June 15, 2021

BIR RULING NO. OT-206-21

R.A. No. 9904; R.A. No. 8424; RMC No. 09-2013; BIR Ruling No. 399-2013

Sycip Gorres Velayo & Co.
6760 Ayala Avenue, 1226 Makati City

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 19, 2018, requesting for a ruling confirming the exemption from income tax and value-added tax/percentage tax of **DASMARIÑAS VILLAGE ASSOCIATION, INC.**, pursuant to Republic Act (R.A.) No. 9904 otherwise known as the "Magna Carta for Homeowners and Homeowners' Associations," as enunciated in Revenue Memorandum Circular No. 9-2013 which clarifies the taxability of association dues, membership fees, and other assessments/charges collected by Homeowners' Associations.

Documents submitted disclosed that **DASMARIÑAS VILLAGE ASSOCIATION, INC.**, is a non-stock and non-profit residential homeowners' association, with Taxpayers Identification No. _____ and duly registered with the Housing and Land Use Regulatory Board under Certificate of Registration No. 01525; that it is situated and within the jurisdiction of the City of Makati; and that among the purposes for which the Association was incorporated is *"to promote and advance the best interest, general welfare, prosperity and safeguard the well-being of the owners, lessees and occupants of the property in the Dasmariñas Village"*; and that the Officer-in-Charge of Makati City, Aileen M. Soriano, on December 21, 2017, issued a Certification stating that:

> *"The Dasmariñas Village Association, Inc. (DVAI) is a legitimate Homeowners Association that provides funds and basic services to its members, such as but not limited to the following:*
>
> *1. Security and safety (2 fire trucks with Emergency Response Team,*

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CCTVs, ambulance services)

2. *Garbage collection and free trash bags*

3. *Repair, maintenance and cleaning of streets, sidewalks, parks, building & facilities and other common areas*

4. *Streetlights*

5. *Lighted street name signs*

6. *Provision of space for water and sewer facilities*

7. *Other similar services and facilities*

The City Government of Makati (CGM) did not appropriate fund and resources intended for the above basic services to the members of DVAI since it involves private properties. Hence, the aforesaid basic services to the members of DVAI is not included among the programs and projects of the City. Furthermore, as a private organization, the delivery of basic services is with their exclusive control and supervision in accordance with Section 3(d) of the Republic Act No. 9904, otherwise known as the Magna Carta of Homeowners Association.

Considering that the CGM lacks resources due to the reason stated above, we would like to recommend the approval of their application for tax exemption."

DASMARIÑAS VILLAGE ASSOCIATION, INC. bases its claim for tax exemption on Section 18 of R.A. No. 9904, which provides:

*"**SECTION 18. Relationship with LGUs.** — Homeowners' associations shall complement, support and strengthen LGUs in providing vital services to their members and help implement local government policies, programs, ordinances, and rules.*

Associations are encouraged to actively cooperate with LGUs in furtherance of their common goals and activities for the benefit of the residents of the subdivisions/villages and their environments.

Where the LGUs lack resources to provide for basic services, the associations shall endeavor to tap the means to provide for the same. In recognition of the associations' efforts to assist the LGUs in providing such basic services, association dues and income derived from rentals of their facilities shall be tax-exempt: Provided, That such income and dues shall be 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. x x x"

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A careful review of the Certification issued by Officer-in-Charge of Makati City, dated December 21, 2017, shows that the City Government of Makati does not support the homeowners association not because it lacks resources but because it does not want to provide financial support to programs involving private properties, and as a private organization, the delivery of basic services is with **DASMARIÑAS VILLAGE ASSOCIATION, INC.'s** exclusive control and supervision in accordance with Section 3 (d) of R.A. No. 9904, otherwise known as the Magna Carta of Homeowners Association. Thus, we regret to inform you that **DASMARIÑAS VILLAGE ASSOCIATION, INC.** does not fall within the purview of those homeowners' associations which may be exempted for income tax under Section 18 of R.A. No. 9904 considering that the requisite qualification that the **city or municipality concerned must be lacking in resources to provide for basic services** is absent.

Consequently, **DASMARIÑAS VILLAGE ASSOCIATION, INC.**, shall be subject to the applicable internal revenue taxes on its income from association dues, rentals of their facilities, trade business and other activities. Specifically:

Income Tax

It shall be subject to the corresponding internal revenue taxes imposed under the National Internal Revenue Code (Tax Code) of 1997, as amended, on its income derived from association dues and rentals of its facilities, which income should be returned for taxation. Likewise, interest income from currency bank deposits and yield or any other monetary benefit from deposit substitute instruments and from trust funds and similar arrangements, and royalties derived from sources within the Philippines are subject to the 20% final withholding tax; provided, however, that interest income derived by it from a depository bank under the expanded foreign currency deposit system shall be subject to 15% [1] final withholding tax pursuant to Section 27 (D) (1) in relation to Section 57 (A), both of the Tax Code of 1997, as amended. Moreover, it is required to file on or before April 15 of each year a profit and loss statement and balance sheet with the annual information return under oath, stating its gross income and expenses incurred during the year and a certificate showing that there has not been any change in its By-Laws, Articles of Incorporation, manner of operation and activities as well as resources and disposition of income.

Value-Added Tax (VAT) or Percentage Tax

DASMARIÑAS VILLAGE ASSOCIATION, INC.'s gross receipts from association dues, membership fees, and other assessment/charges collected in purely reimbursement basis by a homeowners' association are not subject to VAT. [2] 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

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shall be subject to the 12% VAT imposed under Section 108 of the Tax Code of 1997, as amended, or to the 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). [3]

It should be understood that **DASMARIÑAS VILLAGE ASSOCIATION, INC.** shall be constituted as withholding agent of the government if it acts as an employer and its employees receive compensation income subject to the withholding tax under Section 57 of the Tax Code of 1997, as amended.

Finally, **DASMARIÑAS VILLAGE ASSOCIATION, INC.** is also subject to the payment of the annual registration fee of PhP500.00 as prescribed in Section 236 (B) of the Tax Code of 1997, as amended. It is also required under Section 6 (C) in relation to Section 237 of the same Code to issue duly registered receipts for services rendered which do not comprise income from association dues and rentals of their facilities.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

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

Footnotes

1. As amended by Republic Act No. 10963.
2. Section 4.109-1 (B) (1) (y) of Revenue Regulations (RR) No. 13-2018.
3. Republic Act No. 10963 (TRAIN Law) increased the VAT threshold from P1,919,500 to P3,000,000.00 effective Jan. 01, 2018.

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