

IT 2345 - Income Tax: Sales tax: Bank account debits tax: Public benevolent institutions: Community legal aid centres



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TAXATION RULING NO. IT 2345

INCOME TAX : SALES TAX : BANK ACCOUNT DEBITS TAX :
PUBLIC BENEVOLENT INSTITUTIONS : COMMUNITY LEGAL AID
CENTRES

F.O.I. EMBARGO: May be released

REF

H.O. REF: 84/5863-4

DATE OF EFFECT:

B.O. REF:

DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1209875	PUBLIC BENEVOLENT	INCOME TAX ASSESSMENT
I 1209880	INSTITUTIONS	ACT; SECTION 78
I 1209896	COMMUNITY LEGAL CENTRES	SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT; ITEM 81, FIRST SCHEDULE
		BANK ACCOUNT DEBITS TAX ADMINISTRATION ACT; SECTION 3

PREAMBLE

Sub-paragraph 78(1)(a)(ii) of the Income Tax Assessment Act authorises income tax deductions for gifts to a public benevolent institution.

2. Paragraph 81(1)(c) in the First Schedule to the Sales Tax (Exemptions and Classifications) Act provides exemption from sales tax for goods for use and not for sale by public benevolent institutions.

3. Sub-paragraph (a)(vi)(A) of the definition of "excluded debit" in sub-section 3(1) of the Bank Account Debits Tax Administration Act provides exemption from bank account debits tax on debits made to a cheque account kept with a bank in the name of a public benevolent institution.

4. In recent times a number of non-profit organisations have been established to conduct community legal aid centres and services and the question has arisen whether they are public benevolent institutions.

5. The centres operate independently from Government operated legal aid offices, such as the Australian Legal Aid Office, and those operated by law societies. As a development of the times the need for these kinds of free legal services has increased to assist people who require legal assistance but who are ineligible for aid from other legal aid bodies and cannot afford to engage a private legal practitioner.

6. While the independent legal centres apply less stringent means tests than, for example, the Australian Legal Aid Office, they exist to assist persons on lower incomes. Their clients are largely the unemployed, those in receipt of age and invalid pensions and those whose incomes are about or below the poverty line. They can be categorised as needy and underprivileged in relation to both the general condition of their lives and the particular legal problem about which they are seeking aid.

7. The centres are funded mainly by grants from the Australian Government and State Legal Aid Commissions subject to their constitutions and functions satisfying certain criteria. The more important eligibility criteria are -

- . they should be formally constituted primarily or largely to provide legal assistance to the needy;
- . there should be significant voluntary input of services;
- . centres should provide legal services amounting to more than simple advice and referral;
- . centres should provide a high level of access to the community;
- . centres should not operate in competition with other legal aid centres;
- . centres should satisfy certain accountability requirements, e.g. the keeping of suitable accounts and records, etc. to allow audits to be conducted and reports to be made to the funding Commissions, etc.

8. Other sources of funds are unfettered gifts from Law Societies, legal practitioners and the general public and fund-raising projects.

9. While a legal centre may engage law students to assist, qualified legal practitioners also should be available to ensure that expert legal aid is provided. Otherwise it may adopt the mantle of an advisory and referral service, rather than a legal aid service.

10. Some centres also disseminate information to the public about the plight and problems of lower income groups, the unemployed and pensioners to help people to recognise, avoid, reduce or deal with problems having possible legal consequences. These activities are normally subsidiary to the function of providing direct legal aid.

RULING 11. A public benevolent institution is one which is established and maintained to provide for the relief of poverty, sickness, suffering, distress, misfortune, destitution or helplessness. It must be established for the benefit of the

public at large or a significant section or class of the public and relief must be available without discrimination to all members of the public which it seeks to benefit. It must be conducted without purpose of private gain for particular persons.

12. Legal aid offices operated by Government and law societies have in general been accepted as public benevolent institutions.

13. The community legal centres which operate independently and conform to the criteria set out in paragraphs 4 to 11 also qualify as public benevolent institutions.

14. In terms of sub-section 78(1) of the Income Tax Assessment Act gifts of the value of \$2 upwards of money or of other property purchased within 12 months prior to the making of the gift will be allowable as income tax deductions.

15. The centres are also entitled to sales tax exemption for goods for their use and not for sale and to exemption from bank account debits tax.

COMMISSIONER OF TAXATION

30 July 1986

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