



IRS, Private Letter Ruling, Section 501 - Exemption from Tax on Corporations,  
Certain Trusts, etc, PLR 202414007

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Department of the Treasury  
Internal Revenue Service  
Private Letter Ruling

**PLR 202414007 - Section 501 - Exemption from Tax on Corporations, Certain Trusts, etc**

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

Release Number: 202414007

Release Date: 4/5/2024

UIL Code: 501.03-30, 501.32-01, 501.33-00, 503.00-00

**Date:**

01/10/2024

**Employer ID number:**

**Tax years:**

All

**Person to contact:**

Dear [Redacted]:

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

Redacted Letter 4038

**Department of the Treasury**  
**Internal Revenue Service**

PO Box 2508

Cincinnati, OH 45201

**Date:**

*November 13, 2023*

**Employer ID number:**

**Person to contact:**

*Name:*

*ID number:*

*Telephone:*

*Fax:*

**Legend: UIL:** C = state 501.03-30 D = date 501.32-01 E = university 501.32-01 F = date range 1 501.33-00 G = date range 2 503.00-00 w percent = number 1 x percent = number 2 y percent = number 3

Dear [redacted data]:

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 were formed to engage student athletes at the college level to lend their Name, Image and Likeness (NIL) to other charitable organizations in the vicinity. This arrangement for student athletes is to monetize their NIL by matching the selected students with deals in which they are paid by you to promote local charitable organizations. The student athletes selected will make personal appearances and social media posts for the charity. Initially you will work with student athletes at the E. Your revised budget indicates approximately w percent of your gross receipts will be paid to student athletes for their services. You expect no more than x percent of your total gross receipts will be paid to student athletes utilizing their NIL.

Your website states that you are a registered **501(c)(3)** non-profit NIL collective that instills the importance of humanitarian work and philanthropy into its student-athletes. Your website also states that donations are tax deductible, and that you enable athletes to earn compensation for their NIL by partnering with other Section **501(c)(3)** organizations who better your community. As more charitable opportunities are created you will impact the future success and retention of E student athletes.

You assert that not only will student-athletes benefit monetarily from NIL opportunities by working with you, but also, the community will benefit as well. The proposed NIL approach to philanthropy will create relationships with charitable and educational organizations which will advance the economic interests of the charities and benefit education as well. You will bring together private donors, local businesses and fans with student athletes from the E. You will instill in student athletes the importance of humanitarian work and philanthropy as a part of education. This exempt purpose may be accomplished by creating an NIL platform with student athletes and other charities in the community. The student athletes will benefit monetarily from the NIL opportunity, and the community will also thrive through this philanthropic and educational approach to giving.

The student athletes who are engaged will sign an Independent Contractor (IC) agreement with you. The IC agreement will spell out in detail the effective dates of the engagement and amount of compensation for the student athlete.

The charity will sign a Letter of Understanding (LOU) with you which will contain the representations and terms of the agreement. The representations in the LOU will include a scope of work statement which will define the NIL services by the student athlete on behalf of the charity. Also, there will be some oversight by the charity,

and you will be notified promptly if the student athlete fails to complete the NIL services.

You submitted a financial data statement with **Form 1023** which was later superseded by an updated financial data statement. The initial financials with data from (F) showed that y percent of revenues were paid out to student athletes as compensation. The revised financials for the period (G) forecast that about w percent of revenues would be paid to student athletes as compensation. You expect that no more than x percent of your total gross receipts will be paid to student athletes for the use of their NIL. The compensation to student athletes will be for personal appearances and speaking engagements on behalf of the charities. You do not impose a cap on payments to student athletes.

You expect that the efforts by the student athletes will lead to an increased level of public donations to the charities with the overall result benefiting the charities and the community.

You plan to engage in direct contact with existing charitable and educational organizations, implementing "sports clinics targeted to community youth." You also stated that you plan on directly funding, in the future, charitable and educational initiatives maintained by other tax-exempt organizations in the community.

Your funding will come from fans, alumni of the E and generous private donors. You anticipate direct advertisement to the students and the public will also be used but that has not yet been developed.

## 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)** slates 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.

Rev. Rul. **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. **75-286** , 1975-2 C.B. 210, held that an organization formed by the residents of a city block to beautify and preserve that block did not qualify for exemption under section **501(c)(3)** . The restricted nature of the organization's membership and the limited area in which its improvements were made indicated that the organization was organized and operated to serve private interests by enhancing the value of its members' property rights.

Rev. Rul. **76-152** , 1976-1 C.B. 151, held that an organization formed by art patrons to promote community understanding of modern art trends did not qualify for exemption under section **501(c)(3)** . The organization exhibited and sold the artwork of local artists, who received 90 percent of sales proceeds. This provision of direct benefits served the private interests of the artists and could not be dismissed as being merely incidental to its other purposes and activities, and therefore the organization was not operated exclusively for educational purposes.

Rev. Rul. **76-206** , 1976-1 C.B. 154, held that an organization formed to generate community interest in the retention of classical music programs by a local for-profit radio station did not qualify for exemption under section **501(c)(3)** . The organization's activities enabled the radio station to increase its total revenue and, by increasing its listening audience, would enhance the value and salability of the station's airtime. The organization's activities benefited the station in a more than incidental way and served a private rather than a public interest.

*Better Business Bureau of Washington D.C. Inc. v. United States*, **326 U.S. 279** (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.

