June 8, 2021

BIR RULING NO. S30-C-199-21

RA No. 9904; RA No. 10963; RMC No. 9-2013; RR No. 13-2018; BIR Ruling No. 402-13

United Poor Homeowners Association, Inc.
Gumamela Extension, Carmen, Cagayan de Oro City

Attention: *AAA*

Gentlemen :

This refers to your letter dated December 09, 2015 requesting for a confirmatory ruling that **UNITED POOR HOMEOWNERS ASSOCIATION, INC.** is entitled to tax exemption as a non-stock, non-profit corporation under Section 30 of the 1997 Tax Code, as amended.

It is represented that **UNITED POOR HOMEOWNERS ASSOCIATION, INC.**, with Taxpayer Identification Number (TIN) _____ is a non-stock and non-profit residential homeowner association duly organized under Section 2 (a) of Executive Order No. 535 and Section 26 of Republic Act No. 8763; and that among the purposes for which it is formed are:

1. *To construct, manage, maintain and operate adequate facilities and services for its members;*

2. *To initiate and organize socio-cultural projects and activities to awaken community consciousness and belonging;*

3. *To promote, enhance and foster the development and improvement of the quality of life of the members through livelihood projects and other economic activities;*

4. *To acquire, accept donations, purchase, own, hold, develop, lease, mortgage, pledge, exchange, sell, transfer or otherwise invest, deal in or*

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trade, in any manner permitted by the law and the rules and regulations of government regulatory or licensing agencies, real and personal property of every kind and description, or any interest therein, as may be necessary for the accomplishment of the purposes of the Association;

5. *To borrow and otherwise contract indebtedness and issue notes, bonds and other evidence of indebtedness and to secure payment therefore by mortgage, pledge, or deed of trust of, or through encumbrances or any and all of its then-owned or after-acquired real or personal properties and assets, as may be permitted by law;*

6. *To enter into, make, perform and carry out, or cancel and rescind contracts of every kind and for any lawful purpose with any person, firm, association, corporation, syndicate, domestic or foreign, or others;*

7. *To do or perform any other acts and things, and to have and exercise any other power which may be necessary, convenient and appropriate to accomplish the purpose to which the Association is organized.*

In reply thereto, please be informed that **UNITED POOR HOMEOWNERS ASSOCIATION, INC.**, a residential homeowners association, is not among those non-stock, non-profit corporations contemplated under Section 30 of the Tax Code of 1997, as amended. Hence, **UNITED POOR HOMEOWNERS ASSOCIATION, INC.** may not avail of the income tax exemption under the aforesaid provision. However, Revenue Memorandum Circular (RMC) No. 9-2013 discussed the income taxability of association dues, membership fees, and other assessments/charges collected by a homeowners' association from its homeowner-members and other entities, to wit:

"I. Income Tax — Section 18 of R.A. No. 9904 which exempts from taxation the association dues and income derived from rental subject to certain conditions is an implied recognition by Congress that such receipts are subject to tax under existing laws. Thus, the amounts paid in as dues or fees by homeowner-members of a homeowners' association form part of the gross income of the latter subject to income tax. This is because a homeowners' association furnishes its members with benefits, advantages and privileges in return to such payments. For tax purposes, the association dues, membership fees, and other assessment/charges collected by a homeowners' association constitute income payments or compensation for beneficial services it provides to its member and tenants. The previous interpretation that the assessment dues are funds which are merely held in trust by a homeowners' association lacks legal basis and is hereby abandoned.

Moreover, since a homeowner's association is subject to income tax, income payment made to it are subject to applicable withholding taxes under existing

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regulations."

Notwithstanding the above, RMC No. 9-2013 likewise provides that the association dues and income derived from rentals of **UNITED POOR HOMEOWNERS ASSOCIATION, INC.** properties may be exempted from income tax provided that the following conditions are complied with pursuant to Section 18 of RA No. 9904:

a. The homeowners' association must be a duly constituted "Association" as defined under Section 3 (b) of RA No. 9904;

b. The local government unit having jurisdiction over the homeowners' association must issue certification identifying the basic services being rendered by the homeowners' association and therein stating its lack of resources to render such services notwithstanding its clear mandate under applicable laws, rules and regulations. Provided further, that such services must fall within the purview of the "basic community services and facilities" which is defined under Section 3 (d) of RA No. 9904 as those referring to service and facilities that rebound to the benefit of all homeowners' and from which, by reason of practicality, no homeowner may be excluded such as, but not limited to: security; street and vicinity lights' maintenance, repairs and cleaning of streets; garbage collection and disposal; and other similar services and facilities; and

c. The homeowners' association must present proof (*i.e.*, financial statements) that the income and dues are used for the cleanliness, safety, security, and other basic services needed by the members, including the maintenance of the facilities of their respective subdivisions or villages.

With respect to value-added tax, Section 4.109-1 (B) (1) (y) of Revenue Regulations (RR) No. 13-2018 provides that:

"SEC. 4.109-1. VAT-Exempt Transactions. —

xxx xxx xxx

(B) Exempt transactions. —

xxx xxx xxx

(1) Subject to the provisions of Section 4.109-2 hereof, the following transactions shall be exempt from VAT:

xxx xxx xxx

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(y) Association dues, membership fees, and other assessments and charges collected on a purely reimbursement basis by homeowners' associations and condominium corporations established under Republic Act No. 9904 *(Magna Carta for Homeowners and Homeowners' Associations)* and Republic Act No. 4726 *(The Condominium Act)*, respectively;"

xxx xxx xxx

However, gross receipts from the operation not derived from rental of its facilities, association dues, membership fees, other assessment and charges collected in purely reimbursement basis shall be subject to the 12% VAT imposed under Section 108 of the Tax Code of 1997, as amended, or three percent (3%) tax imposed under Section 116 in relation to Section 109 (BB) of the same Code if the gross sales or receipts from such sale of goods and services do not exceed Three Million Pesos (P3,000,000.00). [1]

In this case, there was no showing that the **UNITED POOR HOMEOWNERS ASSOCIATION, INC.** met the above conditions for the entitlement of tax exemption under RA No. 9904. In view of the foregoing, your request for the issuance of a Certificate of Tax Exemption pursuant to the Tax Code of 1997, as amended, is hereby denied.

Please be guided accordingly.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. Republic Act No. 10963 (TRAIN Law) increased the VAT threshold from P1,919,500 to P3,000,000.00 effective January 1, 2018.

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