

**Office of Chief Counsel
Internal Revenue Service
memorandum**

Number: **AM 2023-004**

Release Date: 6/9/2023

CC:EEE:EOET:EO1:CHyde
POSTS-105869-23

UILC: 501.03-00, 501.03-30, 501.33-00

date: May 23, 2023

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subject: Whether Operation of an NIL Collective Furthers an Exempt Purpose Under Section 501(c)(3)

The purpose of this memorandum is to address whether developing paid name, image, and likeness (NIL) opportunities for collegiate student-athletes furthers an exempt purpose under section 501(c)(3),¹ and to promote consistent treatment of similarly situated taxpayers and sound tax administration. This document may not be used or cited as precedent.

BACKGROUND

In 2021, the National Collegiate Athletic Association (NCAA) adopted an interim name, image, and likeness policy (the Interim Policy), permitting student-athletes to be compensated for use of their NIL without impacting their NCAA eligibility.² Under the Interim Policy, student-athletes may receive compensation for NIL activities subject to certain limitations. The Interim Policy prohibits NIL agreements without quid pro quo

¹ Unless otherwise noted, all section references are to the Internal Revenue Code of 1986, as amended.

² [Interim NIL Policy](#), NCAA (July 1, 2021); Michelle Brutlag Hosick, [NCAA Adopts Interim Name, Image and Likeness Policy](#), NCAA (June 30, 2021).

(i.e., compensation for work not performed) and agreements in which compensation is contingent on enrollment at a particular school or athletic participation or achievement.³ State laws and university-specific NIL policies may impose additional requirements or limitations on student-athlete NIL activities.

Since the Interim Policy was adopted, many organizations, generally referred to as “NIL collectives,” have been established by boosters and fans of one or more of a university’s athletic programs to develop and fund, or otherwise facilitate, NIL deals for student-athletes.⁴ NIL collectives generally operate independently of the affiliated university, and increasingly, multiple NIL collectives support a university’s student-athletes. Some NIL collectives are formed as nonprofit entities under state law and have applied for and received recognition of tax exemption under section 501(c)(3) using Forms 1023 and 1023-EZ. Other collectives have been established through a fiscal sponsorship agreement or as an activity or program of an existing section 501(c)(3) organization that supports the affiliated university or its athletic program. In this memo, “nonprofit NIL collective” refers to an organization claiming tax exemption under section 501(c)(3) that develops paid name, image, and likeness opportunities for student-athletes, regardless of whether the organization engages in other purportedly exempt or nonexempt activities.

ISSUE

Whether an organization developing paid name, image, and likeness opportunities for collegiate student-athletes, as described below, furthers an exempt purpose under section 501(c)(3).

CONCLUSION

An organization that develops paid NIL opportunities for student-athletes will, in many cases, be operating for a substantial nonexempt purpose—serving the private interests of student-athletes—which is more than incidental to any exempt purpose furthered by the activity.

FACTS

A nonprofit NIL collective pools contributions, identifies and partners with local and regional charities to develop paid NIL opportunities for student-athletes of the university for which the collective is created to support, and pays compensation to the student-athletes in exchange for their NIL in a manner that is consistent with NCAA regulations,

³ [Name, Image and Likeness Policy Question and Answer](https://ncaaorg.s3.amazonaws.com/ncaa/NIL/NIL_QandA.pdf), NCAA, https://ncaaorg.s3.amazonaws.com/ncaa/NIL/NIL_QandA.pdf (last visited May 2, 2023).

⁴ See [Taking the Buzzer Beater to the Bank: Protecting College Athletes’ NIL Dealmaking Rights: Hearing Before the Subcomm. on Innovation, Data, & Commerce of the H. Comm. on Energy and Commerce](#), 118th Cong. (2023) (hearing memorandum) (“NIL Collectives are a third-party collection of fans and boosters who pool together capital to compensate athletes who play for a given school. Over 250 collectives have been formed nationwide and nearly one-third of collectives have a nonprofit status.”).

university policies, and state and local law. Some nonprofit NIL collectives inform donors they intend to pay student-athletes anywhere from 80 to 100 percent of all contributions as compensation for NIL rights,⁵ while others state that their purpose is to create an endowment to support the payments to student-athletes.

