

United States Senate

WASHINGTON, DC 20510

July 31, 2023

The Honorable Daniel Werfel
Commissioner
Internal Revenue Service
1111 Constitution Avenue, Northwest
Washington, D.C. 20224

The Honorable Lily Batchelder
Assistant Secretary for Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, Northwest
Washington, D.C. 20220

Dear Commissioner Werfel and Assistant Secretary Batchelder:

On June 9, 2023, we were pleased to see the Internal Revenue Service (IRS) Office of Chief Counsel release general legal advice memorandum (GLAM) AM 2023-004, which concludes that certain organizations that make payments to college or incoming college student athletes for rights to their name, image, and likeness (NIL) are, in many cases, not eligible to have tax-exempt status.¹ We appreciate the IRS's attention to this important issue through the GLAM and urge your agencies to take the next step by adapting the GLAM's conclusions into more formal guidance, such as a revenue ruling.

As you know, individuals and organizations can make certain contributions to college or incoming college student athletes for the use of their NIL. According to the GLAM, several of these organizations, commonly known as NIL collectives, claim tax-exempt status under section 501(c)(3) of the Internal Revenue Code. A fundamental requirement for tax-exempt status under section 501(c)(3) is that an organization must operate *exclusively* for a public benefit, such as a religious, charitable, scientific, or educational purpose.

The GLAM concludes that "many organizations that develop paid NIL opportunities for student athletes are not tax-exempt as 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." We agree with this conclusion that many NIL collectives should not be granted tax-exempt status.

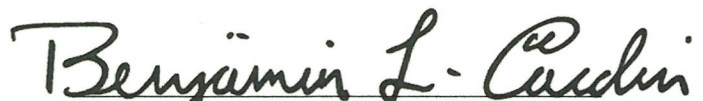
Related to these points, earlier this year we introduced the Athlete Opportunity and Taxpayer Integrity Act to protect student athletes, uphold the integrity of college athletics, and prevent the abuse of the tax code.² This bill would achieve these objectives by denying charitable deductions for donations used to compensate college or incoming college student athletes for the use of their NIL, which would include donations to NIL collectives.

The GLAM is an encouraging step forward and more should be done. We respectfully request that your agencies take the next step by adapting the GLAM's conclusions into more formal guidance, such as a revenue ruling.

Sincerely,



John Thune
United States Senator



Benjamin L. Cardin
United States Senator

¹ <https://www.irs.gov/pub/irao/am-2023-004-508v.pdf>

² <https://www.congress.gov/bill/118thcongress/senatebill/1454/text?s=3&r=2&q=%7B%22search%22%3A%5B%22%22%5D%7D>