


TD 93/D67 - Income tax: would a government department or agency qualify for public benevolent institution status (PBI) under subparagraph 78(1)(a)(ii) of the Income Tax Assessment Act 1936?

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This document has been finalised by TD 94/73.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: would a government department or agency qualify for public benevolent institution status (PBI) under subparagraph 78(1)(a)(ii) of the *Income Tax Assessment Act 1936*?

1. No. Such bodies are established and operated for the general community good rather than being organised and conducted for the direct relief of poverty, distress, suffering or misfortune. They are considered to be simply performing the accepted functions of government even where direct relief may be provided as an incidence of government functions.
2. An institution is accepted as benevolent where its dominant objective and activity is the immediate and direct relief of poverty, sickness, distress, misfortune, destitution or helplessness and it directly provides relief to persons requiring it. An organisation must satisfy certain tests to qualify as a public benevolent institution; including, being non-profit making, being established for the benefit of a section or class of the public, and providing relief without discrimination to every member of that section of the public which it aims to benefit. (Refer to TD 92/197)
3. The full Federal Court decision in the case of the *Metropolitan Fire Brigades Board v. FC of T* 91ATC 4052, 21 ATR 1137, has become established authority for the view that a government body performing the accepted functions of government does not qualify for PBI status. This is because, unlike voluntary organisations performing the same functions, the necessary benevolence criteria is not satisfied. Such bodies are simply performing the accepted functions of government.
4. There may, however, be instances where a body or organisation, which is in receipt of government funding, would be accepted as a PBI. These bodies would have to satisfy all the necessary criteria of a PBI; including the fact that the organisation can not be classified as a purely governmental body performing the accepted functions of government. One of the tests which would determine the latter aspect is whether the body is constituted, funded or controlled by government. Refer to recent cases of *Legal Aid Commission of Victoria v. Commissioner of Payroll Tax (Vic)* 92 ATC 2053, 23 ATR 1148, and *Tangentyere Council Inc v. Commissioner of Taxes (NT)* 92 ATC 4313, 23 ATR 370, which discuss this test.

Examples

1. *A government department disburses money by way of pension payments and other assistance to pensioners, a group of people who would generally be regarded as disadvantaged. The department making those payments would not be regarded as acting as a PBI as the department is simply using government funds to exercise a function of government.*

2. A drug and alcohol abuse unit of a State Health Department provides assistance as part of a wider organisational function directed to the general good of the community. Such a unit would not be considered to be a PBI as the relief is provided as a function of government.

3. State Emergency Services or Search and Rescue Teams which both consist of volunteers, and voluntary organisations such as bush fire brigades which have as their central purpose the provision of direct relief to disadvantaged persons, may qualify as a PBI even where they are government sponsored. This is because they would not be usually arms of government and subject to government control.

Commissioner of Taxation

18/3/93

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Related Determinations: TD 92/197

Related Rulings: CITCM 806

Subject Ref: ; gifts; government department; public benevolent institutions;

Legislative Ref: ITAA 78(1)(a)(ii);

Case Ref: *Legal Aid Commission of Victoria v Commissioner of Pay-roll Tax Vic* 92 ATC 2053, 23ATR 1148, *Tangentyere Council Inc. v The Commissioner of Taxes (NT)* 92 ATC 4313; 23 ATR 370, *Metropolitan Fire Brigades Board v FCT* 91 ATC 4052; 21 ATR 1137;

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