The paid NIL opportunities for student-athletes typically include promoting the collective or a partner charity through a video or social media post, attending a fundraising event, autographing memorabilia for the collective or a partner charity to sell, or participating in or leading a sports camp. The athlete performs the service and, if applicable, the collective transfers the NIL rights to the partner charity. These NIL activities are usually provided at no cost to partner charities. Nonprofit NIL collectives often serve two stated purposes: (1) to raise awareness and to support the mission of the nonprofit NIL collective or of its charitable partners and (2) to compensate student-athletes for use of their NIL in the collective's activities. Some collectives develop opportunities for only a limited number of identified athletes, some benefit only members of one or more of the higher revenue-generating sports, such as football and men's and women's basketball, while others develop opportunities for all student-athletes at a university.⁶

Nonprofit NIL collectives generally post descriptions of each NIL opportunity to an online platform and the student-athletes may then choose whether to accept an opportunity. Those student-athletes who accept an opportunity will perform the activity, document performance, and receive payment from the collective.⁷ Some nonprofit NIL collectives also assist student-athletes with NIL activity reporting required by state law or university policy. Other collectives go further and assist student-athletes with personal brand development, financial planning, tax compliance, and even offer legal advice.

LAW

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).

Treas. Reg. § 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.

⁵ Nonprofit NIL collectives that tout to donors that 100 percent of contributions will be paid to student-athletes often indicate that other boosters will contribute to cover administrative expenses, licensing fees to the affiliated college or university, online platform fees, and other expenses, while other collectives net those expenses from contributions and simply strive to keep the expenses low.

⁶ This list is not exclusive. NIL collectives have also been formed to compensate exclusively student-athletes participating in non-revenue generating sports.

⁷ It is assumed for purposes of this memorandum that the student-athletes are paid per activity and that no joint venture between the collective and the student-athletes has been formed.

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

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. 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. 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. 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 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.

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.

Columbia Park and Recreation Ass'n v. Commissioner, 88 T.C. 1 (1987), held that an organization formed to aid, promote, and provide for the establishment, advancement, and perpetuation of any and all utilities, systems, services, and facilities within a large, private development of residential, commercial, and industrial real property was not organized and operated exclusively for exempt purposes. The Tax Court stated that qualitative and not quantitative factors are more determinative of the charitable purpose of an organization.

Copyright Clearance Center, Inc. v. Commissioner, 79 T.C. 793 (1982), held that an organization formed to operate as a clearinghouse to license the copying of certain publications and to act as a conduit for the transfer of license fees to publishers did not qualify for exemption under section 501(c)(3). Although the Tax Court recognized that a minor or incidental nonexempt purpose would not defeat exemption, the court found that the organization conferred a direct and substantial financial benefit on publishers and furthered the substantial nonexempt purpose of exploiting copyrights.

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.

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.

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.

Ginsberg v. Commissioner, 46 T.C. 47 (1966), held that an organization formed to dredge certain waterways was organized and operated primarily for the benefit of persons owning property adjacent to the waterways rather than for public charitable purposes.

OPERATIONAL TEST AND PRIVATE BENEFIT DOCTRINE

To be described in section 501(c)(3), an organization must be organized and operated exclusively for one or more exempt purposes (charitable, educational, religious, etc.). The operational test is designed to ensure that an organization's resources and activities are devoted to furthering those exempt purposes.⁸ An organization is not operated exclusively for exempt purposes unless it engages primarily in activities that further an exempt purpose.⁹ In addition, an organization is not operated for exempt purposes unless it serves public rather than private interests.¹⁰ Whether an organization is operated exclusively for exempt purposes depends on the facts and circumstances.¹¹ However, an organization bears the burden of proof to establish that it is not operated for the benefit of private interests.¹²

Under the operational test, 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 section 501(c)(3).¹³ An activity may be engaged in for more than one purpose (a dual-purpose activity). However, a single nonexempt purpose, if substantial in nature, will preclude exemption regardless of the number or importance of truly exempt purposes.¹⁴ Therefore, when evaluating an organization's qualification for exemption, it is necessary to determine whether the organization's activity furthers an exempt purpose or a nonexempt purpose, or both, and if the activity furthers both an exempt and nonexempt purpose, whether the nonexempt purpose is incidental to the exempt purpose such that the organization nevertheless qualifies for exemption under section 501(c)(3).¹⁵

⁸ *Am. Campaign Acad. v. Comm'r*, 92 T.C. 1053, 1064 (1989).

