September 10, 2018

BIR RULING NO. 1189-18

Republic Act (RA) No. 9904; RA No. 8424, as amended; Revenue Memorandum Circular (RMC) No. 9-2013; and RMC No. 53-2013; BIR Ruling No. 336-2017

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

Attention: *AAA*

Gentlemen :

This refers to your letter dated June 19, 2014, requesting on behalf of your client, **FIRST GREENMEADOWS HOMEOWNERS' ASSOCIATION, INC. ("FGHAI" for brevity)**, for a confirmatory ruling that the association dues, income derived from rentals of the homeowners' association's properties, and all other revenues derived in pursuance of its purpose as a homeowners' association are exempted from income tax, value-added tax (VAT), and percentage tax, pursuant to Republic Act (RA) No. 9904, otherwise known as the "Magna Carta for Homeowners and Homeowners' Associations." The tax incentives granted to homeowner's associations were clarified in Revenue Memorandum Circular (RMC) No. 9-2013.

Documents submitted disclosed that **FGHAI**, is a residential homeowners association with Taxpayers Identification Number (TIN) 000-000-000-000 and Certificate of Registration No. OCN3RC0000299616 dated January 1, 1997; that it is duly registered with the Home Insurance and Guaranty Corporation [now Housing and Land Use Regulatory Board (HLURB)] under Certificate of Registration No. 04-216 dated October 1, 1990; that the primary purposes for which it was incorporated or organized are the following, to wit:

1. *To promote the best interest and well-being as well as safeguard the welfare of the residents and owners of properties of the said **FIRST GREENMEADOWS HOMEOWNERS' ASSOCIATION, INC.**;*

2. *To promote and foster the spirit of cooperation through peaceful and harmonious social relationships in collective undertaking by group*

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action group among the members for their own benefit;

3. *To engage in community development projects and to encourage youth participation in similar undertaking to prevent idleness and aimless activities towards a more progressive living.*

that in addition to the above, it was also organized and subject to existing laws for the following purposes:

1. *To adopt such measures as may be necessary for the protection and safety of the members of the Association and their property consistent with law*;

2. *To make and adopt such rules and regulations concerning the use, enjoyment and occupancy of all their property in the area*;

3. *To levy fees and charges that may be required or necessary for the maintenance of the Association and its activities*;

4. *To supervise and provide for all the rules and regulations concerning constructions of building and improvements in the area so as to make them conform to all the terms, conditions, and restrictions imposed by Ortigas & Company, Limited Partnership on the lots and improvements situated within the above-described land or area*;

5. *To erect, construct, improve, equip, operate, supervise and maintain ornamental and functional structures in said area*;

6. *To improve, light, provide for, beautify, equip, operate, supervise and maintain streets, pedestrian walls, gardens, playgrounds, and recreational areas for public use or for the general use of the owners or occupants of the lots and/or improvements in the area*;

7. *To sweep, clean and maintain the streets, drainages and canals, collect and dispose of street sweepings, garbage, rubbish and the like, and to construct and maintain such public utilities or services as may be necessary in the area*;

8. *To enforce the covenants, restrictions, reservations, servitudes, easements, liens and charges which presently exist, or may hereinafter be imposed upon the area or any portion thereof over which the Association has jurisdiction; to pay all expenses incidental thereto; to enforce the rules and decisions of the Association over any of said property and to pay all expenses in connection therewith*;

9. *To collect the charges affecting said property that may be levied by the Association; to pay all expenses in connection with the organization*

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and all other expenses to conduct the business and activities of the Association;

10. *To acquire by purchase or otherwise to own, hold, enjoy, lease, operate, maintain, and to convert, sell, lease, transfer, mortgage, or otherwise encumber, dedicate for public use, or otherwise dispose of real or personal property in connection with the business and activities of the Association; provided, however, that the Association shall be required to perform only such of the foregoing enumerated purposes as it shall from time to time deem to be for the best interest of the area within the Association's jurisdiction and the owners and/or occupants of the lot and/or the improvements thereon; and*

11. *To enjoy such other powers as are required and necessary or incidental to the herein above-mentioned.*

that the Chief Executive of the Local Government Unit of Quezon City issued a Certification [1] to the effect that **FGHAI**, consistent with its role to complement, support and strengthen the QC-LGU in providing vital services to their members and help implement local government policies, programs, ordinances and rules, devotes its resources to provide basic community services and facilities that redound to the benefit of all homeowners; that the basic services rendered by **FGHAI**, among others, are as follows:

1) For Cleanliness —

For sanitation of the community, campaign for dog waste signages were installed all over the Greenmeadows Village to serve as a reminder for the damage of the community's dog waste to the environment and the renovation of toilet and shower rooms for the sports facilities to better serve the homeowners, residents and their guest. Cleaning of streets and the garbage collection and disposal systems were also intensified.

2) For Safety and Security —

For the security of the subdivision, implementation of the integrated digital access control and surveillance security system and the use of golf carts by security personnel to patrol the village.

3) For Maintenance and Repairs of Facilities —

To maintain and take good care of the **FGHAI's** existing facilities including its basketball courts, sports facilities and the guard house among others to better serve the homeowners, it also undertakes maintenance and repair projects.

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*4) **For Other Basic Services** —*

Outreach Activities & Fellowship Activities.

that it was further certified that the identified basic services listed above are being rendered by **FGHAI** to its homeowners and the LGU of Quezon City due to the lack of resources of LGU-QC to render such services notwithstanding its clear mandate under applicable laws, rules and regulations; and that **FGHAI** based its exemption on Section 18 of RA No. 9904.

In reply, please be informed that 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. [2] However, RA No. 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.*
>
> *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*. (Underscoring supplied)
>
> xxx xxx xxx"

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 Local Government Unit (LGU).

From the foregoing, and considering that the Office of the City Mayor of Quezon City certified that it lacks available resources to provide basic community services and facilities needed by the members of the Association, this Office rules that **FGHAI** is exempt from income tax, VAT or percentage tax, whichever is applicable, only on its income or receipts derived from association dues and rentals of facilities or properties in the name of the Association, or are owned by the Quezon City and under administration

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of the **FGHAI**. ***(BIR Ruling No. 336-2017 dated July 12, 2017)***

It is requested that a copy of this letter of exemption be attached to the annual income tax return which **FGHAI** will file on or before the 15th day of the fourth month of each year.

Moreover, under Section 135 of the National Internal Revenue Code of 1997, as amended, any provision of existing general or special law to the contrary notwithstanding, the Revenue District Officer shall conduct an audit of the returns filed, the books of accounts and other pertinent records of **FGHAI** to determine compliance with the conditions set forth in this letter of tax exemption and tax liabilities, if any.

Furthermore, **FGHAI** 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 National Internal Revenue Code of 1997, as amended.

Finally, **FGHAI** is also subject to the payment of the annual registration fee of Php500.00 as prescribed in Section 236 (B) of the National Internal Revenue 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 being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different this ruling shall be considered null and void.

Very truly yours,

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

Footnotes

1. Certified as true copy of the original by the City Administrator of Quezon City, Aldrin C. Cuña, MNSA.
2. Revenue Memorandum Circular (RMC) No. 9-2013.

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