*Christian Manner International, Inc. v. Commissioner*, [71 T.C. 661](#) (1979), held that an organization whose primary activity was the publication and sale of religious books written by its founder did not qualify for exemption under section [501\(c\)\(3\)](#). The Tax Court noted in this case that when an activity furthers both an exempt and nonexempt purpose, qualification for exemption depends on whether the nonexempt purpose is so incidental to the exempt purpose as not to disqualify the organization for exemption.

*Est of Hawaii v. Commissioner*, [71 T.C. 1067](#) (1979), held that an organization created to disseminate educational programs, the rights to which were owned by for-profit corporations, furthered the commercial, private purposes of the for-profit entities and did not qualify for exemption under section [501\(c\)\(3\)](#). The Tax Court noted that the critical inquiry was not whether the payments to the for-profit corporations were reasonable, but whether the for-profit entities benefited substantially from the organization's operations.

In *Goldsboro Art League, Inc. v. Commissioner of Internal Revenue*, [75 T.C. 337, 344](#) (1980), the organization exhibited in its two public galleries, "an artists more daring works in a part of the country where there were no nearby art museums or galleries." Due to the "difficulty attracting artists to exhibit their work," the organization offered the displayed works for sale. Moreover, the organization conducted numerous arts education activities and displayed its own permanent collection of art throughout various public buildings. Under these specific circumstances, the tax court found that the private benefit to the artists for the sale of their artwork was secondary and incidental to the primary purpose of educating the public on art.

*American Campaign Academy v. Commissioner*, [92 T.C. 1053, 1076](#) (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.

In *City of Galveston, Texas v. United States*, [33 Fed. Cl. 685, 707-08](#) (1995), the court indicated that "[a] taxpayer cannot premise its right to an exemption by showing that others have been treated more generously, leniently or even erroneously by the IRS."

## 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, we conclude that 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 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. 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)(l)(ii)* . Because you plan to spend between w percent and x percent of your funds to acquire the NIL rights of student athletes, 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 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. 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; 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 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 x percent of your gross receipts 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. See Rev. Rul. [76-152](#) , 1976-1 C.B. 151(1976) "[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 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.

You plan on implementing "sports clinics targeted to community youth" and other charitable and educational initiatives. However, under [Better Business Bureau of Washington, D.C., Inc v. United States](#) , even if these activities further an exempt purpose (which they might not if these activities also substantially benefit the private interests of the student athletes by providing them with more opportunities for monetary compensation), the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

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 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 student athletes. As described in *B.S.W. Group Inc v. Commissioner*, [70 T.C. 352](#) (1978), 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.

As in [Christian Manner International, Inc, v. Commissioner](#) 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 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 financial opportunities for members of the university's sports teams, and that you intend to distribute at least w percent of your gross receipts (and up to x percent) 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 stated that the students you were compensating were of a charitable class because, statistically, most college students are considered to be poor and/or distressed.

You stated that you do not pay student athletes for providing services for charities. You engage the student athletes to conduct activities which promote the mission of selected charities by utilizing the student athlete's NIL. These activities include social media posts and personal appearances on behalf of the charity. You state such activities are not services to the charities by you or the student athlete but are actions on behalf of the charity designed to expand the charity's visibility in the community.

You indicated that you are similar to the organization described in [Goldsboro Art League. Inc. v. Commissioner of Internal Revenue](#) , and therefore, the private benefit to the student athletes is incidental to your primary charitable purpose.

You stated that various "peer institutions", similar to your organization, have been recognized as tax exempt under Section [501\(c\)\(3\)](#) and therefore you should be granted such exempt status.

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

You have not demonstrated that these student athletes belong to a charitable class. You have not indicated that you will offer paid opportunities to student athletes based on a demonstrated need; rather, you plan on compensating all the student athletes regardless of their financial need. 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.

No contract exists between the student athlete and the charity. However, you do have an independent contractor agreement with each athlete and obtain a "Letter of Understanding" between you and the charity regarding services you will provide to the charity using your independent contractor, the student athlete. This "Letter of Understanding" is an agreement that indicates the services you will perform, using your independent contractor, on behalf of the charity.

You are not like the organization in [Goldsboro Art League v. Commissioner](#) (1980). Unlike the organization in *Goldsboro Art League*, you intend to spend between w and x percent of your gross receipts to compensate E student athletes. You have not established that the private benefit from your activities is clearly secondary and incidental to exempt purposes. Rather, the information you provided indicates that providing paid opportunities for E student athletes is one of your primary purposes.

Even if the student athletes engaged in your activities are independent contractors and are not private shareholders or organizational insiders, that fact is not determinative of whether you serve private interests. As recognized by the Tax Court in [American Campaign Academy](#), the conferral of benefits on disinterested persons (i.e. unrelated third-parties) may cause an organization to serve private interests.

Since you distribute the majority of funds received to student athletes, and not for a charitable purpose, you have a substantial non-exempt purpose. Therefore, you fail the operational test for IRC section [501\(c\)\(3\)](#).

Regarding the tax-exempt status of other organizations, each application for exemption is evaluated based on its own specific facts and circumstances. Furthermore, as indicated in *City of Galveston, Texas v. United States*, [33 Fed. Cl. 685,707-08](#) (1995), "[a] taxpayer cannot premise its right to an exemption by showing that others have been treated more generously, leniently or even erroneously by the IRS."

## 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:**

**Street address for delivery service:**

Internal Revenue Service

Internal Revenue Service

EO Determinations Quality Assurance

EO Determinations Quality Assurance

Mail Stop 6403

550 Main Street, Mail Stop 6403

PO Box 2508

Cincinnati, OH 45202

**U.S. mail:**

**Street address for delivery service:**

Cincinnati, OH 45201

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