⁹ Treas. Reg. § 1.501(c)(3)-1(c)(1).

¹⁰ See Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii); *Am. Campaign Acad. v. Comm'r*, 92 T.C. at 1065 ("[w]hen an organization operates for the benefit of private interests...the organization by definition does not operate exclusively for exempt purposes.").

¹¹ See *B.S.W. Group, Inc. v. Comm'r*, 70 T.C. 352, 358 (1978); *est of Hawaii v. Comm'r*, 71 T.C. 1067, 1079 (1979).

¹² Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii).

¹³ *B.S.W. Group, Inc. v. Comm'r*, 70 T.C. at 356-57; see also *est of Hawaii v. Comm'r*, 71 T.C. at 1079; *Ky. Bar Found., Inc. v. Comm'r*, 78 T.C. 921, 923-24 (1982); *Christian Manner International, Inc. v. Comm'r*, 71 T.C. 661, 668.

¹⁴ *Better Business Bureau of Washington, D.C., Inc. v. United States*, 326 U.S. 279, 283 (1945).

¹⁵ *Christian Manner International, Inc. v. Comm'r*, 71 T.C. at 668; *Cf. Copyright Clearance Ctr., Inc. v. Comm'r*, 79 T.C. 793, 808 (1982) ("where [a] nonexempt purpose is merely incidental to an exempt or

The operational test also requires an assessment of any private benefit conferred by an organization's activities. An occasional benefit to private interests, incidental to an organization pursuing its exempt purpose, will not generally cause an organization to impermissibly serve private interests.¹⁶ However, where an organization serves both public and private interests, the private benefit must be "clearly incidental to the overriding public interest."¹⁷ Thus, unlike the prohibition against inurement to insiders, which is absolute, private benefit to non-insiders will not preclude an organization from exemption under section 501(c)(3) if the private benefit is incidental in both a qualitative and quantitative sense.

To be qualitatively incidental, the private benefit must be a byproduct of the exempt activity or a necessary concomitant to the accomplishment of the exempt purpose. Private benefit that is not qualitatively incidental might also be described as direct or intentional. For example, in Rev. Rul. 70-186, an organization was formed to preserve a lake as a public recreational facility.¹⁸ The organization's activities clearly benefited the public at large, but they also provided some benefit to private individuals owning lakefront property. The Service concluded that the benefit to private interests was qualitatively incidental. The benefit to private interests was a necessary concomitant 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, where an organization's activities result in a direct benefit to designated or identifiable individuals, the private benefit is not qualitatively incidental to exempt purposes.¹⁹ For example, in *Ginsberg v. Commissioner*, an organization formed by property owners to dredge a public waterway adjacent to their properties was found to serve private interests because the property owners were the major beneficiaries of the organization's activities.²⁰ Similarly, Rev. Rul. 75-286 concluded that an organization formed by the residents of a city block to preserve and beautify that block did not serve exclusively exempt purposes because the organization's activities served to enhance the value of its members' property rights.²¹ The restricted nature of the organization's membership and limited service area were significant factors in concluding that the benefit to the members was not qualitatively incidental.

qualifying purpose, such incidental nonexempt purpose will not defeat qualification under section 501(c)(3).").

¹⁶ See *Ky. Bar Found., Inc. v. Comm'r*, 78 T.C. at 926.

¹⁷ Rev. Rul. 76-206, 1976-1 C.B. 154.

¹⁸ Rev. Rul. 70-186, 1970-1 C.B. 128.

¹⁹ See RESTATEMENT (SECOND) OF TRUSTS § 375 cmt. b (trust created for the benefit of named beneficiaries is not a charitable trust, even if the purpose of the trust is otherwise charitable).

²⁰ 46 T.C. 47 (1966).

²¹ Rev. Rul. 75-286, 1975-2 C.B. 210.

The benefited persons do not need to control an organization for that organization's activities to impermissibly benefit designated private interests.²² For example, Rev. Rul. 76-206 concluded that an organization formed to generate community interest in the broadcast of classical music by a local for-profit radio station served private interests more than incidentally.²³ The organization's activities enabled the radio station to increase its total revenues and the value of its airtime. The organization's board of directors did not include any representatives of the radio station. Nevertheless, because the organization's activities were intentionally designed to benefit the radio station so that it could continue broadcasting classical music, the private benefit from these activities could not be considered qualitatively incidental to the accomplishment of an exempt purpose.

