

5-8223 -- Gifts to institutions outside Canada

Date: August 31, 1989

Reference: 118.1(1)(g)

Dear Sirs:

This is in response to your letter of June 6, 1989 wherein you enquired about tax credits available to taxpayers who make gifts to educational institutions outside Canada. In particular you question whether a Chinese Canadian scholar who donates a large number of texts to a university in the People's Republic of China ("China") would be eligible for a tax credit.

Generally, the only universities outside Canada to which tax creditable gifts can be made are listed in Schedule VIII of the Regulations to the Income Tax Act (the "Act"). There are no educational institutions that are located in China listed in Schedule VIII. However, in addition to institutions listed in Schedule VIII, paragraph 118.1(1)(g) of the Act includes in the definition of "total charitable gifts" the amount of a gift made to a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift during the individual's taxation year or the 12 months immediately preceding the year. Information Circular 84-3R3 lists the foreign charities to which Her Majesty in right of Canada has recently contributed. However, again no university located in China is listed. Accordingly, there is no credit available under Canadian domestic legislation for a gift made to a university located in China.

Certain tax treaties such as the Canada-U.S. Income Tax Convention contain provisions which require Canada to allow a deduction in respect of charitable donations which would not otherwise be permitted under Canada's domestic tax legislation. For example, the Canada-U.S. Treaty provides that Canada must allow a deduction in respect of gifts made to an organization which is resident in the U.S. and is generally exempt from United States tax and which could qualify in Canada to receive deductible gifts if it were established and resident in Canada. The deduction is only available where the taxpayer has U.S. source income in a particular year, and

may be limited by the amount of such income. However, the Canada-China Income Tax Agreement has no equivalent provision.

Your enquiry refers to gifts made under the Cultural Properties Act. While the Income Tax Act does make specific reference to tax credits available in respect of such gifts, they must be made to a public authority in Canada that was at the time the gift was made, designated under the Cultural Property Export and Import Act, in order that they may be creditable. Accordingly, a university in the People's Republic of China would not qualify.

We trust this is the information you require.

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