


# ***IT 2676 - Income tax: deductibility of gifts to school libraries***

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## Taxation Ruling

### Income tax: deductibility of gifts to school libraries

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IT 290

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*Income Tax Rulings do not have the force of law. Each decision made by the Australian Taxation Office is made on the merits of each individual case having regard to any relevant Ruling.*

### What this Ruling is about

1. This Ruling considers whether a library established in a public educational institution (e.g. a school, college or university) is a 'public library' for the purposes of subparagraph 78(1)(a)(xxvii) of the *Income Tax Assessment Act 1936*. Broadly stated, gifts of \$2 or more made to a public library are allowable deductions under that subparagraph.

### Ruling

2. We accept that a library established in a public educational institution is a 'public library' for the purposes of subparagraph 78(1)(a)(xxvii) if the following requirements are met:

- (a) The affairs of the library are separate and readily distinguishable from the general affairs of the institution. This condition is satisfied if:
  - (i) a building or a section of a building is set aside by the institution specifically for use as a library; and
  - (ii) separate accounts are kept for the library.
- (b) Any gift made to the library is to be used only for library purposes.
- (c) An assurance is given by the institution that gifts allowable as deductions under subparagraph 78(1)(a)(xxvii) will be applied exclusively for the use of the library.

3. For the purpose of this Ruling, a 'public educational institution' is:

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- (a) a government school, college, university or other educational institution; or
- (b) a non-government school, college, university or other educational institution which:
  - (i) is open to the public; and
  - (ii) is administered by persons or institutions who or which, because of their tenure of some public office or their position in the community, have a degree of responsibility to the community as a whole; and
  - (iii) is not run for the purpose of making a profit for its individual members.

## Date of effect

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4. This Ruling sets out the current practice of the Australian Taxation Office and is not concerned with a change in interpretation. Consequently, it applies (subject to any limitations imposed by statute) for years of income commencing both before and after the date on which it is issued.

## Explanations

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5. As was explained in Taxation Ruling IT 290, a public library is:

'one whose collection of books and other literature is available to the public and which is owned or controlled by a government or quasi-government authority, or by persons or an institution having a degree of responsibility to the public'.

6. A library established in a public educational institution normally satisfies this definition because the library is either owned by a government or administered by persons or institutions with a degree of responsibility to the community as a whole.

7. In deciding whether a particular institution is a public educational institution, it is irrelevant that the institution is generally known as 'public' or 'private'. A public educational institution should, in general, be non-profit in nature. The fact that an institution charges fees does not necessarily affect its status as a public educational institution. Nor does the fact that an institution may make incidental profits which it distributes to its members (*Girls' Public Day School Trust v. Ereaut* [1931] AC 12 at 31). However, a profit motive in the

founders of an institution would almost certainly exclude it from being a public educational institution (*Ereaut* at 31; *Trustees of the Cardinal Vaughan Memorial School v. Ryall* (1920) 7 TC 611).

8. Although public educational institutions are usually open to all, the fact that an institution restricts entry to a particular class of the public (e.g. members of a particular religion) does not necessarily prevent the institution from being public in nature (*Ryall* at 611).

9. To be a public library, the library must be open to the public. The public does not necessarily mean the whole community. It may mean a section of the community provided it is a wide and substantial section of the community. A body of students at a public educational institution, being a wide and substantial section of the community, are part of the public. A library that is open to the students of a public educational institution is, therefore, a library open to the public. Additionally, to be a public library a library in a public educational institution does not have to be operated in the same way as other public libraries in terms of operating hours, cataloguing, staffing, etc.

## Example

10. A small country private school has set aside a separate room exclusively for use as a library. Although the school charges fees to the students, it is not a profit-making organisation for the benefit of its individual members. The library is available for student use and is open only during school hours. The school maintains separate accounts for the library.

11. In these circumstances, the school library is a public library and gifts made to the library are allowable deductions under subparagraph 78(1)(a)(xxvii).

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