To be quantitatively incidental, the private benefit must be insubstantial in amount when compared to the overall public benefit conferred by the activity. For example, in Rev. Rul. 76-152, a group of art patrons formed an organization to promote community understanding of modern art trends by exhibiting and selling the work of local artists at an art gallery.²⁴ The organization retained a 10 percent commission on sales and turned over 90 percent of the sales proceeds to the individual artists. The revenue ruling concluded that the benefit to the artists could not be considered quantitatively incidental to the organization's exempt purposes: "Since ninety percent of all sale proceeds are turned over to the 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."

As stated above, private benefit resulting from an organization's activities must be both qualitatively and quantitatively incidental to find that an organization is not serving private interests more than incidentally. In other words, an activity that benefits private interests in a manner that is qualitatively incidental does not further exempt purposes if the benefit to private interests is quantitatively substantial. Similarly, if an activity provides a direct or intentional benefit to private interests such that it is not qualitatively incidental, it does not matter that the benefit may be quantitatively insubstantial: the direct private benefit is deemed repugnant to the idea of an exclusively public charitable purpose.

ANALYSIS

Applying these principles to nonprofit NIL collectives, we believe that the benefit to private interests will, in most cases, be more than incidental both qualitatively and quantitatively. Student-athletes generally benefit from a nonprofit NIL collective through the compensation paid by the collective for use of their NIL. This private benefit is not a byproduct but is rather a fundamental part of a nonprofit NIL collective's activities. A collective's primary activity is developing NIL opportunities that satisfy the NCAA Interim

²² See *Am. Campaign Acad. v. Comm'r*, 92 T.C. 1053, 1069 (1989).

²³ Rev. Rul. 76-206, 1976-1 C.B. 154.

²⁴ Rev. Rul. 76-152, 1976-1 C.B. 151.

Policy's quid pro quo requirement and that permit payments to student-athletes. This direct benefit is categorically different from the indirect benefit considered, for example, in Rev. Rul. 70-186.

The private benefit to student-athletes is also not a necessary concomitant to the accomplishment of a nonprofit NIL collective's exempt purpose of promoting the collective or its partner charities. A private benefit is a necessary concomitant when the exempt purpose could not be achieved without benefiting certain private interests. It will be difficult for a nonprofit NIL collective to establish that it is impossible to accomplish its exempt purpose without compensating student-athletes for their NIL. In many circumstances, the compensation for NIL activities arranged for or facilitated by the nonprofit NIL collective is the very justification for the organization's existence and any incidental exempt purpose it furthers.²⁵ An exempt organization can, of course, pay reasonable compensation for services without endangering its exemption.²⁶ However, the reasonableness of compensation is not determinative of whether private interests are impermissibly benefited. Rather, the critical inquiry is whether an organization's activities are carried on in such a way that private interests are substantially benefited.²⁷

The benefits to student-athletes from a nonprofit NIL collective's activities extend beyond compensation. NIL collectives relieve student-athletes of the transaction and compliance costs they would otherwise incur to participate in an NIL deal. These activities include, but are not limited to, identifying and vetting partner charities, negotiating the terms of an NIL deal, and ensuring compliance with state NIL laws and university-specific NIL policies. Some collectives also provide additional services such as financial planning, tax assistance, legal advice, and assistance in personal brand development. The primary beneficiaries of these activities are the student-athletes. These activities are not necessary to the promotion and marketing of charitable causes and therefore cannot be considered qualitatively incidental to the accomplishment of the nonprofit NIL collective's exempt purpose.

The private benefit to student-athletes is also not qualitatively incidental because it is generally directed to a limited noncharitable class. Student-athletes are not themselves a recognized charitable class. While the Service has previously recognized as charitable certain organizations whose activities benefited student-athletes, the rulings

²⁵ See *est of Hawaii v. Comm'r*, 71 T.C. 1067, 1082 (1979); see also e.g., Brandon Kochkodin, *Looking for a Tax Break? Buy Your Alma Mater Its Next Football Star*, FORBES (Jan. 28, 2023) ("While that model [collectives brokering deals between businesses and athletes] has proven successful, it ignores one rather large and ubiquitous demographic: rabid college football fans who don't own or operate businesses.")

