



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

Date:  
05/16/2024  
Employer ID number:

Person to contact:

Release Number: 202432020  
Release Date: 8/9/2024  
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](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

Date: 02/05/2024

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

**Legend:**

B = Organization Name

D = Organization Name

E = Name

x dollars = dollar amount

y dollars = dollar amount

z dollars = dollar amount

**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 non-profit organization that connects sponsors and college athletes with school groups to deliver compelling messages that last a lifetime. These presentations are provided to the school at no charge. You raise donations from corporations and individuals to cover professional speaking fees for B student athletes. The B student athlete speakers will travel to elementary, middle school, and high schools to speak in classes, meetings, and assemblies. The B student athletes could also speak at other non-profit or community events on subjects such as compassion, goals, leadership, coping skills, friendships, health and wellness, study habits, teamwork, bullying, dangers of drugs, disability awareness, diversity, equity and inclusion, poverty, and suicide prevention.

The majority of your time will be spent raising donations and coordinating with schools and other nonprofit organizations who want to provide B student athlete speakers to their students or audience. Any expenses you incur are related to this activity. You are not staffed or equipped to handle the logistics of getting the right speaker to the right school at the right time. For this reason, you contract with D, (the "logistics coordinator") who has the skills and staff needed to execute the presentations you initiate. D is a for-profit

**Letter 4034 (Rev. 01-2021)**

Catalog Number 47628K

entity and has a separate facility than you. One of your officers serving as board secretary, E, has an executive role with D as their president. You are free to engage other parties as logistics coordinators and the logistics coordinator is free to perform the same or similar services for other organizations.

When you initiate an engagement, the following is provided to the logistics coordinator:

- Name and contact information for the school desiring a free presentation
- Date, time and topic the school would like for the presentation
- Audience details (size, makeup)
- A list of presenters qualified by you to make the presentation
- The funds to be paid to the presenter

For each engagement, the logistics coordinator will perform the following services:

- Communicate with qualified presenters to find and contract with one who will perform the presentation
- Communicate with the school to provide pre-event marketing materials, A/V requirements, and other information as needed
- Make sure the presenter goes through the required speaker training course and is qualified as a college athlete speaker through the logistics coordinator.
- Keep in contact with the presenter to ensure they will be at the right place at the right time
- Arrange an alternate presenter if the selected presenter defaults for any reason
- After the engagement, pay the presenter with funds provided by you
- Perform any necessary actions to conclude the engagement

You state each B student athlete will receive the following benefits:

- Receive x dollars for speaking between 30 to 60 minutes; and
- Receive professional speaker training and certification from D at no cost.

B student athletes will not receive donations but will be paid directly for their services from you. All speaking requests will be reviewed by representatives at each university to ensure the activity is compliant with each university's policies.

Donors are corporations and individuals who want to provide the normal speaking fees schools incur when hiring a speaker to participate in assemblies, meetings, and other events. Donors will give y dollars to you, and you will find the schools needing professional speakers to inspire their students on relevant topics who don't have an adequate budget. Out of the y dollars donated, B student athletes will receive x dollars for their speaking services. You receive z dollars to help cover administrative and awareness costs, and z dollars are paid to D for use of their online platform, professional speaker training certification, presentation template designed for speakers, and event production. D owns the copyrights to the speaker training and certification process.

B student athletes will coordinate with you on open dates and times they can speak. They will also be required to receive certification in D's professional speaker training, which will be provided to the B student athletes for free. B student athletes will also be required to prepare a speech within the presentation template provided by D.

In addition, they will be required to travel to the designated school in their community and speak for 30-60 minutes.

Donations are not capped at y dollars. Each y dollar donation provides one school appearance by a B student athlete speaker, but donors may donate as much as they wish. If a donation exceeds y dollars then it will be used to provide additional school appearances by B student athletes. Donation size does not change the per-event compensation for the B student athlete, the company providing the coordination, or the money retained by you for your expenses.

### **Law**

IRC Section 501(c)(3) provides exemption under IRC Section 501(a) for organizations organized and operated exclusively for one or more of the exempt purposes set forth in IRC 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 IRC Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized 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.

Rev. Rul. 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 an 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. Id. at 669.

Est. of Hawaii v. Commissioner, 71 T.C. 1067 (1979), affd., 647 F.2d 170 (9<sup>th</sup> Cir. 1981), 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. Id. at 1080-81.

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. Id. at 1078-79.

### 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 B student athletes for speaking fees. You have not demonstrated that these B 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 Treasury Regulation Section 1.501(c)(3)-1(d)(1)(ii). Here, 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 speaking opportunities for the B student athletes. Your focus on arranging deals between local charities, schools, etc. and B student athletes furthers the nonexempt purpose of providing B 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 where the organization’s efforts to treat the water, to remove algae, and to improve the condition of the water for recreational purposes enhanced the lake’s use as a recreational facility. 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 for recreational purposes, as the lake was a large body of water bordering several municipalities and used extensively by the public at community-owned public beaches, launching ramps, and other recreational facilities of a public nature. Here, in contrast, your activities result in a direct monetary benefit to the B student athletes, and this private benefit from your activities is not qualitatively incidental to an exempt purpose. Furthermore, unlike the situation in Rev. Rul. 70-186, you have not demonstrated that it would be impossible to accomplish your exempt purposes without providing benefits to the B student athletes.

As in Rev. Rul. 75-286, your activities result in a direct benefit to a limited group of individuals; therefore, the private benefit from your activities is not qualitatively incidental to the exempt purposes.

Just like the artists in Rev. Rul. 76-152, who directly benefited by the exhibition and sale of their works, the B student athletes who are engaged in your activities are directly benefited by the compensation they receive. Here, compensating B student athletes for their speaking activity is serving the private interests of those B student athletes who participate in your activities. This direct monetary benefit to B student athletes is substantial and cannot be considered merely incidental. See Rev. Rul. 76-152, 1976-1 C.B. 151 (“[T]he 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 B 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 speaking opportunities for the B student athletes. The intentional private benefit from your activities cannot be considered qualitatively incidental to the accomplishment of an exempt purpose.

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 B student athletes), if substantial in nature, destroys the exemption regardless of the number or importance of truly exempt purposes. See Better Business Bureau of Washington, D.C., Inc., 326 U.S. at 283. Here, you provide a direct monetary benefit to the B 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. See American Campaign Academy v. Commissioner, 92 T.C. at 1076-78. 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, here, your activities are aimed at benefiting a designated group, namely B student athletes.

As described above, your activities are directed at benefiting B 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 further a non-exempt purpose that is not incidental to an exempt purpose: Your payments to B student athletes in exchange for their speaking engagement does not further an exempt purpose.

As in Est of Hawaii, the critical inquiry is not whether the payments to the B student athletes are reasonable, but whether the B student athletes benefited substantially from the organization's operations. See Est. of Hawaii, 71 T.C. at 1080-81. Here, your entire enterprise is carried on in such a manner that the B student athletes benefit substantially from its operations. This indicates that your activities impermissibly serve private rather than public interests, and that you are not operated exclusively for exempt purposes.

## **Conclusion**

You have not shown that you meet the requirements for recognition of tax exemption under IRC Section 501(c)(3), because you are operating for substantial nonexempt purposes. Specifically, you are also serving the



privates interests of the B student athletes. Compensating the B student athletes serves the private interests of the B student athletes rather than the public interest. Therefore, you fail to qualify for exemption under Section 501(c)(3).

**If you agree**

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

**If you don't agree**

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

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