REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

RA 9904; RMC No. 9-2013
BIR Ruling No. 104-2014
#174-2017 4-6-2017

MAKATI COMMERCIAL ESTATE ASSOCIATION, INC.
Washington Sycip Park, Legazpi Village
Makati City

Attention: **William V. Coscolluela**
Vice President

Gentlemen:

This refers to your letter dated October 14, 2013 requesting on behalf of Makati Commercial Estate Association, Inc. (MaCEA) for tax exemption pursuant to Republic Act (R.A.) No. 9904 otherwise known as the "Magna Carta for Homeowners and Homeowners' Associations".

It is represented that MaCEA is an organization of property owners in the Makati Central Business District; and that based on the two (2) Certifications issued by Brgy. Bel-Air and Brgy. San Lorenzo, both of Makati City, dated July 22, 2013 and September 26, 2013, respectively, MaCEA provides certain community services and facilities to its members, to wit:

1. 24-hour security of the areas within its jurisdiction;
2. Quick response for fire, crime and security concerns;
3. Monitoring of constructions especially for violations of deed of restrictions;
4. Garbage collection and disposal;
5. Daily cleaning of streets, pathways, sidewalks, parks, playgrounds and other common areas;
6. Pest control of parks and common areas;
7. Regular maintenance and trimming of trees, grass and plants in the common areas;
8. Declogging of drainage, canal and sewerages;
9. Maintenance and repair of streets, pathways, sidewalks, parks, playgrounds and other common areas;
10. Maintenance and repair of streetlights;
11. Maintenance repair and storage of maintenance equipment;
12. Maintain and repair barracks and workshops for security personnel and utility crew;
13. Maintenance and repair of security patrol vehicles;
14. Maintenance and repair of Administration Office, motor pool, outposts, security equipment;
15. Maintain and manage personnel to administer and undertake all the above activities;
16. Maintain and manage personnel for accounting, cashiering, servicing facilities, etc.; and
17. Engage external auditors and legal counsel.

and that based on the same Certifications, the above services constitute most of the major expenses and costs of safety, security and administration of the areas within the jurisdiction of the MaCEA; and that the foregoing services are provided by MaCEA in its effort to complement, support and strengthen the local government unit (LGU) in providing vital services to their residents and members.

In reply, please be informed that Section 3(b) of R.A. No. 9904 otherwise known as the "Magna Carta for Homeowners and Homeowners' Associations" provides as follows:

> *"SECTION 3. Definition of Terms. - For purposes of this Act, the following terms shall mean:*
>
> *xxx xxx xxx*
>
> *(b) "Association" refers to the homeowners' association which is a nonstick, nonprofit corporation registered with the Housing and Land Use Regulatory Board (HLURB), or one previously registered with the Home Insurance Guarantee Corporation (now Home Guaranty Corporation) or the Securities and Exchange Commission (SEC), organized by owners or purchasers of a lot in a subdivision/village or other residential real property located within the jurisdiction of the association; or awardees, usufructuaries, legal occupants and/or lessees of a housing unit and/or lot in a government socialized or economic housing or relocation project and other urban estates; or underprivileged and homeless citizens as defined under existing laws in the process of being accredited as usufructuaries or awardees of ownership rights under the Community Mortgage Program (CMP), Land Tenure Assistance Program (LTAP) and other similar programs in relation to a socialized housing project actually being Implemented by the national government or the LGU.*
>
> *xxx xxx xxx"*

Based on the above definition, an association, to fall within the purview of RA No. 9904, must have the following characteristics:

1. It is a homeowners' association registered with the HLURB, Home Guaranty Corporation or SEC; and
2. It is organized by owners or purchasers of a lot in a subdivision/village or other residential real property located within the jurisdiction of the association; or awardees, usufructuaries, legal occupants and/or lessees of a housing unit and/or lot in a government socialized or economic housing or relocation project and other urban estates; or underprivileged and homeless citizens as defined under existing laws in the process of being accredited as usufructuaries or awardees of ownership rights under the Community Mortgage Program (CMP), Land Tenure Assistance Program (LTAP) and other similar programs in relation to a socialized housing project actually being Implemented by the national government or the LGU.

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It is clear that the association being referred to in Section 3(b) of RA No. 9904 pertains to one that is organized by **homeowners** or **residential property** owners or by persons having legal rights over **housing units/residential properties**. As represented, however, MaCEA is an organization of property owners in the Makati Central Business District. The name of the association alone suggests that it is composed of **commercial** property owners. Hence, the second characteristic set forth by RA No. 9904 is lacking in this case.

Assuming *arguendo* that MaCEA is an association falling within the purview of RA No. 9904, it still failed to meet the condition laid down in Section 18 of said law for the grant of tax exemption on the association's income from assessment dues and rental fees. The aforesaid Section 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 environs.*
>
> *Where the LGU's 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. xxx"*

It is clear from the foregoing that the tax exemption is being granted to an association in order to recognize its efforts in assisting the LGU when the latter lacks resources to provide the basic services. In this case, however, the barangays did not lack resources as they were, in fact, paying MaCEA for the services which the latter renders for the community. It is noted in the Financial Statements of MaCEA that it was receiving from the barangays subsidies described as monthly support given by the local government unit within the Makati Central Business District to help the Association on the costs of streetlights, grounds and maintenance, security services and garbage services[1]. It is noted that MaCEA received from barangays subsidies in the total amount of P in 2011, and P in 2012[2]. It is also shown that MaCEA has receivable subsidies from barangays in the amount of P for 2011, and P for 2012[3].

Accordingly, we regret to inform you that MaCEA does not fall within the purview of associations defined under R.A. No. 9904. Consequently, MaCEA shall be subject to the applicable internal revenue taxes on its income from association dues, rentals fees, parking fees, trade, business and other for-profit activities. In particular, MaCEA shall be subject to the following taxes:

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[1] Notes to Financial Statements No. 15.

[2] Ibid

[3] Notes to Financial Statements No. 5

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Income Taxes

It is subject to the corresponding internal revenue taxes imposed under the Tax Code of 1997 on its income derived from association dues, rentals fees, parking fees, trade, business and other activities, 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 7 ½ % final withholding tax pursuant to Section 27(D)(1) in relation to Section 57(A), both of the Tax Code of 1997.

Value-Added Tax or Percentage Tax

Likewise, MaCEA's gross receipts from operations derived from association dues, parking fees, rentals fees, trade, business and other business activities shall be subject to the 12% VAT, or to the 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 should be understood that MaCEA 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, MaCEA 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 official receipts or sales invoice for every sale of services and goods.

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

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