²⁶ See *World Family Corp. v. Comm'r*, 81 T.C. 958, 968 (1983), *action on dec.*, 1985-13 (Dec. 24, 1984).

²⁷ See *est of Hawaii v. Comm'r*, 71 T.C. at 1081; *Church by Mail, Inc. v. Comm'r*, 765 F.2d 1387, 1392 (9th Cir. 1985). The reasonableness of compensation is, however, a factor in whether an organization's activities result in private inurement. Because the compensated student-athletes usually are not members or insiders of a nonprofit NIL collective, we believe private benefit will be implicated more often than inurement. Of course, each case should be developed to determine if inurement is present.

were based on a determination that the activities advanced education.²⁸ Nonprofit NIL collectives make compensatory payments to student-athletes in exchange for services and the use of a valuable property right (NIL), which does not further educational purposes under section 501(c)(3).²⁹ Absent a finding that NIL collectives select student-athletes for participation based on need, such that their activities could be considered conducted for the relief of the poor or distressed, and that payments are reasonably calculated to meet that need, payments to the student-athletes are properly regarded as serving private rather than public interests.

The operation of nonprofit NIL collectives is comparable to the situation addressed in Rev. Rul. 61-170, in which an organization formed to operate a nurses' registry was held not to qualify as a section 501(c)(3) organization because its principal activity was to increase the employment opportunities available to its members.³⁰ A collective's activities similarly serve to increase the number of paid NIL opportunities available to a limited group of student-athletes, furthering their private interests more than incidentally. While the student-athletes who participate in a collective's activities may not be members of the collective, the critical fact is that the benefit from these activities is limited to a narrow noncharitable class of individuals. Expanding the size of the benefited class to include all student-athletes at a particular school would not affect the conclusion that a collective's activities more than incidentally benefit private interests. Size alone is not enough to transform a benefited class into a charitable class.³¹ In assessing the charitable characteristics of a benefited class, a qualitative as opposed to quantitative analysis is more appropriate.³²

In assessing the benefit to student-athletes from a collective's activities, this Office also finds significant the numerous statements by athletic directors, boosters, and others on the importance of NIL collectives, including nonprofit NIL collectives, to the retention and recruitment of student-athletes.³³ Collectives are usually organized by boosters and

²⁸ See, e.g., Rev. Rul. 55-587, 1955-2 C.B. 261 (high school athletic association promoted educational purposes); Rev. Rul. 67-291, 1967-2 C.B. 184 (organization subsidizing training table for university athletic teams furthered university educational program). But see Rev. Rul. 56-13, 1956-1 C.B. 198 (organization formed to persuade students of outstanding athletic ability to attend a particular university is not an educational organization).

²⁹ See *Miss Georgia Scholarship Fund, Inc. v. Comm'r*, 72 T.C. 267, 271 (1979) (holding that an organization formed to provide compensatory scholarships to pageant contestants in exchange for services did not qualify for exemption under section 501(c)(3)).

³⁰ Rev. Rul. 61-170, 1961-2 C.B. 112.

³¹ See *Am. Campaign Acad. v. Comm'r*, 92 T.C. 1053, 1076 (1989); *Columbia Parks & Recreation Ass'n v. Comm'r*, 88 T.C. 1, 19 (1987).

³² *Columbia Parks & Recreation Ass'n v. Comm'r*, 88 T.C. at 19.

³³ See, e.g., Jeremy Crabtree, [Athletic Officials Realize It's Time to Support NIL Collectives or Get Left Behind](#), ON3 (Nov. 14, 2022) (quoting a sports attorney as saying, "People involved with high-level college athletics know how important NIL has become in recruiting and retention of both players and coaches."); Amanda Christovich, [Before Signing Day, ADs Asked Donors to Contribute to NIL Collectives](#), FRONT OFFICE SPORTS (Dec. 21, 2022) ("Since last year, coaches...have been hinting at the importance of NIL in general—even suggesting how much money a collective would need to be effective."); Ross Dellenger, [Big Money Donors Have Stepped Out of the Shadows to Create 'Chaotic' NIL Market](#), SPORTS

