REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

Sections 105 & 108, NIRC
ANPC vs. BIR
VAT-081-2023
AUG 14 2023

MIRADOR JESUIT VILLA
RETREAT HOUSE, INC.
Mirador Hill, 2600
Baguio City

Attention: **REÑE DG. BAÑEZ**
Trustee and Treasurer, MJVRHI

This refers to your request for confirmation that Mirador Jesuit Villa Retreat House, Inc. (MJVRHI) should also be VAT exempt and that such VAT exemption be included in their formerly issued Certificate of Tax Exemption (Income tax only).

As represented, MJVRHI is a non-stock, non-profit corporation that provides "venues and services for retreats, recollection, psychological and spiritual formation, seminars. and workshops for lay, religious, priests, and seminarians." It was issued CTE No. No. , dated November 25, 2021, which certifies its exemption from tax for income derived from collections, mass/love offerings, and outside donations and/or grants.

In its request, MJVRHI seeks exemption not only from income tax but also from VAT for receipts from "the conduct of retreats, recollections, spiritual formation, seminars and workshops for lay, religious, priests and seminarians (including reimbursement for the board and lodging of the retreatants and/or seminar participants); the Grotto (Our Lady of Lourdes) donations; proceeds from receipts in dealings of candles and mass cards; collections and mass/love offerings from the chapel; parking donations; entrance donations for the Eco-Spirituality Park; as well as donations and grants from donors, both individual and corporate," claiming that these form part of its capital and do not constitute income.

MJVRHI cites the case of ANPC vs. BIR[1], wherein the Supreme Court ruled that "membership fees, assessment dues, and other fees of similar nature only constitute contributions to and/or replenishment of the funds for the maintenance and operations of the facilities offered by recreational clubs to their exclusive member," and hence, only constitute capital and not income.

MJVRHI likewise asserts that its receipts should not be subject to VAT as there is no sale, barter, or exchange of goods or services.

The Regional Director of Revenue Region No. 2, in its Memorandum dated May 16, 2023, submits that the ruling in ANPC vs. BIR cannot be applied to this instant case because the nature of assessment dues discussed in the aforementioned case stands in contrast to the fees received by recreational clubs, which are comparable to the activity of MJVRHI in renting out its venue and providing its services.

The Regional Director further submits that the money received by MJVRHI does not come from dues paid by its members but instead from receipts that are in exchange for the services they provide. Thus, MJVRHI claims that the receipts are primarily intended for the maintenance, preservation, and upkeep of its general operations and facilities, and the entire complex is not a ground for it to be exempt from VAT.

[1] G.R. No. 228539; June 26, 2019.

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In reply, please be advised that the Supreme Court, in the case of ANPC vs. BIR, stated that

> "As ANPC aptly pointed out, membership fees, assessment dues, and the like are not subject to VAT because in collecting such fees, the club is not selling its service to the members. Conversely, **the members are not buying services from the club when dues are paid; hence, there is no economic or commercial activity to speak of** as these dues are devoted for the operations/maintenance of the facilities of the organization. As such, there could be no "sale, barter or exchange of goods or properties, or sale of a service" to speak of, which would then be subject to VAT under the 1997 NIRC." (Emphasis ours)

In the case of ANPC, the membership fees, assessment dues, and the like are not subject to VAT because the members are not buying services; hence, there is no economic or commercial activity to speak of. The same does not apply to MJVRHI due to the clear difference between the transactions. In its letter request, MJVRHI admitted that its sources of receipts come from, among others, the conduct of retreats, recollections, spiritual formation, seminars, and workshops for lay, religious, priests, and seminarians (including reimbursement for the board and lodging of the retreatants and/or seminar participants).

This means that MJVRHI does not receive payment for the maintenance and operations of its facilities but instead for the services it offers, such as the ones mentioned above. Although MJVRHI claims that it uses its receipts for the maintenance and operations of its facilities, the same cannot be translated as being in the nature of membership or assessment dues paid by members of a club for the sole purpose of the maintenance and operations of its facilities as contemplated in the case of ANPC vs. BIR.

The difference essentially lies in the way the transactions are structured. In the case of ANPC, it receives membership dues from its members solely for the purpose of the upkeep of the club facilities. Club members pay not for the privilege of using the club's facilities but for their maintenance. MJVRHI receives payments from its customers for the privilege of using its venues for retreats, recollections, and so on, which is basically a sale of service contemplated under Section 108 of the National Internal Revenue Code (Tax Code) of 1997, as amended, similar to what other private venues offer to their clients for wedding and other events.

Moreover, MJVRHI even cited the discussion in the ANPC case that will clarify this matter, to wit:

> "Income as contrasted with capital or property is to be the test. The essential difference between capital and income is that **capital is a fund; income is a flow. A fund of property existing at an instant of time is called capital. A flow of services rendered by that capital by the payment of money from it or any other benefit rendered by a fund of capital in relation to such fund through a period of time is called income.** Capital is wealth, while income is the service of wealth.
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> XXX XXX XXX
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> As correctly argued by ANPC, membership fees, assessment dues, and other fees of similar nature only constitute contributions to and/or replenishment of the funds for the maintenance and operations of the facilities offered by recreational clubs to their exclusive members. **They represent funds "held in trust" by these clubs to defray their operating and general costs and hence, only constitute infusion of capital.**" (Emphasis and underscoring ours)

In the above-cited statements, the Supreme Court clearly outlined what capital is as distinguished from income, which it also used to rule that the collection of the same is not subject to VAT. That is because being considered capital negates funds collected from being treated as income from a transaction and, consequently, is not subject to VAT.

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However, in the case of MJVRHI, their receipts are considered income and not capital. The amount they receive is from a flow of services rendered by capital. Their capital is their retreat house, and their practice their profession by rendering workshops, for which they get paid for. By selling the rights to use their property, their capital serves to acquire income. This is opposed to membership fees, assessment dues, and other fees of similar nature since, by their very nature, they are contributions only and are treated as funds held in trust by clubs. In the case of MJVRHI, the funds they collect are not held in trust for members but are theirs solely, which they can dispose of in any manner whatsoever. Only in this particular case, they decided to utilize it for the same purpose that clubs utilize their funds, which is to maintain their facilities and operations. Simply doing this, however, does not automatically convert MJVRHI's income to capital.

Moreover, Section 105 of the Tax Code of 1997, as amended, provides that:

> "SEC. 105. Persons Liable. - Any person who, in the course of trade or business, sells barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
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> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.
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> The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, **by any person regardless of whether or not the person engaged therein is a non-stock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests)**, or government entity.
>
> xxx xxx xxx" (Emphasis and underscoring ours)

The above-cited provision clearly indicates the coverage of VAT, which includes MJVRHI. Also, one of the main differentiators between MJVRHI and organizations that were deemed exempt from the coverage of VAT is that the contributors of the latter are part owners of the association or organization they contribute to. To demonstrate, private membership club members own shares of the club they pay membership dues to; condominium corporations receive association dues from unit owners of the condominium; and homeowners association dues are collected from house and lot owners within the subdivision homes managed by the homeowners association. This is why their contributions are considered capital because an owner injecting funds into an organization to which he has a share or is a member will be treated as a capital investment. This is where MJVRHI diverges from these organizations or associations. MJVRHI's collection pertains only to MJVRHI, and the person from whom they receive such funds does not incur any benefit for any property that they own; thus, it is not a capital investment. It is merely a payment for a service that is subject to VAT.

Please be guided accordingly.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
012646

CC: **CLAIRE B. CORPUS**
Regional Director
Revenue Region No. 2
Baguio City