REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

R.A. No. 9904; R.A. No. 8424;
RMC No. 9-2013;
BIR Ruling No. 282-14 BIR Ruling No. 402-13

#061-2016 2-9-2016
Date

SUBIC HILLS HOMEOWNERS ASSOCIATION, INC.
Subic Hills Village,
Aningway, Subic, Zambales

Attention: **MS. ESTER A. ASILO**
President

Madam:

This refers to your letter dated April 3, 2014 requesting on behalf of **SUBIC HILLS HOMEOWNERS ASSOCIATION, INC.** for the issuance of a Certificate of Tax Exemption pursuant to Section 30 (E) of the Tax Code of 1997, as amended.

It is represented that **SUBIC HILLS HOMEOWNERS ASSOCIATION, INC.**, with Tax Identification Number (TIN) , is a non-stock, non-profit corporation duly registered with the Home Insurance Guaranty Corporation under Registration No.

In reply thereto, please be informed that while it is stated in its Articles of Incorporation and By-Laws that **SUBIC HILLS HOMEOWNERS ASSOCIATION, INC.** is a non-stock, non-profit homeowners it is not among those corporations contemplated under Section 30 of the Tax Code of 1997, as amended as it does not fall among any of the enumerated corporations in the said provision.

Hence, the income earned by **SUBIC HILLS HOMEOWNERS ASSOCIATION, INC.** is subject to the regular corporate income tax imposed by Section 27(A) of the same Code. **Revenue Memorandum Circular (RMC) No. 9-2013**, which discussed the taxability of association dues, membership fees, and other assessments/charges collected by homeowners' association from its members and other entities, is herein quoted as follows:

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"The taxability of association dues, membership fees, and other assessments/charges collected by a homeowners' association from its homeowner-*members and other entities are discussed hereunder.*

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 for such payments. For tax purposes, the association dues, membership fees, and other assessments/charges collected by a homeowners' association constitute income payments or compensation for beneficial services it provides to its members 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 homeowners' association is subject to income tax, income payments made to it are subject to applicable withholding taxes under existing regulations.

II. Value-Added Tax (VAT) and Percentage Tax – Association dues, membership fees, and other assessments/charges collected by a homeowners' association are subject to VAT since they constitute income payment or compensation for the beneficial services it provides to its homeowner-members.

Section 105 of the NIRC, as amended, provides:

> '**SECTION 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 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 nonstock, 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.' (Emphasis supplied)

The above provision is clear -- even a non-stock, non-profit organization or government entity is liable to pay VAT on the sale of goods or services. This conclusion was affirmed by the Supreme Court in *Commissioner of Internal Revenue v. Court of Appeals and Commonwealth Management and Services Corporation*, (G.R. No. 125355, March 30, 2000). In this case, the Supreme Court held:

'(E)ven a non-stock, non-profit organization or government entity, is liable to pay VAT on the sale of goods or services. VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto. The term "in the course of trade or business" requires the regular conduct or pursuit of a commercial or an economic activity, regardless of whether or not the entity is profit-oriented.

The definition of the term "in the course of trade or business" incorporated in the present law applies to all transactions even to those made prior to its enactment. Executive Order No. 273 stated that any person who, in the course of trade or business, sells, barters or exchanges goods and services, was already liable to pay VAT. The present law merely stresses that even a nonstock, nonprofit organization or government entity is liable to pay VAT for the sale of goods and services.

Section 108 of the National Internal Revenue Code of 1997 defines the phrase "sale of services" as the "performance of all kinds of services for others for a fee, remuneration or consideration." It includes "the supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking or project."

On February 5, 1998, the Commissioner of Internal Revenue issued BIR Ruling No. 010-98 emphasizing that a domestic corporation that provided technical, research, management and technical assistance to its affiliated companies and received payments on a reimbursement-of-cost basis, without any intention of realizing profit, was subject to VAT on services rendered. In fact, even if such corporation was organized without any intention of realizing profit, any income or profit generated by the entity in the conduct of its activities was subject to income tax.

Hence, **it is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered** to its affiliates on a **reimbursement-on-cost basis only**, without realizing profit, for purposes of determining liability for VAT on services rendered. **As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.**'

Accordingly, the gross receipts of homeowners' associations including association dues, membership fees, and other assessments/charges are subject to VAT, income tax and income payments made to it are subject to applicable withholding taxes under existing regulations.

Those exempt from the payment of VAT under Section 109(V) are liable to pay percentage tax. Section 116 provides:

'**SEC. 116.** ***Tax on Persons Exempt from Value-Added Tax (VAT).*** — Any person whose sales or receipts are exempt under Section 109 (V) of this Code from the payment of value-added tax and who is not a VAT-registered person shall pay a tax equivalent to three percent (3%) of his gross quarterly sales or receipts: Provided, That cooperatives

shall be exempt from the three percent (3%) gross receipts tax herein imposed.'

As clearly stated in the law, non-VAT registered entities exempt under Section 109 (1) (V) of the NIRC, as amended, are covered by percentage taxes."

RMC 9-2013 likewise provides that in order for the association dues and income derived from rentals of the properties of **SUBIC HILLS HOMEOWNERS ASSOCIATION, INC.** may be exempted from income tax, VAT and percentage tax, the following conditions must be 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 a 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 services and facilities that redound 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.

In view of the foregoing, your request for the issuance of a Certificate of Tax Exemption pursuant to Section 30 of the Tax Code of 1997, as amended, is hereby denied.

Please be guided accordingly.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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