faculty member who has achieved popularity in their field, or an honors student who has acquired name recognition, to conduct a workshop or to speak at a fundraising dinner. You state that there would be no question that the charity might pay a reasonable stipend or honorarium for their services. You state that charities may now engage a student athlete for its public relations purposes in much the same manner it might have engages the previously mentioned persons, without triggering a violation.

In addressing the qualitative private benefit measure, you state that you are not doing the job of a collective, but providing a certain amount of specialization and expertise that is required to safely navigate the NIL space. You state a proper exempt function is to be served by an organization whose activity consists largely in properly handling gifts in compliance with applicable laws and NCAA rules and to facilitate compliant NIL payment. This is the space you propose to operate in.

In addressing the quantitative private benefit measure, you state that the advice memo does not flatly conclude that an expectation to commit a large share of gross revenue to compensating student athletes for services actually rendered is per se a more than insubstantial nonexempt purpose. You give an analogy to an endowment fund for a faculty chair, which has an expectation that a large portion will be paid out in salary. You state contributors would be motivated by wanting to put money in that individual’s pocket. Similarly, student athletes are only paid for services rendered, and in amounts not more than the value they bring to the engagement. You state, “these modest payments are not an end in themselves, but a “byproduct” of the exempt purpose to benefit the “partner” charities, which literally could not be accomplished without them.”

You conclude your position with the statement that some version of your proposed activities should qualify for exemption. You state there is a legitimate role for student athletes to play in helping raise the public profile of partner charities.

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

Your response did not provide any new facts or changes for consideration and while you have submitted analogies and examples of areas in which an organization providing these types of activities may qualify for exempt status, a ruling is only given on the facts provided in the administrative record. You may not be a

traditional NIL collective as described in AM 2023-004, however, your activities further a substantial not-exempt purpose. Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. An activity that primarily serves private interests may jeopardize exempt status if it is carried on to a degree that is more than an insubstantial part of the organization's activities.

### **Conclusion**

Based on the foregoing, we have determined that you were formed for the purpose of compensating student athletes for use of their NIL. You are operated for substantial non-exempt purposes and for the private benefit of student athletes. In addition, you do not further a charitable purpose, or serve a charitable class as described in IRC Section 501(c)(3). Therefore, you do not qualify for exemption under Section 501(c)(3) and donations to you are not deductible by the donor.

### **If you agree**

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

### **If you don't agree**

You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

**For an officer, director, trustee, or other official who is authorized to sign for the organization:**  
Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, Power of Attorney and Declaration of Representative, with us if they haven't already done so. You can find more information about representation in Publication 947, Practice Before the IRS and Power of Attorney.

We'll review your protest statement and decide if you gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information in Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).



**Where to send your protest**

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service  
EO Determinations Quality Assurance  
Mail Stop 6403  
PO Box 2508  
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Mail Stop 6403  
Cincinnati, OH 45202

You can also fax your protest and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that they received it.

You can get the forms and publications mentioned in this letter by visiting our website at [www.irs.gov/forms-pubs](http://www.irs.gov/forms-pubs) or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

**Contacting the Taxpayer Advocate Service**

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or if you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit [www.taxpayeradvocate.irs.gov](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements