

Donations Made to Nonprofit Name Image Likeness Collectives are Not Tax Exempt

By [Elizabeth Manchester](#)

In 2021, the National Collegiate Athletic Association (“NCAA”) adopted a policy that permitted student athletes to be compensated for the use of their name, image, and likeness (“NIL”). Since then, organizations have been established by boosters or fans to develop and fund these NIL deals for the student athletes, generally known as “NIL collectives”. Many of these NIL collectives were formed as nonprofit entities and received tax exemption under Section 501(c)(3). Some of these collectives that have received 501(c)(3) status have received millions of dollars in donations from boosters, believing that such donations would be considered tax exempt. There has been an ongoing debate as to whether the collectives that received 501(c)(3) status from the IRS could accept tax-deductible donations.

The IRS published a memorandum on this issue on May 23rd, stating “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” ([IRS Memorandum Number AM 2023-004](#)). Under this analysis, NIL collectives do not qualify for tax exempt status under 501(c)(3), and therefore the contributions received by boosters and other donors are not tax deductible contributions.

In order to come to this conclusion, the IRS used its operational test, which ensures that “that an organization’s resources and activities are devoted to furthering those exempt purposes”. Under the test, if the organization’s primary activities do not further an exempt purpose, then it is not operated exclusively for exempt purposes. Furthermore, the organization must serve the public rather than private interests in order to operate for exempt purposes. The IRS states that “where an organization serves both public and private interests, the private benefit must be ‘clearly incidental to the overriding public interest’”. When applying this operation test to nonprofit NIL collectives, the IRS found that the “benefit to private interests will, in most cases, be more than incidental both qualitatively and quantitatively”. This conclusion was rooted in the analysis that it would “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 the memorandum, the IRS stated that the primary beneficiaries of the NIL collective activities are the student-athletes, and such activities are not necessary to the promotion and marketing of charitable causes, even the educational purposes cited under Section 501(c)(3).

It is unclear what will happen next following the release of this memorandum. NIL collectives may stop offering tax-deductible donations, but the IRS could also choose to tax the previous donations or charge the donors or the collectives with penalties. NIL collectives should also use caution in continuing to operate under nonprofit status and should be cautious around soliciting tax-deductible donations until further guidance is provided by the IRS.

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