fans of athletic programs at particular schools. It is reasonable to assume that these organizers, as supporters of a particular school, have an interest in limiting a collective's NIL opportunities to the student-athletes at that school rather than making these opportunities available to any student-athlete willing to participate in the collective's activities. Other factors suggesting that the primary purpose of a nonprofit NIL collective is to compensate student-athletes include, but are not limited to: informing donors that a significant percentage, if not all, of a contribution will be paid to student-athletes; notifying the public that all athletes on a particular team or who play a particular position will earn a specified level of compensation, or that the goal of the organization is to be able to do so; and permitting donors to select which athletic teams will benefit from a donation without an option to designate a charitable program that the donor wishes to support. Given the role that NIL collectives play in student-athlete retention and recruitment, and the presence of other factors listed above, it is apparent that helping student-athletes monetize their NIL is a substantial nonexempt purpose of many nonprofit NIL collectives.

When an organization serves both public and private interests, the private benefit must be clearly incidental, both qualitatively and quantitatively, to the overriding public interest. Because the private benefit from a nonprofit NIL collective's activities, in most cases, will not be incidental in a qualitative sense, and because a single nonexempt purpose, if substantial in nature, precludes exemption, we believe such collectives are not organized and operated exclusively for exempt purposes.³⁴

We also believe that in many cases a nonprofit NIL collective will be serving private interests more than incidentally in a quantitative sense. To be quantitatively incidental, the private benefit must be insubstantial when compared to the overall public benefit conferred by the activity. Because the term "NIL activity" covers a range of activities, such as social media marketing, camps, and speaking engagements, among others, the public benefit from those activities will necessarily vary. However, the public benefit from those activities is also accompanied by a private benefit to the student-athletes, who are compensated for engaging in each activity. Many collectives pay, or intend to

ILLUSTRATED (May 2, 2022) ("[Donors] are also pooling millions of their dollars in creating exclusive, high-priced clubs—"collectives"—to retain current players, entice high school prospects or poach athletes from other programs."); Eric Prisbel, [Technically, It's Illegal, But It's Smart to Use NIL Deals as Recruiting Tools](#), ON3 (Sept. 23, 2021) ("[I]t's naïve to think lucrative NIL deals are not being used as enticing recruiting tools."); Tim Shaw, [The Long Read: Tax Implications of College Collectives, NIL Deals](#), RIA FEDERAL TAX UPDATE (Oct. 6, 2022) (quoting a faculty athletics representative as explaining that nonprofit NIL collectives "should be viewed as passthroughs from a tax perspective. 'They are simply collecting the funds and passing them through to the student-athletes, similar to a charity.'").

³⁴ In *Goldsboro Art League, Inc. v. Commissioner*, 75 T.C. 337 (1980), the Tax Court held that an organization that operated two art galleries (among other undisputedly charitable activities) qualified for exemption notwithstanding that its sales activities provided a direct monetary benefit to artists. The sales activities were found to be secondary and incidental to furthering the organization's exempt purpose. Unlike in *Goldsboro*, any exempt purpose furthered by many nonprofit NIL collectives is secondary and incidental to the intentional nonexempt purpose of compensating student-athletes. We also note that in finding that the organization was not operated for the private benefit of individuals, *Goldsboro* improperly conflated the concept of private benefit with inurement.

pay, to student-athletes all funds after payment of administrative and other expenses. Some promise to pay out 80 or even 100 percent of all contributions to student-athletes. For payouts anywhere within this range, the benefit to private interests is substantial by any measure and cannot be dismissed as merely incidental.³⁵

Consequently, it is the view of this Office that many organizations that develop paid NIL opportunities for student-athletes are not tax exempt and described in section 501(c)(3) because the private benefits they provide to student-athletes are not incidental both qualitatively and quantitatively to any exempt purpose furthered by that activity.³⁶

Please call Christopher Hyde or Matthew Giuliano at (202) 317-5800 if you have any further questions.

³⁵ Even if the payout rate is below this range, all facts and circumstances should be considered to determine whether the benefit to private interests is more than insubstantial.

³⁶ We note that in reconsidering the exempt status of collectives that have already applied for and received favorable determination letters, it may be appropriate to grant relief under section 7805(b).