August 31, 2018

BIR RULING NO. 1152-18

Sec. 18, RA 9904; Sec. 30, RA 8424; PD 1716; RMC No. 9-2013; RMC No. 53-2013

Araneta Village Homeowners' Association, Inc.
Clubhouse Dahlia cor. Amarillo Sts.
Araneta University Village
Brgy. Potrero, Malabon City 1475

Attention: *AAA*

Gentlemen :

This refers to your letter dated December 3, 2013 requesting for tax exemption of **Araneta Village Homeowners' Association, Inc.** under Section 30 of the Tax Code of 1997, as amended and Republic Act (R.A.) No. 9904 otherwise known as the "Magna Carta for Homeowners and Homeowners' Associations," as enunciated in Revenue Memorandum Circular (RMC) No. 9-2013 which clarifies the taxability of association dues, membership fees, and other assessments/charges collected by Homeowners' Associations.

Documents submitted show that Araneta Village Homeowners' Association, Inc. (TIN: 000-000-000-000) is a residential homeowners association duly registered with the Housing and Land Use Regulatory Board under Certificate of Registration No. 09606. It is primarily organized to "to construct, manage, maintain and operate adequate facilities and services for its members."

The Office of the City Mayor of Malabon certified that —

> "x x x the City of Malabon lacks resources to provide for basic services such as security, cleanliness, safety including maintenance of the ARANETA VILLAGE HOMEOWNER'S ASSOCIATION, located in Barangay Potrero, Malabon City. x x x The basic services are shouldered by the ARANETA VILLAGE HOMEOWNERS' ASSOCIATION."

In support of your request, Araneta Village Homeowners' Association, Inc. has

Copyright 2020 CD Technologies Asia, Inc.

completely submitted the following documents:

1) Letter application for tax exemption;

2) Certified true copy of the Certificate of Registration with the HLURB;

3) HLURB certified true copy of the Articles of Incorporation and By-Laws;

4) Copy of the By-Laws;

5) Copies of the Annual Information Returns and Financial Statements for the years 2011, 2012, and 2013;

6) Certification from the Office of the City Mayor of Malabon City dated May 18, 2015;

7) BIR Certificate of Registration; and

8) Other pertinent documents.

Araneta Village Homeowners' Association, Inc. bases its request for tax exemption on Section 30 of the Tax Code of 1997, as amended and Section 18 of R.A. No. 9904.

In reply thereto, please be informed that while it is stated in its Articles of Incorporation and By-Laws that Araneta Village Homeowners' Association, Inc. is a non-stock, non-profit corporation, it is not among those corporations contemplated under Section 30 of the Tax Code of 1997 as it does not fall among any of the enumerated corporations in the said provision.

Homeowners' associations are not tax exempt entities. 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. (RMC No. 9-2013) However, R.A. 9904 provides for tax relief, as follows:

> *"**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 environs.*

Copyright 2020 CD Technologies Asia, Inc.

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."

The law, therefore, specifically exempts from income tax **association dues** and **income from rental of its facilities** as an incentive to the association for providing basic services to its members and homeowners which otherwise should be provided by the LGU.

The *Implementing Rules and Regulations of R.A. No. 9904* (IRR) defines "basic community services and facilities" as 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.

Exempt Association Dues

It should be noted that the Association Dues exempt under R.A. No. 9904 is limited to dues that are regularly imposed by a Homeowners' Association to a homeowner-member as defined in Section 5 of the same law and its implementing rules and regulations, which 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, and does not include other special assessments.

Special assessments, while collected by the association and which collection may redound to the common benefit of all members, cannot be construed to be the same as association dues exempted by R.A. No. 9904. The law makes a distinction regarding what pertains to association dues and other special assessments. Section 8, Rule 2 of the IRR provides:

> **"Section 8. Duties and Responsibilities of Homeowners.** — Every homeowner must pay the necessary fees, charges pertaining to basic community services, and other special assessments such as but not limited to construction bond and stickers."

Thus, forfeited bond deposits, fees for identification cards processing, construction fees, fees for resident stickers and other assessments not falling within the purview of association dues are not exempt from income tax. Also not exempt from income tax are income from investment activities.

Copyright 2020 CD Technologies Asia, Inc.

