IT 2443 - Income tax : gifts

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TAXATION RULING NO. IT 2443

INCOME TAX : GIFTS

F.O.I. EMBARGO: May be released

REF N.O. REF: 87/1206-9 DATE OF EFFECT:

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1211098	GIFTS	78(1)(a)

PREAMBLE This Office recently considered whether certain payments made to a fund approved for the purposes of paragraph 78(1)(a) of the Income Tax Assessment Act constituted gifts for the purposes of the paragraph.

FACTS 2. An organization, not listed in paragraph 78(1)(a), arranged a sporting event to raise funds. The venue and facilities etc. were provided free of charge to the organization. Admission tickets were sold to the public at a cost of $8 for adults, $3 for pensioners and $15 for a family (2 adults and up to 4 children).

3. A number of boxes, which included seating for six people plus food and drink for all, were also offered at a cost of $300 for each box. The use of the box facilities could be obtained by making a $40 payment to the organization, purportedly to cover the cost of the benefit received, together with a $260 "donation" to the particular fund which was approved for the purposes of paragraph 78(1)(a).

RULING 4. In paragraph 6 of Canberra Income Tax Circular Memorandum 806 (CITCM 806) it was stated that a payment made for consideration, however inadequate, falls outside the concept of a gift for the purposes of paragraph 78(1)(a). The example given was a case in which a public benevolent institution arranged a " 100 pound a plate dinner" where the cost of the dinner was paid out of the proceeds of the subscriptions. As the dinner represents consideration received by the payer, even though inadequate, the subscriptions were not allowable as deductible gifts. Paragraph 7 of CITCM 806, however, went on to say that "there is no objection to the allowance of deductions where the whole of the payment is made to the institution and the cost of the function is borne independently by some other person or organization".

5. CITCM 806 was circulated in 1961. In 1968 Owen J. in FCT v McPhail (1968) 117 CLR 111 at page 116 said that to constitute a "gift" for the purposes of paragraph 78(1)(a) "it must appear that the property transferred was transferred voluntarily and not as the result of a contractual obligation to transfer it and no advantage of a material character was

received by the transferor by way of return". Since the decision in McPhail's case it has been the practice of this office to reject all claims for deductions for alleged gifts where the transaction brings with it a substantial collateral benefit to the donor, whether or not the benefit has been provided free of cost to the institution. The view expressed in paragraph 7 of CITCM 806 is therefore no longer considered to be correct.

6. In the circumstances described in paragraph 3 of this Ruling it was apparent that the payment of $260 to the approved fund was made to acquire a collateral advantage of a material nature. Accordingly, there was no gift and the payment was not an allowable income tax deduction under paragraph 78(1)(a).

COMMISSIONER OF TAXATION
13 AUGUST 1987