IT 2071 - Income tax : school building funds

This cover sheet is provided for information only. It does not form part of *IT 2071 - Income tax : school building funds*

This document has been Withdrawn.
There is a Withdrawal notice for this document.

TAXATION RULING NO. IT 2071

INCOME TAX : SCHOOL BUILDING FUNDS

F.O.I. EMBARGO: MAY BE RELEASED

REF H.O. REF: J106/49/1 P3 DATE OF EFFECT:

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

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1072893	GIFTS	78(1)(a)(xv)
	SCHOOL BUILDING FUNDS	78A
	EDUCATION EXPENSES	159T

PREAMBLE A number of private schools throughout Australia are offering parents of students the opportunity of making a "voluntary" donation to the school building fund as an "alternative" to an increase in the level of school fees.

2. In cases sighted it has been explained to parents by the school that a projected budget of future costs indicates that a substantial increase in the level of school fees is necessary. As an alternative to the fee increase or as a means of keeping projected increases to a minimum it is suggested that each parent volunteer to make a gift of a stated amount (or at least a stated amount) per pupil per term to the school building fund. It is usually indicated that such payments will be tax deductible as gifts and, if every parent makes a gift, the scheme will be a success and all parents will benefit.

RULING 3. It has been decided that claims for deduction of gifts to school building funds under sub-paragraph 78(1)(a)(xv) of the Income Tax Assessment Act should be disallowed in circumstances where the payer is making the purported gift as part of a scheme whereby it can reasonably be expected that fees to be paid in respect of the child concerned will be reduced, or maintained at a lower amount, in a way that takes into consideration the amount claimed to be a gift. Arrangements under which a school indicates to parents that the making of gifts of designated amounts by parents will enable the school to hold amounts formally charged as fees to levels to which they could not be held if the "gifts" were not made do not have the true character of gift for the purposes of section 78. See FCT v McPhail (1968) 117 CLR 111 and Leary v FCT (1980) 47 F.L.R. 414. The payments are not, all things considered, voluntary in nature nor is there a situation where the payers do not receive an advantage of a material character in return for making them. They do not appear to proceed from a detached and disinterested generosity.

4. Even if this view of the general law were not a correct one, it is considered that section 78A, paragraph 78A(2)(c) in particular, would apply to deny the deductions sought in these

cases.

5. This ruling is confined to factual situations of the kind outlined above. The ruling does not apply to gifts to qualifying school building funds, including the funds which have entered into the abovementioned schemes, which are not connected, in the way outlined earlier, to the level of tuition etc. fees charged. Ordinary gifts continue to be allowable deductions if they meet the terms of section 78.

6. It follows from the views reflected in this ruling that the purported gifts to which it applies are seen as having the essential characteristic of education expenses to which section 159T of the Act applies. This means that, along with other education expenses of the children concerned, the subject payments will qualify as a rebatable amount under the section subject, of course, to the limit set by sub-sections 159T(4) and (5) and to the further operation of section 159N.

COMMISSIONER OF TAXATION
12 January 1984