Exempt Rental Income

In giving the incentive to homeowners' association, R.A. No. 9904 contemplates that the requirement that upon completion of the subdivision project, roads, alleys, sidewalks and playgrounds shall be donated by the owner or developer to the city or municipality having jurisdiction thereon or the homeowners' association with the former's consent, under Section 32 of Presidential Decree No. 1216, [1] has been complied with. Logically, since these properties are maintained, repaired or administered by the homeowners' association in behalf of the LGU, the homeowners' association were given the incentive of tax exemption on the association dues and the rental income on the properties with the condition that the said incomes "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." Consequently, this Office can only exempt rental income from the lease of: (1) properties owned by the homeowners' association; and (2) properties owned by the LGU and under administration of the homeowners' association.

Following the above discussions, we hereby hold that **Araneta Village Homeowners' Association, Inc.** is exempt from income tax, value-added tax or percentage tax, whichever is applicable **only on** its income derived from association dues and rentals of facilities or properties in the name of the Association, or are owned by the City of Malabon and under the administration of the Araneta Village Homeowners' Association, Inc. 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 subdivision/village.

Income Taxes

Araneta Village Homeowners' Association, Inc., however, shall be subject to the applicable internal revenue taxes on its other income from trade, business or other activities. Specifically:

Income Tax

It shall be subject to the corresponding internal revenue taxes imposed under the Tax Code of 1997 on its income not derived from sources other than association dues (forfeited bond deposits, fees for identification cards processing, construction fees, fees for resident stickers and other assessments) or rentals of its facilities or properties described, 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

Copyright 2020 CD Technologies Asia, Inc.

income derived from it from a depository bank under the expanded foreign currency deposit system shall be subject to 7-1/2% final withholding tax pursuant to Section 27 (D) (1) in relation to Section 57 (A), both of the Tax Code of 1997. 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 or Percentage Tax

Likewise, **Araneta Village Homeowners' Association, Inc.'s** gross receipts from operations not derived from association dues or rentals of its facilities shall be subject to the 12% VAT, as imposed under Section 108 of the Tax Code of 1997, which tax payment may legitimately be passed on to buyers of such goods and services; or 3% percentage tax imposed under Section 116 in relation to Section 109 (1) (W) of the same Code if the gross sales or receipts from such sale of goods and services do not exceed One Million Nine Hundred Nineteen Thousand Five Hundred Pesos (P1,919,500.00).

It is requested that a copy of this letter of exemption be attached to the annual information return which **Araneta Village Homeowners' Association, Inc.** will file on or before the 15th day of the fourth month of each year.

Under Section 235 of the Tax Code of 1997, any provision of existing general or special law to the contrary notwithstanding, the Revenue District Officer shall conduct an audit of annual information return filed, the books of accounts and other pertinent records of **Araneta Village Homeowners' Association, Inc.** to determine compliance with the conditions set forth in this letter of tax exemption and tax liabilities, if any.

It should be understood that **Araneta Village Homeowners' 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.

Finally, **Araneta Village Homeowners' Association, Inc.** is also subject to the payment of the annual registration fee of P500.00 as prescribed in Section 236 (B) of the Tax Code of 1997. 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.

Donations

Copyright 2020 CD Technologies Asia, Inc.

Endowments or gifts received by such associations are not exempt from donor's tax considering that gifts to Associations are not qualified for exemption under Section 101 (A) (3) of the Tax Code of 1997.

As clarified in RMC No. 53-2013, contributions to associations in exchange for goods, services and use of properties constitute as other assessments/charges from activity in exchange for the performance of a service, use of properties or delivery of an object. As such, these fees are income on the part of the associations that are subject to income tax under Section 27 of the Tax Code of 1997. Further, considering that these fees are received in the conduct or pursuit of commercial or economic activity, these fees are also subject to value-added tax (VAT) imposed in Sections 106 and 108, or percentage tax under Section 116 of the Tax Code of 1997, whichever is applicable. *(RMC No. 53-2013 dated August 16, 2013)*

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. DEFINING "OPEN SPACE" IN RESIDENTIAL SUBDIVISIONS AND AMENDING SECTION 31 OF PRESIDENTIAL DECREE NO. 957 REQUIRING SUBDIVISION OWNERS TO PROVIDE ROADS, ALLEYS, SIDEWALKS AND RESERVE OPEN SPACE FOR PARKS OR RECREATIONAL USE.

Copyright 2020 CD Technologies Asia, Inc.